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Part I

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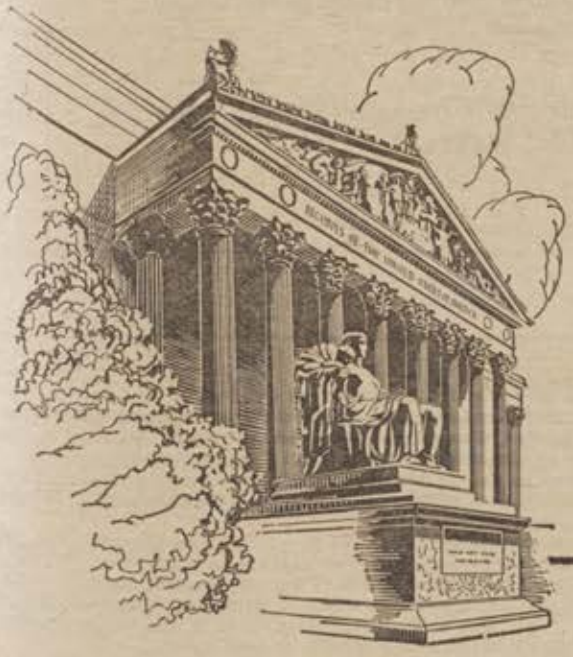

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Title 3—THE PRESIDENT

Proclamation 3937

NATIONAL ADULT-YOUTH COMMUNICATIONS WEEK

By the President of the United States of America

A Proclamation

The men who adopted and ultimately signed the Declaration of Independence were a varied group. Lawyers, planters, physicians, farmers, merchants, politicians—their backgrounds were as different as their love of liberty was unanimous. What is perhaps even more significant than the differences in their backgrounds was the differences in their ages: three were under thirty, twenty were under forty, seven were sixty or older. The committee assigned to draft the Declaration included one of the youngest—Thomas Jefferson—and the oldest—Benjamin Franklin.

These brave men did not hold that only those in a certain age group were gifted enough to join their struggle. Each man was judged not on how old he was but on how strongly he was committed to liberty. These men debated and questioned each other as equals, because each shared the love of freedom that knows no boundary of age.

The spirit of the signers of the Declaration of Independence is needed in our nation more than ever before. Young and old, we are all Americans, and if we are to remain free we must talk to each other, listen to each other, young and old alike, in the interest of freedom.

To encourage and stimulate better communication between our citizens of different generations, the Congress by House Joint Resolution 614, has requested the President to proclaim the period from September 28, 1969, through October 4, 1969, as National Adult-Youth Communications Week.

NOW, THEREFORE, I, RICHARD NIXON, President of the United States of America, do hereby designate the period from September 28 through October 4, 1969, as National Adult-Youth Communications Week.

I call upon the people of the United States to observe that week with appropriate ceremonies and activities designed to encourage cooperation—especially through the communication of ideas—between persons of different generations.

In particular, I urge all American families to foster in their homes that atmosphere of mutual trust and understanding on which human happiness and dignity depend.

IN WITNESS WHEREOF, I have hereunto set my hand this 25th day of September, in the year of our Lord nineteen hundred sixty-nine, and of the Independence of the United States of America the one hundred ninety-fourth.

Richard Nixon

[F.R. Doc. 69-11601; Filed, Sept. 25, 1969; 3:41 p.m.]

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Title 7—AGRICULTURE

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[Amdt. 7]

PART 718—DETERMINATION OF ACREAGE AND COMPLIANCE

Revision of Certain Disposition Dates

Correction

In F.R. Doc. 69-11193, appearing at page 14575 of the issue for Friday, September 19, 1969, the word "Oknanogan" in item (x) under Washington is corrected to read "Okanogan".

Chapter IX—Consumer and Marketing Service (Marketing Agreements and Orders; Fruits, Vegetables, Nuts), Department of Agriculture

[Lemon Reg. 393]

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Limitation of Handling

§ 910.693 **Lemon Regulation 393.**

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendations and information submitted by the Lemon Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such lemons, as hereinafter provided, will tend to effectuate the declared policy of the act by tending to establish and maintain such orderly marketing conditions for such lemons as will provide, in the interest of producers and consumers, an orderly flow of the supply thereof to market throughout the normal marketing season to avoid unreasonable fluctuations in supplies and prices, and is not for the purpose of maintaining prices to farmers above the level which it is declared to be the policy of Congress to establish under the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this regulation until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this regulation is based became available and the time when this regulation must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for lemons and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held, the provisions of this regulation, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such lemons; it is necessary, in order to effectuate the declared policy of the act, to make this regulation effective during the period herein specified; and compliance with this regulation will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on September 23, 1969.

(b) *Order.* (1) The respective quantities of lemons grown in California and Arizona which may be handled during the period September 28, 1969, through October 4, 1969, are hereby fixed as follows:

(i) District 1: Unlimited movement;

(ii) District 2: 139,500 cartons;

(iii) District 3: 59,303 cartons.

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

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

Dated: September 24, 1969.

PAUL A. NICHOLSON,
Deputy Director, Fruit and Vegetable Division, Consumer and Marketing Service.

[F.R. Doc. 69-11597; Filed, Sept. 26, 1969; 8:49 a.m.]

[Lime Reg. 27, Amdt. 5]

PART 911—LIMES GROWN IN FLORIDA

Quality and Size Regulation

Findings. (1) Pursuant to the marketing agreement, as amended, and Order No. 911, as amended (7 CFR Part 911), regulating the handling of limes grown in Florida, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendations of the Florida Lime Administrative Committee, established under the aforesaid amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of limes, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this amendment until 30 days after publication thereof in the FEDERAL REGISTER (5 U.S.C. 553) in that the time intervening between the date when information upon which this amendment is based became available and the time when this amendment must become effective in order to effectuate the declared policy of the act is insufficient; and this amendment relieves restrictions on the handling of limes grown in Florida.

Order. In § 911.329 (Lime Regulation 27; 34 F.R. 6438, 7867, 9849, 11549, 12164) the introductory text of paragraph (a) (2) and subdivision (ii) thereof is amended to read as follows:

§ 911.329 **Lime Regulation 27.**

(a) • • •

(2) During the period September 29, 1969, through April 30, 1970, no handler shall handle:

• • • • • •

(ii) Any limes of the group known as large fruited or Persian limes (including Tahiti, Bearss, and similar varieties) which do not grade at least U.S. Combination, Mixed Color, with not less than 75 percent, by count, of the limes in any container thereof grading at least U.S. No. 1, Mixed Color: *Provided,* That stem length shall not be considered a factor of grade, and tolerances for fruit affected by decay and for fruit failing to meet the requirements set forth in the U.S. Standards for Persian (Tahiti) Limes shall apply; or

• • • • • •

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

Dated, September 25, 1969, to become effective September 29, 1969.

PAUL A. NICHOLSON,
Deputy Director, Fruit and Vegetable Division, Consumer and Marketing Service.

[F.R. Doc. 69-11620; Filed, Sept. 26, 1969; 8:49 a.m.]

PART 932—OLIVES GROWN IN CALIFORNIA

Expenses, Rate of Assessment, and Carryover of Unexpended Funds

On September 10, 1969, notice of rule making was published in the FEDERAL REGISTER (34 F.R. 14225) regarding proposed expenses and the related rate of assessment for the fiscal year ending August 31, 1970, and carryover of unexpended funds, pursuant to the marketing agreement, as amended, and Order No. 932, as amended (7 CFR Part 932), regulating the handling of olives grown in California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). After consideration of all relevant matters presented, including the proposals set forth in such notice which were submitted by the Olive Administrative Committee (established pursuant to said marketing agreement and order), it is hereby found and determined that:

§ 932.206 Expenses, rate of assessment, and carryover of unexpended funds.

(a) *Expenses.* Expenses that are reasonable and likely to be incurred by the Olive Administrative Committee during the period September 1, 1969, through August 31, 1970, will amount to $292,500.

(b) *Rate of assessment.* The rate of assessment for said period, payable by each first handler in accordance with § 932.39, is fixed at $6.50 per ton of olives.

(c) *Reserve.* (1) Unexpended assessment funds, in excess of expenses incurred during the fiscal year ended August 31, 1969, in the amount of $30,000 shall be carried over as a reserve in accordance with the applicable provisions of § 932.40 and § 932.203.

(2) Terms used in the amended marketing agreement and order shall, when used herein, have the same meaning as is given to the respective term in said amended marketing agreement and order.

It is hereby further found that good cause exists for not postponing the effective date hereof until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553) in that (1) the relevant provisions of said marketing agreement and this part require that the rate of assessment fixed for a particular fiscal year shall be applicable to all assessable olives from the beginning of such year; and (2) such year began on September 1, 1969, and the rate of assessment herein fixed will automatically apply to all assessable olives beginning with such date.

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

Dated: September 24, 1969.

PAUL A. NICHOLSON,
Deputy Director, Fruit and Vegetable Division, Consumer and Marketing Service.

[F.R. Doc. 69–11550; Filed, Sept. 26, 1969; 8:48 a.m.]

[Lime Reg. 3, Amdt. 13]

PART 944—FRUITS; IMPORT REGULATIONS

Limes

Pursuant to the provisions of section 8e of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), the provisions of paragraph (a)(2) of § 944.202 (Lime Regulation 3, 34 F.R. 6516, 7959, 11965, 12165) are hereby amended to read as follows:

§ 944.202 Lime Regulation 3.

(a) * * *

(2) Such limes of the group known as large fruited or Persian limes (including Tahiti, Bearss, and similiar varieties) grade at least U.S. Combination, Mixed Color, with not less than 75 percent, by count, of limes in any container thereof grading at least U.S. No. 1, Mixed Color: *Provided*, That stem length shall not be considered a factor of grade, and tolerances for fruit affected by decay and for fruit failing to meet requirements set forth in the U.S. Standards for Persian (Tahiti) Limes shall apply;

* * * * *

It is hereby found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective time of this amendment beyond that hereinafter specified (5 U.S.C. 553) in that (a) the requirements of this amended import regulation are imposed pursuant to section 8e of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), which makes such regulation mandatory; (b) such regulation imposes the same restrictions being made applicable to domestic shipments of limes under amended Lime Regulation 27 (§ 911.329) which becomes effective September 29, 1969; (c) compliance with this amended import regulation will not require any special preparation which cannot be completed by the effective time hereof; and (d) this amendment relieves restrictions on the importation of limes.

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

Dated, September 25, 1969, to become effective September 29, 1969.

PAUL A. NICHOLSON,
Deputy Director, Fruit and Vegetable Division, Consumer and Marketing Service.

[F.R. Doc. 69–11619; Filed, Sept. 26, 1969; 8:49 a.m.]

Title 10—ATOMIC ENERGY

Chapter I—Atomic Energy Commission

PART 170—FEES FOR FACILITIES AND MATERIALS LICENSES UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

Schedule of Fees for Production and Utilization Facilities

Section 170.21 of Atomic Energy Commission's regulations in 10 CFR Part 170 prescribes a schedule of fees for production and utilization facilities including a schedule of annual fees after issuance of operating licenses.

Operating licenses for facilities may be amended to permit possession but not operation of the facility. In view of the minimal licensing effort involved in such "possession-only" licenses, it was not intended that an annual fee would be charged for such licenses while in the "possession-only" status.

The amendment set forth below clarifies that no annual license fee will be charged for production and utilization facilities licensed for possession but not operation.

Because this amendment relates solely to correction and clarification, the Commission has found that good cause exists for omitting notice of proposed rule making and public procedure thereon as unnecessary and for making the amendment effective upon publication in the FEDERAL REGISTER.

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and sections 552 and 553 of title 5 of the United States Code, the following amendment to 10 CFR Part 170 is published as a document subject to codification to be effective upon publication in the FEDERAL REGISTER.

Section 170.21 of 10 CFR Part 170 is amended by revising the introductory language which precedes the schedule of fees to read as follows:

§ 170.21 Schedule of fees for production and utilization facilities.

Applicants for construction permits or operating licenses for production or utilization facilities and holders of construction permits or operating licenses for production or utilization facilities shall pay the fees set forth below, *Provided, however*, That annual fees shall not be paid by holders of licenses which authorize the possession but not operation of production or utilization facilities:

* * * * * *

(Sec. 501, 65 Stat. 290; 31 U.S.C. 483a; 161, 68 Stat. 948; 42 U.S.C 2201)

Dated at Washington, D.C., this 12th day of September 1969.

For the Atomic Energy Commission.

W. B. MCCOOL,
Secretary.

[F.R. Doc. 69–11507; Filed, Sept. 26, 1969; 8:45 a.m.]

Title 9—ANIMALS AND ANIMAL PRODUCTS

Chapter I—Agricultural Research Service, Department of Agriculture

SUBCHAPTER B—COOPERATIVE CONTROL AND ERADICATION OF ANIMAL DISEASES

PART 56—SWINE DESTROYED BECAUSE OF HOG CHOLERA

Payment of Indemnities

Pursuant to the provisions of the Act of May 29, 1884, as amended, the Act of

February 2, 1903, as amended, the Act of March 3, 1905, as amended, the Act of September 6, 1961, and the Act of July 2, 1962 (21 U.S.C. 111–113, 114, 114a, 114g, 115, 117, 120, 121, 123–126, and 134b), § 56.1(h) of Part 56, Title 9, Code of Federal Regulations, relating to the payment of indemnity for swine destroyed because of hog cholera, is hereby amended to read as follows:

§ 56.1 **Definitions.**

* * * * *

(h) *Inbred or hybrid swine.* Any breeding swine which are the progeny of two or more breeds of foundation stock for which records of ancestry are available and which are maintained for breeding purposes as a part of a formal breeding program to produce inbred or hybrid swine, and for which records of ancestry exist through which such swine can be identified as progeny of said foundation stock.

(Secs. 3–5, 23 Stat. as amended, sec. 2, 32 Stat. 792, as amended, sec. 3, 33 Stat. 1265, as amended, sec. 11, 58 Stat. 734, as amended, 75 Stat. 481, 78 Stat. 129–132; 21 U.S.C. 111–113, 114, 114a, 114g, 115, 117, 120, 121, 123–126, 134b)

The purpose of this amendment is to broaden the definition of inbred or hybrid swine. The Division has been advised that swine other than those now qualifying as inbred or hybrid swine under the present definition are equally well qualified for indemnity payments as now provided for swine of this class. Therefore, the Division has determined that the present definition of inbred or hybrid swine is more restrictive than necessary and that these restrictions should be relieved.

The amendment will be of benefit to affected persons as it will facilitate the payment of indemnity claims for hybrid and inbred swine destroyed because of hog cholera. Accordingly, under the administrative procedure provisions (5 U.S.C. 553) it is found upon good cause that notice and other public procedure with respect to the foregoing amendment are impracticable and contrary to the public interest and good cause is found for making the amendment effective less than 30 days after publication in the FEDERAL REGISTER.

Effective date. The foregoing amendment shall become effective upon issuance.

Done at Washington, D.C., this 24th day of September 1969.

R. J. ANDERSON,
Acting Administrator,
Agricultural Research Service.

[F.R. Doc. 69-11548; Filed, Sept. 26, 1969; 8:48 a.m.]

Title 13—BUSINESS CREDIT AND ASSISTANCE

Chapter I—Small Business Administration

[Rev. 1]

PART 106—LEASE GUARANTEE

Because of the number and complexity of published amendments to Part 106 of Chapter I of Title 13 of the Code of Federal Regulations (32 F.R. 5672; 32 F.R. 14759; 34 F.R. 5327), Part 106 is recodified and republished as set forth below with miscellaneous revisions. As recodified and revised, Part 106 reads as follows:

GENERAL

Sec.

AUTHORITY: The provisions of this Part 106 issued under title IV of the Small Business Investment Act of 1958, 72 Stat. 694, 79 Stat. 482, 483, 484; 15 U.S.C. 687, 692, 693, 694.

GENERAL

§ 106.1 Statutory provisions.

TITLE IV—LEASE GUARANTEES

Authority of the Administration.

Section 401(a). The Administration may, whenever it determines such action to be necessary or desirable, and upon such terms and conditions as it may prescribe, guarantee the payment of rentals under leases of commercial and industrial property entered into by small business concerns to enable such concerns to obtain such leases. Any such guarantee may be made or effected either directly or in cooperation with any qualified surety company or other qualified company through a participation agreement with such company. The foregoing powers shall be subject, however, to the following restrictions and limitations:

(1) No guarantee shall be issued by the Administration (i) if a guarantee meeting with the requirements of the applicant is otherwise available on reasonable terms, and (ii) unless the Administration determines that there exists a reasonable expectation that the small business concern in behalf of which the guarantee is issued will perform the covenants and conditions of the lease.

(2) The Administration shall, to the greatest extent practicable, exercise the powers conferred by this section in cooperation with qualified surety or other companies on a participation basis.

(b) The Administration shall fix a uniform annual fee for its share of any guarantee under this section which shall be payable in advance at such time as may be prescribed by the Administrator. The amount of any such fee shall be determined in accordance with sound actuarial practices and procedures, to the extent practicable, but in no case shall such amount exceed, on the Administration's share of any guarantee made under this title, 2½ per centum per annum of the minimum annual guaranteed rental payable under any guaranteed lease; provided that the Administration shall fix the lowest fee that experience under the program established hereby has shown to be justified. The Administration may also fix such uniform fees for the processing of applications for guarantees under this section as the Administrator determines are reasonable and necessary to pay the administrative expenses that are incurred in connection therewith.

(c) In connection with the guarantee of rentals under any lease pursuant to authority conferred by this section, the Administrator may require, in order to minimize the financial risk assumed under such guarantee—

(1) That the lessee pay an amount not to exceed one-fourth of the minimum guaranteed annual rental required under the lease, which shall be held in escrow and shall be available (i) to meet rental charges accruing in any month for which the lessee is in default, or (ii) if no default occurs during the term of the lease, for application (with accrued interest) toward final payments of rental charges under the lease.

(2) That upon occurrence of a default under the lease, the lessor shall, as a condition precedent to enforcing any claim under the lease guarantee, utilize the entire period for which there are funds available in escrow for payment of rentals, in reasonably diligent efforts to eliminate or minimize losses, by releasing the commercial or industrial property covered by the lease to another qualified lessee, and no claim shall be made or paid under the guarantee until such effort has been made and such escrow funds have been exhausted.

(3) That any guarantor of the lease will become a successor of the lessor for the purpose of collecting from a lessee in default rentals which are in arrears and with respect to which the lessor has received payment under a guarantee made pursuant to this section, and

(4) Such other provisions, not inconsistent with the purposes of this title, as the Administrator may in his discretion require.

POWERS

Section 402. Without limiting the authority conferred upon the Administrator and the Administration by § 201 of this Act, the Administrator and the Administration shall have, in the performance of and with respect to the functions, powers, and duties conferred by this title, all the authority and be subject to the same conditions prescribed in section 5(b) of the Small Business Act with respect to loans, including the authority to execute subleases, assignments of lease, and new leases with any person, firm, organization, or other entity, in order to aid in the liquidation of obligations of the Administration hereunder.

FUND

Section 403(a). There is hereby established a revolving fund for use by the Administration in carrying out the provisions of this title. Initial capital for such fund shall consist of not to exceed $5 million transferred

from the fund established under section 4(c) of the Small Business Act: *Provided*, That the last sentence of such section 4(c) shall not apply to any amounts so transferred. Into the fund established by this section there shall be deposited all receipts from the guarantee program authorized by this title. Moneys in such fund not needed for the payment of current operating expenses or for the payment of claims arising under such program may be invested in bonds or other obligations of, or bonds or other obligations guaranteed as to principal and interest by the United States; except that moneys provided as initial capital for such fund shall be returned to the fund established by section 4(c) of the Small Business Act, in such amounts and at such times as the Administration determines to be appropriate, whenever the level of the fund herein established is sufficiently high to permit the return of such moneys without danger to the solvency of the program under this title.

(b) Section 201 of such Act is amended by striking out the third sentence and inserting in lieu thereof the following:

The powers conferred by this Act upon the Administration and upon the Administrator, with the exception of those conferred by titles IV and V hereof, shall be exercised through the Small Business Investment Division and through the Deputy Administrator appointed hereunder. The powers conferred by this Act upon the Administration and upon the Administrator by titles IV and V hereof shall be exercised through such division, section, or other personnel as the Administrator in his discretion shall determine.

(c) The table of contents of such Act is amended by inserting after the analysis of title III the following:

TITLE IV—LEASE GUARANTEES

Sec.
401. Authority of the Administration.
402. Powers.
403. Fund.

(d) Section 4(c) of the Small Business Act is amended—(1) by striking out "$1,716,000,000" and inserting in lieu thereof "$1,721,000,000"; and (2) by striking out the period at the end of the fifth sentence and inserting in lieu thereof the following: "*Provided*, That such limitation shall not apply to functions under the title IV thereof."

§ 106.2 Policy.

It is the intent of the Congress to strengthen the competitive free enterprise system by assisting certain qualified small business concerns to obtain leases of commercial and industrial property, where stringent credit requirements tend to exclude such concerns, by authorizing the Small Business Administration to guarantee, directly or in cooperation with others, the payment of rentals under such leases.

§ 106.3 Definitions.

For the purposes of this part:

(a) "Administrator" means the Administrator of the Small Business Administration.

(b) "SBA" means the Small Business Administration.

(c) "Small Business Concern" means a concern which would qualify as a small business under § 121.3–14 of this chapter.

(d) "Lease Guarantee" is an obligation evidenced by an insurance policy having a face value of the amount of rent assured to the lessor in the event of any default by the lessee in the covenants of the insured lease which results in vacant possession.

(e) A "qualified surety company or other qualified company" means a corporation which is authorized under applicable law to insure the rent provided for in leases of commercial or industrial property to small business concerns.

(f) "Commercial or industrial property" means any property, personal or real, to be leased and used, occupied or possessed by a small business concern in the conduct of its business.

(g) "Lessor" means a legal entity which is the owner of the right to occupancy or possession of the property to be leased. A lessor cannot be wholly owned or controlled by the lessee, a proprietary lessee's blood relatives, or a corporate lessee's officers, directors, or stockholders.

(h) "Lessee" means a small business concern which by the terms of the lease or proposed lease will acquire the right to use, occupy or possess the leased premises. A lessee cannot be wholly owned or controlled by the lessor or an individual lessor's blood relatives or a corporate lessor's officers, directors, or stockholders.

(i) "Lease" means the proposed or executed agreement between the lessor and the small business concern conveying the right to use and occupy or possess the leased premises for a term of years.

(j) "Rent" is the amount agreed upon by the lessor and the lessee for the right to use and occupy the leased premises and payable in fixed installments during the term of the lease.

(k) "Vacant Possession" means that the premises identified in the insured lease have been vacated by the lessee and restored to a condition which will permit immediate releasing by SBA or a participant for the purpose of mitigating loss.

(l) "Participation" means sharing the responsibility for the payment of the insured rent between SBA and a qualified surety company or other qualified company through a participation agreement.

(m) "Default" means any violation of the covenants and conditions of the lease by the lessee which results in a written demand for possession by the lessor.

(n) "Insurer" means SBA as a direct insurer or a qualified participating insurance company.

§ 106.4 Eligibility.

In order to be eligible for a lease guarantee, the lessee must:

(a) Qualify as a small business under § 121.3–14 of this chapter.

(b) Operate or propose operation of a business in conformity with Part 120—Loan Policy, of this chapter.

(c) Not be in unqualified possession of the premises under the lease prior to the issuance of a lease guarantee.

(d) Represent that without a lease guarantee on terms stipulated in the application, he is unable to obtain possession of the premises under the lease.

(e) Certify to SBA that a lease guarantee meeting the requirements of the lessee is not otherwise available on reasonable terms from private commercial sources.

§ 106.5 Procedure for lease guarantee applications.

(a) *Form of application.* An application for rental insurance shall be made on the appropriate SBA form or on a similar form approved by SBA and shall include all pertinent information required in supporting schedules and forms. The application and supporting material shall be submitted to SBA in duplicate if the request is for an SBA insurance policy. If an application is submitted to a qualified surety company or other qualified company for its insurance policy and such company indicates its intention to submit the application to SBA for reinsurance, the application and supporting material shall be in triplicate.

(b) *Place of filing.* Application shall be made, if participation is not available, in the SBA Field Office serving the area in which the property is located. If participation is available, the application may be submitted to the participant which, in turn, may execute an application for reinsurance by SBA and transmit a copy of the application and supporting materials to the SBA Central Office.

§ 106.6 Reinsurance agreement.

Any agreement by SBA to reinsure a qualified company shall provide that:

(a) The premiums charged by the company shall not be in excess of those charged by SBA for its policies of rental insurance.

(b) All other charges, such as processing fees, made by the company shall be reasonable.

(c) The distribution of the responsibility for payment of claims shall be as negotiated with the participating company. An example of distribution is as follows:

The company shall be responsible for paying all claims arising out of the insurance policy up to an amount equal to 12 times the average monthly rent insured and not less than 20 percent of any claim in excess of this amount.

(d) Policies of insurance issued by the participant shall be serviced by the participating company.

(e) A portion of the total premium shall be paid to SBA for its reinsurance; the premium payable to SBA will be determined by negotiation and shall depend upon the degree and extent of the participation, but shall not exceed 2½ percent of the minimum guaranteed or insured rent payable under the lease.

§ 106.7 Insurance premium and amount of insurance.

(a) The premium for this insurance shall be due not later than the effective date of the rental insurance policy, shall be a single, nonrefundable premium and shall be paid in advance of issuance of the policy.

(b) The minimum term of a lease which SBA will guarantee directly is 15 years. The maximum term for such insurance is 20 years.

(c) The minimum term of a lease in the guarantee of which SBA will participate is 5 years. The maximum term for such insurance is 20 years; the maximum amount of a policy is $9 million.

(d) SBA or a participant may insure all or a portion of the rent payable under a lease in installments. The outstanding amount of the policy may be increased by payment of additional premiums if the lease provides for an increase in the rent proportionate to increases in the costs of possession of the premises.

(e) The Administrator has determined on the basis of actuarial studies that the following schedule of premiums (which exclude processing fees) for rental insurance for leases of real property constitutes the maximum reasonable premiums for direct policies and policies reinsured by SBA.

Term of lease in years	*Maximum reasonable premium (as percentage of total minimum rent guaranteed)*[1]
5	6.5
6	5.9
7	5.3
8	4.8
9	4.4
10	4.0
11	3.7
12	3.4
13	3.1
14	2.9
15	2.8
16	2.6
17	2.4
18	2.3
19	2.2
20	2.1

§ 106.8 Approval or decline of application.

(a) Applications shall be accompanied by legible leases or proposed leases in print or type having a size of not less than 8 point.

(b) No insurance or reinsurance shall be approved or issued unless the analysis of location, management and finance made by the use of a system of risk analysis, approved by SBA, indicates that there exists a reasonable expectation that the small business applicant will perform the covenants and conditions of the lease or proposed lease.

(c) The terms, conditions, and covenants in a lease or proposed lease submitted to the insurer with an application shall be subject to recipient's approval. Insurer may require modifications to be made in the lease before issuance of the policy.

(d) If the insurer so determines because of the magnitude or complexity of a single application or if there are applications filed for three or more guarantees of leases in the single development or project, an independently prepared feasibility study provided by the applicant or applicants must be submitted.

§ 106.9 Required lease agreements.

Agreements shall be reached between the lessor and lessee and stated in the lease concerning:

(a) The division, if any, of any award in condemnation proceedings representing the value of the real estate, including fixtures and the value of the leasehold interest. The lessee must retain the rights, on the presumption that such rights exist under condemnation laws, to awards from or claims against the condemnor for any taking of the lessee's property (including any ownership in the leasehold improvements) for moving expenses and for damages for interruption of the lessee's business.

(b) The party or parties responsible for maintenance of hazard insurance and the payment of premiums therefor to insure real and personal property and whether such premiums on real property insurance are included in the minimum rent or are to be paid as additional minimum rent.

(c) The disposition of any hazard insurance proceeds and the party or parties responsible for reconstruction or repair of the premises and refurnishing or reequipping the building.

(d) The party or parties responsible for the payment of local taxes on the premises and whether such taxes are included in the minimum rent or are to be paid as additional minimum rent.

(e) That the lessee may not without the prior written consent of the lessor assign the lessee's interest in the lease or sublet the whole or any part of the premises.

(f) An equitable abatement of rent in the event all or any part of the premises are lost by casualty or condemnation proceedings. In lieu of such abatements, covenants by the tenant to obtain rent insurance or business interruption insurance will be considered.

§ 106.10 Minimizing the risk.

(a) Upon the effective date of the policy of rental insurance

(1) The lessee shall pay an amount not to exceed one-quarter of the average guaranteed annual rental into an escrow account with the insurer for the purpose of paying rental charges not in excess of the guaranteed minimum monthly rental accruing in any month in which the lessee is in default or,

(2) The lessor shall accept an insurance policy providing for a deduction of 3 months' rent due after the date of default as the amount of loss to be borne by the lessor.

(b) If an escrow account is established, it shall be accompanied by a written escrow agreement containing the following provisions:

(1) Simple interest at the rate of 4 percent per annum shall accrue to the escrowed fund from the date of deposit until the date of default.

(2) A default by the lessee in the covenants and conditions of the insured lease which is asserted by the lessor in a written demand for possession of the leased premises, shall forfeit all right and title of the lessee to the escrowed fund and interest accrued thereon.

(3) Upon such default and either before or after the lessee's actual possession is terminated, the insurer shall disburse to the lessor so much of the escrow as is necessary to pay claims for the guaranteed rent of rental charges accruing in any month in which the lessee is in default.

(4) If such default is cured by written agreement between the lessor and the lessee after the insurer has disbursed funds from the escrow to pay the lessor the guaranteed rent, the lessee shall, upon placing in this escrow an amount equivalent to the disbursed funds, be restored to all right, title, and interest in the escrowed fund as if such default had not occurred.

(5) If such default is not so cured and the lessee vacates because of eviction proceedings or the lessor's written demand, any portion of the escrowed funds remaining unused after the property is rerented shall be retained by the insurer.

(6) If no such default occurs during the term of the insurance policy, the insurer, upon written request of the lessee, shall disburse the funds to the lessor for application toward the payment of the final rental charges under said lease.

(7) If, prior to the expiration of the insurance policy, the lease is terminated by mutual consent of lessee and lessor, the total funds held in escrow shall be disbursed to the lessee upon receipt by the insurer of a request for such disbursement signed by the lessor and the lessee and advising the insurer of the termination date of the lease and that all rents due and payable to the date of termination were paid by the lessee.

(8) That the interests of the lessor and lessee in the escrowed funds shall not be subject to the claims of creditors of either the lessee or lessor or others nor to legal process and may not be voluntarily or involuntarily alienated or encumbered by lessor or lessee.

§ 106.11 Lessors duties to lessee and insurer.

(a) The lessor shall perform the duties to the lessee required to be rendered by the terms of the insured lease.

(b) Upon the occurrence of a default by the lessee under the insured lease, the lessor shall give written notice simultaneously to the lessee and to the insurer of the specific default.

(c) Unless such default is corrected by amicable agreement of the lessee and lessor on or before 30 days from date of notice, the lessor will take prompt action to terminate the occupancy of the lessee, to make such repairs to the property as are necessary to restore it to its original condition, ordinary wear and tear excepted, and to deliver vacant possession to the insurer provided, however, this shall not be construed to prohibit improvements in the premises permitted by the lease.

(d) If such default is not corrected by the lessee, the lessor shall utilize the entire period for which there are funds available in escrow for the payment of rental claims (or the deductible period) in reasonably diligent efforts to eliminate or minimize losses by rerenting the property covered by the lease to another lessee subject to the approval of the insurer for the purpose of retaining the insurance coverage.

(e) At any time after an uncorrected default and before the escrowed funds are exhausted, or the deductible period has expired, the lessor may rerent the property described in the insured lease to a new lessee satisfactory solely to the lessor; provided, however, such action by the lessor shall suspend the coverage of the insurance for the term of the new lease and no claim for losses sustained after the commencement date of the new lease and during the new tenant's term shall be paid by the insurer, and the aggregate amount of rent stated in the new lease shall be deducted from the total remaining amount guaranteed by the policy. The policy of insurance coverage shall be terminated and no claims shall be paid unless the lessor provides prompt written notice to the insurer of such rerenting with a true copy of the lease with the new lessee.

(f) At any time after an uncured default and before the escrowed funds are exhausted or the deductible period has expired, the lessor, before entering into a new lease with a new lessee may notify the insurer of the terms of the proposed new lease and of his intention to negotiate a lump-sum settlement of accrued and prospective losses based upon the terms of the proposed lease. If a settlement is agreed upon by the lessor and the insurer, payment of the negotiated settlement sum shall terminate the insurance policy.

(g) At any time after an uncured default and before the escrowed funds are exhausted or the deductible period has expired, the lessor may request the insurer to approve or consent to a new lessee and endorse the policy with the name of the new lessee; such consent shall not be given unless the risk to the insurer is not changed except for the nature of the business operation.

(h) Upon filing a claim for guaranteed rent in default, the lessor will continue to make reasonably diligent efforts to minimize losses by assisting the insurer to locate a prospective lessee. Upon such filing and the exhaustion of the escrowed fund or the expiration of the deductible period, the lessor shall deliver vacant possession to the insurer with the right to rerent the premises.

§ 106.12 Insurer's rights.

(a) The insurer shall have the right to inspect the lessee's premises and operations and to examine and audit the lessee's books and records at any time during the term of the policy of insurance.

(b) Upon the exhaustion of the escrowed funds or the expiration of the deductible period:

(1) The insurer shall become a successor of the lessor for the purpose of rerenting the premises for any lawful purpose at such rentals and to any lessee acceptable to the insurer. Any such rentals shall be the property of the insurer.

(2) The insurer will become a successor to the lessor for the purpose of collecting from the lessee in default all rentals which are in arrears by the terms of the lease and with respect to which the lessor has either received payment or an acknowledgment of the insurer's liability for future payment.

(3) All collateral hypothecated to the lessor by the insured lessee as security for payment of the rent shall be automatically vested in the insurer to secure the lessee's payment of the rent to the insurer.

§ 106.13 Assignments, subleases and surrenders after occupancy.

(a) The interest of the lessee in the leased premises shall not be voluntarily assigned or transferred by corporate merger or capital stock transfer to a new lessee without the prior written consent of the lessor and the insurer.

(b) The lessee shall not sublease the entire premises or any portion thereof without the prior written consent of the lessor and the insurer.

(c) The lessor shall not consent to an assignment or sublease by the tenant without the prior written consent of the insurer.

(d) If the lessor gives consent in violation of paragraph (c) of this section, the policy of lease guarantee insurance shall be suspended for the remainder of the term of the assigned lease or for the term of the sublease, regardless of whether the entire premises are subleased.

(e) In the case of a transfer by assignment or sublease of the leasehold estate or any portion thereof to a new tenant, a lessor who desires to retain the insurance of the rent in its original amount by obtaining the insurer's consent endorsed on the policy shall submit to the insurer such information concerning the assignee or sublessee as the insurer may require.

