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Washington, Friday, August 7, 1942

The President

PROCLAMATION 2564

ENLARGING THE KATMAI NATIONAL MONUMENT—ALASKA

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

WHEREAS it appears that certain public-land islands situated near the Katmai National Monument in Alaska are required for the proper care, management, and protection of the objects of scientific interest located on lands within the said monument; and

WHEREAS it appears that it would be in the public interest to reserve these islands as an addition to the Katmai National Monument:

NOW, THEREFORE, I, FRANKLIN D. ROOSEVELT, President of the United States of America, under and by virtue of the authority vested in me by section 2 of the act of June 8, 1906, c. 3060, 34 Stat. 225 (U.S.C., title 16, sec. 431), do proclaim that, subject to valid existing rights, all islands in Cook Inlet and Shelikof Strait in front of and within five miles of the Katmai National Monument, established by Proclamation of September 24, 1918 (40 Stat. 1855) and enlarged by Proclamation of April 24, 1931 (47 Stat. 2453), are hereby reserved from all forms of appropriation under the public-land laws and added to and made a part of the said Katmai National Monument.

Warning is hereby expressly given to any unauthorized persons not to appropriate, injure, destroy, or remove any feature of this monument and not to locate or settle upon any of the lands thereof.

The Director of the National Park Service, under the direction of the Secretary of the Interior, shall have the supervision, management, and control of this monument as provided in the Act of Congress entitled "An Act to establish a National Park Service, and for other purposes", approved August 25, 1916, 39

Stat. 535 (U.S.C., title 16, secs. 1 and 2), and acts supplementary thereto or amendatory thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the United States to be affixed.

DONE at the City of Washington this 4th day of August in the year of our Lord nineteen hundred and forty-[SEAL] two, and of the Independence of the United States of America the one hundred and sixty-seventh.

FRANKLIN D. ROOSEVELT

By the President:

CORDELL HULL,
Secretary of State.

[F. R. Doc. 42-7611; Filed, August 5, 1942; 2:34 p. m.]

EXECUTIVE ORDER 9214

EXTENDING THE AUTHORITY OF THE OFFICE OF DEFENSE TRANSPORTATION TO DOMESTIC TRANSPORTATION WITHIN THE TERRITORIES AND POSSESSIONS OF THE UNITED STATES

By virtue of the authority conferred upon me by the Constitution and statutes of the United States, and as President of the United States and Commander in Chief of the Army and Navy, it is hereby ordered as follows:

In addition to the powers conferred upon it by Executive Order No. 8989¹ of December 18, 1941, and Executive Order No. 9156² of May 2, 1942, the Office of Defense Transportation shall include within the scope of its authority, as defined in the said orders, all domestic transportation within the territories and possessions of the United States.

FRANKLIN D. ROOSEVELT

THE WHITE HOUSE,

August 5, 1942.

[F. R. Doc. 42-7618; Filed, August 6, 1942; 10:28 a. m.]

¹ 6 FR. 8725.

² 7 FR. 3349.

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TITLE 7—AGRICULTURE

Chapter VII—Agricultural Adjustment Agency

PART 728—WHEAT

NATIONAL MARKETING QUOTA FOR THE MARKETING YEAR 1943-44

Whereas the Agricultural Adjustment Act of 1938, as amended, provides:

SEC. 335. (a) Whenever it shall appear that the total supply of wheat as of the beginning of any marketing year will exceed a normal year's domestic consumption and exports by more than 35 per centum, the Secretary [of Agriculture] shall, not later than the May 15 prior to the beginning of such marketing year, proclaim such fact and, during the marketing year beginning July 1 and continuing throughout such marketing year, a national marketing quota shall be in effect with respect to the marketing of wheat. * * * Marketing quotas for any marketing year shall be in effect with respect to wheat harvested in the calendar year in which such marketing year begins notwithstanding that the wheat is marketed prior to the beginning of such marketing year. * * *

Whereas said act contains, in section 301 (b), the following definitions of terms here pertinent:

"Carry-over" of wheat, for any marketing year shall be the quantity of wheat on hand in the United States at the beginning of such marketing year, not including any wheat which was produced in the United States during the calendar year then current, and not including any wheat held by the Federal Crop Insurance Corporation under Title V.

"Marketing year" means, in the case of the following commodities, the period beginning on the first and ending with the second date specified below:

Wheat, July 1-June 30.

"Normal year's domestic consumption", in the case of * * * wheat, shall be the yearly average quantity of the commodity, wherever produced, that was consumed [consumed] in the United States during the ten marketing years immediately preceding the marketing year in which such consumption is determined, adjusted for current trends in such consumption.

"Normal year's exports" in the case of * * * wheat shall be the yearly average quantity of the commodity produced in the United States that was exported from the United States during the ten marketing years * * * immediately preceding the marketing year in which such exports are determined, adjusted for current trends in such exports.

"Total supply" of * * * wheat for any marketing year shall be the carry-over of the commodity for such marketing year plus the estimated production of the commodity in the United States during the calendar year in which such marketing year begins.

And whereas said act provides, in section 301 (c), that—

The latest available statistics of the Federal Government shall be used by the Secretary [of Agriculture] in making the determinations required to be made by the Secretary under this Act.

Now, therefore, be it known that I, Claude R. Wickard, Secretary of Agriculture of the United States of America, acting under and pursuant to, and by virtue of the authority vested in the Secretary of Agriculture by the Agricultural Adjustment Act of 1938, as amended, upon the basis of the latest available statistics of the Federal Government, do hereby find, determine, and proclaim under section 335 (a) of said Act that:

§ 728.405 *National marketing quota for wheat for the 1943-44 marketing year.* (a) The total supply of wheat for the marketing year beginning July 1, 1943 is 1,508 million bushels.

(b) A normal year's domestic consumption and exports of wheat is 722 million bushels.

(c) The total supply of wheat for the marketing year beginning July 1, 1943, will exceed a normal year's domestic consumption and exports by more than 35 per centum.

(d) A national marketing quota shall be in effect with respect to the marketing of wheat during the marketing year beginning July 1, 1943, and continuing throughout such marketing year. The marketing quota shall be in effect with respect to wheat harvested in the calendar year 1943 notwithstanding that the wheat is marketed prior to July 1, 1943. (Sec. 335 (a), 301 (c), 52 Stat. 54, 43; 7 U.S.C. 1940 ed. 1335, 1301)

Done at Washington, D. C., this 5th day of August 1942. Witness my hand and the seal of the Department of Agriculture.

[SEAL]

CLAUDE R. WICKARD,
Secretary of Agriculture.

[F. R. Doc. 42-7629; Filed, August 6, 1942; 11:24 a. m.]

TITLE 10—ARMY: WAR DEPARTMENT Chapter VIII—Procurement and Disposal of Equipment and Supplies

PART 81—PROCUREMENT OF MILITARY SUPPLIES AND ANIMALS

With the exception of §§ 81.38, 81.39 and 81.40, which are retained, all sections under Part 81 are hereby rescinded and the following new War Department Procurement Regulations are prescribed. See also §§ 83.701 to 83.710, inclusive. These regulations supersede the 5-series of Army Regulations, War Department Procurement Circulars, and all prior instructions and directives which are inconsistent herewith.

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AUTHORITY: §§ 81.101 to 81.112, 81.201 to 81.206, 81.301 to 81.351, 81.401 to 81.427, 81.501 to 81.508, 81.601 to 81.612, 81.801 to 81.817, 81.901 to 81.961, 81.1001 to 81.1017,

81.1101 to 81.1106, and 83.701 to 83.710 issued under sec. 5a, National Defense Act, as amended, 41 Stat. 764, 54 Stat. 1225; 10 U.S.C. 1193-1195, and the First War Powers Act, 1941, 55 Stat. 838; 50 U. S. C. Sup. 601-622.

Numbers to the right of the decimal point correspond with the respective paragraph numbers in Procurement Regulations Nos. 1 to 11, dated July 1, 1942.

GENERAL

GENERAL INSTRUCTIONS

§ 81.101 *Publication of procurement regulations.* During the past few years it has been the practice of the War Department to publish procurement regulations in several different publications, viz: Army Regulations, War Department Procurement Circulars, etc. It has also been the practice to include in such regulations precise details of how purchases were to be effected. For reasons too obvious to mention, neither practice can be justifiably continued in view of the present war emergency. Accordingly, a new numbered series of procurement regulations has been prepared to replace all other procurement regulations outstanding as of this date. As changes in or additions to this new series of regulations become necessary, the same will be effected by the publication of corrected or supplemental sheets to the appropriate regulation.

§ 81.102 *Rescission of Army Regulations.* Effective July 1, 1942, the following Army Regulations are hereby rescinded:

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

§ 81.103 *Rescission of Procurement Circulars.* Effective July 1, 1942, all War Department Procurement Circulars which have not been rescinded heretofore are hereby rescinded.

§ 81.104 *Rescission of other instructions and directives.* Effective July 1, 1942, all prior instructions and directives which are inconsistent with instructions contained in Procurement Regulations Nos. 1 to 11, inclusive, (§§ 81.101 to 81.611, 81.801 to 81.1106, and 83.701 to 83.710) are hereby rescinded.

§ 81.105 *Contents.* The following is a list of the current procurement regulations:

PR No. 1	General Instructions. [101-112.2]	(§§ 81.101-81.112)
PR No. 2	Negotiated Purchases. [201-206.3]	(§§ 81.201-81.206)
PR No. 3	Contracts [301-351].	(§§ 81.301-81.351)
PR No. 4	Bonds and Insurance. [401-427]	(§§ 81.401-81.427)
PR No. 5	Foreign Purchases. [501-508.2]	(§§ 81.501-81.508)
PR No. 6	Interbranch and Interdepartmental Purchases. [601-612]	(§§ 81.601-81.612)
PR No. 7	Disposition of Surplus and Unserviceable Property [701-710.1]	(§§ 83.701-83.710)
PR No. 8	Federal, State and Local Taxes. [801-817.3]	(§§ 81.801-81.817)

PR No. 9	Labor [901-961.2]	(§§ 81.901-81.1017)
PR No. 10	Emergency Plant Facilities [1001-1017]	(§§ 81.1001-81.1106)

§ 81.106 *Distribution; responsibility for.* Chiefs of supply services are responsible for distributing these regulations and all current changes and supplements thereto to their respective purchasing officials.

§ 81.107 *Applicability as to various procurement agencies.* (a) The regulations in this part to the extent, and only to the extent, that they actually confer authority upon the chiefs of the supply services and other officers or civilian officials of the War Department to exercise power to enter into contracts and into amendments or modifications of contracts heretofore or hereafter made, and to make advance, progress and other payments thereon, shall constitute a delegation by the Under Secretary of War of the authority vested in him by memorandum of the Secretary of War, dated December 30, 1941 (Subject: Delegation of Authority Under Executive Order No. 9001). The Chiefs of the supply services severally shall have power to redelegate the powers conferred upon them respectively by the preceding sentence to such officer or officers or civilian official or officials of the War Department as they severally may direct. The exercise, prior to the date of these regulations, of any such authority by any such officer or officers or civilian official or officials is hereby ratified and confirmed in all respects.

(b) Since the regulations are generally declaratory of policy only, it will be necessary for the chief of each supply service to publish appropriate instructions on procedure.

§ 81.108 *Applicability as to various activities.* (a) War Department Procurement Regulations are applicable to all procurement activities of the War Department. Such activities include, but are not necessarily limited to, the following:

(1) Purchase of supplies, materials, equipment and non-personal services.
(2) The procurement of construction work, including that on rivers and harbors.

(b) The regulations are applicable to the expenditure of all appropriated funds by War Department personnel, including funds allocated to, as distinguished from appropriated to, the War Department for use in making purchases.

(c) The regulations are not applicable to the expenditure of organizational, unit and similar funds.

§ 81.109 *Sales, loans, or gifts of supplies to manufacturers—(a) General.* Sales, loans, or gifts of drawings, manufacturing or other information, and samples of supplies and equipment will be made only to those manufacturers who are or may likely be manufacturers or suppliers of the War Department under contract. Such sales, loans or gifts will be in conformity with AR 380-5 where applicable.

(b) *Gifts.* Gifts may be made if the standard list price thereof does not

exceed \$25, and if specific authorization in each case is given by the chief of the supply service concerned. A certificate by the officer accountable for the supplies given, indicating disposition under this authority, will be accepted by auditing officers as a proper voucher for dropping those supplies.

(c) *Loans.* Loans of supplies will be made to contractors as directed in paragraph 10, AR 35-6520¹. Such loans may be made to manufacturers who are likely to be contractors in the same manner only if the standard list price thereof does not exceed \$500, and provided that specific authorization in each case is given by the chief of the supply service concerned.

(d) *Sales.* Sales may be made only as specifically authorized in each case by the chief of the supply service concerned, and then only at the standard list price and in cases where such price does not exceed \$500.

(e) *Authority of the Under Secretary of War.* Any gift exceeding \$25, standard list price, any loan to other than contractors exceeding \$500, standard list price, and any sale at a price other than standard list price or exceeding \$500, standard list price, will be made only with the prior approval of the Under Secretary of War or his duly authorized representative.

§ 81.110 *Prohibition against voluntary service.* No department or officer of the Government may accept voluntary service for the Government except in cases of sudden emergency involving the loss of human life or the destruction of property. "Voluntary service" means that the service is rendered under an agreement whereby a claim for payment may subsequently be made against the Government. Voluntary service may be accepted if a written statement is obtained that the service rendered will not be made a basis for future claim against the Government for compensation.

§ 81.111 *Prohibition against use of troop labor and transportation.* (a) Except in cases of manifest necessity or when authorized by the Secretary of War, the labor of troops or Government employees or Government means of transportation will not be used to enable contractors to fulfill contracts.

(b) Whenever troop labor or Government transportation has been used:

(1) Authority therefor will be given in writing.

(2) A report enumerating in detail the service rendered will be forwarded to the Commanding General, Services of Supply.

(3) Full deduction will be made for the value of the service rendered.

§ 81.112 *Prohibition against purchases from officers or employees of the Government.* (a) No officer or employee of the War Department may act as an agent of the United States in advising, recommending, making or approving the purchase of supplies or other property, or

¹ Administrative regulations of the War Department relative to property accountability and responsibility.

in contracting therefor, if he would be admitted to share or receive directly or indirectly any pecuniary profit or benefit from such purchase or contract.

(b) No officer or agent of any corporation, joint stock company, or association, and no member or agent of any firm, or person directly or indirectly interested in the pecuniary profits or contracts of such corporation, joint stock company, association, or firm, shall be employed or shall act as an officer or agent of the United States for the transaction of business with such corporation, joint stock company, association or firm.

NEGOTIATED PURCHASES

§ 81.201 *Rescission of regulations.* Army Regulations 5-140, May 22, 1940, as amended; Army Regulations 5-160, October 24, 1941, as amended; Army Regulations 5-240, February 11, 1936, as amended; and all other prior directives and instructions of whatsoever nature, including §§ 81.10-81.13 and 81.32-81.33, relating to negotiated purchases, open-market purchases, procurement without advertising, and other purchasing methods are hereby rescinded.

§ 81.202 *Definition.* The term "negotiated purchases" as used in Procurement Regulations includes all purchases which are not made as a result of formal advertising in accordance with section 3709 Revised Statutes. Negotiated purchases may be made by securing informal written bids from a large or small number of suppliers, or by securing telephone quotations. However, where such bids or quotations are requested, the request therefor should clearly indicate that the supply service is proceeding under the negotiating power of Public No. 354, First War Powers Act, 1941.

§ 81.203 *Authority.* Authority for making negotiated purchases is contained in the act of December 18, 1941 (Public No. 354—77th Congress; 55 Stat. 838; 5 U. S. C. Sup. 601-622), which may be referred to as the "First War Powers Act, 1941", and Executive Order No. 9001, December 27, 1941. Hereafter, all negotiated purchases will be made under the authority of the above statute.

§ 81.204 *General policy.* (a) Except as indicated in paragraph (b) of this section, all contracts will be placed by negotiation. The methods of negotiation to be followed will be determined by the chief of the supply service concerned. Any method which will result in the most efficient award of contracts and will, in the judgment of the chief of the supply service concerned, protect the interests of the Government, is hereby authorized.

(b) When authorized by the Director of Purchases of the War Production Board or his designated representative, contracts may be placed by formal advertising instead of by negotiation if deemed necessary in the interests of the Government. Requests for such authority will be submitted to the Purchases Branch, Procurement and Distribution Division, Headquarters, Services of Supply, by the chief of the supply service concerned.

§ 81.205 *Special instructions—(a) Field agencies.* The chiefs of the supply services will decentralize to their field agencies the actual work of negotiating contracts to the greatest extent consistent with efficiency and proper safeguarding of the public interest.

(b) *Qualified suppliers.* Where consistent with the speed of war procurement, negotiations will be carried on with as many qualified suppliers as is practicable. A qualified supplier is one who:

(1) Qualifies as such under the laws and lawful regulations governing the purchase of the supplies in question.

(2) Can comply with all the terms and conditions governing the purchase.

(3) Is a manufacturer of or a regular dealer in the supplies to be purchased.

(4) Has not been adjudged an irresponsible supplier by the chief of the supply service concerned.

(c) *In negotiating contracts,* particular regard will be paid to the following considerations:

(1) Primary emphasis shall be upon securing delivery in the time required by the war program.

(2) In so far as it will effectuate the policy set forth in subparagraph (1) of this paragraph, contracts shall be placed so as to conserve for the more difficult war production problems the facilities of concerns best able, by reason of engineering, managerial, and physical resources, to handle them. Accordingly, contracts for standard or other items which involve relatively simple production problems shall be placed with concerns, normally the smaller ones, which are less able to handle the more difficult war production problems.

(3) Subject to the considerations stated in subparagraphs (1) and (2) of this paragraph, contracts shall be placed with concerns needing to acquire the least amounts of additional critical materials, machinery and equipment for performance of the contracts. Accordingly, as an essential part of each negotiation, procurement officials shall secure from prospective contractors statements listing all additional critical materials, machinery and equipment which will be needed for the performance of the contract.

(4) In giving effect to the provisions of subparagraphs (1), (2) and (3) of this paragraph, it is recognized that it may be necessary to purchase at other than the lowest price offered.

(d) *Authority to make awards.* (1) Awards of contracts or changes therein amounting to less than \$5,000,000 (or when the estimated amount in the case of cost-plus-a-fixed-fee contracts, or changes therein, is less than \$5,000,000) may be made by such contracting and other officers as the chief of the supply service concerned may designate.

(2) Awards of contracts or changes therein amounting to \$5,000,000 or more must be submitted to the Chief of the Purchases Branch, Procurement and Distribution Division, Headquarters, Services of Supply, for approval.

(3) Awards of architect, engineer, management or similar contracts will be

submitted for approval in accordance with subparagraph (2) of this paragraph, when the project which they cover amounts to \$5,000,000 or more.

(e) *Applicable laws.* The Walsh-Healey Public Contracts Act, the Davis-Bacon Act, as amended, the Copeland "Kick-back" Act, as amended, and the Eight Hour Law, as amended, are applicable to contracts made and performed under the authority of Executive Order No. 9001 to the same extent as if said contracts had been made and performed under the provisions of section 3709, Revised Statutes.

(f) *Prospective contractors* will be apprised by general or special instructions of the terms and conditions which will be incorporated in their contracts.

(g) *Commanders in theaters of operations.* Nothing contained in these regulations will be construed to abridge the powers of commanders in theaters of operations to make necessary purchases in such manner as is deemed advisable.

§ 81.206 *Purchase reports*—(a) *Statistics and Progress Branch.* Under General Orders No. 14, Headquarters, Services of Supply, dated June 12, 1942, the Statistics and Progress Branch, Control Division, Headquarters, Services of Supply, was established. This branch is responsible for preparation and submission of all procurement reports required by law to be submitted to the President and to The Congress, as well as to other Federal agencies authorized to receive such reports. Effective July 1, 1942, it will be the responsibility of every contracting officer, except those in Theaters of Operations, to make reports of purchase actions as outlined below. The reports will cover all purchases, supply contracts (include contracts for engineering services, maintenance of real estate and procurement of abstracts of title) and contracts for the acquisition and leasing of real estate. The reports will be submitted in duplicate through the usual channels from the contracting officer within three days after the purchase action being reported or after the end of the month, whichever is applicable, to the Commanding General, Services of Supply, attention Control Division, Statistics and Progress Branch. One additional copy will be attached for Chiefs of Supply Services, Services of Supply, and for the Material Command of the Army Air Forces by contracting officers reporting thereto. Chiefs of Supply Services, Services of Supply and the Material Command of the Army Air Forces will be responsible for complete, accurate, and proper submission of reports from contracting officers under their respective jurisdiction. All other initial reports of purchase actions are abolished, effective July 1, 1942. Informal contracts such as a letter of intent, letter contract, or letter purchase order will not be reported until the transaction becomes a formal one.

(b) *Monthly summary of purchase actions.* A summary of purchase actions will be rendered for each calendar month

as of the last day thereof and submitted on 8" x 10½" sheets in the following form:

MONTHLY SUMMARY OF PURCHASE ACTIONS

(1) Command or Service.....	_____
(2) Month of....., 19__	_____
(3) Office (including station number) and location	_____
(4) Amount of negotiated purchases—	_____
(a) \$10,000 and less.....	\$_____
(b) In excess of \$10,000.....	\$_____
(5) Amount of all other purchases... ..	\$_____
(6) Total amount of all purchases made (sum of entries 4 and 5) -	\$_____
(7) Number of purchases made—	_____
(a) Negotiated (\$10,000 and less) ..	_____
(b) Negotiated (in excess of \$10,000)	_____
(c) All other.....	_____
(d) Total.....	_____
(Signature)	_____
(Name)	_____
(Rank)	_____
Contracting Officer	

Under entry (5) of the form will be included purchases made under the General Schedule of Supplies, Purchase Notice Agreements, Contract Bulletins, and purchases under all other contracts (negotiated or otherwise) which have been entered into by a purchasing office other than the office making the report.

(c) *Report of contracts exceeding \$10,000.* A report of every purchase action which exceeds \$10,000 (actual or estimated) in amount will be made on 8" x 10½" sheets in the following form:

PURCHASE ACTION REPORT

(1) Serial number of report (each contracting officer will begin with No. 1 for the fiscal year and continue in exact sequence to the end of the fiscal year unless such officer is replaced in which instance the new contracting officer will continue numbering in exact sequence).

If the purchase action supersedes an informal contract, such as a letter of intent, letter contract, or letter purchase order, identify such informal contract by date, subject matter, number, if applicable, etc.

(2) Command or Service.

(3) Office (including station number) and location.

(4) Name and address of contractor.

(5) Name and address of establishment or plant or location, where contract will be performed. If more than one, list each one.

(6) Contract or Purchase Action number and date.

(7) Type of Purchase Action (Lump sum, unit price, cost-plus-a-fixed-fee, etc.).

(8) Date deliveries scheduled to begin; to be completed.

(9) Complete description of product, service, facilities or property.

(10) Preference rating and identification symbol used on contract.

(11) Number of units, unit cost, and total cost. If cost is estimated, write "estimated" after amount.

(12) State when an escalator clause is included in the contract and whether such clause is for labor, materials, or both.

(13) The minimum wage determination of the Secretary of Labor which was made part of this contract is

(14) If total cost of contract is in excess of \$150,000 the following information must be supplied:

(a) Names of persons who consummated or concluded the negotiation of the contract for the Government.

(b) Names of all persons who participated in the negotiation on behalf of the contractor.

(c) Statement of principal or controlling reason for selecting the contractor, if no competition was obtained. (Securing two or more quotations constitutes competition.)

(d) Name of person approving specification. (Where Federal, Army, Supply Service, Navy, or other bureau specification is used, a statement to that effect will be sufficient.)

(e) *Reports for the purchase of land.* In addition to the above information, the following will be submitted for reporting the purchase of land:

1. Location
2. Area
3. Intended use
4. Price
5. Assessed value

(Signature)

(Name)

(Rank)

Contracting Officer

If a purchase action report has been submitted and there is any change in information such as number of units, unit cost, total cost, etc., a monthly report (submitted within three (3) days after the end of the month) will be made. The monthly report will not repeat any information given on the original report except entries (1) to (4) inclusive, and entries on which the original information submitted has changed. Such entries will be on a revised basis as of the end of the month and will not be given as additions or deductions to be made to the information contained in the original report. Where several changes have taken place during the month, it is not necessary to show each such change. The first such monthly report will contain the same serial number as the original report, followed by an (a), the second monthly report a (b), etc.

CONTRACTS

§ 81.301 *Rescission of regulations.* Army Regulations 5-200, dated January 2, 1940 as amended, and all other prior directives and instructions of whatsoever nature, including §§ 81.14-81.20 relating to the making of contracts are hereby rescinded.

§ 81.302 *Definitions.* The following terms, as used herein, are defined as follows:

(a) *United States and Government.* These terms are synonymous and include the War Department.

(b) *Contract.* A contract is the written record which evidences an agreement between the United States and one or more contractors.

(c) *Contractor.* A contractor is any person, partnership, company, or corporation which is a party to a contract with the United States.

(d) *Contracting officer.* A contracting officer is a person who has been designated by competent authority to perform the duties of contracting officer.

(e) *Disbursing officer.* A disbursing officer is the officer who has been designated to make payments under a contract.

(f) *The following are terms used in connection with contracts:*

(1) *Signed number.* A signed number means the instrument with the required signatures.

(2) *Authenticated copy.* An authenticated copy means a copy of the instrument shown to be authentic by either:

- (i) Certification as a true copy.
- (ii) Official seal, or
- (iii) Photostatic process.

The signatures on such copies may be either facsimile, stamped, or typed.

(3) *Copy.* A copy means a copy of the instrument, including the names of the contracting parties, but lacking authentication.

(g) *Default.* Default is the refusal or the failure of a contractor to carry out the terms of a contract.

§81.303 General requirements for contracts. (a) Every purchase transaction, except those where payment is made coincidentally with receipt of the supplies, will be covered by a contract executed on an approved form.

(b) Contracts covering purchases amounting to \$5,000 or more and those which involve the making of more than one payment will be supported by a written quotation, except—

Purchases made at public auction, at a produce exchange, or under other similar conditions.

(c) Contracts covering purchases amounting to less than \$5,000 and which require only one payment need not be supported by a written quotation.

PREPARATION OF CONTRACTS

§81.304 Contract forms—(a) Authorized contract forms. The following contract forms are authorized for use whenever deemed appropriate by the chief of the supply service concerned:

- (1) War Department Contract Form No. 1, Lump Sum Supply Contract.
- (2) War Department Contract Form No. 2, Lump Sum Construction Contract.
- (3) War Department Contract Form No. 3, Cost-Plus-A-Fixed-Fee Construction Contract.
- (4) War Department Contract Form No. 4, Cost-Plus-A-Fixed-Fee Architect-Engineer Contract.
- (5) War Department Contract Form No. 5, Short Form Supply Contract (Negotiated).
- (6) War Department Contract Form No. 6, Offer and Acceptance.
- (7) War Department Contract Form No. 7, Letter Purchase Order.
- (8) War Department Contract Form No. 8, Letter Contract (Supplies).
- (9) War Department Contract Form No. 9, Letter Contract (Fixed-Fee Construction).
- (10) War Department Contract Form No. 10, Letter Contract (Lump Sum Construction).
- (11) War Department Contract Form No. 11, War Risk Indemnity Contract.

(b) *Special contract forms.* In those cases where the contract forms authorized above will not meet the needs of special or general situations, special forms to meet such situations may be devised

by the chief of the supply service concerned subject to the provisions of §§ 81.315 to 81.319, inclusive. All such special forms will be submitted to the Purchases Branch, Procurement and Distribution Division, Headquarters, Services of Supply, for approval prior to their adoption for general use.

§81.305. Numbering contracts—(a) When required. Every contract involving the receipt or expenditure of public moneys will be numbered when:

- (1) The actual or estimated amount involved is \$5,000 or more, or
- (2) When more than one payment (or receipt) is involved, regardless of the amount involved.

(b) *System.* Contract numbers will be placed in the upper righthand corner and will consist of the following in the order named:

(1) The capital letter "W", representing the War Department.

(2) Station number representing the station or office as published in Finance Circulars.

(3) The letter or letters representing the supply service. The Chief of Finance will be promptly notified of any change in the letter symbol or of the adoption of a new symbol.

(4) A serial number, separated from the above by a hyphen, commencing with the number 1 and continuing in succession indefinitely without regard to the fiscal year. When the serial number reaches the limit of five digits (99,999), a new series will be used beginning with the serial number 1 and followed by the capital letter "A". Should additional series become necessary, they will be distinguished by the capital letters "B", "C", "D", etc., as may be required.

(c) *Example.* Based on paragraph (b) of this section, the following is the number of the first numbered contract executed by the Quartermaster, Fort Bragg, North Carolina: W-159 qm-1.

(d) *Organized Reserves.* The station number used for contracts pertaining to all units of the Organized Reserves in a corps area will be that assigned to the Organized Reserves of that corps area and the letters will be "qm". Only one series of serial numbers will be used in a corps area for contracts pertaining to all units of the Organized Reserves in that corps area. Corps area commanders will assign each number required.

§81.306 Contract provisions—(a) General. The authorized forms of contract contain the usual provisions which are applicable to contracts executed on those forms. However, if it is necessary to modify the standard provisions and/or add certain special provisions, the appropriate modification of the authorized contract form will be effected by appropriate references.

(b) *Special provisions.* This regulation contains various mandatory, supplemental and alternative contract provisions, together with general instructions as to their use. When the printed contract form being utilized in a particular case does not contain all of the

special provisions, said provisions may be incorporated in the contract by appropriate reference to the applicable paragraph numbers of this regulation.

(c) *Deviation from standard provisions.* Subject to the requirements of §§ 81.322-81.351, major changes in standard contract provisions may be made in exceptional cases with the approval of the chief of the supply service concerned. Such changes will be reported to the Purchases Branch, Procurement and Distribution Division, Headquarters, Services of Supply.

§81.307 Fiscal procedures—(a) Allotments of funds not to be exceeded. The authority to make contracts is subject to the proviso that the allotments made for the supplies will not be exceeded, and officers who are charged with making purchases will be held strictly responsible that obligations incurred by them do not exceed the amounts authorized and that such obligations include no other purpose than that indicated in the allotment.

(b) *Statements as to availability of funds.* See AR 35-340² for the statements which will be made on contracts and on purchase orders placed under existing contracts as to the funds chargeable and the sufficiency thereof.

§81.308 Execution of contracts—(a) Contracts with individuals. A contract with an individual will be signed by the individual in his own name.

(b) *Contracts with an individual trading as a firm.* Such a contract will be signed by the individual, without further reference to the trade name.

(c) *Contracts with partnerships.* (1) The contract may be signed in the name of the partnership by one or more of the partners. Each partner who signs will sign as one of the firm.

(2) A contract with a partnership doing business through a local representative or agent may be executed in the name of the firm by such local representative or agent, in which case the contracting officer will:

(i) File with the contract a properly certified copy of the power of attorney showing the authority of such representative or agent, or

(ii) Certify on the contract that he has satisfied himself of the signer's authority to bind the firm and has waived the requirements as to furnishing evidence of such authority.

(d) *Contracts with corporations.* (1) A contract with a corporation will have the name of the corporation written in the blank space provided therefor at the end of the contract form, followed by the word "By", after which the officer or person who has been authorized to contract on behalf of the corporation will sign his name, with the designation of his official capacity.

(2) The contracting officer will, in all cases, satisfy himself that the signer has authority to bind the corporation and will either require from him satisfactory

²Administrative regulations relative to fiscal procedure, general.

evidence thereof and file this evidence with the contract, or will procure or make one of the alternate certificates indicated on the contract form.

(3) Evidence filed with a contract will consist of extracts from the records of the corporation showing:

(i) The election of the officers executing the contract and bond on behalf of the corporation.

(ii) The grant of authority to the officers who execute the contract and bond.

The above-mentioned copies will be certified by the custodian of such records, under the corporate seal (if there be one), to be true copies of the records of the corporation.

(e) *Contracting officer's signature.* The contracting officer will sign on behalf of the United States in the space provided for his signature, and his official title will be added.

§ 81.309 *Approval of contracts.* (a) Contracts will be made either without the approval of higher authority or subject to such approval, as may be directed by the chief of the supply service concerned.

(b) If approval of the contract is required, an appropriate approval article will be incorporated in the contract.

(c) Contracts subject to approval are not valid until approved by the authority designated to approve them.

(d) All changes and deletions must have been made before such contracts are forwarded for approval.

(e) A contract which has received the approval of higher authority will not thereafter be altered or modified without the approval of said higher authority.

§ 81.310 *Statement and Certificate of Award (Standard Form No. 1036).* (a) Standard Form No. 1036 need not be executed in connection with negotiated contracts.

(b) If in exceptional cases contracts are awarded pursuant to formal advertising, Standard Form No. 1036, properly executed in accordance with instructions contained on the form, will be attached to the copy of the agreement which is furnished the General Accounting Office.

DISTRIBUTION OF CONTRACTS AND ORDERS THEREUNDER

§ 81.311 *Distribution of contracts; general.* The following general instructions are applicable to the distribution of both numbered and unnumbered contracts:

(a) Contracts will not be distributed until properly signed by all parties, and approved, if approval is required.

(b) All instructions relating to distribution of contracts are subject to the provisions of AR 380-5* and all other current instructions governing the safeguarding and disclosing of information affecting the national defense of the United States.

§ 81.312 *Numbered contracts.* Subject to such special instructions as may

be issued by the chief of the supply service concerned, numbered contracts will be distributed as follows:

(a) The original signed number will be forwarded to the General Accounting Office.

(b) The duplicate signed number will be filed with the contracting officer or with the chief of the supply service concerned.

(c) The triplicate signed number will be forwarded to the contractor.

(d) An authenticated copy will be forwarded to the disbursing officer for his files.

(e) Additional authenticated copies or unauthenticated copies will be distributed as directed by the chief of the supply service concerned.

§ 81.313 *Unnumbered contracts.* (a) The original signed number will be furnished the disbursing officer and will be attached to the voucher on which payment is made and will accompany such voucher to the General Accounting Office.

(b) The duplicate signed number will be forwarded to the contractor.

(c) An authenticated copy will be furnished the disbursing officer for his files.

(d) Additional copies will be prepared and distributed as directed by the chief of the supply service concerned.

§ 81.314 *Special cases—(a) Purchases under contracts of Procurement Division, Treasury Department; Navy Department; Post Office Department; etc.* (1) Purchase orders covering such purchases will be distributed in accordance with § 81.313.

(2) The chief of the supply service concerned will secure compliance with all special instructions of the respective agencies which make the contracts.

(b) *United States Employees' Compensation Commission.* Contracting officers will, immediately upon completion, transmit to the United States Employees' Compensation Commission, Washington, D. C., an authenticated copy of the following:

(1) Contracts in which the contractor is designated as the agent of the United States.

(2) Contracts under which, while the contractor is not specifically named as the agent of the United States, the Government may at any and all times direct and control the work in all its details and stages, not merely as to what will be done but also as to how it will be done.

MODIFICATION OF CONTRACTS

§ 81.315 *Supplemental agreements—*

(a) *Authority.* Chiefs of the supply services are authorized to modify or amend existing contracts upon adequate legal consideration by supplemental agreement whenever, in their judgment, the prosecution of the War effort is thereby facilitated, and upon an express finding to that effect. Amendments and modifications of contracts may be utilized to accomplish the same purposes as might have been accomplished by original contracts. This authority shall not be construed as conferring upon the chiefs of the supply services authority to

enter into amendments or modifications of contracts without adequate legal consideration, or to enter into agreements with contractors or obligors modifying or releasing accrued obligations of any sort, including accrued liquidated damages or liability under any surety or other bond. In cases where such settlement, adjustment, modification, or release is deemed desirable by the chiefs of the supply services, a recommendation therefor, accompanied by a full statement of the circumstances and the necessity thereof, should be transmitted to the Chief of the Purchases Branch, Procurement and Distribution Division, Headquarters, Services of Supply.

(b) *Form.* Supplemental agreements entered into pursuant to paragraph (a) of this section should be reduced to writing and signed by the contracting parties.

§ 81.316 *Change orders—(a) Authority.* Pursuant to contractual provision therefor, change orders may be made as authorized by the chiefs of the supply services.

(b) *Form.* Change orders will be in the form of letters addressed to the contractor, and will specify the number of the contract concerned, the changes to be made, the increase or decrease in price and time for performance, and such other terms as may be necessary. Change orders will bear the same complete identification as the contract which they modify, and will be lettered in the order issued for each contract. Signed numbers and copies of change orders will be distributed in the same manner as prescribed for the contracts to which they pertain, and the contracting officer will note on his retained copy of the change order the date on which the contractor's number was mailed to him.

§ 81.317 *Modifications in excess of \$5,000,000.* Supplemental agreements and change orders will be submitted to the Chief of the Purchases Branch, Procurement and Distribution Division, Headquarters, Services of Supply, for approval in all cases where there is an increase in the contract price (or in the estimated cost if a cost-plus-a-fixed-fee contract) amounting to \$5,000,000 or more. If it is deemed necessary to amend or modify the contract without adequate legal consideration in order to facilitate the prosecution of the war effort, the proposed amendment or modification will be submitted to the Chief of the Purchases Branch, Procurement and Distribution Division, Headquarters, Services of Supply, for approval.

§ 81.318 *Adherence to standard forms.* The authority of this Section will not be used for the purpose of authorizing a deviation from standard forms of War Department contracts, unless such deviation is authorized by these regulations nor will it be used for the purpose of making material changes in the character or terms of an award or contract previously approved by the Under Secretary of War or the Chief of the Purchases Branch, Procurement and Distribution Division, Headquarters, Services

*Administrative regulations of the War Department relative to safeguarding military information.

of Supply. The same requirements and restrictions with respect to standard forms are applicable to supplemental agreements and change orders as are applicable to original contracts.

§ 81.319 *Consent of sureties.* If payment or performance under the contract is guaranteed by a surety, the consent of such surety should be obtained to any supplemental agreement modifying or amending the contract, or to any change order in excess of \$25,000. As to change orders not in excess of \$25,000, the consent of the surety is not required but the surety should be furnished copies thereof.

MISCELLANEOUS

§ 81.320 *Assignment—(a) Transfers restricted.* No contract or order, or any interest therein, shall be transferred to any other party by the party to whom such contract or order is given, and any such transfer shall cause the annulment of the contract or order transferred, so far as the United States is concerned, except as follows:

(1) Where such a contract or claim is transferred by order of a court in receivership and bankruptcy proceedings, or

(2) Where made pursuant to the Assignment of Claims Act of 1940.

(b) *Assignment of claims.* Every contract, except those which have been classified, entered into subsequent to October 9, 1940, will permit the assignment of moneys due or to become due thereunder to a bank, trust company, or other financing institution, including any Federal lending agency, provided the payments under the contract aggregate \$1,000 or more. All contracts which thus permit the assignment of claims thereunder will contain provisions as follows:

(1) "Any assignment shall cover all amounts payable under this contract and not already paid, and shall not be made to more than one party, except when any such assignment may be made to one party as agent or trustee for two or more parties participating in such financing."

(2) "Any claim under this contract which may be assigned may be subject to further assignment to a bank, trust company, or other financing institution, including any Federal lending agency, and to similar further assignment; provided that any such assignee shall file written notice of the further assignment together with a true copy of the instrument of further assignment with the contractor and also as provided in proviso 4 of section 1 of the Assignment of Claims Act of 1940 (Public No. 811—76th Congress) in respect of the original assignment."

(3) "No assignee shall divulge any information concerning the contract except to those persons concerned with the transaction."

(4) "Payment to an assignee of any claim arising under this contract shall not be subject to reduction or set-off for any indebtedness of the assignor to the United States arising independently of this contract."

(c) *Classified contracts.* Secret, confidential and restricted contracts shall

contain a provision to the effect that "no claim under this contract shall be assigned" unless the omission of such provision is authorized by the chief of the supply service concerned, in which event the instructions contained herein relating to the assignment of claims will govern and the contract shall contain the following additional provisions:

(1) "In no event shall copies of any plans, specifications, or other similar documents marked 'secret' or 'confidential' and annexed or attached to this contract be furnished to any assignee of any claim arising under this contract or to any other person not entitled to receive the same."

(2) "The contractor agrees that he will obtain from the assignee an agreement signed by such assignee similar to that required by paragraph 50, AR 380-5. In such agreement the assignee shall also agree that, in case of further assignment, it will obtain a similar agreement from such assignee."

(d) *Written notice.* In case of an assignment, the party to whom the contract was assigned shall file written notice and a true copy of the assignment with the

(1) General Accounting Office.

(2) Contracting officer.

(3) Surety or sureties upon the bond or bonds, if any, in connection with such contract.

(4) Disbursing officer designated to make payment.

(e) *Special instructions.* The following special instructions will govern in the assignment of claims:

(1) Upon the request of the contractor, contracting officers will furnish proposed assignees information regarding the status of the contract at the time of the assignment. In so doing, the contracting officer will advise the assignee that the information is so furnished only for confidential use in connection with the assignment.

(2) Indication of the assignment of claim and of any further assignment thereof and the name of the assignee will be made on all vouchers or invoices certified by the contractor.

§ 81.321 *Advance payments—(a) General policy.* Advance payments will be made to contractors upon their request in all cases where such action will facilitate the prosecution of the war, and provided that the Government will be adequately protected.

(b) *Procedure.* (1) Chiefs of supply services are authorized to approve the making of advance payments on contracts pertaining to their respective services when the amount of the contract (or the estimated amount in the case of a cost-plus-a-fixed-fee contract) is less than \$5,000,000 and the amount of the advance payment is less than 50 per cent of the estimated amount of the contract. The chief of each supply service in his discretion is authorized to delegate all or part of this authority to contracting officers under his jurisdiction.

(2) Advance payments will be limited to 30 per cent of the contract price, except where:

(i) Special circumstances justify a larger advance, or

(ii) The contractor agrees to advance to subcontractors requiring financing of subcontracts the entire amount of advances in excess of 30 per cent of the contract price.

(3) Any advance authorized in excess of 30 per cent upon a contract entered into prior to December 27, 1941, will be under a supplemental agreement which contains provisions therefor made on or after said date.

(4) No advance payment will be made without there having been incorporated in the prime contract an approved advance payment contract provision or the execution of an advance payment supplemental agreement in an approved form. Deviation from the language of the approved articles or supplemental agreement forms is authorized when approved by the chief of the supply service concerned, if such deviation will expedite the prosecution of the war. However, a report of each major deviation will be furnished the Advance Payments and Loan Section, Fiscal Division, Headquarters, Services of Supply.

(5) Where a performance bond of a principal contract has been required and advance payments are provided for by supplemental agreement, or where an advance payment bond is furnished as additional security, the official authorized to approve the advance payments may use his discretion as to whether the actual making of such payments should be withheld pending the approval by The Judge Advocate General of a consent of surety on a pre-existing bond or his approval of the applicable advance payment bond.

(6) Advance payments in connection with letter contracts will be provided for by an approved supplemental agreement. There should be included in such agreement a clause relieving a subsequent performance surety of the fidelity risk involved in making advance payments in any case where it is contemplated that a performance bond will be required in connection with the more formal contract and where no advance payment bond has been required.

(7) Advance payments may be made under agreements of all kinds (whether contracts, letter contracts, letter purchase orders, or otherwise).

(8) Requests for advance payments in excess of 50 per cent of the contract price of any contract, and for advance payments on all contracts amounting to \$5,000,000 or more, will be submitted by the chief of the supply service concerned to the Purchases Branch, Procurement and Distribution Division, Headquarters, Services of Supply, for approval. The following information will be presented with each such request, together with the recommendation of the chief of the supply service concerned:

(i) The amount proposed to be advanced.

(ii) The amount and character of contract involved.

(iii) Whether awarded with or without advertising or on a cost-plus-a-fixed-fee basis.

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(iv) The terms of the proposed advance (including method and time of repayment or liquidation).

(v) The national interest in making the advance.

(vi) The security proposed to protect the Government against loss with the definite recommendation of the chief of the supply service as to the adequacy thereof.

(vii) The financial position and the general character and responsibility of the contractor.

(viii) Any other information pertinent to a proper decision in the case.

(ix) The appropriation available.

(c) *Forms and special contract clauses.*

(1) The contract clause contained in § 81.347 will be used in providing for advance payments with interest on fixed-price contracts.

(2) War Department Contract Form No. 20 will be used in executing a supplemental agreement for advance payments with interest on fixed-price contracts.

(3) War Department Contract Form No. 21 will be used in executing a supplemental agreement for advance payments with interest on cost-plus-a-fixed-fee contracts.

(4) War Department Contract Form No. 22 will be used in executing a supplemental agreement for advance payments with interest on a letter purchase order.

(5) The contract clause contained in § 81.348 will be used in providing for advance payments without interest on fixed-price contracts.

(6) War Department Contract Form No. 23 will be used for executing a supplemental agreement for advance payments without interest on fixed-price contracts.

(7) War Department Contract Form No. 24 will be used for executing a supplemental agreement for advance payments without interest on cost-plus-a-fixed-fee contracts.

(8) War Department Contract Form No. 25 will be used for executing a supplemental agreement for advance payments without interest on letter purchase orders.

(9) The contract clause contained in § 81.349 will be used in providing for advance payments on fixed-price contracts for critical machine tools.

(10) War Department Contract Form No. 26 will be used for executing a supplemental agreement for advance payments on fixed-price contracts for critical machine tools.

(d) *Interest.* (1) Except as set forth below, whenever an advance payment is made to a contractor by the War Department, a charge shall be made for the use of the Government money so furnished. The charge shall be in the nature of an interest charge computed, at convenient accounting periods, at the rate of two and one-half per cent per annum on the unliquidated balance of advance payments outstanding from time to time. In the case of a fixed-price contract, the amount of the charge shall be deducted from payments under the contract. In the case of a cost-plus-a-fixed-fee contract, the charge shall be deducted from the amount of the fee otherwise payable

to the contractor, and shall not be an item of reimbursible cost under the contract.

(2) This charge shall not apply to:

(i) Contracts which provide that the work thereunder shall be performed at cost without profit or fee to the contractor.

(ii) Contracts entered into or contracts the terms of which had been agreed upon prior to April 11, 1942, to the extent that such application would be inconsistent with the terms of such contracts.

(iii) Advance payments up to 30 per cent of the contract price made to suppliers of critical machine tools.

(e) *Advance payments to suppliers of critical machine tools.* War Department contracts for critical machine tools will, if requested by the contractor, provide for advance payments of 30 per cent of the contract price, either in the terms of the contract or by supplemental agreement provided that the interest of the Government will be adequately protected. Supplemental agreements providing for similar advance payments on existing contracts for critical machine tools may be executed and approved upon proper request being made therefor.

(f) *Reports.* A quarterly report should be rendered by January 14, April 14, July 14, and October 14, of each year, setting forth the status of all contracts on which there are outstanding advance payments. A special statement should be included in the report as to any contracts with respect to which the completion of the contract and liquidation of the advance payment appears to be doubtful, together with the steps being taken to protect that advance payment. If at any time between such quarterly reports it appears doubtful that a contractor to whom an advance payment has been made will complete the contract, a report should be rendered to the Advance Payment and Loan Section, Fiscal Division, Headquarters, Services of Supply, immediately, including the facts in the case and the steps being taken to protect the advance payment.

MANDATORY AND OPTIONAL CONTRACT PROVISIONS

§ 81.322 *Officials not to benefit clause.* Every contract, regardless of subject matter or amount, will contain the following clause without deviation:

Officials not to benefit. No member or delegate to Congress or resident commissioner shall be admitted to any share or part of this contract or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

§ 81.323 *Covenant against contingent fees.* Every contract, regardless of subject matter or amount, will contain the following clause without deviation:

Covenant against contingent fees. The Contractor warrants that he has not employed any person to solicit or secure his contract upon any agreement for a commission, percentage, brokerage, or contingent fee. Breach of this warranty shall give the Government the right to annul the contract, or, in its discretion, to deduct from the con-

tract price or consideration the amount of such commission, percentage, brokerage, or contingent fees. This warranty shall not apply to commissions, payable by contractors upon contracts or sales secured or made through bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business.

§ 81.324 *Termination for convenience of the Government.* (a) Every lump-sum supply contract, regardless of subject matter or amount, will contain the following clause:

Termination for convenience of the Government. (a) Should conditions arise which, in the opinion of the Secretary of War, make it desirable that this contract be terminated, the Government may, at any time, terminate this contract in whole or in part by a notice in writing from the Contracting Officer to the Contractor that the contract is terminated under this Article. Such termination shall be effective in the manner and upon the date specified in said notice and shall be without prejudice to any claims which the Government may have against the Contractor, or any claims which the Contractor may have against the Government. Upon receipt of such notice the Contractor shall (1) unless the Contracting Officer directs otherwise, discontinue all work and the placing of all orders for materials and facilities in connection with performance of this contract, cancel all existing orders chargeable to this contract, and terminate all subcontracts chargeable to this contract; (2) transfer to the Government, by delivery f. o. b. -----, or by such other means as the Contracting Officer may direct, title to all completed supplies (including spare parts, drawings, information, and other things) called for herein, not previously delivered, and partially completed supplies, work in process, materials, fabricated parts, plans, drawings, and information acquired or produced by the Contractor for the performance of this contract; and (3) take such action as may be necessary to secure to the Government the benefits of any rights remaining in the Contractor under orders or subcontracts wholly or partially chargeable to this contract to the extent that such orders or subcontracts are so chargeable.