(f) If the assignee or sublessee is a small business concern and proposes to conduct business operations within the premises and the risks of management and financial structure have not increased, the insurer may consent to the assignment or sublease without payment of a new premium.

(g) If the insurer finds that the risk of the new management or financial structure of the assignee or sublessee is an increased risk, the insurer shall treat the assignment or sublease as a new lease and shall give consent only if the insurer is paid a premium based on the original rent or the rent of the sublease, the remaining months of the policy term and the prevailing rate schedule at the time the insurer's consent is requested.

(h) If the lessee, without default voluntarily vacates or surrenders possession of the leased premises to the lessor or to any other occupant (including any corporate survivor of a corporate merger with the lessee) with the consent of the lessor, the insurance shall terminate.

§ 106.14 Acquisition of premises by insured lessee.

If during the term of an insured lease an insured lessee exercises an option to purchase the premises or purchases an undivided interest in the premises or acquires any of a corporate lessor's capital stock, the initial amount of insured rent shall be reduced by an amount equivalent to the lessee's acquired interest in the premises or in the capital stock of the lessor.

§ 106.15 Acquisition of lessee by lessor.

If, during the term of an insured lease, the lessor, its subsidiaries or affiliates or any individual in control of the lessor acquires an interest in the lessee, the initial amount of insured rent shall be reduced by an amount equivalent to the acquired interest in the lessee.

§ 106.16 Effect of condemnation and casualty losses on insurance.

(a) In the event the property described in the lease which is the subject of the insurance is totally condemned or totally destroyed, the insurance is terminated as of the date of title vesting in the condemnor or as of the date of the casualty loss.

(b) In the event of partial condemnation or partial casualty losses, the amount of insurance is abated by the ratio which the minimum rent as abated by the terms of the lease bears to the guaranteed or insured minimum rent.

§ 106.17 Lease guarantee administration.

(a) *Direct guarantees.* All policies of insurance which are issued directly by SBA wil be serviced by SBA.

(b) *Participation guarantees.* All policies of insurance which are issued by a participant shall be serviced by the participant.

Effective date. This revision shall become effective upon its publication in the FEDERAL REGISTER.

Dated: September 19, 1969.

HILARY SANDOVAL, JR.,
Administrator.

[F.R. Doc. 69-11517; Filed, Sept. 26, 1969; 8:46 a.m.]

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Administration, Department of Transportation

[Docket No. 69-SO-97; Amdt. 39-846]

PART 39—AIRWORTHINESS DIRECTIVES

Maule M-4 Airplanes

A condition exists on Maule M-4 series airplanes which could result in loss of aileron control. Since this condition exists, an airworthiness directive is being issued to require installation of two washers to the aileron control assembly on Maule M-4 series airplanes.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (31 F.R. 13697), § 39.13 of Part 39 of the Federal Aviation

Regulations is amended by adding the following new airworthiness directive:

MAULE AIRCRAFT CORPORATION. Applies to the following models: M-4, M-4T, M-4C, M-4S, M-4-210, M-4-210C, M-4-220C.

The following are affected serial numbers:

M-4, Serial Nos. 3 through 94.
M-4T, Serial Nos. 1T through 3T.
M-4C, Serial Nos. 1C through 11C.
M-4S, Serial Nos. 1S through 3S.
M-4-210, Serial Nos. 1001 through 1045.
M-4-210C, Serial Nos. 1001C through 1075C, 1079C, 1080C.
M-4-220C, Serial Nos. 2001C through 2029C, 2032C.

Compliance required within the next 25 hours' time in service after the effective date of this airworthiness directive unless already accomplished.

To prevent the most forward aileron control system pulley, mounted on the lower portion of the control column, from separating from its bearing, accomplish the following:

Remove the bolt attaching the most forward aileron control system pulley to the control column. Replace pulley assembly with the addition of washers AN 970-5 and AN 960-516 and an AN 5-27 bolt instead of the original bolt in the following order from front to rear:

1. AN 5-27 bolt, head forward.
2. AN 970-5 washer.
3. AN 960-516 washer.
4. Original pulley.
5. Control column.
6. AN 960-516 washer.
7. An 365-524 nut.

or equivalent approved by Chief, Engineering and Manufacturing Branch, FAA Southern Region.

Maule Service Letter No. 19, dated September 4, 1969, covers this same subject.

This amendment becomes effective September 30, 1969.

(Secs. 313(a), 601, 603, Federal Aviation Act of 1958; 49 U.S.C. 1354(a), 1421, 1423; Sec. 6(c), Department of Transportation Act; 49 U.S.C. 1655(c))

Issued in East Point, Ga., on September 17, 1969.

GORDON A. WILLIAMS, Jr.,
Acting Director, Southern Region.

[F.R. Doc. 69-11522; Filed, Sept. 26, 1969; 8:46 a.m.]

[Docket No. 9702; Amdt. 39-853]

PART 39—AIRWORTHINESS DIRECTIVES

Pilatus Model PC-6 Series Aircraft Serial Nos. 1 Through 723 and 2001 Through 2050

A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive requiring inspection for proper clearance between the pulley and the cable keeper on the Pilatus PC-6 Series Airplane was published in 34 F.R. 11424.

Interested persons have been afforded an opportunity to participate in the making of the amendment. No objections were received.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (14 CFR 11.89), § 39.13 of the Federal Aviation Regulations is amended by adding the following new airworthiness directive:

PILATUS AIRCRAFT WORKS, INC. Applies to Model PC-6 Series Aircraft Serial Nos. 1 through 723 and 2001 through 2050.

Compliance required as indicated unless already accomplished.

To prevent the rudder trim control cable from coming off the pulleys aft of bulkhead 6 (rear cabin wall), accomplish the following:

(a) Within the next 100 hours' time in service, inspect the clearance between the cable keeper and the cable pulleys aft of bulkhead 6 in accordance with Pilatus Service Bulletin No. 92, dated March 1969, or later Swiss Federal Air Office approved revision or an FAA-approved equivalent.

(b) If the clearance between the keeper and the cable pulleys is found to be greater than 0.040 inch, replace the old cable keeper, P/N 6201.16, with a redesigned cable keeper, P/N 916.96.06.244 in accordance with Pilatus Service Bulletin No. 92, dated March 1969, or later Swiss Federal Air Office approved revision or an FAA-approved equivalent.

This amendment becomes effective October 27, 1969.

(Secs. 313(a), 601, 603, Federal Aviation Act of 1958; 49 U.S.C. 1354(a), 1421, 1423; sec. 6(c), Department of Transportation Act; 49 U.S.C. 1655(c))

Issued in Washington, D.C., September 23, 1969.

R. S. SLIFF,
Acting Director, Flight Standards Service.

[F.R. Doc. 69-11523; Filed, Sept. 26, 1969; 8:46 a.m.]

[Airspace Docket No. 69-CE-43]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, CONTROLLED AIRSPACE, AND REPORTING POINTS

Alteration of Control Zone and Transition Area

Correction

In F.R. Doc. 69-10996 on page 14427 in the issue of Tuesday, September 16, 1969, in the ninth line of the description for the Glasgow, Mont., transition area, the word "each" should be corrected to read "east".

[Airspace Docket No. 69-AL-13]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, CONTROLLED AIRSPACE, AND REPORTING POINTS

Alteration of Control Zone

The purpose of this amendment to Part 71 of the Federal Aviation Regulations is to alter the effective period of the Fort Yukon, Alaska, control zone.

The effective period of the Fort Yukon control zone shall be as published by Notice to Airman. It is necessary to reduce the effective period to coincide with the time that certified weather observations required to support the control zone designation are available.

Since this amendment is necessary due to the lack of certified weather observations, and imposes no additional burden on any person, notice and public procedure hereon are unnecessary, and the amendment may be made effective in less than 10 days.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective on issuance, as hereinafter set forth. In § 71.171 (34 F.R. 4584), the Fort Yukon, Alaska, control zone is amended by deleting "from 0745 to 1645 hours, local time, Monday through Saturday," and substituting therefor "as published by Notice to Airman."

(Sec. 307(a), Federal Aviation Act of 1958; 49 U.S.C. 1348; sec. 6(c), Department of Transportation Act; 49 U.S.C. 1655(c))

Issued in Anchorage, Alaska, on September 18, 1969.

WILLIAM P. COMSTOCK,
Brigadier General, U.S. Air Force, Acting Director, Alaska Region.

[F.R. Doc. 69-11518; Filed, Sept. 26, 1969; 8:46 a.m.]

[Airspace Docket No. 69-SO-94]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, CONTROLLED AIRSPACE, AND REPORTING POINTS

Alteration of Control Zone

The purpose of this amendment to Part 71 of the Federal Aviation Regulations is to alter the Pensacola, Fla. (NAS Saufley Field), control zone.

The Pensacola (NAS Saufley Field) control zone is described in § 71.171 (34 F.R. 4557 and 6075) and is presently effective 24 hours per day. Since the control tower will operate from 0600 to 2200 hours, local time daily, effective October 1, 1969, it is necessary to alter the description to redesignate it as a part-time control zone.

Since this amendment is less restrictive in nature and imposes no additional burden on the public, notice and public procedure hereon are unnecessary and Part 71 of the Federal Aviation Regulations is amended, effective 0901 G.m.t., October 1, 1969, as hereinafter set forth.

In § 71.171 (34 F.R. 4557), the Pensacola, Fla. (NAS Saufley Field), control zone (34 F.R. 6075) is amended as follows: "* * * This control zone is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airman's Information Manual * * *." is added to the description.

(Sec. 307(a), Federal Aviation Act of 1958, 49 U.S.C. 1348(a); of sec. 6(c), Department of Transportation Act; 49 U.S.C. 1655(c))

Issued in East Point, Ga., on September 17, 1969.

GORDON A. WILLIAMS, Jr.,
Acting Director, Southern Region.

[F.R. Doc. 69-11519; Filed, Sept. 26, 1969; 8:46 a.m.]

[Airspace Docket No. 69-SO-95]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, CONTROLLED AIRSPACE, AND REPORTING POINTS

Alteration of Control Zone and Transition Area

The purpose of this amendment to Part 71 of the Federal Aviation Regulations is to alter the Wilmington, N.C., control zone and transition area.

The Wilmington control zone is described in § 71.171 (34 F.R. 4557) and the transition area is described in § 71.181 (34 F.R. 4637). In the control zone description, an extension is predicated on the Wilmington VORTAC 197° radial. In the transition area description, extensions are predicated on the Wilmington VORTAC 017° radial and the Wilmington ILS localizer north and south courses. The transition area basic radius circle is established at 8 miles.

U.S. Standards for Terminal Instrument Procedures (TERPs), issued after extensive consideration and discussion with Government agencies concerned and affected industry groups, are now being applied to update the criteria for instrument approach procedures. The criteria for the designation of controlled airspace for the protection of these procedures was revised to conform to TERPs and achieve increased and efficient utilization of airspace.

Because of this revised criteria, it is necessary to alter the control zone description by revoking the extension predicated on the Wilmington VORTAC 197° radial, and the transition area description by revoking the extensions predicated on the Wilmington VOR 017° radial and the Wilmington ILS localizer north and south courses. Current airspace criteria also requires an increase in the basic radius circle from 8 to 8.5 miles.

Since these amendments result in an overall reduction of 20 square miles of controlled airspace and lessens the burden on the public, notice and public procedure hereon are unnecessary and action is taken herein to alter the descriptions accordingly.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective immediately, as hereinafter set forth.

In § 71.171 (34 F.R. 4557), the Wilmington, N.C., control zone is amended to read:

WILMINGTON, N.C.

Within a 5-mile radius of New Hanover County Airport (Lat. 39°16'15" N., long. 77°54'05" W.).

In § 71.181 (34 F.R. 4637), the Wilmington, N.C., transition area is amended to read:

WILMINGTON, N.C.

That airspace extending upward from 700 feet above the surface within an 8.5-mile radius of New Hanover Airport (lat. 39°16'15" N., long. 77°54'05" W.).

(Sec. 307(a), Federal Aviation Act of 1958; 49 U.S.C. 1348(a); sec. 6(c), of the Department of Transportation Act; 49 U.S.C. 1655 (c))

Issued in East Point, Ga., on September 18, 1969.

GORDON A. WILLIAMS, Jr.,
Acting Director, Southern Region.

[F.R. Doc. 69-11520; Filed, Sept. 26, 1969; 8:46 a.m.]

[Airspace Docket No. 69-EA-79]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, CONTROLLED AIRSPACE, AND REPORTING POINTS

Designation of Transition Area

On Page 12596 of the FEDERAL REGISTER for August 1, 1969, the Federal Aviation Administration published proposed regulations which would designate a transition area over Rostraver Airport, Monongahela, Pa.

Interested parties were given 30 days after publication in which to submit written data or views. No objections to the proposed regulations have been received. In view of the foregoing, the proposed regulations are hereby adopted effective 0901 G.m.t., November 13, 1969.

(Sec. 307(a), Federal Aviation Act of 1958; 72 Stat. 749; 49 U.S.C. 1348; Sec. 6(c), Department of Transportation Act; 49 U.S.C. 1655(c))

Issued in Jamaica, N.Y., on September 16, 1969.

GEORGE M. GARY,
Director, Eastern Region.

1. Amend § 71.181 of Part 71 of the Federal Aviation Regulations so as to designate a 700-foot Monongahela, Pa. Transition Area described as follows:

MONONGAHELA, PA.

That airspace extending upward from 700-feet above the surface within a 6.5-mile radius of the center, 40°12'40" N., 79°49'50" W., of Rostraver Airport, Monongahela, Pa., and within 2 miles each side of the Allegheny, Pa., VORTAC 113° radial extending from the 6.5-mile radius area to the VORTAC, excluding the portion which coincides with the Pittsburgh, Pa., transition area.

[F.R. Doc. 69-11521; Filed, Sept. 26, 1969; 8:46 a.m.]

Title 19—CUSTOMS DUTIES

Chapter I—Bureau of Customs, Department of the Treasury

[T.D. 69-216]

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

Instruments of International Traffic

Resolution No. 24 adopted on May 23, 1968, by the Working Party on Customs Questions affecting Transport of the Inland Transport Committee of the United Nations Economic Commission for Europe, of which the United States is a participating member, recommends that governments authorize the use of containers which have been admitted under any temporary importation procedure for the transport of goods in internal traffic with the understanding that the internal journey may be limited to one which will bring the container by a reasonably direct route to, or nearer to, the place where export cargo is to be loaded or where the container is to be reexported empty.

To implement the resolution on behalf of the United States, a notice of a proposal to amend paragraph (f) of § 10.41a, Customs Regulations, which describes the uses in the United States of instruments of international traffic which do not constitute a diversion to unpermitted point-to-point local traffic or a withdrawal of such instrument from its use as an instrument of international traffic, was published in the FEDERAL REGISTER on June 24, 1969 (34 F.R. 9754). Consideration has been given to all relevant matter presented in response to that notice, and it has been decided to adopt the proposed rule without change.

Accordingly, paragraph (f) of § 10.41a, Customs Regulations, is amended to read as follows:

§ 10.41a Lift vans, cargo vans, shipping tanks, skids, pallets, and similar instruments of international traffic.

* * * * *

(f) Except as provided in paragraph (h) of this section, no part of this section precludes (1) the use of an instrument in picking up and delivering loads at intervening points in the United States while en route between the port of arrival and the point of destination of its imported cargo or (2) such use of the instrument while en route from such point of destination of imported cargo to a point where export cargo is to be loaded or to an exterior port of departure by a reasonably direct route to, or nearer to, the place of such loading or departure, provided such point-to-point traffic is incidental to the efficient and economical utilization of the instrument in the course of its use in international traffic. Such use does not constitute a diversion to unpermitted point-to-point local traffic within the United States or a withdrawal of an instrument in the United States from its use as an instrument of international traffic under this section.

* * * * *

(80 Stat. 379, R.S. 251, sec. 14, 67 Stat. 516; 5 U.S.C. 301, 19 U.S.C 66, 1322)

The amended rule is intended to relax existing restrictions on the use of containers admitted as instruments of international traffic in point-to-point local traffic in the United States. Good cause is found, therefore, for dispensing with the delayed effective date provision of 5 U.S.C. 553(d).

Effective date. This amendment shall become effective on the date of its publication in the FEDERAL REGISTER.

[SEAL] MYLES J. AMBROSE,
Commissioner of Customs.

Approved: September 19, 1969.

EUGENE T. ROSSIDES,
Assistant Secretary of the Treasury.

[F.R. Doc. 69-11541; Filed, Sept. 26, 1969; 8:48 a.m.]

Title 20—EMPLOYEES' BENEFITS

Chapter III—Social Security Administration, Department of Health, Education, and Welfare

[Reg. No. 4, further amended]

PART 404—FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE (1950——)

Subpart F—Overpayments, Underpayments, Waiver of Adjustment or Recovery of Overpayments, and Liability of a Certifying Officer

Subpart J—Procedures, Payment of Benefits, and Representation of Parties

MISCELLANEOUS AMENDMENTS

Regulations No. 4 of the Social Security Administration, as amended (20 CFR 404.1 et seq.), are further amended to read as follows:

1. Section 404.501 is amended to read as follows:

§ 404.501 General applicability of section 204 of the Act.

(a) *In general.* Section 204 of the Act provides for adjustment as set forth in §§ 404.502 and 404.503, in cases where an individual has received more or less than the correct payment due under title II of the Act. As used in this subpart, the term "overpayment" includes a payment in excess of the amount due under title II of the Act, a payment resulting from the failure to impose deductions or to suspend or reduce benefits under sections 203, 222(b), 224, and 228 (c), and (d), and (e) of the Act (see Subpart E of this part), a payment pursuant to section 205(n) of the Act in an amount in excess of the amount to which the individual is entitled under section 202 or 223 of the Act, a payment resulting from the failure to terminate benefits, and a payment where no amount is payable under title II of the Act. The term "underpayment" as used in this subpart refers only to monthly insurance benefits and includes nonpayment where some amount of such benefits was payable. An underpayment may be in the form of an accrued unpaid benefit amount for which no check has been drawn or in the form of an unnegotiated check payable to a deceased individual. The provisions for adjustment also apply in cases where through error:

(1) A reduction required under section 202(j)(1), 202(k)(3), 203(a), or 205(n) of the Act is not made, or

(2) An increase required under section 202(d)(2), 202(m), or 215 (f) or (g) of the Act is not made, or

(3) A deduction required under section 203(b) (as may be modified by the provisions of section 203(h)), 203(c), 203(d), 203(i), 222(b), or 223(a)(1)(D) of the Act or section 907 of the Social Security Amendments of 1939 is not made, or

(4) A suspension required under section 202(n) or 202(t) of the Act is not made, or

(5) A reduction under section 202(q) of the Act is not made, or

(6) A reduction, increase, deduction, or suspension is made which is either more or less than required, or

(7) A payment in excess of the amount due under title XVIII of the Act was made to or on behalf of an individual (see §§ 405.350–405.351) entitled to benefits under title II of the Act, or

(8) A payment of past due benefits is made to an individual and such payment had not been reduced by the amount of attorney's fees payable directly to an attorney under section 206 of the Act (see § 404.977).

(b) *Payments made on the basis of an erroneous report of death.* Any monthly benefit or lump sum paid under title II of the Act on the basis of an erroneous report by the Department of Defense of the death of an individual in the line of duty while such individual was a member of the uniformed services (as defined in section 210(m) of the Act) on active duty (as defined in section 210(l) of the Act) is deemed a correct payment for any month prior to the month such Department notifies the Administration that such individual is alive.

2. Section 404.502 is amended to read as follows:

§ 404.502 Overpayments.

Upon determination that an overpayment has been made, adjustments will be made against monthly benefits and lump sums as follows:

(a) *Individual overpaid is living.* (1) If the individual to whom an overpayment was made is at the time of a determination of such overpayment entitled to a monthly benefit or a lump sum under title II of the Act, or at any time thereafter becomes so entitled, no benefit for any month and no lump sum is payable to such individual, except as provided in paragraph (c) of this section, until an amount equal to the amount of the overpayment has been withheld or refunded. Such adjustments will be made against any monthly benefit or lump sum under title II of the Act to which such individual is entitled whether payable on the basis of such individual's earnings or the earnings of another individual.

(2) If any other individual is entitled to benefits of any month on the basis of the same earnings as the overpaid individual, except as adjustment is to be effected pursuant to paragraph (c) of this section by withholding a part of the monthly benefit of either the overpaid individual or any other individual entitled to benefits on the basis of the same earnings, no benefit for any month will be paid on such earnings to such other individual until an amount equal to the amount of the overpayment has been withheld or refunded.

(b) *Individual overpaid dies before adjustment.* If an overpaid individual dies before adjustment is completed under the provisions of paragraph (a) of this section, no lump sum and no subsequent monthly benefit will be paid on the basis of earnings which were the basis of the overpayment to such deceased individual until full recovery of the overpayment has been effected, except as provided in paragraph (c) of this section or under § 404.515. Such recovery may be effected through:

(1) Payment by the estate of the deceased overpaid individual,

(2) Withholding of amounts due the estate of such individual under title II of the Act,

(3) Withholding a lump sum or monthly benefits due any other individual on the basis of the same earnings which were the basis of the overpayment to the deceased overpaid individual, or

(4) Any combination of the above.

(c) *Adjustment by withholding part of a monthly benefit.* Adjustment under paragraphs (a) and (b) of this section may be effected by withholding a part of the monthly benefit payable to an individual where it is determined that:

(1) Withholding the full amount each month would "defeat the purpose of title II," i.e., deprive the person of income required for ordinary and necessary living expenses (see § 404.508); and

(2) Recoupment can be effected in an amount of not less than $10 a month and at a rate which would not result in extending the period of adjustment beyond the earlier of the following:

(i) The expected last month of entitlement; or

(ii) Three years after the initiation of the adjustment action (except that in cases where the individual was "without fault" (see §§ 404.507 and 404.510), the period of adjustment may be extended beyond 3 years, if necessary); and

(3) The overpayment was not caused by the individual's intentional false statement or representation, or willful concealment of, or deliberate failure to furnish, material information.

3. Section 404.503 is amended to read as follows:

§ 404.503 Underpayments.

Underpayments will be adjusted as follows:

(a) *Individual underpaid is living.* If an individual to whom an underpayment is due is living, the amount of such underpayment will be paid to such individual either in a single payment (if he is not entitled to a monthly benefit or a lump-sum death payment) or by increasing one or more monthly benefits or a lump-sum death payment to which such individual is or becomes entitled.

(b) *Individual dies before adjustment of underpayment.* If an individual to whom an underpayment is due dies before receiving payment or negotiating a check or checks representing such payment, such underpayment will be distributed to the living person (or persons) in the highest order of priority as follows:

(1) The deceased individual's surviving spouse as defined in section 216 (c), (g), or (h) of the Act who was either:

(i) Living in the same household (as defined in § 404.1112 of Subpart L of this part) with the deceased individual at the time of such individual's death, or

(ii) Entitled to a monthly benefit on the basis of the earnings record of the deceased individual for the month in which such individual died.

(2) The child or children of the deceased individual (as defined in section 216 (e) or (h) of the Act) entitled to a monthly benefit on the basis of the earnings record of the deceased individual for the month in which such individual died (if more than one such child, in equal shares to each such child).

(3) The parent or parents of the deceased individual (as defined in § 404.1110 of Subpart L of this part) entitled to a monthly benefit on the basis of the earnings record of the deceased individual for the month in which such individual died (if more than one such parent, in equal shares to each such parent).

(4) The surviving spouse of the de- 216 (c), (g), or (h) of the Act) who does not qualify under subparagraph (1) of this paragraph.

(5) The child or children of the deceased individual (as defined in section 216 (e) or (h) of the Act) who do not qualify under subparagraph (2) of this paragraph (if more than one such child, in equal shares to each such child).

(6) The parent or parents of the deceased individual (as defined in § 404.1110 of Subpart L of this part) who do not qualify under subparagraph (3) of this paragraph (if more than one such parent, in equal shares to each such parent).

(7) The legal representative of the estate of the deceased individual as defined in paragraph (d) of this section.

(c) In the event that a person who is otherwise qualified to receive an underpayment under the provisions of paragraph (b) of this section, dies before receiving payment or before negotiating the check or checks representing such payment, his share of the underpayment will be divided among the remaining living person(s) in the same order of priority. In the event that there is (are) no other such person(s), the underpayment will be paid to the living person(s) in the next lower order of priority under paragraph (b) of this section.

(d) *Definition of legal representative.* The term "legal representative," for the purpose of qualifying to receive an underpayment, generally means the administrator or executor of the estate of the deceased individual. However, it may also include an individual, institution or organization acting on behalf of an unadministered estate, provided that such person can give the Administration good acquittance (as defined in paragraph (e) of this section). The following persons may qualify as legal representative for the purposes of this subpart, provided they can give the Administration good acquittance:

(1) A person who qualifies under a State's "small estate" statute,

(2) A person resident in a foreign country who, under the laws and customs of that country, has the right to receive assets of the estate,

(3) A public administrator, or

(4) A person who has the authority, under applicable law, to collect the assets of the estate of the deceased individual.

(e) *Definition of "good acquittance."* A person is considered to give the Administration "good acquittance" when payment to that person will release the Administration from further liability for such payment.

4. Section 404.504 is amended to read as follows:

§ 404.504 Relation to provisions for reductions and increases.

The amount of an overpayment or underpayment is the difference between the amount paid to the beneficiary and the amount of the payment to which the beneficiary was actually entitled. Such payment, for example, would be equal to the difference between the amount of a benefit in fact paid to the beneficiary and the amount of such benefit as reduced under section 202(j)(1), 202(k)(3), 203(a), or 224(a), or as increased under section 202(d)(2), 202(m), or 215 (f) and (g). In effecting an adjustment with respect to an overpayment, no amount can be considered as having been withheld from a particular benefit which is in excess of the amount of such benefit as so decreased.

5. Section 404.505 is amended to read as follows:

§ 404.505 Relationship to provisions requiring deductions.

Adjustments required by any of the provisions in this Subpart F are made in addition to, but after, any deductions required by section 202(t), 203(b), 203(c), 203(d), and 222(b) of the Act, or section 907 of the Social Security Act Amendments of 1939, and before any deductions required by section 203(g) or 203(h)(2) of the Act.

6. Section 404.507 is amended to read as follows:

§ 404.507 Fault.

"Fault" as used in "without fault" (see §§ 404.506 and 405.355) applies only to the individual. Although the Administration may have been at fault in making the overpayment, that fact does not relieve the overpaid individual or any other individual from whom the Administration seeks to recover the overpayment from liability for repayment if such individual is not without fault. In determining whether an individual is at fault, the Administration will consider all pertinent circumstances, including his age, intelligence, education, and physical and mental condition. What constitutes fault (except for "deduction overpayments"—see § 404.510) on the part of the overpaid individual or on the part of any other individual from whom the Administration seeks to recover the overpayment depends upon whether the facts show that the incorrect payment to the individual or to a provider of services or other person, or an incorrect payment made under section 1814(e) of the Act, resulted from:

(a) An incorrect statement made by the individual which he knew or should have known to be incorrect; or

(b) Failure to furnish information which he either knew or could have been be material; or

(c) With respect to the overpaid individual only, acceptance of a payment which he either knew or could have been expected to know was incorrect.

7. Section 404.508(b) is revised to read as follows:

§ 404.508 Defeat the purpose of title II.

* * * * *

(b) *When adjustment or recovery will defeat the purpose of title II.* Adjustment or recovery will defeat the purposes of title II in (but is not limited to) situations where the person from whom recovery is sought needs substantially all of his current income (including social security monthly benefits) to meet current ordinary and necessary living expenses.

8. Paragraphs (a), (c), (e), (f), (i), and (j) of § 404.510 are revised to read as follows:

§ 404.510 When an individual is "without fault" in a deduction-overpayment.

Except as provided in § 404.511, or elsewhere in this Subpart F, an individual will be considered "without fault" in accepting a payment which is incorrect because he failed to report an event specified in section 203 (b) and (c) of the Act, or an event specified in section 203(d) of the Act as in effect for monthly benefits for months after December 1960, or because a deduction is required under section 203 (b), (c), (d), or section 222(b) of the Act, or payments were not withheld as required by section 202(t) or section 228 of the Act, if it is shown that such failure to report or acceptance of the overpayment was due to one of the following circumstances:

(a) Reasonable belief that only his net cash earnings ("take-home" pay) are included in determining the annual earnings limitation or the monthly earnings limitation under section 203(f) of the Act.

* * * * *

(c) The beneficiary's death caused the earnings limit applicable to his earnings for deduction purposes and the charging of excess earnings to be reduced below the following amounts:

(1) $1,200 for a taxable year ending after 1954 and before 1966;

(2) $1,500 for a taxable year ending after 1965 and before 1968;

(3) $1,680 for a taxable year ending after 1967.

* * * * *

(e) Reasonable belief that in determining, for deduction purposes, his earnings from employment and/or net earnings from self-employment in the taxable year in which he became entitled to benefits, earnings in such year prior to such entitlement would be excluded. However,

this provision does not apply if his earnings in the taxable year, beginning with the first month of entitlement, exceeded the earnings limitation amount for such year.

(f) Unawareness that his earnings were in excess of the earnings limitation applicable to the imposition of deductions and the charging of excess earnings or that he should have reported such excess where these earnings were greater than anticipated because of:

(1) Retroactive increases in pay, including back-pay awards;

(2) Work at a higher pay rate than realized;

(3) Failure of the employer of an individual unable to keep accurate records to restrict the amount of earnings or the number of hours worked in accordance with a previous agreement with such individual;

(4) The occurrence of five Saturdays (or other work days, e.g., five Modays) in a month and the earnings for the services on the fifth Saturday or other work day caused the deductions.

* * * * *

(i) Reasonable belief by an individual that no deductions are applicable for any month in the taxable year if after he earned the earnings limitation amount he restricts his monthly earnings to $100 or less for months in any taxable year after August 1958, or to $125 or less for months in any taxable year beginning after December 1965, or to $140 or less for months in any taxable year beginning after December 1967, and he so restricts his earnings.

(j) Reasonable belief that earnings in excess of the earnings limitation amount for the taxable year would subject him to deductions only for months beginning with the first month in which his earnings exceeded the earnings limitation amount. However, this provision is applicable only if he reported timely to the Administration during the taxable year when his earnings reached the applicable limitation amount for such year.

9. Section 404.513 is amended to read as follows:

§ 404.513 Liability of a certifying officer.

No certifying or disbursing officer shall be held liable for any amount certified or paid by him to any individual.

(a) Where adjustment or recovery of such amount is waived under section 204(b) of the Act; or

(b) Where adjustment under section 204(a) of the Act is not completed prior to the death of all individuals against whose benefits or lump sums deductions are authorized; or

(c) Where a claim for recovery of an overpayment is compromised or collection or adjustment action is suspended or terminated pursuant to the Federal Claims Collection Act of 1966 (31 U.S.C. 951–953) (see § 404.515).

10. Section 404.515 is added to read as follows:

§ 404.515 Collection and compromise of claims for overpayment.

(a) *General effect of the Federal Claims Collection Act of 1966.* Claims by the Administration against an individual for recovery of overpayments under title II or title XVIII (not including title XIII overpayments for which refund is requested from providers, physicians, or other suppliers of services) of the Act, not exceeding the sum of $20,000, exclusive of interest, may be compromised, or collection suspended or terminated where such individual or his estate does not have the present or prospective ability to pay the full amount of the claim within a reasonable time (see paragraph (c) of this section) or the cost of collection is likely to exceed the amount of recovery (see paragraph (d) of this section) except as provided under paragraph (b) of this section.

(b) *When there will be no compromise, suspension or termination of collection of a claim for overpayment.*—(1) *Overpaid individual alive.* In any case where the overpaid individual is alive, a claim for overpayment will not be compromised, nor will there be suspension or termination of collection of the claim by the Administration if there is an indication of fraud, the filing of a false claim, or misrepresentation on the part of such individual or on the part of any other party having an interest in the claim.

(2) *Overpaid individual deceased.* In any case where the overpaid individual is deceased (i) a claim for overpayment in excess of $5,000 will not be compromised, nor will there be suspension or termination of collection of the claim by the Administration if there is an indication of fraud; the filing of a false claim, or misrepresentation on the part of such deceased individual, and (ii) a claim for overpayment regardless of the amount will not be compromised, nor will there be suspension or termination of collection of the claim by the Administration if there is an indication that any person other than the deceased overpaid individual had a part in the fraudulent action which resulted in the overpayment.

(c) *Inability to pay claim for recovery of overpayment.* In determining whether the overpaid individual is unable to pay a claim for recovery of an overpayment under title II or title XVIII of the Act, the Administration will consider such individual's age, health, present and potential income (including inheritance prospects), assets (e.g., real property, savings account), possible concealment or improper transfer of assets, and assets or income of such individual which may be available in enforced collection proceedings. The Administration will also consider exemptions available to such individual under the pertinent State or Federal law in such proceedings. In the event the overpaid individual is deceased, the Administration will consider the available assets of the estate, taking into account any liens or superior claims against the estate.

(d) *Cost of collection or litigative probabilities.* Where the probable costs of recovering an overpayment under title II or title XVIII of the Act would not justify enforced collection proceedings for the full amount of the claim or there is doubt concerning the Administration's ability to establish its claim as well as the time which it will take to effect such collection, a compromise or settlement for less than the full amount will be considered.

(e) *Amount of compromise.* The amount to be accepted in compromise of a claim for overpayment under title II or title XVIII of the Act shall bear a reasonable relationship to the amount which can be recovered by enforced collection proceedings giving due consideration to the exemptions available to the overpaid individual under State or Federal law and the time which such collection will take.

(f) *Payment.* Payment of the amount which the Administration has agreed to accept as a compromise in full settlement of a claim for recovery of an overpayment under title II or title XVIII of the Act must be made within the time and in the manner set by the Administration. A claim for such recovery of the overpayment shall not be considered compromised or settled until the full payment of the compromised amount has been made within the time and manner set by the Administration. Failure of the overpaid individual or his estate to make such payment as provided shall result in reinstatement of the full amount of the overpayment less any amounts paid prior to such default.

11. Paragraph (h) is added to § 404.906 to read as follows:

§ 404.906 Administrative actions which are not initial determinations.

Administrative actions which shall not be considered initial determinations under any provision of the regulations in this Subpart J, but which may receive administrative review, include, but are not limited to, the following:

* * * * *

(h) The determination by the Administration under the authority of the Federal Claims Collection Act of 1966 (31 U.S.C. 951–953) not to compromise a claim for overpayment under title II or title XVIII of the Act or not to suspend or terminate collection of such a claim or the determination to compromise such a claim, including the compromise amount and the time and manner of payment (see § 404.515).

12. *Effective date.* The foregoing regulations shall become effective upon publication in the FEDERAL REGISTER.

(Secs. 204, 205, and 1102, 53 Stat. 1368, as amended; 49 Stat. 647, as amended, sec. 5 of Reorganization Plan No. 1 of 1953, 67 Stat. 18, 631; 42 U.S.C. 404, 405, and 1302)

Dated: August 18, 1969.