(b) The Government shall, upon such termination of this contract, pay to the contractor the contract price of all supplies (including spare parts, drawings, information, and other things) called for herein which have been completed in accordance with the provisions of this contract and to which title has been received by the Government under the provisions of paragraph (a) (2) of this article and for which payment has not previously been made.

(c) The Government shall also, in the above events, compensate the Contractor for the uncompleted portion of the Contract as follows:

(1) By reimbursing the Contractor for all actual expenditures certified by the Contracting Officer as having been made with respect to the uncompleted portion of the contract;

(2) By reimbursing the Contractor for all expenditures made with the prior written approval of the Contracting Officer in settling or discharging that portion of the outstanding obligations or commitments of the Contractor which had been incurred or entered into with respect to the uncompleted portion of the contract; and

(3) By paying the Contractor, as a profit on the uncompleted portion of the contract, in so far as a profit is realized hereunder, a sum to be computed by the Contracting Officer in the following manner:

(A) The Contracting Officer shall estimate the profit which would have been realized

on the uncompleted portion of the contract if the contract had been completed and labor and material costs prevailing at the date of termination had remained in effect.

(B) Estimate, from a consideration of all relevant factors, the percentage of completion of the uncompleted portion of the contract.

(C) Multiply the anticipated profit determined under (A) by the percentage determined under (B). The result is the amount to be paid to the Contractor as a proportionate share of profit, if any, as above provided.

Notwithstanding the above provisions, no compensation shall be paid under this Paragraph (c) by way of reimbursement for expenditure, including expenditures made in settling or discharging obligations or commitments, or by way of profit on account of supplies and other things which are undeliverable because of destruction or damage, whether or not because of the fault of the contractor.

(d) Subject to the approval of the Contracting Officer, the Government shall reimburse the Contractor for expenditures made and cost incurred after the date of termination for the protection of Government property and for such other expenditures and costs as may be necessary in connection with the settlement of this contract.

(e) The obligation of the Government to make any of the payments required by this Article shall be subject to any unsettled claim for labor or material and to any claim which the Government may have against the Contractor under or in connection with this contract, and payments under this Article shall be subject to reasonable deductions by the Contracting Officer on account of defects in the materials or workmanship of completed or partially completed supplies delivered hereunder.

(f) The sum of all amounts payable under this Article, plus the sum of all amounts previously paid under this contract, shall not exceed the total contract price, adjusted in the event that this contract contains an article providing for price adjustment, on the basis of the estimate of the Contracting Officer, to the extent which would have been required by such article if this contract had been completed and labor and materials costs prevailing at the date of termination had remained in effect.

(g) Should the above provisions of this Article not result in payment to the Contractor of at least \$100, then that amount shall be paid to the Contractor in lieu of any and all payments hereinbefore provided for in this Article.

(h) Any disputes arising out of termination under this Article shall be decided in accordance with the procedure prescribed in Article 12 of this contract.

(i) Upon the making of the payments called for by this Article, all obligations of the Government to make further payments or to carry out other undertakings hereunder shall cease forthwith and forever, except that all rights and obligations of the respective parties under the Articles, if any, of this contract applicable to patent infringements and reproduction rights shall remain in full force and effect.

(b) Every lump-sum construction contract, regardless of subject matter or amount, will contain the following clause without deviation:

ARTICLE * * * Termination for convenience of the Government. (a) The Government may terminate this contract in whole or in part at any time by a notice in writing from the Contracting Officer to the Contractor, specifying the date upon which such termination shall become effective and the extent to which the performance of such contract shall be terminated. Termination

shall be effective upon the date and to the extent specified in said notice.

(b) Upon receipt of the notice of termination the Contractor shall except insofar as the notice directs otherwise with respect to this contract, or, in the event of partial termination, with respect to the part thereof covered by the notice:

(1) Discontinue all work and the placing of all orders for materials and facilities otherwise required for the performance thereof;

(2) Cancel all existing orders and subcontracts to the extent such orders and subcontracts are chargeable to the performance thereof;

(3) Transfer to the Government, in accordance with the directions of the Contracting Officer, all materials, supplies, work in process, facilities, equipment, machinery or tools acquired by the Contractor in connection with the performance thereof, and all plans, drawings, working drawings, sketches, specifications and information for use in connection therewith: *Provided*, That the Contractor may retain any such equipment, machinery and tools if he so elects and will forego reimbursement thereon.

(4) Take such action as may be necessary to secure to the Government the benefits of any rights remaining in the Contractor under orders or subcontracts chargeable thereto to the extent that such orders or subcontracts are so chargeable;

(5) Take such action as the Contracting Officer may prescribe for the protection and preservation of all property in the possession or control of the Contractor, title to which is transferable to the Government under the provisions of this article. Should the notice of termination cover only a portion of this contract the Contractor will proceed to completion of such portions as are not terminated.

(c) Upon compliance by the Contractor with the above provisions of this Article and subject to deductions for payments previously made, the Government shall compensate the Contractor as follows:

(1) By reimbursing the Contractor for all actual expenditures certified by the Contracting Officer as having been made with respect to this contract, including expenditures made in connection with any portions of the contract which may have been completed prior to termination, as well as expenditures made after termination in completing those portions of the contract which the Contractor may have been required by the notice of termination to complete.

(2) By reimbursing the Contractor for all expenditures made with the prior written approval of the Contracting Officer in settling or discharging any outstanding contractual obligations or commitments incurred or entered into by the Contractor with respect to this contract;

(3) By paying the Contractor, as a profit on this contract, insofar as a profit is realized hereunder, an amount to be computed by the Contracting Officer in the following manner:

(A) Estimate the profit which would have been realized on this contract if the contract had been completed and labor and material costs prevailing at the date of terminations had remained in effect.

(B) Estimate, from a consideration of all relevant factors, the percentage of completion of the contract including any work performed after termination. In estimating the percentage of completion, the Contracting Officer shall estimate the percentage of the total work required by the contract which the work actually accomplished represents.

(C) Multiply the profit determined under (A) by the percentage determined under (B). The product is the amount to be paid the Contractor as profit.

(d) Subject to the approval of the Contracting Officer, the Government shall reim-

burse the Contractor for expenditures made and costs incurred after the date of termination for the protection of Government property and for such other expenditures and costs as may be necessary in connection with the settlement of this contract.

(e) The obligation of the Government to make any of the payments required by this Article shall be subject to any unsettled claim for labor or material and to any claim which the Government may have against the Contractor under or in connection with this contract, and payments under this Article shall be subject to reasonable deductions by the Contracting Officer on account of defects in materials or workmanship.

(f) The sum of all amounts payable under this Article, plus the sum of all amounts previously paid under this contract, shall not exceed the total contract price, adjusted in the event that this contract contains an article providing for price adjustment, on the basis of the estimate of the Contracting Officer, to the extent which would have been required by such article if this contract had been completed and labor and materials costs prevailing at the date of termination had remained in effect.

(g) Should the above provisions of this Article not result in payment to the Contractor of at least \$100, then that amount shall be paid to the contractor in lieu of any and all payments hereinbefore provided for in this Article.

(h) Any disputes arising out of termination under this Article shall be decided in accordance with the procedure prescribed in Article _____ of this contract.

(i) Upon the making of the payments called for by this Article, all obligations of the Government to make further payments or to carry out other undertakings hereunder shall cease forthwith and forever, except that all rights and obligations of the respective parties under the Articles, if any, of this contract applicable to patent infringements and reproduction rights shall remain in full force and effect.

§ 81.325 Anti-discrimination clause. Every contract, regardless of subject matter or amount, will contain the following clause without deviation:

Anti-discrimination. (a) The Contractor, in performing the work required by this contract, shall not discriminate against any worker because of race, creed, color, or national origin.

(b) The Contractor agrees that the provision of Paragraph (a) above will also be inserted in all of his subcontracts. For the purpose of this article, a subcontract is defined as any contract entered into by the contractor with any individual, partnership, association, corporation, estate, or trust, or other business enterprise or other legal entity, for a specific part of the work to be performed in connection with the supplies furnished under this contract: *Provided, however*, That a contract for the furnishing of standard or commercial articles or raw material shall not be considered as a sub-contract.

§ 81.326 Disputes concerning questions of fact. Every contract, regardless of subject matter or amount, will contain the following clause:

Disputes. Except as otherwise specifically provided in this contract, all disputes concerning questions of fact arising under this contract shall be decided by the Contracting Officer, subject to written appeal by the Contractor within 30 days to the Secretary of War or his duly authorized representative, whose decision shall be final and conclusive upon the parties hereto. In the meantime the Contractor shall diligently proceed with performance.

§ 81.327 *Domestic Articles clause.* Whenever the restrictions of the Buy American Act are applicable (see §§ 81.501 to 81.508), the contract will contain the following clause without deviation:

Domestic articles. Unless the Secretary of War shall determine it to be inconsistent with the public interest, or the cost to be unreasonable, only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States, and only such manufactured articles, materials, and supplies as have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced, or manufactured, as the case may be, in the United States shall be delivered pursuant to this contract, except as noted in the specifications and/or other papers hereto attached. The provisions of this article shall not apply with respect to articles, materials, or supplies for use outside the United States, or if articles, materials, or supplies of the class or kind to be used, or the articles, materials, or supplies from which they are manufactured are not mined, produced, or manufactured, as the case may be, in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.

§ 81.328 *Notice of shipments clause.* Every contract which will involve the shipment thereunder of one carload or more of supplies will contain the following clause:

Notice of shipments. In connection with any shipment hereunder of one carload or equivalent or more consigned to any unit or officer of the War Department, the shipper, at the time the equipment or supplies are ordered for loading for rail, motor, or water transport, will send consignee notice thereof by prepaid telegraph or teletype, including date, route, size of shipment, and brief general description of the equipment or supplies comprising the shipment. When authorized by the purchasing and contracting officer, such notice may be sent by air mail, in lieu of telegraph or teletype, where secrecy is essential and where the use of air mail is practicable. This provision is not to be substituted for any other requirement, such as mailing bills of lading.

§ 81.329 *Variation in quantities.* In those cases where it is desired to accept over or under deliveries due to manufacturing processes, etc., contracts may contain the following clause:

Variation in quantities. Unless otherwise specified, any variation in the quantities herein called for, not exceeding 10 percent, will be accepted as a compliance with the contract, when caused by conditions of loading, shipping, packing, or allowances in manufacturing processes, and payments shall be adjusted accordingly.

§ 81.330 *Partial payments in an amount not to exceed 75% of cost to the contractor.* In those cases where it is contemplated that partial payments in an amount not to exceed 75 per cent of the cost to the contractor of the property will be made, the contract will contain the following clause:

Partial payments. Partial payments, which are hereby defined as payments prior to delivery, on work in progress for the Government under this contract, may be made upon the following terms and conditions.

(a) The Contracting Officer may, from time to time, authorize partial payment to the Contractor upon property acquired or produced by it for the performance of this

contract: *Provided,* That such partial payments shall not exceed 75 per cent of the cost to the Contractor of the property upon which payment is made, which cost shall be determined from evidence submitted by the Contractor and which must be such as is satisfactory to the Contracting Officer: *Provided further,* That in no event shall the total of unliquidated partial payments (see (c) below) and of unliquidated advance payments, if any, made under this contract, exceed 80 per cent of the total contract price of supplies still to be delivered.

(b) The title to all property upon which any partial payment is made prior to the completion of this contract shall vest in the Government in its then condition forthwith upon the making of any such partial payment or payments: *Provided,* That nothing herein shall deprive the Contractor of any further partial or final payments due or to become due hereunder; nor relieve the Contractor or the Government of any of their respective rights or obligations under this contract.

(c) In making payment for the supplies furnished hereunder, there shall be deducted from the contract price therefor a proportionate amount of the partial payments theretofore made to the Contractor, under the authority herein contained.

§ 81.331 *Partial payments in an amount not to exceed 90 per cent of direct labor and material cost to the contractor.* In those cases where it is contemplated that partial payments in an amount not to exceed 90 per cent of the direct labor and material cost to the contractor will be made, the contract will contain the following clause:

Partial payments. Partial payments, which are hereby defined as payments prior to delivery, on work in progress for the Government under this contract, may be made upon the following terms and conditions:

(a) The Contracting Officer may, from time to time, authorize partial payments to the Contractor upon property acquired or produced by it for the performance of this contract: *Provided,* That such partial payments shall not exceed 90 per cent of the direct labor and direct material costs to the Contractor of the property upon which payment is made, which costs shall be determined from evidence submitted by the Contractor and which must be such as is satisfactory to the Contracting Officer: *Provided, further,* That in no event shall the total of unliquidated partial payments (see (c) below) and of unliquidated advance payments, if any, made under this contract, exceed 80 per cent of the contract price of supplies still to be delivered.

(b) The title to all property upon which any partial payment is made prior to the completion of this contract shall vest in the Government in its then condition forthwith upon the making of any such partial payment or payments: *Provided,* That nothing herein shall deprive the Contractor of any further partial or final payments due or to become due hereunder; nor relieve the Contractor or the Government of any of their respective rights or obligations under this contract.

(c) In making payment for the supplies furnished hereunder, there shall be deducted from the contract price therefor a proportionate amount of the partial payments theretofore made to the Contractor, under the authority herein contained.

§ 81.332 *Government-owned facilities clause.* In those cases where the contractor is to procure necessary facilities for the account of the Government for use in connection with the work under

the contract, and in those cases where the Government furnishes the contractor new facilities which the Government has acquired or will acquire directly, the contract will contain the following clause:

Government-owned facilities. (a) In connection with its work under this contract, the Contractor shall acquire or manufacture for the Government's account the facilities listed in Schedule "A", attached hereto. Upon the inspection and approval of the Contracting Officer and upon the Contractor's furnishing of satisfactory evidence of payment therefor by him, the Government shall reimburse the Contractor for the cost of such facilities, which are presently estimated at the amounts stated therefor in said Schedule "A", or such larger amounts as the Contracting Officer may approve in writing in the event the actual costs exceed such estimated costs. * (The Government shall furnish to the Contractor, for his use at his plant at -----, the facilities listed in Schedule "B", attached hereto, and not later than the dates shown therein. The cost of installation of such facilities shall be borne by the Contractor.)

(b) As each item of the facilities listed in Schedule "A" is delivered to, or manufactured by, the Contractor, for the Government's account, it shall become and remain the property of the Government, and title thereto shall vest in the Government. * (All of the facilities listed in Schedule "B" are the property of the Government, and title to them is, and shall remain, in the Government.) The Government hereby grants to the Contractor the right to use, without the payment of rental therefor, such facilities in connection with the work herein contracted for and, subject to the written approval of the Contracting Officer, for any additional work for which the Government may contract. The Contractor agrees at its own expense to keep such facilities in good operating condition and repair and to make all necessary repairs and replacements thereof.

(c) Each item of such facilities shall be suitably marked with an identifying mark or symbol, indicating that such item is the property of the Government. Upon the completion of the installation of all such facilities, the Contractor shall submit to the Contracting Officer a detailed inventory list of such facilities, including a description of the identifying mark or symbol on each item thereof.

(d) The Government shall not be responsible for damages to property of the Contractor or for personal injuries to the Contractor's officers, agents, servants or employees, or other persons on the premises as invitees or licensees of the Contractor, arising from or incident to the use of the facilities, and the Contractor shall save the Government harmless from any and all such claims: *Provided,* That nothing in this paragraph shall be deemed to affect any liability of the Government to its own employees.

(e) The ----- or his (Chief of supply service)

duly authorized representative shall, at all times, have access to the Contractor's building or buildings, wherein any of the facilities are situated, for the purpose of inspecting or inventorying such facilities or of removing them upon the completion or termination of this contract, subject to the provisions of paragraphs (g) and (h) hereof.

(f) The Contractor shall not remove, sublease or otherwise part with the possession of any of the said facilities from its plant without first obtaining the written consent

*Use these provisions only where the Government is furnishing facilities which it has acquired, or will acquire, directly.

of the Contracting Officer. The Contractor shall not transfer, pledge or assign any of the said facilities in any manner, to any third person, either directly or indirectly; and the Contractor shall not do or suffer anything to be done whereby any of the said facilities shall or may be seized, taken in execution, attached, destroyed or injured. Violation of the provisions of this paragraph or of paragraph (b) shall entitle the Government forthwith to enter upon the premises of the Contractor and remove the facilities therefrom.

(g) Within one year after the completion or termination of this contract or any other contract entered into between the Government and the Contractor for the performance of which such facilities will be used, the Government may serve on the Contractor a written notice of its intention to remove such facilities from the Contractor's plant. Within ninety (90) days after receipt of such notice the Contractor shall dismantle and prepare the facilities for shipment at its own expense, and thereupon the Government shall remove the facilities from the Contractor's plant at the Government's expense.

(h) During the period prior to the receipt of such notice or the expiration of one year after the completion or termination of this contract, whichever happens first, the Contractor shall retain such facilities in its plant, and when directed by the Contracting Officer, and subject to the availability of appropriate funds, place and maintain all such facilities in stand-by condition. Upon the presentation of duly certified invoices or vouchers therefor, and after approval of such invoices or vouchers by the Contracting Officer, the Government shall pay to the Contractor all expenses incurred by it as a result of placing and maintaining such special equipment in such stand-by condition, but such expense shall not exclude any charge for storage. In the event that the Contracting Officer does not, within said one-year period, direct the return of said facilities, the Contractor shall have the right to require the Government promptly to remove said facilities in a neat and workmanlike manner.

NOTE 1: An option to the contractor to purchase the facilities upon the completion or termination of the contract or succeeding contracts may be included as an additional paragraph (1) of the clause if, in the opinion of the chief of supply service concerned, such inclusion is desirable in the interests of the Government.

NOTE 2: In those cases where it is determined that a rental should be charged, the next to the last sentence of paragraph (b) of the clause should be deleted and the following inserted in lieu thereof: "The contractor agrees to pay the Government rental as follows:

§ 81.333 Liability for Government-owned property. All contracts which involve the use of Government-owned property in the performance thereof shall contain a clause substantially as follows:

Liability for Government-owned property. Unless otherwise provided in this contract, the Contractor's liability for loss or damage to Government property in its possession or control or delivered to it for installation in the articles contracted for hereunder, or for use in connection with the performance of this contract, shall be that of a bailee under a mutual benefit bailment.

§ 81.334 Records of Government-owned property. All contracts which involve the use of Government-owned property in the performance thereof

shall contain a clause substantially as follows:

Records of Government-owned property. The Property Officer, _____, is designated as the officer to maintain the necessary property records in connection with this contract, as contemplated by AR 35-6520.*

§ 81.335 Patents clause. Where patented articles are to be manufactured under the contract or patented devices are to be used in the performance of the contract, the contract should contain one of the following clauses:

Patents. The Contractor shall hold and save the Government, its officers, agents, servants, and employees, harmless from liability of any nature or kind, including costs and expenses, for or on account of any patented or unpatented invention, article, or appliance manufactured or used in the performance of this contract, including their use by the Government, except for any invention pertaining to item _____ of Article 1 hereof. The Government shall hold and save the Contractor harmless from liability of any nature or kind, including costs and expenses, for infringement of patent rights pertaining to item _____ of Article 1, hereof.

Patents. The Contractor shall hold and save the Government, its officers, agents, servants and employees, harmless from liability of any nature or kind including costs and expenses, for or on account of any patented or unpatented invention, article, or appliance manufactured or used in the performance of this contract, including their use by the Government, and the Contractor shall give a bond in an amount satisfactory to the United States, the terms of which shall fully protect the Government against loss should the Contractor default in the obligation under this article.

§ 81.336 Disclosure of information. All secret, confidential or restricted contracts will contain the following clause without deviation:

Disclosure of information. (a) It is understood that disclosure of information relating to the work contracted for hereunder to any person not entitled to receive it, or failure to safeguard all secret, confidential and restricted matter that may come to the Contractor or any person under his control in connection with the work under this contract, may subject the Contractor, his agents, employees, and subcontractors to criminal liability under the laws of the United States. (See Title 1 of an Act approved June 15, 1917, 40 Stat. 217; 50 U.S.C. 30-42), as amended by an Act approved March 23, 1940 (54 Stat., Chap. 72); and the provisions of an Act approved January 12, 1938, (52 Stat. 3; 50 U.S.C., Supp. V 45-45d) as supplemented by Executive Order No. 8381, dated March 22, 1940, 5 F.R. 1147.

(b) The Contractor shall cause a like provision to be inserted in all subcontracts under this contract.

§ 81.337 Employment of aliens. All secret, confidential or restricted contracts will obtain the following clause without deviation:

Employment of aliens. (1) It is understood by the parties hereto that this contract is subject to the provisions of section 11 of an Act approved June 28, 1940 (Public No. 671, 76th Congress), quoted below:

*Administrative regulations of the War Department relative to property accountability and responsibility.

Sec. 11. (a) No aliens employed by a Contractor in the performance of secret, confidential, or restricted Government contracts shall be permitted to have access to the plans or specifications, or the work under such contracts, or to participate in the contract trials, unless the written consent of the head of the Government department concerned has first been obtained, and any person who willfully violates or through negligence permits the violation of the provisions of this subsection shall be fined not more than \$10,000 or imprisoned not more than 5 years, or both.

(b) Any alien who obtains employment on secret, confidential, or restricted Government contracts by willful misrepresentation of his alien status, or who makes such willful misrepresentation while seeking such employment, shall be fined not more than \$10,000 or imprisoned not more than 5 years, or both.

(c) For the purpose of this section, the terms "person" shall be construed to include an individual, partnership, association, corporation, or other business enterprise.

(2) *Employment of aliens by subcontractors.* In each subcontract which the contractor may make under this contract, there shall be included a stipulation that no aliens in the employ of the subcontractor shall be permitted to have access to the plans or specifications or the work under the contract, or to participate in the contract trials, unless the written consent of the Secretary of War has first been obtained: *Provided*, That such stipulation need not be included in any subcontract for standard or commercial products procured under specifications which will not disclose the nature or character of the work and/or materials covered by this contract or any other classified information relative thereto.

§ 81.338 Plant protection clauses. In those cases where the Contracting Officer deems it necessary to retain some control as to the plant protective devices in a particular plant, the contract will contain one of the following clauses:

Plant protection. The Contractor shall maintain in and about his plant adequate plant protective devices and shall employ such watchmen, guards and other personnel as the Contracting Officer may deem necessary to prevent espionage, sabotage, and other malicious destruction or damage.

Plant protection. (a) The Contractor and each Subcontractor shall, at his own expense at all times during the term of this contract or any subcontract hereunder, continue all such precautions, for the guarding and protection of his plant, property and work in process, as have immediately prior to the date of this contract been taken by the Contractor or Subcontractor, and shall make available such information with respect thereto as the Contracting Officer may request.

(b) At any time during said term of this contract, the Contracting Officer may require the Contractor or Subcontractor to install and maintain in and about his plant additional protective equipment and personnel. The Contractor and each Subcontractor shall promptly submit to the Contracting Officer detailed inventories, showing each item and the cost thereof, of any protective equipment so required and installed and detailed statements of the cost of maintaining any personnel so required and maintained.

(c) Title to all plant protective equipment added under paragraph (b) of this Article shall be in the Government. The Contractor or the Subcontractor shall, at his own ex-

pense, during the term of this contract or any extension thereof, or during the term of the subcontract or any extension thereof, maintain and keep in good condition and repair all such protective equipment, and shall make any necessary replacements thereof at his own expense.

(d) The _____ or his (Chief of Supply Service) duly authorized representative and authorized plant protection personnel of the War Department shall, at all times during the performance of this contract or any extension thereof, or during the term of the subcontract or any extension thereof, and until after expiration of the right of removal set forth below, have access to the Contractor's plant, or the plant of the Subcontractor, in order to inspect, inventory or remove any of said plant protective equipment required pursuant to paragraph (b) hereof.

(e) After the completion or termination of this contract and prior to final settlement thereof, the Contractor, or the Subcontractor, as the case may be, shall have the option, exercisable in writing, to purchase, at the then value as fixed by the Contracting Officer, any special plant protective equipment, theretofore installed in his plant pursuant to paragraph (b). The Government shall have the right, at any time within 120 days after the expiration of this option, to remove any plant protective equipment with respect to which the option has not been exercised.

(f) The contract price will be adjusted by an amount equal to the reasonable cost, as determined by the Contracting Officer, of installing and maintaining the plant protective equipment and personnel required of the Contractor or any Subcontractor under paragraph (b) of this Article, less the then value, as determined by the Contracting Officer, of any equipment purchased by the Contractor or Subcontractor under the option provided for in paragraph (e) of this Article.

(g) The Contractor agrees to insert in each of his subcontracts the following provision:

"The _____ agrees to be bound (Subcontractor) by the provisions of Article _____

(This Article) insofar as they are applicable to this contract. The _____ will reimburse the _____ (Prime Contractor)

for the cost of _____ (Subcontractor)

such special equipment and personnel as have been added by the _____ pursuant to paragraph (b) of Article _____ (Subcontractor)

(This Article) Such reimbursement shall be

subject to deductions on account of the exercise by the Subcontractor of the option provided in paragraph (e) of Article _____ (This Article)

"_____ (This Article)

(h) For the purpose of this article, a subcontract is defined as any contract or agreement entered into between the Contractor and any other party, for the performance of all or any part of the work called for under this contract.

Plant protection. (a) The Contractor shall at his own expense at all times during the term of this contract continue all such precautions, for the guarding and protection of its plant, property, and the work in process, as have immediately prior to the date of this contract been taken by it, and shall make available such information with respect thereto as the Contracting Officer may request.

(b) At any time during the term of this contract the Contracting Officer may require the Contractor to install and maintain in and

about its plant additional protective equipment and personnel; and the Contractor shall promptly submit to said Contracting Officer detailed inventories, showing each item and the cost thereof, of any protective equipment so required and installed, and detailed statements of the cost of maintaining any personnel so required and maintained. Title to said protective equipment shall be in the Contractor. The Contractor shall at its own expense during the term of this contract maintain and keep in good condition and repair (for use in the performance of this contract) any protective equipment so required and installed, and, to the extent that, during said term, any of said protective equipment shall be lost, damaged, broken, worn out or destroyed, and/or otherwise require replacement, shall at its own expense make such replacement. The said Contracting Officer and authorized plant inspection personnel of the War Department shall at all times during the term of this contract have access to the Contractor's plant and the right to inspect and inventory said protective equipment. The contract price will be adjusted by an amount equal to the reasonable cost (as determined by the said Contracting Officer) of any additional protective equipment or personnel so required to be installed or maintained, less the value (as determined by the said Contracting Officer) of said additional protective equipment at the completion or termination of this contract.

(c) The Contractor agrees to insert in each subcontract made in connection with the performance of this contract an article identical with the foregoing paragraphs (a) and (b), except that in place of the words "Contracting Officer" in paragraph (a), shall appear the words "United States Government, acting through the Contracting Officer in Contract No. _____".

(d) This contract shall be modified in writing to increase the amount due the Contractor hereunder to the extent of any payments made by the Contractor to the Subcontractor under any subcontractual provision inserted pursuant to paragraph (c) hereof.

(e) For the purpose of this article, a subcontract is defined as any contract or agreement entered into between the Contractor and any other party, for the performance of all or any part of the work called for under this contract.

§ 81.339 Price adjustment for increase in freight rates. In appropriate cases, contracts may contain the following clause:

Price adjustment for increase in freight rates. If after the date of the bid, or in the case of a contract not entered into pursuant to a bid after the date of the award, the Interstate Commerce Commission shall authorize an increase in freight rates upon the materials set out below, which are used in the production of the supplies covered by this contract, and if the contractor is required to pay increased freight rates on such materials (either by payment to the carrier or because the increased freight charges are added to the price paid by the contractor for the materials) in order to perform the contract, the prices named herein will be increased accordingly, and the amount due the contractor as a result of such increase will be charged to the Government and entered on vouchers (or invoices) as a separate item: *Provided*, That the contractor shall not be entitled to receive payment for any such increase unless he submits such evidence as may be required by the contracting officer with respect to the increased freight charges borne by the contractor.

§ 81.340 Clauses for rental of gas cylinders. Every contract for the purchase

of gas to be delivered in cylinders will contain one of the following clauses:

Rental of gas cylinders (individual basis). Cylinders shall remain the property of the contractor and will be loaned, without charge, to the Government for a period of 30 days after the date of shipment of cylinders from the contractor's plant. Beginning with the first day after the expiration of the 30-day free loan period to and including the day the cylinders are released to the transportation company for return to the contractor, there will be charged and the United States agrees to pay the contractor a rental at the rate of \$_____ per cylinder per day for the use of cylinders not returned to the contractor.

Rental of gas cylinders (quantity basis). Cylinders shall remain the property of the contractor and will be loaned, without charge, to the Government for a period of 30 days after the date of shipment of cylinders from the contractor's plant. Beginning with the first day after the expiration of the 30-day free loan period to and including the day the cylinders are released to the transportation company for return to the contractor, there will be charged and the United States agrees to pay the contractor a rental at the rate of \$_____ per cylinder per day, computed on a quantity basis, as indicated below, for the use of cylinders not returned to the contractor. This rental charge will be computed separately for oxygen and acetylene cylinders and for each point of delivery named in the contract. A credit of 30 cylinder days will accrue for each cylinder shipped. A debit of one cylinder day will accrue for each cylinder for each day held beginning with the day after date of shipment from contractor's plant to and including the day the cylinder is released to the transportation company for return to the contractor. At the end of the contract period, in the event the total number of debits exceeds the total number of credits, rental will be charged for the difference. If the total number of credits equals or exceeds the total number of debits, no charge will be made for the use of the cylinders.

All cylinders not returned to the contractor on or before the expiration of a 90-day rental period or lost or damaged beyond repair while in the possession of the United States Government shall be paid for by the United States to the contractor at a replacement value of \$_____ for each oxygen cylinder of 100 to 110 cubic feet capacity, \$_____ for each oxygen cylinder of 200 to 220 cubic feet capacity, \$_____ for each acetylene cylinder of 100 to 150 cubic feet capacity, and \$_____ for each acetylene cylinder of 250 to 300 cubic feet capacity.

Cylinders retained or lost and so paid for shall be considered the property of the United States. But if and when located they may, at the option of the Government, be returned to the contractor, and, in such event, credit shall be allowed to the Government at the replacement value paid, less rental at the rate of \$_____ per day beginning at the expiration of the 30-day loan period as aforesaid to the date upon which cylinders are turned over to carrier for return to contractor's plant.

§ 81.341 Redetermination of price clause. The following price redetermination clause will be used in those cases where it is desired to provide for an automatic redetermination of the price:

Redetermination of price. The parties hereto recognize that, because of circumstances beyond their control, accurate estimates of the cost of performing this contract cannot be made within a reasonable time. Accordingly, they agree that the price stated in Article 1 shall be redetermined as

provided below, upon the basis of the actual experience of the Contractor in performing part of his contract. Such redetermination of the price shall be made as follows:

(a) The estimated cost of performing this contract, upon which the price stated in Article 1, is based, is \$-----, itemized as follows:*

- A. Factory Cost:
 1. Direct materials.
 2. Direct productive labor.
 3. Direct engineering labor.
 4. Miscellaneous direct factory charges.
 5. Indirect factory expenses (State basis of allocation). Total Factory Cost.**
- B. Other manufacturing cost.
- C. Miscellaneous direct expenses.
- D. Indirect engineering expenses.
- E. Expenses of distribution, servicing and administration.
- F. Guarantee expenses.

(b) It is agreed that the cost of production of the first ----- % of items called for hereunder, hereafter referred to as the "preliminary run" will not necessarily be typical for the remainder of the contract. The cost of production of the next ----- % hereafter referred to as the "test run" shall be used as the general basis for redetermination. Within ----- days after the completion of the production of the "test run", the Contractor shall submit to the Contracting Officer separate statements of the actual cost of the production of the "preliminary run" and the "test run", itemized in the same way as the estimated cost states above. Such statement shall be based upon the cost accounting system regularly utilized by the Contractor and certified as correct by an independent public accountant or by two officers of the Contractor. The Contractor shall submit his books and accounts to such examination and audit as shall be requested by the Contracting Officer.

(c) If the actual cost of production of the preliminary run plus the cost of the production of the remainder of the items called for by the contract, as indicated by the actual cost of production of the "test run", is less than the total estimated cost stated in paragraph (a), the total price to be paid pursuant to Article 1 shall be reduced in the same ratio.

(d) Pending the redetermination of the price hereunder, all items delivered shall be paid for at the price set forth in Article 1. Upon the redetermination of such price hereunder, an amount equal to the difference between the price paid on all items theretofore delivered and such redetermined price for such items shall be applied by the contractor as a credit against payment for subsequent deliveries, or shall be applied or returned to the Government as directed by the Contracting Officer.

(e) If this contract contains an escalator clause (Price Adjustment) notwithstanding any provisions of such escalator clause which may be inconsistent herewith, that clause shall be understood to relate only to that portion of the production under the contract which is not covered by the statements of actual cost required by paragraph (b) of this article. The blanks in the escalator clause will be filled in at the time of redetermination hereunder, and the month in which the redetermination is made shall be taken as the base month for such escalator clause and the estimated labor costs and the estimated material costs shall include only such costs as are not reflected in the actual cost

*This breakdown may be altered to suit particular circumstances.

**State separately the estimated amount of each of the following items included: (a) Normal depreciation, (b) Special amortization.

statements. For this reason the blanks in the escalator clause were not filled in at the time of the execution of this contract.

§ 81.342 *Renegotiation of price clause.* The following price renegotiation clause will be used in those cases where it is desired or necessary to renegotiate the price in good faith:

Renegotiation of price. (a) The Contractor represents that the contract price provided in Article ----- is based upon a total estimated cost of \$----- itemized as follows:*

- A. Factory Cost:
 1. Direct materials.
 2. Direct productive labor.
 3. Direct engineering labor.
 4. Miscellaneous direct factory charge.
 5. Indirect factory expenses (State basis of allocation). Total Factory Cost.**
- B. Other manufacturing cost.
- C. Miscellaneous direct expenses.
- D. Indirect engineering expenses.
- E. Expenses of distribution, servicing and administration.
- F. Guarantee expenses.

(b) Within ----- days after the completion of the production of ----- % of the items called for under this contract, the Contractor shall submit to the Contracting Officer a statement of the actual cost of the production of said percentage, itemized in the same way as the estimated cost stated above. Such statement shall be based upon the cost accounting system regularly utilized by the Contractor and certified as correct by an independent public accountant or by two officers of the Contractor. The Contractor shall submit his books and accounts to such examination and audit as shall be requested by the Contracting Officer.

(c) Upon the written request of either party, which request shall be made within ----- days after the filing of the statement required by paragraph (b) hereof, the Contracting Officer and the Contractor will enter into negotiations and will attempt to agree upon a modification of the contract.

(d) Pending the renegotiation of the price hereunder, all items delivered shall be paid for at the price set forth in Article 1. Upon the renegotiation of the price hereunder, an amount equal to the difference between the price paid on all items theretofore delivered and such renegotiated price for such items, if in the Government's favor, shall be applied by the Contractor as a credit against payment for subsequent deliveries, or shall be applied or returned to the Government as directed by the Contracting Officer; if in the Contractor's favor, it shall be paid by the Government on a separate invoice or voucher.

(e) If this contract contains an escalator clause (Price Adjustment) the figures set forth therein and the terms thereof shall be controlling in the absence of a modification of the contract under this article. In the event of such a modification, the escalator clause shall be so modified as to relate only to that portion of the production under the contract which is not covered by the statement of actual cost required by paragraph (b) of this article. In modifying the provisions of the escalator clause, the month in which the renegotiation occurs shall be taken as the base month, and the estimated labor costs and the estimated material costs shall include only such costs as are not reflected in the actual cost statement submitted under paragraph (b) hereof.

§ 81.343 *Rate of wages clause.* All contracts subject to the Davis-Bacon Act will contain the following clause without deviation:

Rate of wages. (In accordance with the act of August 30, 1935, 49 Stat. 1011, as amended

by the act of June 15, 1940, 54 Stat. 399 (U. S. Code, 1934, ed., title 40, secs. 276a and 276a-1), this article shall apply if the contract is in excess of \$2,000 in amount and is for the construction, alteration, and/or repair, including painting and decorating, of a public building or public work within the geographical limits of the States of the Union, the Territory of Alaska, the Territory of Hawaii, or the District of Columbia.)

(a) The contractor or his subcontractor shall pay all mechanics and laborers employed directly upon the site of the work, unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account, the full amounts accrued at time of payment, computed at wage rates not less than those stated in the specifications, regardless of any contractual relationship which may be alleged to exist between the contractor or subcontractor and such laborers and mechanics; and the scale of wages to be paid shall be posted by the contractor in a prominent and easily accessible place at the site of the work. The contracting officer shall have the right to withhold from the contractor so much of accrued payments as may be considered necessary by the contracting officer to pay to laborers and mechanics employed by the contractor or any subcontractor on the work the difference between the rates of wages required by the contract to be paid laborers and mechanics on the work and the rates of wages received by such laborers and mechanics and not refunded to the contractor, subcontractors, or their agents.

(b) In the event it is found by the contracting officer that any laborer or mechanic employed by the contractor or any subcontractor directly on the site of the work covered by the contract has been or is being paid a rate of wages less than the rate of wages required by the contract to be paid as aforesaid, the Government may, by written notice to the contractor, terminate his right to proceed with the work or such part of the work as to which there has been a failure to pay said required wages and prosecute the work to completion by contract or otherwise, and the contractor and his sureties shall be liable to the Government for any excess costs occasioned the Government thereby.

(c) The regulations of the Secretary of Labor, referred to in article 19 hereof, allow certain "permissible deductions" from the wages required by this article to be paid.

§ 81.344 *Nonrebate of wages clause.* All contracts subject to the Copeland "Kick-back" Act will contain the following clause without deviation:

Nonrebate of wages. The contractor shall comply with the regulations of the Secretary of Labor pursuant to the Act of June 13, 1934, 48 Stat. 948 (U. S. Code, title 40, secs. 273b and 276c), and any amendments or modifications thereof, shall cause appropriate provisions to be inserted in subcontracts to insure compliance therewith by all subcontractors subject thereto, and shall be responsible for the submission of affidavits required of subcontractors thereunder, except as the Secretary of Labor may specifically provide for reasonable limitations, variations, tolerances, and exemptions from the requirements thereof.

§ 81.345 *Convict labor.* All contracts subject to the prohibitions against use or employment of convict labor will contain the following clause without deviation:

Convict labor. The contractor shall not employ any person undergoing sentence of imprisonment at hard labor, nor knowingly use any materials manufactured or produced in a penal or correctional institution.

§ 81.346 *Eight-hour law.* All contracts subject to the provisions of the Eight-Hour Law of 1912 will contain the following clause without deviation:

Eight-hour law. No laborer or mechanic doing any part of the work contemplated by this contract, in the employ of the contractor or any subcontractor contracting for any part of said work contemplated, shall be required or permitted to work more than 8 hours in any one calendar day upon such work at the site thereof, except upon the condition that compensation is paid to such laborer or mechanic in accordance with the provisions of this article. The wages of every laborer and mechanic employed by the contractor or any subcontractor engaged in the performance of this contract shall be computed on a basic day rate of 8 hours per day and work in excess of 8 hours per day is permitted only upon the condition that every such laborer and mechanic shall be compensated for all hours worked in excess of 8 hours per day at not less than one and one-half times the basic rate of pay. For each violation of the requirements of this article a penalty of \$5 shall be imposed upon the contractor for each laborer or mechanic for every calendar day in which such employee is required or permitted to labor more than 8 hours upon said work without receiving compensation computed in accordance with this article, and all penalties thus imposed shall be withheld for the use and benefit of the Government: *Provided*, That this stipulation shall be subject in all respects to the exceptions and provisions of U. S. Code, title 40, sections 321, 324, 325, and 326, relating to hours of labor, as in part modified by the provisions of section 5 (b) of Public Act No. 671, 76th Congress, approved June 23, 1940, and Section 303 of Public Act No. 781, 76th Congress, approved September 9, 1940, relating to compensation for overtime.

§ 81.347 *Advance payments with interest.* The following clause will be included in fixed-price contracts when it is contemplated that advance payments with interest will be made thereon:

Advance payments. (a) At any time and from time to time, after the approval of this contract, at the request of the Contractor and subject to the approval of the _____

(Chief of supply service) or his duly authorized representative,

or of the person to whom authority has been delegated to make advance payments, as to the present need therefor, the Government shall advance to the Contractor sums not to exceed _____ or _____ (Insert amount of advance payment)

per centum (____%) of the contract price, as it may be amended, whichever shall be the smaller. On the unliquidated balance of the advance payments outstanding, the Contractor agrees to pay interest at the rate of two and one-half per cent per annum to be computed in accordance with the provisions of paragraph (f).

(b) As a condition precedent to the making of any advance payment or payments as hereinbefore provided, the Contractor shall furnish the Government with such adequate security as the Under Secretary of War or the person to whom authority has been delegated to make advance payments shall prescribe: *Provided*, That, if other security is not prescribed, the terms of this contract shall be considered adequate security for such advance payments: *Provided further*, That, if at any time the Under Secretary of War deems the security furnished by the Contractor inadequate, the Contractor shall furnish such additional security as shall be satisfactory to the Under Secretary of War.

(c) Until all advance payments hereunder are liquidated, all funds received as advance payments under this contract together with _____ Per cent (____%) (Insert per cent to be deposited which shall be not less than 75%

of all other cash payments under this contract, shall be deposited in a special bank account or accounts at a member bank or banks of the Federal Reserve System separate from the Contractor's general or other funds. Such special bank account or accounts shall be so designated as to indicate clearly to the bank their special character and purpose, and the balances in such account or accounts shall be used by the Contractor exclusively as a revolving fund for carrying out the purposes of this contract (including reimbursement to the Contractor for any reasonable amounts expended by him for such purposes), and any amendments thereto, and not for the other business of the Contractor: *Provided*, That for the purpose of determining proper disposition of funds hereunder such of the Contractor's costs as may not be directly allocable to this contract, as it may be amended, may be charged against funds deposited in the special account in that proportion which the amount of work being done under this contract, as it may be amended, approximately bears to the total amount of work being performed by the Contractor, out of which such costs also arise, but within the period to which such costs relate. When required by the _____ or his duly authorized (Chief of supply service)

representative, or any other person to whom authority to make advance payments has been delegated, withdrawals from special account or accounts shall be made subject to the prior written approval of the Contracting Officer or his duly authorized representative. Any balances from time to time in such special account or accounts shall secure the repayment of the advances in connection with which the special account or accounts are opened, and the Government shall have a lien upon such balances to secure the repayment of such advances which lien shall be superior to any lien of the bank or any other person upon such account or accounts by virtue of assignment to it of such contract or otherwise: *Provided*, That the bank shall be under no liability to any party hereto for the withdrawal of any funds from said special account upon checks, properly endorsed and signed by the Contractor, except that after the receipt by the bank of written directions from the _____ or his duly (Chief of supply service)

authorized representative, the bank shall act thereon and be under no liability to any party hereto for any action taken in accordance with the said written directions. Any instructions or written directions received by the bank through the Contracting Officer upon War Department stationery and purporting to be signed by, or by the direction of, the _____ or his duly (Chief of supply service)

authorized representative shall, insofar as the rights, duties, and liabilities of the bank are concerned, be conclusively deemed to have been properly issued and filed with the bank by the _____ or his duly (Chief of supply service) authorized representative.

(d) If, upon the completion of the contract, or upon its termination for other than the fault of the contractor, the advance payments made to the contractor have not been fully liquidated in the manner herein provided, the unliquidated balance of such advance payments shall be deducted from any payments otherwise due the contractor, and if the sum or sums due the contractor be insufficient to cover such balance, the deficiency shall be paid by the contractor in

cash forthwith after demand and final audit by the Government of all accounts hereunder. In the event of cancellation or termination of this contract because of the fault of the contractor, the contractor agrees to return to the Government, upon demand, without set-off of any sums alleged to be due the contractor, the unliquidated balance of any advanced payment. Furthermore, if in the opinion of the _____

(Chief of supply service) or his duly authorized representative, the unobligated balance of the advance payments made by the Government under paragraph (a) hereof exceeds the amount necessary for the current needs of the contractor, as determined by the _____

(Chief of supply service) or his duly authorized representative the amount of such excess shall, upon demand made by the _____ or his duly (Chief of supply service)

authorized representative be promptly returned to the Government and will be credited against the balance due the Government on advances previously made. If the demand made in any event set forth in this subparagraph is not met upon receipt of such demand by the contractor, the amount demanded will bear interest at the rate of six per cent (6%) rather than two and one-half per cent (2½%) per annum from the date of the receipt of the demand until payment is made: *Provided, however*, That such additional interest over and above the regular two and one-half per cent is hereby waived as to any sum paid by the contractor within 15 days after the amount becomes due hereunder.

(e) Except as otherwise provided herein, liquidation of the principal of any advance payment or advance payments made to the contractor hereunder shall be made by means of direct repayment by the contractor from his own free funds or from the special account or by deductions of _____ per cent (Per cent of advance authorized)

from any and all payments made by the Government under this contract: *Provided*, That if at any time, as a result of amendments to the contract or otherwise, the unliquidated balance of the principal of advance payments made exceeds _____ per (Per cent of advance authorized)

cent of the contract price of units still to be delivered under the contract, the amount of such excess shall upon demand of the _____ or his duly authorized (Chief of supply service)

representative be promptly returned to the Government by withdrawal from the special account or otherwise, or if not so returned, shall be deducted from any and all payments to be made by the Government under the contract: *Provided further*, That, if and when the contractor has, by means of deductions or otherwise, reimbursed the Government in full for payments made, any money remaining in the special bank account or accounts shall be free and clear of any lien hereunder and the bank or banks concerned shall have authority to pay same to the contractor and shall thereupon be relieved of any further obligation to the Government on account thereof.

(f) On the unliquidated balance of the advance payments outstanding, the contractor agrees to pay interest at the rate of two and one-half per cent per annum. Such interest shall be computed at the end of each calendar month on the average daily balance of the principal of the unliquidated advance payments outstanding. In determining such balance, charges on account of the advance payments to the contractor hereunder shall be made as of the dates of the checks therefor; credits arising from deductions from payments to the contractor under this contract shall be made as of the dates the checks

for such payments are drawn; and credits arising from cash repayments to the Government by the contractor shall be made as of the dates the checks therefor are received by the disbursing officer. As soon as such monthly computations shall have been made, the interest so determined shall be deducted from the payments otherwise due the contractor under this contract: *Provided, however,* That in no event shall deductions on account of interest exceed five per cent (5%) of the gross payment due the contractor prior to any deduction under this paragraph or paragraph (e) or any other provisions of this contract. In the event the accrued interest exceeds such five per cent, the excess of such interest shall be carried forward and deducted from subsequent payments. The interest shall not be compounded, and shall, subject to the provisions of paragraph (d) hereof, cease to accrue upon the termination of the contract for other than the fault of the contractor, or upon the date found by the Contracting Officer to be the date upon which the contractor completed his performance under the contract.

(g) The contractor shall, at all times, afford to the Contracting Officer or his duly authorized representative, proper facilities for the inspection and audit of the contractor's accounts, and the contractor hereby agrees that the Contracting Officer, or his duly authorized representative, shall have the right, so far as the contractor's rights are concerned, during business hours, to inspect and make copies of any entries in the books and records of the bank relating to the said special account.

(h) Subject to the approval of the Contracting Officer or his duly authorized representative the contractor may make payments to subcontractors and materialmen in advance out of the special account, for labor or services, or to pay for material in advance of delivery at the site of the work or at an approved storage site. Such subadvances shall not exceed _____ per cent of the subcontract price and the subcontractor or materialmen to whom such advances are made shall furnish adequate security therefor. Unless other security is furnished, covenants in subcontracts, expressly made for the benefit of the Government, providing for a sub-special account with Government lien thereon and for a Government lien on property, tangible or intangible, purchased from the special account, and imposing upon the subcontractor substantially the same duties and giving the Government substantially the same rights as are provided herein between the Government and the contractor, have been prescribed by the Under Secretary of War as minimum adequate security for such subadvances.

(i) If no surety bond is furnished as part of the security under subparagraph (b) hereof, then, upon receipt of items or materials paid for from such special account or accounts, such items or materials shall be segregated and the Government shall have a lien on such items or materials until the advance payment or payments have been fully liquidated, or until the item or items and/or materials concerned have become the property of the Government as the result of partial payments, or otherwise: *Provided,* That if segregation in any instance be impracticable and the items or materials concerned are consequently intermingled with other property of the Contractor, then and in that event the lien above provided for in favor of the Government shall extend to the intermingled mass to the amount represented by the value of the items or materials involved; and without limiting the generality of the foregoing, such lien shall continue as follows: (a) in case the contract covers construction, until such items or materials are incorporated into the building, and thereafter on the building in the construction of which the

items or materials are incorporated; (b) in the case of items or materials comprising facilities, on such facilities both before and after their installation in the plant; and (c) in the case of articles contracted for, until the items or materials so paid for are fabricated into such articles, and thereafter on the articles until accepted by the Government [; and the Government shall hereby likewise have an effective assignment of a security interest in all intangible property purchased, or otherwise acquired, with funds from said special account].* If at any time during the progress of the work under this contract it becomes necessary to deliver any item or items and/or materials upon which the Government has a lien as aforesaid to a third person, the contractor shall notify such third person of the lien herein provided and shall obtain from such third person a receipt, in duplicate, acknowledging, *inter alia*, the existence of such lien. A copy of each receipt shall be delivered by the contractor to the contracting officer.