ROBERT M. BALL,
Commissioner of Social Security.

Approved: September 23, 1969.

ROBERT H. FINCH,
Secretary of Health, Education, and Welfare.

[F.R. Doc. 69-11562; Filed, Sept. 26, 1969; 8:49 a.m.]

Title 21—FOOD AND DRUGS

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

SUBCHAPTER C—DRUGS

PART 148e—ERYTHROMYCIN

Drugs for Human Use; Drug Efficacy Study Implementation; Erythromycin-Sulfonamide Combination Products for Oral Administration

In the FEDERAL REGISTER of April 2, 1969 (34 F.R. 6005), the Commissioner of Food and Drugs announced the conclusions of the Food and Drug Administration following evaluation of reports received from the National Academy of Sciences-National Research Council, Drug Efficacy Study Group, on the following preparations:

1. Erythrosulfa Tablets; contain erythromycin, sulfadiazine, sulfamerazine and sulfamethazine; marketed by the Upjohn Co., 7171 Portage Road, Kalamazoo, Mich. 49002.

2. Ilosone Sulfa, For Oral Suspension; contains erythromycin estolate, sulfadiazine, sulfamerazine, and sulfamethazine; marketed by Eli Lilly & Co., Box 618, Indianapolis, Ind. 46206.

3. Ilosone Sulfa Tablets; contain erythromycin estolate, sulfadiazine, sulfamerazine, and sulfamethazine; marketed by Eli Lilly & Co.

4. Ilotycin Ethyl Carbonate-Sulfa, Pediatric for Oral Suspension; contains erythromycin ethylcarbonate, sulfadiazine, sulfamerazine, and sulfamethazine; marketed by Eli Lilly & Co.

5. Ilotycin-Sulfa Tablets; contain erythromycin, sulfadiazine, sulfamerazine, and sulfamethazine; marketed by Eli Lilly & Co.

The announcement gave notice that the Academy found these products to be ineffective as a fixed combination for their labeled indications: Mixed infections, infections more susceptible to the combination than to either erythromycin or sulfonamides alone, and gram-negative or mixed infections of the urinary tract. The Food and Drug Administration concurred that substantial evidence is lacking that each drug will have the effects it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in its labeling. All interested persons who may be adversely affected by removal of drugs containing erythromycin and sulfonamides from the market were invited to submit within 30 days any pertinent data bearing on the proposal to amend the antibiotic drug regulations to delete such combination drugs from the list of drugs acceptable for certification.

No responses were received pursuant to the announcement.

In addition to the above products, for which the conditions of certification are described in §§ 148e.11, 148e.12, 148e.26, and 148e.28, §§148e.24, 148e.27, 148e.32, and 148e.33 describe the conditions for certification of other oral dosage forms of erythromycin with sulfonamides. The data submitted in support of these preparations, though not evaluated by the National Academy of Sciences-National Research Council, have been reviewed by the Food and Drug Administration and have been found to lack substantial evidence that the fixed combinations will have the effects they purport or are represented to have. Preparations currently marketed under these regulations are:

1. Erythrocin Ethyl Succinate—Sulfas Granules; contain erythromycin ethyl succinate, sulfadizine, sulfamerazine, and sulfamethazine; marketed by Abbott Laboratories, 14th and Sheridan Road, North Chicago, Ill. 60064.

2. Erythrocin Ethyl Succinate—Sulfas Chewable Tables; contain erythromycin ethyl succinate, sulfadiazine, sulfamerazine, and sulfamethazine; marketed by Abbott Laboratories.

3. Erythrocin Stearate—Sulfas Filmtabs; contain erythromycin stearate, sulfadiazine, sulfamerazine, and sulfamethazine; marketed by Abbott Laboratories.

Accordingly, the Commissioner concludes that in the absence of substantial evidence of effectiveness for the fixed combination drugs, (1) the regulations for the certification of antibiotic drugs should be amended to delete the above-listed antibiotic combinations and any other oral dosage forms containing both erythromycin and any sulfonamide from the list of drugs acceptable for certification, and (2) all outstanding certificates issued for such combination drugs should be revoked.

Therefore, pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (secs. 502, 507, 52 Stat. 1050–51, as amended, 59 Stat. 463, as amended; 21 U.S.C. 352, 357) and under authority delegated to the Commissioner (21 CFR 2.120), Part 148e is amended:

1. By repealing §§ 148e.28 *Erythromycin estolate tablets with sulfonamides*, 148e.32 *Erythromycin ethyl succinate-trisulfapyrimidines chewable tablets*, and 148e.33 *Erythromycin ethyl succinate-trisulfapyrimidines for oral suspension*.

2. In § 148e.11 *Erythromycin ethylcarbonate for oral suspension*, by deleting from paragraph (a)(1) the sentence "It may contain suitable sulfonamides."

3. In § 148e.12 *Erythromycin estolate for oral suspension*, by deleting from paragraph (a)(1) the sentence "It may contain suitable sulfonamides."

4. By revising § 148e.24(a)(1) to read as follows:

§ 148e.24 Erythromycin enteric-coated tablets.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Erythromycin enteric-coated tablets are enteric-coated tablets composed of erythromycin, suitable and harmless buffer substances, diluents, binders, lubricants, colorings, and flavorings. Each tablet contains 100 or 250 milligrams of erythromycin. Each tablet shall meet the tests for enteric-coated tablets set forth in the U.S.P. and shall distintegrate within a total time of 2 hours. The moisture content is not more than 6 percent. The erythromycin base used in making the batch conforms to the standards of § 148e.1(a)(1) (i), (ii), (iii), (iv), (v), and (vii). Each other substance used, if its name is recognized in the U.S.P. or N.F., conforms to the standards prescribed therefor by such official compendium.

* * * * *

5. In § 148e.26. *Erythromycin tablets*, by deleting from paragraph (a)(1) the sentence "It may contain suitable sulfonamides."

6. In § 148e.27 *Erythromycin stearate tablets*, by deleting from paragraph (a)(1) the sentence "It may contain suitable sulfonamides."

Certificates of safety and effectiveness issued under all of the above-referenced regulations are revoked.

Any person who will be adversely affected by the removal of any such drugs from the market may file, within 30 days after publication hereof in the FEDERAL REGISTER, objections to this order stating reasonable grounds and requesting a hearing on such objections. A statement of reasonable grounds for a hearing must identify the claimed errors in the NAS-NRC evaluation and the Administration's conclusions as to the effectiveness of the combination drugs and identify any adequate and well-controlled investigations on the basis of which it could reasonably be concluded that the combination drugs would have the effectiveness claimed for their intended uses. Objections should be filed, preferably in quintuplicate, with the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW., Washington, D.C. 20201, and may be accompanied by a memorandum or brief in support thereof.

If objections accompanied by reasonable grounds are received, the Commissioner will promptly announce a hearing. If a hearing is scheduled, it will be held under the provisions of section 507(f) of the Federal Food, Drug, and Cosmetic Act, employing the hearing procedures set forth in Subpart F of Part 2 (21 CFR Part 2), as amended by an order promulgated in the FEDERAL REGISTER of April 8, 1969 (34 F.R. 6237).

Effective date. This order shall become effective 40 days after its date of publication in the FEDERAL REGISTER unless stayed by the filing of proper objections. The Commissioner will announce in the FEDERAL REGISTER whether or not requests for hearing with reasonable grounds have been received during the 30-day period. At that time the Commissioner will specify how the outstanding stocks of the affected drugs are to be handled.

(Secs. 502, 507, 52 Stat. 1050–51, as amended, 59 Stat. 463, as amended; 21 U.S.C. 352, 357)

Dated: September 18, 1969.

HERBERT L. LEY, JR.,
Commissioner of Food and Drugs.

[F.R. Doc. 69-11509; Filed, Sept. 26, 1969; 8:45 a.m.]

Title 24—HOUSING AND HOUSING CREDIT

Subtitle A—Office of the Secretary, Department of Housing and Urban Development

PART 4—OPEN SPACE LAND

Subpart B—Relocation Payments

MISCELLANEOUS AMENDMENTS

The regulations governing the making of relocation payments under section 404(a) of the Housing and Urban Development Act of 1965, 42 U.S.C. 3074(a), published under Part 4 of Subtitle A of Title 24 of the Code of Federal Regulations, effective August 27, 1966 (31 F.R. 11384), are hereby amended to include the regulations governing relocation payments under section 516 of the Housing and Urban Development Act of 1968, 42 U.S.C. 1465(c), and otherwise revised, in the following respects:

1. Section 4.100 is revised to include reference to section 516 of the Housing and Urban Development Act of 1968 and, as so revised, reads as follows:

§ 4.100 Statement of applicable law.

Section 404(a) of the Housing and Urban Development Act of 1965, 42 U.S.C. 3074(a), provides that financial assistance extended to any applicant under the Open-Space Land Program under title VII of the Housing Act of 1961, as amended, 42 U.S.C. 1500, may include grants for relocation payments made on such terms and conditions and subject to such limitations as are set forth in sections 114 (b), (c), and (d) of the Housing Act of 1949, as amended, 42 U.S.C. 1465 (b), (c), and (d). Section 516 of the Housing and Urban Development Act of 1968, 42 U.S.C. 1465(c), amends section 114(c) by expanding the relocation payments provisions applicable to the programs of the Department of Housing and Urban Development. Authority to issue regulations is included in the delegation to the Assistant Secretary for Renewal and Housing Assistance at 31 F.R. 8964, June 29, 1966.

2. In § 4.101, paragraph (j) is amended by adding a new sentence, and paragraph (p) is amended by revising subparagraph (4) and adding a new subparagraph (6), to read as follows:

§ 4.101 Definitions.

* * * * *

(j) *Individual.* A person who is not a member of a family. An elderly individual is an individual 62 years of age or over at the time of displacement. A handicapped individual is an individual who has a physical impairment which is expected to be of long-continued and indefinite duration and which substantially impedes his ability to live independently.

* * * * *

(p) *Relocation payment.* * * *

(4) To or on behalf of a family or elderly individual for relocation adjustment prior to August 1, 1968 (relocation adjustment payment); or to or on behalf of a family or elderly or handicapped individual on or after August 1, 1968 (additional relocation payment).

* * * * *

(6) To a family or individual to assist an owner-occupant of a one- or two-family dwelling in the purchase and occupancy of a replacement dwelling on or after August 1, 1968 (replacement housing payment).

* * * * *

3. Section 4.105 is revised to read as follows:

§ 4.105 Eligibility—relocation adjustment payment; additional relocation payment; replacement housing payment.

(a) *Relocation adjustment payment.* A family or elderly individual who satisfies the eligibility conditions of § 4.103 (a), governing eligibility for a relocation payment for moving expenses and actual direct loss of property, prior to August 1, 1968, is eligible for a relocation adjustment payment if the claimant:

(1) Is unable to secure a suitable dwelling unit in (i) a low-rent housing project assisted under the United States Housing Act of 1937, as amended, 42 U.S.C. 1401 et seq. (or a State or local program found by HUD to have the same general purposes) or (ii) a dwelling unit assisted under section 101 of the Housing and Urban Development Act of 1965, 12 U.S.C. 1701s(a); and

(2) Has moved to a decent, safe, and sanitary dwelling.

(b) *Additional relocation payment.* A family or elderly or handicapped individual who satisfies the eligibility conditions of § 4.103(a), governing eligibility for a relocation payment for moving expenses and actual direct loss of property, on or after August 1, 1968, is eligible for an additional relocation payment if the claimant:

(1) Is unable to secure a suitable dwelling unit in (i) a low-rent housing project assisted under the United States Housing Act of 1937, as amended, 42 U.S.C. 1401 et seq. (or a State or local program found by HUD to have the same general purposes) or (ii) a dwelling unit assisted under section 101 of the Housing and Urban Development Act of 1965, 12 U.S.C. 1701s(a); and

(2) Has moved to a decent, safe, and sanitary dwelling: *Provided*, That an additional relocation payment not to exceed $500 in the first 12 months and $500 in the second 12 months may be made on a lump-sum basis or other than a monthly basis in cases in which other than monthly payments are determined warranted by HUD.

(c) *Replacement housing payment.* A family or individual who satisfies the eligibility conditions of § 4.103(a), governing eligibility for a relocation payment for moving expenses and actual direct loss of property, on or after August 1, 1968, is eligible for a replacement housing payment if the claimant:

(1) Is the owner of the real property acquired for a project assisted under title VII of the Housing Act of 1961, as amended, 42 U.S.C. 1500;

(2) Has occupied a single- or two-family dwelling located on the real property for not less than 1 year prior to the initiation of negotiations for the acquisition of the property;

(3) Does not receive the additional relocation payment provided for by § 4.105(b);

(4) Purchases and occupies a replacement dwelling within 1 year subsequent to the date on which he is required to move from the dwelling acquired for the project; and

(5) Does not receive a payment pursuant to the State law of eminent domain determined by HUD to have substantially the same purpose and effect as would a replacement housing payment and to be a part of the cost of the project for which Federal financial assistance is available.

4. Section 4.108 is amended by revising the heading and paragraph (a), and deleting the proviso in paragraph (d), to read as follows:

§ 4.108 Administration of relocation payments.

(a) *Conditions for relocation payment.* The Agency (or, if the Agency is the municipality, the board or commission responsible for carrying out the federally assisted activities or, if there is no such board or commission, the principal executive officer of the municipality) shall approve a schedule (Form HUD-6148) of average annual gross rentals for standard housing in the locality for determining the amount of relocation adjustment payments and additional relocation payments in accordance with § 4.113 (c) and (d), and a separate schedule (Form HUD-6155) for determining the average price of standard sales housing in a locality, and any other conditions under which the Agency will make relocation payments. The schedules and conditions shall be consistent with the regulations in this subpart and shall be available in written form to claimants in the relocation office of the Agency.

* * * * *

(d) *Prompt payment.* A relocation payment shall be made by the Agency as promptly as possible after a claimant's eligibility has been determined in accordance with the regulations in this subpart.

* * * * *

5. Section 4.112(c) is revised in part to read as follows:

§ 4.112 Filing of claims.

* * * * *

(c) *Time for filing claims.* A claim for moving expenses, actual direct loss of property, or a small business displacement payment shall be submitted to the Agency within a period of 6 months after the displacement of the claimant.

A claim for settlement costs shall be submitted within 6 months after the costs have been incurred. A claim for a relocation adjustment payment or for an additional relocation payment shall be submitted within a period of 60 days after the displacement of the claimant. A claim for a replacement housing payment shall be submitted within 18 months after the displacement of the claimant.

* * * * *

6. Section 4.113 is amended by adding new paragraphs (d) and (e), to read as follows:

§ 4.113 Limitation on amount of relocation payments.

* * * * *

(d) *Maximum amount—additional relocation payment.* The total additional relocation payment that may be made to a family or elderly or handicapped individual shall consist of monthly payments over a period not to exceed 24 months and shall be paid in an amount (not to exceed $500 in the first 12 months and not to exceed $500 in the second 12 months) which, when added to 20 percent of the annual income of the family or individual at the time of displacement, shall be equal to the average annual gross rental required at such time to secure a decent, safe, and sanitary dwelling of modest standards adequate in size to accommodate the family or individual (in the area in which the project is carried out or in other areas not generally less desirable in regard to public utilities and commercial facilities), as determined by the Agency.

(e) *Maximum amount—replacement housing payment.* The total replacement housing payment that may be made for a family or individual eligible for a replacement housing payment under § 4.105(c) of the regulations in this subpart shall be an amount not to exceed $5,000, which, when added to the acquisition payment, shall be equal to the average price required for purchase of a decent, safe, and sanitary dwelling of modest standards adequate in size to accommodate the displaced owner, which is reasonably accessible to public services and places of employment, and which is available on the private market.

7. Section 4.114 is revised to read as follows:

§ 4.114 Determinations in condemnation proceedings.

Notwithstanding any other provision of the regulations in this subpart, when property is acquired by proceedings in condemnation, and the amount of the judgment includes an allowance for any of the expenses included within the definition of relocation payment appearing in § 4.101(p) of this subpart, the portion of the judgment representing compensation for these expenses, if separately stated, shall be entitled to recognition as a relocation payment in an amount not to exceed the applicable dollar limitation of § 4.113: *Provided*, That the allowance for actual direct loss of property makes no compensation for loss of goodwill or profit.

(42 U.S.C. 1465(e); 42 U.S.C. 3535(d); Secretary's delegation of authority to Assistant Secretary for Renewal and Housing Assistance published at 31 F.R. 8964, June 29, 1966)

Effective date. These amendments shall be effective as of September 23, 1969.

LAWRENCE M. COX,
Assistant Secretary for Renewal and Housing Assistance.

[F.R. Doc. 69-11539; Filed, Sept. 26, 1969; 8:47 a.m.]

Title 50—WILDLIFE AND FISHERIES

Chapter I—Bureau of Sport Fisheries and Wildlife, Fish and Wildlife Service, Department of the Interior

SUBCHAPTER C—THE NATIONAL WILDLIFE REFUGE SYSTEM

PART 32—HUNTING

Wichita Mountains Wildlife Refuge, Okla.

On page 11593 of the FEDERAL REGISTER of July 15, 1969, there was published a notice of a proposed amendment to 50 CFR 32.31. The purpose of this amendment is to provide public hunting of elk on certain areas of the National Wildlife Refuge System, as legislatively permitted.

Interested persons were given 60 days in which to submit written comments, suggestions, or objections with respect to the proposed amendment. After consideration of all comments, suggestions, and objections received, the proposed amendment is hereby adopted without change.

Since this amendment benefits the public by relieving existing restrictions on hunting, it shall become effective upon publication in the FEDERAL REGISTER (sec. 10, 45 Stat. 1224, 16 U.S.C. 715i; sec. 4, 80 Stat. 927, 16 U.S.C. 668dd).

1. Section 32.31 is amended by the following addition:

§ 32.31 List of open areas; big game.

* * * * *

OKLAHOMA

Wichita Mountains Wildlife Refuge.

A. V. TUNISON,
Acting Director, Bureau of Sport Fisheries and Wildlife.

SEPTEMBER 22, 1969.

[F.R. Doc. 69-11478; Filed, Sept. 26, 1969; 8:45 a.m.]

PART 32—HUNTING

Audubon National Wildlife Refuge, N. Dak.

The following special regulation is issued and is effective on date of publication in the FEDERAL REGISTER.

§ 32.32 Special regulations; big game; for individual wildlife refuge areas.

NORTH DAKOTA

AUDUBON NATIONAL WILDLIFE REFUGE

Public hunting of deer on the Audubon National Wildlife Refuge, N. Dak., is permitted only in the area designated by signs as open to hunting. This open area, comprising 13,837 acres, is delineated on a map available at refuge headquarters and from the Regional Director, Bureau of Sports Fisheries and Wildlife, Federal Building, Fort Snelling, Twin Cities, Minn. 55111. Hunting shall be in accordance with all applicable State regulations covering the hunting of deer, subject to the following special conditions:

(1) Hunting is permitted from 12 noon, c.s.t., until sunset November 7, and from sunrise until sunset November 8 through November 16, 1969.

(2) All hunters must exhibit their hunting license, deer tag, game, and vehicle contents to Federal and State officers upon request.

(3) Vehicular traffic, including the use of boats, is prohibited by hunters on the refuge during the deer season.

The provision of this special regulation supplements the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective through November 16, 1969.

DAVID C. MCGLAUCHLIN,
Refuge Manager, Audubon National Wildlife Refuge, Coleharbor, N. Dak.

SEPTEMBER 19, 1969.

[F.R. Doc. 69-11514; Filed, Sept. 26, 1969; 8:45 a.m.]

PART 33—SPORT FISHING

Mark Twain National Wildlife Refuge, Ill.; Correction

In F.R. Doc. 68-14536, appearing on page 18100 of the issue for Thursday, December 5, 1968, under Illinois paragraph (3) of § 33.5 should read as follows:

(3) The open season for sport fishing in the Gardner Division of the Mark Twain National Wildlife Refuge extends from January 1, 1969, through October 15, 1969, inclusive.

JAMES F. GILLETT,
Refuge Manager, Mark Twain National Wildlife Refuge, Quincy, Ill.

SEPTEMBER 22, 1969.

[F.R. Doc. 69-11540; Filed, Sept. 26, 1969; 8:47 a.m.]

Chapter II—Bureau of Commercial Fisheries, Fish and Wildlife Service, Department of the Interior

SUBCHAPTER H—EASTERN PACIFIC TUNA FISHERIES

PART 280—YELLOWFIN TUNA

Restrictions Applicable to Fishing Vessels

Experience gained since the adoption of amendments to the yellowfin tuna regulations effective May 17, 1969 (34 F.R. 7845–7889) prescribing the restrictions on the taking of yellowfin tuna from a defined area of the eastern Pacific Ocean, and particularly experiences with paragraph (e)(1) of section 280.6, which does not inhibit the development of new fishing areas but requires reporting when leaving and returning to the regulatory area, have demonstrated a need for a revision in the regulations to make them more effective in implementing the yellowfin conservation measures promulgated by the Inter-American Tropical Tuna Commission. There have been occurrences and circumstances related to vessels reporting as fishing outside of the regulatory area which indicate that violations of the regulations are occurring and that vessels have reported quantities of yellowfin tuna taken outside the regulatory area that, in fact, were captured inside the area.

The United States has an obligation under international agreement to assure that its vessels comply with the conservation recommendations of the Inter-American Tropical Tuna Commission. Violation of the terms of the agreement not only would have a detrimental effect on the yellowfin stocks involved but could cause a collapse in the conservation program. The Bureau of Commercial Fisheries has an additional responsibility to insure that a few vessels do not violate the regulations and thereby gain an unfair advantage over the rest of the fleet in their competition for a limited resource.

Two notices of proposed rule-making were published (Mar. 14, 1969, 34 F.R. 5258 and Mar. 29, 1969, 34 F.R. 5950) which contained various proposals relating to fishing outside the regulatory area. Interested persons were given the opportunity to participate through a public hearing at San Diego on April 10, 1969, and through submission of written material. Extensive testimony relative to the problem and means of solving it was received. Reporting procedures which, it was hoped, would help solve the regulatory problem of fishing outside the regulatory area were adopted. In addition, a procedure (§ 280.7) was adopted whereby the Director may take emergency action to impose restrictions on fishing outside the regulatory area if he determines that the provisions relating to such fishing are inadequate to insure that the recommendations of the Commission are implemented. Because it may tend to inhibit the development of new fishing areas, the emergency action will not be implemented at this time. Instead a less restrictive amendment to section 280.6 is adopted in an attempt to eliminate practices which now offer opportunity for violations. If, however, the amendment proves ineffective, the Director will have no recourse but to invoke the emergency action.

Paragraph (e) is revised and a new paragraph (f) is added to section 280.6. The amendment is issued under the authority contained in subsection (c) of section 6 of the Tuna Conventions Act of 1950, as amended (16 U.S.C. 955(e)) and makes the following changes:

1. Vessels which fish both within and outside the regulatory area are subject to the yellowfin incidental catch limitations.

2. Vessels shall notify the Bureau of their intent to fish outside the regulatory area and shall transmit each even-numbered day a prepaid message to the Regional Director while they are outside the regulatory area for purposes of position determination by triangulation. Such reporting will commence at a time to be announced by the Director.

3. Vessels intending to unload a catch in a foreign country shall notify the Regional Director at least 48 hours prior to delivery.

The amendments are described below:

Paragraph (e) of § 280.6 is revised and a new paragraph (f) is added to read as follows:

§ 280.6 Restrictions applicable to fishing vessels.

* * * * *

(e) On trips begun after the closure of the yellowfin season:

(1) All yellowfin tuna caught by fishing vessels which, on the same trip, fished both within and outside the regulatory area in the Pacific Ocean shall be subject to the incidental catch limitations as set out in paragraph (c) of this section.

(2) All vessels planning to fish exclusively outside the regulatory area in the Pacific Ocean shall report to the Regional Director 72 hours before leaving port; within 24 hours before departing the regulatory area; and within 24 hours before returning to the regulatory area. Such reports, which must reach the Regional Director within the time limits specified, can be made by letter, telegram, prepaid commercial radio message (either radiogram or ship-to-shore radiophone), or telephone and may be relayed to the Regional Director by the master, managing owner or his shore representative.

(i) On departure from the regulatory area reports described under subparagraph (2) of this paragraph shall include the latitude of departure from the regulatory area and approximate time of departure. On returning to the regulatory area the reports shall include the catch of yellowfin tuna and of other species made outside the regulatory area and the latitude and approximate time of reentry.

(ii) In addition, each vessel while outside the regulatory area shall transmit a prepaid message to the Regional Director between 10 a.m. and 2 p.m. Pacific standard time (+8 time zone) on each even-numbered day; such reporting to begin on a date to be announced by the Bureau Director through publication of a suitable notice in the FEDERAL REGISTER and to continue throughout the closed season. The message shall be sent through either Station KMI (San Francisco) or Station WOM (Miami) to the Regional Director, Bureau of Commercial Fisheries, Terminal Island, Calif. On Saturdays, Sundays, and holidays such messages shall be transmitted to area code 213, telephone number 831–0445, and on other days to area code 213, telephone number 831–9281, extension 575. On such transmissions the following statement will be made: "This Message Is Being Transmitted in Compliance With the U.S. Eastern Tropical Pacific Yellowfin Tuna Regulations, and it Confirms That the Vessel (Name of Reporting Vessel) Has Not Reentered the Eastern Pacific Regulatory Area as of This Date: (Give Date)." Any vessel that fails to receive an acknowledgment that a required transmission has been received through KMI or WOM must attempt to transmit the same message on the day following the failure to receive such acknowledgment. If in 3 successive days the vessel fails to receive an acknowledgment that a required transmission has been received, it will then be considered that the vessel's radio equipment is not functioning properly and the vessel shall then return directly to port.

(iii) Those vessels announcing that they will fish entirely outside the regulatory area shall, after leaving port, proceed directly to waters outside the regulatory area and, upon reentering the regulatory area, will proceed directly to port for unloading: *Provided*, That if a vessel must make an emergency port call for disembarking a sick or injured crew member, refueling, repairs, or for any other emergency, the vessel will proceed directly to port and will notify the Regional Director forty-eight (48) hours prior to the port call, giving the name of the port to be entered. If the vessel then wishes to resume fishing outside the regulatory area, it must notify the Regional Director again of its intentions as provided in (2) above and proceed directly to waters outside the regulatory area.

(3) Any vessel failing to file the reports and to follow the procedures required in this paragraph shall be restricted to the incidental catch limit of fifteen percent (15%) of yellowfin for the entire fishing voyage. This incidental limit is by weight of yellowfin tuna when landed with one or more of the species listed in § 280.2(b)(3).

(f) All fishing vessels will notify the Regional Director, at least forty-eight (48) hours prior to any delivery or sale in a foreign country, of fish caught in or

outside of the regulatory area of the eastern tropical Pacific Ocean. Such reports shall include the amount by species and whether the fish were caught inside or outside of the regulatory area. These reports can be made by prepaid commercial radio message or may be relayed to the Regional Director by the managing owner or his shore representative.

Effective Date. This amendment shall become effective on the date of its publication in the FEDERAL REGISTER. Vessels which are fishing outside the regulatory area on the effective date or have fished outside previous to the effective date and are still at sea may land yellowfin tuna taken outside the regulatory area in excess of the incidental catch limitation provided they conformed with the reporting requirements as set out in the regulations (34 F.R. 7856). Vessels at sea which have fished inside the regulatory area shall be restricted to the fifteen percent (15%) yellowfin incidental catch limitation. Vessels which have left port not more than 4 days before the effective date and have not fished during the present trip and had planned to fish exclusively outside of the regulatory area may do so but must report their intent to the Regional Director and be outside of the regulatory area within 5 days of the effective date.

Issued at Washington, D.C., pursuant to authority delegated to me by the Secretary of the Interior on August 26, 1966 (31 F.R. 11685), and dated September 25, 1969.

H. E. CROWTHER,
Director,
Bureau of Commercial Fisheries.

[F.R. Doc. 69-11596; Filed, Sept. 26, 1969; 8:49 a.m.]

Title 41—PUBLIC CONTRACTS AND PROPERTY MANAGEMENT

Chapter 101—Federal Property Management Regulations

SUBCHAPTER H—UTILIZATION AND DISPOSAL

PART 101-43—UTILIZATION OF PERSONAL PROPERTY

Subpart 101-43.49—Illustrations

REPORTING REQUIREMENTS

Section 101-43.4901 is amended by changed reporting requirements in some of the Federal Supply Classification Groups appearing in the table comprising paragraph (d).

Section 101-43.4901(d) is amended as follows:

§101-43.4901 Excess personal property reporting requirements.

* * * * *

(d) * * *

Group No.	Federal supply classification: Group identification	Classes	Not reportable to GSA	Reportable to GSA	Minimum reportable condition codes
* * *	* * *	* * *	* * *	* * *	* * *
26	Tires and tubes	All except	x		
		2610 tires and tubes, pneumatic, except aircraft.		x	N2, E2, O2.
28	Engines, turbines and components.	All except	x		
		2805 gasoline reciprocating engines, except aircraft; and components.		x	N3, E3, O3.
		2810 gasoline, reciprocating engines, aircraft; and components, as specified by § 101-43.4901(b).		x	
		2815 diesel engines and components.		x	
		2840 gas turbines and jet engines, aircraft; and components, as specified by § 101-43.4901(b).		x	
* * *	* * *	* * *	* * *	* * *	* * *
49	Maintenance and repair shop equipment.	All except		x	N3, E3, O3, R3.
		4920 aircraft maintenance and repair shop specialized equipment.		x	N4, E4, O4, R4.
		4925 ammunition maintenance and repair shop specialized equipment.	x		
		4931 fire control maintenance and repair shop specialized equipment.	x		
		4933 weapons maintenance and repair shop specialized equipment.	x		
		4935 guided missile maintenance, repair, and checkout specialized equipment.		x	N4, E4, O4, R4.
51	Hand tools	All		x	N3, E3, O3, R3.
* * *	* * *	* * *	* * *	* * *	* * *
54	Prefabricated structures and scaffolding.	All		x	N4, E4, O4, R4.
55	Lumber, millwork, plywood and veneer.	All		x	N4.
56	Construction and building materials.	All except		x	N4.
		Sand, gravel, and stone in 5610 mineral construction materials, bulk.	x		
* * *	* * *	* * *	* * *	* * *	* * *
59	Electrical and electronic equipment components.	All		x	N3.
* * *	* * *	* * *	* * *	* * *	* * *
65	Medical, dental, and veterinary equipment and supplies.	All except		x	N3, E3, O3.
		6505 drugs, biologicals, and official reagents.	x		
		6510 surgical dressing materials.		x	N3.
		6530 hospital furniture, equipment, utensils, and supplies.		x	N3, E3, O3, R3.
* * *	* * *	* * *	* * *	* * *	* * *
69	Training aids and devices	All		x	N3, E3, O3, R3.
* * *	* * *	* * *	* * *	* * *	* * *
72	Household and commercial furnishings and appliances.	All		x	N3, E3, O3, R3.
73	Food preparation and serving equipment.	All		x	N3, E3, O3, R3.
74	Office machines, visible record equipment, and data processing equipment (see § 101-43.4901(c)).	All		x	N4, E4, O4, R4.
* * *	* * *	* * *	* * *	* * *	* * *
77	Musical instruments, phonographs, and home-type radios.	All except		x	N3, E3, O3.
		7710 musical instruments		x	N4, E4, O4, R4.
78	Recreational and athletic equipment.	All		x	N3, E3, O3.
79	Cleaning equipment and supplies.	All except		x	N3, E3, O3.
		7930 cleaning and polishing compounds and preparations.		x	N3.
* * *	* * *	* * *	* * *	* * *	* * *
81	Containers, packaging, and packing supplies.	All except	x		
		8105 bags and sacks		x	N3, E3, O3, R3.
		8110 drums and cans		x	
		8115 boxes, cartons, and crates		x	
		8120 commercial and industrial gas cylinders.		x	
		8135 packaging and packing bulk materials.		x	N3.
83	Textiles, leather, furs, apparel, and shoe findings, tents, and flags.	All except		x	N3.
		8340 tents and tarpaulins		x	N4, E4, O4, R4.
		8345 flags and pennants	x		
84	Clothing and individual equipment.	All except		x	N3.
		8405 outerwear, men's		x	N4, E4, O4, R4.
		8410 outerwear, women's		x	
		8415 clothing, special purpose		x	
		8455 badges and insignia	x		
		8460 luggage		x	N3, E3, O3, R3.
		8465 individual equipment		x	
* * *	* * *	* * *	* * *	* * *	* * *

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c))

Effective date. This amendment is effective upon publication in the FEDERAL REGISTER.

Dated: September 19, 1969.

JOHN W. CHAPMAN, Jr.,
Acting Administrator of General Services.

[F.R. Doc. 69-11482; Filed, Sept. 26, 1969; 8:45 a.m.]

Proposed Rule Making

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

[7 CFR Part 827]

PUERTO RICO

Proposed Amendment of the Definition of a Farm; 1969–70 and Subsequent Crops

Notice is hereby given that the Secretary of Agriculture, pursuant to authority vested in him by the Sugar Act of 1948, as amended (61 Stat. 922, as amended), is considering amending § 827.2, Determination of a farm in Puerto Rico (28 F.R. 262), by amending the introductory sentence of paragraph (b) and by adding a new subparagraph (4) to such paragraph (b).

In accordance with the rule making requirements in 5 U.S.C. 553, all persons who desire to submit written data, views, or arguments for consideration in connection with the proposed amendment may file the same in duplicate with the Deputy Administrator, State and County Operations, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, Washington, D.C. 20250, on or before October 31, 1969. All written submissions made pursuant to this notice will be made available for public inspection at such times and places and in a manner convenient to the public business (7 CFR 1.27(b)).

The Secretary is preparing to amend the regulation which determines a farm in Puerto Rico for purposes of the Sugar Act of 1948, as amended. Such regulation provides the basis for applying the payment scale-down provisions of that act which apply to each farm. The definition of a farm was revised January 10, 1963, to permit the use of management services contracts for farms controlled by independent producers, but subject to certain limitations to guard against arrangements which would tend to defeat the scale-down in rates of payment. Many producers in Puerto Rico have farms which are too small to warrant the investment in the machinery required for efficient and economic operations. Under these circumstances, management services contracts have served to keep more land in production than would otherwise have been the case. Thus, a larger volume of sugarcane has been available to the processors who customarily provide the management services. The purpose of this amendment is to make clear that the regulation is intended to include as one farm all sugarcane land in Puerto Rico controlled by affiliate companies of a company furnishing management services and all sugarcane land in Puerto Rico controlled by trustees administering pension trust funds for the benefit of employees of affiliate companies of a company furnishing management services. The present regulation has been interpreted to provide that tracts of land may be constituted as one farm where the tracts are controlled by different trustees administering retirement or pension trust funds for the benefit of employees of companies which are wholly owned by one company and are affiliated with the company furnishing management services. This amendment incorporates such interpretation and is for the purpose of giving public notice thereof, and thus should eliminate erroneous impressions as to the effect of that part of the regulation applicable to management services. The amendment also extends that part of the regulation applicable to management services to affiliate companies which own 50 percent or more interest in each other.

The entire regulation for determining a farm in Puerto Rico, amended as proposed, is set forth as follows in form and language appropirate for issuance if adopted by the Secretary:

§ 827.2 Determination of a farm in Puerto Rico.

(a) *Definitions.* For the purpose of this section, the terms:

(1) "Person" means an individual, partnership, corporation, or association.

(2) "Producer" means a person who is the legal owner, at the time of harvest or abandonment, of a portion or all of a crop of sugarcane grown on a farm for the extraction of sugar or liquid sugar.

(b) *Constitution of a farm.* For the 1962–63 and subsequent sugarcane crops in Puerto Rico, a farm shall be constituted according to whichever one of the following subparagraphs is applicable according to the prevailing circumstances, subject to the provisions of subparagraph (4).

(1) "Farm" means all land which is farmed by one or more producers as a farming unit with cropping practices, equipment, workstock, labor, and management substantially separate from that of any other such unit, and also includes all other land on which sugarcane farming operations are carried out with respect to which such producer(s) furnishes management services and (i) receives for such management services an amount in excess of 12½ percent of the aggregate net market proceeds from the producer's share of the sugar and molasses produced from the sugarcane, (ii) assumes an obligation for loss, (iii) shares in the net profit, or (iv) guarantees directly or indirectly a stipulated amount to any person who owns or controls land on which such farming operations are carried out.

(2) "Farm" means all land owned or controlled by a producer who separately or together with other producers, except processor-producers, owns the crop and bears the full financial risks of producing the sugarcane crop grown on such land and who carries out the sugarcane farming operations on such land by utilizing management services for which an amount is payable not in excess of 12½ percent of the aggregate net market proceeds from the producer's share of the sugar and molasses obtained from the sugarcane produced on the farm as computed pursuant to the applicable fair price determination (Part 877, Chapter VIII).

(3) "Farm" means all land included in a proportional profit farm which is organized pursuant to the provisions of title IV of the Land Law of Puerto Rico, supervised by a manager with headquarters on the farm, and operated with workstock, light equipment, farm buildings and labor substantially separate from that of any other such farm.

(4) Effective for the 1969–70 crop and subsequent crops of sugarcane and whenever the circumstances described in this subparagraph (4) exist, subparagraphs (1) and (2) shall not apply and "farm" means all land controlled by two or more producers who carry out the sugarcane farming operations on such land by utilizing the management services of the same company, and (i) are affiliate companies of the company furnishing management services or (ii) are acting as agents of affiliate companies of the company furnishing management services or are trustees administering trust plans or agreements established for the benefit of employees of affiliate companies of the company furnishing management services. For purposes of this subparagraph (4) a company is an affiliate of another company if either owns 50 percent or more interest in the other, if a third entity (hereinafter referred to as parent entity) owns 50 percent or more interest in both or if the parent entity owns 50 percent or more interest in one and 50 percent or more interest in an entity that owns 50 percent or more interest in the other.

Signed at Washington, D.C., on September 23, 1969.

KENNETH E. FRICK,
Administrator, Agricultural Stabilization and Conservation Service.

[F.R. Doc. 69-11549; Filed, Sept. 26, 1969; 8:48 a.m.]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 71]

[Airspace Docket No. 69-CE-92]

CONTROL ZONE AND TRANSITION AREA

Proposed Alteration

The Federal Aviation Administration is considering amending Part 71 of the Federal Aviation Regulations so as to alter the Alton, Ill., control zone and the St. Louis, Mo., transition area.

Interested persons may participate in the proposed rule making by submitting such written data, views, or arguments as they may desire. Communications should be submitted in triplicate to the Director, Central Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, Federal Building, 601 East 12th Street, Kansas City, Mo. 64106. All communications received within 45 days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendments. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Regional Air Traffic Division Chief. Any data, views, or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposals contained in this notice may be changed in the light of comments received.

A public docket will be available for examination by interested persons in the Office of the Regional Counsel, Federal Aviation Administration, Federal Building, 601 East 12th Street, Kansas City, Mo. 64106.

Since designation of controlled airspace in the Alton, Ill., and St. Louis, Mo., terminal areas, one instrument approach procedure has been changed and a new instument approach procedure has been authorized for Civic Memorial Airport, Alton, Ill. Also, the criteria for designation of control zones and transition areas have changed. In addition, the part time control zone designation at Alton, Ill., must be altered to allow changing of control zone times by the issuance of a Notice to Airmen. Accordingly, it is necessary to alter the Alton, Ill., control zone and the St. Louis, Mo., transition area to adequately protect aircraft executing the altered and new instrument approach procedures and to comply with the new control zone and transition area criteria, and to further alter the Alton, Ill., control zone to permit changing of the control zone times by issuance of a Notice to Airmen.

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations as hereinafter set forth:

(1) In § 71.171 (34 F.R. 4557), the following control zone is amended to read:

ALTON, ILL.

Within a 5-mile radius of Civic Memorial Airport (latitude 38°53'30" N., longitude 90°03'00" W.); within 2½ miles each side of the 104° bearing from Civic Memorial Airport, extending from the 5-mile radius zone to 5½ miles east of the airport; and within 3 miles each side of the 009° bearing from Civic Memorial Airport; extending from the 5-mile radius zone to 7 miles north of the airport. This control zone is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airman's Information Manual.

(2) In § 71.181 (34 F.R. 4637), the following transition area is amended to read:

ST. LOUIS, MO.

That airspace extending upward from 700 feet above the surface within a 10-mile radius of Lambert-St. Louis Municipal Airport (latitude 38°44'50" N., longitude 90°21'55" W.); within 5 miles southeast and 8 miles northwest of the Lambert-St. Louis Municipal Airport Runway 24 ILS localizer northeast course, extending from the 10-mile radius area to 12 miles northeast of the Runway 24 OM; within 5 miles southwest and 8 miles northeast of the Lambert-St. Louis Municipal Airport Runway 12R ILS localizer northwest course, extending from the Runway 12R OM to 12 miles northwest of the OM; within an 8-mile radius of Civic Memorial Airport, Alton, Ill. (latitude 38°53'30" N., longitude 90°03'00" W.); that airspace extending upward from 1,200 feet above the surface within a 33-mile radius of Lambert-St. Louis Municipal Airport; within 6 miles southwest and 9 miles northeast of the St. Louis VORTAC 328° radial, extending from the 33-mile radius area to 36 miles northwest of the VORTAC; within 5 miles northwest and 8 miles southeast of the Maryland Heights VORTAC 243° radial, extending from the 33-mile radius area to 19 miles southwest of the VORTAC; within the area bounded on the west and northwest by the east and southeast edge of V-148, on the northeast by the 33-mile radius area, on the southeast by the northwest edge of V-238 and on the south by the north boundary of V-88; within a 40-mile radius of Scott AFB (latitude 38°32'30" N., longitude 89°51'05" W.); within the area bounded on the northwest by the 40-mile radius area, on the east by the west edge of V-313, on the southwest by the northeast edge of V-335; and the area north of St. Louis bounded on the west by the east edge of V-52N, on the north by the south edge of V-50 and on the east by the west edge of V-9W, excluding the portion which overlies the Springfield, Ill., transition area; that airspace extending upward from 2,500 feet MSL within the area bounded on the north by the arc of a 40-mile radius circle centered on Scott AFB, on the northeast by the southwest edge of V-335, on the east by the west edge of V-313, on the south by the north edge of V-190 and on the west by the east edge of V-9; and that airspace extending upward from 4,500 feet MSL within the area bounded on the north by the south edge of V-88, on the northeast by the southwest edge of V-9W, on the south by the north edge of V-72, on the west by a line 5 miles west of and parallel to the St. Louis VORTAC 200° radial and on the northwest by the southeast edge of V-238; within the area bounded on the north by the south edge of V-12, on the southeast by the northwest edge of V-14N, on the southwest by the northeast edge of V-175 and on the northwest by a line 5 miles southeast of and parallel to the Jefferson City, Mo., VOR 041° radial and within the area bounded on the northeast by the southwest edge of V-52, on the south by the north edge of V-4N and on the northwest by the southeast boundary of V-63, excluding that airspace which coincides with the Springfield, Vandalia, and Centralia, Ill., transition areas.

These amendments are proposed under the authority of section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348), and of section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Kansas City, Mo., on September 10, 1969.

EDWARD C. MARSH,
Director, Central Region.

[F.R. Doc. 69-11524; Filed, Sept. 26, 1969; 8:46 a.m.]

[14 CFR Part 71]

[Airspace Docket No. 69-SW-60]

TRANSITION AREA

Proposed Designation

The Federal Aviation Administration is considering amending Part 71 of the Federal Aviation Regulations to designate a 700-foot transition area at Slidell, La.

Interested persons may submit such written data, views, or arguments as they may desire. Communications should be submitted in triplicate to the Chief, Air Traffic Division, Southwest Region, Federal Aviation Administration, Post Office Box 1689, Fort Worth, Tex. 76101. All communications received within 30 days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Chief, Air Traffic Division. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official docket will be available for examination by interested persons at the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, Fort Worth, Tex. An informal docket will also be available for examination at the Office of the Chief, Air Traffic Division.

It is proposed to amend Part 71 of the Federal Aviation Regulations as hereinafter set forth.

In § 71.181 (34 F.R. 4637), the following transition area is added:

SLIDELL, LA.

That airspace extending upward from 700 feet above the surface within a 5-mile radius of Slidell Airport (lat. 30°20'37" N., long. 89°49'18" W.), and within 2.5 miles each side

of the New Orleans VORTAC 043° radial extending from the 5-mile radius area to 23 miles northeast of the VORTAC.

The proposed transition area will provide airspace protection for aircraft executing approach/departure procedures proposed at the Slidell Airport, Slidell, La. The southwesterly extension to the proposed transition area is based on the New Orleans VORTAC 043° true (038° magnetic) radial.

This amendment is proposed under the authority of section 307(a), Federal Aviation Act of 1958 (49 U.S.C. 1348), and of section 6(c), of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Fort Worth, Tex., on September 18, 1969.

A. L. COULTER,
Acting Director, Southwest Region.

[F.R. Doc. 69-11525; Filed, Sept. 26, 1969; 8:46 a.m.]

[14 CFR Part 71]

[Airspace Docket No. 69-SW-61]

TRANSITION AREA

Proposed Designation

The Federal Aviation Administration is considering amending Part 71 of the Federal Aviation Regulations to designate a 700-foot transition area at Patterson, La.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Chief, Air Traffic Division, Southwest Region, Federal Aviation Administration, Post Office Box 1689, Fort Worth, Tex. 76101. All communications received within 30 days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Chief, Air Traffic Division. Any data, views, or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official docket will be available for examination by interested persons at the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, Fort Worth, Tex. An informal docket will also be available for examination at the Office of the Chief, Air Traffic Division.

It is proposed to amend Part 71 of the Federal Aviation Regulations as hereinafter set forth.

In § 71.181 (34 F.R. 4637), the following transition area is added:

PATTERSON, LA.

That airspace extending upward from 700 feet above the surface within a 5-mile radius of Harry P. Williams Memorial Airport (lat. 29°42'40" N., long. 91°20'18" W.), within 2.5 miles each side of the Tibby VORTAC 276° radial extending from the 5-mile radius area to 24 miles west of the VORTAC, and within 3.5 miles each side of the 228° bearing from the Patterson RBN (lat. 29°42'32" N., long. 91°20'14" W.) extending from the 5-mile radius area to 11.5 miles southwest of the RBN.

The proposed transition area will provide controlled airspace for aircraft executing approach/departure procedures proposed at the Harry P. Williams Memorial Airport, Patterson, La. The easterly extension to the proposed transition area is based on the Tibby VORTAC 276° true (270° magnetic) radial; the southwesterly extension is based on the 228° true (222° magnetic) bearing from the proposed Patterson RBN.

Additional controlled airspace extending upward from 1,200 feet above the surface will be required; however, it will be included in a separate proposal to consolidate all 1,200-foot transition areas within the State of Louisiana into one 1,200-foot transition area.

This amendment is proposed under the authority of section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348, and of section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Fort Worth, Tex., on September 18, 1969.

A. L. COULTER,
Acting Director, Southwest Region.

[F.R. Doc. 69-11526; Filed, Sept. 26, 1969; 8:46 a.m.]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 95]

[Docket No. 18625; RM-1388]

CITIZENS RADIO SERVICE

Order Extending Time for Filing Comments

In the matter of amendment of § 95.83 (a)(14) of the Citizens Radio Service rules to permit transmission of communications relating to street and highway traffic conditions.

1. The California Citizens Band Association, Inc., has requested an 80-day extension of time for filing comments on the Commission's proposal (FCC 69-850) in this proceeding which was released on August 8, 1969. The notice called for comments on or before September 15, 1969, and reply comments on or before September 25, 1969.

2. In support of its request, California Citizens Band Association stated that it required additional time in which to furnish constructive comments, and that a later expiration date on which to file comments will enable a larger number of interested persons to be apprised of the Commission's proposal through "Citizens Band" magazines published in the latter part of September.

3. It appears that the public interest would be served by a short extension of the present filing times, but an additional 80 days is not required.

4. *Accordingly, it is ordered,* Pursuant to § 0.331(b)(4) of the Commission's rules, that the time for filing comments in the above-captioned proceeding is extended to October 15, 1969, and the time for filing reply comments is extended to October 27, 1969.

Adopted: September 19, 1969.

Released: September 22, 1969.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] J. E. BARR,
Chief, Safety and Special Radio Services Bureau.

[F.R. Doc. 69-11542; Filed, Sept. 26, 1969; 8:48 a.m.]

FEDERAL HOME LOAN BANK BOARD

[12 CFR Part 563]

[No. 23,377]

FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

Proposed Amendment Relating to Accounting for Gains and Losses With Respect to Transactions in Securities

SEPTEMBER 23, 1969.

Resolved, that the Federal Home Loan Bank Board considers it advisable to prescribe regulations for accounting by insured institutions for gains and losses on the disposition of securities and to provide for deferral of gains and losses on dispositions made for the purpose of meeting liquidity requirements, and it hereby proposes to amend Part 563 of the rules and regulations for Insurance of Accounts (12 CFR Part 563) by adding a new § 563.23-2, immediately after § 563.23-1 thereof, to read as follows:

§ 563.23-2 Accounting for gains and losses with respect to transactions in securities.

(a) *Recognition of gains and losses.* Except as hereinafter provided, gains and losses (net of related taxes) resulting from the disposition of securities shall be recognized on an insured institution's books at the time realized. However, an insured institution may elect to defer and amortize all gains and losses (net of related taxes) resulting from the disposition, on or prior to December 31, 1971, of any securities, if such disposition is part of a plan adopted for the purpose of meeting the liquidity requirements contained in Part 523 of this chapter. Such election, once made, shall be consistently followed with respect to all transactions in securities entered into for liquidity purposes during the period beginning on the effective date of this section and ending December 31, 1971, and with respect to all related reinvestment transactions entered into thereafter.

(b) *Making of election to defer gains and losses.* The election referred to in paragraph (a) of this section shall be

made by the insured institution's board of directors in a resolution specifically referring to the provisions of this section.

(c) *Deferral and amortization of gains and losses.* An insured institution which elects to defer and amortize gains and losses on the dispositior. of securities as provided in paragraph (a) of this section shall account for such gains and losses as follows:

(1) Gains shall be deferred by a credit to an account descriptive of deferred profit; losses shall be deferred by a debit to an account descriptive of deferred losses. Gains and losses so deferred shall thereafter be credited or debited, as appropriate, to an account descriptive of income from the related securities, at least quarterly, in equal amounts over a period not in excess of the lesser of (i) the period ending on the maturity date of the security disposed of or (ii) 10 years. For convenience, deferred balances may be grouped by average remaining period of amortization.

(2) Where an amount has been deferred and the security acquired in the transaction is subsequently disposed of in a transaction which results in a reduction, for a period in excess of 45 days, of the total amount of securities held for liquidity purposes, any gain or loss resulting from such transaction shall be recognized, and the related unamortized balance of the amount deferred shall be treated as an adjustment of such gain or loss.

(d) *Maintenance of records.* An institution which, pursuant to paragraph (a) of this section, elects to defer and amortize gains and losses on security transactions shall maintain such records and follow such accounting practices as the Corporation may deem necessary for compliance with this section.

(Sec. 5A, 47 Stat. 727, as added by 64 Stat. 256, as amended by sec. 4, Public Law 90–506, 82 Stat. 856, secs. 402, 403, 48 Stat. 1256, 1257, as amended; 12 U.S.C. 1425a, 1725, 1726. Reorg. Plan No. 3 of 1947, 12 F.R. 4981, 3 CFR, 1943–1948 Comp., p. 1071)

Resolved further that interested persons are invited to submit written data, views, and arguments to the Office of the Secretary, Federal Home Loan Bank Board, 101 Indiana Avenue NW., Washington, D.C. 20552, by October 27, 1969, as to whether this proposal should be adopted, rejected, or modified. Written material submitted will be available for public inspection at the above address unless confidential treatment is requested or the material would not be made available to the public or otherwise disclosed under § 505.6 of the general regulations of the Federal Home Loan Bank Board (12 CFR 505.6).

By the Federal Home Loan Bank Board.

[SEAL] GRENVILLE L. MILLARD, Jr.,
Assistant Secretary.

[F.R. Doc. 69–11554; Filed, Sept. 26, 1969; 8:49 a.m.]

[12 CFR Parts 561, 571]

[No. 23,376]

FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

Proposed Amendments Relating to Definitions of "Specified Assets", "Government Obligations", and "Cash"

SEPTEMBER 23, 1969.

Resolved that the Federal Home Loan Bank Board considers it advisable to amend Parts 561 and 571 of the rules and regulations for insurance of accounts (12 CFR Parts 561, 571) by (1) revising the definitions of the terms "specified assets" and "Government obligations" and (2) revoking the definition of the term "cash" and rescinding a related statement of policy to reflect certain changes proposed to be made in Part 523 of the regulations for the Federal Home Loan Bank System (12 CFR Part 523) regarding liquidity for members of such system. Accordingly, it hereby proposes to amend Parts 561 and 571 as follows:

1. Revise paragraph (a) of § 561.17 to read as follows:

§ 561.17 Specified assets.

(a) The term "specified assets" means the total assets of an insured institution less the institution's assets, including any accrued interest thereon, which qualify as liquid assets, as defined in paragraph (c) of § 523.10 of this chapter, or would so qualify except for the maturity limitations contained in such paragraph, Government obligations and accrued interest thereon, Federal Home Loan Bank stock, prepaid Federal Savings and Loan Insurance Corporation premiums, loans secured by Government obligations, loans in process, loans on the security of the institution's share accounts, investments (other than in capital stock) in other institutions insured by the Federal Savings and Loan Insurance Corporation and in institutions insured by the Federal Deposit Insurance Corporation, and the institution's actual investments in insured and guaranteed loans and guaranteed obligations.

* * * * *

2. Revoke § 561.18, defining the term "cash".

3. Revise § 561.19 to read as follows:

§ 561.19 Government obligations.

The term "Government obligations" means obligations of, or guaranteed or insured by, or special obligations (as they may hereinafter be defined by the Board) issued by, the United States; or obligations, participations, or other instruments of or issued by, or fully guaranteed as to principal and interest by, an agency or instrumentality of the United States named in paragraph (a)(3) of § 523.10 of this chapter.

4. Rescind § 571.2, a statement of policy relating to inclusion of time deposits as cash.

(Sec. 5A, 47 Stat. 727, as added by 64 Stat. 256, as amended by sec. 4, Public Law 90–505, 82 Stat. 856, secs. 402, 403, 48 Stat. 1256, 1257, as amended; 12 U.S.C. 1425a, 1725, 1726. Reorg. Plan No. 3 of 1947, 12 F.R. 4981, 3 CFR, 1943–1948 Comp., p. 1071)

Resolved further that interested persons are invited to submit written data, views, and arguments to the Office of the Secretary, Federal Home Loan Bank Board, 101 Indiana Avenue NW., Washington, D.C. 20552, by October 27, 1969, as to whether this proposal should be adopted, rejected, or modified. Written material submitted will be available for public inspection at the above address unless confidential treatment is requested or the material would not be made available to the public or otherwise disclosed under § 505.6 of the General Regulations of the Federal Home Loan Bank Board (12 CFR 505.6).

By the Federal Home Loan Bank Board.

[SEAL] GRENVILLE L. MILLARD, Jr.,
Assistant Secretary.

[F.R. Doc. 69–11555; Filed, Sept. 26, 1969; 8:49 a.m.]

[12 CFR Parts 523, 531]

[No. 23,374]

FEDERAL HOME LOAN BANK SYSTEM

Proposed Amendments Relating to Liquidity

SEPTEMBER 23, 1969.

Resolved That the Federal Home Loan Bank Board considers it advisable to amend Parts 523 and 531 of the regulations for the Federal Home Loan Bank System (12 CFR Parts 523, 531) for the purpose of implementing section 4 of Public Law 90–505, approved September 21, 1968, which amended section 5A of the Federal Home Loan Bank Act (12 U.S.C. 1425a), by prescribing regulations regarding liquidity requirements for members of the Federal Home Loan Bank System. Accordingly, it hereby proposes to amend Parts 523 and 531 as follows:

1. Amend the heading after § 523.9 to read as follows:

LIQUIDITY

2. Delete the present provisions of § 523.12, which relates to liquidity of members.

3. Rescind §§ 531.6 and 531.7, statements of policy relating to the present provisions of § 523.12.

4. Add new §§ 523.10 and 523.14 to read as follows:

§ 523.10 Definitions.

For the purposes of this section, §§ 523.11, and 523.12:

(a) The term "obligation of the United States" means an evidence of indebtedness issued by the United States, or by any agency or instrumentality of the United States if fully guaranteed as to

principal and interest by the United States.

(b) The term "insured bank" means a bank whose deposits are insured by the Federal Deposit Insurance Corporation and which is not under the control or in the possession of any supervisory authority.

(c) *Liquid assets.* Prior to January 1, 1972, the term "liquid assets" means the total of cash on hand and the book value of unpledged assets specified in subparagraphs (1) through (6) of this paragraph, without regard to the maturity limitation contained in subparagraph (2). Beginning January 1, 1972, the term "liquid assets" means the total of cash on hand and the book value of the following unpledged assets:

(1) Deposits in a Federal Home Loan Bank and demand deposits in an insured bank;

(2) Obligations of the United States having a remaining period to maturity of not more than 5 years;

(3) Obligations issued, or fully guaranteed as to principal and interest, by the following agencies or instrumentalities of the United States and having a remaining period to maturity of not more than 5 years:

(i) A Federal Home Loan Bank or Banks,

(ii) The Federal National Mortgage Association,

(iii) The Government National Mortgage Association,

(iv) A Bank or Banks for Cooperatives, including the Central Bank for Cooperatives,

(v) A Federal Land Bank or Banks,

(vi) A Federal Intermediate Credit Bank or Banks,

(vii) The Tennessee Valley Authority,

(viii) The Export-Import Bank of the United States, or

(ix) The Commodity Credit Corporation.

(4) Time deposits in an insured bank, if:

(i) The total of all time deposits of the same member in the same bank does not exceed the greater of (*a*) one-fourth of 1 percent of the total deposits of such bank (calculated on the basis of total deposits of such bank as shown by its last published statement of condition preceding the date such deposit is made or acquired by a member), or (*b*) $15,000;

(ii) No consideration, other than discounting to a current market rate of interest, is received by the member from a third party in connection with the making or acquiring of such deposits by the member; and

(iii) The remaining periods to maturity of such deposits are not more than 1 year and such deposits are negotiable, or, in the case of time deposits which may not be withdrawn without notice, the notice periods do not exceed 90 days;

(5) Bankers' acceptances of an insured bank if:

(i) The total of all such acceptances of the same bank held by the same member does not exceed one-fourth of 1 percent of the total deposits of such bank (calculated on the basis of total deposits of such bank as shown by its last published statement of condition preceding the date of such acquisition);

(ii) No consideration, other than discounting to a current market rate of interest, is received by the member from a third party in connection with the acquisition of such acceptances; and

(iii) The remaining periods to maturity of such acceptances are not more than 6 months; and

(6) General obligations of any State, territory, or possession of the United States, or political subdivision of any of the foregoing, if:

(i) Such obligations are rated in one of the four highest grades as shown by the most recently published rating made of such obligations by a nationally recognized investment rating service; and

(ii) The remaining periods to maturity of such obligations are not more than 2 years.

(d) *Short-term liquid assets.* The term "short-term liquid assets" means the total of cash on hand and the book value of the following unpledged assets:

(1) Deposits specified in subparagraph (1) of paragraph (c) of this section;

(2) Obligations specified in subparagraphs (2) and (3) of paragraph (c) of this section which have a remaining period to maturity of not more than 18 months;

(3) Time deposits specified in subparagraph (4) of paragraph (c) of this section which

(i) Are negotiable and have a remaining period to maturity of not more than 6 months; or

(ii) If withdrawable only after notice, require notice of not more than 90 days; and

(4) Bankers' acceptances specified in subparagraph (5) of paragraph (c) of this section.

(e) The term "net withdrawable accounts" means the amount of all withdrawable accounts less the unpaid balance of all loans on the security of such accounts.

(f) The term "short-term borrowings" means borrowings which are payable on demand or which are due for payment in 1 year or less.

§ 523.11 **Liquidity requirements.**

Except as otherwise provided in paragraph (e) of this section, the liquidity requirements for each member shall be the following:

(a) *Liquid assets of member other than an insurance company.* For each calendar month, each member, other than an insurance company, shall maintain an average daily balance of liquid assets in an amount not less than the amount obtained by multiplying (1) the member's average daily balance for the preceding calendar month of its net withdrawable accounts and short-term borrowings by (2) such percentage (not less than 4 percent or more than 10 percent) as the Board may prescribe from time to time.

(b) *Short-term liquid assets of member other than an insurance company.* For each calendar month beginning January 1972, each member, other than an insurance company, shall maintain an average daily balance of short-term liquid assets in an amount not less than 2 percent of the member's average daily balance for the preceding calendar month of its net withdrawable accounts and short-term borrowings.

(c) *Liquid assets of member insurance company.* For each calendar month, each member insurance company shall maintain an average daily balance of liquid assets in an amount not less than the amount obtained by multiplying (1) the member's average daily balance for the preceding calendar month of its policy reserve required by State law and short-term borrowings by (2) such percentage (not less than 4 percent or more than 10 percent) as the Board may prescribe from time to time.

(d) *Calculation of average daily balances.* (1) For the purposes of this section and § 523.12, the "average daily balance of its net withdrawable accounts and short-term borrowings" and "average daily balance of its policy reserve required by State law and short-term borrowings" shall be calculated by:

(i) Adding the amounts of the member's net withdrawable accounts, or in the case of a member insurance company its policy reserve required by State law, as of the close of each business day in a calendar month and, for any nonbusiness day, as of the close of the nearest preceding business day;

(ii) Adding the amounts of the member's short-term borrowings as of the close of each business day in the calendar month and, for any nonbusiness day, as of the close of the nearest preceding business day;

(iii) Adding the amounts obtained pursuant to items (i) and (ii) of this subparagraph; and

(iv) Dividing the total amount obtained pursuant to item (iii) of this subparagraph by the number of days in such month.

(2) For the purposes of this section and § 523.12, the "average daily balance of liquid assets" and "average daily balance of short-term liquid assets", respectively, shall be calculated by adding the amount of the member's liquid assets, or short-term liquid assets, respectively, as of the close of each business day in a calendar month, and, for any nonbusiness day, as of the close of the nearest preceding business day, and by dividing the total amount obtained by the number of days in such month.

(e) *Reduction and suspension of liquidity requirements.* Whenever the Board deems it advisable in order to enable a member to meet withdrawals or to pay obligations, the Board may, to such extent and subject to such conditions as it may prescribe, permit the member to reduce its liquidity below the minimum amount required by paragraphs (a), (b), and (c) of this section. Whenever the Board determines that conditions of national emergency or unusual economic stress exist, the Board may suspend any part or all of the liquidity requirements of paragraph (a), (b), and (c) of this section for such period as the Board may

prescribe. Any such suspension, unless sooner terminated by its terms or by the Board, shall terminate at the expiration of 90 days next after its commencement, but nothing in this sentence shall prevent the Board from again suspending any part or all of such liquidity requirements before, at, or after any such termination.

§ 523.12 Deficiencies and penalties.

(a) *Calculation of deficiency.* (1) Except as provided in subparagraph (2) of this paragraph, a member's liquid assets for any calendar month are deficient in the amount that the member's average daily balance of liquid assets for such calendar month is less than the minimum amount of liquid assets required pursuant to § 523.11. Except as provided in subparagraph (2) of this paragraph, for each calendar month beginning January 1972, the short-term liquid assets of a member other than an insurance company, are deficient in the amount that the member's average daily balance of short-term liquid assets for such calendar month is less than the minimum amount of short-term liquid assets required pursuant to § 523.11.

(2) A member, other than an insurance company, may reduce any deficiency calculated pursuant to subparagraph (1) of this paragraph (i) with respect to the first month of a current distribution period, by the amount of the member's aggregate net withdrawals (excess of withdrawals over cash savings received) ftrom withdrawable accounts during the last 3 business days of the immediately preceding month and the first 10 calendar days of the current month, and (ii) with respect to the second month of the same current distribution period, by one-half of such amount of aggregate net withdrawals: *Provided*, That any deficiency for any month calculated pursuant to subparagraph (1) of this paragraph shall not be reduced pursuant to this subparagraph by more than 2 percent of the member's average daily balance of its net withdrawable accounts and short-term borrowings for the last calendar month of the immediately preceding distribution period.

(b) *Calculation of penalty.* The amount of penalty for any deficiency calculated pursuant to paragraph (a) of this section shall be determined by each member by multiplying the amount of such deficiency by one-twelfth of the sum of 2 percent and the annual interest rate for advances of 1 year or less charged by the member's Bank on the last day of the month in which such deficiency occurred. If there is a deficiency in the same calendar month in both the average daily balance of liquid assets and short-term liquid assets, the penalty shall shall be calculated only on the larger deficiency. No penalty shall be calculated on any deficiency of $5,000 or less unless the Board shall otherwise direct in a specific case.

(c) *Assessment of penalty; compromise, remission, or mitigation.* The Board hereby assesses a penalty against each member in the amount calculated pursuant to paragraph (b) of this section. For good cause shown, the Board may, upon application by a member submitted through the Bank of which it is a member, compromise, remit, or mitigate in whole or in part any penalty herein assessed before collection thereof.

§ 523.13 Reports; records.

(a) *Reports.* If there is a deficiency pursuant to the provisions of paragraph (a) of § 523.12 and a penalty is assessed pursuant to the provisions of paragraph (c) of § 523.12, the member shall submit to the Bank of which it is a member, not later than the 10th day of the month following the month for which the penalty is assessed, a report with respect to such penalty and related matters in form prescribed by the Board. Copies of this form may be obtained from the Federal Home Loan Bank Board, Washington, D.C., on from any Bank.

(b) *Records.* Each member shall maintain such records as may be required to verify such member's compliance with the liquidity requirements prescribed by the Board. Such records shall be made available to the Board, or its representatives, during the course of each supervisory examination and at such other times as the Board may direct.

§ 523.14 Payment of penalty.

At the time each report is submitted pursuant to the requirements of paragraph (a) of § 523.13, the member shall enclose with such report a check, payable to the Bank of which it is a member, in the amount of the penalty assessed for the month covered in such report, unless the member makes the application referred to in paragraph (c) of § 523.12.

(Sec. 5A, 47 Stat. 727, as added by 64 Stat. 256, as amended by sec. 4, Public Law 90-505, 82 Stat. 856, sec. 17, 47 Stat. 736, as amended; 12 U.S.C. 1425a, 1437. Reorg. Plan No. 3 of 1947, 12 F.R. 4981, 3 CFR, 1943-1948 Comp., p. 1071)

Resolved further that interested persons are invited to submit written data, views, and arguments to the Office of the Secretary, Federal Home Loan Bank Board, 101 Indiana Avenue NW., Washington, D.C. 20552, by October 27, 1969, as to whether this proposal should be adopted, rejected, or modified. Written material submitted will be available for public inspection at the above address unless confidential treatment is requested or the material would not be made available to the public or otherwise disclosed under § 505.6 of the general regulations of the Federal Home Loan Bank Board (12 CFR 505.6).

Resolved further that a hearing will begin on October 27, 1969, at 10 a.m., e.s.t., in Suite 610, Railway Labor Building, 400 First Street NW., Washington, D.C., before a Hearing Officer designated by the Federal Home Loan Bank Board, for the purpose of receiving evidence, oral views, and arguments as to whether this proposal should be adopted, rejected, or modified. Interested persons, or their authorized representatives, who intend to appear at such hearing are requested to send written notice of such intention to the Secretary, Federal Home Loan Bank Board, 101 Indiana Avenue NW., Washington, D.C., on or before October 20, 1969.

By the Federal Home Loan Bank Board.

[SEAL] GRENVILLE L. MILLARD, JR.,
Assistant Secretary.

[F.R. Doc. 69-11556; Filed, Sept. 26, 1969; 8:49 a.m.]

[No. 23,375]

[12 CFR Parts 545, 556]

FEDERAL SAVINGS AND LOAN SYSTEM

Proposed Amendments Relating to Liquidity, Investments, Securities, and Related Matters

SEPTEMBER 23, 1969.

Resolved that the Federal Home Loan Bank Board considers it advisable to amend Parts 545 and 556 of the rules and regulations for the Federal Savings and Loan System (12 CFR Parts 545, 556) for the purposes of (1) implementing the authority contained in section 5 of Public Law 90-505, approved September 21, 1968, which amended section 5 of the Home Owners' Loan Act of 1933 (12 U.S.C. 1464) to permit Federal savings and loan associations to invest in any asset which qualifies for use in meeting the liquidity requirements imposed on them pursuant to section 5A of the Federal Home Loan Bank Act (12 U.S.C. 1425a), as amended by section 4 of Public Law 90-505, and (2) reflecting certain other changes relating to liquidity made by said provisions of Public Law 90-505. Accordingly, it hereby proposes to amend said Parts 545 and 556 as follows:

1. Revise paragraph (a) of § 545.6-20 to read as follows:

§ 545.6-20 Loans and investments guaranteed under the Foreign Assistance Act of 1961.

(a) *General provisions.* Without regard to any other provision of this part except § 545.6-8, a Federal association which has a Charter in the form of Charter K (rev.) or Charter N may invest in loans and interests in loans payable in U.S. dollars and guaranteed by the President under § 224 of the Foreign Assistance Act of 1961, as amended, and in housing project loans and interests therein so payable and guaranteed by the President under § 221 of that act, subject to the provisions of this section. The aggregate principal amount of such investments outstanding at any one time shall not exceed 1 percent of the assets of the association.