(j) Any assignment of moneys due or to become due under this contract shall be subordinate to the rights or claims of the Government arising under this contract or any amendment thereto by virtue of any advance payments authorized herein or otherwise: *Provided,* That, if at any time any claim arising under this contract is assigned or purportedly assigned in any manner inconsistent with the said rights of the Government, the _____ or his duly authorized (Chief of supply service) representative shall have the right to suspend further advance payments without notice.

§ 81.348 *Advance payments without interest.* The following clause will be included in fixed-price contracts when it is contemplated that advance payments without interest will be made thereon:

Advance payments. (a) At any time and from time to time, after the approval of this contract, at the request of the Contractor and subject to the approval of the _____

(Chief of supply service) or his duly authorized representative, or of the person to whom authority has been delegated to make advance payments, as to the present need therefor, the Government shall advance to the Contractor, without payment of interest therefor by the Contractor, sums not to exceed _____ or (Insert amount of advance payment) _____ per centum (____%) of the contract price, as it may be amended, whichever shall be the smaller.

(b) As a condition precedent to the making of any advance payment or payments as hereinbefore provided, the Contractor shall furnish the Government with such adequate security as the Under Secretary of War or the person to whom authority has been delegated to make advance payments shall prescribe: *Provided,* That, if other security is not prescribed, the terms of this contract shall be considered adequate security for such advance payments: *Provided further,* That if at any time the Under Secretary of War deems the security furnished by the Contractor inadequate, the Contractor shall furnish such additional security as shall be satisfactory to the Under Secretary of War.

(c) Until all advance payments hereunder are liquidated, all funds received as advance payments under this contract together with _____ per cent (Insert percent to be deposited which shall be not less than 75%) (____%) of all other cash payments under

*The bracket provision may be inserted in the case of experimental contracts or other cases where deemed especially appropriate.

this contract, shall be deposited in a special bank account or accounts at a member bank or banks of the Federal Reserve System separate from the Contractor's general or other funds. Such special bank account or accounts shall be so designated as to indicate clearly to the bank their special character and purpose, and the balances in such account or accounts shall be used by the Contractor exclusively as a revolving fund for carrying out the purposes of this contract (including reimbursement to the Contractor for any reasonable amounts expended by him for such purposes), and any amendments thereto, and not for the other business of the Contractor: *Provided,* That for the purpose of determining proper disposition of funds hereunder such of the Contractor's costs as may not be directly allocable to this contract, as it may be amended, may be charged against funds deposited in the special account in that proportion which the amount of work being done under this contract, as it may be amended, approximately bears to the total amount of work being performed by the Contractor, out of which such costs also arise, but within the period to which such costs relate. When required by the _____ or his duly authorized (Chief of supply service) representative, or any other person to whom authority to make advance payments has been delegated, withdrawals from special account or accounts shall be made subject to the prior written approval of the Contracting Officer or his duly authorized representative. Any balances from time to time in such special account or accounts shall secure the repayment of the advances in connection with which the special account or accounts are opened, and the Government shall have a lien upon such balances to secure the repayment of such advances which lien shall be superior to any lien of the bank or any other person upon such account or accounts by virtue of assignment to it of such contract or otherwise: *Provided,* That the bank shall be under no liability to any party hereto for the withdrawal of any funds from said special account upon checks, properly endorsed and signed by the Contractor, except that after the receipt by the bank of written directions from the _____ or his duly

(Chief of supply service) authorized representative, the bank shall act thereon and be under no liability to any party hereto for any action taken in accordance with the said written directions. Any instructions or written directions received by the bank through the Contracting Officer upon War Department stationery and purporting to be signed by, or by the direction of, the _____ or his duly au-

(Chief of supply service) thorized representative shall, in so far as the rights, duties, and liabilities of the bank are concerned, be conclusively deemed to have been properly issued and filed with the bank by the _____ or his duly authorized representative.

(d) If, upon the completion of the contract, or upon its termination for other than the fault of the Contractor, the advanced payments made to the Contractor have not been fully liquidated in the manner herein provided, the unliquidated balance of such advance payments shall be deducted from any payments otherwise due the Contractor, and if the sum or sums due the Contractor be insufficient to cover such balance, the deficiency shall be paid by the Contractor in cash forthwith after demand and final audit by the Government of all accounts hereunder. In the event of cancellation or termination of this contract because of the fault of the Contractor, the Contractor agrees to return to the Government, upon demand, without set-off of any sums alleged to be due the Contractor, the unliquidated balance of any

advance payment. Furthermore, if, in the opinion of the _____ or

(Chief of supply service)

his duly authorized representative, the unobligated balance of the advance payments made by the Government under paragraph (a) hereof exceeds the amount necessary for the current needs of the Contractor, as determined by the _____ or

(Chief of supply service)

his duly authorized representative the amount of such excess shall, upon demand made by the _____ or his duly

(Chief of supply service)

authorized representative be promptly returned to the Government and will be credited against the balance due the Government on advances previously made. If the demand made in any event set forth in this subparagraph is not met upon receipt of such demand by the Contractor, the amount demanded will bear interest at the rate of six per cent (6%) per annum from the date of the receipt of the demand until payment is made: *Provided, however*, That such payment of interest is hereby waived as to any sum paid by the Contractor within 15 days after the amount becomes due hereunder.

(e) Except as otherwise provided herein, liquidation of any advance payment or advance payments made to the Contractor hereunder shall be made by means of direct repayment by the Contractor from his own free funds or from the special account or by deductions of _____ per cent from any and

(Per cent of advance authorized)

all payments made by the Government under this contract: *Provided*, That if at any time, as a result of amendments to the contract or otherwise, the unliquidated balance of advance payments made exceeds _____ per

(Per cent of advance authorized)

cent of the contract price of unit still to be delivered under the contract, the amount of such excess shall upon demand of the _____ or his duly authorized

(Chief of supply service)

representative be promptly returned to the Government by withdrawal from the special account or otherwise, or if not so returned, shall be deducted from any and all payments to be made by the Government under the contract; *Provided further*, That, if and when the Contractor has, by means of deductions or otherwise, reimbursed the Government in full for payments made, any money remaining in the special bank account or accounts shall be free and clear of any lien hereunder and the bank or banks concerned shall have authority to pay same to the Contractor and shall thereupon be relieved of any further obligation to the Government on account thereof.

(f) The Contractor shall, at all times, afford to the Contracting Officer or his duly authorized representative, proper facilities for the inspection and audit of the Contractor's accounts, and the Contractor hereby agrees that the Contracting Officer, or his duly authorized representative shall have the right, so far as the Contractor's rights are concerned, during business hours, to inspect and make copies of any entries in the books and records of the bank relating to the said special account.

(g) Subject to the approval of the Contracting Officer or his duly authorized representative the Contractor may make payments to subcontractors and materialmen in advance out of the special account, for labor or services, or to pay for material in advance of delivery at the site of the work or at an approved storage site. Such subadvances shall not exceed _____ per cent of the subcontract price and the subcontractor or materialmen to whom such advances are made shall furnish adequate security therefor. Unless other security is furnished, covenants in subcontracts, expressly made for the benefit of the Government, providing for a subspecial account with Government lien thereon and

for a Government lien on property, tangible or intangible, purchased from the special account, and imposing upon the subcontractor substantially the same duties and giving the Government substantially the same rights as are provided herein between the Government and the Contractor, have been prescribed by the Under Secretary of War as minimum adequate security for such subadvances.

(h) If no surety bond is furnished as part of the security under subparagraph (b) hereof, then, upon receipt of items or materials paid for from such special account or accounts, such items or materials shall be segregated and the Government shall have a lien on such items or materials until the advance payment or payments have been fully liquidated, or until the item or items and/or materials concerned have become the property of the Government as the result of partial payments, or otherwise: *Provided*, That if segregation in any instance be impracticable and the items or materials concerned are consequently intermingled with other property of the Contractor, then and in that event the lien above provided for in favor of the Government shall extend to the intermingled mass to the amount represented by the value of the items or materials involved; and without limiting the generality of the foregoing, such lien shall continue as follows: (a) in case the contract covers construction, until such items or materials are incorporated into the building, and thereafter on the building in the construction of which the items or materials are incorporated; (b) in the case of items or materials comprising facilities, on such facilities both before and after their installation in the plant; and (c) in the case of articles contracted for, until the items or materials so paid for are fabricated into such articles, and thereafter on the articles until accepted by the Government []; and the Government shall hereby likewise have an effective assignment of a security interest in all intangible property purchased, or otherwise acquired, with funds from said special account.* If at any time during the progress of the work under this contract it becomes necessary to deliver any item or items and/or materials upon which the Government has a lien as aforesaid to a third person, the Contractor shall notify such third person of the lien herein provided and shall obtain from such third person a receipt, in duplicate, acknowledging, *inter alia*, the existence of such lien. A copy of each receipt shall be delivered by the Contractor to the Contracting Officer.

(i) Any assignment of moneys due or to become due under this contract shall be subordinate to the rights or claims of the Government arising under this contract or any amendment thereto by virtue of any advance payments authorized herein or otherwise: *Provided*, That if at any time any claim arising under this contract is assigned or purportedly assigned in any manner inconsistent with the said rights of the Government, the _____ or his duly

(Chief of supply service)

authorized representative shall have the right to suspend further advance payments without notice.

§ 81.349 *Advance payments, machine tools.* The following clause will be included in fixed-price contracts for critical machine tools when it is contemplated that advance payments will be made thereon:

Advance payments. Upon the approval of this contract, at the request of the Contractor, the Government shall advance to the

*The bracket provision may be inserted in the case of experimental contracts or other cases where deemed especially appropriate.

Contractor, without payment of interest therefor by the Contractor, sums not to exceed _____ or

(Insert amount of advance payment)

_____ per centum (____%) of the contract price, as it may be amended, whichever shall be the smaller.

(b) If at any time the Contracting Officer deems that the national interest requires that security be furnished by the Contractor in addition to the provisions of this article, the Contractor shall furnish such security as shall be satisfactory to the Contracting Officer.

(c) If, upon the completion of the contract, or upon its termination for other than the fault of the Contractor, the advance payments made to the Contractor have not been fully liquidated in the manner herein provided, the unliquidated balance of such advance payments shall be deducted from any payments otherwise due the Contractor, and if the sum or sums due the Contractor be insufficient to cover such balance, the deficiency shall be paid by the Contractor in cash forthwith after demand and final audit by the Government of all accounts hereunder. In the event of cancellation or termination of this contract because of the fault of the Contractor or in case of breach of the provisions of this article by the Contractor, the Contractor agrees to return to the Government, upon demand, without set-off of any sums alleged to be due the Contractor, the unliquidated balance of any advance payment. If the demand made in either event set forth in this subparagraph is not met upon receipt of such demand by the Contractor, the amount demanded will bear interest at the rate of six per cent (6%) per annum from the date of the receipt of the demand until payment is made: *Provided, however*, That such payment of interest is hereby waived as to any sum paid by the Contractor within 15 days after the amount becomes due hereunder.

(d) Except as otherwise provided herein, liquidation of any advance payment or advance payments made to the Contractor hereunder, unless directly repaid by the Contractor, shall be made by deductions of _____ per cent from any and all payments

(Per cent of advance Authorized)

made by the Government under this contract: *Provided*, That if at any time, as a result of amendments to the contract or otherwise, the unliquidated balance of advance payments made exceeds _____ per

(Per cent of Advance Authorized)

cent of the contract price of units still to be delivered under the contract, the amount of such excess shall upon demand of the Contracting Officer or his duly authorized representative be promptly returned to the Government, or if not so returned, shall be deducted from any and all payments to be made by the Government under the contract.

(e) The Contractor shall, at all times, afford to the Contracting Officer or his duly authorized representative, proper facilities for the inspection and audit of the Contractor's accounts.

(f) Except with the approval of the Contracting Officer or his duly authorized representative, subadvances shall not exceed thirty per cent of the subcontract price.

(g) Any assignment of moneys due or to become due under this contract shall be subordinate to the rights or claims of the Government arising under this contract or any amendment thereto by virtue of any advance payments authorized herein or otherwise: *Provided*, That, if at any time any claim arising under this contract is assigned or purportedly assigned in any manner inconsistent with the said rights of the Government, the Contracting Officer or his duly authorized representative shall have the right to suspend further advance payments without notice.

§ 81.350 *Termination clause.* The following clause will be incorporated in all cost-plus-a-fixed-fee construction contracts:

Termination for Convenience of the Government

1. The Government may terminate this contract at any time by a notice in writing from the Contracting Officer to the Contractor. Such termination shall be effective in the manner and upon the date specified in said notice and shall be without prejudice to any claims which the Government may have against the Contractor. Upon receipt of such notice, the Contractor shall, unless the notice directs otherwise, immediately discontinue all work and the placing of all orders for materials, facilities, and supplies in connection with performance of this contract and shall proceed to cancel promptly all existing orders and terminate all subcontracts insofar as such orders and/or subcontracts are chargeable to this contract.

2. If this contract is terminated for the fault of the Contractor, the Contracting Officer may enter upon the premises and take possession, for the purpose of completing the work contemplated by this contract of any or all materials, tools, machinery, equipment, and appliances which may be owned by or in the possession of the Contractor and all options, privileges, and rights, and may complete or employ any other person or persons to complete said work. Following such termination, rental shall be paid to the Contractor for such construction plant or parts thereof as he may own, and which the Government may retain at rates prescribed in Article _____.

3. Upon the termination of this contract, full and complete settlement of all claims of the Contractor arising out of this contract shall be made as follows:

a. The Government shall assume and become liable for all obligations, commitments, and claims that the Contractor may have theretofore in good faith undertaken or incurred in connection with said work, the cost of which would be reimbursable in accordance with the provisions of this contract; and the Contractor shall, as a condition of receiving the payments mentioned in this article, execute and deliver all such papers and take all such steps as the Contracting Officer may require for the purpose of fully vesting in the Government, the rights and benefits of the Contractor under such obligations or commitments.

b. The Government shall reimburse the Contractor for all expenditures made in accordance with Article _____ and not previously reimbursed.

c. The Government shall reimburse the Contractor for such further expenditures after the date of termination for the protection of Government property and for accounting services in connection with the settlement of this contract as are required or approved by the Contracting Officer.

d. The Government shall pay to the Contractor any unpaid balance for the rental of the Contractor's equipment in accordance with Article _____ to date of termination.

e. If the contract is terminated for the convenience of the Government, the Contractor will be paid that proportion of the prescribed fee which the work actually completed bears to the entire work under this contract, less fee payments previously made. If the contract is terminated due to fault of the Contractor, no additional payments on account of the fee will be made.

f. The obligation of the Government to make any of the payments required by this Article, or by Article _____ of this contract, shall be subject to any unsettled claims in

connection with this contract which the Government may have against the Contractor.

4. Prior to final settlement the Contractor shall furnish a release as required in Article _____ hereof.

§ 81.351 *Price adjustments clause.* The following clause will be used in those cases where the use of the standard escalator clause is required. In no case will any deviations from this clause provide for price adjustment on the basis of changes in the actual cost of labor and materials to the contractor, or in the contractor's plant.

Price adjustments. The total contract price stated in Article _____ is subject to adjustment for increases or decreases in direct labor and direct material costs in accordance with the following method:

(a) *Labor.* (1) Upon the basis of labor costs prevailing in _____, 194____, (hereinafter called the base month) the direct labor cost is estimated to be \$_____. It is also estimated that the indirect labor cost attributable to this contract is _____% of such estimated direct labor cost. Direct labor, as used herein, refers only to the labor of employees of the Contractor performed directly on, and properly chargeable to, the supplies manufactured hereunder, excluding, but without limitation, all executive, managerial, supervisory, technical, professional, office, clerical and sales employees, but including working foremen, gang-bosses and strawbosses. The Contractor represents that the above estimated cost is based upon a schedule, approved by the Contracting Officer, of the kinds or classes of jobs or occupations to be charged as direct labor under this contract, and that the estimate includes only such jobs or occupations. In computing the actual direct labor cost for the purposes of paragraphs (a) (2) and (a) (3) hereof, the cost of kinds or classes of jobs or occupations not listed in this schedule, a copy of which is attached hereto, shall not be included.

(2) After deliveries under this contract have been completed, the estimated direct labor cost set forth above shall be apportioned into direct labor cost quotas for the consecutive three-month periods (hereinafter called "quota periods") beginning on the first day of _____, 194____, and on the first day of each third month thereafter. This apportionment shall be made by dividing the actual direct labor cost properly charged to this contract during each quota period by the total actual direct labor cost under the contract, and by multiplying the percentage thus obtained for each quota period by the total estimated direct labor cost. The result shall be the direct labor cost quota for that period.

(3) Upon the basis of the average hourly earnings in the durable goods manufacturing industries compiled by the United States Department of Labor, Bureau of Labor Statistics, the Government will determine the average hourly earnings for each quota period by adding the average hourly earnings for each month of such quota period and dividing their sum by three, and calculations will be made of the percentage of change of such average hourly earnings for each quota period in comparison with the average hourly earnings for the same month. The labor cost quota for each quota period will then be multiplied by the percentage of change for such quota period, and the result will be applied as an increase or decrease in the con-

¹The month during which the contract is executed or performance is commenced, whichever is earlier.

tract price: *Provided*, That the total of such increases in the contract price shall not exceed the amount by which the total actual direct labor cost exceeds the total estimated direct labor cost, and that the total of such decreases in the contract price shall not exceed the amount by which the total actual direct labor cost is less than the total estimated direct labor cost.

(4) The total increase or decrease to be paid or deducted under paragraph (a) (3) shall be multiplied by _____%* and the result shall be applied as a further increase or decrease in the contract price, as an adjustment for the indirect labor cost under this contract.

(b) *Materials.* (1) Upon the basis of materials costs prevailing in the base month, the cost of direct materials which the Contractor will purchase for the performance of this contract, excluding materials to be used which the Contractor has on hand or for which firm price commitments have been obtained by him, (hereinafter called "direct materials to be purchased hereunder") is estimated to be \$_____. (hereinafter called "estimated adjustable materials cost"). It is also estimated that the indirect materials cost attributable to this contract is _____% of such estimated direct materials cost. Direct materials as used herein refers only to those materials which go into and become a component part of the Contractor's finished product and which, under the cost accounting system regularly employed in the Contractor's plant, are accounted for by direct charges to the particular contract. The Contractor represents that the above estimate is based upon a schedule, approved by the Contracting Officer, of the kinds and classes of "direct materials to be purchased hereunder." In computing the actual cost of "direct materials to be purchased hereunder" for the purposes of paragraphs (b) (2) and (b) (3) hereof, the cost of kinds or classes of materials not listed in this schedule, a copy of which is attached hereto, shall not be included.

(2) After deliveries under this contract have been completed, the "estimated adjustable materials cost" shall be apportioned into materials cost quotas for the quota periods as defined in paragraph (a) (2) above. This apportionment shall be made by dividing the total actual cost of "direct materials to be purchased hereunder" into the portion of such cost properly charged to the contract during each quota period, and by multiplying the percentage thus obtained for each quota period, by the total "estimated adjustable materials cost." The result shall be the materials cost quota for that period. Direct materials shall be charged to the contract for the quota period during which the price therefor is determined as between the Contractor and the materials supplier: *Provided*, That where commitments are obtained by the Contractor for future deliveries at a firm price in excess of the market price prevailing at the time such commitments were obtained, such materials shall be charged to the contract for the quota period during which delivery is to be received by the Contractor: *And, Provided, further*, That with respect to materials which are not identifiable with the purchase commitments under which they are acquired, determinations as to (1) whether the materials employed in the performance of this contract were on hand at the time the contract was executed, and (2) the quota period to which the materials are to be charged and the amount of such charge shall, with the approval of the Contracting Officer, be made on the basis of

*The percentage of indirect labor cost stated in paragraph (a) (1).

the accounting system regularly employed in the Contractor's plant.

(3) The Government will average for each quota period the index numbers of wholesale prices for -----² compiled by the United States Department of Labor, Bureau of Labor Statistics, for the three months included within such quota period, and calculations will be made of the percentage of change of such average index numbers for each quota period in comparison with the index numbers for the base month. The materials cost quota for each quota period shall then be multiplied by the percentage of change for such quota period, and the result will be applied as an increase or decrease in the contract price: *Provided*, That the total of such increases in the contract price shall not exceed the amount by which the actual cost of "direct materials to be purchased hereunder" exceeds the total "estimated adjustable materials cost," and that the total of such decreases in the contract price shall not exceed the amount by which said total actual cost of "direct materials to be purchased hereunder" is less than the total "estimated adjustable materials cost."

(4) The total increase or decrease to be paid or deducted under Paragraph (b) (3) shall be multiplied by -----% ** and the result shall be applied as a further increase or decrease in the contract price, as an adjustment for the indirect materials cost under this contract.

(c) *General*. (1) For the purpose of determining increases or decreases in contract prices, rates of change in average hourly earnings and rates of change in the materials index number will be calculated to the nearest one-tenth of one per cent, and there shall be used the latest figures which shall have been issued by the Bureau of Labor Statistics up to the close of the fourth month following the last quota period under this contract.

(2) Payments for increases, or deduction for decreases in the contract price, resulting from the operation of this article, will be made after the completion of the calculations of price adjustments in accordance herewith: *Provided*, That the Government may, from time to time during the life of the contract, make partial payments on account of such increases, subject to such requirements as a condition precedent to such payments as the Contracting Officer may provide: *Provided, further*, That in the event such partial payments shall exceed the amount due to the Contractor by the operation of this article, the Government shall deduct the amount of such excess from any further payments due under this contract.

(3) Should the Contractor, during the performance of this contract, on account of subcontracting, or otherwise, depart from the production method upon which the estimates and schedules of direct labor and direct materials costs were based to such an extent that the use of such estimates or schedules will operate to produce an unfair adjustment of the contract price, a corresponding correction in such estimates or schedules may be made by mutual agreement between the Contractor and the Contracting Officer. In the event of disagreement with respect to the need for or extent of such correction, the procedure of Article ----- (Disputes) shall apply.

(4) If this contract is terminated pursuant to any provision thereof the contract price shall be adjusted as provided above, except that for the purposes of paragraphs (a) (2), (a) (3), (b) (2), and (b) (3), the

²The index for the commodities group which includes the items making up the major portion of the "direct materials to be purchased hereunder."

**The percentage of indirect materials cost stated in Paragraph (b) (1).

terms "estimated direct labor cost" and "estimated adjustable materials cost" shall be understood to refer to that part of such costs which corresponds to that proportion of the supplies contracted for which is completed and delivered by the Contractor, and the terms "actual direct labor cost" and "actual cost of direct materials to be purchased hereunder", shall refer only to that part of such costs which is properly chargeable to the supplies completed and delivered.

(5) The Contractor shall file with the Contracting Officer, not later than sixty days after the completion of the performance of the work under this contract or after its termination, a statement of the actual direct labor costs and the actual costs of "direct materials to be purchased hereunder," certified as correct by an independent public accountant approved by the Contracting Officer, showing the amounts of such costs properly chargeable during each quota period and, in case of termination, the amounts properly chargeable to the supplies completed and delivered. In determining the total actual direct labor cost and the total actual "direct materials to be purchased hereunder," and in determining the amounts thereof to be charged in each quota period, the Contractor may, subject to the approval of the Contracting Officer and to the limitations of paragraph (b) (2), employ the accounting system regularly employed in the Contractor's plant. Such statement shall be deemed prima facie correct. The Government reserves the right to audit the books and records of the Contractor, to determine the accuracy of such determinations and certification, and to obtain any information in connection with the operation of this Article. All information obtained from the Contractor's records shall be treated as confidential. The Contractor shall preserve all the books, papers, and other accounting records pertaining thereto: *Provided*, That if the Contractor at any time after the lapse of three years following the completion or cessation of work under the contract, desires to dispose of said books, papers, and accounting records, he shall so notify the Secretary of War, or his duly authorized representative, who shall either authorize their destruction or notify the Contractor to turn them over to the Government for disposition.

(6) If after the date on which the prices herein were quoted, the Congress or any state legislature, shall impose, remove, increase or decrease any payroll tax required to be borne by the Contractor and directly applicable to or measured by the payrolls of the Contractor hereunder, then the rate of such newly imposed tax, or the net increase or net decrease in the rate of a previously imposed tax, shall be multiplied by that portion of the actual direct labor cost which is subject to such increases or decreases in the tax or taxes, and the result shall be paid the Contractor under this paragraph.

BONDS AND INSURANCE

GENERAL

§ 81.401 *Rescission of regulations*. Army Regulations 5-140, May 22, 1940, as amended; Army Regulations 5-220, August 7, 1940, as amended; and all other prior directives and instructions relating to bonds and insurance are hereby rescinded.

§ 81.402 *Definitions*—(a) *Bid bond*. A bond accompanying a bid and providing that:

(1) The bid will not be withdrawn after the opening within the period specified in the bid or, if no shorter period is specified, within 60 days.

(2) A written contract with such bond or bonds as may be required will be executed within 10 days after the prescribed forms are presented for signature.

(b) *Performance bond*. A bond executed in connection with a contract and securing the performance and fulfillment of all the undertakings, covenants, terms, conditions, and agreements of the contract.

(c) *Payment bond*. A bond executed in connection with a contract and securing the payment of all persons supplying labor and material in the prosecution of the work provided for in the contract.

(d) *Annual bid bond*. A single bond securing all bids submitted to the designated agency during the fiscal year in lieu of a separate bid bond with each bid.

(e) *Annual performance bond*. A single bond securing all contracts executed with the designated agency during the fiscal year in lieu of a separate performance bond with each contract.

(f) *Patent infringement bond*. A bond executed in connection with a contract which contains a patent provision and securing the performance of that provision.

(g) *Advance payment bond*. A bond executed in connection with a contractual provision for an advance payment and securing the fulfillment of said provision.

(h) *Contract for public work of the United States*. A contract for work, labor, or manufacture upon articles of property belonging to the United States, as well as a contract for supplies wherein it is provided that partial payment will be made for material and labor as the manufacture or construction of such supplies progresses, title to which vests in the United States upon the making of such partial payment, is a contract for "public work of the United States," although the contractor retains possession and remains responsible for the care of the property so paid for until finally accepted by the United States.

BONDS

§ 81.403 *Examination of bonds*. All fidelity and surety bonds (bid bonds excepted) required by the several bureaus of the War Department will be forwarded to The Judge Advocate General for examination as to whether they are legally sufficient and are in proper form and duly executed; in the case of corporate sureties, to ascertain whether those who purported to execute them on behalf of such surety companies had authority to do so; in the case of individual sureties, to ascertain whether the affidavit of justification and the certificate of sufficiency of the sureties are in accordance with regulations; and in case of payment bonds required by the act of August 24, 1935 (49 Stat. 793), to ascertain whether the penal sum thereof is in the requisite amount.

§ 81.404 *Filing of bonds*. All bonds provided for in these regulations will be executed in duplicate. The original, except those bonds required to be approved or filed elsewhere than at the War Department, will be forwarded

through The Judge Advocate General to the General Accounting Office for file, and the duplicate will be filed in the office to which it pertains or which authorized its acceptance. In the case of those bonds required to be approved or filed elsewhere than at the War Department, the duplicate (bid bonds excepted) will be forwarded to The Judge Advocate General for examination.

§ 81.405 *Options in lieu of surety or sureties on bonds*—(a) *United States bonds or notes*—(1) *Authority*. Any person required to furnish a bond executed by himself as principal has the option of depositing United States Liberty Bonds or other United States bonds or notes (except as provided in subparagraph (2) (iv) of this paragraph) in a sum equal at their par value to the penal amount of the bond in lieu of furnishing sureties on his bond. Sec. 1029, Act June 2, 1924 (43 Stat. 349), as amended by sec. 1126, Act February 26, 1926 (44 Stat. 122); and sec. 7, Act February 4, 1935 (49 Stat. 22); 6 U.S.C. 15.

(2) *Procedure*. (i) The procedure for carrying out the afore-cited authority is contained in Treasury Department Circular No. 154, dated February 6, 1935.

(ii) The contracting officer is the "bond approving officer" who will turn over the securities deposited with him to the local disbursing officer for safekeeping, and the disbursing officer will receipt therefor in duplicate on Form B, Treasury Department Circular No. 154.

(iii) Instead of keeping securities turned over to him the disbursing officer may deposit them with the Treasurer of the United States, a Federal Reserve bank, branch Federal Reserve bank having the requisite facilities, or other depository duly designated for that purpose by the Secretary of the Treasury, under procedure prescribed in Treasury Department Circular No. 154.

(iv) United States Savings Bonds may only be pledged in lieu of sureties when the bond approving officer is the Secretary of the Treasury, thus precluding the acceptance by War Department contracting officers of United States Savings Bonds in lieu of sureties. Treasury certificates of indebtedness are not acceptable.

(b) *Certified checks, money orders or currency*—(1) *Authority*. Any person required to furnish a bond executed by himself as principal has the option of depositing a certified check, a Post Office money order, or currency, in lieu of furnishing sureties on his bond, provided the penal sum of said bond is not in excess of \$50,000.

(2) *Procedure*. (i) Certified checks or Post Office money orders will be drawn to the order of the Treasurer of the United States.

(ii) Certified checks, Post Office money orders and currency accepted by the contracting officer in lieu of a bond will be promptly turned over to the local disbursing officer and deposited by him in a special deposit account. A certificate as to this action will be executed by the disbursing officer and attached to each copy of the contract.

(iii) The amount of the security deposited will be refunded to the contractor upon the completion of the terms of the agreement for which the security is deposited.

§ 81.406 *Corporate sureties*—(a) *Formal requirements*. In order to be acceptable to the War Department a corporate surety, except as hereinafter provided, must have obtained from the Secretary of the Treasury authority to do business under the act of August 13, 1894 (28 Stat. 279), as amended by the act of March 23, 1910 (36 Stat. 241; 6 U.S.C. 8; M.L. 1939, sec. 534). A list of the corporations approved by the Secretary of the Treasury is published semi-annually by the Treasury Department as Form No. 356 (Section of Surety Bonds), copies of which may be procured from the chief of the supply service concerned, who will make requisition for his requirements to The Judge Advocate General semiannually on March 15 and September 15. These corporations are acceptable as sureties upon bonds required by the War Department within the limitation of such approval: *Provided, however*, That any corporation authorized under the laws of the Philippine Islands to act as surety on bonds may be accepted as surety on bonds executed in the Philippine Islands in an amount of penalty not exceeding 10 per cent of the paid-up capital and surplus of such corporation, although it has not qualified before the Treasury Department as hereinbefore provided.

(b) *Qualifications of agents*. Surety companies must furnish promptly to the War Department, for file in the office of The Judge Advocate General:

(1) Powers of attorney authorizing their agents to execute bonds;

(2) Powers of attorney, or certified copies of resolutions of their boards of directors or trustees, authorizing their officers to execute bonds; and

(3) Certificate showing the revocation of such authority to execute bonds.

(c) *One or more companies*—(1) *Supply contracts*. One or more companies may be accepted as surety upon any recognizance, stipulation, bond, or undertaking in connection with supply contracts under the War Department. On bonds covering supply contracts where the amount is greater than the underwriting limitation of a surety company, the latter may reinsure with a company on the acceptable list of surety companies having the required underwriting limitation.

(2) *Construction and public work contracts*. One or more companies may be accepted as surety upon any recognizance, stipulation, bond, or undertaking in connection with contracts for the construction of any building or the prosecution or completion of any public work or for the repair of any public building or public work under the War Department, but in all cases of more than one surety, the sureties must execute such obligation jointly and severally. In the event of two or more corporate sureties, where it is desired to limit the obligation and liability of each surety,

the limit of liability of each surety shall be set forth in the bond as a definite and specified sum, such amount to be in all cases within the limitation of its qualified power.

Reinsurance agreements will not be accepted on contracts for the construction, alteration, or repair of any public buildings or public work of the United States.

§ 81.407 *Individual sureties*—(a) *Number of*. If individual sureties are furnished, there shall be at least two responsible individuals.

(b) *Measure of liability*. The liability of each surety shall extend to the entire penal amount of the bond, except that when more than two sureties are furnished, the Secretary of War may authorize special provisions in respect of liability.

(c) *Justification*. (1) Individual sureties will each justify in a sum not less than the penal amount of the bond.

(2) In special cases two or more bonds may be accepted to cover one contract provided there are two different individual sureties on each bond.

(d) *Citizenship*. (1) Except as prescribed in subparagraph (2) below, individual sureties will be citizens of the United States.

(2) Sureties on bonds executed in foreign countries, the Canal Zone, the Philippine Islands, Puerto Rico, Hawaii, Alaska, or any possession of the United States, for the performance of contracts entered into in these places, need not be citizens of the United States, but sureties other than citizens of the United States must be domiciled in the place where the contract is to be performed.

(e) *Firm or corporation as principal obligor*. (1) A firm as such will not be accepted as a surety, nor a partner for copartners or for a firm of which he is a member.

(2) When a corporation executes a bond as principal, any stockholder of the corporation is a competent surety on the bond, provided he is worth the amount for which he justified, over and above the value of his holdings in the corporation, and provided further that that fact is expressly stated in his affidavit of justification.

§ 81.408 *Bid bonds*. (a) The extent to which bid bonds will be required, and the penalties of such bonds, will be determined by the chief of the supply service concerned except that in the case of advertised contracts bid bonds will be required in all cases where the invitations to bidders specify that the contracts are to be supported by performance and/or payment bonds.

(b) Standard Form No. 24 (Standard Government Form of Bid Bond (construction or supply)) is the approved bid bond form. In the preparation of the form, contracting officers are authorized, when deemed by them to be in the best interests of the Government, to insert in the blank space on page one, following the words "in the penal sum of" and before the word "dollars", the following clause:

* * * an amount equal to ----- per cent of the accompanying bid of said principal, but in no event shall said penalty exceed the sum of * * *

There should be inserted in the first blank space of the above clause the percentage deemed appropriate by the contracting officer, having regard to existing instructions of the chief of the supply service concerned, and in the second blank space the amount of the maximum penalty in dollars.

§ 81.409 *Annual bid bond*—(a) *When authorized.* (1) Bidders may file an annual bid bond to cover all bids submitted to any particular purchasing officer during the fiscal year.

(2) When authorized by the chief of the supply service concerned, a bidder may file an annual bid bond to cover all bids submitted to all purchasing officers of that supply service serving within the continental limits of the United States during the fiscal year.

(3) When authorized by the chief representative of the supply service concerned in an oversea department, a bidder may file an annual bid bond to cover all bids submitted to purchasing officers of that supply service within that department during the fiscal year.

(b) *Form used.* Standard Form No. 34 (Standard Government Form of Annual Bid Bond (supplies)) will be utilized and all instructions thereon will be complied with.

§ 81.410 *Performance bonds.* (a) The requirement of performance bonds to secure the performance of contracts is discretionary with the chief of the supply service concerned. However, the requirement of performance bonds will be the exception rather than the rule.

(b) Sureties on a bid bond are acceptable as sureties on a performance bond by the same person, provided they are able to justify as required.

(c) The use of the following performance bond forms is authorized:

(1) Standard Form No. 25 (Standard Government Form of Performance Bond (construction or supply)) when the bond is to be executed by individual sureties or one corporate surety.

(2) Standard Form No. 25-B (Standard Government Form of Performance Bond (construction or supply)) when the bond is to be executed by two or more corporate sureties and it is desired to limit the liability of several corporate sureties. For cases involving more than six sureties, continuation sheets to sheets 1 and 3 of the form are provided, bearing the form designations Standard Form No. 25-B1 and No. 25-B3.

(d) The amount of the penalty will be fixed in accordance with instructions of the chief of the supply service concerned. The penalty of the bond should be fixed in the lowest amount which, in the exercise of sound judgment, is deemed adequate for the protection of the United States.

§ 81.411 *Annual performance bond*—(a) *When authorized.* Contractors may file an annual performance bond:

(1) To cover all contracts entered into with any particular contracting officer during the fiscal year.

(2) When authorized by the chief of the supply service concerned to cover all contracts entered into with contracting officers of that supply service within the continental limits of the United States during the fiscal year.

(3) When authorized by the chief representative of the supply service concerned in an oversea department, to cover all contracts entered into with contracting officers of that supply service within that department during the fiscal year.

(b) *Form used.* Standard Form No. 35 (Standard Government Form of Annual Performance Bond (supplies)) will be utilized, and all instructions thereon will be complied with.

(c) *Record of obligations.* The officer having custody of the retained copy of such a bond will record all obligations against the bond and will require the contractor to post additional bonds when the obligations exceed the amount of the bond.

§ 81.412 *Payment bonds.* (a) The requirement of payment bonds to secure the payment of labor and materialmen is discretionary with the chief of the supply service concerned except that in the case of construction contracts where performance bonds are required, payment bonds will also be required. The requirement of payment bonds will otherwise be the exception rather than the rule.

(b) Sureties on bid bonds and performance bonds are acceptable on payment bonds by the same person, provided they are able to justify as required.

(c) The use of the following payment bond forms is authorized:

(1) Standard Form No. 25-A (Standard Government Form of Payment Bond (construction)) when the bond is to be executed by the individual sureties or one corporate surety.

(2) Standard Form No. 25-C (Standard Government Form of Payment Bond (construction)) when the bond is to be executed by two or more corporate sureties and it is desired to limit the liability of several corporate sureties. For cases involving more than six sureties, continuation sheets to sheets 1 and 3 of the form are provided, bearing the form designations Standard Form No. 25-C1 and 25-C3.

(d) The amount of the penalty will be fixed in accordance with instructions of the chief of the supply service concerned. The penalty of the bond should be fixed in the lowest amount which, in the exercise of sound judgment, is deemed adequate for the protection of the United States as representative of labor and materialmen.

§ 81.413 *Patent infringement bonds.* When a contractor is required to furnish a patent infringement bond, such bond will be in the form prescribed in advance by the chief of the supply service concerned, and in an amount which the contracting officer considers sufficient for the protection of the Government. The

form of "Affidavit by Individual Surety" will conform to that in Standard Form No. 25 (Revised), approved by the Secretary of the Treasury (1935).

§ 81.414 *Advance payment bonds*—(a) *Requirement.* The requirement of advance payment bonds to secure the performance of advance payment agreements is discretionary with the chief of the supply service concerned. Advance payment bonds will be required in only the most exceptional circumstances.

(b) *Form used.* Standard Form No. 25 (Standard Government Form of Performance Bond (construction or supply)) may be used as advance payment bond form by making the following changes in the standard form:

(1) *Where provisions for advance payments are contained in the basic contract.* Delete "Performance bond" from the heading and substitute "Advance payment bond" therefor. After completing the clause beginning "The condition of this obligation is such," so as to identify the basic contract, add the following clause:

And whereas such contract authorizes advance payments to the contractor in the sums not to exceed \$-----, or ----- per centum of the contract price, as it may be amended, whichever shall be the smaller.

In the defeasance clause (the clause beginning "Now, Therefore,") insert the words "relating to advance payments" in line 2 between the word "contract" and the word "during" and also after the word "contract" in line 6 of such clause.

(2) *Where provisions for advance payments are contained in a supplemental agreement.* Delete "Performance bond" from the heading and substitute "Advance payment bond" therefor. After completing the clause beginning "the condition of this obligation is such," so as to identify the principal contract, add the following:

* * * and whereas the Government has entered into a contract supplemental to the aforesaid principal contract, such supplemental contract being dated ----- and authorizing advance payments to the contractor of sums not to exceed \$----- or ----- per centum of the contract price, as it may be amended, whichever shall be the smaller. Delete the word "contract" from line 2 (both places) and line 6 of the defeasance clause and substitute therefor at each place the words "supplemental contract relating to advance payments."

(c) *Amount of penalty.* The amount of the penalty will be fixed in accordance with instructions of the chief of the supply service concerned. The penalty of the bond should be fixed in the lowest amount which, in the exercise of sound judgment, is deemed adequate for the protection of the United States.

§ 81.415 *Bonds executed by receivers, trustees, administrators, or executors.*

(a) Receivers, trustees, administrators, and executors are officers of the court appointing them and their powers as such are limited. When a bond executed by a receiver, trustee, administrator, or executor is submitted, in addition to the court order showing his authority for the

execution of the bond, the following method of preparing and executing the bond will be followed. The obligation should read:

I (we) John Doe (and _____) as [(executor(s)) (administrator(s)) of the estate of _____ deceased] (trustee(s) of _____) (receiver(s) of _____).

The execution should be prepared and signed by the representative in the blank spaces for individual principals in the following form:

John Doe (and _____) as [(executor(s)) (administrator(s)) of the estate of _____ deceased] (trustee(s) of _____) (receiver(s) of _____).

In the case of a bond executed by the receiver of a corporation, the corporate seal should not be affixed as the bond is not the bond of the corporation but the bond of the individual as receiver of the corporation.

(b) Bonds executed by a receiver or trustee, which may extend beyond the term of his appointment, and bonds executed by administrators or executors, will in general not be accepted except when the court has by specific decree authorized the execution of the kind of bond submitted by the receiver, trustee, administrator, or executor, or has granted authority to execute such a bond by name in the court order appointing such officer, in the event of which a duly authenticated copy of such order must be attached to the bond.

§ 81.416 *Substitution or replacement of surety.* (a) In case of financial embarrassment, failure, or other disqualifying cause on the part of the surety under a bond, the Commanding General, Services of Supply, will require the bond to be substituted or replaced to his satisfaction, upon notification to the principal.

(b) The Secretary of the Treasury is empowered to require the principal of any corporate surety to give additional bond at any time when he determines any such corporate surety to be no longer sufficient security. See sec. 4, act August 13, 1894 (28 Stat. 279), as amended by act March 23, 1910 (36 Stat. 241; 6 U.S.C. 9.)

§ 81.417 *Reports.* The chief of each supply service will transmit to the Insurance Section, Procurement and Distribution Division, Services of Supply, a data sheet in connection with each contract in support of which a bond is required. The information which will be supplied on the data sheet will be the contract number, name of the contractor, name of the project or the type of the supplies, amount of contract, penalty of the bond, type of bond, name of surety, bond number, effective date of bond, premium charged, and rate of premium per \$1000 of bond penalty.

INSURANCE

§ 81.418 *Regulations.* Pending the publication of a manual governing insurance and insurance procedure, the following regulations will apply.

§ 81.419 *General policy.* Insurance coverages will not be required nor authorized except in those cases where the procurement of certain types of insurance is desirable or necessary in the prosecution of the war.

§ 81.420 *Cost-plus-a-fixed-fee contracts.* The following will specifically govern the procurement of insurance:

(a) *Fire and allied insurance coverages.* These forms of insurance will not be authorized without the prior approval of the Insurance Section, Procurement and Distribution Division, Services of Supply.

(b) *Casualty insurance coverages.* Contractors will be required to procure and maintain the following insurance which will cover the operations of the prime contractor and all cost-plus-a-fixed-fee subcontractors thereunder:

(1) *Workmen's Compensation insurance (statutory limits)* including occupational diseases coverage (\$50/100,000 limits). In jurisdictions where no compensation law is applicable, Employers' Liability insurance (\$50/100,000 limits).

(2) *General Public Liability insurance (\$50/100,000 limits)* for personal injury liability to be written on comprehensive policy form.

(3) *Automobile Liability for Personal Injury (\$50/100,000 limits) and Property Damage insurance (\$5,000 limit)* to be written on comprehensive policy form.

(c) *Marine insurance.* Where the operation of floating equipment is involved, a report stating the nature of the work, a description of the equipment and terms under which it is being used will be made to the Insurance Section, Procurement and Distribution Division, Services of Supply. Arrangements, to be announced later, are in process whereby all such equipment will be insured through the Maritime Commission.

(d) *Miscellaneous insurance.* Certain other forms of insurance and bonds such as pay roll robbery, interior holdup, safe burglary, fidelity bonds, license and permit bonds, forgery bonds and public property damage may be authorized by the chiefs of the supply services or their authorized representatives if the circumstances warrant. The authorization of such additional coverages will be the exception rather than the rule.

(e) *Methods of purchase.* The coverages required by paragraph (b) of this section will be purchased and written under the War Department Insurance Rating Plan. The only exception to this requirement will be when insurance carriers are prohibited by state insurance officials from writing policies on this basis. All such cases will be directed to the attention of the Insurance Section, Procurement and Distribution Division, Services of Supply. In those cases where the War Department Insurance Rating Plan is inapplicable, insurance may be purchased on the customary basis.

(f) *Lump sum subcontractors.* Such subcontractors will be required to provide the prime contractor and the contracting officer with certificates of insurance showing that insurance as required by paragraph (b) of this section is in force.

Limits of insurance should be at least equal to those specified for the prime contractor. The only exception to this requirement is where the lump sum subcontractor is a self insurer and his ability to respond in damages can be shown to the satisfaction of the chiefs of the supply services or their authorized representatives.

§ 81.421 *Architect-engineer-management contracts.* In order to obtain the most suitable and efficient arrangements with respect to insurance, hospital and medical, loss paying and safety engineering facilities, the chief of the supply service concerned or his duly authorized representative may require the Architect-Engineer-Manager contractor to provide, through one insurance company, coverage for all contractors on the project. The requirements established in § 81.420 (b) will apply, and insurance covering lump sum contractors will be provided under the policies issued to the A-E-M contractor (written under the War Department Insurance Rating Plan). Lump sum contracts in such cases will not include any estimated cost for the insurance so provided.

§ 81.422 *Lump sum prime contracts (construction).* No insurance requirements will be imposed on the contractor unless, in the opinion of the chief of the supply service concerned or his authorized representative, the imposition of certain insurance requirements will serve to safeguard the contractor's ability to complete the contract. If performance and payment bonds support the contract, the requirement of any insurance should be unnecessary.

§ 81.423 *Contracts with United States Contractors for work outside the United States.* Contracts of this kind are generally on a cost-plus-a-fixed-fee basis, and involve a determination of the applicable laws and local conditions which will probably be encountered. The insurance arrangements and types of insurance to be employed, if any, will be subject to the approval of the Insurance Section, Procurement and Distribution Division, Services of Supply. Notification of the negotiation of such contracts to the Insurance Section, Procurement and Distribution Division, Services of Supply, will enable that section to complete negotiations of the insurance arrangements simultaneously with the preparation of the contract.

§ 81.424 *Boiler inspections.* (a) Boiler inspection services may be arranged for by the contracting officer or the contractor with the approval of the contracting officer in connection with facilities which are owned by the Government (except where statutory inspections by the Department of Commerce are required) and in the case of contractor-owned facilities operated under cost-plus-a-fixed-fee contracts exclusively for the War Department.

(b) The Boiler inspection contract approved April 9, 1942, will be executed by the contracting officer and the insurance company concerned in those cases where

contracting officers desire to utilize the insurance company inspection facilities.

§ 81.425 *Claims and litigation.* Each contracting officer or other War Department representative in charge of the project or activities involved will immediately teletype, radio, or telegraph to the Litigation Section, Office of The Judge Advocate General, Washington, D. C., notification of any suit involving the interests of the United States. Such notification will give all pertinent facts concerning the suit, the names of the parties thereto, the date of service of process, statement of the alleged cause of action, the amount sued for, the date on which answer to the suit must be filed, statement of the principal defense to the suit which the defendant may raise and a statement as to whether the amount sued for is fully covered by insurance and if so, whether or not the insurance carrier will accept full responsibility for the defense of this suit.

§ 81.426 *War risk lump sum contracts.* The chiefs of the supply services or their authorized representatives may execute the War Risk Indemnity Contract approved by the Under Secretary of War, January 2, 1942, with any reliable insurance carrier subject to the following conditions:

(a) The contracts will be executed on the War Risk Indemnity Contract form, approved by the Under Secretary of War, January 2, 1942.

(b) The contractor whose workmen's compensation insurance is involved must be a lump sum prime contractor or lump sum subcontractor.

(c) The lump sum prime contract or lump sum subcontract must be for work outside of the several states of the United States and the District of Columbia.

(d) The lump sum prime contractor or subcontractor shall have been unable or be unable to have his existing workmen's compensation insurance continued or to obtain workmen's compensation insurance from another insurance carrier on account of war risk hazards.

(e) The workmen's compensation insurance contract, made a part of the War Risk Indemnity Contract, must be issued to apply solely to the contract of the lump sum contractor involved and cover employees engaged in the performance of the work at the locations described therein. Such insurance contract may be issued on the form customarily used.

§ 81.427 *Reports.* Copies of all policies, certificates of insurance, reports of insurance companies and insurance advisors, War Risk Indemnity Contracts, Boiler Inspection Contracts, and all other data pertaining thereto will be forwarded to the Insurance Section, Procurement and Distribution Division, Services of Supply.

FOREIGN PURCHASES

§ 81.501 *Rescission of regulations.* Army Regulations 5-340, August 10, 1936, as amended, and all other prior directives and instructions relating to the Buy American Act and foreign purchases are hereby rescinded.

§ 81.502 *Buy American Act (quoted):*

SEC. 1. That when used in this title—

(a) The term "United States", when used in a geographical sense, includes the United States and any place subject to the jurisdiction thereof;

(b) The terms "public use", "public building", and "public work" shall mean use by, public building of, and public work of, the United States, the District of Columbia, Hawaii, Alaska, Puerto Rico, the Philippine Islands, American Samoa, the Canal Zone, and the Virgin Islands.

SEC. 2. Notwithstanding any other provision of law, and unless the head of the department or independent establishment concerned shall determine it to be inconsistent with the public interest, or the cost to be unreasonable, only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States, and only such manufactured articles, materials, and supplies as have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced, or manufactured, as the case may be, in the United States, shall be acquired for public use. This section shall not apply with respect to articles, materials, or supplies for use outside the United States, or if articles, materials, or supplies of the class or kind to be used or the articles, materials, or supplies from which they are manufactured are not mined, produced, or manufactured as the case may be, in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.

SEC. 3. (a) Every contract for the construction, alteration, or repair of any public building or public work in the United States growing out of an appropriation heretofore made or hereafter to be made shall contain a provision that in the performance of the work the contractor, subcontractors, material men, or suppliers, shall use only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States, and only such manufactured articles, materials, and supplies as have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced, or manufactured, as the case may be, in the United States except as provided in section 2: *Provided, however,* That if the head of the department or independent establishment making the contract shall find that in respect to some particular articles, materials, or supplies it is impracticable to make such requirement or that it would unreasonably increase the cost, an exception shall be noted in the specifications as to that particular article, material, or supply, and a public record made of the findings which justified the exception.

(b) If the head of a department, bureau, agency, or independent establishment which has made any contract containing the provision required by subsection (a) finds that in the performance of such contract there has been a failure to comply with such provisions, he shall make public his findings, including therein the name of the contractor obligated under such contract, and no other contract for the construction, alteration, or repair of any public building or public work in the United States or elsewhere shall be awarded to such contractor, subcontractors, material men, or suppliers with which such contractor is associated or affiliated, within a period of three years after such finding is made public. * * * Title III, Act March 3, 1933 (47 Stat. 1520; 41 U.S.C. 10a, b, and c; M. L., 1939, sec. 742).

§ 81.503 *Applicability of Act.* (a) By determination of the Secretary of War, dated March 13, 1942, restrictions of the above-quoted Act are suspended as to all

contracts or orders except those for articles of food or clothing which had not theretofore been exempted from such restrictions.

The term "articles of food" includes only those items actually purchased for use as such, and does not include food products purchased for other uses. "Articles of clothing" includes only those items purchased for use as clothing.

(b) The articles of food or clothing heretofore exempted from the restrictions are as follows:

(1) All articles of food or clothing which have been mined, produced or manufactured, as the case may be, in the Dominion of Canada.

(2) The following items without regard to country of origin:

Bananas.
Brazil nuts.
Canned corn beef.
Chocolate.
Citron.
Cocoa.
Coffee.
Fish oils.
Green olives.
Molasses.
Orange and lemon peel.
Spices.
Sugar.
Tapioca.
Tea.
Vanilla.

(3) Articles of food or clothing for use outside of the United States.

(4) Articles of food or clothing purchased in any of the Atlantic bases located on land leased to the United States pursuant to the London agreement, dated March 27, 1941.

(5) The following exemptions may also be relevant in view of the possible use of the items so exempted in manufacturing items of clothing.

Asbestos.
Cork.
Cotton linters.
Cotton, long staple.
Flax.
Flaxseed.
Hemp.
Jute, unmanufactured.
Kapok.
Leather.
Manila fiber.
Mohair.
Rayon.
Rubber.
Silk.
Sisal.
Tanning materials.
Hides (and skins).
Hog bristles.
Jute burlaps.
Wool.

§ 81.504 *Procedure for complying with the Act.* In making purchases of articles of food or clothing which are still subject to the restrictions of the "Buy American" Act, the chief of the supply service concerned should make every effort to satisfy his requirements for such articles out of domestic production. In any case where the chief of the supply service finds it essential to purchase articles of food or clothing of foreign production, a recommendation should be submitted to the Chief, Purchases Branch, Procure-

ment and Distribution Division, Headquarters, Services of Supply, for a determination under the "Buy American" Act permitting such purchase.

§ 81.505 *Duty*—(a) *Payment of, not required.* Executive Order 9177, dated May 30, 1942 (7 Fed. Reg. 4195) extends the authority contained in the act approved June 30, 1914 (38 Stat. 399; 34 U.S.C. 568) to the Secretary of War and to such persons as he may delegate such authority. The law and executive order authorizes the Secretary of War to make emergency purchases of war material abroad and provides that when such purchases are made abroad, the material shall be admitted free of duty and prescribes a form of customs certificate to be made for that purpose. See paragraph (a) of § 81.506. Regulations of the Commissioner of Customs, Treasury Department, under Executive Order No. 9177, are published in T. D. 50651, approved June 8, 1942.

(b) *Bond not required.* No bond prescribed by any provision of the customs laws or regulations is required in connection with the importation of articles when such articles are imported by the War Department, its bureaus, or authorized agents.

§ 81.506 *Clearance through customs*—(a) *Foreign goods*—(1) *Delegation of authority.* The purchasing officer, or other officer or official, to whom authority under § 81.505 has been delegated by the Secretary of War, through the chief of supply service, will make all required certificates to the customs authorities, with respect to past or future emergency purchases of war materials abroad, in order to secure entry and admission free of duty, in the following form:

The procurement of this material constituted an emergency purchase of war material abroad and it is accordingly requested that such material be admitted free of duty pursuant to the Act of June 30, 1914 (34 U.S.C. 568) and Executive Order No. 9177.

(2) *Purchase orders; bills of lading; etc.* (i) The purchasing officer, or other officer or official, to whom authority has been delegated as indicated in subparagraph (1) of this paragraph, will furnish the port quartermaster at the port of entry with two copies of the purchase order. One of the copies, subject to the provisions of AR 380-5,⁶ is for the collector of customs at port of entry and will contain the certificate quoted in subparagraph (1) of this paragraph signed by such purchasing officer, or other officer or official, as the case may be.

(ii) Bills of lading showing full marks (§ 81.507) will be sent to the port quartermaster at the port of entry and should be mailed so as to arrive not later than the shipment.

(iii) Under the Tariff Act of 1930, the consignee may make entry by producing a bill of lading, a carrier's certificate, or duplicate bill of lading. A shipping re-

⁶ Administrative regulations of the War Department relative to safeguarding technical information.

ceipt or other document may also be accepted as authority for making entry, if the collector is satisfied that no bill of lading has been issued, provided the shipping receipt or other document bears a certificate of the carrier in accordance with subsection (h) or (i) of section 484 of the Tariff Act, or if the entry is made by the actual consignee in person or in his name by a duly authorized agent.

(3) *Donations, etc.* Small shipments of property donated by foreign governments or otherwise acquired without expense, such as maps, books, or samples of military equipment, should be made the subject of a letter of advice addressed by the purchasing officer or other officer or official to whom authority has been delegated as indicated in subparagraph (1) of this paragraph, to the port quartermaster at port of entry, setting forth fully the status of the shipment and giving the name of the port from which the shipment will move, the probable date of arrival, and the name of the steamer, if known.

(b) *Returned American goods.* (1) The purchasing officer will furnish the port quartermaster at the port of entry with an invoice of returned American goods, substantially in accordance with the following form, supplemented, when necessary, by a letter of advice:

INVOICE OF RETURNED AMERICAN GOODS AND DECLARATION OF FOREIGN EXPORTER

19__ (place) (date)
I, _____, do solemnly and truly declare that the several articles of merchandise herein specified are, to the best of my knowledge and belief, truly and bona fide of the growth (or production or manufacture) of the United States; that they were exported from the United States, by the United States, from the port of _____ on or about _____ 19__; that they are returned by the United States per _____, due to said _____ 19__, consigned to _____ without having been advanced in value or improved in condition by any process of manufacture or other means; and that no drawback, bounty, or allowance has been paid or admitted thereon or any part thereof.

(Signature)

Marks	Numbers	Quantity	Description	Value United States coin
-----	-----	-----	-----	-----
-----	-----	-----	-----	-----
-----	-----	-----	-----	-----
-----	-----	-----	-----	-----

Declared to before me this _____ day of _____, 19__:

(To be sworn to before any officer authorized to administer oaths, except that if the value exceeds \$100, it must be sworn to before the American consul.)

(2) This invoice will be accomplished in triplicate and disposed of as a "certified invoice."

(3) The following brief will be placed on the back of each copy:

CUSTOMHOUSE INDORSEMENT

No. _____
 Importer _____
 Vessel _____
 From _____
 Arrived _____
 Kind of entry _____
 Marks, quantity, and contents _____

§ 81.507 *Marking of shipments.* (a) All supplies purchased abroad will be consigned to and marked for the port quartermaster at the port of entry. The marking will also show the final consignee and destination, for example:

Port Quartermaster,
 New York Port of Embarkation,
 1st Avenue and 58th Street,
 Brooklyn, New York.
 For Chief of Ordnance,
 Washington, D. C.

(b) The full address must be shown. Initials will not be used, as is the commercial custom.

(c) Packages will be marked "Government goods."

(d) Shipments must not be consigned to forwarding agents.

§ 81.508 *Freight charges.* (a) In order to avoid complications in procuring release from the carrier, freight charges will be paid in all cases to the port of entry, and in no case will delivery be contracted for f. o. b. any interior point.

(b) If the shipments are to move to the interior, the purchasing officer must furnish the port quartermaster at the port of entry with the necessary shipping instructions.

INTERBRANCH AND INTERDEPARTMENTAL PURCHASES

§ 81.601 *Rescission of regulations.* Army Regulations 5-300, December 10, 1936, as amended; Army Regulations 5-320, October 10, 1936, as amended; and all other prior directives and instructions relating to interbranch and interdepartmental procurement are hereby rescinded.

§ 81.602 *Definitions*—(a) *Interbranch purchase.* The purchase of supplies by one supply service from another such supply service, or under a contract executed by the latter.

(b) *Interdepartmental purchase.* The purchase of supplies by one executive department or independent agency of the Government from another such department or agency, or under a contract executed by the latter.

INTERBRANCH PURCHASES

§ 81.603 *Supplies of standard manufacture*—(a) *Requirement.* Supplies of standard manufacture and common to two or more supply services will be purchased by the Quartermaster Corps. The Procurement Assignment Board, Procurement and Distribution Division, Headquarters, Service of Supply, will determine the items which will be considered of standard manufacture and common to two or more supply services.

(b) *Procedure.* (1) Requisitions for normal quarterly requirements will be consolidated and forwarded to The Quartermaster General sixty days in advance of the quarterly period for which needed.

(2) Requisitions for unusual or emergency requirements will be forwarded to The Quartermaster General by radio and confirmed by formal requisition.

(3) Each requisition will contain a certificate of availability of funds and citation of the applicable procurement authority.

(4) When practicable, requisitions will call for not less than minimum carload lots.

(5) Commercial units will be the basis of all requisitions.

(6) Requisitions will be filled as a result of individual or collective purchases. No attempt will be made by the Quartermaster Corps to maintain depot stocks from which requisitions could be filled.

§ 81.604 *Supplies not of standard manufacture—(a) Requirements.* Supplies which are not of standard manufacture and which are generally peculiar to a particular supply service will be purchased by that service, unless purchased by some other supply service is directed by the Procurement Assignment Board, Procurement and Distribution Division, Headquarters, Services of Supply.

(b) *Procedure.* Requisitions will be submitted and filled in accordance with the instructions of the chief of the supply service charged with purchasing the supplies involved.

§ 81.605 *Special supplies.* Because of their nature and the peculiar problems involved in their purchase, the following categories of supplies will be purchased as indicated opposite each:

(a) *Motor vehicles and bodies.* As directed in AR 850-15.⁶

(b) *Railroad equipment and supplies.* As directed in AR 100-50.⁷

(c) *Radio, sound and light signal apparatus, all accessories, outfits, and parts.* As directed by the Chief Signal Officer.

(d) *Anthracite and bituminous coal.* As directed by The Quartermaster General.

(e) *Aviation gasoline and aviation lubricating oil.* As directed by the Chief of the Air Corps.

(f) *Perishable subsistence.* As directed by The Quartermaster General.

(g) *Gloves, flying, winter; helmets, flying, summer.* As directed by The Quartermaster General.

INTERDEPARTMENTAL PURCHASES

§ 81.606 *Purchases under contracts of Procurement Division, Treasury Department—(a) Requirement.* Purchases will be made from contracts of the Procurement Division, Treasury Department (General Schedule of Supplies), when s. directed by the chief of the supply

⁶ Administrative regulations of the War Department relative to military motor vehicles.

⁷ Administrative regulations of the War Department relative to railroads operated by the Army.

service concerned or when required by the terms of the contracts.

(b) *Procedure.* Chiefs of supply services are responsible for advising contracting officers as to the terms and conditions of all such contracts and as to whether purchases therefrom are mandatory.

§ 81.607 *Purchases under contracts of Navy Department—(a) Requirement.* Purchases will be made from contracts of the Navy Department when so directed by the chief of the supply service concerned or when required by the terms of the contracts.

(b) *Procedure.* Chiefs of supply services are responsible for advising contracting officers as to the terms and conditions of all such contracts and as to whether purchases therefrom are mandatory.

§ 81.608 *Purchases from Federal Prison Industries, Inc., Department of Justice—(a) Requirement.* Purchases of items manufactured by the Federal Prison Industries, Inc., Department of Justice, will be made from that agency except where that agency has been granted a general or special clearance for purchase of the items from commercial sources.

(b) *Procedure.* Chiefs of supply services are responsible for advising contracting officers as to the items, if any, which must be procured from the above agency and of the procedure for placing orders.

§ 81.608a *Purchases from State prisons and other correctional institutions.* Purchases of items manufactured or produced by State prisons and other correctional institutions are authorized (Op., Atty. Gen., 37739, May 6, 1942 and let., Pres., May 10, 1942). No purchase, however, of a mandatory item appearing in the schedules of the Federal Prison Industries, Inc., (see § 81.608) will be made without a prior clearance (general or special) from that agency.

§ 81.609 *Purchases under contracts of Post Office Department—(a) Requirement.* Envelopes required by the military service (other than by the War Department for use in the District of Columbia) will be procured under the contracts entered into by the Post Office Department within the discretion of the chief of the supply service concerned.

(b) *Envelopes authorized for supply to the military service.* The following envelopes are authorized for supply to the military service (excluding the War Department) on requisitions, the item numbers corresponding to those in "Award of Contracts for Envelopes", Post Office Department:

Item No.	Description
6.	3 3/8 by 8 3/8 inches, Sulphate, open side, square flap.
12.	3 3/8 by 8 3/8 inches, Sulphate, open side.
17.	4 1/8 by 9 1/2 inches, Sulphate, open side.
36.	5 by 11 1/2 inches, Sulphate, open side.
46.	6 by 12 1/2 inches, Sulphate, open side, wallet flap.
49.	6 1/2 by 9 1/2 inches, sulphate, open side.
53.	6 1/2 by 10 1/2 inches, Sulphate, open side.
57.	7 by 10 1/2 inches, Sulphate, open side.

Item No.	Description
61.	7 1/2 by 11 1/2 inches, Sulphate, open side.
68.	8 1/2 by 11 1/2 inches, Sulphate, open side.
84.	9 1/2 by 12 inches, Sulphate, open side.
93.	10 by 15 inches, Sulphate, open side, 5-inch flap.
104.	12 by 16 inches, Sulphate, open side, 5-inch flap.
111.	2 1/2 by 4 1/4 inches, Sulphate, open end.
122.	3 3/4 by 5 3/8 inches, Sulphate, open end.
123.	3 3/8 by 7 1/2 inches, Sulphate, Dennison tag, quality "P" or equal; strong eye-let at bottom, open end.
155.	7 1/2 by 10 1/2 inches, Sulphate, with string and button. Open end tension.
185.	3 1/2 by 6 inches, White, open side.
189.	3 3/8 by 8 3/8 inches, White, open side.
192.	4 1/8 by 9 1/2 inches, White, open side.
194.	4 1/2 by 10 3/8 inches, White, open side.
195.	4 3/4 by 11 inches, White, open side.
289.	3 3/8 by 6 1/2 inches, White, open side, fine bond.
304.	4 3/8 by 7 3/8 inches, White, open side, fine bond.
405.	3 3/8 by 8 3/4 inches, Sulphate, open side, window.
433.	3 3/8 by 8 3/8 inches, White, open side, window.
435.	4 1/8 by 9 1/2 inches, White, open side, window.

§ 81.610 *Purchases from Government Printing Office.* (a) All blank envelopes, blank paper, inks, glues and other supplies manufactured or carried in stock by the Government Printing Office, and which are required for use within the District of Columbia, will be purchased from that office.

(b) All printing, binding, and blank-book work, except that authorized to be procured from field printing plants, will be procured from the Government Printing Office, unless a clearance for purchase from commercial sources is obtained from the Public Printer. The chiefs of supply services are authorized to communicate directly with the Government Printing Office for the purpose of securing clearances in appropriate cases.

§ 81.611 *Purchases from other agencies.* When it is to the interest of the Government and when both the requiring and the supplying agencies are in agreement with such action, the chiefs of the supply services are authorized to procure supplies from other Federal agencies on such terms and conditions as may be mutually agreed upon.

§ 81.612 *Surplus property.* The Director of Procurement, Procurement Division, Treasury Department, reports to the War Department all surplus property available for transfer from other agencies of the Government. These reports will be distributed to the chiefs of the supply services for information as to whether or not the property is desired for any agency under the jurisdiction of his office. If the property is desired the chief of the supply service will notify the Purchase Policy and Procedure Section, Purchases Branch, Procurement & Distribution Division and request for transfer authorization will be made by that section to the Procurement Division, Treasury Department. Direct correspondence by chiefs of supply services with the Procurement Division, Treasury Department, in this connection is not authorized.

FEDERAL, STATE AND LOCAL TAXES

§ 81.801 *Contract tax article.* All lump sum (fixed-price) contracts which involve the expenditure of appropriated funds will include the following tax article: *Provided, however,* That such article may, in the discretion of the Contracting Officer, be omitted where the estimated time of performance does not exceed sixty days:

Unless otherwise indicated, the prices herein include any Federal, state and local tax or charge heretofore imposed which is applicable to the supplies or work covered hereby. If after the date of the award, the Federal Government or any state or local government shall impose, remove, or change any duty, sales, use or excise tax or any other tax or charge directly applicable to the supplies or work covered hereby or the materials used in the manufacture thereof or directly upon the importation, production, processing, manufacture, construction or sale of such supplies, work, or materials, which tax or charge must be borne by the contractor because of a specific contractual obligation or by operation of law, or, in case of a decrease or elimination of a tax, where the contractor is relieved to that extent, and if in case of an increase in an existing tax or the imposition of a new tax the contractor has paid such tax or charge to the Federal Government or a state or local government, or any other person, then the prices named herein will be increased or decreased accordingly and any amount due to the contractor as a result of such change will be charged to the Government and entered on vouchers (or invoices) as a separate item: *Provided, however,* That the Government reserves the right to issue to the contractor in lieu of such payment a tax exemption certificate or certificates acceptable to the Federal Government or state or local Government, as the case may be, and the contractor agrees, in the case of any such state or local tax or charge, to take such steps as may be requested by the Government to cause such tax or charge to be paid under protest, to preserve and to cause to be assigned to the Government any and all rights to the refund of such tax or charge, and to furnish to the Government all reasonable assistance and cooperation requested by the Government in any litigation or proceeding for the recovery of such tax or charge; and *Provided, further,* That nothing contained herein shall be construed as requiring the Government to reimburse the contractor for any Federal, state or local income taxes, income surtaxes or excess profits taxes.

§ 81.802 *Tax provisions.* All contracts should contain appropriate provisions showing what taxes which are directly attributable to the cost of performance of the contract are excluded from the contract price, with the amount of such taxes, and whether or not tax exemption certificates will be required.

FEDERAL TAXES

§ 81.803 *Authority for Federal taxes.* Chapter 29 of the Internal Revenue Code (26 U.S.C. 3400-3453) as amended, imposes Federal taxes upon certain specified articles sold in the United States by the manufacturer or producer, or imported into the United States, to be paid by the manufacturer, producer, or importer, but provides that no tax under this chapter shall be imposed with respect to the sale of any article for the exclusive use of the United States, and that a credit

against the tax or a refund may be allowed or made with respect to the sale of any article if such article was resold for the exclusive use of the United States and the manufacturer, producer, or importer has such evidence as the regulations of the Commissioner of Internal Revenue may prescribe.

§ 81.804 *Tax exempt sales.* Under the regulations of the Commissioner of Internal Revenue (T. D. 5114, approved January 27, 1942) the following sales are exempt from the taxes imposed by Chapter 29 of the Internal Revenue Code: (a) sales of articles to the United States; (b) sales of articles to Government contractors or subcontractors when such articles are incorporated in an article sold to the United States; (c) sales of articles which are incorporated in the building or work constructed, altered, improved or repaired pursuant to a Government contract. Such sales are tax exempt only where the price paid by the Government does not include the tax.

§ 81.805 *Cost-plus-a-fixed-fee contracts.* Under rulings of the Commissioner of Internal Revenue articles sold to contractors engaged on a cost-plus-a-fixed-fee basis are exempt from the application of the Federal excise taxes since such articles are furnished for the exclusive use of the United States. As a condition to such exemption title to the article purchased by the fixed-fee contractor must ultimately vest in the United States.

§ 81.806 *Tax on firearms.* Chapter 25 of the Internal Revenue Code (26 U.S.C. 2700-2733), as amended, imposes Federal taxes upon the sale, lease, or transfer of firearms, but provides that no tax under such Chapter shall be imposed in connection with the sale or transfer of firearms for the use of the United States.

§ 81.807 *Jewelry, furs, and toilet preparations.* Chapter 19 of the Internal Revenue Code (26 U.S.C. 2400-2411), as amended, imposes a retailers' excise tax upon the sale of jewelry, furs, and toilet preparations, but provides that no tax shall be imposed with respect to the sale of any article for the exclusive use of the United States.

§ 81.808 *Items on which taxes are imposed.* Information concerning items on which Federal taxes are imposed and the applicable rates thereon will be published from time to time in this Regulation. Full information in regard thereto may be found in regulations of the Commissioner of Internal Revenue. Regulations 44 and 46 of the Bureau of Internal Revenue are applicable to taxes imposed by Chapter 29, and Regulations 51 of the Bureau of Internal Revenue are applicable to the taxes imposed by Chapter 19.

§ 81.809 *Exclusion of Federal excise taxes.* In order to reduce the amount of administrative work, thereby facilitating the prosecution of the war, contractors should be required to exclude from the price quoted the amount of Federal excise taxes imposed upon the supplies, work or undertaking concerned. Wherever practicable, contractors should be

required to exclude the tax imposed upon any articles to be incorporated in the supplies to be purchased (or to be incorporated into the building or work to be constructed, altered, improved or repaired).

STATE AND LOCAL TAXES

§ 81.810 *Application of State and local taxes.* While the various state and local tax laws are not uniform in their application, as a general rule Government purchases are exempt from such taxes. Neither are such laws uniform in their application to purchases by Government contractors. Information will be published from time to time as to the procedure to be followed with regard to state and local taxes.

TAX EXEMPTION CERTIFICATES

§ 81.811 *Standard tax exemption forms.* (a) The following standard tax exemption forms have been prescribed:

	<i>Standard Form No.</i>
U. S. Government tax exemption certificate	1094
Cover of U. S. Government tax exemption certificate book (front, outside and inside; back, outside)	1094A
Tabulation sheet (insert)	1094B
U. S. Government tax exemption identification card	1094C

(b) Chiefs of Supply Services are responsible for the supply of necessary standard forms to their contracting officers. Reports accounting for these forms will be submitted by the issuing officer as directed by the chief of the supply service concerned.

(c) Section 316.24 of Regulations 46 of the Bureau of Internal Revenue prescribes a form of tax exemption certificate which is somewhat different from Standard Form No. 1094. There is no objection to the use of any form of tax exemption certificate which is acceptable to the Bureau of Internal Revenue.

(d) The following forms of tax exemption certificates for issuance by contractors and subcontractors are prescribed by § 470.3 (b) of T. D. 5114:

EXEMPTION CERTIFICATE

(For use by prime contractor)

Date _____, 19__

The undersigned hereby certifies that the articles specified in the accompanying order or on the reverse side hereof are purchased from _____ for the United States

(Name of vendor)

under Government contract _____;

(Number or other identification)

that he now has in his possession a certificate of exemption furnished by the United States with respect to such contract; and that such certificate authorizes him to issue this exemption certificate.

It is understood that the fraudulent use of this certificate to secure exemption will subject the undersigned and all guilty parties to a fine of not more than \$10,000, or to imprisonment for not more than five years, or both, together with costs of prosecution.

(Name)

(Address)

EXEMPTION CERTIFICATE

(For use by subcontractor)

Date _____, 19--

The undersigned hereby certifies that the articles specified in the accompanying order or on the reverse side hereof are purchased from _____ for incorporation

(Name of vendor)
in _____ which are to be de-
(Subsidiary articles)

livered to _____; that the
(Subcontractor's vendee)

price to be charged said vendee contemplates that the aforesaid articles and the subsidiary articles are to be purchased on a tax-free basis; and that the undersigned now has in his possession an exemption certificate furnished by said vendee certifying that the above-named subsidiary articles are to be incorporated ultimately in other articles for use of the United States under Government contract _____

(Number or other identification)

It is understood that the fraudulent use of this certificate to secure exemption will subject the undersigned and all guilty parties to a fine of not more than \$10,000, or to imprisonment for not more than five years, or both, together with costs of prosecution.

(Name)

(Address)

(e) W.D. Tax Form No. 1, Authority of Contractor and Subcontractors to issue Tax Exemption Certificates, is as follows:
W.D. Tax Form No. 1.

AUTHORITY OF CONTRACTOR AND SUBCONTRACTORS TO ISSUE TAX EXEMPTION CERTIFICATES

(To be attached to a Form 1094 U. S. Tax Exemption Certificate)

(Name of Contractor)

(Address of Contractor)

Contract No. _____

Tax Exemption Certificate No. _____

The Contractor and/or his subcontractors (including suppliers) are authorized to issue tax exemption certificates in the form prescribed by Section 470.3 (b) of Treasury Decision 5114, approved January 27, 1942 (7 Fed. Reg. 579, January 29, 1942) as to the articles listed below, which are incorporated in or to be incorporated in the supplies or work covered by the contract referred to in the Tax Exemption Certificate to which this authority is attached.

List of Articles (If none, so state)	Description	Quantity*	Unit Price*
_____	_____	_____	_____

(Contracting Officer)

(Title)

§ 81.812 Preparation and execution of tax exemption certificates. In the preparation of tax exemption certificates the typewriter will be used when practicable; otherwise ink or indelible pencil will be used. The use of ordinary lead pencil is prohibited. All blank spaces must be properly filled in or lined out, and no such exemption certificate will be delivered to a contractor, unless fully and properly executed, except that, if at the time of entering into a contract for supplies to be sold for the exclusive use of the Government, Federal tax excluded, it is impossible to determine the amount of

*To be shown by Contracting Officer if known.

such taxes as in the case of an indefinite quantity contract, it is permissible for the Contracting Officer to issue a blanket tax exemption certificate to cover all sales under the contract. The certificate should be issued by the Contracting Officer who executed such contract and should cover all articles purchased under such contract, including delivery orders placed thereunder by other officers. A separate certificate for each kind of tax (Federal, State, local, etc.) involved will be prepared. In the issuance of these certificates care should be exercised by the Contracting Officer to fill in the blank spaces provided for showing on each certificate the separate amounts of the taxes involved, so that the certificate may be used only for the intended purpose. Where the supplies or work covered by the contract are not taxable as such and the certificate is to be used for the purpose of obtaining exemption on the articles to be incorporated in the supplies or work covered by the contract, the amount of tax to be shown on the certificate should be stated as "None." No tax should be shown on the certificate except the tax imposed directly upon the supplies of work covered by the contract. The following statement will be written or stamped upon the face of each certificate pertaining to Federal taxes (except where a cost-plus-fixed-fee contract is involved): "W.D. Tax Form No. 1 attached." Tax Exemption Certificate Form No. 1094 may be modified insofar as necessary with respect to contracts for construction, alterations, improvements and repairs. The Contracting Officer will, in addition to his signature and title, insert on the lines provided therefor, his identification-card number.

§ 81.813 Use of tax exemption certificates. (a) Under regulations prescribed by the Commissioner of Internal Revenue, articles are exempt from the taxes imposed by Chapter 29 of the Internal Revenue Code when such articles are sold on a tax-free basis for the exclusive use of the United States. The tax is imposed upon the manufacturer, producer or importer. Where the article is sold on a tax-free basis for the exclusive use of the United States by a person other than the manufacturer, producer or importer a credit for or a refund of the tax may be obtained. With the exception of tires, inner tubes and automobile radios, articles are exempt from taxes imposed by Chapter 29 where such articles are used by the purchaser as material in the manufacture or production of or as a component part of an article which is taxable under such chapter. Under regulations of the Commissioner of Internal Revenue, tax exemption certificates are used for the purpose of establishing rights to exemptions, credits and refunds.

(b) An article is deemed to be sold for the exclusive use of the United States when it is sold (i) to the United States to be utilized by the United States or to be disposed of by the United States to a foreign government, or (ii) to a Government contractor or subcontractor (including a supplier) when the article is

incorporated in an article sold to the United States or in the building or work constructed, altered, improved or repaired pursuant to a contract with the United States, or (iii) to a Government contractor under a cost-plus-fixed-fee contract or subcontractor under a cost-plus-fixed-fee subcontract where the article is used as equipment, materials or supplies by the contractor or subcontractor in performing a Government prime contract and payment for the article is made by the United States, whether directly or by reimbursement of the contractor or subcontractor for the cost thereof. The term "incorporated in" as used above refers to any process whereby an article enters into building, work or supplies or a component thereof so as to become a part thereof and is not merely consumed in such production.

(c) The Contracting Officer should execute and deliver to the contractor a tax exemption certificate (Form 1094 or any other form acceptable to the Bureau of Internal Revenue) covering Federal taxes in the following cases:

(1) Where the supplies purchased under the contract are taxable under Chapter 29 and are purchased by the Government at a price which is exclusive of such tax. In such a case, the word "None" should be inserted in the space headed "List of Articles" on the attached W.D. Tax Form No. 1, except where the supplies have had (or will have) incorporated therein tires, inner tubes or automobile radios, and the price paid by the Government is exclusive of the tax thereon.

(2) Where the supplies purchased under the contract are not taxable under Chapter 29 but have had (or will have) incorporated therein one or more articles which are taxable under such chapter, and the price paid by the Government is exclusive of the tax on one or more of such articles. In such a case, the amount of tax shown on the tax exemption certificate should be stated as "None" and the articles incorporated (or to be incorporated) into the supplies purchased by the Government which are sold exclusive of the tax thereon should be listed upon W.D. Tax Form No. 1 attached to the certificate. Upon receipt of the tax exemption certificate, the contractor and/or his subcontractors (including suppliers) are then authorized to issue tax exemption certificates in the form prescribed by Section 470.3 (b) of Treasury Decision 5114, approved January 27, 1942 (7 F.R. 579, January 29, 1942) as to the articles listed on W.D. Tax Form No. 1 attached to the Form No. 1094.

(3) Where the contract covers construction, alterations, improvements or repairs, and the physical project to be constructed, altered, improved or repaired will have incorporated therein one or more articles which are taxable under Chapter 29 and the price paid by the Government for the construction, alterations, improvements or repairs, is exclusive of the tax on one or more of such articles to be incorporated into the physical project. In such a case, the amount of tax shown on the tax exemption cer-

tificate should be stated as "None", and the articles to be incorporated into the physical project to be constructed, altered, improved or repaired on which no such tax is included in the contract price should be listed upon W.D. Tax Form No. 1 attached to the certificate. Upon receipt of the tax exemption certificate the contractor and/or his subcontractors (suppliers) are then authorized to issue tax exemption certificates in the form prescribed by § 470.3 (b) of Treasury Decision 5114, approved January 27, 1942 (7 F.R. 579, January 29, 1942) as to the articles listed on W.D. Tax Form No. 1 attached to the certificate.

(4) Under a cost-plus-fixed-fee contract (except one covering the sale of articles taxable under Chapter 29, where (1) above is applicable) when one or more articles taxable under Chapter 29 are used by the contractor as equipment, material or supplies in performing the contract, and such articles are purchased at a price which is exclusive of the tax thereon and payment for same is made by the United States, directly or by reimbursement of the contractor. In such a case, the amount of tax shown on Form 1094 should be stated as "None" and there should be attached to or written on Form 1094 the following statement:

The contractor is authorized to issue tax exemption certificates in the form prescribed by § 470.3 (b) of Treasury Decision 5114, approved January 27, 1942 (7 F.R. 579, January 29, 1942) as to all articles sold on a Federal tax exclusive basis and for which payment is made by the United States, directly or by reimbursement of the contractor, and which are used by the contractor as equipment, material or supplies in performing the contract to which this (the attached) certificate pertains.

(d) The Commissioner of Internal Revenue has ruled that tax exemption certificates issued by contractors and subcontractors in the form prescribed by T. D. 5114 relates to tax-free sales only and cannot be used to obtain a refund or credit of tax paid by manufacturers on articles sold or delivered to contractors or subcontractors performing work for the Federal Government on specified contracts.

(e) Tax exemption certificates are also used for establishing exemptions from state and local taxes. In such cases certificates should be prepared in accordance with the requirements of the particular state or local tax officials concerned. No tax exemption certificate should be issued with respect to a state or local tax unless the contract shows that the price paid by the Government is exclusive of the tax to which the certificate pertains or unless the contractor consents to the deduction of such tax from the contract price and the acceptance of the tax exemption certificate in lieu thereof.

COLLECTION AND PAYMENT OF TAXES BY GOVERNMENT

§ 81.814 *Federal Taxes; collection and payment.* (a) The amount of the Federal tax will be collected from the purchaser when articles subject to tax under Chapter 29 of the Internal Revenue Code

purchased free of tax are sold to individuals or used for other than the exclusive use of the United States. Funds so collected will be deposited with the local disbursing officer together with information of the name of the contractor from whom the articles were purchased and the number of the contract under which purchase was made. In cases where the name and amount of the contract involved are not known to the sales officer, he will ascertain this information from the shipping or contracting officer or from the chief of the supply service, if necessary.

(b) Funds received by a disbursing officer as payment for taxes imposed by Chapter 29 of the Internal Revenue Code will be placed in a special deposit account and remitted to the contractor monthly, or at the time the officer closes his accounts when he ceases to disburse, in order that return may be made therefor to the appropriate Collector of Internal Revenue. A copy of the report of such remittance will be forwarded to the Bureau of Internal Revenue. However, if it is impossible for the disbursing officer to determine the contractor from whom the articles subject to tax under Chapter 29 were purchased, he may remit the amount of the tax to the Collector of Internal Revenue for the district in which the disbursing officer is located with a statement that the name of the contractor is unknown.

§ 81.815 *State and local taxes; collection and payment.* (a) When impossible for any reason to effect purchases, excluding the amount of any state or local tax which is deemed to be legally inapplicable to Government purchases, a tax exemption certificate will be executed and delivered to the disbursing officer to whose accounts the vouchers in the transaction pertain, together with a written statement to the effect that the vendor refused the tax exemption certificate. Exemption certificates executed and delivered as prescribed in this subparagraph are for use of the Finance Department in securing a refund of the amount of the taxes involved. The serial number of the certificate will be shown on the payment voucher.

(b) When Standard Form No. 1094, executed under the conditions stated above, is received in the administrative office (Finance Department), there will be noted on the form the bureau or office number of the payment voucher, and the administrative office (Finance Department) will bill the State or local taxing agency for refund of the taxes paid. The amount(s) collected will be transmitted to the disbursing officer for credit to the appropriation(s) from which the vouchers were paid, or to miscellaneous receipts account "4326—Refund, State and Local Taxes," if the appropriation cannot be readily identified. In the event the administrative office (Finance Department) fails to secure refund of the amount of taxes paid, it will transmit promptly to the General Accounting Office the said tax-exemption certificates, if available, together with all

correspondence with the taxing agency relating thereto, and information as to the disbursing officer's voucher number on which payment for the merchandise was made, for use by the General Accounting Office in effecting collection thereof as required by section 236, Revised Statutes, as amended by the Budget and Accounting Act, 1921.

§ 81.816 *Items subject to Federal excise taxes.* The items subject to manufacturers' excise taxes imposed by Chapter 29 of the Internal Revenue Code, as amended, are listed below. The tax imposed in each case is equivalent to the indicated percentage of the price for which sold by the manufacturer, producer or importer, and is effective October 1, 1941. The Revenue Act further provides that, for the purposes of the tax, the lease of an article (including any renewal or extension of a lease or any substitute lease of such article) by the manufacturer, producer or importer shall be considered a taxable sale of such article (sec. 3440, as amended).

CHAPTER 29—MANUFACTURERS' EXCISE AND IMPORT TAXES

Subchapter A—Manufacturers' Excise Taxes

	Sec. I. R. C.	Sec. this Reg.
Automobiles, trucks, busses, and parts.	3403.....	81.816(b).
Business and store machines.	3406(a)(6).....	81.816(e)(1)(f).
Electrical energy.	3411.....	81.816(h).
Electric signs.	3406(a)(5).....	81.816(e)(1)(v).
Electric, gas, and oil appliances.	3406(a)(3).....	81.816(e)(1)(iii).
Electric light bulbs and tubes.	3406(a)(10).....	81.816(e)(1)(x).
Firearms, shells, and cartridges.	3407.....	81.816(f).
Gasoline.	3412(a).....	81.816(i).
Lubricating oils.	3413.....	81.816(j).
Luggage.	3406(a)(2).....	81.816(e)(1)(ff).
Matches.	3409.....	81.816(g).
Optical equipment.	3406(a)(9).....	81.816(e)(1)(ix).
Photographic apparatus.	3406(a)(4).....	81.816(e)(1)(iv).
Pistols and revolvers.	2700(a).....	81.816(f).
Radio receiving sets, phonographs, phonograph records, and musical instruments.	3404.....	81.816(e).
Refrigerators, refrigerating apparatus, air-conditioners.	3405.....	81.816(d).
Rubber articles.	3406(a)(7).....	81.816(e)(1)(vii).
Sporting goods.	3406(a)(1).....	81.816(e)(1)(i).
Tires and inner tubes.	3400(a).....	81.816(a).
Toilet preparations (terminated).	3401.....	
Washing machines.	3406(a)(8).....	81.816(e)(1)(viii).

(a) *Tires and inner tubes.* Sec. 3400 (a). (1) Tires wholly or in part of rubber (exclusive of metal rims or rim bases)—5 cents a pound on total weight. Par. (1).

(2) Inner tubes (for tires) wholly or in part of rubber—9 cents a pound on total weight. Par. (2).

(b) *Automobiles, trucks, busses, and parts.* Sec. 3403.

(1) Automobile truck chassis, automobile truck bodies, automobile bus chassis, automobile bus bodies, truck and bus trailer and semitrailer chassis, truck and bus trailer and semitrailer bodies, tractors of the kind chiefly used for highway transportation in combination with a trailer or semitrailer (including in each of the above cases parts or accessories therefor sold on or in connection therewith or with the sale thereof)—5 per centum. A sale of an automobile truck, bus, or truck or bus trailer or semitrailer, shall, for the purposes of this subsection, be considered to be a sale of the chassis and of the body. Subsec. (a).

(2) Other automobile chassis and bodies, chassis and bodies for trailers or semitrailers suitable for use in connection with passenger automobiles, and motorcycles (including in each case parts or accessories therefor sold on or in connection therewith or with the sale thereof), except tractors—7 per centum. A sale of an automobile, trailer, or semitrailer shall, for the purposes of this subsection, be considered to be a sale of the chassis and of the body. *Subsec. (b).*

(3) Parts or accessories (other than tires and inner tubes and other than radios) for any of the articles enumerated in subsection (a) or (b)—5 per centum. *Subsec. (c).*

(c) *Radio receiving sets, phonographs, phonograph records, and musical instruments.* Including in each case, except in the case of musical instruments, parts or accessories therefor sold on or in connection with the sale thereof—10 per centum. *Section 3404.*

(1) Radio receiving sets, automobile radio receiving sets, combination radio and phonograph sets, and phonographs. *Subsec. (a).*

(2) Chassis, cabinets, tubes, reproducing units, power packs, antennae of the "built-in" type, and phonograph mechanisms, which are suitable for use on or in connection with, or as component parts of, any of the articles enumerated in subsection (a), whether or not primarily adapted for such use. *Subsec. (b).*

(3) Phonograph records. *Subsec. (c).*

(4) Musical instruments. *Subsec. (d).*

(d) *Refrigerators, refrigerating apparatus, and air-conditioners.* Including in each case parts or accessories therefor sold on or in connection with the sale thereof—10 per centum. *Sec. 3405.*

(1) *Refrigerators, etc.* Refrigerators, beverage coolers, ice cream cabinets, water coolers, food and beverage display cases, food and beverage storage cabinets, ice making machines, and milk cooler cabinets, each such article having, or being primarily designed for use with, a mechanical refrigerating unit operated by electricity, gas, kerosene, or gasoline. *Subsec. (a).*

(2) *Refrigerating apparatus.* Compressors, condensers, evaporators, expansion units, absorbers, and controls for, or suitable for use as part of, or with, a refrigerating plant, refrigerating system, refrigerating equipment or unit, or any of the articles enumerated in subsection (a). *Subsec. (b).*

(3) *Air-conditioners.* Self-contained small air-conditioning units. *Subsec. (c).*

(4) *Components.* Cabinets, compressors, condensers, fans, blowers, heating coils, cooling coils, filters, humidifiers, and controls, for, or suitable for use as part of, or with, any of the articles enumerated in subsection (c). *Subsec. (d).*

(e) *Sporting goods; luggage; etc. (New Manufacturers' Excise Taxes).* *Section 3406.*

(1) Including in each case parts or accessories of such articles sold on or in connection therewith, or with the sale thereof. *Subsec. (a).*

(1) *Sporting Goods—10 per centum. Par. (1).*

Badminton nets.
Badminton rackets.*
Badminton racket frames.*
Badminton racket string.
Badminton shuttlecocks.
Badminton standards.
Baseballs.
Baseball bats.**
Baseball body protectors.
Baseball shin guards.
Baseball gloves.
Baseball mitts.
Baseball masks.
Basketballs.

*Measuring 22 inches over-all or more in length.

**Measuring 26 inches or more in length.

Billiard tables.****
Billiard balls }
Billiard cues } for such tables.

Bowling balls.
Bowling pins.
Boxing gloves.
Boxing masks.
Boxing head guards.
Boxing ear guards.
Clay pigeons.
Cricket balls.
Cricket bats.
Croquet balls.
Croquet mallets.
Curling stones.
Deck tennis rings.
Deck tennis nets.
Deck tennis posts.
Fencing equipment.
Fishing artificial lures.
Fishing baits.
Fishing creels.
Fishing flies.
Fishing reels
Fishing rods
Football.
Football harness.
Football helmets.
Golf bags.**
Golf balls.
Golf clubs.***
Gymnasium equipment.
Gymnasium apparatus.
Hockey balls.
Hockey pucks.
Hockey sticks.***
Indoor baseballs.
Indoor baseball bats.**
Indoor baseball gloves.
Indoor baseball mitts.
Lacrosse balls.
Lacrosse sticks.
Mass balls.
Polo balls.
Polo mallets.
Pool tables.****
Pool balls }
Pool cues } for such tables.
Push balls.
Skates.
Skis.
Ski poles.
Snow shoes.
Snow toboggans.
Snow sleds.
Soccer balls.
Softball balls.
Softball bats.**
Softball gloves.
Softball mitts
Squash balls.
Squash rackets.*
Squash racket frames.*
Squash racket string.
Table tennis balls.
Table tennis nets.
Table tennis paddles.
Table tennis tables.
Tennis balls.
Tennis nets.
Tennis rackets.*
Tennis racket frames.*
Tennis racket string.
Track hurdles.
Traps for throwing clay pigeons.
Vaulting cross bars.
Vaulting poles.
Vaulting standards.
Volley balls.
Volley nets.
Volley standards.
Water polo balls.
Water polo goals.
Wrestling head harness.

(ii) *Luggage.* Trunks, valises, traveling bags, suitcases, hat boxes for use by travelers, fitted toilet cases (not including con-

****Measuring 30 inches or more in length.

***Measuring 45 inches over-all or more in length.

tents), and other traveler's luggage, and leather and imitation leather brief cases—10 per centum. *Par. (2).*

(iii) *Electric, gas, and oil appliances.* Electric direct motor-driven fans and air circulators; electric, gas, or oil water heaters; electric flatirons; electric air heaters (not including furnaces); electric immersion heaters; electric heating pads and blankets; electric, gas or oil appliances of the type used for cooking, warming, or keeping warm food or beverages for consumption on the premises; electric mixers, whippers, and juicers; and household type electric vacuum cleaners—10 per centum. *Par. (3).*

(iv) *Photographic apparatus.* Cameras and lenses; unexposed photographic films (including motion picture films but not including X-ray film), photographic plates and sensitized paper; photographic apparatus and equipment; and any apparatus or equipment designed especially for use in the taking of photographs or motion pictures or in the developing, printing, or enlarging of photographs or motion picture films—10 per centum. *Par. (4).*

(v) *Electric signs.* Neon-tube signs, electric signs, and electric advertising devices—10 per centum. *Par. (5).*

(vi) *Business and store machines—10 per centum. Par. (6).*

Adding machines.
Addressing machines.
Autographic registers.
Bank proof machines.
Billing machines.
Bookkeeping machines.
Calculating machines.
Card punching machines.
Cash registers.
Change making machines.
Check writing machines.
Check signing machines.
Check cancelling machines.
Check perforating machines.
Check cutting machines.
Check dating machines.
Other check protector machine devices.
Computing machines.
Coin counters.
Dictographs.
Dictating machine record shaving machines.
Dictating machines.
Duplicating machines.
Embossing machines.
Envelope opening machines.
Erasing machines.
Fanfold machines.
Fare registers.
Fare boxes.
Listing machines.
Line-a-time and similar machines.
Mailing machines.
Multigraph machines.
Multigraph typesetting machines.
Multigraph type justifying machines.
Numbering machines.
Portable paper fastening machines.
Pay roll machines.
Pencil sharpeners.
Postal permit mailing machines.
Punch card machines.
Sealing machines.
Shorthand writing machines.
Sorting machines.
Stencil cutting machines.
Tabulating machines.
Ticket counting machines.
Ticket issuing machines.
Typewriters.
Transcribing machines.
Time recording devices.

and combinations of any of the foregoing items.

(vii) *Rubber articles.* Articles of which rubber is the component material of chief weight. The tax imposed under this paragraph shall not be applicable to footwear, articles designed especially for hospital or

surgical use, or articles taxable under any other provision of this chapter—10 per centum. Par. (7).

(viii) *Washing machines.* Washing machines of the kind used in commercial laundries. No tax shall be imposed under this paragraph on washing machines of the household type. 10 per centum. Par. (8).

(ix) *Optical equipment*—10 per centum. Par. (9).

- Colorimeters.
- Fire control optical instruments.
- Micro-projection apparatus.
- Microscopes.
- Optical machinery.
- Refractometers.
- Searchlight mirrors.
- Searchlight reflectors.
- Spectrometers.
- Optical measuring instruments.
- Photo-micro apparatus.
- Polariscopes.
- Projection lenses.
- Projection prisms.
- Spectroscopes.
- Telescopes.
- Telescopic sights.

(x) *Electric light bulbs and tubes.* Electric light bulbs and tubes, not including articles taxable under any other provisions of this subchapter—5 per centum. Par. (10).

(2) *Exemption if article taxable as jewelry.* Any article taxable as jewelry under section 2400 (Chapter 19—Retailers' Excise Taxes) are exempted from the tax imposed by this section. Subsec. (b).

(f) *Firearms, shells, and cartridges.* 11 per centum. Sec. 3407. Note: The tax imposed by this section does not apply to pistols and revolvers. The sale or lease of such articles, however, by the manufacturer, producer, or importer is taxable at the same rate under sec. 2700 (a) Chap. 25—Firearms, Subchap. A—Pistols and Revolvers.

(g) *Matches.* Sec. 3409. (1) Fancy wooden matches and wooden matches having a stained, dyed, or colored stick or stem, packed in boxes or in bulk—5½ cents per 1,000 matches.

(2) All matches other than those enumerated above—2 cents per 1,000 matches.

(h) *Electrical energy.* Electrical energy sold for domestic or commercial consumption and not for resale—3¼ per centum. Sec. 3411.

(i) *Gasoline.* 1½ cents a gallon. Sec. 3412 (a). All products commonly or commercially known or sold as gasoline (including casinghead and natural gasoline), benzol, benzene, or naphtha, regardless of their classifications or uses; and any other liquid of a kind prepared, advertised, offered for sale or sold for use as, or used as, a fuel for the propulsion of motor vehicles, motor boats, or airplanes, except that it does not include any of the foregoing sold for use otherwise than as a fuel or in the manufacture or production of such fuel. The term "gasoline" does not include products commonly or commercially known or sold as kerosene, gas oil, or fuel oil.

(j) *Lubricating oils.* 4½ cents a gallon. Sec. 3413. The term "lubricating oil" as used in these regulations includes all oils, regardless of their origin, which are sold as lubricating oil and all oils which are suitable for use as a lubricant. The term "lubricating oils" does not include products of the type commonly known as grease.

§ 81.817 *Federal Retailers' Excise Taxes.* The items on which Federal Retailers' Excise Taxes are imposed are listed below. The tax is in the amount of 10 per centum of the price for which sold, and the taxes are effective as of October 1, 1941.

CHAPTER 19—RETAILERS' EXCISE TAXES

(a) *Sec. 2400. Jewelry, etc.* All articles commonly or commercially known as jewelry, whether real or imitation; pearls, precious and semi-precious stones, and imitations thereof; articles made of, or ornamented, mounted or fitted with, precious metals or imitations thereof; watches and clocks and cases and movements therefor; gold, gold-plated, silver, silver-plated or sterling flatware or hollow ware; opera glasses; lorgnettes; marine glasses; field glasses; and binoculars.