* * * * *

2. Revise § 545.6-21 to read as follows:

§ 545.6-21 Loans on securities.

A Federal association which has a Charter in the form of Charter K (rev.) or Charter N may invest in loans secured by obligations of, or fully guaranteed as to principal and interest by, the United

States, or by obligations, participations, or other instruments of or issued by, or fully guaranteed as to principal and interest by, an agency or instrumentality of the United States named in paragraph (c)(3) of § 523.10 of this chapter, if:

(a) The borrower is a financial institution the accounts of which are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation, or is a broker or dealer registered with the Securities and Exchange Commission;

(b) The market value of the securities for each such loan is at least equal to the amount of such loan at the time it is made; and

(c) The loans take the form of a purchase of securities by the Federal association with an agreement by the association to release the securities and by the borrower to reacquire the securities at a specified price.

§ 545.8–2 [Deleted]

3. Delete § 545.8–2, which relates to required holdings of cash and obligations of the United States.

4. Revise § 545.8–3 to read as follows:

§ 545.8–3 Insured loans for title purchase.

Without regard to any other provision of this part except § 545.6–8, a Federal association which has a Charter in the form of Charter K (rev.) or Charter N may invest in loans, or interests therein, made for the purpose of financing the purchase by homeowners of the fee simple title to property on which their homes are located and as to which the association has the benefit of insurance under section 240 of the National Housing Act, as amended, or of a commitment or agreement for such insurance.

5. Revise § 545.9 to read as follows:

§ 545.9 Securities and other investments.

A Federal association may invest in the following:

(a) Any assets which qualify as liquid assets, as defined in paragraph (c) of § 523.10 of this chapter, and any assets, other than bankers' acceptances, which would so qualify except for the maturity limitation contained in such paragraph;

(b) Any obligations fully guaranteed as to principal and interest by the United States;

(c) Any participations or other instruments of or issued by, or fully guaranteed as to principal and interest by, the Federal National Mortgage Association, the Government National Mortgage Association, or any other agency of the United States named in paragraph (c)(3) of § 523.10 of this chapter;

(d) Any general obligations of any political subdivision of a State (including the District of Columbia, the Commonwealth of Puerto Rico and the possessions of the United States) in which the association's home office or branch office is located: *Provided*, That investments in such obligations which are not in the four highest grades as shown by the most recently published ratings made of such obligations by a nationally recognized investment service shall not be made in an aggregate amount exceeding 1 percent of the association's assets; or

(e) The stock of a Federal Home Loan Bank or the Federal National Mortgage Association.

§ 545.9–3 [Revoked]

6. Revoke § 545.9–3, which relates to investments in time deposits.

§ 556.1 [Rescinded]

7. Rescind § 556.1, a statement of policy relating to inclusion of time deposits as cash.

(Sec. 5A, 47 Stat. 727, as added by 64 Stat. 256, as amended by sec. 4, Public Law 90–505, 82 Stat. 856, sec. 5, 48 Stat. 132, as amended by sec. 5, Public Law 90–505, 82 Stat. 858; 12 U.S.C. 1425a, 1464. Reorg. Plan No. 3 of 1947, 12 F.R. 4981, 3 CFR, 1943–1948 Comp., p. 1071)

Resolved further that interested persons are invited to submit written data, views, and arguments to the Office of the Secretary, Federal Home Loan Bank Board, 101 Indiana Avenue NW., Washington, D.C. 20552, by October 27, 1969, as to whether this proposal should be adopted, rejected, or modified. Written material submitted will be available for public inspection at the above address unless confidential treatment is requested or the material would not be made available to the public or otherwise disclosed under § 505.6 of the general regulations of the Federal Home Loan Bank Board (12 CFR 505.6).

By the Federal Home Loan Bank Board.

[SEAL] GRENVILLE L. MILLARD, Jr.,
Assistant Secretary.

[F.R. Doc. 69–11557; Filed, Sept. 26, 1969; 8:49 a.m.]

FEDERAL RESERVE SYSTEM

[12 CFR Parts 204, 217]

[Regs. D, Q]

RESERVES OF MEMBER BANKS; INTEREST ON DEPOSITS

Certain Borrowings Classified as Deposits

On June 27, 1969, the Board of Governors published for comment proposed amendments to Part 204 (Regulation D) and Part 217 (Regulation Q) designed mainly to narrow the category of so-called "Federal funds" transactions that are exempt from such regulations (FEDERAL REGISTER of July 9, 1969, 34 F.R. 11384).[1] In view of comments received, the complexity of the issues involved and related actions taken by the Board subsequent to the June 27 proposal, the Board considers that it would be in the public interest to publish the present revised proposal for further comment.

In the Board's view, four classes of Federal funds "purchases" and other short-term borrowings by member banks should be excluded from the provisions of Regulations D and Q. Borrowings from other banks are one such class, because these are necessary for effective functioning of the Federal funds market, which is useful in the implementation of monetary policy. Two other classes are (a) "repurchase" (RP) transactions in Government and Federal agency securities eligible for Federal Reserve purchase and (b) Federal funds borrowings from securities dealers arising from the clearance of securities, both of which facilitate the effective functioning of U.S. financial markets. Finally, the Board considers that it is appropriate to permit short-term borrowings by member banks from various governmental institutions outside the basic provisions of Regulations D and Q.

With this view in mind, the Board is considering amending section 204.1(f) of Regulation D to read as follows:

§ 204.1 Definitions.

* * * * *

(f) *Deposits as including certain promissory notes and other obligations.* For the purposes of this part, the term "deposits" also includes a member bank's liability on any promissory note, acknowledgment of advance, due bill, or similar obligation (written or oral) that is issued or undertaken by a member bank principally as a means of obtaining funds to be used in its banking business, except any such obligation that:

(1) Is issued to, and held for the account of, (i) a domestic banking office[1a] of a bank, (ii) an "Edge" or "Agreement" corporation operating under section 25(a) or section 25 of the Federal Reserve Act, or (iii) an agency of the United States;

(2) Evidences an indebtedness arising from a transfer of direct obligations of, or obligations that are fully guaranteed as to principal and interest by, the United States or any agency thereof that the bank is obligated to repurchase;

(3) Has an original maturity of more than 2 years, is unsecured, and states expressly that it is subordinated to the claims of depositors; or

(4) Arises from a borrowing by a member bank from a dealer in securities, for 1 business day, of proceeds of a transfer of deposit credit in a Federal Reserve Bank (or other immediately available funds), commonly referred to as "Federal funds", received by such dealer on the date of the loan in connection with clearance of securities transactions.

[1] The June 27 proposal was a reoffering of the Board's Sept. 25, 1968, notice of proposed rule making (FEDERAL REGISTER of Oct. 1, 1968, 33 F.R. 14648) so far as the earlier proposal related to bringing a bank's liabilities on nondocumentary "nondeposit" obligations within the coverage of Regulations D and Q. Adoption of the proposal offered for comment at this time would complete the Board's action on the Sept. 25, 1968, proposal as well as the June 27, 1969, proposal.

[1a] Any banking office in any State of the United States or the District of Columbia of a bank organized under domestic or foreign law.

This paragraph shall not, however, affect (i) any instrument issued before June 27, 1966, or (ii) any instrument that evidences an indebtedness arising from a transfer of assets under repurchase agreement issued before July 25, 1969.

* * * * *

Section 217.1(f) of Regulation Q would be amended to read as follows:

§ 217.1 **Definitions.**

* * * * *

(f) *Deposits as including certain promissory notes and other obligations.* For the purposes of this part, the term "deposits" also includes a member bank's liability on any promissory note, acknowledgment of advance, due bill, or similar obligation (written or oral) that is issued or undertaken by a member bank principally as a means of obtaining funds to be used in its banking business, except any such obligation that:

(1) Is issued to, and held for the account of, (i) a bank, foreign government, monetary or financial authority of a foreign government when acting as such, or international financial institution of which the United States is a member, (ii) an "Edge" or "Agreement" corporation operating under section 25(a) or section 25 of the Federal Reserve Act, or (iii) an agency of the United States;

(2) Evidences an indebtedness arising from a transfer of direct obligations of, or obligations that are fully guaranteed as to principal and interest by, the United States or any agency thereof that the bank is obligated to repurchase;

(3) Has an original maturity of more than 2 years, is unsecured, and states expressly that it is subordinated to the claims of depositors; or

(4) Arises from a borrowing by a member bank from a dealer in securities, for 1 business day, of proceeds of a transfer of deposit credit in a Federal Reserve Bank (or other immediately available funds), commonly referred to as "Federal funds", received by such dealer on the date of the loan in connection with clearance of securities transactions.

This paragraph shall not, however, affect (i) any instrument issued before June 27, 1966, or (ii) any instrument that evidences an indebtedness arising from a transfer of assets under repurchase agreement issued before July 25, 1969.

* * * * *

Upon adoption of these proposed amendments, the interpretation published as § 217.137 (Published Interpretations of the Board, ¶3261) ("Transfer from deposit account to 'borrowed money' account and payment of interest thereon") would be revoked.

The principal effect of the proposal is to bring within the coverage of Regulations D and Q a member bank's liability on a so-called "Federal funds" transaction with any person other than a bank and its subsidiaries, various governmental institutions, or a securities dealer.[3]

Under the proposal, a member bank that "purchases" Federal funds would be under a duty to take such action as may be necessary to ascertain the nature of the "seller" in order to justify classification of its liability on the transaction as "Federal funds purchased" rather than as a deposit. Any member bank that has given general assurance to another member bank that sales by it of Federal funds ordinarily will be for its own account, and thereafter executes such transactions for the account of others, would be expected to indicate the nature of the actual lender with respect to each such transaction. If it failed to do so, the selling bank would be responsible for any resulting violation of Regulation Q and would be deemed by the Board as violating section 19 and Regulation Q, since it would have caused the purchasing bank's inadvertent nonconformance.

Although the proposal relates mainly to the permissible scope of Federal funds transactions outside Regulations D and Q, the proposal is also designed to maintain the effectiveness of the Board's 1966 action under which promissory notes issued by a member bank principally as a means of obtaining funds to be used in its banking business are classified as deposits.[4]

To the same extent as at present, liabilities on borrowings from a bank (including a member bank, a nonmember commercial bank, a mutual savings bank, a cooperative bank, the Export-Import Bank of the United States, the Government Development Bank in Puerto Rico, and a foreign bank) would remain exempt from the reserve requirements and interest rate limitations of Regulations D and Q. In particular, liabilities on borrowings from foreign offices of banks, while remaining exempt from Regulation Q, would remain subject to the special reserve requirements of § 204.5(c) of Regulation D, which became effective September 4, 1969 (34 F.R. 13409, Aug. 20, 1969).

New provisions would be added under which (1) a member bank's liability on a borrowing from a Federal agency would be exempt from Regulations D and Q, and (2) a member bank's liability on a borrowing from a foreign government, a monetary or financial authority of a foreign government when acting as such, or an international financial institution of which the United States is a member would be exempt from Regulation Q. If the latter provision is adopted, § 204.5(c) of Regulation D will be amended so that the special reserve requirement thereof would apply to borrowings from the specified classes of institutions, just as are borrowings from foreign banking offices.

The proposal applies to nondocumentary obligations as well as documentary obligations undertaken by a member bank to obtain funds for use in its banking business. Also, under the proposal, in order for any bank liability to another bank, Edge or Agreement corporation, or certain official institutions to be classified as a nondeposit, the liability must be for the account of such an organization. Except for Federal funds transactions, the procedures with respect to which have already been described, the Board expects that any such liability would be issued on a nontransferable basis.

To aid in the consideration of this matter by the Board, interested persons are invited to submit relevant data, views, or arguments. Any such material should be submitted in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than October 20, 1969. Under the Board's rules regarding availability of information (12 CFR Part 261), such materials will be made available for inspection and copying upon request unless the person submitting the material requests that it be considered confidential.

By order of the Board of Governors, September 18, 1969.

[SEAL] ROBERT P. FORRESTAL,
Assistant Secretary.

[F.R. Doc. 69-11536; Filed, Sept. 26, 1969; 8:47 a.m.]

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[3] The only liability on a Federal funds transaction with a securities dealer that would be exempt from the reserve requirements and interest rate limitations of Regulations D and Q is one that arises from a borrowing for 1 business day of Federal funds received by the dealer from the clearance of securities transactions on the date of the borrowing. The Board considers that the option of settling securities transactions in Federal funds facilitates the efficient functioning of certain key U.S. securities markets. Use of this option might tend to be inhibited if dealer sales of such Federal funds to banks were subject to the regulations.

[4] Where a member bank issues an obligation principally for another purpose—such as usually would be the case with respect to a due bill issued to evidence the bank's liability to deliver securities or foreign exchange sold—it need not classify its liability thereon as a deposit. However, the circumstances surrounding an obligation issued principally for a purpose other than obtaining funds for use in the ordinary course of business may cause an obligation to become subject to Regulation Q—for example, if the bank's liability on a due bill extended beyond a period exceeding that necessary to complete the securities sale, or if the bank paid interest to the customer in excess of the amount that accrued on the securities sold during the delay in delivery.

Notices

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Serial A 3732]

ARIZONA

Notice of Proposed Classification of Public Lands for Transfer Out of Federal Ownership

SEPTEMBER 19, 1969.

1. Pursuant to the Act of September 19, 1964 (43 U.S.C. 1412), it is proposed to classify the public lands and acquired lands described below for transfer out of Federal ownership by private, State, or National Park system exchanges under the authority of section 8 of the Act of June 28, 1934 (48 Stat. 1272), as amended (43 U.S.C. 315g); the Act of October 8, 1964 (78 Stat. 1039, 16 U.S.C. 460n); and the Act of September 13, 1962 (76 Stat. 538, 16 U.S.C. 459c). As used in this order, the term "public lands" means any lands withdrawn or reserved by Executive Order No. 6910 of November 26, 1934, as amended, or within a grazing district established pursuant to the Act of June 28, 1934 (48 Stat. 1269), as amended, which are not otherwise withdrawn or reserved for a Federal use or purpose.

The acquired lands involved were acquired under the Bankhead Jones Farm Tenant Act and may be transferred only by exchange.

2. Publication of this notice has the effect of segregating the described lands from all forms of appropriation under the public land laws except those listed in section 1 above, including the mining and mineral leasing laws.

3. The lands proposed for classification in this notice are shown on a map on file and available for inspection in the Safford District Office, Bureau of Land Management, 1707 Thatcher Boulevard, Safford, Ariz.

4. The lands involved are located in the northeast corner of Cochise County and are described as follows:

ACQUIRED LANDS

GILA AND SALT RIVER MERIDIAN, ARIZONA

T. 13 S., R. 30 E.
Sec. 7;
Sec. 10, S½SE¼;
Sec. 11, N½NE¼, SE¼NE¼, S½SE¼, and SW¼;
Sec. 12, SW¼NW¼;
Sec. 13, W½SE¼ and SE¼SE¼;
Sec. 14, N½NE¼ and SW¼;
Sec. 15, S½NW¼;
Sec. 22, SW¼;
Sec. 23, S½NE¼ and NW¼;
Sec. 24, NE¼ and SE¼SW¼;
Sec. 26, E½NE¼SE¼ and SE¼SE¼ (except E½SE¼SE¼SE¼);
Sec. 35, SE¼.

T. 13 S., R. 31 E.,
Sec. 17, S½;
Sec. 18, NE¼SW¼, lot 3, and lot 4 (except SW¼SW¼SW¼);
Sec. 20, SW¼SW¼;
Sec. 29, W½NW¼ and NW¼SW¼;
Sec. 31, lot 2.
T. 14 S., R. 30 E.,
Sec. 1, SE¼;
Sec. 11, E½SE¼;
Sec. 13, NE¼;
Sec. 24, NW¼ and S½.
T. 14 S., R. 31 E.,
Sec. 3, N½SE¼ and SE¼SE¼ (except SE¼SE¼SE¼SE¼);
Sec. 4, E½SE¼ and SW¼SW¼;
Sec. 5, SE¼SE¼;
Sec. 6, N½SW¼;
Sec. 8, E½SW¼, W½SE¼, and NW¼;
Sec. 9, N½NW¼;
Sec. 12, W½SE¼;
Sec. 13, SE¼;
Sec. 17, E½ and SW¼;
Sec. 18, S½SE¼;
Sec. 19, SE¼;
Sec. 20, S½S½;
Sec. 21, E½;
Sec. 22, NW¼;
Sec. 23, SW¼NE¼ and W½SE¼;
Sec. 28, S½SE¼;
Sec. 33, E½;
Sec. 34, N½S½.
T. 14 S., R. 32 E.,
Sec. 19, SE¼SE¼ and lot 4;
Sec. 20, W½SW¼;
Sec. 29, W½NW¼, NW¼SW¼, SE¼NW¼, and SW¼NE¼.

PUBLIC LANDS

GILA AND SALT RIVER MERIDIAN, ARIZONA

T. 14 S., R. 31 E.,
Sec. 11, NE¼;
Sec. 13, W½NE¼.
T. 14 S., R. 32 E.,
Sec. 18, lot 3, NE¼SW¼.
T. 15 S., R. 30 E.,
Sec. 26, W½SW¼, NW¼SE¼, and NE¼SW¼;
Sec. 35, NW¼NW¼.

The lands described aggregate approximately 7,787.22 acres.

5. The above lands have been identified as not being needed for Federal land management programs.

For a period of 60 days from date of publication of this notice in the FEDERAL REGISTER, all persons who wish to submit comments, suggestions, or objections in connection with the proposed classification may present their views in writing to the State Director, Bureau of Land Management, 3022 Federal Building, Phoenix, Ariz. 85025, or to the District Manager, Bureau of Land Management, Post Office Box 786, Safford, Ariz. 85546.

FRED J. WEILER,
State Director.

[F.R. Doc. 69-11512; Filed, Sept. 26, 1969; 8:45 a.m.]

[Serial A 4184]

ARIZONA

Notice of Proposed Classification of Public Lands for Transfer Out of Federal Ownership by Indemnity Lieu Selection

SEPTEMBER 19, 1969.

1. Pursuant to the Act of September 19, 1964 (43 U.S.C. 1411–18) and to the regulations in 43 CFR Parts 2410 and 2411, it is proposed to classify the public lands described below for transfer out of Federal ownership by Indemnity Lieu Selection (43 U.S.C. 851, 852). Publication of this notice has the effect of segregating all the described lands from appropriation under all other land laws, including the mining and mineral leasing laws. As used herein, the term "public lands" means any lands (1) withdrawn or reserved by Executive Order No. 6910 of November 26, 1934, as amended, or (2) within a grazing district established pursuant to the Act of June 28, 1934 (48 Stat. 1269), as amended, which are not otherwise withdrawn or reserved for a Federal use or purpose.

2. The public lands proposed for classification in this notice are shown on maps on file and available for inspection, in the Phoenix District Office, Bureau of Land Management, and Land Office, Bureau of Land Management, Federal Building, Phoenix, Ariz.

3. The lands involved are surveyed but the survey plat has not yet been approved. When approved, they probably will be described as follows:

YAVAPAI COUNTY

GILA AND SALT RIVER MERIDIAN

T. 17 N., R. 8 W.,
Sec. 19, lots 1, 2, 3, 4, and 5, SE¼SW¼ and S½SE¼;
Sec. 20, lots 1, 2, 3, and 4, and S½S½;
Sec. 21, lots 1, 2, 3, and 4, and S½;
Sec. 22, lots 1, 2, 3, and 4, and S½;
Sec. 23, lots 1, 2, 3, and 4, and S½;
Sec. 24, lots 1, 2, 3, and 4, and S½S½;
Sec. 25, all;
Sec. 26, all;
Sec. 27, all;
Sec. 28, all;
Sec. 29, all;
Sec. 30, lots 1, 2, 3, and 4, E½W½ and E½;
Sec. 31, lots 1, 2, 3, and 4, E½W½ and E½;
Sec. 32, all;
Sec. 33, all;
Sec. 34, all;
Sec. 35, all;
Sec. 36, all.

The area described aggregates approximately 9,656.89 acres.

4. For a period of 60 days from the date of publication of this notice in the FEDERAL REGISTER, all persons who wish

to submit comments, suggestions, or objections in connection with the proposed classification may present their views in writing to the Phoenix District Manager, Bureau of Land Management, Federal Building, Phoenix, Ariz. 85025.

FRED J. WEILER,
State Director.

[F.R. Doc. 69-11513; Filed, Sept. 26, 1969; 8:45 a.m.]

[S 2635]

CALIFORNIA

Notice of Proposed Classification of Public Lands for Transfer Out of Federal Ownership

AUGUST 5, 1969.

1. Pursuant to the Act of September 19, 1964 (43 U.S.C. 1412), and to the regulations in 43 CFR 2410 and 2411, it is proposed to classify the public lands in paragraph 3 for transfer out of Federal ownership under one or more of the below-stated statutes.

2. Publication of this notice has the effect of segregating the following described public lands from all forms of disposal under the public land laws, including the mining laws, except the form or forms of disposal for which it is proposed to classify the lands. However, publication does not alter the applicability of the public land laws governing the use of the lands under lease, license, or permit, or govern the disposal of their mineral and vegetative resources, other than under the mining laws.

3. The below-described lands proposed to be classified for disposal are located in Mendocino and Sonoma Counties. The proposals have been discussed and analyzed in detail with the counties and with other agencies, groups, and individuals. Maps and other information are available for inspection in the Ukiah District Office, Bureau of Land Management, 168 Washington Avenue, Ukiah, Calif. 95482.

For disposal at public sale under section 2455 of the Revised Statutes (43 U.S.C. 1171):

MOUNT DIABLO MERIDIAN

MENDOCINO AND SONOMA COUNTIES

Group I

T. 6 N., R. 6 W.,
Sec. 23, lot 8.
T. 8 N., R. 7 W.,
Sec. 4, lots 1 and 2.
T. 10 N., R. 9 W.,
Sec. 3, unsurveyed portion;
Sec. 25, portion of lot 40.
T. 11 N., R. 10 W.,
Sec. 10;
Sec. 11, lot 41.
T. 9 N., R. 11 W.,
Sec. 22, E½NE¼, SW¼NE¼, and S½SW¼;
Sec. 23, NE¼SW¼;
Sec. 27, NW¼NE¼.
T. 10 N., R. 11 W.,
Sec. 2, lot 1.
T. 9 N., R. 12 W.,
Sec. 13, NW¼SW¼.
T. 13 N., R. 12 W.,
Sec. 7, lot 3;
Sec. 18, lot 1.
T. 14 N., R. 12 W.,
Sec. 30, NW¼NW¼.
T. 16 N., R. 12 W.,
Sec. 1, NW¼SE¼;
Sec. 10, lots 1 and 2;
Sec. 11, SW¼NE¼.
T. 17 N., R. 12 W.,
Sec. 2, NE¼SE¼;
Sec. 6, lots 6 and 7;
Sec. 7, lot 1;
Sec. 14, NE¼SW¼;
Sec. 15, lot 2 and SE¼SE¼;
Sec. 23, lot 2;
Sec. 30, lot 12.
T. 18 N., R. 12 W.,
Sec. 32, SW¼NE¼.
T. 13 N., R. 13 W.,
Sec. 12, SW¼NE¼ and SE¼NW¼.
T. 14 N., R. 13 W.,
Sec. 24, SW¼NW¼;
Sec. 34, NE¼NW¼.
T. 15 N., R. 13 W.,
Sec. 23, E½NW¼;
Sec. 26, NW¼SE¼.
T. 17 N., R. 13 W.,
Sec. 1, lot 9.
T. 18 N., R. 13 W.,
Sec. 15, SW¼NW¼.
T. 24 N., R. 13 W.,
Sec. 14, lot 3;
Sec. 24, lot 1 and NW¼NE¼.
T. 15 N., R. 14 W.,
Sec. 13, S½N½;
Sec. 24, NE¼NE¼.
T. 23 N., R. 14 W.,
Sec. 33, NW¼NW¼.
T. 21 N., R. 15 W.,
Sec. 30, E½NE¼.
T. 23 N., R. 15 W.,
Sec. 17, SW¼;
Sec. 18, NE¼SE¼;
Sec. 20, NW¼NE¼, N½NW¼, and SW¼NW¼;
Sec. 21, SE¼SW¼;
Sec. 28, W½NE¼.
T. 24 N., R. 15 W.,
Sec. 3, lots 3 and 4.
T. 12 N., R. 17 W.,
Sec. 1, lot 10.

The public lands described above aggregate approximately 2,311.86 acres.

Group II

For exchange under section 8 of the Taylor Grazing Act (43 U.S.C. 315g), or for sale under section 2455 of the Revised Statutes (43 U.S.C. 1171):

T. 19 N., R. 14 W.,
Sec. 23, SE¼NW¼.
T. 23 N., R. 15 W.,
Sec. 26, S½SE¼.
T. 13 N., R. 16 W.,
Sec. 9, NE¼SW¼.
T. 14 N., R. 16 W.,
Sec. 10, NW¼NE¼.
T. 24 N., R. 17 W.,
Sec. 22, SE¼NW¼.

The public lands described above aggregate approximately 240 acres.

Group III

For disposal through the Point Reyes National Seashore Act of September 13, 1962 (76 Stat. 538) and all other forms of exchange, or for sale under section 2455 of the Revised Statutes (43 U.S.C. 1171):

T. 13 N., R. 13 W.,
Sec. 2, lot 1, S½NE¼, SE¼NW¼, E½SW¼, and NW¼SE¼;
Sec. 9, NE¼SW¼;
Sec. 13, NE¼SW¼.
T. 12 N., R. 14 W.,
Sec. 4, Lot 4.
T. 13 N., R. 14 W.,
Sec. 28, E½NW¼.
T. 22 N., R. 14 W.,
Sec. 5, lot 7;
Sec. 6, lot 4;
Sec. 30, lots 5 and 6, and NW¼SE¼.
T. 23 N., R. 14 W.,
Sec. 30, N½ lot 6.
T. 13 N., R. 15 W.,
Sec. 10, SW¼SE¼.
T. 23 N., R. 15 W.,
Sec. 3, SW¼SE¼;
Sec. 10, lots 1 and 2.
T. 24 N., R. 15 W.,
Sec. 9, SE¼SE¼;
Sec. 10, W½NW¼ and NW¼SW¼;
Sec. 11, NE¼SW¼ and SE¼;
Sec. 12, SW¼SW¼;
Sec. 30, SE¼SE¼.

The public lands described above aggregate approximately 1,252.23 acres.

Group IV

For disposal through the Point Reyes National Seashore Act of September 13, 1962 (76 Stat. 538), or for State Indemnity Lieu Selection (43 U.S.C. 851, 852):

T. 7 N., R. 6 W.,
Sec. 9, NE¼SW¼.
T. 7 N., R. 7 W.,
Sec. 11, E½NE¼;
Sec. 12, SW¼NW¼ and NW¼SW¼.
T. 14 N., R. 13 W.,
Sec. 18, N½SE¼.
T. 17 N., R. 13 W.,
Sec. 2, NE¼SE¼.
T. 14 N., R. 14 W.,
Sec. 1, SE¼NE¼;
Sec. 24, N½NE¼.

The public lands described above aggregate approximately 440 acres.

Group V

For disposal through State Indemnity Lieu Selection (43 U.S.C. 851, 852), or for lease or sale under Recreation and Public Purposes Act (44 Stat. 741 and 68 Stat. 173; 43 U.S.C. 869):

T. 7 N., R. 6 W.,
Sec. 5, W½ lot 3, W½ lot 4, and lots 7 to 10, inclusive.
T. 8 N., R. 6 W.,
Sec. 32, SW¼SW¼.
T. 10 N., R. 10 W.,
Sec. 32, SE¼NE¼, E½SE¼, and SW¼SE¼.

The public lands described above aggregate approximately 465.81 acres.

Group VI

For State Indemnity Lieu Selection (43 U.S.C. 851, 852):

T. 9 N., R. 11 W.,
Sec. 22, E½NE¼, SW¼NE¼, and S½SW¼;
Sec. 23, NE¼SW¼;
Sec. 27, NW¼NE¼.
T. 18 N., R. 13 W.,
Sec. 24, SW¼SW¼;
Sec. 25, lot 3.
T. 13 N., R. 15 W.,
Sec. 31, NW¼NE¼ and lots 9 to 11, inclusive.
T. 23 N., R. 15 W.,
Sec. 17, SW¼;
Sec. 18, NE¼SE¼;
Sec. 20, NW¼NE¼, N½NW¼, and SW¼NW¼;
Sec. 32, lots 3 to 6, inclusive, and SE¼NE¼.
T. 13 N., R. 16 W.,
Sec. 25, SE¼.
T. 19 N., R. 17 W.,
Sec. 4, SW¼NW¼ and N½SW¼;
Sec. 8, SE¼NE¼ and E½SE¼;
Sec. 17, SE¼SW¼.

The public lands described above aggregate 1,501.54 acres.

4. For a period of 60 days from the date of publication of this notice in the FEDERAL REGISTER, all persons who wish to submit comments, suggestions, or objections in conection with the proposed

classification may present their views in writing to the Ukiah District Manager, Bureau of Land Management, 168 Washington Avenue, Ukiah, Calif. 95482.

5. A hearing will be held if sufficient public interest is demonstrated.

R. E. McCarthy,
Acting State Director.

[F.R. Doc. 69-11516; Filed, Sept. 26, 1969; 8:45 a.m.]

Oil Import Administration

[Bulletin 3]

APPLICATIONS FOR OIL IMPORT ALLOCATIONS AND LICENSES FOR PERIOD BEGINNING JANUARY 1, 1970

1. Section 5 of Oil Import Regulation 1 (Revision 5), as amended, requires that applications for allocations and licenses of imports of crude oil, unfinished oils, or finished products be filed not later than 60 days prior to the beginning of an allocation period and subparagraph (2) of paragraph (a) of section 25 of Oil Import Regulation 1 (Revision 5), as amended, requires that applications for allocations of imports of crude oil and unfinished oils for new or reactivated refinery capacity and for petrochemical plants based on estimated inputs be filed not later than 60 days prior to the beginning of an allocation period.

2. Timely filing of applications under section 5 or under section 25 of Oil Import Regulation 1 (Revision 5), as amended, is deemed essential and, with respect to the allocation period beginning January 1, 1970, the Administrator will no longer follow the practice, sometimes indulged with respect to prior allocations periods, of recommending waiver of such timely filing requirements.

3. As a matter of convenience to prospective applicants, within approximately 90 days prior to the beginning of the allocation period, forms of applications for allocations and licenses will, so far as practicable, be mailed to persons, firms and corporations on a list compiled by the Oil Import Administration of persons, firms, or corporations likely, in the judgment of the Administrator, to be interested in filing applications for allocations and licenses of imports of crude oil, unfinished oils, or finished products or applications for allocations of crude and unfinished oils for new or reactivated refinery capacity or petrochemical plants based upon estimated inputs. The compilation of the list above described is not to be construed as a representation that the same is complete and neither the United States nor its officers or employees assume responsibility or liability for the failure, negligent or otherwise, to include in such list any person, firm, or corporation so interested, or for the failure to mail the requisite form or forms to any person, firm or corporation, whether or not such person, firm, or corporation is on such a list. The failure of any person, firm, or corporation to receive a requisite application form or forms will not constitute a basis for recommending waiver of the timely filing requirements of Oil Import Regulation 1 (Revision 5), as amended.

J. J. Simmons, III,
Administrator,
Oil Import Administration.

September 3, 1969.

[F.R. Doc. 69-11580; Filed, Sept. 26, 1969; 8:49 a.m.]

[Bulletin 4]

ALLOCATIONS; PETROCHEMICAL PLANTS USING EXTENDER OILS IN MANUFACTURING SYNTHETIC RUBBER

1. For the 1969 allocation period, the Oil Import Administration refused to grant any allocation based upon the use of "extender oils" in the manufacture of synthetic rubber. The Administrator disallowed the use of these extender oils as a base for the calculation of the 1969 quota allocations upon the ground that there was no chemical conversion of the extender oils within the meaning of section 22(n) of Oil Import Regulation 1 (Revision 5), as amended.

2. The Oil Import Appeals Board in its consolidated decision of Firestone Tire and Rubber Co., Q-46, Ashland Oil and Refining Co., Q-74 and Goodrich-Gulf Chemicals, Inc., Q-72, stated, "Therefore, it is the opinion of the Board that the interpretation of chemical reaction applied by the Oil Import Administration is too narrow, and disallowance of the oil claimed by these petitioners as inputs, constitutes error."

3. In view of this finding by the Board, applicants for oil import allocations and licenses for the allocation period beginning January 1, 1970, based upon petrochemical plant operations for the year ending September 30, 1969, should include for consideration by the Oil Import Administration as "petrochemical plant inputs" any extender oils used in the manufacture of synthetic rubber.

J. J. Simmons III,
Administrator,
Oil Import Administration.

September 3, 1969.

[F.R. Doc. 69-11581; Filed, Sept. 26, 1969; 8:49 a.m.]

DEPARTMENT OF AGRICULTURE

Packers and Stockyards Administration

[P. & S. Docket No. 445]

MARKET AGENCIES AT FORT WORTH STOCKYARDS

Notice of Petition To Vacate Order and Dismiss Proceeding

Pursuant to the provisions of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 et seq.), a basic order was issued on July 12, 1935 in the case of In re: W. H. Abernathy and Charles J. Turner, Jr., trading as Abernathy Live Stock Commission Company et al., respondents prescribing the rates and charges to be assessed by the respondents for the stockyard services rendered by them at the Fort Worth Stockyards, Fort Worth, Tex. Such rates and charges have been modified from time to time by subsequent orders issued in the proceeding. The latest such order was issued on June 17, 1969, prescribing the rates and charges to be assessed by respondents to and including May 31, 1971, unless modified or extended by further order before the latter date.

On August 11, 1969, the respondents filed a petition requesting that the rate order in this proceeding be vacated and the proceeding dismissed in conformity with § 203.11 (9 CFR 203.11) of the Statements of General Policy under the Packers and Stockyards Act. The petition reads as follows:

> Comes now the respondents, who request that the rate order in this proceeding be vacated and the proceeding be dismissed in accordance with section 203.11 of the Statements of General Policy under the Packers and Stockyards Act (9 CFR 203.11).
>
> The basic rate order in this proceeding was issued July 12, 1935. Respondents are now operating under an order issued February 7, 1966 (25 A.D. 166) as modified. Such orders to remain in effect unless modified or extended by further order until May 31, 1971.
>
> Respondents do not believe the marketing structure in their trade territory, economic conditions in the industry, or any other circumstances requires continuing the formal procedure for obtaining modification in the rates and charges assessed by respondents. It is requested, therefore, that this petition be granted as soon as possible.

Any interested person may file with the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C. 20250, within 15 days after the publication of this notice in the Federal Register, written data, views, comments, or arguments with respect to the petition filed by respondents.

All written submissions made pursuant to this notice will be made available for public inspection at such times and places and in a manner convenient to the public business (7 CFR 1.27(b)).

Done at Washington, D.C., this 22d day of September 1969.

Glenn G. Bierman,
Acting Administrator, Packers and Stockyards Administration.