(b) *Sec. 2401. Furs.* Articles made of fur on the hide or pelt, and articles of which such fur is the component material of chief value.

(c) *Sec. 2402. Toilet Preparations.* Perfumes, essences, extracts, toilet waters, cosmetics, petroleum jellies, hair oils, pomades, hair dressings, hair restoratives, hair dyes, aromatic cachous, toilet powders, and any similar substance, article, or preparation, by whatsoever name known or distinguished; any of the above which are used or applied or intended to be used or applied for toilet purposes.

LABOR

§ 81.901 *Convict labor; basic law.* The public policy of the United States as to convict labor is expressed in the act of February 23, 1887 (24 Stat. 411, 18 U.S.C. 708, 709). This statute is a penal one and provides for imprisonment or fine for its violation. See also sec. 602 (b), act June 30, 1932 (47 Stat. 418; 31 U.S.C. 686b).

§ 81.902 *Executive Order of the President.* Pursuant to the public policy prescribed by the basic law, the President on May 18, 1905, issued an Executive Order which provides, in substance, that all contracts which shall hereafter be entered into by officers or agents of the United States involving the employment of labor in the States composing the Union, or the Territories contiguous thereto, shall, unless otherwise provided by law, contain a stipulation forbidding, in the performance of such contracts, the employment of persons undergoing sentences of imprisonment at hard labor which have been imposed by courts of the several States, Territories, or Municipalities having criminal jurisdiction.

§ 81.903 *Exceptions.* The provisions of §§ 81.901 and 81.902 do not apply to the following purchases:

(a) Purchases of items manufactured by the Federal Prison Industries, Inc. See § 81.608.

(b) Purchases of items manufactured or produced by State prisons and other correctional institutions. See § 81.608a.

EIGHT HOUR LAW OF 1912

§ 81.904 *Eight hour law; basic law.* Eight hour law approved June 19, 1912 (37 Stat. 137), as amended by sec. 5 (b), act of June 28, 1940 (54 Stat. 679) and sec. 303, act of September 9, 1940 (54 Stat. 884). 40 U.S.C. 324, 325; M.L., 1939 and Sup. I, secs. 743, 745.

§ 81.905 *Applicability of eight-hour law.* The basic law applies to all contracts for work which may require or involve the employment of laborers or mechanics, except the following classes:

(a) Contracts for supplies, whether manufactured to conform to particular

specifications or not, as well as contracts to which the Walsh-Healey Public Contracts Law is applicable.

(b) Contracts for such materials or articles as may usually be bought in open market, except armor and armor plate, whether made to conform to particular specifications or not.

(c) Contracts for the construction or repair of levees or revetments necessary for protection against floods or overflows on the navigable waters of the United States.

(d) Contracts for the transmission of intelligence.

(e) Contracts for transportation by land or water.

ANTI-REBATE (COPELAND OR "KICK-BACK") LAW

§ 81.906 *Anti-rebate or Kick-back law; basic law.* Act June 13, 1934 (48 Stat. 948); 40 U.S.C., Sup. 276b and c; M.L., 1939, sec. 740. Sec. 9, Reorganization Plan No. IV (54 Stat. 1236), effective June 30, 1940, in accordance with sec. 4 of H.J. Res. 551 (Pub. Res., No. 75, 76th Cong.; 54 Stat. 231).

§ 81.907 *Applicability of anti-rebate or Kick-back law.* The basic law applies to all contracts and subcontracts for the repair, construction, prosecution, or completion of any public building, public work, or building or work financed in whole or in part by loans or grants from the United States, irrespective of the amounts of such contracts and the fact such contracts may not specify the wages to be paid by the contractors to their employees (19 Comp. Gen. 576).

§ 81.908 *Procedure under anti-rebate or Kick-back law.* Pursuant to the regulations of the Secretary of Labor made effective April 30, 1942, the following procedure is prescribed:

(a) Each contractor or subcontractor engaged in work subject to the basic law shall furnish each week a sworn affidavit with respect to the wages paid each of its employees engaged on the work covered by the basic law during the preceding weekly pay roll period. The affidavit shall be executed and sworn to by the contractor or subcontractor or by an authorized officer or employee of the contractor or subcontractor who supervises the payment of wages and shall be in the following form:

State of _____
 County of _____, ss.:
 I, _____ (name of party signing affidavit), _____ (title), being duly sworn, do depose and say: That I pay or supervise the payment of the persons employed by _____ (contractor or subcontractor) on the _____ (building or work); that the attached pay roll sets out accurately and completely the name, occupation, and hourly wage rate of each person so employed for the weekly pay roll period from the _____ day of _____, 194____, to the _____ day of _____, 194____, the total number of hours worked by him during such period, the full weekly wages earned by him and any deductions made from such weekly wages, and the actual weekly wages paid to him; that no rebates have been or will be made either directly or indirectly to or on behalf of said _____ (con-

tractor or subcontractor) from the full weekly wages earned as set out on the attached pay roll; and that no deductions, other than the permissible deductions (as defined in the Regulations under the "Kick-Back" Act (48 Stat. 948)) described in the following paragraph of this affidavit, have been made or will be made, either directly or indirectly, from the full weekly wages earned as set out on the attached pay roll.

(Paragraph describing deductions, if any.)

(Signature and title)

Sworn to before me this _____ day of _____ 194__

(b) Each weekly affidavit shall be delivered by the contractor or subcontractor within seven (7) days after the regular payment date of the pay roll period, to a representative of a Federal or State agency in charge at the site of the building or work, or, if there is no representative of a Federal or State agency at the site of the building or work, the affidavit shall be mailed by the contractor or subcontractor, within such time, to a Federal or State agency contracting for or financing the building or work. After such examination and check as may be made, such affidavit, or a copy thereof, together with a report of any violation, shall be transmitted to the United States Department of Labor, Washington, D. C., unless otherwise arranged with the Department of Labor.

(c) Each contractor or subcontractor shall, within seven (7) days after the making of any subcontract with another person concerning work which is subject to the basic law, deliver to the local or national Government representative in charge at the site of the building or work, or, if there is no Government representative, shall mail within such time to the Federal agency contracting for or financing the building or work, an affidavit setting forth the name and address of his subcontractor and a summary statement of the precise work subcontracted.

§ 81.909 *Authorized pay roll deductions.* The following pay roll deductions are authorized:

(a) Deductions for the following purposes are permissible:

(1) Where required by Federal, State or local statutes or ordinances to be made by the employer from the wages earned by the employee;

(2) Bona fide prepayment of wages without discount or interest;

(3) Deductions required by court process provided that the contractor or subcontractor will not be permitted to make such a deduction in favor of the contractor, subcontractor, or any affiliated person or where collusion or collaboration exists.

(b) Any deduction is also permissible which in fact meets the following standards and with respect to which the contractor or subcontractor shall have made written application by registered mail to the Secretary of Labor, a copy of which application shall be sent to the contracting agency by the contractor or subcontractor, setting forth all the pertinent facts indicating that such deductions will meet the following standards:

(1) That such deduction is not prohibited by other law; and

(2) That such deduction is: (i) voluntarily consented to by the employee in writing and in advance of the period in which the work was done, and that consent to the deduction is not a condition either for the obtaining of or for the continuance of employment; or (ii) that such deduction is for the benefit of the employees or their labor organization through which they are represented and is provided for in a bona fide collective bargaining agreement; and

(3) That from such deduction no payment is made to, nor profit or benefit is obtained directly or indirectly by the contractor or subcontractor or any affiliated person, and that no portion of the funds, whether in the form of a commission or otherwise, will be returned to the contractor or subcontractor or to any affiliated person; and

(4) That the convenience and interest of the employees are served thereby, and that such or similar deductions have been customary in this or comparable situations.

(c) After application in good faith, the deduction may be made in accordance with the foregoing standards: *Provided, however,* That if the Secretary of Labor, on his own motion, or on the application of any person or agency affected by the granting of the application, shall conclude at any time, after written notice to the applicant and an opportunity for him to present his views in support of the deduction, that the deduction has not met the foregoing standards, such deductions shall cease to be "permissible" seven days after the applicant and the federal agency concerned have been notified of the Secretary's decision.

(d) Upon application to and prior written permission from the Secretary of Labor, and subject to the standards set forth in paragraph (b) (1) (2) and (4) of this section, deductions may be made by a contractor or subcontractor or any affiliated person, for membership fees in group benefit or retirement associations; for board and lodging, or for other purposes where the Secretary of Labor concludes the deduction is required by compelling circumstances: *Provided, however,* The contractor, subcontractor, or any affiliated person does not make a profit or benefit directly or indirectly from the deduction. A copy of the Secretary's decision shall be sent to the applicant and the federal agency concerned.

(e) In accordance with and subject to the standards set forth in paragraph (b) (1) to (4), inclusive, of this section, general permission is hereby granted to make pay roll deductions for:

(1) The payment of the purchase price of United States Defense Stamps and Bonds and United States Tax Savings Notes;

(2) The repayment of loans to or the purchase of shares in credit unions organized and operated in accordance with District of Columbia, Federal, or State credit union statutes;

(3) Contributions to a federal government or quasi-governmental agency.

(f) In any case in which the employee does not have full and actual freedom of disposition of his wage payment, whether made in cash or by check, any restricted payment made to the employee is considered a deduction under the regulations in this section.

(g) Nothing herein shall be construed to permit any deduction which the contractor or subcontractor knew, or in the exercise of good faith should have known, did not meet the foregoing standards. In order to insure compliance with this section, the Secretary of Labor may notify the contractor or subcontractor that the deduction will be permitted only if certain conditions with respect thereto are observed. The contractor or subcontractor or any affiliated person shall also comply with such general rules and regulations concerning the deductions as the Secretary of Labor shall make from time to time, notice of which shall have been given to the contractor or subcontractor or any affiliated person making the deduction and to the federal agency concerned either directly or through publication in the FEDERAL REGISTER.

DAVIS-BACON LAW

§ 81.910 *Davis-Bacon Act, as amended.* Act August 30, 1935 (49 Stat. 1011) as amended by the acts approved June 15, 1940 (54 Stat. 399) and March 23, 1941 (Public Law 22, 77th Cong.) 40 U.S.C. 276a; M.L., 1939 and Sup. I, sec. 746.

§ 81.911 *Applicability of Davis-Bacon law—(a) Contracts in excess of \$2,000.* The basic law, as amended, applies to all contracts in excess of \$2,000 for:

(1) Construction, alteration, or repair of any public building, highway, or other work of construction;

(2) Alteration or repair of vessels, boats, and aircraft;

(3) Performance of any work upon Government-owned personal property, except where such work is to be performed under the Walsh-Healey Public Contracts Act pursuant to general or special directions of the Secretary of Labor.

(b) *Alaska, Hawaii, and District of Columbia.* The basic law is also applicable within the geographical limits of the Territory of Alaska, the Territory of Hawaii, and the District of Columbia.

(c) *Contracts without advertising for bids.* The amendment made by the act of March 23, 1941, makes the basic law applicable to contracts entered into upon a cost-plus-a-fixed-fee basis or otherwise without advertising for bids.

(d) *Exceptions.* The basic law does not apply to:

(1) Contracts for the construction or repair of ships or other movables where the place of performance of the contract cannot be ascertained at the time the contract is negotiated.

(2) Contracts awarded by institutions or groups supported in whole or in part by Federal funds, but to which contracts neither the United States nor the District of Columbia is a party.

(3) Contracts for the rental of equipment with operating personnel. (19 Comp. Gen. 467)

§ 81.912 *Regulations and forms*—(a) *Regulations.* Regulations No. 503, Department of Labor, dated September 30, 1935, as amended, are required to be followed by every contracting officer in executing contracts to which the basic law is applicable. The Department of Labor has repealed section 22 of Regulations No. 503, as amended, and in place thereof has added the following new section 22, effective April 30, 1942:

Sec. 22. *Pay roll deductions.* The "Regulations Applicable to Contractors and Subcontractors on Public Building and Public Work and on Building and Work Financed in Whole or in Part by Loans or Grants from the United States" promulgated from time to time by the Secretary of Labor pursuant to the act of June 13, 1934, shall be applicable to the compensation of all laborers and mechanics employed on public buildings or public works subject to the Davis-Bacon Act, as amended. (7 F.R. 686)

(b) *Authorized pay roll deductions.* See § 81.909 for authorized deductions.

(c) *Forms.* (1) Department of Labor Forms DB-11 and DB-15.

(2) Standard Form No. 1093.

(d) *How obtained.* Copies of the above regulations will be obtained by the chiefs of the supply services directly from the Department of Labor for distribution to those concerned. Chiefs of supply services are responsible for the supply of the necessary forms to their contracting officers.

§ 81.913 *Requests for predetermination of wage rates*—(a) *Separate request for each contract.* Prior to entering into negotiations for awarding a contract to which the basic law is applicable, the contracting officer will request the Secretary of Labor, through the chief of the supply service concerned, to predetermine the wage rates to be contained in the contract. This request will be made on Department of Labor Form DB-11, and the instructions on that form will be followed. Since the Department of Labor has stated that the basic law does not apply to the following positions, no predetermination of wages is necessary in their cases:

- Assistant engineer on dredges or floating plant in supervisory positions.
- Assistant foreman.
- Camp assistant.
- Checker.
- Chief engineer.
- Chief mate.
- Civil engineer.
- Clerk.
- Cook.
- Cook's helper.
- Foreman.
- Junior deck officer.
- Master or captain.
- Mate.
- Mess boy.
- Messenger.
- Office manager.
- Pilot.
- Quartermaster or steersman.
- Steward.
- Storekeeper.
- Superintendent.

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Timekeeper.
Waiter.
Watchman.

(b) *Information as to local wage conditions.* Each request submitted as indicated in paragraph (a) will be accompanied by one or more copies of Department of Labor Form DB-15, executed in accordance with the instructions on that form, which require a separate form for each occupation. In filling out this form, the contracting officer will consult the following and consider the information obtained therefrom in forming the opinion which he is required to state on the form:

(1) The Building Trades Council (or some other local federation or council of the various craft unions),

(2) Independent labor organizations not allied with the local Building Trades Council,

(3) Municipal Officials (the commissioner of public works, the city clerk or other officials in charge of municipal construction who have data on the wage rates paid on city projects.

(4) The employers' organizations (such as Master Builders, the Master Painters, or other contractors' associations, the local chamber of commerce, etc.),

(5) Individual contractors and architects in the locality,

(6) The State Labor Department or its equivalent,

(7) The contracting officer and supervising superintendent, and

(8) The local office of the United States Employment Service or affiliated agency.

§ 81.914 *Special contract clause.* Each contract subject to the basic law will contain the following clause:

The minimum wages to be paid laborers and mechanics on this project, as determined by the Secretary of Labor to be prevailing for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the pertinent locality, are as follows:

Classification of laborers and mechanics	Minimum rates of wages per hour

Any class of laborers and mechanics not listed in the preceding paragraph, which will be employed on this contract, shall be classified or reclassified conformably to the foregoing schedule. In the event the interested parties cannot agree on the proper classification or reclassification of a particular class of laborers and mechanics to be used, the question, accompanied by the recommendation of the contracting officer, shall be referred to the Secretary of Labor for final determination.

§ 81.915 *Underpayment of wages.* Where a contracting officer finds that any laborer or mechanic employed by a contractor or subcontractor on work contracted for which is subject to the basic law has been or is being paid a rate of wages less than the wages required by

the contract to be paid, the contracting officer will make a report on Standard Form No. 1093 (Schedule of Deductions from Payments to Contractor), executed as completely as is possible from his records, to the disbursing officer. The latter will complete the execution of the form from his records and transmit it to the office indicated on the form. *Circular Letter A-34106, February 28, 1936, of the Comptroller General.*

WALSH-HEALEY PUBLIC CONTRACTS LAW

§ 81.916 *Walsh-Healey public contracts law; basic law.* (a) Act of June 30, 1936 (49 Stat. 2036; 41 U.S.C. 35-45; M.L., 1939, sec. 747). The law is quoted in the publication referred to in § 81.917 (a).

(b) Subsection 1 (c) of the basic law was amended by the act of May 13, 1942 (Public Law 552—77th Congress) so as to add a colon at the end thereof and the following proviso:

Provided, That the provisions of this subsection shall not apply to any employer who shall have entered into an agreement with his employees pursuant to the provisions of paragraphs 1 or 2 of subsection (b) of section 7 of an Act entitled "Fair Labor Standards Act of 1938".

§ 81.917 *Applicability of Walsh-Healey public Contracts law.* (a) Generally, the law is applicable to all contracts for the purchase of supplies when the amount thereof exceeds \$10,000. The publication of the Department of Labor entitled "Rulings and Interpretations, September 29, 1939, Walsh-Healey Public Contracts Act," and additions and amendments thereto, contain detailed information as to the contracts which are subject to and those exempt from the act.

(b) The following changes and additions to the regulations referred to in paragraph (a) have been published:

(1) Contracts for the rental of equipment are not subject to the act.

(2) Individuals, corporations, or other organizations, not manufacturers or regular dealers as defined by the act, but acting at the instance of Defense Production Associations certified by the War Production Board, are exempt from the representation and stipulation required by section 1 (a) of the act.

(3) All Emergency Plant Facilities Contracts executed on an approved form are exempt from the act.

(4) Ice has been held to be a non-perishable commodity and thus contracts therefor are subject to the act.

(5) An exemption from the application of section 1 (d) and section 2 of the basic law has been granted with respect to employment of girls between the ages of 16 and 18 by contractors in any of the following industries:

- Food processing.
- Leather products (including luggage and saddlery).
- Boots and shoes.
- Rubber products.
- Photographic equipment and supplies.
- Chemical, drug and allied products.
- Surgical and scientific instruments.
- Optical instruments.
- Arms and ammunition.
- Electrical manufacturing.

¹ Cf. Part 201.

✓ See 41 CFR Part 201

Plastic products.
Safety appliances.
Machinery and allied products.
Converted paper products.
Fabrication of metal products (including nonferrous metal products).

Subject to the following conditions:

(i) That no girl under 16 years of age shall be employed.

(ii) That no girl under 18 years of age shall be employed for more than 8 hours in any one day, or between the hours of 10 p. m. and 6 a. m., or in any way contrary to State laws governing hours of work.

(iii) That no girl under 18 years of age shall be employed in any operation or occupation which, under the Fair Labor Standards Act or under any State law or administrative ruling, is determined to be hazardous in nature or dangerous to health.

(iv) That for every girl under the age of 18 years employed by him the contractor shall obtain and keep on file a certificate of age showing that the girl is at least 16 years of age.

(v) That a specific and definite luncheon period of at least 30 minutes be regularly granted any women workers under 18 years of age.

(vi) That no girl under 18 shall be employed at less than the minimum hourly rate set by or under the Fair Labor Standards Act or the Walsh-Healey Public Contracts Act for the industry in which the exemption is granted.

(6) Contracts awarded to any railroad or other carrier are excepted from the representations and stipulations required by section 1 of the act.

(7) ² Contracts negotiated during the present war with States or Territories of the United States or with corporations, commissions or authorities wholly owned and controlled by such States or Territories are exempt from the application of Article 1³ of the Regulations.

(8) Stipulation (c) of Article 1³ of the contract stipulations (page 39 of the Regulations) has been amended so as to add a colon at the end thereof and the following provisos:

Provided, however, That the provisions of this stipulation shall not apply to any employer who shall have entered into an agreement with his employees pursuant to the provisions of paragraphs 1 or 2 of subsection (b) of section 7 of an act entitled "The Fair Labor Standards Act of 1938": *Provided further,* That in the case of such an employer, during the life of the agreement referred to, the applicable overtime rate set by the Secretary of Labor shall be paid for hours in excess of 12 in any 1 day or in excess of 56 in any 1 week and if such overtime is not paid, the employer shall be required to compensate his employees during that week at the applicable overtime rate set by the Secretary of Labor for hours in excess of 8 in any 1 day or in excess of 40 in any 1 week.

(9) Article 103 (Overtime) of the Administrative Regulations (page 42 of the Regulations) has been amended so as to add the following paragraph:

In the case of any employer who shall have entered into an agreement with his employees pursuant to the provisions of paragraphs 1 or 2 of subsection (b) of section 7 of an Act entitled "The Fair Labor Standards

Act of 1938," the foregoing requirements shall be the same except that during the life of the agreement overtime compensation shall be payable only for hours worked in excess of 12 in any 1 day or in excess of 56 in any 1 week. If overtime is not paid for hours in excess of 12 in any 1 day or in excess of 56 in any 1 week, the employer shall be required to compensate his employees during that week for overtime for hours in excess of 8 in any 1 day or in excess of 40 in any 1 week. The requirements of section 7 (b) 1 and 2 of the Fair Labor Standards Act are more fully explained in Interpretative Bulletin No. 8 of the Wage and Hour Division.

§ 81.918 *General instructions relative to Walsh-Healey public contracts law.*

(a) The regulations and instructions contained in "Ruling and Interpretations, September 29, 1939, Walsh-Healey Public Contracts Act", and amendments thereto, will be complied with by all contracting officers. Chiefs of supply services are responsible for furnishing this publication and a supply of the forms referred to therein to each of their contracting officers.

(b) The prospective contractors will be informed of applicable minimum wage determinations, if any, in advance of or coincident with negotiating contracts.

(c) Requests for exceptions, modifications and exemptions authorized by section 6 of the basic law will be submitted to the Purchases Branch, Procurement and Distribution Division, Headquarters, Services of Supply, by the chief of the supply service concerned.

(d) The minimum wage determinations made to date by the Secretary of Labor are published in the succeeding sections.

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§ 81.919 *Knitted and men's woven underwear and commercial knitting industry.* Knitted and men's woven underwear and commercial knitting. The following described manufacturing, processing, and finishing operations:

(a) The manufacturing, dyeing, or other finishing of any knitted fabrics made from any yarn or mixture of yarns, *except:*

(1) The knitting from any yarn or mixture of yarns and the further manufacturing, dyeing, or other finishing of knitted garments, knitted garments sections, or knitted garment accessories for use as external apparel or covering which are partially or completely manufactured in the same establishment as that where the knitting process is performed: *Provided,* That this exception shall not be construed to apply to the garments or garment accessories designated in paragraph (b) of this section.

(2) Fulled suitings, coatings, topcoatings, or overcoatings containing more than 25 percent, by weight, of wool or animal fiber other than silk.

(3) Hosiery.

(b) The manufacturing, dyeing, or other finishing from any yarn or mixture of yarns, or from purchased knitted fabric, of any of the following products:

(1) Knitted garments or garment accessories for use as underwear, sleeping wear, or negligees.

(2) Fleece-lined garments made from knitted fabric containing cotton only or containing any mixture of cotton and not more than 25 percent, by weight, of wool or animal fiber other than silk.

(3) Knitted shirts of cotton or any synthetic fiber or any mixture of such fibers which have been knit on machinery of 10-cut or finer in the same establishment as that where the knitting process is performed.

² 7 F.R. 3992.

³ § 201.1, 7 F.R. 4494.

⁴ C41, CFR, Part 201.

See pg

(4) Knitted towels or cloths.

(c) The manufacturing of men's and boys' underwear from any woven fabric.

Date effective—March 3, 1942.

Wage—40 cents per hour or \$16.00 per week of 40 hours, arrived at either upon a time or piece work basis. Learners and handicapped workers may be employed in accordance with the present regulations under the Fair Labor Standards Act, which were adopted for the purposes of this wage determination.

§ 81.920 *Work gloves industry.* Including leather work gloves, leather-palm cotton gloves, all canvas or cotton-flannel work gloves, knit gloves, woolen knit lined gloves, and officers' white cotton gloves.

Date effective—August 2, 1937.

Wage—\$14.00 per week for a week of 40 hours or 35 cents per hour, arrived at either upon a time or piece work basis.

A tolerance of not to exceed 10 per cent of the workers in any one establishment is granted for those workers who are in fact learners or handicapped or superannuated workers, subject to the conditions that they be paid not less than 25 cents per hour or \$10.00 per week and not less than piece rates paid to other workers in the same establishment and that they be qualified for such exemption in accordance with such requirements as may be established hereafter.

§ 81.921 *Seamless hosiery industry.* Manufacture and furnishing of seamless hosiery.

Date effective—March 30, 1942.

Wage—\$14.40 per week for a week of 40 hours, or 36 cents per hour, arrived at either upon a time or piece work basis. Learners and handicapped workers may be employed in accordance with the present regulations under the Fair Labor Standards Act of 1938 which regulations were adopted for the purposes of this wage determination.

§ 81.922 *Men's hats and caps industry.*

Date effective—August 2, 1937.

Wage—67.5 cents per hour or \$27.00 per week for a 40-hour week, to be arrived at either upon a time or piece work basis.

Variation from minimum wage determination.

Date effective—February 11, 1938.

A tolerance of not more than 20 per cent of the employees in any one factory whose activities at any given time are subject to the provisions of the basic law is granted for auxiliary workers: *Provided*, That such auxiliary workers be paid a wage of not less than 37.5 cents per hour or \$15.00 per week for a 40-hour week, arrived at either upon a time or piece work basis: *And provided further*, That the term "auxiliary worker" when used in connection with employees in the uniform cap and in the stitched hat branches of the industry shall not be interpreted to include cutters or workers in the cutting room, machine workers, or workers on any kind of machine, blockers, pressers, or handsewers.

Extension of minimum wage determination—Women's hats and caps.

Date effective—July 11, 1942.

Wage—The minimum wage for the manufacture or furnishing of women's hats and caps of design and construction similar to those covered by the above determinations effective August 2, 1937 and February 11, 1938, for the men's hat and cap industry shall be the minimum wage set forth in those determinations.

Nothing in this determination shall be interpreted as abrogating any obligation that may have been incurred under the previous determinations for the industry.

§ 81.923 *Men's raincoat industry.* Including vulcanized and rubberized raincoats and raincoats made from material known under the registered trade-mark of "Cravanette" or from fabric chemically or otherwise treated so as to render it water-resistant (except oiled cotton).

Date effective—Determined to be September 18, 1939.

Wage—40 cents per hour or \$16.00 per week of 40 hours, arrived at either on a time or piece work basis.

A tolerance of not to exceed 10 per cent of the workers in any one establishment is granted for those workers who are in fact learners, handicapped or superannuated workers, subject to the conditions that they be paid not less than 25 cents per hour or \$10.00 per week for a 40-hour week and not less than the piece rates paid to other workers in the same establishment, and that they be qualified for such exemption in accordance with such requirements as may be established hereafter.

Extension of minimum wage determination—Men's and women's oiled cotton waterproof outer garments and other oiled waterproof rainwear.

Date effective—March 6, 1941.

Wage—The minimum wage determination for men's raincoats, including the tolerance provision applicable thereto, is extended to the manufacture of men's and women's oiled cotton waterproof outer garments and other oiled waterproof rainwear.

§ 81.924 *Cotton garments and allied industries.* Miscellaneous garments whether made of wool or cotton:

Men's and youths' trousers and knickers (except those made wholly of wool).

Shirts and nightwear (including flannel).

Men's and youths' work shirts.

Men's and youths' and boys' sleeping garments.

Overalls, overall jackets, and one-piece overall suits.

Work pants and breeches (except those made wholly of wool).

Work and other short coats.

Windbreakers and lumberjackets (excluding mackinaws and leather and sheep-lined coats).

Oiled waterproof cotton outer garments.

Men's and youths' wash suits.

Washable service apparel (hospital, professional, etc.).

Blanket-lined and similar coats.

Other cotton outerwear, men's, youths'.

Wool and wool-lined jackets whether or not such jackets are properly described as windbreakers, lumberjackets, or blanket-lined or similar coats, or as work and other short coats, or by other designation.

Date effective—August 2, 1937.

Wage—37.5 cents per hour or \$15.00 per week for a week of 40 hours, to be

arrived at either upon a time or piece work basis.

A tolerance not to exceed 10 per cent of the workers in any one establishment is granted for those workers who are in fact learners: *Provided*, That such learners be paid not less than \$8.00 per week for the first four weeks, \$10.00 for the next four weeks, and \$12.00 for the third four-week period after which they shall receive \$15.00: *Provided*, That they be paid during the twelve weeks learning period not less than the piece rates paid to the workers in the same establishment: *And provided further*, That such learners be on the pay roll at the time performance of the contract is started; and that an additional tolerance of 10 per cent be granted for those workers who are in fact handicapped or superannuated: *Provided*, That they be paid not less than the piece rates paid to the workers in the same establishment: *And provided further*, That all such learners, handicapped or superannuated workers be qualified for such exemption in accordance with such requirements as may be hereafter established.

Leather and sheep-lined coats are expressly excepted from the above.

Extension of minimum wage determination—Barrack bags and bandoleers.

Date effective—February 14, 1938.

Wage—The minimum wage determination for the cotton garment and allied industries is extended to the manufacture of barrack bags of the type described in U. S. Army Specifications No. 6-245, and to bandoleers of the type described in U. S. Army Specifications No. 50-1-13-A.

Extension of minimum wage determination.

Date effective—March 6, 1941.

Wage—The minimum wage determination for the cotton garment and allied industries, together with the tolerance provision applicable to learners, as previously set forth, is extended to the manufacture and supply of the articles listed below:

Ammunition and cartridge belts made of textiles.

Canvas leggings.

Cot covers.

Fabric pouches and carriers for first aid equipment, such as:

Kit canteen ring straps.

Kit inserts.

Kit laces.

Kit pouches.

Kit suspenders.

Mattress covers.

Mosquito bars.

Wardrobe bags with draw-strings made of textiles.

§ 81.925 *Men's neckwear industry.* All but knitted neckwear.

Date effective—August 2, 1937.

Wage—50 cents per hour or \$20.00 per week for a 40-hour week, arrived at either upon a time or piece work basis.

A tolerance of not to exceed 10 per cent of the workers in any one establishment is granted for those workers who are in fact learners or handicapped or superannuated workers, exclusive of boxers and trimmers, with an additional tolerance to persons actually employed as boxers and trimmers: *Provided*, That all

such workers including learners, handicapped and superannuated workers and boxers and trimmers, be paid not less than 37.5 cents per hour or \$15.00 per week for a 40-hour week and not less than the piece rates paid to all other workers in the same occupational classification: *And provided further*, That all such employees be qualified for such exception in accordance with such requirements as may be established hereafter.

§ 81.926 *Dimension granite industry*. Including monumental stone, building stone, paving blocks, curbing, riprap, and rubble, but not crushed stone.

Date effective—January 15, 1938.

Wage—In Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, and New York—57.5 cents per hour or \$23.00 per week based on a 40-hour week, arrived at either on a time or piece work basis.

In North Carolina, Virginia, South Carolina, Georgia, Florida, Alabama, Tennessee, Kentucky, Mississippi, Louisiana, Arkansas, and Texas—32.5 cents per hour or \$13.00 per week based on a 40-hour week, arrived at either on a time or piece work basis.

In Pennsylvania, Maryland, Wisconsin, Minnesota, South Dakota, and all other States not included in the foregoing subparagraphs—42.5 cents per hour or \$17.00 per week based on a 40-hour week, arrived at either on a time or piece work basis.

Monumental stone, building stone, paving blocks, curbing, riprap, and rubble, specifically made subject to the minimum wage determination for the dimension granite industry, are exclusively products of granite quarries, and such stones when the products of other quarries are not subject to the minimum wage determination for the dimension granite industry.

§ 81.927 *Shoe manufacturing and allied industries*. The term "shoe manufacturing and allied industries" means:

(a) The manufacture or partial manufacture of footwear from any material and by any process except knitting, vulcanizing of the entire article or vulcanizing (as distinct from cementing) of the sole to the upper.

(b) The manufacture or partial manufacture of the following types of footwear, subject to the limitations of paragraph (1) but without prejudice to the generality of that paragraph:

Athletic shoes.
Boots.
Boot tops.
Burial shoes.
Custom made boots or shoes.
Moccasins.
Puttees, except spiral puttees.
Sandals.
Shoes completely rebuilt in a shoe factory.
Slippers.

(c) The manufacture from leather or from any shoe-upper material of all cut stock and finding for footwear, including bows, ornaments, and trimmings.

(d) The manufacture of the following types of stock and findings for foot-

wear from any material except from rubber or composition of rubber, molded to shape:

Cutsoles.	Shanks.
Midsoles.	Boxtoes.
Insoles.	Counters.
Taps.	Stays.
Lifts.	Stripping.
Rands.	Sock linings.
Toplifts.	Heel pads.
Bases.	

(e) The manufacture of heels of any material except molded rubber, but not including the manufacture of wood-heel blocks.

(f) The manufacture of cut upper parts for footwear, including linings, vamps and quarters.

(g) The manufacture of pasted shoe stock.

(h) The manufacture of boot and shoe patterns.

Date effective—July 11, 1942.

Wage—40 cents an hour or \$16.00 for a week of 40 hours, arrived at on a time or piece work basis.

Learners, handicapped workers, and apprentices may be employed in accordance with the following regulations under the Fair Labor Standards Act of 1938, which are hereby adopted for the purpose of this wage determination: Regulations Applicable to the Employment of Learners (5 F.R. 2862; Title 29, Chapter V, Code of Federal Regulations, Part 522); Regulations Applicable to the Employment of Handicapped Persons (5 F.R. 2959; Title 29, Chapter V, Code of Federal Regulations, Part 524); Regulations Applicable to the Employment of Apprentices (5 F.R. 3766; Title 29, Chapter V, Code of Federal Regulations, Part 521); and the Regulations Applicable to the Employment of Handicapped Clients in Sheltered Workshops (5 F.R. 655; Title 29, Chapter V, Code of Federal Regulations, Part 525).

Nothing in this determination shall be interpreted as abrogating any obligation that may have been incurred under the previous determination for the Men's Welt Shoe Industry.

§ 81.928 *Handkerchief industry*. Handkerchiefs.

Date effective—January 26, 1938.

Wage—35 cents per hour or \$14.00 per week for a week of 40 hours, arrived at either upon a time or piece work basis.

§ 81.929 *Envelope industry*. Envelopes.

Date effective—May 12, 1938.

Wage—42.5 cents per hour or \$17.00 per week for a week of 40 hours, to be arrived at either upon a time or piece work basis.

§ 81.930 *Vitreous or vitrified china industry*. Vitreous or vitrified china, excluding semivitreous or semivitrified china.

Date effective—May 19, 1938.

Wage—42.75 cents per hour or \$17.10 per week for a week of 40 hours, to be arrived at either upon a time or piece work basis. The Administrator for the Public Contracts Division, Department of Labor, advises the above applies only to

"tableware, kitchenware, dinnerware, and kindred lines, and NOT to plumbers' and sanitary supplies."

§ 81.931 *Leather, leather trimmed, and sheep-lined garments industry*. All leather, leather trimmed, and sheep-lined garments for men, women, or children.

Date effective—September 19, 1941.

Wage—42.5 cents per hour or \$17.00 per week of 40 hours, arrived at either upon a time or piece rate basis.

NOTE: The Administrator of Public Contracts, Department of Labor, in letter dated January 6, 1942, states that it has been determined that sheep-lined aviation helmets and leather aviation helmets come within the purview of the above determination.

§ 81.932 *Flint glass industry*.

Date effective—July 12, 1938.

Wage—42.5 cents an hour or \$17.00 per week for a week of 40 hours, arrived at either upon a time or piece work basis.

The flint glass industry produces such types of glassware, as illuminating, table glassware, all thin blown glass, thermos bottles, chemical and laboratory ware, perfumery ware, stoppers and bottles, and the like, which character of glassware is produced by the pressed, pressed and blown, off hand and blown method, cutting and polishing; in fact, all types of glassware other than window, plate, and rolled glass, common bottles, containers, and prescription glassware.

NOTE: The Department of Labor has advised that this wage determination is intended to cover all types of glassware other than window, plate and rolled glass, common bottles, containers, and prescription glassware. Among the items particularly included under this intended coverage are fiberglass and fiberglass products.

§ 81.933 *Luggage and saddlery industries*. Luggage, including mail satchels or pouches.

Date effective—July 27, 1938.

Wage—40 cents an hour or \$16.00 per week of 40 hours, arrived at either upon a time or piece work basis for the States of Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, Pennsylvania, New Jersey, Maryland, Delaware, Washington, Oregon, California, Idaho, Nevada, Arizona, Montana, Wyoming, Utah, Colorado, New Mexico; and 37.5 cents an hour or \$15.00 per week of 40 hours, arrived at either upon a time or piece work basis, for the other 26 States and the District of Columbia.

Extension of minimum wage determination. Carrier's tie straps and leather pouches.

Date effective—October 11, 1939.

Wage—That the minimum wage determination for the luggage and saddlery industries is extended to the manufacture of carrier's tie straps and leather pouches, consisting of a leather pouch or pocket of holster type with belt loop used for carrying pliers and knife.

§ 81.934 *Fireworks industry*—(a) *Commercial fireworks division*. Commercial fireworks.

Date effective—October 15, 1938.

Wage—31.25 cents an hour or \$12.50 per week for a week of 40 hours, arrived at either upon a time or piece work basis.

(b) *Fusee division.* Fusees, flares, and ship and railroad torpedoes.

Date effective—October 15, 1938.

Wage—37.5 cents an hour or \$15.00 per week for a week of 40 hours, arrived at either upon a time or piece work basis.

§ 81.935 *Wool carpet and rug industry.* Wool carpets and rugs (exclusive of rag rugs).

Date effective—October 15, 1938.

Wage—40 cents an hour or \$16.00 per week of 40 hours, to be arrived at either upon a time or piece work basis. [Par. 935]

§ 81.936 *Tag industry.* Tags.

Date effective—September 23, 1941.

Wage—40 cents an hour or \$16.00 per week of 40 hours, arrived at either upon a time or piece work basis.

§ 81.937 *Aircraft manufacturing industry—*(a) The aircraft manufacturing industry is that industry which manufactures airplanes and gliders, aircraft-type engines, aircraft propellers, parts and accessories for the above-mentioned products, and specialized aircraft servicing equipment.

(b) Expressly excluded from the scope of the definition are such commodities as:

(1) *Fabricated textile products.* Fabric covers (including engine-warming covers); parachutes; safety belts; tow targets; and wind socks.

(2) *Pyrotechnics.* Cartridges for engine starters; and flares and signals.

(3) *Electrical and radio equipment.* Batteries; electric wire and cable; inter-communication equipment; landing and navigation lights; lighting systems; radios; and radio compasses.

(4) *Rubber products.* Rubber de-icing equipment; flotation gear; life preservers and life rafts; bonded rubber mountings and vibration dampers; rubber utilities; and tires and tubes.

(5) *Machine shop products and machinery.* Bearings; bolts, nuts, rivets, screws and washers; gas refueling systems (including refueling pumps); gears and sprockets; piston rings; springs; and wire rope.

(6) *Miscellaneous products.* Cameras; fire extinguishers; first aid equipment; gaskets; instruments; lavatory equipment; and lighter-than-air craft.

Date effective—May 7, 1942.

Wage—50 cents an hour or \$20.00 for a week of 40 hours, arrived at on a time or piece-work basis.

Nothing in this determination shall be interpreted as abrogating any obligation that may have accrued under the terms of the determinations for the industry effective on December 29, 1938, and on November 18, 1941.

§ 81.938 *Bobbinet industry.* See § 81.960 (Textile industry).

§ 81.939 *Iron and steel industry.* This determination covers only pig iron, iron

or steel ingots, and rolled or drawn iron or steel products as hereinafter stated, and such fabricated iron or steel products as are specifically named but does not include any unspecified coated, insulated, forged, or cast items. The definition as formulated below describes the products of the iron and steel industry and the provisions thereof do not apply to any production in open hearth and electric furnaces other than that specifically enumerated.

The iron and steel industry is defined to mean and include the business of producing and selling all or any one or more of the following products:

Axles—rolled or forged.
Bale ties—single loop.
Bars—alloy steel, hot rolled.
Bars—cold finished, carbon and alloy.
Bars—concrete reinforcing, straight lengths.

Bars—ingots, blooms and billets—iron.
Bars—merchant steel.
Bars—tool steel.
Ferro-manganese and spiegeleisen.
Glider rails and splice bars therefor.
Ingots, blooms, billets and slabs—alloy.
Ingots, blooms, billets and slabs—carbon.
Light rails—60 pounds or less per yard, and splice bars and angle bars therefor.

Standard tee rails of more than 60 pounds per yard, and angle bars and rail joints therefor, or any of such products.

Mechanical tubing.
Pig iron—foundry, high silicon silvery, malleable, open hearth basic, Bessemer, and high silicon Bessemer.

Pig iron—low phosphorus.
Pipe—standard, line pipe, and oil country tubular products.

Plates.
Posts—fence and sign.
Railroad tie plates.
Railroad track spikes.
Sheet bars.

Sheets.
Skelp.
Steel sheet piling.
Strip steel—cold rolled.
Strip steel—hot rolled.
Structural shapes.

Tubes—boiler.
Tube rounds.
Wheels—car, rolled steel.
Wire—drawn.

Wire hoops—twisted or welded.
Wire nails and staples, twisted barbless wire, barbed wire, twisted wire fence stays and wire fencing (except chain-link fencing).

Wire rods.
Wire—spring.
Wire—telephone.

Date effective—Note. This determination was originally effective March 1, 1939, but its operation was subsequently suspended due to court proceedings. Its operation was again resumed effective May 27, 1940.

Wage—Whether arrived at on a time or piece work basis, 45 cents per hour in the locality consisting of the States of Louisiana, Arkansas, Mississippi, North Carolina, South Carolina, Florida, Oklahoma, Texas, Alabama, Tennessee, Georgia, Virginia, and West Virginia (except the counties of Hancock, Brooke, Ohio, Harrison, Monongalia, and Marshall).

60 cents per hour in the locality consisting of the States of Washington, Ore-

gon, California, Montana, Idaho, Nevada, Wyoming, New Mexico, Utah, Colorado, and Arizona;

58½ cents per hour in the locality consisting of the States of North Dakota, South Dakota, Nebraska, Kansas, Minnesota, Iowa, Missouri, and the area in and about East Saint Louis, Illinois;

62½ cents per hour in the locality consisting of the States of Wisconsin, Illinois (except the area in and about East Saint Louis, Illinois), Michigan, Indiana, Ohio, Pennsylvania, Delaware, Maryland, Kentucky, New Jersey, New York, Connecticut, Rhode Island, Massachusetts, Vermont, New Hampshire, Maine, and that portion of the State of West Virginia comprised within the counties of Hancock, Brooke, Ohio, Marshall, Harrison, and Monongalia, and the District of Columbia.

Provided, That apprentices may be employed at lower rates if their employment conforms to the standards of the Federal Committee on Apprenticeship.

This wage determination has heretofore been interpreted to cover the following:

Plate, armor;
Strips, galvanized;
Sheets, galvanized;
Plates, galvanized;
Shapes, structural, galvanized; and to exclude the following:
Wire, telephone, insulated;
Rods, welding, coated.

§ 81.940 *Tobacco industry.* Cigarettes, chewing and smoking tobacco, snuff (cigars are specifically excluded).

Date effective—May 2, 1939.

Wage—32.5 cents an hour or \$13.00 per week of 40 hours, arrived at either upon a time or piece work basis.

§ 81.941 *Furniture industry.* This determination applies to all contracts subject to the basic law, for any of the commodities included in the determination under the wood furniture branch, the public seating branch, and the metal furniture branch of the furniture manufacturing industry.

*Metal furniture branch—*The metal furniture branch of the furniture manufacturing industry is defined to be that industry whose products include:

Metal office furniture—Vertical filing cabinets; horizontal sections and half sections, and bookcases; hi-line and bookshelf units; desks; tables; chairs; storage cabinets; and wardrobes.

Metal hospital furniture.
Metal household furniture.

Steel shelving—Industrial and general purpose steel shelving, miscellaneous fittings, attachments, and accessories.

Steel lockers—Box lockers; single-tier lockers; double-tier lockers; two-person and compartment lockers; miscellaneous fittings as used in schools, clubs, gymnasiums, commercial, and industrial establishments.

Visible filing equipment—Cabinets; panels.

Date effective—May 13, 1939.

Wage—45 cents an hour or \$18.00 per week of 40 hours, arrived at either upon a time or piece rate basis.

Extension of minimum wage determination—Metal furniture branch.

Date effective—July 28, 1941.

Wage—That the minimum wage determination for the metal furniture branch of the furniture industry is extended to the manufacture of metal cabinets for printers' type; metal cabinet partitions; metal tool boxes, tool cabinets, and tool chests; metal trunks, box type; metal rotating bins; metal sectional bins; and metal work benches, desks, and tables.

Public seating branch—The public seating branch of the furniture manufacturing industry is defined to be that industry which fabricates, assembles, and installs (by those who fabricate or assemble) public seating (upholstered or unupholstered), fabricated or assembled of wood, plywood, iron, steel, nonferrous metals, or any combinations of these materials, and consisting of the following:

Fixed or connected seating for such public places as theaters, auditoriums, lodges, assembly halls, shoe stores, rinks, ball parks, race tracks, stadia, and other similar buildings and structures;

Pewing, chancel, choir stalls, and related furniture and accessories for ecclesiastical purposes, seats and benches for court houses, hospitals, public waiting rooms, and for other similar public purposes;

Pupils' desks, pupils' tables, pupils' chairs, and school furniture for all educational purposes;

Portable chairs with folding seats in both single and multiple units;

Portable folding seating in single units for other than household use.

Provided, That the following are specifically not included: Tablet armchairs and school chairs fabricated and/or assembled exclusively of wood.

Date effective—May 13, 1939.

Wage—37.5 cents an hour or \$15.00 per week of 40 hours, arrived at either upon a time or piece rate basis.

Wood furniture branch—The wood furniture branch of the furniture manufacturing industry is defined to be that industry whose products include living room, library, bedroom, dining room, kitchen, hall, and office furniture (upholstered or unupholstered); chairs (upholstered or unupholstered), desks, and tables for other uses not specifically excepted herefrom; parlor frames, chairs in the white, furniture parts of wood, and other unfinished household furniture.

"Furniture parts of wood" shall be understood to mean wood parts for furniture where the process of manufacture has advanced so far that the product can be used only in the production of furniture but not to include hardwood dimension stock nor plywood.

Studio couches, household furniture made of metal, fiber, rattan, reed, and willow are not comprehended by this minimum wage determination for the wood furniture manufacturing industry.

Store and lunchroom furniture and fixtures, furniture for professional uses in laboratories, hospitals, barber shops, and beauty parlors, as well as such specialized products as porch, camp, and juvenile furniture, are also excluded from the definition of the wood furniture manufacturing industry.

Date effective—May 13, 1939.

Wage—For the States of Maine, Vermont, New Hampshire, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Ohio, Indiana, Illinois, Michigan, Wisconsin, Minnesota, Iowa, Missouri, Maryland, West Virginia, Delaware, Kansas, Nebraska, South Dakota, North Dakota, Montana, Wyoming, Colorado, New Mexico, Arizona, Utah, Idaho, Nevada, and the District of Columbia, 35 cents an hour or \$14.00 per week of 40 hours, arrived at either upon a time or piece rate basis.

For the States of Virginia, Kentucky, North Carolina, Georgia, South Carolina, Florida, Alabama, Tennessee, Arkansas, Louisiana, Oklahoma, Texas, and Mississippi, 30 cents an hour or \$12.00 per week of 40 hours, arrived at either upon a time or piece rate basis.

For the States of California, Washington, and Oregon, 50 cents an hour or \$20.00 per week of 40 hours, arrived at either upon a time or piece rate basis.

§ 81.942 **Drug and medicine industry**. Manufacture or packaging of any one or more of the following products:

Drugs or medicinal preparations (other than food) intended for internal or external use in the diagnosis, treatment, or prevention of disease in, or to affect the structure or any function of, the body of man or other animals;

Dentrifices, cosmetics, perfume, or other preparations designed or intended for external application to the person for the purpose of cleansing, improving the appearance of, or refreshing the person.

The foregoing shall not be deemed to include the manufacture or packaging of shaving cream, shampoo, essential (volatile) oils, glycerine, and soap, or the milling or packaging without further processing of crude botanical drugs.

Date effective—September 19, 1941.

Wage—40 cents per hour or \$16.00 per week of 40 hours, arrived at either upon a time or piece rate basis.

§ 81.943 **Photographic supplies industry**. Cameras, including motion-picture cameras (except 35 millimeter); photostat and blueprint machines; tripods, film rewinders and reels, shutters, and other photographic accessories (except 35 millimeter); such equipment as flashlight apparatus, plate holders, developing apparatus; supplies such as films, photographic paper, and plate; and projectors of all types (except 35 millimeter).

Date effective—August 14, 1939.

Wage—40 cents an hour or \$16.00 per week of 40 hours, arrived at either upon a time or piece work basis: **Provided**, That learners may be employed at lower rates for a period of not to exceed 60 days if the total number of such workers in any one establishment does not exceed 5 percent of the workers on the payroll, and if such learners are paid not less than 80 percent of the minimum wage as determined, or 32 cents an hour or \$12.80 per week of 40 hours, arrived at either upon a time or piece work basis.

(This determination was extended to include the blueprint paper coating industry. See § 81.944).

§ 81.944 **Blueprint paper coating industry**. The blueprint paper coating industry includes the manufacture or supply of blueprint, brownprint, blackprint, blackline, and other similarly sensitized papers and cloths.

Date effective—October 11, 1940.

Wage—The prevailing minimum wage determination for the photographic supplies industry, set forth in § 81.943 has been extended to include the blueprint paper coating industry.

§ 81.945 **Soap industry**. Soap in bars, cakes, chips, and flakes, and in granulated, powdered, paste, and liquid forms, and glycerine; cleansers containing soap, scouring powders, and shaving soaps, and creams containing soap, and washing compounds containing soap.

Date effective—August 14, 1939.

Wage—40 cents an hour or \$16.00 per week of 40 hours, arrived at either upon a time or piece work basis.

§ 81.946 **Fertilizer industry**. Superphosphates, concentrated superphosphates, and concentrated fertilizer from superphosphates, potash, and ammoniates.

Date effective—September 12, 1939.

Wage—The amount indicated for each of the following groups of States, whether arrived at upon a time or piece work basis.

For the States of Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Delaware (except Kent and Sussex Counties), Maryland (except the Eastern Shore consisting of Cecil, Kent, Queen Annes, Talbot, Caroline, Dorchester, Wicomico, Worcester, and Somerset Counties), West Virginia, Ohio, Indiana, Michigan, Wisconsin, Illinois, Missouri, Iowa, Minnesota, North Dakota, South Dakota, Nebraska, Kansas, and the District of Columbia, 40 cents an hour or \$16.00 per week of 40 hours.

For the States of New Mexico, Colorado, Wyoming, Montana, Idaho, Utah, Arizona, Nevada, California, Oregon, and Washington, 50 cents an hour or \$20.00 per week of 40 hours.

For Kent and Sussex Counties of Delaware, the Eastern Shore of Maryland (including Cecil, Kent, Queen Annes, Talbot, Caroline, Dorchester, Wicomico, Worcester, and Somerset Counties), Virginia, Tennessee, and Kentucky, 30 cents an hour or \$12.00 per week of 40 hours.

For the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas, Oklahoma, and Texas, effective April 19, 1940, 30 cents an hour or \$12.00 per week of 40 hours.

§ 81.947 **"Specialty accounting" supply manufacturing industry**. The commodities covered by this determination are as follows:

(a) Autographic and/or credit registers and/or supplies thereof, such as are used in making handwritten records of various transactions.

(1) Autographic registers may be further described as a machine or device for storing, alining, registering, and issuing copies of hand written records.

(i) The accounting forms are usually folded in zigzag style, although some roll stationery is used. Such accounting forms are usually printed with the name and business of the user, but stock printed forms and plain stationery may be used. One or multiple copies of stationery may be used. Some roll and folder stationery is provided with edge perforations which engage pin sprockets for registration of forms.

(ii) The one or several carbon copies required may be arranged on rolls at right angles to rolls of stationery or such carbon sets may be interleaved with the forms and may cover the entire area or only a part of such forms.

(iii) Registers may be equipped to retain one or more copies of the transaction in a lock compartment and to issue the remaining copies. Registers may be supplied with a cash drawer, which is opened only by an operation which delivers a serially numbered form into a locked compartment.

(2) Credit registers may be further described as a cabinet or device for retaining in orderly arrangement sales tickets representing charge and other transactions.

(i) Such credit registers usually contain a set of vertical-hinged leaves, each leaf containing several numbered springs, the numbers corresponding with customers' names written on an index.

(ii) Such registers usually contain a storage and cash drawer and are sometimes supplied in combination with adding machines.

(b) Continuous form stationery, which is described as multiple sets of "business forms" with or without carbons, attached and/or folded, for use in billing machines, typewriters, and other office equipment. For example, continuous form stationery may be rolled or "fan folded" and may provide any number of copies up to the limit which will take a carbon impression. This type of stationery is usually printed according to specifications. They may be coated with carbon on the back or interleaved with carbon sheets.

(c) Sales and manifold books, which are described as bound books of multiple sets of forms for making original, handwritten records of sales and/or other transactions. For example, sales books are bound books of sales checks or tickets arranged in sets, usually either carbon coated on the back or arranged to fold or lay one or more carbon sheets between each two copies of a set. Translucent sheets are occasionally combined with carbon paper coated on both sides to reduce the number of carbon sheets. Covers may be arranged to fold in for the purpose of providing a better writing surface and may be ruled for tabulating sales. Sales books may or may not be printed.

Date effective—November 1, 1939.

Wage—40 cents per hour or \$16.00 per week of 40 hours, arrived at either upon a time or piece work basis: *Provided*, That apprentices may be employed at lower rates if their employment conforms with the standards of the Federal Committee on Apprenticeship.

§ 81.948 *Explosives and related products industry.* Blasting and detonating caps.

Date effective—October 19, 1939.

Wage—47.5 cents per hour or \$19.00 per week of 40 hours, arrived at either upon a time or piece rate basis. Apprentices may be employed at lower rates than herein determined: *Provided*, Their employment conforms to the standards of the Federal Committee on Apprenticeship.

Powder and other explosives. Dynamite; nitroglycerine; black blasting powder; pellet and fuse powder; smokeless gun powder; permissible explosives (those approved by the United States Bureau of Mines for use in mines where dust and gas explosions are likely to occur).

List of permissible explosives as of June 30, 1941, according to Bureau of Mines Report of Investigations 3583, has been published. Where necessary, copies should be obtained by purchasing officers from the chief of the supply service concerned.

Date effective—October 19, 1939.

Wage—57.5 cents an hour or \$23.00 per week of 40 hours, arrived at either upon a time or piece rate basis. Apprentices may be employed at lower rates than herein determined: *Provided*, Their employment conforms to the standards of the Federal Committee on Apprenticeship.

Small arms ammunition. Ammunition and parts thereof for small arms and such related products as saluting primers and cartridges for cartridge type aircraft engine starters.

Date effective—Determined to be October 19, 1939.

Wage—42.5 cents an hour or \$17.00 per week of 40 hours, arrived at either upon a time or piece rate basis. Apprentices may be employed at lower rates than herein determined: *Provided*, Their employment conforms to the standards of the Federal Committee on Apprenticeship.

§ 81.949 *Paper and pulp industry.* Pulp and other fiber and the primary conversion of pulp and other fiber into paper and paperboard, and in addition, the manufacture and conversion of primary paper into toilet paper and paper towels, coated book paper, and paper shipping sacks.

Date effective—Determined to be October 15, 1939.

Wage—For the States of Virginia, North Carolina, South Carolina, Georgia, Alabama, Tennessee, Kentucky, Mississippi, Louisiana, Arkansas, Oklahoma, Florida, and Texas, 35 cents an hour or \$14.00 per week of 40 hours, arrived at either upon a time or piece work basis.

For the States of Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Delaware, Maryland, West Virginia, Ohio, Indiana, Michigan, Wisconsin, Illinois, Missouri, Iowa, Minnesota, North Dakota, South Dakota, Nebraska, Kansas, New Mexico, Colorado, Wyoming, Montana, Idaho, Utah, Arizona, Nevada, and the District of Colum-

bia, 39 cents an hour or \$15.60 per week of 40 hours, arrived at either upon a time or piece work basis.

For the States of Washington, Oregon, and California, 50 cents an hour or \$20.00 per week of 40 hours, arrived at either upon a time or piece work basis.

The following explanation of this determination has been received from the Public Contracts Division, Department of Labor:

Except for those products listed in the determination as manufactured on converted from primary paper, this determination is limited in application to paper and paperboard manufactured from pulp and other fiber, and to pulp and other fiber of the character used in manufacturing paper and paperboard. The majority of paper and paperboard items purchased by the Government that are subject to this wage determination are classified and listed as follows:

(a) *Book paper, writing paper, and cover paper.* (1) Book paper includes antique-finish, book end, coated book, half-tone, lithograph, machine-finished size and supercalendered, and offset papers.

(2) Cover paper includes laid cover and machine-finish cover papers.

(3) Writing paper includes bond, duplicate check copies, index, internal revenue ledger, manifold (including glazed), map, mimeograph, parchment deed, vellum finish, and postage stamp papers.

(b) *Building paper.* Felts and sheathing paper.

(c) *Ground-wood printing and specialty paper.* Blueprint paper (unsensitized distinctive papers (public debt, securities, etc.), safety papers (safety device incorporated in manufacture of paper), and tracing paper.

(d) *Newsprint paper.* Facing slips and newsprint paper.

(e) *Paperboards.* Back-lining, binder's board or tarboard, bristol board, chipboard, lined boards (box, chip, marble-grained), newsboard, pressboard, red sulphite, tag board, manila card-board, and strawboard.

(f) *Tissue and absorbent paper.* (1) Absorbent paper includes blotting, filter, and matrix paper and board.

(2) Tissue paper includes lens tissue, paper towels, and toilet paper.

(g) *Wrapping paper.* (1) Kraft wrapping paper.

(2) Manila paper includes target paper and uncut label paper.

(3) Plate and roll wiping paper.

§ 81.950 *Cement industry.* Portland cements, including modified portland cement, such as portland masonry cement and portland puzzolan cement.

Date effective—March 2, 1940.

Wage—Within the States of Pennsylvania, New York, New Jersey, Maryland, West Virginia, Ohio, Delaware, Massachusetts, Connecticut, Rhode Island, Vermont, New Hampshire, and the District of Columbia, 57 cents an hour or \$22.80 per week of 40 hours.

Within the States of Maine, Michigan, Indiana, Kentucky, South Dakota, North

Dakota, Nebraska, and Kansas, 50 cents an hour or \$20.00 per week of 40 hours.

Within the State of Illinois, 63½ cents an hour or \$25.40 per week of 40 hours.

Within the States of Wisconsin, Minnesota, Iowa, Missouri, Colorado, Wyoming, Utah, Montana, Idaho, Oregon, Nevada, Arizona, and New Mexico, 55 cents an hour or \$22.00 per week of 40 hours.

Within the State of Washington, 70 cents an hour or \$28.00 per week of 40 hours.

Within the State of California, 62½ cents an hour or \$25.00 per week of 40 hours.

Within the States of Oklahoma and Texas, 47 cents an hour or \$18.80 per week of 40 hours.

Within the States of Arkansas, Louisiana, Alabama, Tennessee, Virginia, Georgia, Florida, Mississippi, North Carolina, and South Carolina, 40 cents an hour or \$16.00 per week of 40 hours.

§ 81.951 *Structural clay products industry.* Common brick, face brick (including glazed and enameled brick), salt glazed brick, manhole brick, structural clay tile (including glazed tile), unglazed face tile, paving brick, and clay or shale granules.

Date effective—October 27, 1941.

Wage—Arrived at either upon a time or piece work basis: In the States of Maryland, Virginia, Kentucky, Tennessee, North Carolina, South Carolina, Georgia, Alabama, Mississippi, Florida, Louisiana, Arkansas, Oklahoma, Texas, New Mexico, and the District of Columbia, 34 cents an hour or \$13.60 per week of 40 hours.

For the remaining States of the United States, 40 cents an hour or \$16.00 per week of 40 hours.

§ 81.952 *Uniform and clothing industry*—(a) *Suit and coat branch.* The suit and coat branch of the uniform and clothing industry is defined to be that industry which manufactures men's civilian suits and overcoats, tailored-to-measure uniforms including the pants, uniform overcoats, and uniform coats. Expressly excluded from this definition are shirts, single pants regardless of material, outdoor jackets, leather and sheep-lined jackets, work clothing, and washable service apparel.

Date effective—February 25, 1941.

Wage—60 cents an hour or \$24.00 per week of 40 hours, arrived at either upon a time or piece work basis, with a 20 percent tolerance for auxiliary workers: *Provided*, They be paid not less than 40 cents an hour or \$16.00 per week of 40 hours.

(b) *Outdoor jackets branch.* The outdoor jackets branch of the uniform and clothing industry is defined to be that industry which manufactures wool and wool-lined jackets whether or not such jackets are properly described as mackinaws, field jackets, windbreakers, lumber jackets, peajackets, wool jumpers, or middies, blanket-lined or similar coats, or by any other similar designation.

Date effective—February 25, 1941.

Wage—40 cents an hour or \$16.00 per week of 40 hours, arrived at either upon a time or piece work basis.

(c) *Wool trousers branch.* The wool trousers branch of the uniform and clothing industry is defined to be that industry which manufactures wool or part wool uniform trousers or breeches, except tailored-to-measure trousers.

Date effective—February 25, 1941.

Wage—40 cents an hour or \$16.00 per week of 40 hours, arrived at either upon a time or piece work basis.

§ 81.953 *Die casting manufacturing industry.* The die casting manufacturing industry is defined to be that industry which manufactures die castings for sale and does not include the manufacture of die castings when incorporated into another product by the manufacture of such other products. The term "die casting" as used herein describes a casting made by forcing molten metal under pressure into a metallic mold or die.

Date effective—April 5, 1941.

Wage—50 cents an hour or \$20.00 per week of 40 hours, arrived at either upon a time or piece work basis. Apprentices may be employed at lower rates of pay if their employment conforms to the standards of the Federal Committee on Apprenticeship. Learners may be employed at the rate of 40 cents an hour or \$16.00 per week of forty hours for a period of not to exceed 60 days if the total number of employees classified as such does not exceed 5 per cent of the total number of employees in any one establishment.

§ 81.954 *Dental goods and equipment manufacturing industry*—(a) Durable goods. Hand instruments, including forceps and pliers, broaches and cutting instruments, for dental use.

Dental chairs.
Dental cabinets.
Equipment units.
Dental sterilizers.
Dental gas apparatus.
Dental X-ray equipment.
Dental compressors, engines, and lathes.
Dental lights.
Dental laboratory equipment, other than laboratory furniture.

Date effective—September 23, 1941.

Wage—40 cents an hour or \$16.00 per week of 40 hours, arrived at either upon a time or piece work basis.

Apprentices may be employed at lower rates of pay if their employment conforms to the standards of the Federal Committee on Apprenticeship. Learners may be employed at the rate of 35 cents an hour or \$14.00 per week of 40 hours for a period of not to exceed 60 days, if the total number of employees so classified does not exceed 10 per cent of the total number of employees in any one establishment in any given pay roll or work week.

(b) *Consumable goods.*

Dental gold.
Dental alloy for amalgams.
Dental cement and filling materials.
Teeth, porcelain and gold.
Orthodontic appliances.
Waxes, compounds, and investments.

Rubber dental materials.

Denture materials other than rubber. Burs, drills, and similar tools for use with handpieces.

Abrasive points, wheels, and disks.

Date effective—September 23, 1941.

Wage—35 cents an hour or \$14.00 per week of 40 hours, arrived at either upon a time or piece work basis.

§ 81.955 *Scientific industrial and laboratory instruments industry.* Instruments and apparatus of the type used in navigation; surveying; engineering; drafting; target detection; fire control; meteorology; laboratories for physical, chemical, clinical, biological, bacteriological, geological, physiological, and psychological teaching, demonstration, research, and testing.

Instruments and apparatus for indicating, measuring, recording, or controlling the following:

quantity
quality
temperature
combustion
pressure
flow
density
intensity
humidity
conductivity
position
altitude
level
attitude
angle
direction
distance
speed
acceleration

Electrically-actuated instruments used to measure physical quantities; and optical glass; *but not including*:

Instruments and apparatus for measuring or controlling flow or consumption of water, gas, or gasoline, used in the services rendered by public utilities and service stations in indicating consumer consumption; instruments and apparatus used on automobiles; clocks and watches; and machinists' gages.

Date effective—September 23, 1941.

Wage—40 cents an hour or \$16.00 per week of 40 hours, arrived at either upon a time or piece work basis.

Apprentices may be employed at lower rates of pay if their employment conforms to the standards of the Federal Committee on Apprenticeship. Learners may be employed at the rate of 35 cents an hour or \$14.00 per week of 40 hours for a period of not to exceed 60 days, if the total number of employees so classified does not exceed 10 per cent of the total number of employees in any one establishment in any given pay roll or work week.

§ 81.956 *Surgical instruments and apparatus industry.* Instruments and apparatus used in, or in connection with, or in the aid of the practice of medicine and as particularly applied to surgery, such as surgical and diagnostic instruments and apparatus for medical and surgical treatment, including sutures, lig-

atures, and sterilizers for surgical purposes; but not including:

Electrosurgical instruments and apparatus in which electricity is the diagnostic, therapeutic, or functioning element, such as X-ray, fluoroscope, and high frequency apparatus and equipment, ultraviolet and infra-red ray and other therapeutic and heating lamps, apparatus, and equipment, orthopedic appliances, such as trusses, braces, supports, splints, artificial limbs, and elastic belts and stockings; and surgical dressings.

Date effective—September 23, 1941.

Wage—40 cents an hour or \$16.00 per week of 40 hours, arrived at either upon a time or piece work basis.

Apprentices may be employed at lower rates of pay if their employment conforms to the standards of the Federal Committee on Apprenticeship. Learners may be employed at the rate of 35 cents an hour or \$14.00 per week of 40 hours for a period of not to exceed 60 days, if the total number of employees so classified does not exceed 10 per cent of the total number of employees in any one establishment in any given pay roll or work week.

§ 81.957 *Evaporated milk industry.* Evaporated milk.

Date effective—November 3, 1941.

Wage—Arrived at either upon a time or piece work basis:

In the States of Washington, Oregon, and California, 50 cents per hour or \$20.00 per week of 40 hours.

In the States of Idaho, Montana, Nevada, Utah, Arizona, New Mexico, Colorado, Wyoming, North and South Dakota, Nebraska, Minnesota, Iowa, Wisconsin, Michigan, and Ohio, 40 cents per hour or \$16.00 per week of 40 hours.

In the remaining States of the United States and the District of Columbia, 32.5 cents per hour or \$13.00 per week of 40 hours.

§ 81.958 *Paint and varnish industry.* Pigments or colors, either in dry or paste form; paints mixed ready for use or in dry or paste form; varnishes, lacquers, enamels; fillers, putty, top dressings; paint and varnish removers; furniture and floor wax; and lacquer thinners.

Date effective—November 6, 1941.

Wage—Arrived at either upon a time or piece work basis:

For the States of Virginia, North Carolina, South Carolina, Tennessee, Georgia, Florida, Alabama, Mississippi, Louisiana, and Arkansas, 40 cents an hour or \$16.00 per week of 40 hours.

For all other States of the United States and the District of Columbia, 50 cents an hour or \$20.00 per week of 40 hours.

§ 81.959 *Leather manufacturing industry.* The leather manufacturing industry is defined to be that industry which tans, curries, and finishes leather (including rawhide) from any type of hide or skin, and manufactures wetting and power transmission belting when made wholly or principally of leather.

(a) *Tanning, currying, and finishing of leather (including rawhide).*

Date effective—December 17, 1941.

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Wage—Arrived at either upon a time or piece rate basis.

In the States of Maine, Vermont, New Hampshire, New York, Massachusetts, Rhode Island, Connecticut, New Jersey, Maryland, Pennsylvania, Delaware, Ohio, Indiana, Michigan, Wisconsin, Illinois, Missouri, Iowa, Minnesota, North Dakota, South Dakota, Nebraska, Kansas, New Mexico, Colorado, Wyoming, Montana, Idaho, Utah, Arizona, Nevada, California, Oregon, Washington, and the District of Columbia, 50 cents an hour or \$20.00 per week of 40 hours.

In the States of West Virginia, Virginia, Kentucky, Tennessee, North Carolina, South Carolina, Georgia, Alabama, Mississippi, Florida, Arkansas, Louisiana, Oklahoma, and Texas, 40 cents an hour or \$16.00 per week of 40 hours.

(b) *Wetling and power transmission belting.*

Date effective—December 17, 1941.

Wage—Arrived at either upon a time or piece rate basis. 40 cents an hour or \$16.00 per week of 40 hours, regardless of where manufactured.

§ 81.960 *Textile industry.* The term textile industry means:

(a) The manufacturing or processing of yarn or thread and all processes preparatory thereto, and the manufacturing, bleaching, dyeing, printing and other finishing of woven fabrics (other than carpets and rugs containing any wool) from cotton, flax, jute, other vegetable fiber, silk, grass, or any synthetic fiber, or from mixtures of these fibers; or from such mixtures of these fibers with wool or animal fiber (other than silk) as are specified in § 81.960 (g) and (h); except the chemical manufacturing of synthetic fiber and such related processing of yarn as is conducted in establishments manufacturing synthetic fiber;

(b) The manufacturing of batting, wadding, or filling and the processing of waste from the fibers enumerated in paragraph (a) of this section;

(c) The manufacturing, bleaching, dyeing, or other finishing of pile fabrics or cords (except carpets and rugs containing any wool) from any fiber or yarn;

(d) The processing of any textile fabric, included in this definition of this industry, into any of the following products: bags; bandages and surgical gauze; bath mats and related articles; bedspreads; blankets; diapers; dish-cloths; scrubbing cloths and wash-cloths; sheets and pillow cases; tablecloths, lunch-cloths and napkins; towels; window curtains; shoe laces and similar laces;

(e) The manufacturing or finishing of braid, net or lace from any fiber or yarn;

(f) The manufacturing of cordage, rope or twine from any fiber or yarn including the manufacturing of paper yarn and twine;

(g) The manufacturing, or processing of yarn (except carpet yarn containing any carpet wool) or thread by systems other than the woolen system from mixtures of wool or animal fiber (other than silk) with any of the fibers designated in paragraph (a) of this section,

containing not more than 45 per cent by weight of wool or animal fiber (other than silk);

(h) The manufacturing, bleaching, dyeing, printing or other finishing of woven fabrics (other than carpets and rugs) from mixtures of wool or animal fiber (other than silk) containing not more than 25 per cent by weight of wool or animal fiber (other than silk), with any of the fibers designated in § 81.960 (a), with a margin of tolerance of 2 per cent to meet the exigencies of manufacture;

(i) The manufacturing, dyeing, finishing or processing of rugs or carpets from grass, paper, or from any yarn or fiber except yarn containing any wool but not including the manufacturing by hand of such products.

Date effective—June 24, 1942.

Wage—40 cents an hour or \$16.00 for a week of 40 hours, arrived at on a time or piece work basis.

Learners, handicapped workers, and apprentices may be employed, and deductions from the wages of employees may be made in accordance with the present regulations under the Fair Labor Standards Act of 1938, which were adopted for the purpose of this wage determination.

This determination shall not be interpreted as abrogating any obligation that may have occurred under the previous determination for the industry or under the previous wage determination for the manufacture of bobbinets which is covered by the present definition of the Textile Industry.

§ 81.961 *Chemical and related products industry.* The chemical and related products industry is defined to be that industry which manufactures:

(a) (1) Heavy industrial, and fine chemicals, including among others, compressed and liquefied gases, and insecticides and fungicides, and

(2) The byproducts of the foregoing; and

(b) The manufacture of such commodities as bluing; bone black, carbon black, and lampblack; cleaning and polishing preparations (except paint and varnish remover, furniture and floor wax and polish, and soap); mucilage, paste and other adhesives.

Omitted from the scope of the definition of this industry are ammunition; drugs and medicines; explosives; fertilizer; fireworks; paints, pigment, varnishes, and lacquers; and soap, which are covered in other sections—§§ 81.916 to 81.961. (See § 81.918 (d))

Date effective—April 28, 1942.

Wage—Arrived at either upon a time or piece work basis.

(1) 40 cents an hour or \$16.00 per week of 40 hours, for the States of Maryland, Virginia, North Carolina, South Carolina, Tennessee, Arkansas, Mississippi, Alabama, Georgia, Florida, and the District of Columbia; and

(2) 50 cents an hour or \$20.00 per week of 40 hours for the remaining States of the United States.

NOTE: The following elaboration of the intended scope of the above determination

has been furnished by the Department of Labor:

The heavy, industrial, and fine chemicals referred to in the determination are those classified by the 1939 Census of Manufacturers in the following industries:

Census industry No.	Census industry title
933	Insecticides, fungicides and related industrial and household chemical compounds;
981	Coal-tar products, crude and intermediate;
982	Plastic materials;
985	Compressed and liquefied gases;
999	Chemicals not elsewhere classified.

The definition does not extend to the utilization of chemicals in other industries, nor does it apply to the following products which are grouped with Chemicals by various industrial classification codes:

Animal and vegetable oils;
Candles;
Glue and gelatin;
Grease and tallow;
Ink;
Rayon and allied products;
Salt;
Tanning extracts and natural dyestuffs;
Wood distillation products, charcoal and naval stores.

PLANT FACILITIES EXPANSIONS POLICY

§ 81.1001 *General policy in regard to new facilities.* The conservation of critical material and the fullest possible utilization of existing facilities, whether structures, machinery, or equipment, requires that preference in placing contracts should be given first to contractors who have existing buildings or machinery available, and, second, to contractors who need to acquire the least amount of additional facilities for performance of the contract. Where it has been determined that new facilities are essential, preference should be given to contractors who will themselves finance such facilities. So far as practicable, direct payment or direct reimbursement by the Government for the cost of new facilities should be confined to facilities which themselves form a separate unit (on land covered by the facilities contract or controlled by a long-term lease) or which are readily removable or separable from the contractor's existing plant without unreasonable expense or loss of value. Thus, so far as practicable, buildings should not be erected at the Government's expense on land owned by the contractor unless the Government is given an option to lease on an appropriate basis for a substantial term (e. g. ten years) after the emergency, or an option to buy land at a reasonable price, now or later determined by negotiation.

In connection with new construction projects, the following measures will be observed in order to conserve critical materials:

(a) The site will be selected with a view to minimizing the requirements for additional utilities, transportation, and housing facilities. An effort will also be made to avoid the necessity of multiple-storied structures.

(b) Whenever possible, structures should be of a temporary nature and

should be of the simplest construction consistent with the proposed use of the structure and the applicable building codes.

(c) Air conditioning will be employed in only those structures or portions of structures where the manufacturing process makes such use essential. Air conditioning will not be employed for the comfort or for increasing the efficiency of personnel.

(d) Construction of new facilities will, insofar as possible, be of materials the use of which is not prohibited by applicable orders of the Army-Navy Munitions Board or the War Production Board.

§ 81.1002 *Rental or allowance for the use of Government-financed facilities.* In cases where competition in a price sense will or may exist between the contractor receiving Government-financed facilities and other manufacturers (not using comparable Government facilities on a no-rental basis), appropriate steps will be taken to equalize insofar as possible the competitive situation. To this end, a reasonable rental not less than normal depreciation during the period of use will ordinarily be charged in such cases. Where there is direct Government construction or installation of Government-owned machinery or equipment (not including construction or installation under a Defense Plant Corporation Lease), in lieu of the rental charge, cognizance may be taken of the difference in the ownership or rental status of the facilities, as between the several manufacturers, and this factor taken into account in placing the contract.

Where Government-financed facilities are employed for the performance of contracts other than those directly with the Government, a rental will usually be charged for the facilities so employed. However, where the facilities are furnished as a part of an integrated production program under which a reduction commensurate with the facilities furnished is obtained in the cost of the supplies to the Government, and the furnishing of the facilities without rental does not create an unfair competitive advantage, the rental charge need not be made. Rental may also be waived with respect to production for a foreign Government for cause deemed adequate by the chief of the supply service.

§ 81.1003 *Reconversion and storage costs.* Where, pursuant to the policy stated in § 81.1001, the Government undertakes to finance the conversion of plants to war production (including required new machinery, equipment, and building installations), the cost of such conversion may include the cost of removing existing commercial machinery, equipment, and installations, and the cost of incidental building rehabilitation and alteration. In such cases, provision may be made for payment, on termination of production for the Government, of the costs of removal of Government-financed machinery and equipment, including preparation for shipment and storage. No provision may be made, however, for the Government's bearing,

either directly or indirectly, any part of the cost of reconverting the contractor's plant to commercial production (including reinstallation of privately-owned machinery and equipment), nor will the Government bear the cost of storing such machinery and equipment during the period between conversion and re-conversion. This policy is equally applicable to all types of contracts, whether facilities contracts, cost-plus-a-fixed-fee contracts, or fixed-price contracts.

§ 81.1004 *Tax amortization.* Under the provisions of section 124 of the Internal Revenue Code, the cost of facilities which are acquired by corporations may be amortized over a period of sixty months (or, under certain circumstances, a shorter period) for the purpose of computing taxable income. The amortization provisions do not apply when the facilities expansion is financed under a plan of the type described in Plans III, IV, or V, in § 81.1006 (c), (d), or (e). In order to secure the benefits of such amortization, the corporation must obtain from the War Department or the Navy Department a Necessity Certificate which certifies to the Commissioner of Internal Revenue that the facilities therein described are necessary in the interest of National Defense. The duties of the Services of Supply with respect to processing applications for such certificates are set forth below in §§ 81.1014 to 81.1017.

METHODS FOR PROVIDING NEW FACILITIES AND PROTECTION OF THE GOVERNMENT'S INTEREST IN GOVERNMENT-FINANCED FACILITIES

§ 81.1005 *Protection of the Government's interest.* The duty of protecting the Government's interest in facilities for which the Government has paid in whole or in part rests upon the Contracting Officer. Where the new facilities are paid for by the contractor, and the cost thereof is not to be borne by the Government directly or indirectly, there is no problem of protecting the interest of the Government in the facilities. (See Plan I, § 81.1006 (a)). Where the new facilities are to be financed by the Government, protection of the Government's interest therein will ordinarily be accomplished by the use of Plan II, III, IV, or V, as outlined in § 81.1006 (b), (c), (d) or (e). In exceptional cases, such protection may be accomplished by the use of Special Facilities Contracts or Lease Agreements or through the use of the procedure outlined in § 81.1007.

§ 81.1006 *Methods for providing new facilities.* The following methods are typical of those which may be used for providing new facilities:

(a) *Plan I: Private ownership, with no Government interest.*—(1) *Purpose.* For cases in which the contractor is not to be paid by the Government directly or indirectly for the cost of the facilities except to the extent of normal depreciation included in the price of articles sold to the Government.

(2) *Financing.* Financed by the contractor.

(3) *Title.* Vested in the contractor.

(b) *Plan II: Private ownership, with Government interest (Emergency Plant Facilities Contract)*—(1) *Purpose.* For cases in which the contractor is to be reimbursed by the Government and desires to retain a future interest in the facilities.

(2) *Financing.* By the contractor until repaid by the Government.

(3) *Title.* Vested in the contractor with option to purchase such interest as the Government may have acquired by having repaid the contractor partially or wholly for facilities.

(c) *Plan III: Government ownership, War Department construction contract*—(1) *Purpose.* For cases in which the contractor is constructing facilities for the Government and at Government expense.

(2) *Financing.* By the Government.

(3) *Title.* Vested in the Government. When the facilities will constitute an addition to or an extension of an existing plant of the contractor, the contractor may be given an option to purchase the facilities.

(d) *Plan IV: Government Ownership, Defense Plant Corporation Lease*—(1) *Purpose.* For cases in which the Defense Plant Corporation pays for the facilities.

(2) *Financing.* Defense Plant Corporation, upon recommendation by the War Department, enters into an Agreement of Lease with the contractor which, as agent for and in the name of Defense Plant Corporation, constructs the buildings and purchases the machinery and then leases the facilities from Defense Plant Corporation at an agreed rental. In most cases where the rental agreed upon is insufficient to reimburse Defense Plant Corporation in full over the term of the lease, part of the financing is borne by the War Department under an agreement with Defense Plant Corporation.

(3) *Title.* Vested in Defense Plant Corporation, with option in contractor to buy at the end of the lease.

(e) *Plan V: Government Ownership, Supply Contract*—(1) *Purpose.* For cases in which the contractor will acquire facilities (other than real estate and buildings) for the account of and to be paid for by the Government; facilities to be used by contractor to manufacture supplies under War Department Supply Contract; contractor to pay cost of maintenance and replacement during life of contract. This type of Governmental financing is provided for by the article entitled "Government-Owned Facilities," § 81.332.

(2) *Financing.* Government Funds.

(3) *Title.* Vested in the Government, with option in contractor, in certain cases, to buy at cost less depreciation.

§ 81.1007 *Other methods of protecting the Government's interest in Government-financed facilities.* Where, because of special circumstances (such as the inseparability of the new facilities from existing privately owned facilities), the adoption of none of the methods set forth in § 81.1006 is practicable and the Government bears, as a part of the contract price, all or a portion of the cost

of the facilities to the contractor, the Contracting Officer will include in the contract which provides for such payment by the Government for the facilities suitable provisions for the protection of the Government's interest in the facilities and will state in the contract the amount of such payment. Ordinarily in such cases the provisions hereinafter set forth should all be included. However, in exceptional circumstances one or more of such provisions, with the approval of the Chief of the Purchases Branch, Procurement and Distribution Division, Services of Supply, may be omitted from the contract with or without substitution of modified provisions directed to the same end:

(a) Requirement that the contractor maintain the facilities, or an appropriate portion thereof, in good condition at its own expense for a period provided for in the contract extending beyond the period of existing supply contract, unless upon request the Contracting Officer releases it from such obligation;

(b) Requirement that the contractor retain title to the facilities, or an appropriate portion thereof, during said period free of encumbrances not consented to in writing by the Contracting Officer;

(c) Requirement that the contractor makes no material alteration in the nature of the facilities, or an appropriate portion thereof, without the written consent of the Contracting Officer;

(d) Requirement that the contractor give priority to Government orders during said period;

(e) Requirement that the contractor shall not include in any price in any supply contract with the Government any sum for depreciation or amortization of the facilities, or an appropriate portion thereof, during said period;

(f) Provision that the contractor may at any time be released from the above requirements upon payment to the Government of a sum agreed upon between the contractor and the Contracting Officer as constituting fair and just return to the Government for its payment for the facilities.

Where reference is made in the above to "an appropriate portion" of the facilities, that portion for which payment is made by the Government is intended.

PROCEDURE FOR OBTAINING CLEARANCE AND APPROVAL OF FACILITIES EXPANSIONS

§ 81.1008 *Preliminary clearance.* (a) The chief of the supply service concerned will report to the Deputy Chief of Staff for Resources and Requirements, Headquarters, Services of Supply, every proposed facilities expansion involving either:

(1) New construction, regardless of amount,

(2) The addition of machinery or equipment where expediting production funds are required, or

(3) The addition, under a supply contract, of machinery or equipment the estimated cost of which exceeds twenty per cent of the total amount of the contract and \$25,000.

(b) Such report should be made when the facility is first conceived, and should contain the following information:

(1) Name of the company.

(2) Nature and location of the proposed project.

(3) Nature of the product concerned in this expansion.

(4) Estimated increase in productive capacity expected to result from the proposed expansion.

(5) Estimated cost of the expansion:

(i) Construction, including land and improvements.

(ii) Machinery and equipment.

(iii) Total.

(6) Estimated labor requirements for operation:

(i) Men.

(ii) Women.

(7) Estimated additional demand for power stated in kilowatts, and estimated additional requirements for natural gas.

(8) A brief statement, demonstrating that the proposal is essential to meet the needs for equipment or material under the latest "Requirements for Army Supply Program," and that existing facilities or structures are not available for the required purpose.

§ 81.1009 *Plant Site Board clearance.* Every proposed facilities expansion in excess of \$1,000,000 must be approved by the Plant Site Board of the War Production Board. In order to obtain the clearance of the Plant Site Board, it will be necessary to submit substantially the same information as that required under § 81.1008. Where the chief of the supply service concerned deems it desirable in the interests of expedition, the information may be furnished and the clearance obtained by telephone.

§ 81.1010 *Final approval and release of expediting funds.* (a) Applications for final approval of proposed facilities expansions of the types set forth in § 81.1008 and for the release of expediting funds, where such funds are required, will be submitted to the Deputy Chief of Staff for Resources and Requirements, Headquarters, Services of Supply (or in the case of the Air Corps, such applications will be submitted to the Under Secretary of War). Such applications will supply the following information:

(1) The name of the project.

(2) The nature and location of the project.

(3) The nature of the product.

(4) The estimated maximum capacity of the proposed facility.

(5) The name of the proposed operator.

(6) The estimated cost of the project.

(7) The amount of "expediting production" funds requested.

(8) The proposed manner of financing the balance of the cost.

(9) A statement substantially as follows: "This project was formally cleared by the Plant Site Board of the War Production Board on _____ (date)."

(10) Estimated date production operations to commence.

(11) Map in duplicate showing location.

(12) Floor space to be provided (where appropriate).

(13) Estimated costs:

(i) Land ----- acres, \$-----
 (ii) Construction, \$-----
 (iii) Machinery and equipment, \$-----
 (iv) Government overhead and other, \$-----
 Total, \$-----

(14) Estimated labor requirements for operation (Include estimated percentage of female labor.)

(i) Supervisory and administrative salary range, -----
 (ii) Skilled, salary range, -----
 (iii) Semi-skilled, salary range, -----

(iv) Unskilled, salary range, -----

(15) Statement as to local availability of labor for proposed plant.

(16) Power:

(i) Expected maximum demand in kilowatts, -----

(ii) Is adequate power available locally? -----

(iii) What is proposed source of power supply? -----

(17) Transportation:

(i) Estimated transportation requirements -----

(ii) Are there adequate main line rail facilities? -----

(iii) Are there adequate improved highway facilities to the site? -----

(18) Water:

(i) Expected water requirements in gallons per day, -----

(ii) Is there an adequate supply of water available? What is proposed source of supply? -----

(19) Fuel:

Is there an adequate supply of fuel? -----

(20) Sewage disposal requirements and method of handling proposed.

(21) Housing:

Will additional housing for operating personnel be required? If so, state approximate number of units, -----

(22) Has the proposed site been favorably reported on from an engineering standpoint by the Department charged with responsibility for construction? -----

(23) Alternate locations:

Have alternate sites been reconnoitered? What are the reasons which caused the recommended site to be selected? -----

(24) A statement by the chief of the supply service that he has made a thorough investigation and has determined that the facilities proposed are essential to meet the needs for equipment and material set forth by the latest "Requirements for Army Supply Program," that there are no existing manufacturing facilities available or susceptible of conversion for the purpose, and that there are no existing structures which can be made available for the purpose by purchase or lease.

(b) Where it is deemed essential in the interest of expedition to file the application before the complete information re-

quired above is available, the information required by items (10) through (24) may be supplied in a second letter following the original application.

§ 81.1011 *Contract clearance.* All proposals for facilities expansions and amendments thereto in excess of \$5,000,000 under Defense Plant Corporation Lease Agreements and all proposed contract awards in excess of \$5,000,000 involving any type of Government financing of facilities expansions or installations will be submitted to the Chief, Purchases Branch, Procurement and Distribution Division, Headquarters, Services of Supply.

§ 81.1012 *Obtaining the letter of commitment in connection with Defense Plant Corporation Lease Agreements.* Where the proposed expansion is to be financed through a Defense Plant Corporation Lease Agreement, the letter of commitment from the War Department to the Defense Plant Corporation will be submitted to the Under Secretary of War. Such submission will be through the Special Legal and Liaison Division, Office of the Under Secretary of War, and will be accompanied by a brief statement of the nature, location, estimated cost, and productive capacity of the project, together with a statement that the project is essential and that the estimated cost thereof is believed reasonable.

§ 81.1013 *Approval of contracts required in special cases.* All Emergency Plant Facilities contracts, all Special Facilities contracts and Special Lease Agreements, and all contracts required to be submitted under § 81.1007, will be submitted to the Chief, Purchases Branch, Procurement and Distribution Division, Services of Supply, for approval.

PROCESSING APPLICATIONS FOR NECESSITY CERTIFICATES IN CONNECTION WITH FACILITIES EXPANSIONS

§ 81.1014 *Information to be submitted in application.* Applications for Necessity Certificates should contain the information and be executed in the manner indicated in the following publications:

(a) Form of application for Necessity Certificate, with instruction sheet, issued jointly by the War and Navy Departments, dated October 27, 1941, as the same may from time to time be thereafter amended.

(b) Regulations prescribed by the Secretary of War and the Secretary of the Navy, with the approval of the President, governing the issuance of Necessity Certificates under section 124 (f) of the Internal Revenue Code.

Copies of the foregoing publications may be obtained from the Tax Amortization Section, Headquarters, Services of Supply. Taxpayers may be advised that copies are thus obtainable.

§ 81.1015 *Place of filing application.* The application for Necessity Certificate should ordinarily be filed with the Tax Amortization Section, Headquarters, Services of Supply, Washington, D. C. In some instances, taxpayers, un-

familiar with the procedure, may file applications with officers of the supply services. An original and one copy of applications thus filed, will be promptly forwarded by the officer, through the chief of the supply service concerned to the Tax Amortization Section, Headquarters, Services of Supply. The third copy will be retained in order to enable the officer to make investigation and report pursuant to § 81.1016 (e).

§ 81.1016 *Procedure for processing applications.* The following procedure will govern the processing of applications:

(a) The Tax Amortization Section, Headquarters, Services of Supply, will, in cases which concern a supply service, send one copy of the application to the chief of such supply service with a request for report.

(b) The chief of the supply service concerned will transmit this copy to the officer most appropriately qualified, for investigation and report.

(c) The reporting officer, referred to in paragraph (b) of this section, will retain the application and transmit his report thereon to the chief of the supply service concerned, in duplicate, not later than fifteen days after the receipt of the application by him, except in cases in which he is unable to complete his report within such time, in which event he will send an original and a copy of a statement giving his reasons for his inability so to report within the prescribed time and stating when the report will be filed.

(d) The chief of the supply service will retain one copy of the report and forward the original to the Tax Amortization Section, Headquarters, Services of Supply.

(e) The report will, with the exception noted below, be limited to advice as to whether the construction, reconstruction, erection, installation or acquisition of a facility is necessary in the interest of National Defense during the emergency period, within the meaning of section 124 of the Internal Revenue Code as interpreted by Article 3 of the Regulations. This will involve advice on the following points:

(1) Is the "supply to be produced with the facility sought to be certified" "required" within the meaning of Article 3-a of the Regulations?

(2) Is the facility sought to be certified appropriate for the production of the supply?

(3) Is there "an existing or prospective shortage of facilities for the production of the supply" within the meaning of Article 3-b of the Regulations and what facts form the basis of the reporting officer's conclusions with regard to this point?

(4) In the light of information on hand or readily available, do the statements made in the application bearing upon determination of necessity (particularly those relative to replacements and the applicant's attempts to subcontract) appear to be correct?

In the event that a supply service has sponsored the supply to be produced with

the facilities sought to be certified for defense rating under Priorities Regulation No. 1, a statement to this effect will be made by the reporting officer in connection with his answer to the first of the above questions. In the event that a supply service has sponsored the facility for a project rating, a statement to this effect will be made by the reporting officer in connection with his answer to the second and third of the above questions. In exceptional cases where the officer has special knowledge of other facts relating to the application, such as data in regard to the time of filing, which are not known to or readily ascertainable by the Tax Amortization Section, Headquarters, Services of Supply, he shall mention these facts in his report.

§ 81.1017 *Certificates of Non-Reimbursement and Government Protection discontinued.* In view of the repeal by Congress, as of the date of its original enactment, of subsection (i) of section 124 of the Internal Revenue Code, the issuance of Certificates of Non-Reimbursement and Certificates of Government Protection has been discontinued, and all copies of executed applications for such certificates should be forwarded to the Tax Amortization Section, Headquarters, Services of Supply.

MISCELLANEOUS PURCHASE INSTRUCTIONS

§ 81.1101 *Discounts in purchasing.* (a) All purchases regardless of the method used (after advertising or by negotiation) will be made on a firm price basis without regard to seller's offer of prompt payment or cash discount provisions.

(b) For all purchases hereafter initiated, all prompt payment or cash discount provisions in invitations for bids, requests for quotations or estimates, or other purchase instruments will be deleted. All requests for bids, formal or informal, will contain a clause reading substantially as follows:

"No offers of prompt payment or cash discounts will be rendered to or considered by the Government."

(c) Nothing in this section will be construed to apply to:

- (1) Purchases made without competition,
- (2) Purchases made under a contract executed by another Federal department or agency, or
- (3) A cash discount offered after acceptance of an offer and making of award.

§ 81.1102 *Contracts with foreign nationals.* (a) By virtue of Executive Order No. 8389, April 10, 1940, as amended, and Treasury Department regulations issued pursuant thereto, the award of contracts in which certain foreign countries or nationals thereof have any interest is prohibited.

(b) The above prohibition does not apply to contracts with individuals, partnerships, associations, corporations, or other organizations which have been granted a general or special license by the Secretary of the Treasury.

(c) Whenever a contracting officer has reason to believe that any prospective

contractor is subject to the above prohibition he should inquire of the chief of the supply service concerned or the nearest Federal Reserve Bank as to the eligibility of the prospective contractor.

§ 81.1103 *Contracts with blocked nationals.* (a) The Secretary of State from time to time publishes lists of persons and organizations deemed to be acting directly or indirectly for the benefit of the enemy. Copies of these lists will be made available to the chiefs of the supply services.

(b) No contract will be knowingly awarded to any person or organization so listed.

§ 81.1104 *Redetermination or renegotiation of price.* (a) In those cases where contracts are executed on the basis of speculative cost estimates the contracts should contain a clause providing for the redetermination or renegotiation of the price.

(b) See §§ 81.341 and 81.342 for approved clauses. The clause providing for redetermination of price sets up objective standards for redetermining the price downward only. The clause providing for renegotiation imposes no legal obligation beyond the obligation upon the contractor to furnish a statement of actual costs and the obligation upon the contractor and the Government to renegotiate on the basis thereof. It is contemplated that such renegotiation will lead to a revision of the price in the event that actual costs are materially different from estimated costs. If neither party to the contract requests renegotiation upon the filing of the statement of costs, or if such renegotiation fails to result in a modification of the contract, the contract will be carried out in accordance with its original terms.

§ 81.1105 *Limitation on purchase of arms, ammunition and implements of war.* (a) No purchase of arms, ammunition, or implements of war shall be made on behalf of the United States by any officer, executive department, or independent establishment of the Government from any person who shall have failed to register under the provisions of section 12 of Public Resolution of November 4, 1939 (Pub. Res. No. 54—76th Cong.).

(b) Articles which are considered arms, ammunition and implements of war will be proclaimed from time to time by the President. Chiefs of the supply services concerned will publish such information to the contracting officers concerned and secure compliance with the above limitation.

§ 81.1106 *Maximum prices.* (a) No contract will be awarded for the purchase of supplies at a price in excess of the maximum price, if any, established by the Office of Price Administration, or any other agency of the Government authorized to establish maximum prices.

(b) Chiefs of supply services are responsible for distributing maximum price schedules to contracting officers concerned.

PART 83—DISPOSITION OF SURPLUS AND UNSERVICEABLE PROPERTY

Sections 83.1 to 83.4, inclusive are hereby rescinded and the following regulations are prescribed governing the disposition of surplus and unserviceable property. These regulations are also contained in the new War Department Procurement Regulations and supersede Army Regulations No. 5-50, as amended, and all prior instructions and directives which are inconsistent herewith.

Sec.	
83.701	Rescission of regulations.
83.702	Definitions.
83.703	Declaration of surplus; by chiefs of supply services.
83.704	By Commanding General, Services of Supply.
83.705	Transfer of property to other supply services.
83.706	Transfer of property to other Federal agencies.
83.707	Exchange of unserviceable property.
83.708	Sale of surplus property.
83.709	Responsibility for sale of salvage and "to be sold" property.
83.710	Sales at nominal prices to effect transfer.

§ 83.701 *Rescission of regulations.* Army Regulations 5-50, May 22, 1939, as amended, and all other instructions inconsistent herewith are hereby rescinded.

§ 83.702 *Definitions*—(a) *Surplus property.* New, obsolete, used or deteriorated articles which have been declared by competent authority as not needed by the War Department.

(b) *"To be sold" property.* Obsolete or unserviceable articles which have been classified as "to be sold" property by an inspector.

(c) *Salvage.* Unserviceable articles which have been classified as "salvage" by an inspector.

(d) *Negotiation.* Any method of reaching an agreement on the terms of sale except the formal sealed bid procedure contemplated by section 3709, Revised Statutes.

§ 83.703 *Declaration of surplus; by chiefs of supply services.* Chiefs of supply services are authorized to declare property surplus to the needs of the War Department without reference to higher authority, under the following conditions:

(a) When the property is unqualifiedly in excess of the requirements of the supply service and cannot be advantageously exchanged as part or total payment for similar property which is needed;

(b) When it has been ascertained that the property is not desired by any other supply service of the War Department; and

(c) When the total current estimated value does not exceed \$50,000.

§ 83.704 *By Commanding General, Services of Supply.* In those cases where the chief of the supply service concerned is not permitted by § 83.703 to declare property surplus and it has been ascertained that the property is not required by any other supply service, such property will be recommended to the Commanding General, Services of Supply, for declaration as surplus to the War Department. The following infor-

mation will be furnished with each such recommendation:

(a) List of the property with its estimated original and present value. When the property is damaged, wrecked, burned or otherwise depreciated, the estimated cost of repairs necessary to put it in serviceable condition will be furnished;

(b) Statement of reason for disposing of the property, including information as to whether it is new, used or deteriorated;

(c) An estimate of the storage space which the property occupies; and

(d) Statement that the requirements for the property by other supply services have been ascertained and satisfied.

§ 83.705 *Transfer of property to other supply services.* Property which is excess to the requirements of a particular supply service whether or not it has been declared surplus and property which has been classified as "to be sold" may, upon request of another supply service, be transferred without reimbursement except for the costs of packing, handling and transportation.

§ 83.706 *Transfer of property to other Federal agencies.* (a) Property which has been declared surplus, in accordance with § 83.703 or § 83.704 and "to be sold" property will be promptly reported to the Procurement Division, Treasury Department, by the chief of the supply service concerned, for the purpose of effecting a transfer of the property to some other Federal agency.

(b) Property so reported will be withheld from sale, pending a possible transfer, for such length of time as the chief of the supply service concerned shall permit.

(c) Upon request from the Procurement Division, Treasury Department, property so held for transfer may be transferred without reimbursement except for the costs of packing, handling and transportation.

§ 83.707 *Exchange of unserviceable property.* (a) Whenever unserviceable articles can be advantageously exchanged as payment in full or in part for serviceable articles of like character, such unserviceable articles will be disposed of in this manner.