[F.R. Doc. 69-11535; Filed, Sept. 26, 1969; 8:47 a.m.]

DEPARTMENT OF COMMERCE

Maritime Administration

OCEANIC STEAMSHIP CO.

Notice of Application for Approval of Certain Cruises

Notice is hereby given that The Oceanic Steamship Co. has applied for approval pursuant to section 613 of the Merchant Marine Act, 1936, as amended, of the following cruises:

Ship	Approximate cruise dates 1970	Itinerary
Monterey	Apr. 2-Apr. 14	San Francisco, Los Angeles, San Diego, Acapulco, Puerto Vallarta, Mazatlan, Los Angeles.
Do	Apr. 15-Apr. 25	San Diego, Los Angeles, Acapulco, Puerto Vallarta, Mazatlan, Los Angeles, San Francisco.
Do	Apr. 26-May 17	San Diego, Los Angeles, San Francisco, Honolulu, Nawiliwili, Lahaina, Hilo, Kailua (Kona), Honolulu, Los Angeles, San Francisco.
Do	May 23-June 21	San Francisco, Los Angeles, Mazatlan, Galapagos, Callao, Guayaquil, Balboa, Taboga, Acapulco, Los Angeles, San Francisco.
Do	June 22-July 5	Los Angeles, San Francisco, Seattle, Victoria, Sitka, Juneau, Skagway, Vancouver, Los Angeles, San Francisco.
		Itinerary (each cruise)
Mariposa	July 29-Aug. 11 Aug. 12-Aug. 24 Aug. 25-Sept. 6	San Francisco, Los Angeles, Vancouver, Juneau, Skagway, Sitka, Victoria, San Francisco, Los Angeles.

Any person, firm, or corporation having any interest, within the meaning of section 613 of the Merchant Marine Act, 1936, as amended, in the foregoing who desires to offer data, views, or arguments should submit the same in writing, in triplicate, to the Secretary, Maritime Subsidy Board, Washington, D.C. 20235, by the close of business on October 10, 1969.

In the event an opportunity to present oral argument is also desired, specific reason for such request should be included. The Maritime Subsidy Board will consider these comments and views and take such action with respect thereto as in its discretion it deems warranted.

By order of the Maritime Subsidy Board.

Dated: September 24, 1969.

JOHN M. O'CONNELL,
Assistant Secretary.

[F.R. Doc. 69-11563; Filed, Sept. 26, 1969; 8:49 a.m.]

FEDERAL HOME LOAN BANK BOARD

[H.C. No. 40]

IMPERIAL CORPORATION OF AMERICA

Notice of Receipt of Application for Approval of Acquisition of Control of Presidio Savings and Loan Association

SEPTEMBER 24, 1969.

Notice is hereby given that Federal Savings and Loan Insurance Corporation has received an application from the Imperial Corporation of America, San Diego, Calif., for approval of acquisition of control of the Presidio Savings and Loan Association, Santa Barbara, Calif., an insured institution, under the provisions of section 408(e) of the National Housing Act, as amended (12 U.S.C. 1730 (a)), and § 584.4 of the regulations for Savings and Loan Holding Companies, said acquisition to be effected by the exchange of at least 80 percent of the guarantee stock of Presidio Savings and Loan Association for stock of Imperial Corporation of America. Comments on the proposed acquisition should be submitted to the Director, Office of Examinations and Supervision, Federal Home Loan Bank Board, Washington, D.C. 20552, within 30 days of the date this Notice appears in the FEDERAL REGISTER.

[SEAL] GRENVILLE L. MILLARD, JR.
Assistant Secretary,
Federal Home Loan Bank Board.

[F.R. Doc. 69-11558; Filed, Sept. 26, 1969; 8:49 a.m.]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[DESI 10240]

SULFAMETHIZOLE AND METHENAMINE MANDELATE COMBINATION; PHENOBARBITAL AND PIPENZOLATE BROMIDE COMBINATION; PHENOBARBITAL, AMINOPENTAMIDE SULFATE, AND RESERPINE COMBINATION; ACETYLCARBROMAL, MEPHENESIN, AND RESERPINE COMBINATION; STYRAMATE; AND STYRAMATE, SALICYLAMIDE, PHENACETIN, AND CAFFEINE COMBINATION

Drugs for Human Use; Drug Efficacy Study Implementation

The Food and Drug Administration has evaluated reports received from the National Academy of Sciences-National Research Council, Drug Efficacy Study Group, on the following drugs:

1. Mesulfin Tablets containing 250 milligrams sulfamethizole and 250 milligrams methenamine mandelate, per tablet; Ayerst Laboratories, Inc., 685 Third Avenue, New York, N.Y. 10017 (NDA 12-718).

2. Pediatric Piptal with Phenobarbital Drops containing 6 milligrams phenobarbital and 4 milligrams pipenzolate bromide per milliliter; Lakeside Laboratories, Division of Colgate-Palmolive Co., 1707 East North Avenue, Milwaukee, Wis. 53201 (NDA 10-240).

3. Neuro-Centrine Tablets containing 15 milligrams phenobarbital, 0.25 milligram aminopentamide sulfate, and 0.05 milligram reserpine per tablet; Bristol Laboratories, Division Bristol-Myers Co., Syracuse, N.Y. 13201 (NDA 10-428).

4. Amril Tablets containing 200 milligrams acetylcarbromal, 150 milligrams mephenesin, and 0.50 milligram reserpine per tablet; Amfre-Grant, Inc., 924 Rogers Avenue, Brooklyn, N.Y. 11226 (NDA 12-004).

5. Myospaz Tablets containing 200 milligrams styramate, 210 milligrams salicylamide, 150 milligrams phenacetin and 30 milligrams caffeine per tablet; North American Pharmacal, Inc., 6851 Chase Road, Dearborn, Mich. 48126 (NDA 12-844).

6. Strexate Tablets containing 200 milligrams styramate, 210 milligrams salicylamide, 150 milligrams phenacetin, and 30 milligrams caffeine per tablet; Armour Pharmaceutical Co., Box 511, Kankakee, Ill. 60901 (NDA 12-466).

7. Sinaxar Tablets containing 200 milligrams styramate per tablet; Armour Pharmaceutical Co. (NDA 11-339).

The Food and Drug Administration has concluded on an overall basis that there is a lack of substantial evidence that these drugs will have the effects they purport or are recommended to have. Accordingly, the Commissioner of Food and Drugs intends to initiate proceedings to withdraw approval of the above-listed new-drug applications.

Prior to initiating such action, however, the Commissioner invites the holders of new-drug applications for these drugs and any interested person who may be adversely affected by their removal from the market to submit any pertinent data bearing on the proposal within 30 days after the date of publication of this notice in the FEDERAL REGISTER. The only material which will be considered acceptable for review must be well-organized and consist of adequate and well-controlled studies bearing on the efficacy of the products, and not previously submitted.

This announcement of the proposed action and implementation of the NAS-NRC report for these drugs is made to give notice to persons who might be adversely affected by their withdrawal from the market. Promulgation of an order withdrawing approval of the new-drug applications will cause any such drug on the market to be a new drug for which an approved new drug-application is not in effect and will make it subject to regulatory action.

The above named holders of the subject new-drug applications have been mailed a copy of the NAS-NRC reports and any interested person may obtain a copy on request from the office named below.

Communications forwarded in response to this announcement should be identified with the reference number, DESI 10240, and be directed to the following appropriate office and addressed to the Food and Drug Administration, 200 C Street SW., Washington, D.C. 20204:

Requests for NAS-NRC report: Press Relations Office (CE-300).

All other communications regarding this announcement: Special Assistant for Drug Efficacy Study Implementation (MD-16), Bureau of Medicine.

This announcement is issued pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sections 502, 505, 52 Stat. 1050-53, as amended; 21

U.S.C. 352, 355) and under authority delegated to the Commissioner (21 CFR 2.120).

Dated: September 19, 1969.

HERBERT L. LEY, JR.,
Commissioner of Food and Drugs.

[F.R. Doc. 69-11510; Filed, Sept 26, 1969; 8:45 a.m.]

[Docket No. FDC-D-122; NDA No. 10-491]

LEMMON PHARMACAL CO.

Anergex (Poison-oak Extract for Injection); Amended Notice of Opportunity for Hearing

A notice of opportunity for hearing was published in the FEDERAL REGISTER of February 27, 1969 (34 F.R. 2680), on a proposal to withdraw approval of new-drug application No. 10-491 and all amendments and supplements thereto held by Lemmon Pharmacal Co. (Mulford Laboratories Division), Sellersville, Pa. 18960, for the drug Anergex (poison-oak extract) under the provisions of section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)), on the grounds that new information before the Commissioner with respect to such drug, evaluated with the evidence available to him when the application was approved, shows that substantial evidence is lacking that the drug has the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in its labeling.

The applicant, Lemmon Pharmacal Co., had been notified by letter dated November 12, 1968, from the Bureau of Medicine, following a conference with representatives of the Administration, that certain manufacturing and control data were required to assure that Anergex will have the characteristics of identity, strength, quality, and purity that it purports or is represented to possess.

The Commissioner provided the applicant with written notice by letter dated March 11, 1969, that the methods used in and the facilities and controls used for the manufacture, processing, and packing of the drug, as specified in the letter of November 12, 1968, are inadequate to assure and preserve the drug's identity, strength, quality, and purity, and provided an opportunity for correction pursuant to section 505(e) of said act.

Information provided by the applicant on March 25, 1969, has been evaluated as inadequate to correct the matters complained of. Accordingly, Lemmon Pharmacal Co. is hereby notified that the notice of opportunity for hearing is amended to include the additional ground under section 505(e) of the act that the Commissioner finds on the basis of new information before him, evaluated with the evidence before him when the application was approved, that the methods used in and the facilities and controls used for the manufacture, processing, and packing of such drug are inadequate to assure and preserve its identity, strength, quality, and purity and were not made adequate within a reasonable time after receipt of written notice from the Commissioner specifying the matter complained of.

This notice is issued pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 505, 52 Stat. 1052-53, as amended; 21 U.S.C. 355) and under authority delegated to the Commissioner (21 CFR 2.120).

Dated: September 19, 1969.

HERBERT L. LEY, JR.,
Commissioner of Food and Drugs.

[F.R. Doc. 69-11511; Filed, Sept. 26, 1969; 8:45 a.m.]

Office of the Secretary

INTERSTATE AIR POLLUTION IN THE PARKERSBURG, W. VA.-MARIETTA, OHIO, AREA

Air Pollution Control

Notice of date, time, and place of reconvened conference.

Pursuant to the call of the Secretary of November 17, 1966, a conference of air pollution control agencies in the Parkersburg, W. Va.-Marietta, Ohio, area was held in Vienna, W. Va., on March 22 and 23, 1967.

Following the close of the conference, participants from the States of West Virginia and Ohio communicated additional views and informaiton to the Department of Health, Education, and Welfare concerning the discussions at the conference and related to the findings and conclusions reached by the conference participants.

Accordingly, in order to assure that the record of the conference accurately reflects the discussions, views, and information available to the participants and to afford opportunity for interested persons to be heard, notice that this conference will be reconvened on Thursday, October 30, 1969, beginning at 10 a.m., e.s.t., at the Vienna Community Building, 34th Street, Jackson Road, Vienna, W. Va., is hereby given to the Ohio Air Pollution Control Board, State of Ohio; the West Virginia Air Pollution Control Commission, State of West Virginia; and to the air pollution control agencies of the following municipalities (as defined in section 302(f) of the Clean Air Act, as amended (42 U.S.C. 1857 h(f))):

In the State of Ohio: Washington County; Belpre, Dunham, Fearing, Marietta, Muskingum, and Warren Townships, Washington County; and municipalities located within such townships.

In the State of West Virginia: Wood County; Clay, Lubeck, Parkersburg, Slate, Tygart, Union, and Williams Magisterial Districts, Wood County; and municipalities located within such magisterial districts.

Mr. William H. Megonnell is hereby designated as presiding officer of the reconvened conference, and Mr. Donald F. Walters is hereby designated as the official conference participant for the Department of Health, Education, and Welfare.

Any agency or municipality desiring to make a formal presentation at the reconvened conference should file a notice of such intention with the Presiding Officer, National Air Pollution Control Administration, Room 907, Ballston Center Tower No. 2, 801 North Randolph Street, Arlington, Va. 22203, not later than October 24, 1969. The agencies called to attend such conference may bring such persons as they desire to the conference.

A technical report concerning air pollution in the Parkersburg, W. Va.-Marietta, Ohio, Interstate Area entitled "Parkersburg, W. Va.-Marietta, Ohio, Air Pollution Abatement Activity" was prepared and issued by the National Air Pollution Control Administration in March 1967. An addendum updating that report has been prepared and both the report and addendum are available upon request to the presiding officer.

Interested persons desiring to present their views to the reconvened conference with respect to such report and addendum and other pertinent information should file, not later than October 24, 1969, a notice of such intention, and, if practicable, five copies of the proposed presentation (and other relevant material) with the presiding officer.

A transcript of the proceedings will be maintained and will be made available on request of any person at the expense of such person.

Dated: September 23, 1969.

JOHN T. MIDDLETON,
Commissioner.

[F.R. Doc. 69-11487; Filed, Sept. 26, 1969; 8:45 a.m.]

Social Security Administration

BOTSWANA

Notice of Finding Regarding Foreign Social Insurance or Pension System

Section 202(t)(1) of the Social Security Act (42 U.S.C. 402(t)(1)) prohibits payment of monthly benefits to aliens, subject to the exceptions described in sections 202(t)(2) through 202(t)(5) of the Social Security Act (42 U.S.C. 402(t)(2) through 402(t)(5)), for any month after they have been outside the United States for 6 consecutive calendar months.

Section 202(t)(2) of the Social Security Act (42 U.S.C. 402(t)(2)) provides that section 202(t)(1) shall not apply to any individual who is a citizen of a foreign country which the Secretary of Health, Education, and Welfare finds has in effect a social insurance or pension system which is of general application in such country and under which (A) periodic benefits, or the actuarial equivalent thereof, are paid on account of old age, retirement, or death, and (B) individuals who are citizens of the United States but not citizens of such foreign country and who qualify for such benefits are permitted to receive such benefits or the

actuarial equivalent thereof while outside such foreign country without regard to the duration of the absence.

Pursuant to authority duly vested in the Commissioner of Social Security by the Secretary of Health, Education, and Welfare, and redelegated to him, the Director of the Bureau of Retirement and Survivors Insurance has approved a finding that Botswana does not have a social insurance or pension system which is of general application in such country.

Accordingly, it is hereby determined and found that Botswana does not have in effect a social insurance or pension system which meets the requirements of section 202(t)(2) of the Social Security Act (42 U.S.C. 402(t)(2)).

The provisions of subparagraphs (A) and (B) of section 202(t)(4) of the Social Security Act (42 U.S.C. 402(t)(4) (A) and (B)) provide that section 202(t)(1) shall not be applicable to benefits payable on the earnings record of an individual who has 40 quarters of coverage under social security or who has resided in the United States for a period or periods aggregating 10 years or more. However, the provisions of subparagraphs (A) and (B) of section 202(t)(4) shall not apply to an individual who is a citizen of a foreign country that has in effect a social insurance or pension system which is of general application in such country and which satisfies the provisions of subparagraph (A) of section 202(t)(2) but not the provisions of subparagraph (B) of section 202(t)(2).

By virtue of the finding herein, the limitation on payment of monthly benefits to aliens included in section 202(t)(1) does not apply to citizens of Botswana receiving benefits on the earnings records of individuals who have 40 quarters of coverage under social security or who have resided in the United States for a period or periods aggregating 10 years or more.

Dated: September 15, 1969.

HUGH F. MCKENNA,
Director, Bureau of Retirement and Survivors Insurance.

[F.R. Doc. 69-11527; Filed, Sept. 26, 1969; 8:46 a.m.]

FEDERATION OF MALAYSIA

Notice of Finding Regarding Foreign Social Insurance or Pension System

Section 202(t)(1) of the Social Security Act (42 U.S.C. 402(t)(1)) prohibits payment of monthly benefits to aliens, subject to the exceptions described in sections 202(t)(2) through 202(t)(5) of the Social Security Act (42 U.S.C. 402(t)(2) through 402(t)(5)), for any month after they have been outside the United States for 6 consecutive calendar months.

Section 202(t)(2) of the Social Security Act (42 U.S.C. 402(t)(2)) provides that section 202(t)(1) shall not apply to any individual who is a citizen of a foreign country which the Secretary of Health, Education, and Welfare finds has in effect a social insurance or pension system which is of general application in such country and under which (A) periodic benefits, or the actuarial equivalent thereof, are paid on account of old age, retirement, or death, and (B) individuals who are citizens of the United States but not citizens of such foreign country and who qualify for such benefits are permitted to receive such benefits or the actuarial equivalent thereof while outside such foreign country without regard to the duration of the absence.

Pursuant to authority duly vested in the Commissioner of Social Security by the Secretary of Health, Education, and Welfare and redelegated to him, the Director of the Bureau of Retirement and Survivors Insurance has approved a finding that the Federation of Malaysia does not have a social insurance or pension system which pays periodic benefits, or the actuarial equivalent thereof, on account of old age, retirement, or death.

Accordingly, it is hereby determined and found that the Federation of Malaysia does not have in effect a social insurance of pension system which meets the requirements of section 202(t)(2)(A) of the Social Security Act (42 U.S.C. 402(t)(2)(A)).

The provisions of subparagraphs (A) and (B) of section 202(t)(4) of the Social Security Act (42 U.S.C. 402(t)(4) (A) and (B)) provide that section 202(t)(1) shall not be applicable to benefits payable on the earnings record of an individual who has 40 quarters of coverage under social security or who has resided in the United States for a period or periods aggregating 10 years or more. However, the provisions of subparagraphs (A) and (B) of section 202(t)(4) shall not apply to an individual who is a citizen of a foreign country that has in effect a social insurance or pension system which is of general application in such country and which satisfies the provisions of subparagraph (A) of section 202(t)(2) but not the provisions of subparagraph (B) of section 202(t)(2).

By virtue of the finding herein, the limitation on payment of monthly benefits to aliens included in section 202(t)(1) does not apply to citizens of the Federation of Malaysia receiving benefits on the earnings records of individuals who have 40 quarters of coverage under social security or who have resided in the United States for a period or periods aggregating 10 years or more.

Dated: September 15, 1969.

HUGH F. MCKENNA,
Director, Bureau of Retirement and Survivors Insurance.

[F.R. Doc. 69-11528; Filed, Sept. 26, 1969; 8:46 a.m.]

MOROCCO

Notice of Finding Regarding Foreign Social Insurance or Pension System

Section 202(t)(1) of the Social Security Act (42 U.S.C. 402(t)(1)) prohibits payment of monthly benefits to aliens, subject to the exceptions described in sections 202(t)(2) through 202(t)(5) of the Social Security Act (42 U.S.C. 402(t)(2) through 402(t)(5)), for any month after they have been outside the United States for 6 consecutive calendar months.

Section 202(t)(2) of the Social Security Act (42 U.S.C. 402(t)(2)) provides that section 202(t)(1) shall not apply to any individual who is a citizen of a foreign country which the Secretary of Health, Education, and Welfare finds has in effect a social insurance or pension system which is of general application in such country and under which (A) periodic benefits, or the actuarial equivalent thereof, are paid on account of old age, retirement, or death, and (B) individuals who are citizens of the United States but not citizens of such foreign country and who qualify for such benefits are permitted to receive such benefits or the actuarial equivalent thereof while outside such foreign country without regard to the duration of the absence.

Pursuant to authority duly vested in the Commissioner of Social Security by the Secretary of Health, Education, and Welfare, and redelegated to him, the Director of the Bureau of Retirement and Survivors Insurance has approved a finding that Morocco does not have a social insurance or pension system of general application in that a relatively small percentage of the paid labor force is covered under the social insurance system of Morocco.

Accordingly, it is hereby determined and found that Morocco does not have in effect a social insurance or pension system of general application which meets the requirements of section 202(t)(2) of the Social Security Act (42 U.S.C. 402(t)(2)).

The provisions of subparagraphs (A) and (B) of section 202(t)(4) of the Social Security Act (42 U.S.C. 402(t)(4) (A) and (B)) to provide that section 202(t)(1) shall not be applicable to benefits payable on the earnings record of an individual who has 40 quarters of coverage under social security or who has resided in the United States for a period or periods aggregating 10 years or more. However, the provisions of subparagraphs (A) and (B) of section 202(t)(4) shall not apply to an individual who is a citizen of a foreign country that has in effect a social insurance or pension system which is of general application in such country and which satisfies the provisions of subparagraph (A) of section 202(t)(2) but not the provisions of subparagraph (B) of section 202(t)(2).

By virtue of the finding herein, the limitation on payment of monthly benefits to aliens included in section 202(t)(1) does not apply to citizens of Morocco receiving benefits on the earnings records of individuals who have 40 quarters of coverage under social security or who have resided in the United States for a period or periods aggregating 10 years or more.

This augments the finding with respect to Morocco published in the FEDERAL REGISTER of July 9, 1960 (25 F.R. 6489).

Dated: September 15, 1969.

HUGH F. MCKENNA,
Director, Bureau of Retirement and Survivors Insurance.

[F.R. Doc. 69-11529; Filed, Sept. 26, 1969; 8:47 a.m.]

THE NETHERLANDS

Notice of Finding Regarding Foreign Social Insurance or Pension System

Section 202(t)(1) of the Social Security Act (42 U.S.C. 402(t)(1)) prohibits payment of monthly benefits to aliens, subject to the exceptions described in sections 202(t)(2) through 202(t)(5) of the Social Security Act (42 U.S.C. 402(t)(2) through 402(t)(5)), for any month after they have been outside the United States for 6 consecutive calendar months.

Section 202(t)(2) of the Social Security Act (42 U.S.C. 402(t)(2)) provides that section 202(t)(1) shall not apply to any individual who is a citizen of a foreign country which the Secretary of Health, Education, and Welfare finds has in effect a social insurance or pension system which is of general application in such country and under which (A) periodic benefits, or the actuarial equivalent thereof, are paid on account of old age, retirement, or death, and (B) individuals who are citizens of the United States but not citizens of such foreign country and who qualify for such benefits are permitted to receive such benefits or the actuarial equivalent thereof while outside such foreign country without regard to the duration of the absence.

Pursuant to authority duly vested in the Commissioner of Social Security by the Secretary of Health, Education, and Welfare, and redelegated to him, the Director of the Bureau of Retirement and Survivors Insurance has approved a finding that the Netherlands has in effect a pension system of general application which meets the requirements of section 202(t)(2)(A) in that it pays periodic benefits on account of old age, retirement, or death. Pursuant to orders-in-council approved by the Crown, the Netherlands removed all restrictions on the payment of benefits to qualified U.S. citizens, effective as of July 1, 1968, thus permitting payment of benefits without reduction to qualified U.S. citizens while outside the country without regard to the duration of the absence. Therefore, the pension system of the Netherlands meets the requirements of section 202(t)(2)(B).

Accordingly, it is hereby determined and found that the Netherlands has in effect beginning with July 1, 1968, a pension system of general application which meets the requirements of section 202(t)(2)(A) and (B) of the Social Security Act (42 U.S.C. 402(t)(2)(A) and (B)).

This revises the finding published in the FEDERAL REGISTER of July 14, 1960 (25 F.R. 6657).

Dated: September 15, 1969.

HUGH F. MCKENNA,
Director, Bureau of Retirement and Survivors Insurance.

[F.R. Doc. 69-11530; Filed, Sept. 26, 1969; 8:47 a.m.]

PAKISTAN

Notice of Finding Regarding Foreign Social Insurance or Pension System

Section 202(t)(1) of the Social Security Act (42 U.S.C. 402(t)(1)) prohibits payment of monthly benefits to aliens, subject to the exceptions described in sections 202(t)(2) through 202(t)(5) of the Social Security Act (42 U.S.C. 402(t)(2) through 402(t)(5)), for any month after they have been outside the United States for 6 consecutive calendar months.

Section 202(t)(2) of the Social Security Act (42 U.S.C. 402(t)(2)) provides that section 202(t)(1) shall not apply to any individual who is a citizen of a foreign country which the Secretary of Health, Education, and Welfare finds has in effect a social insurance or pension system which is of general application in such country and under which (A) periodic benefits, or the actuarial equivalent thereof, are paid on account of old age, retirement, or death, and (B) individuals who are citizens of the United States but not citizens of such foreign country and who qualify for such benefits are permitted to receive such benefits or the actuarial equivalent thereof while outside such foreign country without regard to the duration of the absence.

Pursuant to authority duly vested in the Commissioner of Social Security by the Secretary of Health, Education, and Welfare, and redelegated to him, the Director of the Bureau of Retirement and Survivors Insurance has approved a finding that Pakistan does not have a social insurance or pension system under which periodic benefits, or the actuarial equivalent thereof, are paid on account of old age, retirement, or death.

Accordingly, it is hereby determined and found that Pakistan does not have in effect a social insurance or pension system of general application which meets the requirements of section 202(t)(2)(A) of the Social Security Act (42 U.S.C. 402(t)(2)(A)).

The provisions of subparagraphs (A) and (B) of section 202(t)(4) of the Social Security Act (42 U.S.C. 402(t)(4) (A) and (B)) provide that section 202(t)(1) shall not be applicable to benefits payable on the earnings record of an individual who has 40 quarters of coverage under social security or who has resided in the United States for a period or periods aggregating 10 years or more. However, the provisions of subparagraphs (A) and (B) of section 202(t)(4) shall not apply to an individual who is a citizen of a foreign country that has in effect a social insurance or pension system which is of general application in such country and which satisfies the provisions of subparagraph (A) of section 202(t)(2) but not the provisions of subparagraph (B) of section 202(t)(2).

By virtue of the finding herein, the limitation on payment of monthly benefits to aliens included in section 202(t)(1) does not apply to citizens of Pakistan receiving benefits on the earnings records of individuals who have 40 quarters of coverage under social security or who have resided in the United States for a period or periods aggregating 10 years or more.

This augments the finding with respect to Pakistan published in the FEDERAL REGISTER of July 26, 1958 (23 F.R. 5674).

Dated: September 15, 1969.

HUGH F. MCKENNA,
Director, Bureau of Retirement and Survivors Insurance.

[F.R. Doc. 69-11531; Filed, Sept. 26, 1969; 8:47 a.m.]

PERU

Notice of Finding Regarding Foreign Social Insurance or Pension System

Section 202(t)(1) of the Social Security Act (42 U.S.C. 402(t)(1)) prohibits payment of monthly benefits to aliens, subject to the exceptions described in sections 202(t)(2) through 202(t)(5) of the Social Security Act (42 U.S.C. 402(t)(2) through 402(t)(5)), for any month after they have been outside the United States for 6 consecutive calendar months.

Section 202(t)(2) of the Social Security Act (42 U.S.C. 402(t)(2)) provides that section 202(t)(1) shall not apply to any individual who is a citizen of a foreign country which the Secretary of Health, Education, and Welfare finds has in effect a social insurance or pension system which is of general application in such country and under which (A) periodic benefits, or the actuarial equivalent thereof, are paid on account of old age, retirement, or death, and (B) individuals who are citizens of the United States but not citizens of such foreign country and who qualify for such benefits are permitted to receive such benefits or the actuarial equivalent thereof while outside such foreign country without regard to the duration of the absence.

Pursuant to authority duly vested in the Commissioner of Social Security by the Secretary of Health, Education, and Welfare, and redelegated to him, the Director of the Bureau of Retirement and Survivors Insurance has approved a finding that Peru has in effect a social insurance system of general application which meets the requirements of section 202(t)(2)(A) in that it pays periodic benefits on account of old age, retirement, or death. On February 25, 1969, pursuant to a Decree-law issued by the Government of Peru, Peru removed all restrictions on the payment of benefits to qualified U.S. citizens, effective as of February 1, 1969, thus permitting payment of benefits to qualified U.S. citizens while outside the country without regard to the duration of the absence. Therefore, the social insurance system of Peru meets the requirements of section 202(t)(2)(B).

Accordingly, it is hereby determined and found that Peru has in effect beginning with February 1, 1969, a social insurance system of general application which meets the requirements of section 202(t)(2) (A) and (B) of the Social Security Act (42 U.S.C. 402(t)(2) (A) and (B)).

This revises the finding with respect to Peru published in the FEDERAL REGISTER of June 4, 1959 (24 F.R. 4567).

Dated: September 15, 1969.

HUGH F. MCKENNA,
Director, Bureau of Retirement and Survivors Insurance.

[F.R. Doc. 69-11532; Filed, Sept. 26, 1969; 8:47 a.m.]

UGANDA

Notice of Finding Regarding Foreign Social Insurance or Pension System

Section 202(t)(1) of the Social Security Act (42 U.S.C. 402(t)(1)) prohibits payment of monthly benefits to aliens, subject to the exceptions described in sections 202(t)(2) through 202(t)(5) of the Social Security Act (42 U.S.C. 402(t)(2) through 402(t)(5)), for any month after they have been outside the United States for 6 consecutive calendar months.

Section 202(t)(2) of the Social Security Act (42 U.S.C. 402(t)(2)) provides that section 202(t)(1) shall not apply to any individual who is a citizen of a foreign country which the Secretary of Health, Education, and Welfare finds has in effect a social insurance or pension system which is of general application in such country and under which (A) periodic benefits, or the actuarial equivalent thereof, are paid on account of old age, retirement, or death, and (B) individuals who are citizens of the United States but not citizens of such foreign country and who qualify for such benefits are permitted to receive such benefits or the actuarial equivalent thereof while outside such foreign country without regard to the duration of the absence.

Pursuant to authority duly vested in the Commissioner of Social Security by the Secretary of Health, Education, and Welfare, and redelegated to him, the Director of the Bureau of Retirement and Survivors Insurance has approved a finding that Uganda does not have a social insurance or pension system which pays periodic benefits, or the actuarial equivalent thereof, on account of old age, retirement, or death.

Accordingly, it is hereby determined and found that Uganda does not have in effect a social insurance or pension system which meets the requirements of section 202(t)(2)(A) of the Social Security Act (42 U.S.C. 402(t)(2)(A)).

The provisions of subparagraphs (A) and (B) of section 202(t)(4) of the Social Security Act (42 U.S.C. 402(t)(4) (A) and (B) provide that section 202(t)(1) shall not be applicable to benefits payable on the earnings record of an individual who has 40 quarters of coverage under social security or who has resided in the United States for a period or periods aggregating 10 years or more. However, the provisions of subparagraphs (A) and (B) of section 202(t)(4) shall not apply to an individual who is a citizen of a foreign country that has in effect a social insurance or pension system which is of general application in such country and which satisfies the provisions of subparagraph (A) of section 202(t)(2) but not the provisions of subparagraph (B) of section 202(t)(2).

By virtue of the finding herein, the limitation on payment of montly benefits to aliens included in section 202(t)(1) does not apply to citizens of Uganda receiving benefits on the earnings records of individuals who have 40 quarters of coverage under social security or who have resided in the United States for a period or periods aggregating 10 years or more.

Dated: September 15, 1969.

HUGH F. MCKENNA,
Director, Bureau of Retirement and Survivors Insurance.

[F.R. Doc. 69-11533; Filed, Sept. 26, 1969; 8:47 a.m.]

CIVIL AERONAUTICS BOARD

[Docket No. 19956]

TRANSPORTES AEREOS NACIONALES, S.A.

Notice of Resumption of Hearing

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that the hearing in the above-entitled matter, which recessed on September 11, 1969, will be resumed on October 1, 1969, at 10 a.m., d.s.t., in Room 805, Universal Building, 1825 Connecticut Avenue NW., Washington, D.C., before the undersigned examiner.

Dated at Washington, D.C., September 23, 1969.

[SEAL] EDWARD T. STODOLA,
Hearing Examiner.

[F.R. Doc. 69-11551; Filed, Sept. 26, 1969; 8:48 a.m.]

[Docket No. 21238]

SERVICE MAIL RATES FOR INTRA-ALASKA ROUTES

Notice of Prehearing Conference

Notice is hereby given that a prehearing conference in the above-entitled matter is assigned to be held on October 14, 1969, at 10 a.m., e.s.t., in Room 726, Universal Building, 1825 Connecticut Avenue NW., Washington, D.C., before Examiner Harry H. Schneider.

Requests for information and evidence, statements of proposed issues, proposed procedural dates and motions shall be filed with the examiner and parties on or before October 6, 1969.

Dated at Washington, D.C., September 24, 1969.

[SEAL] THOMAS L. WRENN,
Chief Examiner.

[F.R. Doc. 69-11552; Filed, Sept. 26, 1969; 8:49 a.m.]

[Docket No. 21454; Order 69-9-127]

DETROIT-NASHVILLE NONSTOP INVESTIGATION

Order Instituting Investigation

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 23d day of September 1969.

The Board has decided to institute a proceeding designated as the Detroit-Nashville Nonstop Investigation, which will focus on the need for nonstop service between Detroit and Nashville. No effective single-carrier service is presently authorized between Detroit and Nashville. Thus, the majority of the Detroit-Nashville traffic must utilize two-carrier connecting service over such cities as Louisville, Columbus, Cincinnati, Pittsburgh, and Cleveland. Moreover, the traffic volume warrants an examination of the need for nonstop service. Under these circumstances, we consider an investigation warranted.

Accordingly, it is ordered, That:

1. An investigation designated as the Detroit-Nashville Nonstop Investigation be and its hereby is instituted in Docket 21454 pursuant to sections 204(a) and 401(g) of the Federal Aviation Act of 1958, as amended, to determine whether the public convenience and necessity require the alteration, amendment, or modification of any air carrier certificates so as to authorize nonstop service between Detroit, Mich., and Nashville, Tenn.;

2. Any authority awarded herein shall be without subsidy eligibility;

3. Motions to consolidate, applications, and motions or petitions seeking modification or reconsideration of this order shall be filed no later than 20 days after the service of this order and answers to such pleadings shall be filed no later than 10 days thereafter;

4. This proceeding shall be set for hearing at a time and place to be hereafter designated; and

5. A copy of this order shall be served upon the Mayors of Detroit and Nashville; the Governors of Michigan and Tennessee; Airlift International, Inc.; American Airlines, Inc.; Allegheny Airlines, Inc.; Delta Air Lines, Inc.; Eastern Air Lines, Inc.; Flying Tiger Line, Inc.; Mohawk Airlines, Inc.; North Central Airlines, Inc.; Northwest Airlines, Inc.; Trans World Airlines, Inc.; United Air Lines, Inc.; Northeast Airlines, Inc.; Braniff Airways, Inc.; Seaboard World Airlines, Inc.; Ozark Air Lines, Inc.; Southern Airways, Inc.; and Piedmont Aviation, Inc.

This order shall be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] HAROLD R. SANDERSON,
Secretary.

[F.R. Doc. 69-11553; Filed, Sept. 26, 1969; 8:49 a.m.]

FEDERAL COMMUNICATIONS COMMISSION

[Mexican List No. 258]

MEXICAN BROADCAST STATIONS

Notification List of New Stations, Proposed Changes in Existing Stations, Deletions, and Corrections

JUNE 16, 1969.