(b) Exchanges of unserviceable property for serviceable property will be made under the direction and supervision of the chief of the supply service concerned.

(c) When the property to be exchanged is subject to a price fixing order issued by an agency of the Government, effort should be made to secure the established price in the exchange transaction.

(d) A copy of each contract covering the exchange of deteriorated, unserviceable, obsolescent or surplus military equipment, munitions or supplies for other military equipment, munitions or supplies will be furnished the respective chairmen of the House Military Affairs Committee and the Senate Military Affairs Committee within twenty-four hours after the contract has been made.

§ 83.708 *Sale of surplus property—(a) General.* Property having been declared surplus in accordance with § 83.703 or § 83.704 will be sold by negotiation under the direction and supervision of the chief of the supply service concerned, if a transfer is not effected.

(b) *Sales to National Council of the Boy Scouts of America.* Surplus and "to be sold" property and salvage may be sold to the National Council of the Boy Scouts of America under the direction and supervision of the chief of the supply service concerned. The sales price will represent a fair value to the War Department, including costs of packing, handling and transportation.

(c) *Maximum prices.* When property consists of articles or materials on which maximum prices have been placed by any authorized agency of the Government, no award will be made at a price higher than the prescribed maximum.

§ 83.709 *Responsibility for sale of salvage and "to be sold" property.* (a) All unserviceable articles which have been classified as salvage or as "to be sold" property by competent authority will be turned over to the Quartermaster Corps for sale, except as follows:

(1) Property which can be advantageously exchanged in accordance with § 83.707.

(2) Accumulations of scrap, cuttings, and by-products resulting directly from manufacturing operations in arsenals, depots, plants, or commercial establishments, all of which will be disposed of by the chief of the supply service concerned.

(b) Sales of salvage and "to be sold" property will be made by negotiation under the direction and supervision of The Quartermaster General, or, in the cases provided for in paragraph (a) (1) and (2) of this section, of the chief of the supply service concerned.

§ 83.710 *Sales at nominal prices to effect transfer.* As a measure appropriate to the relief of distress from economic causes or from disaster, the Secretary of War has authorized, subject to discontinuance when desirable, certain sales of salvage at nominal prices, as follows:

Condemned clothing, shoes, equipment, and similar supplies in salvage, that may be accumulated at posts, camps, and stations of the Regular Army or National Guard, may be sold for relief purposes to charitable organizations of commonly recognized standing or to state relief administrations at nominal prices to be fixed by the chief of the supply service concerned.

[SEAL]

J. A. ULIO,
Major General,
The Adjutant General.

[F. R. Doc. 42-6839; Filed, July 17, 1942;
3:40 p. m.]

PART 81—PROCUREMENT OF MILITARY SUPPLIES AND ANIMALS

MISCELLANEOUS AMENDMENTS

Section 81.917 (b) (10) is hereby added and §§ 81.106, 81.924, and 81.1106 are amended to read as follows:

§ 81.106 *Distribution of procurement regulations.* Distribution of these regulations including subsequent changes thereto will be made by the Adjutant General. (Sec. 5a, National Defense Act, as amended, 41 Stat. 764, 54 Stat. 1225; 10 U.S.C. 1193-1195, and the First War Powers Act, 1941, 55 Stat. 838; 50 U.S.C. Sup. 601-622) [C-1]

§ 81.917 *Applicability of Walsh-Healey public contracts law.*

(b) * * *

(10) Articles 601, 602, 1101 and 1201 of the Administrative Regulations (pages 43 to 45 of the Regulations) have been amended as follows:

(i) Art. 601 (Requests for Exceptions and Exemptions).

Requests for the exception or exemption of a contract or class of contracts from the inclusion or application of one or more of those stipulations required by article I must be made by the head of a contracting agency or department and shall be accompanied with a finding by him setting forth reasons why such inclusion or application will seriously impair the conduct of Government business.

Request for the exception or exemption of a stipulation respecting minimum rates of pay and maximum hours of labor contained in an existing contract must be made jointly by the head of the contracting agency and the contractor and shall be accompanied with a joint finding by them setting forth reasons why such exception or exemption is desired.

All requests for exceptions or exemptions shall be transmitted to the Public Contracts Division of the Department of Labor.

(ii) Art. 602 (Decisions Concerning Exceptions and Exemptions).

Decisions concerning exceptions and exemptions shall be in writing and approved by the Secretary of Labor or officer prescribed by him, originals being filed in the Department of Labor, and certified copies shall be transmitted to the department or agency originating the request, to the Comptroller General, and to the Procurement Division of the Treasury. All such decisions shall be promulgated to all contracting agencies by the Public Contracts Division of the Department of Labor.

(iii) Art. 1101 (Minimum Wages).

Until a determination of the prevailing minimum wage for a particular industry or group of industries has been made by the Secretary of Labor prior to the invitation for bids, the stipulation with respect to wages in section 1 (b) of the Act will be inoperative, as provided in article 1 (b) of these Regulations.

Determinations of prevailing minimum wages or changes therein will be published in the FEDERAL REGISTER and sent to contracting officers by the Public Contracts Division of the Department of Labor. Such determinations will be effective upon the dates fixed therein.

(iv) Art. 1201 (Reports of Contracts Awarded).

Whenever the contracting officer shall award a contract in which the stipulations required under article 1 are operative, he

¹ See 41 CFR Part 201.

² Rulings and Interpretations, September 29, 1939, Walsh-Healey Public Contracts Act, Department of Labor.

shall furnish the Department of Labor in quadruplicate on a form provided for this purpose the information required by such form.

(Sec. 5a, National Defense Act, as amended, 41 Stat. 764, 54 Stat. 1225; 10 U.S.C. 1193-1195, and the First War Powers Act, 1941, 55 Stat. 838; 50 U.S.C. Sup. 601-622) [C-2]

§ 81.924 *Cotton garments and allied industries.* The cotton garment and allied industries shall be understood to be that industry which manufactures or furnishes any of the following commodities:

Trousers, knickers, work pants, and breeches (except when made wholly of wool and uniform trousers and breeches made wholly or partially of wool); dress or work shirt, and nightwear of any material except knit fabric; overalls, overall jackets, and one-piece overall suits; work coats and work jackets (except wool and wool-lined, and leather and sheep-lined); washable service apparel (hospital, professional, etc.); other cotton outerwear of any material except knit fabric; barrack bags; bandoleers; ammunition and cartridge belts made of textiles; canvas leggings; cot covers; fabric pouches and carriers for first aid equipment, such as: kit canteen ring straps, kit inserts, kit laces, kit pouches and kit suspenders; mattress covers; mosquito bars; and wardrobe bags with drawstrings, made of textiles.

Date effective—July 20, 1942.

Wage—40 cents per hour or \$16.00 per week of 40 hours, arrived at either upon a time or piece work basis.

Learners and handicapped workers may be employed at subminimum rates in accordance with the present applicable regulations issued by the Administrator of the Wage and Hour Division under the Fair Labor Standards Act which were adopted by the Secretary of Labor for the purposes of this determination. (Sec. 5a, National Defense Act, as amended, 41 Stat. 764, 54 Stat. 1225; 10 U.S.C. 1193-1195, and the First War Powers Act, 1941, 55 Stat. 838; 50 U.S.C. Sup. 601-622) [C-3]

§ 81.1106 *Maximum prices.* In the absence of actual knowledge of violation of price limitations, purchasing and contracting officers may rely upon the vendor's certificate contained on invoices or public vouchers for purchases and services other than personal, as to the correctness of prices charged, and are not required to check or verify such prices against prices established by the Office of Price Administration, or any other agency of the Government authorized to establish maximum prices. (Sec. 5a, National Defense Act, as amended, 41 Stat. 764, 54 Stat. 1225; 10 U.S.C. 1193-1195, and the First War Powers Act, 1941, 55 Stat. 838; 50 U.S.C. Sup. 601-622) [C-4]

[SEAL]

J. A. ULJO,
Major General,
The Adjutant General.

[F. R. Doc. 42-7616; Filed, August 6, 1942; 10:00 a. m.]

TITLE 14—CIVIL AVIATION

Chapter I—Civil Aeronautics Board

[Regulations, Serial No. 236]

ASSISTANT AIRLINE TRANSPORT PILOT CERTIFICATES

Authorization to the Administrator of Civil Aeronautics to issue "assistant airline transport pilot certificates" to a designated class of pilots. At a session of the Civil Aeronautics Board held at its office in Washington, D. C., on the 30th day of July 1942.

The Civil Aeronautics Board finding that its action herein is in the public interest and is necessary to the successful prosecution of the war effort;

Now, therefore, the Civil Aeronautics Board, acting pursuant to the authority vested in it by the Civil Aeronautics Act of 1938, as amended, particularly sections 205 (a), 601, 602 (c) and 604 of said Act, makes and promulgates the following special regulation, effective immediately.

An airman certificate of assistant airline transport pilot grade may be issued by the Administrator of Civil Aeronautics to pilots listed in the operations specifications of scheduled air carriers engaged in overseas or foreign air transportation: *Provided*, That such pilots are holders of currently effective commercial pilot certificates with proper aircraft and instrument ratings: *Provided further*, That such certificates shall authorize these pilots to serve as first pilots in scheduled air transportation carrying cargo and mail only and shall not be effective beyond January 1, 1943.

By the Civil Aeronautics Board.

(SEAL) DARWIN CHARLES BROWN,
Secretary.

[F. R. Doc. 42-7627; Filed, August 6, 1942; 11:20 a. m.]

TITLE 30—MINERAL RESOURCES

Chapter III—Bituminous Coal Division

[Docket No. A-1530]

PART 338—MINIMUM PRICE SCHEDULE, DISTRICT NO. 18

ORDER GRANTING RELIEF

Order granting temporary relief and conditionally providing for final relief in the matter of the petition of District Board No. 18 for the establishment of price classifications and minimum prices for coals, in certain size groups, produced in Subdistrict 3 in District No. 18.

An original petition, pursuant to section 4 II (d) of the Bituminous Coal Act of 1937, having been duly filed with this Division by the above-named party, requesting the establishment, both temporary and permanent, of price classifications and minimum prices for the coals in Size Groups Nos. 14 and 15 produced in

Subdistrict No. 3 in District No. 18 for shipments by both rail and truck; and

It appearing that a reasonable showing of necessity has been made for the granting of temporary relief in the manner hereinafter set forth; and

No petitions of intervention having been filed with the Division in the above-entitled matter; and

The following action being deemed necessary in order to effectuate the purposes of the Act:

It is ordered, That, pending final disposition of the above-entitled matter, temporary relief is granted as follows: Commencing forthwith, § 338.5 (*General prices; minimum prices for shipment via rail transportation*) is amended by adding thereto Supplement R, and § 338.21 (*General prices in cents per net ton for shipment into all market areas*) is amended by adding thereto Supplement T, which supplements are hereinafter set forth and made a part hereof.

It is further ordered, That pleadings in opposition to the original petition in the above-entitled matter and applications to stay, terminate or modify the temporary relief herein granted may be filed with the Division within forty-five (45) days from the date of this Order, pursuant to the Rules and Regulations Governing Practice and Procedure before the Bituminous Coal Division in Proceedings Instituted Pursuant to section 4 II (d) of the Bituminous Coal Act of 1937.

It is further ordered, That the relief herein granted shall become final sixty (60) days from the date of this Order, unless it shall otherwise be ordered.

Dated: July 28, 1942.

[SEAL]

DAN H. WHEELER,
Acting Director.

DISTRICT NO. 18

NOTE: The material contained in these supplements is to be read in the light of the classifications, prices, instructions, exceptions and other provisions contained in Part 338, Minimum Price Schedule for District No. 18, and Supplements thereto.

The following price classification and minimum prices shall be inserted in Minimum Price Schedule for District No. 18:

§ 338.5 *General prices; minimum prices for shipment via rail transportation*—Supplement R. *Rail transportation*. Insert under Sub-District No. 3 in the following f. o. b. mine prices in cents per net ton for shipment via rail transportation into market areas shown for Sub-District No. 3—La Ventana:

Sub-District No. 3	Size groups	
	14	15
	350	325

§ 338.21 *General prices in cents per net ton for shipment into all market areas*—Supplement T. *Truck shipment*. Insert under Sub-District No. 3 the fol-

lowing prices in cents per net ton for shipment into all market areas:

Sub-District No. 3	Size groups	
	14	15
	350	325

[F. R. Doc. 42-7590; Filed, August 5, 1942; 11:11 a. m.]

TITLE 32—NATIONAL DEFENSE

Chapter IX—War Production Board

Subchapter B—Director General for Operations

PART 1090—AGAVE FIBER

[General Preference Order M-84, as amended August 5, 1942]

Section 1090.1 *General Preference Order M-84* is hereby amended to read as follows:

§ 1090.1 *General Preference Order M-84*—(a) *Additional definitions.* For the purposes of this order:

(1) "Agave Fiber" means agave fiber of the species of agave sisalana, agave fourcroydes, and agave cantala, of all grades and qualities including tow, waste, and fiber under 20" in length, commonly known in the trade as sisal, henequen, cantala and maguey, and sometimes preceded by an adjective designating the country or district of origin.

(2) "Agave Cordage" means cables and ropes $\frac{3}{16}$ " in diameter and larger, in which agave fiber either alone or in combination with other materials is used.

(3) "Processor" means any person who spins, twists, weaves or otherwise uses agave fiber in the production of cordage, twine or any other product.

(4) "Processing" means any use of agave fiber for the manufacture of any article or commodity into which agave fiber goes or of which it becomes a part.

(5) "Dealer" means any person who procures agave cordage or agave twine for storage or for sale, and includes selling agents and other commercially recognized agents acting for their own account or for others, whether or not acquiring title to such agave cordage or agave twine, but shall not include any person who imports agave cordage and/or agave twine.

(6) "Wrapping twine" means twine, including lath yarns (ply and yarn goods) as included in National Bureau of Standards Simplified Practice Recommendation R 92-38, and any other twine suitable for the same purposes for which those twines described in said Simplified Practice Recommendation R 92-38 are used, which contains agave fiber, but shall not include binder twine.

(7) "Binder twine" or "Binding twine" means a single yarn twine, manufactured of agave fiber of the type customarily heretofore manufactured and sold

in lengths measuring 500 feet, 550 feet, 600 feet or 650 feet to the pound, with a plus or minus tolerance of 5 per centum, containing a lubricant of not less than 10 per centum of the total weight of the twine and an insect repellent, and which is put up in balls of approximately 5 or 8 pounds each, is suitable for use with a harvesting machine, and is used in the harvesting of agricultural products.

(8) "Inventory" with respect to any person shall include all of any agave product held or controlled by such person at all warehouses, plants or places of storage, but shall not include any of such product while actually in transit or actually in use.

(9) "Supply" means the average monthly amount of any agave product withdrawn from inventory which has been resold or put into actual use:

(i) In the three calendar months preceding the calendar month for which supply is being calculated; or,

(ii) In the three calendar months of the previous year which immediately followed the calendar month of that year corresponding to the said calendar month for which supply is being calculated.

whichever of the two shall be the higher.

(10) "Basic monthly poundage" with respect to any cordage processor for any month shall be the average number of pounds per month of both Manila and agave cordage sold by such processor during the period from January 1, 1939, to December 31, 1941, minus 37% of such person's Manila fiber basic monthly poundage calculated as required by General Preference Order M-36.⁷ *Provided*, That any cordage processor keeping his books on a weekly basis may calculate his basic monthly poundage from the fifty-two week period of the 1939 calendar year and adjust any other calculations or quotas under this order.

(b) *Restrictions on sales and deliveries of agave fibers.* No person shall sell, or deliver, or make or accept delivery of agave fiber of any grade or quality; *except* that purchases, sales and deliveries of agave fiber may be made:

(1) By and to Defense Supplies Corporation.

(2) By and to persons importing or otherwise handling agave fiber in accordance with written instructions from Defense Supplies Corporation, provided, that such agave fiber is to be delivered, either processed or unprocessed, directly or through one or more other persons to Defense Supplies Corporation.

(3) By and to importers, dealers, jobbers, or processors, pursuant to contracts entered into on or before February 20, 1942, but only of agave fiber in the amounts specified in such contracts on or before the said date, or by any amendments or supplements thereto on or before August 5, 1942: *Provided, however*, That purchases, sales and deliveries under general requirements contracts or contracts to take all, or a specified percentage of a production may continue to be made until December 31, 1942.

(4) By and to importers, dealers, jobbers, or processors of agave fiber which has been rejected by Defense Supplies Corporation as unfit for its use.

(5) By and to importers, dealers, jobbers or processors of tow, waste, bagasse flume or fiber less than 20 inches in length, provided that such fiber was on hand in the United States on February 20, 1942, or was, or is thereafter imported into the United States pursuant to this paragraph (b).

(6) By processors to processors whether directly or through one or more other persons of agave fiber which was on hand in the United States on or before August 5, 1942, or which is thereafter imported into the United States pursuant to this paragraph (b).

(c) *Restrictions on the processing of agave fibers.* (1) Except as provided in paragraphs (c) (2), (3) and (4), no person shall process any agave fiber in the manufacture of any product except the products specified below, and then only from the fibers and in the amounts expressly permitted below. The quotas hereinbelow established shall include processing for delivery to or for physical incorporation into material or equipment to be delivered to, or for the account of, the Army of the United States, the United States Navy, the United States Maritime Commission, or the War Shipping Administration, or their general or operating agents.

(i) *Wrapping twine.* Processors may use agave fiber for the manufacture of wrapping twine in an amount in any month not in excess of the percentage, for such month, of his average monthly sales for the calendar year 1941 described below:

Year 1942:	Percentage
February.....	100
March.....	70
April.....	65
May.....	65
June.....	57½
July.....	50
August, and each month thereafter..	40

Provided, however, That no person shall put into process after April 13, 1942, any Java agave sisalana for the manufacture of wrapping twine, or after August 5, 1942, any Java agave cantala.

(ii) *Binder twine.* Processors may use agave fiber, in an amount not in excess of:

(a) During the eleven months ending June 30, 1942, an amount which, when added to binder twine in his stocks on November 1, 1941, equals 120% of that processor's total sales of binder twine in the United States during the twelve months ending October 31, 1941;

(b) During the four months commencing July 1, 1942, and ending October 31, 1942, an amount which equals 40% of that processor's total sales of binder twine in the United States during the twelve months ending October 31, 1941:

Provided, however, That no person shall put into process binder twine containing any Java agave sisalana after April 13, 1942, or any Java agave cantala after August 5, 1942; *And provided further*, That the Director General for Operations

⁷ F. R. 1128, 1642, 2234, 2788, 2940, 2995.

⁷ F. R. 5116.

may increase pro rata the amount of agave fiber which processors may be allowed to process into binder twine, if, in the Director's opinion, additional amounts of binder twine are needed to provide for the growing or harvesting of agricultural food products or sewing up bags containing such products.

(iii) *Carpet yarns.* Processors may use agave fiber for manufacturing carpet yarns, if such fibers had actually been put into process for such purpose on or before February 20, 1942.

(iv) *Padding or stuffing.* Processors manufacturing padding or stuffing may use for that purpose only bagasse waste except on orders to be delivered to, or for the account of, or to be physically incorporated into material or equipment to be delivered to, or for the account of, the Army of the United States, the United States Navy, the United States Maritime Commission or the War Shipping Administration, or their general or operating agents, in which case tow, waste, and fibers less than 20" in length may be used.

(v) *Reinforced paper, tape and plastics.* Processors manufacturing reinforced paper, tape and plastics may use any agave fibers except Java sisalana and Java cantala, but only in an amount not in excess of 50% of the fiber content of their average monthly sales of such products for the twelve months ended June 30, 1942.

(vi) *Agave cordage.* Processors manufacturing agave cordage shall not put into process in any of the periods listed below an amount of agave fiber in excess of the amounts hereinafter specified for such period:

Periods	Amounts of Agave fiber
July 1, 1942, through December 31, 1942	12.2 times basic monthly poundage.
Each calendar quarterly period in 1943	5.3 times basic monthly poundage.

Provided, That the amount of agave fiber which may be put into process by any cordage processor in any such period shall be:

(a) *Diminished* by the amount of any additional Manila fiber which may be put into process by such cordage processor during such period pursuant to any exceptions or additional authorizations issued by the Director General for Operations pursuant to General Preference Order No. M-36;

(b) *Increased* by the difference, if any, between the amount of Manila fiber permitted to be put into process by such cordage processor pursuant to General Preference Order M-36, and any lesser amount of Manila fiber actually put into process by such cordage processor during such period, and

(c) *Increased* by any or all of the said processor's permitted amount of agave fiber for use in the manufacture of wrapping twine as provided in paragraph (c) (1) (i).

(2) A person may process agave fiber in the manufacture of a product not specified in paragraph (c) (1), for delivery to, or for the account of, or for

physical incorporation into material or equipment to be delivered to, or for the account of, the Army of the United States, the United States Navy, the United States Maritime Commission or the War Shipping Administration, or their general or operating agents.

(3) The prohibitions of paragraph (c) (1) shall not apply to the manufacture of wrapping twine, binder twine, agave cordage, reinforced paper, tape, or plastics from tow, waste, or fiber under 20" in length.

(4) Any processor who, by reason of the foregoing limitations is unable to meet his required deliveries under contracts existing on August 5, 1942, of agave cordage to be delivered to, or for the account of, the Army of the United States, the United States Navy, the United States Maritime Commission, the War Shipping Administration, or their general or operating agents, or any processor of agave cordage who, by reason of meeting the requirements of any such contracts, is required to reduce his operations during the period July 1, 1942, through December 31, 1942, to such an extent that it will cause serious labor displacement, may apply to the War Production Board for permission to process such additional amounts of agave fiber as may be necessary to enable him to meet his said required deliveries. Each application must be filed on or before August 19, 1942, and must state:

(i) Each contract held by the said processor of the type mentioned above,

(ii) The deliveries per month required thereunder,

(iii) The total deliveries per month required under all such contracts,

(iv) The amount of agave fiber processed by such person in May, 1942.

(v) The amount of agave fiber permitted to be processed during the period July 1, 1942, through December 31, 1942, by such processor under the foregoing limitations, and

(vi) The exact amount of relief desired during the said period.

(5) The Director General for Operations may, whenever supplies of agave fiber on hand in the United States and available for future purchase by the United States warrant, increase pro rata the amounts of agave fiber which may be entered into process for the manufacture of agave cordage or for such other products as in the judgment of the Director General for Operations may be necessary to promote the national defense and in the public interest.

(d) *Restrictions on purchases, sales and deliveries of agave cordage and wrapping twine.* (1) No dealer shall order, purchase or accept deliveries of any wrapping twine or agave cordage which will result in such dealer having in inventory an amount thereof in excess of a two months' supply.

(2) No person (other than a dealer, the Army of the United States, the United States Navy, or the United States Maritime Commission, and the War Shipping Administration, and its general or operating agents) shall order or accept delivery of any wrapping twine or agave cordage which will result in such person having in inventory an amount

thereof in excess of one and one-half months' supply; and no such person shall have outstanding at any one time orders for future deliveries of wrapping twine or agave cordage in excess of one month's supply for such person.

(3) No importer shall sell or deliver in any month agave cordage in excess of his average monthly sales of Manila and agave cordage in the calendar years 1939-1941, or wrapping twine, imported or domestic, in excess of the following percentages of his average monthly sales thereof during the said calendar years:

- 65 percent—July.
- 40 percent—August, and each month thereafter.

(4) Nothing in this paragraph shall prevent the orderly advance accumulation of a supply of wrapping twine to meet an expected seasonal demand for agricultural purposes, provided that the total amount so accumulated shall not be in excess of the amount estimated to be necessary for use for such purpose based on the most recently available crop forecasts of the Department of Agriculture.

(e) *Restrictions on purchases, sales and use of binder twine.* No person shall hereafter sell, purchase, deliver, accept delivery of or use any binder twine except for the growing or harvesting of agricultural products or for sewing up bags containing such products, and any person purchasing any binder twine shall endorse on, or attach to his purchase order or delivery receipt therefor, a statement signed by such person, or on his behalf by a duly authorized individual, a certificate in substantially the following form:

The undersigned hereby represents that the binder twine covered by this certificate will be either resold or used by the undersigned, during the next twelve months, for and only for one or more of the uses specified in paragraph (e) of General Preference Order No. M-84 (for 1942 growing, harvesting or bagging requirements).

(f) *Control of stocks of agave fiber.* Control is hereby taken of the distribution and use of agave fiber. Any agave fiber at any time hereafter in the inventory of any person shall be sold and delivered by such person if, and as, specifically directed in any order of the Director General for Operations which may be issued whenever the Director General for Operations shall determine that a shortage of any particular grade of agave fiber for defense, or for private account and for export, renders it necessary or appropriate so to allocate such agave fiber in the public interest, or to promote the national defense by so directing its sale and delivery by such person. Any such sale shall be made at the established prices and terms of sale and payment therefor. No person shall dispose of or use agave fiber in any manner inconsistent with any such order.

(g) *Reports.* Each person affected by this order shall execute and file with the War Production Board such reports and questionnaires as may be required by said Board from time to time.

(h) *Records.* All persons affected by this order shall keep and preserve for

not less than two years accurate and complete records concerning inventories, production and sales.

(i) *Appeal.* Any person affected by this order who considers that compliance therewith would work an exceptional and unreasonable hardship upon him, or that it would result in a degree of unemployment which would be unreasonably disproportionate compared with the amount of agave fiber conserved, or that compliance with this order would disrupt or impair a program of conversion from non-defense to defense work, may appeal to the War Production Board by letter or telegram, Reference M-84, setting forth the pertinent facts and the reason he considers he is entitled to relief. The Director General for Operations may thereupon take such action as he deems appropriate.

(j) *Communications to War Production Board.* All reports required to be filed hereunder, and all communications concerning this order, shall, unless otherwise directed, be addressed to: War Production Board, Textile, Clothing and Leather Branch, Washington, D. C. Reference: M-84.

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

(l) *Applicability of priorities regulations.* This order and all transactions affected thereby are subject to all applicable provisions of the Priorities Regulations of the War Production Board, as amended from time to time. (P.D. Reg. 1, as amended, 6 F.R. 6680; W.P.B. Reg. 1, 7 F.R. 561; E.O. 9024, 7 F.R. 329; E.O. 9040, 7 F.R. 527; E.O. 9125, 7 F.R. 2719; sec. 2 (a), Pub. Law 671, 76th Cong., as amended by Pub. Laws 89 and 507, 77th Cong.)

Issued this 5th day of August 1942.

AMORY HOUGHTON,
Director General for Operations.

[F. R. Doc. 42-7609; Filed, August 5, 1942;
12:18 p. m.]

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

[Amendment 1 to Exemption 1 of Priorities Regulation 11]

Section 944.32a *Exemption 1 to Priorities Regulation 11* is hereby amended to read as follows:

§ 944.32a *Exemption 1 to Priorities Regulation 11.* Pursuant to paragraph (c) of Priorities Regulation No. 11, Class 1 producers, as defined in said Regulation, located in Alaska, Panama Canal

17 F.R. 5043.

Zone, or in territories or possessions of the United States outside of the continental United States, are, until further action by the Director General for Operations, exempted from filing PRP applications. (P.D. Reg. 1, as amended, 6 F.R. 6680; W.P.B. Reg. 1, 7 F.R. 561; E.O. 9024, 7 F.R. 329; E.O. 9040, 7 F.R. 527; E.O. 9125, 7 F.R. 2719; sec. 2 (a), Pub. Law 671, 76th Cong., as amended by Pub. Laws 89 and 507, 77th Cong.)

Issued this 5th day of August 1942.

AMORY HOUGHTON,
Director General for Operations.

[F. R. Doc. 42-7613; Filed, August 5, 1942;
3:43 p. m.]

PART 1106—PRINTING AND PUBLISHING

[General Conservation Order M-99]

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

§ 1106.1 *Conservation Order M-99—*

(a) *Definitions.* For the purpose of this order. (1) "Plate" means any kind or shape of metal printing or marking plate or other metal form, used in the printing process, except such as are composed only of lead, tin and antimony.

(2) "Printing process" means the act or process of printing, impressing, or otherwise transferring on paper (or any paperlike substance) wood, fabric, metal or other material, any ink, color, pigment, mark, character or delineation, and includes any incidental or partial process required to prepare a plate for such use.

(3) A plate shall be deemed to be "obsolete" if, on July 1, 1942, or on the first day of any calendar quarter thereafter, it has been in existence for the period specified below and has not been used during such period:

- (i) Newspaper printing: 1 year;
- (ii) Magazine and periodical printing: 1 year;
- (iii) Book printing: 4 years;
- (iv) Container printing: 1 year;
- (v) All other categories of printing: 2½ years.

(4) The re-graining or other preparation of a planographic or intaglio plate for re-use shall be deemed a "use" of such plate within the meaning of subparagraph (3) of this paragraph (a).

(5) Notwithstanding the provisions of subparagraph (3) of this paragraph (a), a plate shall not be deemed to be obsolete at any time when there is an assured future use for the same.

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

(7) "Restricted metal" means aluminum, antimony, chromium, copper, lead, nickel, tin, zinc, or any alloy thereof.

(b) *Notices required to be given.* (1) Before September 1, 1942, every person

who is in possession, as custodian or otherwise (but is not the owner), of any obsolete plates shall notify the owner (if known, or, if not, the consignor) thereof that such person has such plates in his possession, and shall identify such plates by title or subject matter. Such notice may be given by mailing a letter to the owner, or consignor, as the case may be, addressed to his last known address.

(2) Before September 1, 1942, every person owning obsolete plates which are subject to a contractual right of another person to purchase or otherwise acquire the same shall notify such other person of such contractual right and identify the plates. Such notice may be given by mailing a letter to the owner, or consignor, as the case may be, at his last known address. If by the close of business on September 20, 1942, such other person fails to exercise his contractual right, or to execute a release in writing of such contractual right, then the owner of the plates shall, not later than September 30, 1942, mail to the War Production Board a written report identifying the plates by title or subject matter, giving the name and address of the person having the contractual right pertaining thereto, and stating the estimated aggregate amount of each restricted metal in the plates.

(c) *Restrictions on receipt or use of restricted metal after September 30, 1942, by persons who fail to dispose of obsolete plates.* (1) If any person on October 1, 1942, or on the first day of any other calendar quarter thereafter, owns or is in possession of any obsolete plates, and, if subject to the provisions of paragraph (b) of this order, has not complied therewith, such person shall not, at any time during the same calendar quarter, acquire or take possession of any plates containing restricted metals or any restricted metals for conversion into plates for use in any printing process, and no such person shall use or cause to be used in any printing process any plates or restricted metals so received by him.

(2) On and after October 1, 1942, each person who acquires any plates or any restricted metal for conversion into plates for use in any printing process shall endorse on each purchase or other order for such plates or metal a statement in the following form, signed manually or as provided in Priorities Regulation No. 7 (§ 944.27) by an official duly authorized for such purposes:

The undersigned hereby certifies that he is familiar with the terms of Conservation Order No. M-99, and is not prohibited thereby from receiving the material hereby ordered.

(Name of person)

By _____
(Duly Authorized Official)

(3) No person shall sell, deliver or otherwise dispose of any plates or restricted metal for conversion into plates or for use in the printing process, unless the purchase or other order shall contain thereon the endorsement required by subparagraph (2) of this paragraph (c).

(d) *Disposition of obsolete plates.* Any person owning obsolete plates may sell

or deliver the same to any scrap metal dealer, secondary smelter, or refiner authorized to receive the same under the provisions of any order or regulation of the Director General for Operations.

(e) *Miscellaneous provisions*—(1) *Applicability of Priorities Regulation No. 1.* This Order and all transactions affected thereby are subject to the provisions of Priorities Regulation No. 1, as amended from time to time, except to the extent that any provision hereof may be inconsistent therewith, in which case the provisions of this Order shall govern.

(2) *Reports.* All persons affected by this order shall execute and file with the War Production Board such further reports and questionnaires as the Director General for Operations shall from time to time require.

(3) *Records.* All persons affected by this order shall keep and preserve for not less than two years accurate and complete records of their inventory and sales of obsolete plates, subject to the inspection of the duly authorized representative of the War Production Board.

(4) *Appeal.* Any person affected by this order who considers that compliance therewith would work an exceptional and unreasonable hardship, upon him, may appeal to the War Production Board, setting forth the pertinent facts and the reasons he considers he is entitled to relief.

(5) *Communications to War Production Board.* All reports required to be filed hereunder and all communications concerning this order shall, unless otherwise directed, be addressed to: War Production Board, Printing and Publishing Branch, Washington, D. C. Ref.: M-99.

(6) *Violations.* Any person who willfully violates any provision of this order, or who, in connection with this order, willfully conceals a material fact or furnishes false information to any department or agency of the United States is guilty of crime, and upon conviction may be punished by fine or imprisonment. In addition, any such person may be prohibited from making or obtaining further deliveries of, or from processing or using, material under priority control and may be deprived of priorities assistance. (P.D. Reg. 1, as amended, 6 F.R. 6680; W.P.B. Reg. 1, 7 F.R. 561; E.O. 9024, 7 F.R. 329; E.O. 9040, 7 F.R. 527; E.O. 9125, 7 F.R. 2719; sec. 2 (a), Pub. Law 671, 76th Cong., as amended by Pub. Laws 89 and 507, 77th Cong.)

Issued this 5th day of August 1942.

AMORY HOUGHTON,
Director General for Operations.

[F. R. Doc. 42-7612; Filed, August 5, 1942;
3:43 p. m.]

PART 1010—SUSPENSION ORDERS

[Suspension Order S-73]

MIDDLESEX NAVAL UNIFORM CO.

Rubin Pizer of Malden, Massachusetts, doing business as Middlesex Naval Uniform Company, is engaged in the manu-

facture of clothing. In the latter part of February and in March, 1942, for the purpose of manufacturing sailors' uniforms, he ordered woolen cloth from his suppliers, extending with his orders the A-10 priority rating assigned by Conservation Order M-73¹ to orders for woolen cloth for the manufacture of officers' uniforms. By the use of the foregoing rating he obtained deliveries of over 4,000 yards of said cloth, which he could not have otherwise done. He subsequently used the cloth for the manufacture of sailors' uniforms. By such use of the cloth so obtained, he violated § 944.11² of Priorities Regulation No. 1, and by obtaining delivery of said cloth by wilful misstatements contained in the A-10 rating which he extended with his orders aforesaid, he violated § 944.18³ of said regulation.

These wilful violations of Priorities Regulation No. 1 have impeded the war effort of the United States by diverting woolen cloth to uses unauthorized by the War Production Board. In view of the foregoing

It is hereby ordered:

§ 1010.73 *Suspension Order S-73.*

(a) Deliveries of material to Rubin Pizer individually or doing business as Middlesex Naval Uniform Company, his successors and assigns, shall not be accorded priority over deliveries under any other contract or order and no preference ratings shall be assigned or applied to such deliveries to Rubin Pizer individually or doing business as Middlesex Naval Uniform Company by means of Preference Rating Certificates, Preference Rating Orders, General Preference Orders or any other orders or regulations of the Director of Industry Operations or the Director General for Operations.

(b) No allocation shall be made to Rubin Pizer individually or doing business as Middlesex Naval Uniform Company, its successors and assigns, of any material the supply or distribution of which is governed by any order of the Director of Industry Operations or the Director General for Operations except as specifically authorized by the Director General for Operations.

(c) Rubin Pizer individually or doing business as Middlesex Naval Uniform Company, his successors or assigns, shall not produce, put into process or deliver cloth made of any wool other than noils, waste, reprocessed or reused wool except as specifically authorized in writing by the Regional Compliance Chief of the Boston Regional Office, War Production Board.

(d) Nothing contained in this order shall be deemed to relieve said Rubin Pizer individually or doing business as Middlesex Naval Uniform Company, from any restriction, prohibition, or provision contained in any other order or regulation of the Director of Industry Operations or Director General for Operations, except in so far as the same may be inconsistent with the provisions hereof.

¹ 7 F.R. 5020.

² 6 F.R. 4490, 6682.

³ 6 F.R. 4491, 6682.

(e) This order shall take effect on August 7, 1942, and shall expire on February 7, 1943, at which time the restrictions contained in this order shall be of no further effect. (P.D. Reg. 1, as amended, 6 F.R. 6680; W.P.B. Reg. 1, 7 F.R. 561; E.O. 9024, 7 F.R. 329; E.O. 9040, 7 F.R. 527; E.O. 9125, 7 F.R. 2719; sec. 2 (a), Pub. Law 671, 76th Cong., as amended by Pub. Laws 89 and 507, 77th Cong.)

Issued this 5th day of August 1942.

AMORY HOUGHTON,
Director General for Operations.

[F. R. Doc. 42-7614; Filed, August 5, 1942;
3:43 p. m.]

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

[Amendment 3 to Priorities Regulation 11]

PRODUCTION REQUIREMENTS PLAN

Priorities Regulation No. 11 (§ 944.32)¹ is hereby amended as follows:

1. Paragraph (e) is amended to read as follows:

(e) *Interim procedure for Class I Producers.* Any Class I Producer who has filed his PRP Application for either the third or for the fourth quarter of 1942, but has not received his PRP certificate for such quarter may apply or extend preference ratings for delivery during the particular quarter as follows:

(1) If he has been operating under the Production Requirements Plan, he may apply the same preference ratings he was authorized to apply during the preceding quarter to not more than 40% during the first month, and not more than 70% during the first two months of the amount of each material which he has indicated on his PRP Application as his anticipated requirements for the particular quarter.

(2) If he has not been operating under the Production Requirements Plan, he may continue to apply and extend ratings under any applicable preference rating orders or preference rating certificates in the same manner as permitted prior to the beginning of the particular quarter; and, notwithstanding the termination of any preference rating order on or after the end of the preceding quarter the same shall be deemed to continue in effect as to any such person until he receives his PRP Certificate: *Provided, however,* That he shall not apply or extend ratings to the delivery in the particular quarter of any material in an aggregate quantity greater than 40% during the first month, nor greater than 70% during the first two months, of the amount of such material which he has indicated as his anticipated requirements on his PRP Application for that particular quarter, subject to any further restrictions contained in the preference rating certificates or orders assigning the ratings which he is applying or extending.

¹ 7 F.R. 4423, 4615, 4698, 4848, 5043, 5359, and *supra*.

(3) A Class I Producer who applies or extends any preference rating pursuant to subparagraphs (1) or (2) of this paragraph (e), shall deduct the amount of any material which he has received or to which he has applied or extended such rating from the amount rated or otherwise authorized by his PRP Certificate when issued to him.

2. The Metals List attached to Priorities Regulation No. 11 is hereby amended as follows:

1. Paragraph (a) (1) of the Metals List is amended by inserting before the word "tungsten" the word "silver."

2. By omitting paragraphs (b) and (c) of said List.

(P.D. Reg. 1, as amended, 6 F.R. 6680; W.P.B. Reg. 1, 7 F.R. 561; E.O. 9024, 7 F.R. 329; E.O. 9040, 7 F.R. 527; E.O. 9125, 7 F.R. 2719; sec. 2 (a), Pub. Law 671, 76th Cong., as amended by Pub. Laws 89 and 507, 77th Cong.)

Issued this 5th day of August 1942.

AMORY HOUGHTON,
Director General for Operations.

[F. R. Doc. 42-7615; Filed, August 5, 1942;
4:35 p. m.]

PART 1029—FARM MACHINERY AND EQUIPMENT AND ATTACHMENTS AND REPAIR PARTS THEREFOR

[Amendment 1 to Limitation Order L-26, as amended July 14, 1942]

Paragraph (c) (1) (ii) *General Restrictions of § 1029.1 Limitation Order L-26*, as amended July 14, 1942, is hereby amended by adding at the end thereof the following:

* * * However, at his option, such producer may total the amounts of the material so authorized for use in his production of all attachments and repair parts, and distribute this total among such items (irrespective of the designated percentages) as he may desire, but in no event shall his aggregate use of such material exceed such total.

(P.D. Reg. 1, as amended, 6 F.R. 6680; W.P.B. Reg. 1, 7 F.R. 561; E.O. 9024, 7 F.R. 329; E.O. 9040, 7 F.R. 527; E.O. 9125, 7 F.R. 2719; sec. 2 (a), Pub. Law 671, 76th Cong., as amended by Pub. Laws 89 and 507, 77th Cong.)

Issued this 6th day of August 1942.

AMORY HOUGHTON,
Director General for Operations.

[F. R. Doc. 42-7638; Filed, August 6, 1942;
11:40 a. m.]

PART 1068—CANS MADE OF TINPLATE OR TERNEPLATE

[Amendment 2 to Conservation Order M-81, as amended June 27, 1942]

Section 1068.1 *Conservation Order M-81*, as amended June 27, 1942, is hereby amended as follows:

1. Item 11 of Vegetables in Table II, entitled "Tomato Pulp or Puree", is hereby deleted.

¹ 7 F.R. 34, 2504, 2787, 3713, 4647, 5396.

² 7 F.R. 4836.

2. The second sentence of Item 7 of Vegetables in Table I, reading "No. 10 cans, see Table II" is hereby amended to read as follows:

"No. 1 Picnic, No. 2, No. 2½, or No. 10 cans."

3. The third sentence of Item 8 of Vegetables in Table I, reading "No. 10 cans, see Table II," is hereby amended to read as follows:

"No. 1 Picnic, No. 2; No. 2½, or No. 10 cans. For 8Z Short cans, see Table II."

(P.D. Reg. 1, as amended, 6 F.R. 6680; W.P.B. Reg. 1, 7 F.R. 561; E.O. 9024, 7 F.R. 329; E.O. 9040, 7 F.R. 527; E.O. 9125, 7 F.R. 2719; sec. 2 (a), Pub. Law 671, 76th Cong., as amended by Pub. Laws 89 and 507, 77th Cong.)

Issued this the 6th day of August 1942.

AMORY HOUGHTON,
Director General for Operations.

[F. R. Doc. 42-7639; Filed, August 6, 1942;
11:40 a. m.]

PART 3013—SOLUBLE NITROCELLULOSE

[General Preference Order M-196]

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

§ 3013.1 *General Preference Order M-196*—(a) *Definitions*. (1) "Soluble nitrocellulose" means the product made by nitrating any form of cellulose (including linters, woodpulp and cellophane scrap) having a nitrogen content of 12.5% or less, and whether in the form of base solution or in the dehydrated or water wet condition. The term includes smokeless powder scrap and dissolved film scrap, but does not include undissolved film scrap.

(2) "Smokeless powder scrap" means any rejected smokeless powder unsuited for military purposes and made available for protective coatings and industrial uses.

(3) "Film scrap" means discarded nitrate film whether motion picture or still.

(4) "Undissolved film scrap" means film scrap which has not been dissolved or put in solution, whether washed or unwashed.

(5) "Base solution" means soluble nitrocellulose in solution form, and includes dissolved film scrap.

(6) "Consumer" means a manufacturer using soluble nitrocellulose as one of his raw materials.

(7) "Producer" means any person producing soluble nitrocellulose and any person procuring and dissolving soluble nitrocellulose for sale as base solution.

(8) "Distributor" means any person who buys soluble nitrocellulose for purpose of resale as such.

(9) "Washer" means any person who removes the silver emulsion from the film base.

(10) "Type of soluble nitrocellulose" means one of the following four types of soluble nitrocellulose: lacquer type, coated textile type, film type, and plastics type.

(b) *Directions with respect to production*. The Director General for Operations may from time to time issue directions to a producer or producers with respect to the type of soluble nitrocellulose to be produced, or with respect to the division of production among types of soluble nitrocellulose. He may also issue directions with respect to the formula or formulae to be used by producers in dissolving film scrap.

(c) *Restrictions on deliveries of soluble nitrocellulose*. On and after September 1, 1942, no producer or distributor, except as provided in this paragraph (c), shall make delivery of soluble nitrocellulose to any person, and no person may accept delivery thereof from any producer or distributor.

(1) *Deliveries in excess of 1000 lbs.* Where the amount of soluble nitrocellulose of which any person may seek delivery in any month (whether from one, or more than one, producer or distributor) shall exceed 1000 lbs., dry weight, delivery may be made by a producer or distributor only with the express authorization or direction of the Director General for Operations. Prior to the commencement of each calendar month beginning with September, 1942, the Director General for Operations will directly or indirectly issue to each producer or distributor (normally but not necessarily on Form PD-610, theretofore filed with the War Production Board by such producer or distributor) authorizations or directions covering deliveries of soluble nitrocellulose which may or must be made by him during such month to any person whose total orders for soluble nitrocellulose in such month exceed 1000 lbs., and he may also during any month, including July and August, 1942, issue such other authorizations or directions as he may deem appropriate or necessary, either with respect to deliveries to be made or with respect to use or uses to which material to be delivered is to be put or not to be put. Each producer or distributor, upon being informed by the Director General for Operations of the deliveries which such director has authorized or directed, shall forthwith notify each customer affected thereby.

(2) *Deliveries exceeding 232 lbs. but not more than 1000 lbs.* Where the amount of soluble nitrocellulose of which any person may seek delivery in any month (whether from one, or from more than one, producer or distributor) exceeds 232 lbs., dry weight, but is not more than 1000 lbs., dry weight, a producer or distributor may without the express authority of the Director General for Operations make delivery of soluble nitrocellulose to such person in such month in a quantity not exceeding the sum of the following amounts, provided such producer or distributor shall have received from such person, the certificate referred to in paragraph (f) (2) hereof within the time specified in said paragraph:

(i) The amount of soluble nitrocellulose ordered by such person required by such person for the filling of defense orders;

(ii) An amount equal to a percentage of such person's average monthly use or consumption of soluble nitrocellulose in the calendar year 1941. Unless and until the Director General for Operations shall fix a different percentage, such percentage shall be 50%.

(3) *Unrestricted deliveries.* No restrictions of any sort are imposed with respect to the following:

(i) Delivery to or acceptance of delivery by any person in any month of soluble nitrocellulose in a quantity not exceeding 232 lbs., dry weight.

(ii) Delivery of smokeless powder scrap to any producer by the Ordnance Department of the United States Army or by the Bureau of Ordnance of the United States Navy.

(d) *Restrictions on deliveries of undissolved film scrap.* On and after September 1, 1942, no person shall make delivery of undissolved film scrap, whatever the quantity, without the express authorization or direction of the Director General for Operations, and no person may accept delivery thereof except as so provided. The Director General for Operations will from time to time on proper showing to him by letter issue authorizations or directions covering deliveries of undissolved film scrap.

(e) *Separation of functions.* Each producer who consumes all or part of his production of soluble nitrocellulose shall treat the production and consumption parts of his operations as separate divisions within the meaning of paragraph (h) (2) hereof, and in his separate capacities as a consumer of soluble nitrocellulose and as a producer of soluble nitrocellulose shall file all applications and reports required of him in his separate capacities. Any authorization or direction to any person under paragraph (d) hereof to accept delivery of undissolved film scrap shall not unless the contrary is expressly indicated constitute authority to use or consume the dissolved film scrap.

(f) *Applications and reports.* (1) Each person who seeks delivery in any calendar month of more than 1,000 lbs., dry weight, of soluble nitrocellulose, whether for his own consumption or resale, shall, on or before the 15th day of the month preceding the month in which such delivery is sought, submit the original and two copies of Form PD-609 to the War Production Board, Chemicals Branch, Washington, D. C., Ref.: M-196, and one copy to his supplier.

(2) Each person who seeks delivery in any calendar month of soluble nitrocellulose in a quantity in excess of 232 lbs., dry weight, but not more than 1000 lbs., dry weight, whether for his own consumption or resale, shall submit to his supplier with his order not less than 10 nor more than 30 days prior to the requested delivery date, a certificate in the following form, duly executed by him:

The undersigned purchaser hereby certifies (1) that the _____ lbs. of soluble nitrocellulose hereby ordered for delivery in _____, with any other soluble nitrocellulose ordered for delivery during such month, whether from the person to whom this certificate is presented or any other person, will not exceed 1,000 lbs., dry weight; (2) that _____ lbs. of the amount hereby ordered is necessary to fill defense orders placed with the undersigned; (3) that _____ lbs. of the amount hereby ordered (together with the amount of non-defense orders placed with any other person) represents % of the undersigned's average monthly 1941 consumption of soluble nitrocellulose, his 1941 consumption amounting to _____ lbs.; (4) that his inventory as of the date for which delivery is requested will not exceed a 30-day supply in terms of General Preference Order M-196, with terms of which he is familiar.

Name of Purchaser
By -----
Signature of Authorized Official

Title

Such certificate may be inscribed on or accompany as a separate instrument the order for soluble nitrocellulose to which it pertains.

(3) Each producer or distributor shall on or before the 20th day of each month commencing with August 1942, submit to the War Production Board an original and two copies of Form PD-610, properly executed by him.

(4) All producers, distributors and other persons affected by this order shall make such reports or furnish such information at such times in such form and in respect to such matters as the Director General for Operations may from time to time prescribe.

(g) *Inventory restrictions.* No distributor or consumer shall accept delivery of soluble nitrocellulose, and no person shall make delivery of soluble nitrocellulose to any distributor or consumer, if the inventory of such consumer or distributor accepting delivery is, excluding the amount of which delivery is being made, in excess of a 30-day supply in terms, in case of the consumer, of orders received by such consumer for his finished products on the basis of his method of operation during the previous 90 days, or, in case of a distributor, in terms of his orders for soluble nitrocellulose, but this paragraph shall not be construed to prevent a person's accepting delivery thereof in the smallest practicable delivery unit as evidenced by his past experience.

(h) *Miscellaneous provisions.*—(1) *Notification of customers.* Producers and distributors shall, as soon as practicable, notify each of their regular customers of the requirements of this order, but failure to give such notice shall not excuse any person from the obligation of complying with the terms of this order.