List of new stations, proposed changes in existing stations, deletions, and corrections in assignments of Mexican standard broadcast stations modifying the assignments of Mexican broadcast stations contained in the appendix to the recommendations of the North American Regional Broadcasting Agreement Engineering Meeting, January 30, 1941.

Call letters	Location	Power watts	Antenna radiation mv/m/k w	Schedule	Class	Antenna height (feet)	Ground system: Number of radials	Ground system: Length (feet)	Proposed date of change or commencement of operation
		690 kilocycles							
XETS (temporary operation with 500 W, ND, U beginning 5-30-69. This notifies the supplementary information).	Tapachula, Chis., N. 14°54'18", W. 92°15'56".	1000D/500N	ND-*175*	U	III	*289*	*90*	344	
		680 kilocycles							
XEKC (this corrects the class and modifies the expected date of entry into operation).	Oaxaca, Oax.	5000D/1000N	DA-2	U	*II*				6-12-70 (probable).
		690 kilocycles							
XERG (correction of an omission: In operation with 500 W-D/250 W-N, ND, since 4-1-63. This notifies the supplementary information).	Monterrey, N.L., N. 25°40'11", W. 100°18'21".	500D/200N	ND-*177*	U	II	*230*	*120*	*351*	*4-1-63.*
		710 kilocycles							
XEKU (in operation with 500 W-D/150 W-N, since 6-13-69. This notifies the supplementary information).	Acapulco, Gro., N. 16°51'20", W. 99°53'06".	*500D*/150N	ND-*175*	U	II	*292*	*90*	*320*	*6-13-69.*
		970 kilocycles							
XEQX (correction of an omission: In operation on 970 kc/s with 500 W-D/150 W-N, ND, since 10-17-66. Modify daytime class. This notifies the supplementary information).	Monclova, Coah., N. 26°55'28", W. 101°26'29".	500D/150N	ND-*175-D* ND-*150-N*	U	III-D/ IV-N	*197*	*90*	*248*	*10-17-66.*
		1010 kilocycles							
XEFM (operation temporarily suspended beginning 6-25-69).	Veracruz, Ver.	1000D/200N	ND	U	II				
		1160 kilocycles							
XEIW (operation temporarily suspended beginning 5-14-69).	Uruapan, Mich.	1000	ND	D	II				
		1240 kilocycles							
(New) (assignment deleted)	Salina Cruz, Oax.	250	ND	U	IV				6-16-69.
		1480 kilocycles							
XEOU (in operation since 6-18-69. This notifies the supplementary information).	Huajuapan de Leon, Oax., N. 17°48'25", W. 97°47'10".	500	ND-*175*	D	III	*138*	*90*	*167*	*6-18-69.*

[SEAL]

FEDERAL COMMUNICATIONS COMMISSION,
WALLACE E. JOHNSON,
Assistant Chief, Broadcast Bureau.

[F.R. Doc. 69-11543; Filed, Sept. 26, 1969; 8:48 a.m.]

FEDERAL MARITIME COMMISSION

CONTINENTAL NORTH ATLANTIC WESTBOUND FREIGHT CONFERENCE

Notice of Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1405 I Street NW., Room 1202; or may inspect agreements at the offices of the District Managers, New York, N.Y., New Orleans, La., and San Francisco, Calif. Comments with reference to an agreement including a request for hearing, if desired, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 20 days after publication of this notice in the FEDERAL REGISTER. A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the comments should indicate that this has been done.

Notice of agreement filed by:

Mr. Burton H. White, Burlingham, Underwood, Wright, White & Lord, 25 Broadway, New York, N.Y. 10004.

Agreement No. 8210-7 between the member lines of the Continental North Atlantic Westbound Freight Conference amends the self-policing provisions of the basic agreement. It provides for the establishment of an enforcement authority or neutral body to police the Conference and for review of the findings and/or penalties imposed by the neutral body by arbitrators if demanded by the accused line. The qualifications, duties and authority of the neutral body, the rights of the accused line, procedural requirements for the handling of complaints, hearings and arbitration of the decisions reached by the neutral body are spelled out. Provision is also made for the imposition of fines for violations which shall not exceed $5,000 for any single violation.

By order of the Federal Maritime Commission.

Dated: September 24, 1969.

THOMAS LISI,
Secretary.

[F.R. Doc. 69-11544; Filed, Sept. 26, 1969; 8:48 a.m.]

[Independent Ocean Freight Forwarder License No. 1247]

INTERMODAL TRANSPORT CO., INC.

Order of Revocation

By letter dated September 9, 1969, Intermodal Transport Co., Inc., 1075 Bryant Street, San Francisco, Calif. 94103, voluntarily returned its License No. 1247 to the Federal Maritime Commission and advised that it had no intention of carrying on the business of independent ocean freight forwarding.

By virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order 201.1, section 6.03,

It is ordered, That the Independent Ocean Freight Forwarder License No. 1247 of Intermodal Transport Co., Inc., be and is hereby revoked effective September 19, 1969.

It is further ordered, That a copy of this order be published in the FEDERAL REGISTER and served upon Intermodal Transport Co., Inc.

JOHN F. GILSON,
Deputy Director,
Bureau of Domestic Regulation.

[F.R. Doc. 69-11545; Filed, Sept. 26, 1969; 8:48 a.m.]

[Independent Ocean Freight Forwarder License No. 909]

LYKES BROS. STEAMSHIP CO., INC.

Order of Revocation

By letter dated September 15, 1969, Lykes Bros. Steamship Co., Inc., Post Office Box 50998, New Orleans, La. 70150, voluntarily surrendered its License No. 909. The licensee advised the Federal Maritime Commission that its forwarding services have been confined to those functions which, as an oceangoing common carrier, it can render without a license.

By virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order 201.1, section 6.03,

It is ordered, That the Independent Ocean Freight Forwarder License No. 909 of Lykes Bros. Steamship Co., Inc., be and is hereby revoked effective September 19, 1969.

It is further ordered, That this revocation is without prejudice to reapplication for a license at a later date.

It is further ordered, That a copy of this order be published in the FEDERAL REGISTER and served upon Lykes Bros. Steamship Co., Inc.

JOHN F. GILSON,
Deputy Director,
Bureau of Domestic Regulation.

[F.R. Doc. 69-11546; Filed, Sept. 26, 1969; 8:48 a.m.]

[Docket No. 69-49; Agreement No. 6010-14]

STRAITS/NEW YORK CONFERENCE

Order for Investigation and Hearing

Agreement No. 6010-14, filed for approval under section 15 of the Shipping Act, 1916, by the member lines of the Straits/New York Conference, is an "Exclusive agency" agreement whereby member lines and their agents are prohibited from representing nonconference carriers—common, private, and contract—in Straits' area loading ports, except as husbanding agent or chartering broker.

Both the initial and continued approval of any agreement under section 15 are dependent upon a determination that the agreement is not unjustly discriminatory as between carriers, shippers, exporters, importers, or ports or between exporters from the United States and their foreign competitors or contrary to the public interest or otherwise in violation of the Shipping Act, 1916, as amended, and that it does not operate to the detriment of the commerce of the United States.

Information before the Commission is insufficient for it to know what transportation circumstances necessitated filing of the modifications, or what the impact of any approval will be in Straits' area loading ports. The Commission desires to develop information to determine whether the sweeping prohibition here is necessary and compatible with the criteria of approvability set forth in section 15, or whether lesser restraints will serve the Conference's purposes.

Now therefore, it is ordered, That an investigation and hearing is hereby instituted pursuant to sections 15 and 22 of the Shipping Act to determine whether Agreement No. 6010-14 is justified in the circumstances and whether it should be approved, disapproved or modified; and

It is further ordered, That the lines listed in Appendix A hereto, are hereby made respondents in this proceeding; and

It is further ordered, That this matter be assigned for public hearing before an examiner of the Commission's Office of Hearing Examiners and that the hearing be held at a date and place to be determined and announced by the presiding examiner; and

It is further ordered, That notice of this order be published in the FEDERAL REGISTER and that a copy thereof and notice of hearing be served upon respondents; and

It is further ordered, That any person, other than respondents, who desires to become a party to this proceeding and participate therein, shall file a petition to intervene with the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before October 13, 1969, with copy to parties.

And it is further ordered, That all future notices issued by or on behalf of the Commission in this proceeding, including notice of time and place of hearing or prehearing conference, shall be mailed directly to all parties of record.

By the Commission.

[SEAL] THOMAS LISI,
Secretary.

APPENDIX A

J. N. Aucutt, Esq., Chairman, Straits/New York Conference, Post Office Box No. 247, Hong Kong Bank Chambers, Sixth Floor, Singapore 1.

American President Lines, 601 California Street, San Francisco, Calif. 94108.

Barber-Fern Line, Fearnley & Eger, Barber Steamship Lines, Inc., Agent, 17 Battery Place, New York, N.Y. 10004.

Hoegh Lines, Nedlloyd Lines, Inc., General Agents, 25 Broadway, New York, N.Y. 10004.

Isthmian Lines, Inc., States Marine-Isthmian Agency, Inc., 90 Broad Street, New York, N.Y. 10004.

Kawasaki Kisen Kaisha, Ltd., "K" Line New York, Inc., General Agents, 29 Broadway, New York, N.Y. 10006.

Lykes Bros. Steamship Co., Inc., 1770 Tchoupitoulas Street, Post Office Box 50998, New Orleans, La.

Maersk Line (A. P. Moller), 67 Broad Street, New York, N.Y. 10004.

Mitsui O.S.K. Lines, Ltd., 17 Battery Place, New York, N.Y. 10004.

N. V. Nedlloyd Lijnen, Nedlloyd Lines, 25 Broadway, New York, N.Y. 10004.

Nippon Lusen Kaisha (N.Y.K. Line), 25 Broadway, New York, N.Y. 10004.

P. N. Djakarta Lloyd, Kerr Steamship Co., Inc., General Agents, 29 Broadway, Second Floor, New York, N.Y. 10006.

Thai Mercantile Marine Ltd., States Marine-Isthmian Agency, Inc., 90 Broad Street, New York, N.Y. 10004.

The Scindia Steam Navigation Co., Ltd., United States Navigation Co., Inc., 17 Battery Place, New York, N.Y. 10004.

[F.R. Doc. 69-11547; Filed, Sept. 26, 1969; 8:48 a.m.]

GENERAL SERVICES ADMINISTRATION

[Federal Property Management Regs. Temporary Reg. F-57]

CHAIRMAN OF ATOMIC ENERGY COMMISSION

Delegation of Authority To Represent Customer Interest in an Electric Service Rate Proceeding

1. *Purpose.* This regulation delegates authority to the Chairman, Atomic Energy Commission, to represent the customer interest of the Federal Government in an electric service rate proceeding.

2. *Effective date.* This regulation is effective immediately.

3. *Delegation.* a. Pursuant to the authority vested in me by the Federal Property and Administrative Services Act of 1949, 63 Stat. 377, as amended, particularly sections 201(a)(4) and 205(d) (40 U.S.C. 481(a)(4) and 486(d)), authority is delegated to the Chairman, Atomic Energy Commission, to represent the interests of the executive agencies of the Federal Government before the Idaho Public Utilities Commission in a proceeding involving electric service rates of the Idaho Power Co. (Case No. U-1006-68).

b. The Chairman, Atomic Energy Commission, may redelegate this authority to any officer, official, or employee of the Atomic Energy Commission.

c. This authority shall be exercised in accordance with the policies, procedures, and controls prescribed by the General Services Administration, and further, shall be exercised in cooperation with the responsible officers, officials, and employees thereof.

JOHN W. CHAPMAN, JR.,
Acting Administrator
of General Services.

SEPTEMBER 23, 1969.

[F.R. Doc. 69-11508; Filed, Sept. 26, 1969; 8:45 a.m.]

FEDERAL POWER COMMISSION

[Docket Nos. RI70-215 etc.]

GEORGE T. ABELL ET AL.

Order Accepting Contract Amendments, Providing for Hearings on and Suspension of Proposed Changes in Rates [1]

SEPTEMBER 19, 1969.

The above-named Respondents have tendered for filing proposed changes in presently effective rate schedules for sales of natural gas subject to the jurisdiction of the Commission. The proposed changes, which constitute increased rates and charges, are designated as follows:

Docket No.	Respondent	Rate schedule No.	Supplement No.	Purchaser and producing area	Amount of annual increase	Date filing tendered	Effective date unless suspended	Date suspended until—	Cents per Mcf: Rate in effect	Cents per Mcf: Proposed increased rate	Rate in effect subject to refund in dockets Nos.
RI70-215	George T. Abell, Post Office Box 430, Midland, Tex. 79701.	3	5	El Paso Natural Gas Co. (Red Hills Area, Lea County, N. Mex.) (Permian Basin Area).	$976	8-26-69	[2] 9-26-69	2-26-70	17.69	[3] [4] 19.69	
RI70-216	Austral Oil Co., Inc., 2700 Humble Bldg., Houston, Tex. 77002.	21	4	El Paso Natural Gas Co. (Huerfanito Field, San Juan County, N. Mex.) (San Juan Basin Area).	2,802	8-25-69	[2] 10-1-69	3-1-70	[5] 14.0	[5] [7] 15.9	RI64-342.
....do		22	2	....do	34,570	8-25-69	[2] 10-1-69	3-1-70	13.0	[5] [7] 14.6	
....do		24	3	....do	6,708	8-25-69	[2] 10-1-69	3-1-70	13.0	[5] [7] 14.6	
....do		26	6	....do	3,349	8-25-69	[2] 10-1-69	3-1-70	13.0	[5] [7] 14.6	
RI70-217	Pubco Petroleum Corp., Post Office Box 869, Albuquerque, N. Mex. 87103.	1	[8] 30	El Paso Natural Gas Co. (Blanco Mesa Verde Field, San Juan County, N. Mex. (San Juan Basin Area).	54,677	8-20-69	[10] 9-20-69	2-20-70	[9] [11] 14.2501	[5] [7] [11] 15.2525	RI64-341.
					1,416	8-20-69	[10] 9-20-69	2-20-70	13.0	[5] [7] [11] 14.2357	RI64-341.
....do		2	4	....do	480	8-20-69	[10] 9-20-69	2-20-70	[9] [11] 14.2501	[5] [7] [11] 15.2525	RI64-341.
....do		3	5	....do	1,219	8-20-69	[10] 9-20-69	2-20-70	[9] [11] 14.2501	[5] [7] [11] 15.2525	RI64-341.
....do		4	31	El Paso Natural Gas Co. (Various Pictured Cliffs Fields, San Juan and Rio Arriba Counties, N. Mex.) (San Juan Basin Area).	8,808	8-20-69	[10] 9-20-69	2-20-70	[11] 12.2308	[5] [7] [11] 13.2188	
....do		5	5	Southern Union Gathering Co. (Blanco Mesa Verde Field, San Juan County, N. Mex.) (San Juan Basin Area).	3,377	8-20-69	[10] 9-20-69	2-20-70	[11] 14.2693	[5] [7] [11] [12] 15.2886	RI64-341.
....do		6	4	El Paso Natural Gas Co. (Ignacio Blanco Field, La Plata County, Colo.)	8,939	8-20-69	[10] 9-20-69	2-20-70	14.0	[5] [7] 15.0	RI64-341.
....do		7	[8] 8	El Paso Natural Gas Co. (South Blanco Pictured Cliffs and Blanco Mesa Verde Fields, Rio Arriba County, N. Mex.) (San Juan Basin Area).	257	8-20-69	[10] 9-20-69	2-20-70	[11] 12.2295	[5] [7] [11] 13.2175	RI64-337.
		7	[10] 9	....do	4,806	8-20-69	[10] 9-20-69	2-20-70	[9] [11] 14.2486	[5] [7] [9] [11] 15.2510	RI64-341.
....do		9	6	Southern Union Gathering Co. (Blanco Mesa Verde Field, San Juan County, N. Mex.) (San Juan Basin Area).	1,092	8-20-69	[10] 9-20-69	2-20-70	[11] 14.2693	[5] [7] [11] [12] 15.2886	RI64-341.
....do		10	8	....do	397	8-20-69	[10] 9-20-69	2-20-70	[11] 14.2693	[5] [7] [11] [12] 15.2886	RI64-341.
....do		11	8	....do	310	8-20-69	[10] 9-20-69	2-20-70	[11] 14.2693	[5] [7] [11] [12] 15.2886	RI64-341.
....do		16	6	El Paso Natural Gas Co. (Aztec Pictured Cliffs Field, San Juan County, N. Mex.) (San Juan Basin Area).	32	8-20-69	[10] 9-20-69	2-20-70	[11] 12.2020	[5] [7] [11] 13.2188	RI66-3.
RI70-218	Pubco Petroleum Corp. (Operator) et al.	8	12	Southern Union Gathering Co. (Blanco Mesa Verde Field, San Juan County, N. Mex.) (San Juan Basin Area).	3,857	8-20-69	[10] 9-20-69	2-20-70	[11] 14.2693	[5] [7] [11] [12] 15.2886	RI64-344. RI65-537.
....do		13	[8] 23	El Paso Natural Gas Co. (Basin	16,932	8-20-69	[10] 9-20-69	2-20-70	[9] [11] 14.2486	[5] [7] [9] [11] 15.2510	RI64-344.
		13	[17] 24	Dakota Field, San Juan and Rio Arriba Counties, N. Mex.) (San Juan Basin Area).	16,072	8-20-69	[10] 9-20-69	2-20-70	13.0	[5] [7] [9] 14.2357	
RI70-219	Kingwood Oil Co., 109 Park Avenue Bldg., Oklahoma City, Okla. 73102.	7	2	El Paso Natural Gas Co. (Argo Lease, San Juan County, N. Mex.) (San Juan Basin Area).	299	8-28-69	[10] 9-28-69	2-28-70	[5] 14.0	[5] [7] [9] 15.0	RI64-329.
RI70-220	Sun Oil Co., DX Division (Operator) et al., 907 South Detroit Ave., Tulsa, Okla. 74120.	21	[10] 16	United Gas Pipe Line Co.	.....	8-25-69	[2] 9-25-69	(Accepted)	.....	.....	
		21	17	(Marshall Field, Goliad County, Tex.) (RR. District No. 2).	17,577	8-25-69	[2] 9-25-69	2-25-70	13.2002	[4] [9] [20] 18.3	
RI70-221	Continental Oil Co. (Operator) et al., Houston, Tex. 77001.	207	[10] 15	United Gas Pipe Line Co.	.....	8-28-69	[10] 9-28-69	(Accepted)	.....	.....	
		207	16	(Cabeza Creek Area, Goliad and DeWitt Counties, Tex.) (RR. District No. 2).	48,476	8-28-69	[10] 9-28-69	2-28-70	13.2002	[4] [9] [20] 18.3	

See footnotes at end of table.

[1] Does not consolidate for hearing or dispose of the several matters herein.

Docket No.	Respondent	Rate schedule No.	Supplement No.	Purchaser and producing area	Amount of annual increase	Date filing tendered	Effective date unless suspended	Date suspended until—	Cents per Mcf: Rate in effect	Cents per Mcf: Proposed increased rate	Rate in effect subject to refund in dockets Nos.
RI70-223	Sun Oil Co., DX Division 907 South Detroit Ave., Tulsa, Okla.	175	7	Tennessee Gas Pipeline Co., a division of Tenneco, In . (Seeligson Field, Jim Wells County, Tex.) (RR. District No. 4).	$71,458	8-29-69	[3] 11-1-69	4-1-70	15.6	[4] [6] 16.6	RI68-405.
	do	28	5	Phillips Petroleum Co.[21] (Panhandle Field, Hutchinson and Moore Counties, Tex.) (RR. District No. 10).	4,730	8-29-69	[22] 11-1-69	1-1-70	[23] 13.0	[4] [23] 14.0	RI66-109.
	do	240	5	Northern Natural Gas Co. (Southeast Como Field, Beaver County, Okla.) (Panhandle Area).	531	8-29-69	[3] 11-1-69	4-1-70	[23] [24] 17.015	[4] [23] [24] 18.015	RI68-454.
RI70-223	Texaco, Inc., Post Office Box 3109, Midland, Tex. 79701	338	1	Northern Natural Gas Co. (Texas Panhandle Area, Lipscomb, Hansford, and Ochiltree Counties, Tex.) (RR. District No. 10).	3,360	8-27-69	[3] 11-1-69	4-1-70	[25] 17.0	[4] [25] 18.0	
RI70-224	Eason Oil Co. (Operator) et al., Post Office Box 18755, Oklahoma City, Okla. 73118.	22	[26] 4	Northern Natural Gas Co. (West Sharon Field Woodward, County, Okla.) (Panhandle Area).	3,430	8-27-69	[3] 9-27-69	2-27-70	[25] 17.0	[4] [25] 18.0	
RI70-225	J. C. Barnes Oil Co. (Operator) et al., Post Office Box 505, Midland, Tex. 79701.	2	2	Panhandle Eastern Pipe Line Co. (Aledo Field, Hunton Formation, Dewey and Custer Counties, Okla.) (Oklahoma "Other" Area).	615,960	8-29-69	[3] 9-29-69	2-28-70	[25] 15.0	[4] [27] 17.9	

[1] The stated effective date is the effective date requested by Respondent.
[2] Increase from applicable area ceiling rate to contract rate.
[4] Pressure base is 14.65 p.s.i.a.
[5] Includes B.t.u. adjustment.
[6] Periodic rate increase.
[7] Pressure base is 15.025 p.s.i.a.
[8] Includes 1-cent minimum guarantee for liquids.
[9] Not applicable to Supplement Nos. 27, 28, and 29.
[10] The stated effective date is the first day after expiration of the statutory notice.
[11] Includes partial reimbursement for full 2.55 percent New Mexico Emergency School Tax.
[12] Applicable to Supplement Nos. 27, 28, and 29 only.
[13] Southern Union filed on Aug. 25, 1969, a letter dated Aug. 21, 1969, protesting the 2.55 percent tax reimbursement.
[14] Applicable to gas produced from Pictured Cliffs Formation.
[15] Applicable to gas produced from Mesa Verde Formation.
[16] Not applicable to Supplements Nos. 14 through 16.
[17] Applicable to Supplements Nos. 14 through 16 only.
[18] Contract Amendment which provides, among other things, for a renegotiated rate of 18.3 cents for the 5-year period commencing June 19, 1969, with 1 cent increases every 5 years thereafter, deletes redetermination provisions, provides for downward B.t.u. adjustment and sellers right to collect any higher applicable just and reasonable rate established by the Commission.
[19] Renegotiated rate increase.
[20] Subject to a downward B.t.u. adjustment.
[21] Phillips processes the gas in its Dumas Plant and resells the residue gas to El Paso Natural Gas Co. at a present effective rate of 19.76325 cents which is effective subject to refund in Docket No. G-20403. Phillips is contractually due a periodic increase to 21.5 cents plus tax reimbursement as of Aug. 1, 1969, but has not filed for same.
[22] Contractual effective date.
[23] Subject to 0.4466 cent deduction by buyer if gas is sour. Filing reflects that gas is sour.
[24] Includes 0.015-cent tax reimbursement.
[25] Applicable to low pressure separator gas as provided by Supplement No. 3.
[26] Subject to upward and downward B.t.u. adjustment.
[27] Respondent is contractually due 19 cents per Mcf initial contract rate.

Pubco Petroleum Corp. and Pubco Petroleum Corp. (Operator) et al. (both referred to herein as Pubco), request an effective date of September 1, 1969, for their proposed rate increases. Kingwood Oil Co. requests waiver of the statutory notice to permit an effective date of September 1, 1969, for its rate increase. Continental Oil Co. (Operator) et al. (Continental), request a retroactive effective date of June 19, 1969, for their proposed contract amendment and rate increase. Good cause has not been shown for waiving the 30-day notice requirement provided in section 4(d) of the Natural Gas Act to permit earlier effective dates for the aforementioned producers' rate filings and such requests are denied.

Concurrently with the filing of their rate increases, Sun Oil Co.—DX Division (Operator) et al. (Sun), submitted a contract amendment dated August 1, 1969 [28], and Continental submitted a contract amendment dated August 7, 1969 [29], which provide the basis for their proposed rate increases. We believe that it would be in the public interest to accept the aforementioned producers' contract amendments to become effective on September 25, 1969 (Sun) and September 28, 1969 (Continental), but not the proposed rates contained therein which are suspended as hereinafter ordered.

Fifteen of the proposed rate increases filed by Pubco reflect partial reimbursement for the full 2.55 percent New Mexico Emergency School Tax. El Paso Natural Gas Co. (El Paso) and Southern Union Gathering Co. (Southern Union) are the purchasers under the rate schedules involved. El Paso in accordance with its policy of protesting tax filings proposing reimbursement for the New Mexico Emergency School Tax in excess of 0.55 percent, is expected to protest the rate increases wherein it is the buyer. El Paso questions the right of the producer under the tax reimbursement clause to file a rate increase reflecting tax reimbursement computed on the basis of an increase in tax rate by the New Mexico legislature in excess of 0.55 percent. While El Paso concedes that the New Mexico legislature effected a higher rate of at least 0.55 percent, it claims there is controversy as to whether or not the new legislation effected an increased rate in excess of 0.55 percent. On August 25, 1969, Southern Union filed a protest to the tax reimbursement portion of the increases filed by Pubco wherein Southern Union is the buyer. Southern Union states that it objects to the proposed increases filed by Pubco, insofar as the same proposed rates in excess of 15.0636 cents per Mcf, on the grounds that the same are not authorized by the basic contracts. In view of the contractual problem presented, we shall provide that the hearings herein with respect to Pubco's rate increases shall concern themselves with the contractual basis for the rate filings, as well as the statutory lawfulness of the proposed rates and charges.

Sun Oil Co.—DX Division (also referred to herein as Sun) proposes a rate increase from 13 cents to 14 cents per Mcf for a sale to Phillips Petroleum Co. (Phillips) in Texas Railroad District No. 10. Phillips processes the gas in its Dumas Plant and resells the residue gas under its FPC Gas Rate Schedule No. 32 to El Paso at a present effective rate of 19.76325 cents, inclusive of tax reimbursement, which is effective subject to refund in Docket No. G-20403. The area increased rate ceiling, which is considered applicable at the tailgate of Phillips' plant, is 11 cents per Mcf. Phillips is contractually due a periodic increase to 21.5 cents plus tax reimbursement as of August 1, 1969, but as yet has not filed for such increase. In these circumstances, we conclude that Sun's proposed rate should be suspended until January 1, 1970, the termination date of a 5-month suspension period had Phillips submitted a timely filing for its contractually due 21.5 cents per Mcf rate.

Eason Oil Co. (Eason) proposes a rate increase from 17 cents to 18 cents per Mcf for low pressure gas under its FPC Gas Rate Schedule No. 22 and requests a

[28] Designated as Supplement No. 16 to Sun's FPC Gas Rate Schedule No. 21.
[29] Designated as Supplement No. 15 to Continental's FPC Gas Rate Schedule No. 207.

suspension period expiring on November 9, 1969, if its proposed rate is suspended, to coincide with the expiration date of the suspension period in Docket No. RI69-771 for high pressure gas under the same rate schedule. Good cause has not been shown for granting Eason's request for limiting the suspension period ordered herein for low pressure gas and Eason's request is denied.

All of the producers' proposed increased rates and charges exceed the applicable area price levels for increased rates as set forth in the Commission's statement of general policy No. 61-1, as amended (18 CFR 2.56), with the exception of the rate increase filed by George T. Abell in the Permian Basin Area which exceeds the just and reasonable rate established by the Commision in Opinion No. 468, as amended, and should be suspended for 5 months as ordered herein.

The proposed changed rates and charges may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds:

(1) Good cause has been shown for accepting for filing Sun and Continental's contract amendments dated August 1, 1969, and August 7, 1979, respectively, as set forth above, and for permitting such supplements to become effective on the dates indicated in the "Effective Date" column listed above.

(2) It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon hearings concerning the lawfulness of the proposed changes, and that the above-designated supplements be suspended and the use thereof deferred as hereinafter ordered (except the supplements referred to in paragraph (1) above).

The Commission orders:

(A) Supplement No. 16 to Sun's FPC Gas Rate Schedule No. 21 and Supplement No. 15 to Continental's FPC Gas Rate Schedule No. 207 are accepted for filing and permitted to become effective as of September 25, 1969 (Sun), the proposed effective date, and September 28, 1969 (Continental), the expiration date of the statutory notice.

(B) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR Ch. I), public hearings shall be held upon dates to be fixed by notices from the Secretary concerning the lawfulness of the proposed increased rates and charges contained in the above-designated supplements (except the supplements as set forth in paragraph (A) above).

(C) Pending hearings and decisions thereon, the above-designated rate supplements are hereby suspended, and the use thereof deferred until the date indicated in the "Date Suspended Until" column, and thereafter until such further time as they are made effective in the manner prescribed by the Natural Gas Act.

(D) Neither the supplements hereby suspended, nor the rate schedules sought to be altered thereby, shall be changed until these proceedings have been disposed of or until the periods of suspension have expired, unless otherwise ordered by the Commission.

(E) Notices of intervention or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C. 20426, in accordance with the rules of practice and procedure (18 CFR 1.8 and 1.37(f)) on or before November 14, 1969.

By the Commission.

[SEAL] GORDON M. GRANT, *Secretary.*

[F.R. Doc. 69-11458; Filed, Sept. 26, 1969; 8:45 a.m.]

FEDERAL RESERVE SYSTEM

FIRST NATIONAL CORP.

Notice of Application for Approval of Acquisition of Shares of Bank

Notice is hereby given that application has been made, pursuant to section 3(a) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(a)), by First National Corp., which is a bank holding company located in Appleton, Wis., for prior approval of the acquisition of 80 percent or more of the voting shares of The First National Bank of Seymour, Seymour, Wis.

Section 3(c) of the Act provides that the Board shall not approve:

(1) Any acquisition or merger or consolidation under section 3 which would result in a monopoly, or which would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of the United States, or

(2) Any other proposed acquisition or merger or consolidation under section 3 whose effect in any section of the country may be substantially to lessen competition, or to tend to create a monopoly, or which in any other manner would be in restraint of trade, unless the Board finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served.

Section 3(c) further provides that, in every case, the Board shall take into consideration the financial and managerial resources and future prospects of the company or companies and the banks concerned, and the convenience and needs of the community to be served.

Not later than thirty (30) days after the publication of this notice in the FEDERAL REGISTER, comments and views regarding the proposed acquisition may be filed with the Board. Communications should be addressed to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The application may be inspected at the office of the Board of Governors or the Federal Reserve Bank of Chicago.

Dated at Washington, D.C., this 19th day of September 1969.

By order of the Board of Governors.

[SEAL] ROBERT P. FORRESTAL, *Assistant Secretary.*

[F.R. Doc. 69-11515; Filed, Sept. 26, 1969; 8:45 a.m.]

CITIZENS AND SOUTHERN HOLDING CO. AND CITIZENS AND SOUTHERN NATIONAL BANK

Notice of Request and Order for Hearing

Notice is hereby given that request has been made to the Board of Governors of the Federal Reserve System, pursuant to section 4(c)(8) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c)(8)), and section 222.4(a) of the Board's Regulation Y (12 CFR 222.4(a)), by The Citizens and Southern Holding Co. and The Citizens and Southern National Bank, both of Atlanta, Ga., both bank holding companies, for a determination that the planned activities of Citizens & Southern Credit Service Corp. are of the kind described in the aforementioned sections of the Act and the regulation so as to make it unnecessary for the prohibitions of section 4 of the Act with respect to the acquisition or retention of shares in nonbanking organizations to apply in order to carry out the purposes of the Act.

Inasmuch as section 4(c)(8) of the Act requires that any determination pursuant thereto be made by the Board after due notice and hearing and on the basis of the record made at such hearing:

It is hereby ordered, That pursuant to section 4(c)(8) of the Bank Holding Company Act and in accordance with §§ 222.4(a) and 222.5(a) of the Board's Regulation Y (12 CFR 222.4(a), 222.5(a)), promulgated under the Bank Holding Company Act, a hearing with respect to this matter be held commencing on November 20, 1969, at 10 a.m. at the Federal Reserve Bank of Atlanta, 104 Marietta Street N.W., Atlanta, Ga. 30303, before Leonard J. Ralston (whose address is Small Business Administration, 1441 L Street NW., Washington, D.C. 20416), a hearing examiner selected by the Civil Service Commission, pursuant to section 3344 of title 5 of the United States Code. The hearing will be conducted according to the Board's rules of practice for formal hearings (12 CFR Part 263). The right is reserved to the Board or the hearing examiner to designate any other date or place for such hearing or any part thereof which may be determined to be necessary or appropriate for the convenience of the parties. The Board's rules of practice for formal hearings provide in part, "Unless otherwise specifically provided by statute or by rule of the Board, a hearing shall ordinarily be private and shall be attended only by

the parties, their representatives or counsel, representatives of the Board, witnesses while testifying, and other persons having an official interest in the proceedings: *Provided, however,* That, on written request by a party or a representative of the Board, or on the Board's own motion, the Board, in its discretion and to the extent permitted by law, may permit other persons to attend or may order the hearing to be public."

Any person desiring to give testimony at the hearing should file with the Secretary of the Board, directly or through the Federal Reserve Bank of Atlanta, on or before November 7, 1969, a written request containing a statement of the nature of the petitioner's interest in the proceeding, and a summary of the matters concerning which said petitioner wishes to give testimony. Such requests will be presented to the hearing examiner, and the persons submitting the requests will be notified, prior to the hearing, of his determination thereon. The application may be inspected at the Federal Reserve Bank of Atlanta or at the Federal Reserve Building, 20th Street and Constitution Avenue NW., Washington, D.C.

Dated at Washington, D.C., this 22d day of September 1969.

By order of the Board of Governors.

[SEAL] ROBERT P. FORRESTAL, *Assistant Secretary.*

[F.R. Doc. 69-11537; Filed, Sept. 26, 1969; 8:47 a.m.]

UNITED VIRGINIA BANKSHARES

Notice of Request and Order for Hearing

Notice is hereby given that request has been made to the Board of Governors of the Federal Reserve System, pursuant to section 4(c)(8) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c)(8)), and section 222.4(a) of the Board's Regulation Y (12 CFR 222.4(a)), by United Virginia Bankshares, Richmond, Va., a bank holding company, for a determination that the planned insurance activities of its proposed nonbanking subsidiary, United Virginia Insurance Agency, are of the kind described in the aforementioned sections of the Act and the regulation so as to make it unnecessary for the prohibitions of section 4 of the Act with respect to the acquisition or retention of shares in nonbanking organizations to apply in order to carry out the purposes of the Act.