(2) *Intra-company transactions.* The prohibitions or restrictions contained in this order with respect to acceptance of orders and deliveries in the absence of a contrary direction apply not only to acceptances of orders from and deliveries to other persons, including affiliates and subsidiaries, but also to acceptances of

orders from and deliveries to one branch, division or section of a single enterprise by or from another branch, division or section of the same or any other enterprise under common ownership or control.

(3) *Communications to War Production Board.* All reports required to be filed hereunder, and all communications concerning this order, shall, unless otherwise directed, be addressed to: War Production Board, Chemicals Branch, Washington, D. C., Ref.: M-196.

(4) *Appeals.* Any person affected by this order who considers that compliance therewith would work an exceptional and unreasonable hardship upon him, or that it would result in a degree of unemployment which would be unreasonably disproportionate compared with the amount of soluble nitrocellulose conserved, or that compliance with this order would disrupt or impair a program of conversion from non-defense to defense work, may appeal to the Director General for Operations by addressing a letter to the War Production Board, Chemicals Branch, Washington, D. C., Ref.: M-196, setting forth the pertinent facts and the reasons he considers he is entitled to relief. The Director General for Operations may thereupon take such action as he deems appropriate.

(5) *Violations or false statements.*—Any person who wilfully violates any provisions of this order or who in connection with this order wilfully conceals a material fact or furnishes false information to any department or agency of the United States, is guilty of a crime, and upon conviction may be punished by fine or imprisonment. In addition, any such person may be prohibited from making or obtaining further deliveries of, or from processing or using material under priority control and may be deprived of priorities assistance. (P.D. Reg. 1, as amended, 6 F.R. 6680; W.P.B. Reg. 1, 7 F.R. 561; E.O. 9024, 7 F.R. 329; E.O. 9040, 7 F.R. 527; E.O. 9125, 7 F.R. 2719; sec. 2(a), Pub. Law 671, 76th Cong., as amended by Pub. Laws 89 and 507, 77th Cong.)

Issued this 6th day of August 1942.

AMORY HOUGHTON,
Director General for Operations.

[F. R. Doc. 42-7637; Filed, August 6, 1942; 11:40 a. m.]

Chapter XI—Office of Price Administration

PART 1411—COMPENSATORY ADJUSTMENTS
[Amendment 2 to Compensatory Adjustment Regulation 1]

WARTIME INCREASES IN THE COST OF
TRANSPORTING BITUMINOUS COAL

Corrections

In the 18th line of § 1411.5, appearing on page 6005 of the issue for Tuesday, August 4, 1942, the word "event" is misspelled. In the second line of the first column on page 6006 "to" should read "in". In § 1411.7 (b) *Effective dates of amendments* "1411.3 (a)" should be added.

PART 1419—EXPLOSIVES

[Maximum Price Regulation 191]

COTTON LINTERS AND HULL FIBERS

Correction

In § 1419.1 (c), appearing on page 6001 of the issue for Tuesday, August 4, 1942, the price for hull fibers having a cellulose content of 70 percent should read "\$.037" instead of "\$0.37".

TITLE 47—TELECOMMUNICATION

Chapter I—Federal Communications Commission

PART 42—DESTRUCTION OF RECORDS

MISCELLANEOUS AMENDMENTS

The Commission on August 4, 1942, effective immediately, adopted the following amendment:

Part 42—Destruction of Records (Rules Governing the Destruction of Records of Telecommunication Carriers)—On the cover page and at page one change the title to read, "Part 42—Preservation of Records," and delete the parenthetical subtitle reading, "(Rules Governing the Destruction of Records of Telecommunication Carriers)."

The following new sections were also adopted:

§ 42.2 *Requirements of other lawful authorities for longer periods.* (a) Wherever the period specified in these rules for the retention of cash records and other documents which are involved in claims by or against the carrier is shorter than the period specified in the statute of limitations of a state wherein the utility operates, the latter shall control.

(b) These rules shall not be construed as excusing compliance with any other lawful requirement for the preservation of accounts, records, or memoranda for longer periods than those herein prescribed.

§ 42.3 *Records acquired from predecessors.* The provisions of these rules apply to all records which come into the possession of the accounting carrier in connection with the acquisition of property, such as by purchase, consolidation, merger, etc.

§ 42.4 *Installation of records not required.* These regulations shall not be interpreted as requiring that the records herein named shall be installed, when such records are not already kept by the carrier, unless required by other regulations such as foregoing § 42.3 or the applicable uniform system of accounts. (Sec. (1), 48 Stat. 1069; 47 U.S.C. 154 (i)—Sec. 220, 48 Stat. 1078; 47 U.S.C. 220).

By the Commission.

[SEAL]

T. J. SLOWIE,
Secretary.

[F. R. Doc. 42-7636; Filed, August 6, 1942; 11:31 a. m.]

TITLE 50—WILDLIFE

Chapter I—Fish and Wildlife Service

PART 23—SOUTHWESTERN REGION NATIONAL WILDLIFE REFUGES

HAVASU LAKE NATIONAL WILDLIFE REFUGE, ARIZONA AND CALIFORNIA

Pursuant to the provisions of section 10 of the Migratory Bird Conservation Act of February 18, 1929 (45 Stat. 1222-16 U.S.C. 715i) as amended, the administration of which was transferred to the Secretary of the Interior on July 1, 1939, in accordance with Reorganization Plan No. II (53 Stat. 1431), the following is hereby ordered:

§ 23.409a *Havasu Lake National Wildlife Refuge, Arizona and California; public use areas.* In accordance with the provisions of §§ 12.1 to 12.16, inclusive,¹ for the administration of national wildlife refuges under the jurisdiction of the Fish and Wildlife Service, the Director of the Fish and Wildlife Service may permit municipalities or other governing bodies, organizations, and individuals to operate public use areas and facilities including but not limited to boathouses, boats, canoes, cabins, stores, docks, and wharfs upon such terms and at such rates of charge, if any, as may be determined by the director to be commensurate with the value of the privilege granted. Any permittee operating on the refuge as hereinabove provided shall be required, prior to construction, to submit for the approval of the director an over-all plot plan for the orderly development of the public use areas. No building, structure, or other improvement or facility shall be constructed in the public use areas until the plans, specifications, and location have been approved by the director, and no fee or rental shall be charged in excess of the tariff or schedule of rates approved by the director.

§ 23.409b *Havasu Lake National Wildlife Refuge, Arizona and California; boating.* In accordance with the provisions of §§ 12.1 to 12.16, inclusive, for the administration of national wildlife refuges under the jurisdiction of the Fish and Wildlife Service, boating is permitted in the Havasu Lake National Wildlife Refuge, Arizona and California, subject to the following conditions and restrictions:

(a) *Permits required for the operation of privately-owned boats.* Any person desiring to keep or operate a boat for more than three days during a fiscal year on the Havasu Lake National Wildlife Refuge will be required first to obtain a permit to do so from the refuge manager of the area. For the issuance of such a permit there will be charged per fiscal year or part thereof the sum of \$2 for each powerboat or sailboat, \$1 for each rowboat or canoe, and \$5 for each houseboat: *Provided*, That such boats shall not be used for hire or for carriage of persons or property for com-

¹ 5 F.R. 5284.

ensation or as an adjunct to any business for which a charge is made or compensation received directly or indirectly. Permits will continue in force until the end of the fiscal year in which issued, unless sooner revoked by the refuge manager. Number plates corresponding to the number of the permit must be provided by each permittee and shall be displayed by him in a conspicuous place on each outer side of the boat near the bow, and the permittee shall keep in his possession and available for inspection the permit granted to him. A permit may not be transferred from one boat to another, but the permit for a particular boat may be transferred from the permittee to another person during the fiscal year for which it is issued upon application to and approval by the refuge manager and the payment of a fee of 50¢.

(b) *Wharves, dock, and boathouses.* As an accompaniment to a boat permit, general landing and anchorage privileges are granted to the permittee subject to the instructions and supervision of the refuge manager. Where desired in connection with a boat permit and if deemed by the refuge manager not detrimental to the interests of the United States, there may be granted a permit to install and anchor at the shore for the private use of the permittee a floating dock, wharf, and/or boathouse of size and design approved by the officer in charge to accommodate the boat for which the permit has been issued. A charge of \$1.50 per fiscal year or any part thereof will be made for the permit for such a dock, wharf, and/or boathouse used in connection with any type of boat. The permit shall not be transferred or the use of the dock, wharf, and/or boathouse granted or sublet by the permittee to another person without application to and approval by the refuge manager and the payment of a fee of 50¢. Permits will continue in force until the end of the fiscal year in which issued unless sooner terminated or revoked. All such facilities shall be well constructed and maintained in a manner satisfactory to the refuge manager, and their location shall be approved by him. Number plates corresponding to the permit will be provided by the permittee and shall be displayed in conspicuous places on each dock or wharf.

(c) *Equipment required for boats.* The minimum requirements for the equipment of all passenger-carrying boats operating on the refuge shall be those of the United States Coast Guard together with the following additional ones:

(1) Each boat shall be provided with two or more oars, with trustworthy life preservers equal in number to the maximum number of persons to be carried, with an anchor of sufficient size and a rope, chain, or cable of sufficient length and strength to hold the boat in case of accident, and with a water pump or bailing bucket, and other necessary tools.

(2) From sunset to sunrise powerboats or sailboats under way shall carry

signal lights and during such time no other lights that may be mistaken for such signal lights shall be exhibited on such boats within the refuge. Each boat shall carry a white light aft to show all around the horizon, and a combination lantern or lanterns in the fore part of the boat to show green to the right and red to the left and both colors to the front. In addition, a white light may be used in the center of the boat near the bow but the aft light shall be higher than such light and so placed as to form a range therewith, and shall be clear of house, awnings, and/or other obstructions.

(3) Each rowboat or canoe, when in use at any time between sunset and sunrise shall carry a lantern or other suitable light to be exhibited whenever in the vicinity of other boats on the water.

(4) A boat at anchor while in use between sunset and sunrise shall carry forward, where it can best be seen, at a height not exceeding 20 feet above the hull, a white light visible all around the horizon.

(5) Each boat shall be provided with a whistle or other sound-producing mechanical appliance capable of producing a blast of two seconds or more in duration. A mouth whistle that can be heard for at least half a mile will be held to comply with this rule.

(d) *Navigation rules.* Boats operating on the refuge shall comply with the rules and regulations of the United States Coast Guard as well as with the following additional regulations:

(1) When two boats are approaching each other head-on or so nearly as to be in danger of collision, it shall be the duty of each to turn to the right and to pass on the port, or left side of the other.

(2) When two powerboats approach within 250 yards of each other from opposite directions, either boat shall give, as a signal of her intention, one short and distinct blast of her whistle, which the other boat shall answer promptly by a similar blast of her whistle, and thereupon each boat shall pass on the port, or left, side of the other.

(3) If the courses of the approaching boats are so far to the starboard, or right, side of each other as not to be in danger of collision, either boat shall give two short and distinct blasts of her whistle as an indication of her intention to continue on her course, which the other boat shall answer promptly by two similar blasts of her whistle, and thereupon each boat shall pass on the starboard, or right, side of the other.

(4) When two boats are proceeding on courses that cross each other and such crossing may involve risk of collision, the boat on the starboard, or right, side shall have the right-of-way, and the boat on the port, or left, side shall keep out of the way of the other until the crossing has been safely effected.

(5) A boat overtaking any other boat shall keep out of the way of the overtaken boat, passing on the left side of it if that side is in the clear.

(6) Powerboats when moving under power shall keep clear of rowboats with occupants, approaching them not nearer

than 100 feet and should reduce speed during the interval of passing.

(7) Motorboats propelled by gas, oil, gasoline, or alcohol engines, both outboard and inboard, shall not be operated without effective mufflers, except for occasional periods not exceeding 5 minutes at a time.

(8) No boat shall approach, pass, or be located within three hundred (300) feet of the outlets in Parker Dam, or of the Municipal Water District Inlets.

(e) *Responsibility of owners of boats.* Passenger-carrying boats shall comply with the requirements of the United States Coast Guard and, in addition thereto, boats that, in the opinion of the refuge manager, whose decision shall be final and conclusive, are not properly constructed, operated, or maintained shall not be permitted to be placed in or remain on the waters of the reservoir. Each boat when not in use and each dock, wharf, or boathouse shall be securely anchored or moored in locations designated or approved by the refuge manager and in such a manner as not to endanger other boats on the reservoir or property along the shore. Boats, docks, wharves, or boathouses found floating loose on the reservoir will be taken up, and the permittee shall reimburse the United States for any expense incurred in making the boat, dock, wharf, or boathouse secure. Owners of boats shall not permit the use or operation thereof by any person not competent to operate same or to handle the machinery thereof. The United States assumes no responsibility for loss of or damage to life or property by theft, storm, accident, or otherwise in connection with or growing out of the exercising of any privilege conferred by a permit issued in accordance with these regulations.

(f) *Disorderly conduct.* No intoxicated person shall be permitted on land belonging to the United States, or on docks, wharves, or boathouses constructed thereon, or in or on boats on the waters of the reservoir. The person in charge of each boat, dock, or wharf, or boathouse shall preserve order therein or thereon and shall extend courteous treatment to passengers and persons therein or thereon.

§ 23.409c *Havasus Lake National Wildlife Refuge, Arizona and California; sanitation.* No bottles, cans, garbage, rubbish, or refuse of any kind shall be thrown into the waters of Havasu Lake, but the same shall be disposed of as directed by signs and instructions posted by the refuge manager. Outhouses, septic tanks, and cesspools shall be located and constructed as directed by the refuge manager, and all sanitary requirements specified by the refuge manager shall be observed.

§ 23.409d *Havasus Lake National Wildlife Refuge, Arizona and California; hunting and firearms.* The Havasu Lake National Wildlife Refuge, Arizona and California, has been set aside as a national wildlife refuge, and it is unlawful:

(a) To molest wild animals or birds or their nests on the area;

(b) To hunt on any part of the refuge except on areas set aside for that purpose by the Secretary of the Interior and in accordance with rules and regulations prescribed for such hunting; and,

(c) To carry or be in possession of any firearm on any lands or in or on any boat, dock, wharf, houseboat, or boathouse within the refuge, except that a person may carry an unloaded shotgun, broken or encased, during the hunting season which he is traveling to or returning from areas set aside for hunting by the Secretary of the Interior via routes or courses of travel designated by suitable posting by the refuge manager.

§ 23.409e *Havasus Lake National Wildlife Refuge, Arizona and California; fishing.* Fishing is permitted in all the waters of the Havasu Lake National Wildlife Refuge, Arizona and California, except during the open season for the hunting of migratory game birds, in accordance with the provisions of the laws and regulations applicable to the refuge, including the regulations dated December 19, 1940, for the administration of national wildlife refuges under the jurisdiction of the Fish and Wildlife Service, and subject to the following conditions and restrictions:

(a) *State laws.* Any person while fishing within the refuge must comply with the applicable State laws and regulations.

(b) *Fishing licenses and permits.* Any person who fishes within the refuge shall be in possession of a valid State fishing license, if such license is required. The license shall serve as a Federal permit for fishing on the refuge and must be carried on the person of the licensee while so fishing. The license must be exhibited upon the request of any representative of the Arizona Game and Fish Commission or of the California Department of Natural Resources authorized to enforce the State fishing laws and regulations, or of any representative of the United States Department of the Interior.

(c) *Routes of travel.* Persons entering the refuge for the purpose of fishing shall follow such routes or courses of travel as may be designated by suitable posting by the refuge manager.

§ 23.409f *Havasus Lake National Wildlife Refuge, Arizona and California; revocation of permits.* The permit of any person violating any of the laws or regulations applicable to the Havasu Lake National Wildlife Refuge, Arizona and California, may be revoked by the regional director, and upon such revocation such person shall remove himself and all his property from the reservoir and the lands belonging to the United States. If he fails to remove his property within a period of 30 days from the date of such revocation, it shall become the unqualified property of the United States and will be sold, removed, destroyed, or converted to the use of the United States without liability to the owner.

W. C. MENDENHALL,
Acting Secretary of the Interior.

APRIL 30, 1942.

[F. R. Doc. 42-7617; Filed, August 6, 1942; 10:01 a. m.]

Notices

TREASURY DEPARTMENT.

Fiscal Service: Bureau of the Public Debt.

[1942, Dept. Circ. 693]

7/8 PERCENT TREASURY CERTIFICATES OF INDEBTEDNESS OF SERIES B-1943

AUGUST 6, 1942.

I. OFFERING OF CERTIFICATES

1. The Secretary of the Treasury, pursuant to the authority of the Second Liberty Bond Act, as amended, invites subscriptions, at par and accrued interest, from the people of the United States for certificates of indebtedness of the United States, designated 7/8 percent Treasury Certificates of Indebtedness of Series B-1943. The amount of the offering is \$1,500,000,000, or thereabouts.

II. DESCRIPTION OF CERTIFICATES

1. The certificates will be dated August 15, 1942, and will bear interest from that date at the rate of 7/8 percent per annum, payable on a semiannual basis on February 1 and August 1, 1943. They will mature August 1, 1943, and will not be subject to call for redemption prior to maturity.

2. The income derived from the certificates shall be subject to all Federal taxes, now or hereafter imposed. The certificates shall be subject to estate, inheritance, gift or other excise taxes, whether Federal or State, but shall be exempt from all taxation now or hereafter imposed on the principal or interest thereof by any State, or any of the possessions of the United States, or by any local taxing authority.

3. The certificates will be acceptable to secure deposits of public moneys. They will not be acceptable in payment of taxes and will not bear the circulation privilege.

4. Bearer certificates with two coupons attached will be issued in denominations of \$1,000, \$5,000, \$10,000 and \$100,000. The certificates will not be issued in registered form.

5. The certificates will be subject to the general regulations of the Treasury Department, now or hereafter prescribed, governing United States certificates.

III. SUBSCRIPTION AND ALLOTMENT

1. Subscriptions will be received at the Federal Reserve Banks and Branches and at the Treasury Department, Washington. Subscribers must agree not to sell or otherwise dispose of their subscriptions, or of the securities which may be allotted thereon, prior to the closing of the subscription books. Banking institutions and security dealers generally may submit subscriptions for account of customers, but only the Federal Reserve Banks and the Treasury Department are authorized to act as official agencies. Others than banking institutions and security dealers will not be permitted to enter subscriptions except for their own account. Subscriptions from banks and trust companies for their own account

will be received without deposit. Subscriptions from all others must be accompanied by payment of 5 percent of the amount of certificates applied for.

2. The Secretary of the Treasury reserves the right to reject any subscription, in whole or in part, to allot less than the amount of certificates applied for, and to close the books as to any or all subscriptions at any time without notice; and any action he may take in these respects shall be final. Subject to these reservations, subscriptions for amounts up to and including \$25,000 will be allotted in full. The basis of the allotment on all other subscriptions will be publicly announced, and allotment notices will be sent out promptly upon allotment.

IV. PAYMENT

1. Payment at par and accrued interest, if any, for certificates allotted hereunder must be made or completed on or before August 15, 1942, or on later allotment. In every case where payment is not so completed, the payment with application up to 5 percent of the amount of certificates applied for shall, upon declaration made by the Secretary of the Treasury in his discretion, be forfeited to the United States. Any qualified depository will be permitted to make payment by credit for certificates allotted to it for itself and its customers up to any amount for which it shall be qualified in excess of existing deposits, when so notified by the Federal Reserve Bank of its District.

V. GENERAL PROVISIONS

1. As fiscal agents of the United States, Federal Reserve Banks are authorized and requested to receive subscriptions, to make allotments on the basis and up to the amounts indicated by the Secretary of the Treasury to the Federal Reserve Banks of the respective districts, to issue allotment notices, to receive payment for certificates allotted, to make delivery of certificates on full-paid subscriptions allotted, and they may issue interim receipts pending delivery of the definitive certificates.

2. The Secretary of the Treasury may at any time, or from time to time, prescribe supplemental or amendatory rules and regulations governing the offering, which will be communicated promptly to the Federal Reserve Banks.

[SEAL] HENRY MORGENTHAU, JR.,
Secretary of the Treasury.

[F.R. Doc. 42-7628; Filed, August 6, 1942;
11:21 a. m.]

DEPARTMENT OF THE INTERIOR.

Bituminous Coal Division.

[Docket No. A-1537]

DISTRICT BOARD 3

NOTICE OF AND ORDER FOR HEARING AND ORDER GRANTING TEMPORARY RELIEF

In the matter of the petition of District Board No. 3 for the establishment of price classifications and minimum

prices for the coals of certain mines in District No. 3.

A petition, pursuant to the Bituminous Coal Act of 1937, having been duly filed with this Division by the above-named party;

It is ordered, That a hearing in the above-entitled matter under the applicable provisions of said Act and the rules of the Division be held on August 19, 1942, at 10:00 o'clock in the forenoon of that day, at a hearing room of the Bituminous Coal Division, 734 Fifteenth Street NW., Washington, D. C. On such day the Chief of the Records Section in room 502 will advise as to the room where such hearing will be held.

It is further ordered, That W. C. Cuff or any other officer or officers of the Division duly designated for that purpose shall preside at the hearing in such matter. The officers so designated to preside at such hearing are hereby authorized to conduct said hearing, to administer oaths and affirmations, examine witnesses, take evidence, to continue said hearing from time to time, and to prepare and submit proposed findings of fact and conclusions and the recommendation of an appropriate order in the premises, and to perform all other duties in connection therewith authorized by law.

Notice of such hearing is hereby given to all parties herein and to persons or entities having an interest in this proceeding and eligible to become a party herein. Any person desiring to be admitted as a party to this proceeding may file a petition of intervention in accordance with the rules and regulations of the Bituminous Coal Division for proceedings instituted pursuant to section 4 II (d) of the Act, setting forth the facts on the basis of which the relief in the original petition is supported or opposed or on the basis of which other relief is sought. Such petitions of intervention shall be filed with the Bituminous Coal Division on or before August 14, 1942.

All persons are hereby notified that the hearing in the above-entitled matter and any orders entered therein, may concern, in addition to the matters specifically alleged in the petition, other matters necessarily incidental and related thereto, which may be raised by amendment to the petition, petitions of intervention or otherwise, or which may be necessary corollaries to the relief, if any, granted on the basis of this petition.

The matter concerned herewith is in regard to the request of District Board No. 3 for the following revisions in and additions to the price classifications and minimum prices of the coals of certain code members in District No. 3; a change from "F" to "D" in Size Groups 1 to 10 for the coals of the Moore No. 1 and Moore No. 2 Mines (Mine Index Nos. 1102 and 337) of C. L. Moore & Son Coal Company, and additional classifications of "B" in Size Groups 11 to 16, inclusive; a change from "J" in Size Groups 1 to 6, inclusive, and "H" in Size Groups 7 to 10, inclusive, to "D" in Size Groups 1 to 10, inclusive, for the coals of the Foster No. 31 Mine (Mine Index No. 590), of T. E. Foster and additional classifications

of "B" in Size Groups 11 to 13, inclusive, and "A" in Size Groups 14 to 16, inclusive; a change from "J" to "D" in Size Groups 1 to 10, inclusive, for the coals of the Bolair Mine (Mine Index No. 762) of Russell Talbert, and additional classifications of "B" in Size Groups 11 to 16, inclusive; a change from "F" in Size Groups 1 to 10, inclusive, to "DE" in Size Groups 1 to 6, inclusive, and "DF" in Size Groups 7 to 10, inclusive, for the coals of the Morgan Brothers No. 1 and No. 2 Mines (Mine Index Nos. 1236 and 687) of Donald Morgan, and additional classifications of "B" in Size Groups 11 to 16, inclusive; and a change from the classification of "F" in Size Groups 1 to 10, inclusive, to "DE" in Size Groups 1 to 6, inclusive, and "DF" in Size Groups 7 to 10, inclusive, for the coals of the Joe Morgan Mine (Mine Index No. 946) of Joe Morgan, and additional classifications of "B" in Size Groups 11 to 17, inclusive.

It is further ordered, That pending final disposition of the above-entitled matter, temporary relief be, and the same hereby is, granted as follows: Commencing forthwith, the Schedule of Effective Minimum Prices for District No. 3 For All Shipments Except Truck is supplemented to include the price classifications and minimum prices in the schedule marked "Temporary Supplement R" annexed hereto and made a part hereof.¹

Dated: August 5, 1942.

[SEAL] E. BOYKIN HARTLEY,
Acting Director.

[F. R. Doc. 42-7621; Filed, August 6, 1942;
10:55 a. m.]

[Docket No. B-160]

ROBERT VAAL, CODE MEMBER

ORDER CANCELLING AND REVOKING CODE
MEMBERSHIP

A complaint having been filed on December 8, 1941, with the Bituminous Coal Division, pursuant to sections 4 II (j) and 5 (b) of the Bituminous Coal Act of 1937, by District Board 11, alleging in substance that Robert Vaal, a code member in District No. 11, wilfully violated the Bituminous Coal Code and rules and regulations thereunder (1) by selling various amounts of lump, nut and screening coal on various dates at prices below the established minimum prices; (2) by incorrectly designating the sizes of the portion of the coals sold, in violation of paragraph 8 of section 4 II (i) of the Act and Rule 8 of section XIII of the Marketing Rules and Regulations; and (3) by failing to maintain and keep on file sales slips, invoices, other memoranda or records, and data relating to sales and shipments of 1¼" x 0 screenings produced at his mine, as required by Orders Nos. 307 and 312;

Pursuant to Orders of the Acting Director, and after due notice to interested parties, a hearing in this matter having been held on February 17, 1942 before a duly designated Examiner of the Division at a hearing room thereof in Bedford, Indiana, at which all interested

¹ Not filed as part of the original document.

persons were afforded an opportunity to be present, adduce evidence, cross-examine witnesses and otherwise be heard, and at which the code member appeared;

The preparation and filing of a report by the Examiner having been waived and the record in the proceeding having thereupon been submitted to the undersigned;

The undersigned having made Findings of Fact and Conclusions of Law and having rendered an Opinion, which are filed herewith;

Now, therefore, it is ordered, That the code membership of Robert Vaal, operating the Vaal Mine (Mine Index No. 623), in Spencer County, Indiana, in District No. 11 be, and it hereby is, cancelled and revoked, effective fifteen (15) days from the date hereof.

It is further ordered, That prior to any reinstatement of Robert Vaal to membership in the Code, he shall pay to the United States a tax in the amount of \$152.94, as provided in section 5 (c) of the Bituminous Coal Act of 1937.

Dated: August 5, 1942.

[SEAL] E. BOYKIN HARTLEY,
Acting Director.

[F. R. Doc. 42-7622; Filed, August 6, 1942;
10:55 a. m.]

[Docket No. 1835-FD]

DEBEVOISE-ANDERSON COMPANY, INC.

ORDER FOR RESTORATION OF REGISTRATION

An Order having been issued in the above-entitled matter on June 20, 1942 suspending the registration of Debevoise-Anderson Company, Inc. as a Registered Distributor, Registration No. 2193 for a period of thirty (30) days from the date of said Order; and

Said Order having been duly served upon the said Debevoise-Anderson Company, Inc. on June 25, 1942, and said period of suspension having expired on July 20, 1942; and

Debevoise-Anderson Company, Inc. having duly filed with the Division on July 23, 1942 an affidavit dated July 15, 1942 pursuant to the provisions of said Order issued June 20, 1942 and § 304.15 of the Rules and Regulations for the Registration of Distributors; and

It appearing from said affidavit that Debevoise-Anderson Company, Inc. has refunded to the Beccaria Coal Mining Company, Code Member, improperly collected discounts of Fifty-eight Dollars and Thirty-one Cents (\$58.31) and that said affidavit otherwise complies with the provisions of said Order issued June 20, 1942 and said § 304.15 of the Rules and Regulations for the Registration of Distributors;

Now, therefore, it is ordered, That the registration of Debevoise-Anderson Coal Company, Inc. as a distributor be, and it hereby is, restored as of 12:01 on July 21, 1942.

Dated: August 5, 1942.

[SEAL] E. BOYKIN HARTLEY,
Acting Director.

[F. R. Doc. 42-7623; Filed, August 6, 1942;
10:56 a. m.]

[Docket No. A-341]

WHEELING VALLEY COAL CORP., ET AL.

NOTICE OF AND ORDER FOR RESUMPTION OF
HEARING

In the matter of the petition of Wheeling Valley Coal Corporation, Cove Hill Coal Company and the Buffalo Coal and Coke Company, code members in District No. 6, for a reduction in the effective minimum prices for ex-river shipments into market areas 11, 12 and 13, pursuant to section 4 II (d) of the Bituminous Coal Act of 1937.

The Acting Director having by Order dated July 8, 1942, granted a motion filed by petitioners requesting that the cause herein be reopened and leave to petitioners to amend the original petition herein; and

Petitioners having duly filed an amended petition;

It is ordered, That the hearing in the above-entitled matter under the applicable provisions of said Act and the rules of the Division be resumed on August 24, 1942, at 10 o'clock in the forenoon of that day, at a hearing room of the Bituminous Coal Division, 734 Fifteenth Street NW., Washington, D. C. On such day the Chief of the Records Section in room 502 will advise as to the room where such hearing will be held.

It is further ordered, That Charles O. Fowler or any other officer or officers of the Division duly designated for that purpose shall preside at the hearing in such matter. The officers so designated to preside at such hearing are hereby authorized to conduct said hearing, to administer oaths and affirmations, examine witnesses, take evidence, to continue said hearing from time to time, and to prepare and submit proposed findings of fact and conclusions and the recommendation of an appropriate order in the premises, and to perform all other duties in connection therewith authorized by law.

Notice of the resumption of such hearing is hereby given to all parties herein and to persons or entities having an interest in this proceeding and eligible to become a party herein. Any person who has not heretofore been admitted as a party to this proceeding and desiring to be so admitted may file a petition of intervention in accordance with the rules and regulations of the Bituminous Coal Division for proceedings instituted pursuant to section 4 II (d) of the Act, setting forth the facts on the basis of which the relief in the original petition as amended is supported or opposed or on the basis of which other relief is sought. Such petitions of intervention shall be filed with the Bituminous Coal Division on or before August 22, 1942.

All persons are hereby notified that the hearing in the above-entitled matter and any orders entered therein, may concern, in addition to the matters specifically alleged in the petition or amendment thereto, other matters necessarily incidental and related thereto, which may be raised by amendment to the petition, petitions of intervention or otherwise, or which may be necessary corollaries to the relief, if any, granted on the basis of this petition.

The matter concerned herewith is in regard to an original petition as amended of the Wheeling Valley Coal Corporation, Cove Hill Coal Company and the Buffalo Coal and Coke Company, code member producers in District No. 6, for a reduction in the effective minimum prices for ex-river shipments in Market Areas 11, 12 and 13.

Dated: August 5, 1942.

[SEAL] E. BOYKIN HARTLEY,
Acting Director.

[F. R. Doc. 42-7624; Filed, August 6, 1942;
10:58 a. m.]

GENERAL LAND OFFICE.

WYOMING

STOCK DRIVEWAY WITHDRAWAL NO. 198 ENLARGED

Under the authority of section 7 of the act of June 28, 1934, as amended by the act of June 26, 1936, 48 Stat. 1272, 49 Stat. 1976, 43 U.S.C. 315f, the following-described public lands in Wyoming are hereby classified as necessary and suitable for the purpose and, under the provisions of section 10 of the act of December 29, 1916, as amended by the act of January 29, 1929, 39 Stat. 865, 45 Stat. 1144, 43 U.S.C. 300, such lands, excepting any mineral deposits therein, are withdrawn from all disposal under the public-land laws and reserved, subject to valid existing rights, for the use of the general public as an addition to Stock Driveway Withdrawal No. 198, Wyoming No. 33:

SIXTH PRINCIPAL MERIDIAN

T. 42 N., R. 92 W.,
sec. 7, lot 6;
T. 42 N., R. 93 W.,
sec. 1, lot 7, NW $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$, and
SW $\frac{1}{4}$ SE $\frac{1}{4}$,
sec. 12, lots 1, 2, and NW $\frac{1}{4}$ NE $\frac{1}{4}$;
aggregating 293.50 acres.

Any mineral deposits in the lands shall be subject to location and entry only in the manner prescribed by the Secretary of the Interior in accordance with the provisions of the aforesaid act of January 29, 1929, and existing regulations.

OSCAR L. CHAPMAN,
Assistant Secretary of the Interior.
JULY 9, 1942.

[F. R. Doc. 42-7626; Filed, August 6, 1942;
11:12 a. m.]

DEPARTMENT OF AGRICULTURE.

Agricultural Adjustment Administration.

[F & S Docket No. 1492]

FAIRBURY LIVESTOCK COMPANY

ORDER EXTENDING SUSPENSION OF RATES

By order dated July 6, 1942 (7 F.R. 5201), pursuant to the provisions of the Packers and Stockyards Act, 1921 (7 U.S.C. 1940 ed. 181 *et seq.*), the tariff of rates and charges applicable to hogs, effective July 7, 1942, submitted by Julius

J. Williams, trading as Fairbury Livestock Company at Fairbury, Nebraska, designated as Supplement No. 3 to Tariff No. 1, was suspended for a period of 30 days beyond the time when such tariff would otherwise go into effect.

It now appears that the hearing which was directed in this proceeding cannot be concluded within the period of suspension.

It is therefore ordered, That Supplement No. 3 to Tariff No. 1, submitted as stated above, is hereby suspended for an additional period of 30 days from and including August 6, 1942.

It is further ordered, That a copy hereof be served upon the respondent by registered mail.

It is further ordered, That this order shall be published in the FEDERAL REGISTER.

Done at Washington, D. C., this 5th day of August 1942. Witness my hand and the seal of the Department of Agriculture.

[SEAL] THOMAS J. FLAVIN,
Assistant to the Secretary
of Agriculture.¹

[F. R. Doc. 42-7610; Filed, August 5, 1942;
2:33 p. m.]

Rural Electrification Administration.

[Administrative Order No. 724]

WEST VIRGINIA

ALLOCATION OF FUNDS FOR LOANS

July 29, 1942.

I hereby amend:

(a) Administrative Order No. 603,² dated June 27, 1941, by rescinding the allocation of \$500,000 therein made for "West Virginia 1010E1 Harrison;"

(b) Administrative Order No. 603, dated June 27, 1941, by rescinding the allocation of \$200,000 therein made for "West Virginia 1010G1 Harrison."

[SEAL] HARRY SLATTERY,
Administrator.

[F. R. Doc. 42-7630; Filed, August 6, 1942;
11:24 a. m.]

FEDERAL COMMUNICATIONS COMMISSION.

[Docket No. 6363]

WILLIAM G. H. FINCH (W 55 NY)

NOTICE OF HEARING

In re application of William G. H. Finch, (W 55 NY), dated May 29, 1942, for modification of construction permit; class of service, high frequency broadcast; class of station, high frequency broadcast; location, New York, New York; operating assignment specified: Frequency, 45,500 kcs., coverage: 8,500 sq. mi.; Power, -----; hours of operation, unlimited.

You are hereby notified that the Commission has examined the above de-

¹ Acting pursuant to authority delegated by the Secretary of Agriculture under the Act of April 4, 1940 (54 Stat. 81; 7 F. R. 2656).

² 6 F. R. 3220.

scribed application and has designated the matter for hearing for the following reasons:

1. To determine the cost of completing the construction authorized in permit No. B1-PH-42, and the financial outlay, if any, incurred in connection therewith by the applicant, prior to April 27, 1942.

2. To determine when the construction heretofore authorized in permit No. B1-PH-42 was actually commenced.

3. To determine what materials and equipment the applicant has on hand or available for the construction authorized by permit No. B1-PH-42 and the additional materials and equipment, if any, necessary for the completion thereof.

4. To determine whether the granting of this application would be consistent with the policy announced by the Commission in its Memorandum Opinion dated April 27, 1942.

5. To determine whether, in view of the foregoing, public interest, convenience and necessity would be served through the granting of this application.

The application involved herein will not be granted by the Commission unless the issues listed above are determined in favor of the applicant on the basis of a record duly and properly made by means of a formal hearing.

The applicant is hereby given the opportunity to obtain a hearing on such issues by filing a written appearance in accordance with the provisions of § 1.382 (b) of the Commission's Rules of Practice and Procedure. Persons other than the applicant who desire to be heard must file a petition to intervene in accordance with the provisions of § 1.102 of the Commission's Rules of Practice and Procedure.

The applicant's address is as follows: William G. H. Finch, 10 East 40th Street, New York, New York.

Dated at Washington, D. C., August 4, 1942.

By the Commission.

[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 42-7631; Filed, August 6, 1942;
11:31 a. m.]

[Docket No. 6364]

OAK PARK REALTY AND AMUSEMENT CO. (W 79 C)

NOTICE OF HEARING

In re application of Oak Park Realty and Amusement Company, (W 79 C), dated May 13, 1942, for modification of construction permit; class of service, high frequency broadcast; class of station, high frequency broadcast; location, Chicago, Illinois; operating assignment specified: Frequency, 47,900 kcs.; coverage, 10,800 square miles; power, —; hours of operation, unlimited.

You are hereby notified that the Commission has examined the above described application and has designated the matter for hearing for the following reasons:

1. To determine the cost of completing the construction authorized in permit No.

B4-PH-117, and the financial outlay, if any, incurred in connection therewith by the applicant, prior to April 27, 1942.

2. To determine when the construction heretofore authorized in permit No. B4-PH-117, was actually commenced.

3. To determine what materials and equipment the applicant has on hand or available for the construction authorized by permit No. B4-PH-117 and the additional materials and equipment, if any, necessary for the completion thereof.

4. To determine whether the granting of this application would be consistent with the policy announced by the Commission in its Memorandum Opinion dated April 27, 1942.

5. To determine whether, in view of the foregoing, public interest, convenience and necessity would be served through the granting of this application.

The application involved herein will not be granted by the Commission unless the issues listed above are determined in favor of the applicant on the basis of a record duly and properly made by means of a formal hearing.

The applicant is hereby given the opportunity to obtain a hearing on such issues by filing a written appearance in accordance with the provisions of § 1.382 (b) of the Commission's Rules of Practice and Procedure. Persons other than the applicant who desire to be heard must file a petition to intervene in accordance with the provisions of § 1.102 of the Commission's Rules of Practice and Procedure.

The applicant's address is as follows: Oak Park Realty and Amusement Company, 1540 Broadway, New York, New York.

Dated at Washington, D. C., August 4, 1942.

By the Commission.

[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 42-7632; Filed, August 6, 1942; 11:31 a. m.]

[Docket No. 6375]

MID-AMERICA BROADCASTING CORP.
(WINK)

NOTICE OF HEARING

In re application of Mid-America Broadcasting Corporation (WINK), dated June 11, 1942, for modification of construction permit; class of service, broadcast; class of station, broadcast; location, Louisville, Kentucky; operating assignment specified: Frequency, 1080 kc.; power, 1 kw. night, 5 kw. day; hours of operation, unlimited (directional antenna).

You are hereby notified that the Commission has examined the above described application and has designated the matter for hearing for the following reasons:

1. To determine the cost of completing the construction authorized in permit No. B2-P-2760, and the financial outlay, if any, incurred in connection therewith by the applicant, prior to April 27, 1942.

2. To determine when the construction heretofore authorized in permit No. B2-P-2760, was actually commenced.

3. To determine what materials and equipment the applicant has on hand or available for the construction authorized by permit No. B2-P-2760 and the additional materials and equipment, if any, necessary for the completion thereof.

4. To determine whether the granting of this application would be consistent with the policy announced by the Commission in its Memorandum Opinion dated April 27, 1942.

5. To determine whether, in view of the foregoing, public interest, convenience and necessity would be served through the granting of this application.

The application involved herein will not be granted by the Commission unless the issues listed above are determined in favor of the applicant on the basis of a record duly and properly made by means of a formal hearing.

The applicant is hereby given the opportunity to obtain a hearing on such issues by filing a written appearance in accordance with the provisions of § 1.382 (b) of the Commission's Rules of Practice and Procedure. Persons other than the applicant who desire to be heard must file a petition to intervene in accordance with the provisions of § 1.102 of the Commission's Rules of Practice and Procedure.

The applicant's address is as follows: Mid-America Broadcasting Corporation, Radio Station WINK, 234 Starks Building, Louisville, Kentucky.

Dated at Washington, D. C., August 4, 1942.

By the Commission.

[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 42-7633; Filed, August 6, 1942; 11:32 a. m.]

[Docket No. 6376]

EDUCATIONAL BROADCASTING CORP.
(KROW)

NOTICE OF HEARING

In re application of Educational Broadcasting Corporation (KROW), dated February 6, 1942, for modification of construction permit; class of service, broadcast; class of station, broadcast; location, Oakland, California; operating assignment specified: Frequency, 960 kc.; power, 5 kw. (DA-night); hours of operation, unlimited.

You are hereby notified that the Commission has examined the above described application and has designated the matter for hearing for the following reasons:

1. To determine the cost of completing the construction authorized in permit No. B5-P-2803, and the financial outlay, if any, incurred in connection therewith by the applicant, prior to April 27, 1942.

2. To determine when the construction heretofore authorized in permit No. B5-P-2803, was actually commenced.

3. To determine what materials and equipment the applicant has on hand or available for the construction authorized by permit No. B5-P-2803 and the additional materials and equipment, if any, necessary for the completion thereof.

4. To determine whether the granting of this application would be consistent with the policy announced by the Commission in its Memorandum Opinion dated April 27, 1942.

5. To determine whether, in view of the foregoing, public interest, convenience, and necessity would be served through the granting of this application.

The application involved herein will not be granted by the Commission unless the issues listed above are determined in favor of the applicant on the basis of a record duly and properly made by means of a formal hearing.

The applicant is hereby given the opportunity to obtain a hearing on such issues by filing a written appearance in accordance with the provisions of § 1.382 (b) of the Commission's Rules of Practice and Procedure. Persons other than the applicant who desire to be heard must file a petition to intervene in accordance with the provisions of § 1.102 of the Commission's Rules of Practice and Procedure.

The applicant's address is as follows: Educational Broadcasting Corporation, Radio Station KROW, 464 19th Street, Oakland, California.

Dated at Washington, D. C., August 4, 1942.

By the Commission.

[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 42-7634; Filed, August 6, 1942; 11:32 a. m.]

[Docket No. 6377]

WKBH, INC.

NOTICE OF HEARING

In re application of WKBH, Incorporated (WKBH), dated January 20, 1942, for modification of construction permit; class of service, broadcast; class of station, broadcast; location, LaCrosse, Wisconsin; operating assignment specified: Frequency 1410 kc.; power, 5 kw. (DA-Night); hours of operation, unlimited.

You are hereby notified that the Commission has examined the above described application and has designated the matter for hearing for the following reasons:

1. To determine the cost of completing the construction authorized in permit B4-P-2733, and the financial outlay, if any incurred in connection therewith by the applicant prior to April 27, 1942.

2. To determine when the construction heretofore authorized in permit No. B4-P-2733, was actually commenced.

3. To determine what materials and equipment the applicant has on hand or available for the construction authorized by permit No. B4-P-2733 and the additional materials and equipment, if any, necessary for the completion thereof.

4. To determine whether the granting of this application would be consistent with the policy announced by the Commission in its Memorandum Opinion dated April 27, 1942.

5. To determine whether, in view of the foregoing, public interest, conven-

ience and necessity would be served through the granting of this application.

The application involved herein will not be granted by the Commission unless the issues listed above are determined in favor of the applicant on the basis of a record duly and properly made by means of a formal hearing.

The applicant is hereby given the opportunity to obtain a hearing on such issues by filing a written appearance in accordance with the provisions of § 1.382 (b) of the Commission's Rules of Practice and Procedure. Persons other than the applicant who desire to be heard must file a petition to intervene in accordance with the provisions of § 1.102 of the Commission's Rules of Practice and Procedure.

The applicant's address is as follows: WKBH, Incorporated, Radio Station WKBH, Radio Building, 409 Main Street, La Crosse, Wisconsin.

Dated at Washington, D. C., August 4, 1942.

By the Commission.

[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 42-7635; Filed, August 6, 1942;
11:32 a. m.]

HIGH FREQUENCY BROADCAST STATIONS ADOPTION OF LICENSING POLICY

The Commission on August 4, 1942, effective immediately, adopted the following policy for licensing high frequency (FM) and ST broadcast stations:

Because war conditions have caused great shortages in materials, equipment and skilled personnel necessary to radio broadcasting, the Federal Communications Commission has announced that holders of construction permits for new frequency modulation (FM) radio stations may obtain licenses during the war to operate presently existing facilities, provided construction has reached a point where the transmitter is presently capable of being operated to render a substantial public service. FM broadcasters securing licenses under this policy will have to show that additional construction is not possible at this time and must assure the Commission that construction will be completed according to Rules, Regulations and Standards of the FCC as soon as the required materials and engineering personnel have become available.

According to FCC records there are 5 licensed FM stations now in operation. Twenty-three stations are operating under special temporary authorization pending completion of construction in accordance with the construction permits. Upon appropriate application these would receive licenses to replace the special temporary authorizations. An additional 7 stations are now conducting program tests and have filed applications for an operating license. The new policy under which the FCC will consider applications for operating licenses on the basis of partial construction probably will affect also 21 other holders of FM construction permits. Six permittees now building studio transmitter links (ST), which connect with station transmitters,

would come under the policy. Applicants for new facilities, however, are barred, except under special circumstances, by an earlier "freeze" policy announced in the Memorandum Opinion of April 27, 1942, which recognized the necessity for conserving critical materials and banned new grants for FM as well as most other types of broadcast radio.

The Commission observes that the Communications Act does not contemplate extensions of time within which to complete construction unless it appears that construction can be completed within a reasonable length of time. Nor is it desirable to continue the issuance of special temporary authorizations upon a short term basis. However, it is desirable to encourage such service as is now possible to listeners having FM receivers. Accordingly, the Commission will give consideration to applications for licenses to cover partial construction of FM and ST stations where such construction has proceeded to the point where it is possible to provide a limited but satisfactory FM service. The Commission will also consider applications where construction has been completed and the permittee has been unable to secure equipment and technical personnel to make measurements, required as a prerequisite to issuance of a license. Such licenses will be granted on the definite understanding that immediately the required materials and personnel are available, steps will be taken to comply fully with the original construction permit.

To secure a grant of such an application for license, it will be necessary for each applicant to show (1) diligence in proceeding with construction and the reasons for failure to complete construction; (2) the actual status of construction which the applicant believes sufficient to provide an acceptable FM service; (3) the materials and technical personnel needed to complete construction and make proof of performance (Section 6, Form 320); and, (4) the applicant's determination to proceed to final completion in accordance with the Rules, Regulations and Standards of the Commission when materials for further construction and needed technical personnel become available.

By the Commission.

[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 42-7641; Filed, August 6, 1942;
11:31 a. m.]

FEDERAL TRADE COMMISSION.

[Docket No. 4437]

HASTINGS MANUFACTURING COMPANY

ORDER APPOINTING TRIAL EXAMINER AND FIXING TIME AND PLACE FOR TAKING TESTIMONY

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 5th day of August A. D. 1942.

This matter being at issue and ready for the taking of testimony, and pursuant to authority vested in the Federal Trade

Commission, under Acts of Congress (38 Stat. 717; 15 U.S.C.A., section 41), and (49 Stat. 1526, U.S.C.A., section 13, as amended),

It is ordered, That W. W. Sheppard, a trial examiner of this Commission, be and he hereby is designated and appointed to take testimony and receive evidence in this proceeding and to perform all other duties authorized by law;

It is further ordered, That the taking of testimony in this proceeding begin on Monday, August 24, 1942, at ten o'clock in the forenoon of that day (Eastern Standard Time) in Room 859, Federal Building, Detroit, Michigan.

Upon completion of testimony for the Federal Trade Commission, the trial examiner is directed to proceed immediately to take testimony and evidence on behalf of the respondent. The trial examiner will then close the case and make his report upon the evidence.

By the Commission.

[SEAL] OTIS B. JOHNSON,
Secretary.

[F. R. Doc. 42-7625; Filed, August 6, 1942;
11:05 a. m.]

OFFICE OF THE COORDINATOR OF INTER-AMERICAN AFFAIRS.

ORDER DESIGNATING ACTING COORDINATOR, ETC.

Order designating Acting Coordinator of Inter-American Affairs and delegating to such officer authority to perform duties and functions of the Coordinator.

By virtue of authority vested in the Coordinator of Inter-American Affairs by Executive Orders Nos. 8840¹ and 9116² and the Third Supplemental National Defense Appropriation Act, 1942 (55 Stat. 810), Percy L. Douglas is hereby authorized in the absence of the Coordinator to perform and exercise as Acting Coordinator, all of the duties, powers and functions heretofore and hereafter authorized by law to be performed and exercised by the Coordinator and in the absence of the Coordinator and said Percy L. Douglas, John C. McClintock is authorized to perform and exercise as Acting Coordinator the aforesaid duties, powers and functions and in the absence of the Coordinator and said Percy L. Douglas and John C. McClintock, Wallace K. Harrison is authorized to exercise and perform such duties, powers and functions as Acting Coordinator, and in the absence of the Coordinator, and said Percy L. Douglas, John C. McClintock and Wallace K. Harrison, Joseph C. Rovensky is authorized to exercise and perform such duties, powers and functions as Acting Coordinator.

This authorization shall remain in effect until specifically revoked by the Coordinator.

NELSON A. ROCKEFELLER,
Coordinator.

AUGUST 5, 1942.

[F. R. Doc. 42-7640; Filed, August 6, 1942;
11:49 a. m.]

¹ 6 F.R. 3857.

² 7 F.R. 2527.