Inasmuch as section 4(c)(8) of the Act requires that any determination pursuant thereto be made by the Board after due notice and hearing and on the basis of the record made at such hearing:

It is hereby ordered, That pursuant to section 4(c)(8) of the Bank Holding Company Act and in accordance with §§ 222.4(a) and 222.5(a) of the Board's Regulation Y (12 CFR 222.4(a), 222.5(a)), promulgated under the Bank Holding Company Act, a hearing with respect to this matter be held commencing on November 6, 1969, at 10 a.m. at the Federal Reserve Bank of Richmond, Ninth and Franklin Streets, Richmond, Va. 23213, before Leonard J. Ralston (whose address is Small Business Administration, 1441 L Street NW., Washington, D.C. 20416), a hearing examiner selected by the Civil Service Commission, pursuant to section 3344 of title 5 of the United States Code. The hearing will be conducted according to the Board's rules of practice for formal hearings (12 CFR Part 263). The right is reserved to the Board or the hearing examiner to designate any other date or place for such hearing or any part thereof which may be determined to be necessary or appropriate for the convenience of the parties. The Board's rules of practice for formal hearings provide, in part, "Unless otherwise specifically provided by statute or by rule of the Board, a hearing shall ordinarily be private and shall be attended only by the parties, their representatives or counsel, representatives of the Board, witnesses while testifying, and other persons having an official interest in the proceeding: *Provided, however,* That, on written request by a party or a representative of the Board, or on the Board's own motion, the Board, in its discretion and to the extent permitted by law, may permit other persons to attend or may order the hearing to be public."

Any person desiring to give testimony at the hearing should file with the Secretary of the Board, directly or through the Federal Reserve Bank of Richmond, on or before October 24, 1969, a written request containing a statement of the nature of the petitioner's interest in the proceeding, and a summary of the matters concerning which said petitioner wishes to give testimony. Such requests will be presented to the hearing examiner, and the persons submitting the requests will be notified, prior to the hearing, of his determination thereon. The application may be inspected at the Federal Reserve Bank of Richmond or at the Federal Reserve Building, 20th Street and Constitution Avenue NW., Washington, D.C.

Dated at Washington, D.C., this 22d day of September 1969.

By order of the Board of Governors.

[SEAL] ROBERT P. FORRESTAL, *Assistant Secretary.*

[F.R. Doc. 69-11538; Filed, Sept. 26, 1969; 8:47 a.m.]

INTERSTATE COMMERCE COMMISSION

[Notice 912]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

SEPTEMBER 24, 1969.

The following are notices of filing of applications for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the new rules of Ex Parte No. MC-67 (49 CFR Part 1131) published in the FEDERAL REGISTER, issue of April 27, 1965, effective July 1, 1965. These rules provide that protests to the granting of an application must be filed with the field official named in the FEDERAL REGISTER publication, within 15 calendar days after the date of notice of the filing of the application is published in the FEDERAL REGISTER. One copy of such protests must be served on the applicant, or its authorized representative, if any, and the protests must certify that such service has been made. The protests must be specific as to the service which such protestant can and will offer, and must consist of a signed original and six copies.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in field office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

No. MC 4405 (Sub-No. 476 TA), filed September 15, 1969. Applicant: DEALERS TRANSIT, INC., 7701 South Lawndale Avenue, Chicago, Ill. 60652. Applicant's representative: R. O. Homberger (same address as above). Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Specially designed tractor-trailer combinations,* in driveaway service, from Windsor Locks, Conn., to Vandenberg Air Force Base, Calif.; Minot Air Force Base, N. Dak.; Grand Forkes Air Force Base, N. Dak.; Malstrom Air Force Base, Mont.; F. E. Warren Air Force Base, Wyo.; and Hill Air Force Base, Utah, for 180 days. Supporting shipper: Military Management and Terminal Service, Washington, D.C. Send protests to: Roger L. Buchanan, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 219 South Dearborn Street, Chicago, Ill. 60604.

No. MC 75320 (Sub-No. 146 TA), filed September 15, 1969. Applicant: CAMPBELL SIXTY-SIX EXPRESS, INC., Post Office Box 807, Springfield, Mo. 65801. Authority sought to operate as a *common carrier,* by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading), serving the plantsite of Remington Arms Co., Inc., at or near Lonoke, Ark., as an off-route point in connection with applicant's regular-route authority between Memphis, Tenn., and Little Rock, Ark., for 180 days. Supporting shipper: E. I. du Pont de Nemours & Co., 10th and Market Streets, Wilmington, Del. 19898. Send protests to: John V. Barry, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 1100 Federal Office Building, 911 Walnut Street, Kansas City, Mo. 64106.

No. MC 17702 (Sub-No. 1 TA), filed September 22, 1969. Applicant: BEN H. SCHUSTER, doing business as BEN H. SCHUSTER TRUCKING, N89 W16114

Cleveland Avenue, Menomonee Falls, Wis. 53051. Applicant's representative: William C. Dineen, 412 Empire Building, 710 North Plankinton Avenue, Milwaukee, Wis. 53203. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Fruit drinks and syrups*, in containers, from the plant and warehouse facilities of Wagner Industries, Inc., Cicero, Ill., to Milwaukee, Wis., for the account of Wagner Industries, Inc., for 180 days. Supporting shipper: Wagner Industries, 1331 South 55th Court, Cicero, Ill. 60650 (Vincent P. Russo, Vice President). Send protests to: District Supervisor Lyle D. Helfer, Interstate Commerce Commission, Bureau of Operations, 135 West Wells Street, Room 807, Milwaukee, Wis. 53203.

No. MC 91306 (Sub-No. 13 TA), filed September 22, 1969. Applicant: JOHNSON BROTHERS TRUCKERS, INC., Post Office Box 530, Elkin, N.C. 28621. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New furniture*, from points in Buncombe, Cleveland, McDowell, and Burke Counties, N.C., to points in New York, New Jersey, Pennsylvania, Delaware, and Maryland, for 180 days. Supporting shippers: Broyhill Furniture Industries, Lenoir, N.C. 28645; Drexel Furniture Co., Drexel, N.C. 28619. Send protests to: Jack K. Huff, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 316 East Morehead, Suite 417 (BSR Building), Charlotte, N.C. 28202.

No. MC 99899 (Sub-No. 4 TA), filed September 15, 1969. Applicant: CERTIFIED FREIGHT LINES, INC., 2163 East 14th Street, Los Angeles, Calif. Applicant's representative: Warren N. Grossman, 825 City National Bank Building, 606 South Olive Street, Los Angeles, Calif. 90014. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *general commodities* (except household goods, as defined by the Commission, classes A and B explosives, commodities in bulk, and commodities requiring special equipment), serving the Diablo Canyon Nuclear Power Plant located approximately 7 miles northwest of the unincorporated community of Avila Beach, Calif., as an off-route point in connection with applicant's regular route operations between Los Angeles and San Francisco, Calif., for 180 days. NOTE: Applicant states it does not intend to tack, but will interline with other carriers. Supporting shipper: J. A. Marino, Traffic Analyst, Pacific Gas & Electric Co., 245 Market Street, San Francisco, Calif. 94106. Send protests to: John E. Nance, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 7708, Federal Building, 300 North Los Angeles Street, Los Angeles, Calif. 90012.

No. MC 114533 (Sub-No. 200 TA), filed September 15, 1969. Applicant: BANKERS DISPATCH CORPORATION, 4970 South Archer Avenue, Chicago, Ill. 60632. Applicant's representative: Stanley Komosa (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Woven labels, yarns, fibers, and other related textile supplies and parts*, between Holdrege, Nebr., on the one hand, and, on the other, Omaha, Nebr., restricted to the transportation of shipments having an immediately prior or subsequent movement by air, for 180 days. Supporting shipper: Artistic Woven Labels, Inc., Post Office Box 308, Holdrege, Nebr. 68949. Send protests to: Roger L. Buchanan, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Federal Buildings and U.S. Courthouse, 219 South Dearborn Street, Chicago, Ill. 60604.

No. MC 117765 (Sub-No. 87 TA), filed September 18, 1969. Applicant: HAHN TRUCK LINE, INC., 5315 Northwest Fifth, Oklahoma City, Okla. 73107. Applicant's representative: R. E. Hagan (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Empty plastic cartons and containers*, from Omaha, Nebr., to Hillsboro, Kans., for 180 days. Supporting shipper: Milk Producers, Inc., Robert Olson, Director of Plant, Hillsboro, Kans. 67063. Send protests to: C. L. Phillips, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 240, Old Post Office, 215 Northwest Third Street, Oklahoma City, Okla. 73102.

No. MC 123993 (Sub-No. 10 TA), filed September 10, 1969. Applicant: FOGLEMAN TRUCK LINE, INC., Post Office Box 1504, Crowley, La. 70526. Applicant's representative: Austin L. Hatchell, 1102 Perry-Brooks Building, Austin, Tex. 78701. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General Commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, dry fertilizer, dry fertilizer ingredients, and dry fertilizer materials, fertilizer, fertilizer solutions and materials, herbicides, fungicides, pesticides, industrial urea, in bags, dried fruits and nuts in containers, and foodstuffs in cans or bottles), between the plant or warehouse facilities of the Procter and Gamble Co., and its subsidiaries in Alexandria, La., or its commercial zone, on the one hand, and, on the other, points in Mississippi, those in that part of Florida located west of the Apalachicola River in Escambia, Santa Rosa, Okaloosa, Walton, Holmes, Jackson, Washington, Bay, Gulf and Calhoun Counties, Fla., and those in Baldwin, Barbour, Bullock, Butler, Choctaw, Clarke, Coffee, Conecuh, Covington, Crenshaw, Dale, Escambia, Geneva, Henry, Houston, Marengo, Mobile, Monroe, Pike, Washington, and Wilcox Counties, Ala.; for 180 days. Supporting shipper: The Procter and Gamble Co., Post Office Box 599, Cincinnati, Ohio 45201. Send protests to: W. R. Atkins, District Supervisor, Bureau of Operations, Interstate Commerce Commission, T-40009 Federal Building, 701 Loyola Avenue, New Orleans, La. 70113.

No. MC 124078 (Sub-No. 406 TA), filed September 22, 1969. Applicant: SCHWERMAN TRUCKING CO., 611 South 28th Street, Milwaukee, Wis. 53246. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Bentonite*, in bulk, from Cobleskill, N.Y., to the Blenheim-Gilboa Pumped Storage Power Project at or near Gilboa, N.Y., for 150 days. Supporting shipper: Perini Corp., 73 Mount Wayte Avenue, Framingham, Mass. 01701 (Fred A. Reif, Chief Engineer). Send protests to: District Supervisor Lyle D. Helfer, Interstate Commerce Commission, Bureau of Operations, 135 West Wells Street, Room 807, Milwaukee, Wis. 53203.

No. MC 124854 (Sub-No. 7 TA), filed September 22, 1969. Applicant: GRIM BROS. TRUCKING CO., 997 Laucks Mill Road, York, Pa. 17402. Applicant's representative: John M. Musselman, 400 North Third Street, Harrisburg, Pa. 17108. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Materials and supplies* used in the production and distribution of masonry building units, from Baltimore, Md., to Lansing, Mich., for 180 days. Supporting shipper: United Glazed Products, Inc., 506 South Central Avenue, Baltimore, Md. Send protests to: Robert W. Ritenour, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 508 Federal Building, Post Office Box 869, Harrisburg, Pa. 17108.

No. MC 127705 (Sub-No. 28 TA), filed September 22, 1969. Applicant: KREVDA BROS. EXPRESS, INC., Box 68, Gas City, Ind. 46933. Applicant's representative: Donald W. Smith, 900 Circle Tower Building, Indianapolis, Ind. 46204. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Glass containers and closures therefor*, from the plantsite of Glass Containers Corp. at Indianapolis, Ind., to Oconto, Green Bay, and Watertown, Wis., for 180 days. Supporting Shipper: Glass Containers Corp., 1301 South Keystone Avenue, Indianapolis, Ind. Send protests to: District Supervisor J. H. Gray, Interstate Commerce Commission, Bureau of Operations, Room 204, 345 West Wayne Street, Fort Wayne, Ind. 46802.

No. MC 133065 (Sub-No. 7 TA), filed September 18, 1969. Applicant: ECKLEY TRUCKING AND LEASING, Mead, Nebr. 68041. Applicant's representative: Frederick J. Coffman, Post Office Box 806, Lincoln, Nebr. 68501. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Snowmobiles* (with skis or wheels), from Wahoo, Nebr., to points in Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, and Vermont, for 180 days. Supporting shipper: Hellstar Corp., 246 West Eighth Street, Wahoo, Nebr. 68066. Send protests to: District Supervisor Johnston, Bureau of Operations, Interstate Commerce Commission, 315 Post Office Building, Lincoln, Nebr. 68508.

No. MC 133995 (Sub-No. 1 TA), filed September 17, 1969. Applicant: DEL W. JENSEN, 391 West 3200 South Street, Bountiful, Utah 84010. Applicant's representative: Irene Warr, 419 Judge Building, Salt Lake City, Utah 84111. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Automotive chemicals, motor oil, and antifreeze* (in retail containers, not in bulk) (1) from Los Angeles and San Francisco, Calif., to Salt Lake City, Utah; (2) from Los Angeles, Calif., to Las Vegas, Nev.; (3) from San Francisco, Calif., to Reno, Nev.; (4) from Los Angeles and San Francisco, Calif., to Butte and Billings, Mont.; (5) from Los Angeles and San Francisco, Calif., to Denver, Colo.; (6) from Denver, Colo., to Salt Lake City, Utah, under a continuing contract with Universal Distributing Co., for 180 days. Supporting shipper: Universal Distributing Co., 9553 South State Street, Sandy, Utah (Donald H. Wagstaff, Jr., President). Send protests to: John T. Vaughan, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 6201 Federal Building, Salt Lake City, Utah 84111.

By the Commission.

[SEAL] H. NEIL GARSON, *Secretary*.

[F.R. Doc. 69-11559; Filed, Sept. 26, 1969; 8:49 a.m.]

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PART II

ATOMIC ENERGY COMMISSION

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Revision of Procurement Regulations

Title 41—PUBLIC CONTRACTS AND PROPERTY MANAGEMENT

Chapter 9—Atomic Energy Commission

REVISION OF PROCUREMENT REGULATIONS

Because of the number and complexity of published amendments to Chapter 9, Title 41 of the Code of Federal Regulations, the chapter is republished as set forth below. This republication contains numerous editorial changes and corrections and the following more significant changes:

1. A new Part 9–59, Administration of Cost-Type Contractor Procurement Activities, has been added which together with related miscellaneous amendments throughout Chapter 9, clarify AEC policies and requirements for the administration of cost-type contractor procurement. This new part supersedes previous AEC regulations regarding procurement by cost-type contractors, including former Subpart 9–1.52 and the related sections in each part of Chapter 9 which had identified those regulations requiring "appropriate treatment" in order to carry out basic AEC procurement policies for cost-type contractors.

2. Part 9–5, Special and Directed Sources of Supply, has been extensively rewritten. Subpart 9–5.50 has been clarified by the addition of § 9–5.5001(f) concerning the needs of operating contractors which can be filled by obtaining excess materials from GSA Property Management and Disposal Service. Subpart 9–5.51 has been revised to eliminate any reference to procurement by AEC cost-type contractors from GSA sources of supply. This material is included in a new Subpart 9–5.9 which, among other things, provides that the document authorizing the use by cost-type contractors of GSA sources no longer need recite that the contractor is acting as agent of the Government. Former § 9–5.5207–1, Gallium, has been deleted since users may now procure gallium on an unclassified and decentralized basis.

3. AECPR 9–8.700–2 has been revised to require the use of an appropriate termination clause in architect-engineer contracts.

4. Certain types of relocation costs are more clearly identified under § 9–15.5010–20(f) as being specifically unallowable.

5. A new Part 9–20, Retention Requirements for Contractor and Subcontractor Records, has been added which exempts certain AEC contracts and subcontracts from the requirements of FPR Part 1–20. The requirements of the AEC records disposition program shall apply to such contracts and subcontracts.

6. Part 9–53, Numbering and Distribution of Contracts and Orders, has been amended to provide, in § 9–53.104, for distribution to the Division of Contracts of one conformed copy of each contract and subcontract (including modifications thereto) where the proposed action was submitted for Headquarters approval prior to execution.

PART 9–1—GENERAL

Subpart 9–1.1—Procurement Regulations

Subpart 9–1.2—Definition of Terms

Subpart 9–1.3—General Policies

Subpart 9–1.4—Procurement Authority and Responsibility

Subpart 9–1.5—Contingent Fees

Subpart 9–1.6—Debarred, Suspended, and Ineligible Bidders

Subpart 9–1.7—Small Business Concerns

Subpart 9–1.8—Labor Surplus Area Concerns

Subpart 9–1.9—Reporting Possible Antitrust Violations

Subpart 9–1.11—Qualified Products

Subpart 9–1.16—Reports of Identical Bids

Subpart 9–1.50—Change Orders, Equitable Adjustments, and Supplemental Agreements for Fixed-Price Contracts

Subpart 9–1.51 [Reserved]

Subpart 9–1.52 [Reserved]

Subpart 9–1.53—Novation Agreements and Change of Name Agreements

Subpart 9–1.54—General Policy for the Avoidance of Organizational Conflicts of Interest

AUTHORITY: The provisions of this Part 9–1 issued under sec. 161 of the Atomic Energy Act of 1954, as amended, 68 Stat. 948, 42 U.S.C. 2201; sec. 205 of the Federal Property and Administrative Services Act of 1949, as amended, 63 Stat. 390, 40 U.S.C. 486.

Subpart 9–1.1—Procurement Regulations

§ 9–1.101 Scope of subpart.

This subpart describes the Atomic Energy Commission Procurement Regulations in terms of establishment, authority, applicability, issuance, arrangement, implementation and supplementation of FPR, exclusions, deviations, and other AEC Procurement Instructions.

§ 9–1.102 Establishment of AEC Procurement Regulations.

(a) The AEC Procurement Regulations (AECPR) are hereby established.

(b) These regulations implement and supplement the Federal Procurement Regulations (FPR) and are a part of the Federal Procurement Regulations System.

(c) The effective date of FPR issuances throughout AEC will be the date indicated in the respective issuances, unless otherwise provided in the AEC Procurement Regulations.

(d) The effective date of AECPR issuances throughout AEC will be the date indicated in the respective issuances.

§ 9–1.103 Authority.

The AEC Procurement Regulations are prescribed by the General Manager, Assistant General Manager for Operations, or the Director, Division of Contracts of the AEC, pursuant to the authority of the Atomic Energy Act of 1954, and the Federal Property and Administrative Services Act of 1949.

§ 9–1.104 Applicability.

(a) The AEC Procurement Regulations and the Federal Procurement Regulations, which together form that part of the Federal Procurement Regulations System which governs AEC procurement, apply to all procurement of personal property and nonpersonal services (including construction).

(b) The AECPR and FPR also contain provisions which pertain to procurements by AEC cost-type contractors. (See Part 9–59, Administration of Cost-Type Contractor Procurement Activities.)

§ 9–1.105 Issuances.

§ 9–1.105–1 Publication.

The AEC Procurement Regulations appear in the Code of Federal Regulations as Chapter 9 of Title 41, Public Contracts and Property Management, and are published in the daily issues of the FEDERAL REGISTER, in cumulative form in the Code of Federal Regulations, and in separate looseleaf volume form.

§ 9–1.105–2 Copies.

Copies of the AEC Procurement Regulations in the FEDERAL REGISTER and the Code of Federal Regulations form may be purchased by Federal agencies and the public, at nominal cost, from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

§ 9–1.106 Arrangement.

§ 9–1.106–1 General plan.

The AEC Procurement Regulations employ the same numbering system and nomenclature used in the Federal Procurement Regulations and conform with FEDERAL REGISTER standards approved for the FPR.

§ 9–1.106–2 Numbering.

(a) The numbering system permits identification of every unit. The first digit, followed by a dash, represents the chapter number (AEC has been assigned Chapter 9). The dash is followed by the part number which may be one or more digits followed by a decimal point. The numbers after the decimal point represent, respectively, the subpart, section (in two digits) and, after a second dash, subsection, paragraph, subparagraph, and additional subdivisions. For example, this division is called "§ 9–1.106–2," in which the first digit denotes the chapter, the second the part, the third the subpart, the fourth and fifth the section, and the sixth the subsection.

(b) Where the AECPR implements a part, subpart, section, or subsection of the FPR, the implementing part, subpart, section, or subsection of the AECPR will be numbered (and captioned) to correspond to the FPR part, subpart, section, or subsection.

(c) Where the AECPR supplements the FPR, the numbers 50 and up will be assigned to the parts, subparts, or sections involved.

(d) Where the subject matter contained in a part, subpart, section, or subsection of the FPR requires no implementation, the AECPR will contain no corresponding part, subpart, section, or subsection number.

§ 9–1.106–3 Citation.

AEC Procurement Regulations will be cited in accordance with Federal Register standards approved for the FPR. Thus, this section, when referred to in divisions of the AEC Procurement Regulations, should be cited as "§ 9–1.106–3 of this chapter." When this section is referred to formally in official documents, such as legal briefs, it should be cited as "41 CFR 9–1.106–3." Any section of the AEC Procurement Regulations may be informally identified, for purposes of brevity, as AECPR followed by the section number, i.e., "AECPR 9–1.106–3."

§ 9–1.107 Implementation and supplementation of FPR.

§ 9–1.107–1 Description.

The AEC Procurement Regulations "implement" and "supplement" the FPR. The meaning of these terms includes the following:

(a) Implementation may have either of the following meanings:

(1) A part, subpart, section, etc., which treats a similarly numbered portion of the FPR in greater detail or indicates the manner of compliance, including any deviations.

(2) The absence of a corresponding part, subpart, section, etc., in the AECPR indicates that the FPR is applicable as written. Policies and procedures in the FPR are not repeated in the AECPR.

(b) Supplementation means AECPR coverage of matters which have no counterpart in the FPR.

§ 9–1.108 Exclusions.

Certain policies and procedures which come within the scope of this chapter nevertheless may be excluded from

AECPR. AEC Manual, Volume 9, Procurement, will contain these exclusions (AEC Procurement Instructions—AECPI) which include the following categories:

(a) Subject matter which bears a security classification, is "official use only," or is of a purely internal nature.

(b) Policy or procedure which is expected to be effective for a period of less than 6 months.

(c) Policy or procedure which is being instituted on an experimental basis for a reasonable period.

(d) Instructional material that explains more fully and in discursive fashion matters covered in FPR's and AECPR's.

§ 9–1.109 Deviation.

§ 9–1.109–1 Description.

The term "deviation" includes any of the following actions:

(a) When a prescribed contract clause is set forth verbatim, use of a contract clause covering the same subject matter which varies from that set forth.

(b) When a standard or other form is prescribed, use of any other form for the same purpose.

(c) Alteration of a prescribed standard or other form except as may be authorized in the regulations.

(d) The imposition of lesser or, where the regulation expressly prohibits, greater limitations than are imposed upon the use of a contract clause, form, procedure, type of contract, or upon any other procurement action, including but not limited to, the making or amendment of a contract, or actions taken in connection with the solicitation of bids or proposals, award, administration, or settlement of contracts.

(e) When a policy or procedure is prescribed, use of any inconsistent policy or procedure.

§ 9–1.109–2 Procedure.

In the interest of establishing and maintaining uniformity to the greatest extent feasible, deviations from the Federal Procurement Regulations System shall be kept to a minimum and controlled as follows:

(a) In individual cases, deviations from the FPR and AECPR may be authorized by Division Directors, Headquarters (having contracting authority) and Managers of Field Offices, unless otherwise provided. This authority may not be redelegated.

(1) A supporting statement for each individual deviation, which indicates briefly the nature of the deviation and the reasons for such special action shall be included in the contract file.

(2) A copy of the supporting statement for each individual deviation shall be forwarded to the Director, Division of Contracts.

(b) In classes of cases, requests for deviations from the FPR and the AECPR shall be forwarded in triplicate through the appropriate Division Director, Headquarters, to the Director, Division of Contracts, and shall be accompanied by an appropriate supporting statement. Requests will be considered on an expedited basis and appropriate coordination with Headquarters staff and program divisions will be obtained by the Director, Division of Contracts. Requests involving the FPR will be considered jointly by AEC and the General Services Administration, unless, in the judgment of the Director, Division of Contracts, after due consideration of the objective of uniformity and the program responsibilities of AEC, circumstances preclude such joint effort. In such case, the Director, Division of Contracts will approve such class deviations as he determines necessary and will appropriately notify the General Services Administration.

§ 9–1.110 Exemptions.

(a) Section 602(d)(13) of the Federal Property and Administrative Services Act of 1949, as amended, provides that nothing in that Act shall impair or affect any authority of the Atomic Energy Commission. This includes the authority of AEC under the Atomic Energy Act of 1954, as amended, Public Law 85–804, and any other law.

(b) This exemption authority is to be exercised only to the extent that compliance with the requirements of the Federal Property and Administrative Services Act of 1949, as amended, would impair or affect the carrying out of AEC's programs. Except as otherwise expressly provided in these regulations, requests for exemptions from the requirements of Title III of the Federal Property and Administrative Services Act of 1949, as amended, shall be submitted to the Director, Division of Contracts. Such requests will be accompanied by an appropriate explanation and justification for the exemption, which sets forth the grounds on which compliance with the particular requirements of Title III of the Federal Property and Administrative Services Act of 1949, as amended, would impair or affect AEC programs.

Subpart 9–1.2—Definition of Terms

§ 9–1.201 Definitions.

This subpart contains definitions of terms used generally throughout the AECPR, in addition to those set forth in FPR Subpart 1–1.2. Additional definitions will be found in individual parts of FPR and AECPR covering terms used in those parts only.

§ 9–1.250 Commission or AEC.

A distinction is made in AECPR between the term "Commission" and the abbreviation "AEC" in that the former is used to mean the Commissioners as a body and the latter to signify the U.S. Atomic Energy Commission. Many contract clauses make no distinction in these terms. Where practicable, this distinction will be made in AECPR, except in contracts and contract clauses where the terms are used synonymously.

§ 9–1.251 Division Director.

As used in AECPR, the term "Division Director" means the Director of a Division at the Headquarters level who is authorized to enter into contracts.

§ 9–1.252 Subcontract.

Unless otherwise provided in FPR or AECPR, the term "subcontract" means any agreement with a contractor or higher-tier subcontractor for the furnishing of supplies or services required for the performance of a contract. The term includes, by way of description and without limitation, letter contracts and purchase orders, and any amendment or modification thereof or supplement thereto.

§ 9–1.253 Contractor.

A "contractor" is any person, firm, association, or corporation entering into a contract with the Government.

§ 9–1.254 Subcontractor.

A "subcontractor" is any person, firm, association, or corporation entering into a subcontract with a contractor or higher-tier subcontractor.

§ 9–1.255 Cost-type contractor and cost-type subcontractor.

The term "cost-type contractor" means a contractor who has a prime contract with the AEC on a cost basis. The term "cost-type subcontractor" means a subcontractor who has a subcontract on a cost basis under a cost-type prime contract provided all the preceding subcontracts, if any, in the contractual chain are also on a cost basis.

§ 9–1.256 [Reserved]

§ 9–1.257 [Reserved]

§ 9–1.258 Supplier.

The term "supplier" means a manufacturer or producer, construction contractor, architect-engineer, regular dealer, or service establishment, and such other persons (or concerns) as may be found by the AEC to be qualified and responsible as sources of supplies or services.

§ 9–1.259 Supplies.

The term "supplies" as used herein means all property except land or interests in land. It includes, by way of description and without limitation, materials, supplies, equipment, public works, buildings, facilities, tools, and parts and accessories for such items.

§ 9–1.260 Services.

The term "services" means services other than personal services including, by way of description and without limitation, nonpersonal services; educational or training services; architectural or engineering services; maintenance or repair services; transportation services; utility services; operating and management services; experimental, developmental, or research work; and construction work.

Subpart 9–1.3—General Policies

§ 9–1.301 Methods of procurement.

(a) *General.* In promoting the primary objective of strengthening the common defense and security rapidly

and effectively, there is a great responsibility to protect and preserve competitive enterprise. All practicable steps must be taken to provide for the equitable distribution of contracts among the maximum number of competent suppliers and to avoid the concentration of contracts among a relatively few suppliers.

(b) *Procurement by formal advertising.* Supplies and services shall generally be procured by formal advertising in accordance with FPR Part 1–2 and Part 9–2.

(c) *Procurement by negotiation.* Supplies and services may be procured without formal advertising in accordance with the requirements of FPR Part 1–3 and Part 9–3.

§ 9–1.302 Procurement sources.

§ 9–1.302–1 General.

(a) *Procurement from Government sources.* Procurement of certain supplies and services may be effected by orders on Government sources referred to in FPR 1–1.302. It is the policy of the AEC that such methods of procurement be utilized to the fullest extent practicable, in accordance with applicable laws and regulations. Procurement by the AEC under the Economy Act of June 30, 1932, as amended (31 U.S.C. 686), shall conform to the requirements of that Act and applicable regulations of the General Accounting Office. Procedures to be followed in procuring from Government sources are set forth in Part 9–5.

(b) *Procurement from local trade area sources.* In soliciting quotations for small purchases, maximum utilization should be made of the provisions in FPR 1–3.603–1(b) with respect to sources within the trade area in which the procuring activity is located. Regardless of the size of the procurement, however, qualified sources of supply in the local trade area always should be considered.

§ 9–1.305–1 Mandatory use of Federal Specifications.

(a) The policies and procedures established by FPR 1–1.305 shall be complied with by AEC for all direct procurement except as provided for in § 9–1.305–5.

(b) The paper specification standards published by the Joint Committee on Printing for the purchase of paper to be used on Government-owned printing, binding, and duplicating equipment shall be applied to cost-type contractor procurement. The paper specification standards shall also be used in specifying paper requirements for "Federal printing" as defined in the Government Printing and Binding Regulations.

§ 9–1.305–3 Deviations from Federal Specifications.

Subject to the requirements of FPR 1–1.305–3, Managers of Field Offices, Heads of Divisions and Offices, Headquarters, or their representatives specifically designated for this purpose, may authorize deviations from Federal Specifications in connection with AEC direct procurement. In those cases where use of Federal Specifications is required under § 9–1.305–1(a), information required by FPR 1–1.305–3(b)(5) with respect to deviations shall be forwarded through channels to the Director, Division of Contracts.

§ 9–1.305–5 Use of Federal and interim Federal Specifications in construction contracts.

When specifications for AEC construction are prepared by private firms, Managers of Field Offices and Heads of Divisions or Offices, Headquarters, are responsible for obtaining compliance with the general policies of this subpart to the extent practicable and compatible with meeting program objectives.

§ 9–1.306–1 Mandatory use and applications of Federal Standards.

The policies and procedures established by FPR 1–1.306 for the development and use of Federal Standards shall be complied with by AEC to the same extent as provided for Federal Specifications in §§ 9–1.305–1, 9–1.305–3, and 9–1.305–5.

§ 9–1.307 Purchase descriptions.

Specifications should be in such terms as to permit full and free competition among all potential suppliers. However, technical reasons may occasionally exist for using specifications which limit competition by requiring certain types of material or articles, such as replacement parts, auxiliary equipment and tools required for use with major equipment. Restrictive specifications may be used to meet special requirements, provided (a) AEC needs cannot reasonably be met in any other manner, and (b) a complete justification for the restriction is reduced to writing and included in the contract file.

§ 9–1.310 Responsible prospective contractors.

§ 9–1.310–1 Scope.

This section implements the policy and procedures set forth in FPR 1–1.310 to determine, before award, whether prospective contractors for furnishing the AEC supplies or nonpersonal services (including construction) qualify as responsible.

§ 9–1.310–4 General policy.

A "responsible prospective contractor" is one which is found by the contracting officer to meet all of the applicable standards specified in § 9–1.310–5, *Standards*, in addition to FPR 1–1.310–5. If the contracting officer has sufficient current information to satisfy himself that the prospective contractor meets these standards, the contracting officer may proceed with the award without further inquiry. In all other cases before making determinations of responsibility, the contracting officer shall, by specific inquiry, obtain information sufficient to satisfy himself that a prospective contractor currently meets the applicable standards set forth in § 9–1.310–5 and FPR 1–1.310–5.

§ 9–1.310–5 Standards.

(a) In order to qualify as responsible, a prospective contractor must, in the opinion of the contracting officer, meet the following standards in addition to those set forth in FPR 1–1.310–5 as they relate to the particular procurement under consideration:

(1) An accounting system and financial controls have been established and are determined by the contracting officer to be adequate to permit the administration of the type of contract proposed, particularly if under its terms the costs incurred are a factor in determining the amount payable under the contract, or if advance or progress payments are requested.

(2) In determining the adequacy of a prospective contractor's financial resources for the performance of the proposed contract, as required by FPR 1–1.310–5(a)(1), particular attention shall be given to the ability of the contractor to discharge his full financial responsibility for charges and losses of Government-furnished material, such as special nuclear materials, when the contractor has financial responsibility for such material.

§ 9–1.310–7 Information regarding responsibility.

Before making a determination of responsibility, the contracting officer shall have sufficient current information to satisfy himself that the prospective contractor meets the standards in FPR 1–1.310–5 and § 9–1.310–5. To the extent appropriate to the particular procurement under consideration, information from the following sources in addition to those in FPR 1–1.310–7 should be utilized before considering making a preaward on-site evaluation:

(a) *Financial information.* (1) Balance sheet and profit and loss statement for the most recent fiscal year prepared and certified by an independent public accountant and, if available, similar financial data for the 2 previous years; also, latest available interim balance sheet and profit and loss statement of the current fiscal year. If audit reports by an independent public accountant are not available, a prospective contractor may be required to submit affidavits concerning financial data which fully set forth its financial condition and operating results.

(2) Information as to the prospective contractor's schedule of principal contracts, subcontracts and purchase orders, listing: Government and civilian contracts and orders separately, the respective Government or civilian contract representative; the aggregate amount of any unliquidated advance or progress payments, loans, liens, pledges, or assignments relating to each such contract or order; performance or deliveries under the contracts or purchase orders with full information on past contractual performance including the current status of all delinquencies and existing backlogs; and whether financial aid was furnished by the Government.

(b) *Organization, experience, and facilities*—(1) *Organization.* Form of company (corporation, partnership, etc.); status of company (manufacturer, regular dealer, etc.); affidavits of parent company (business, organization, and relationship); small business status.

(2) *Experience.* Business, manufacturing, research, development, services, including:

(i) Length of time in present business and all previous businesses;

(ii) Type of business;

(iii) Similarity between the current business experience and the supplies, services, or activities required by the proposed contract.

(3) *Facilities.* Adequacy and availability of plant facilities, materials, and personnel for the performance of the proposed contract, including the following, as appropriate:

(i) Facilities, including office, manufacturing, laboratory, and warehouse areas; the quality and quantity of production or technical tools and equipment;

(ii) Materials and components;

(iii) Trained labor force and the company's labor relations; availability of unskilled labor and training facilities;

(iv) Quality of the scientific, technical, and engineering staff;

(v) The kinds and amount of work usually performed by subcontracting and the identity of major subcontractors and their technical, scientific, productive, developmental, and financial qualification; the reputation of such subcontractors and their past performance record on contracts; and a schedule of their current principal contracts and subcontracts; and the extent to which the prospective contractor proposes to perform the contract by subcontracting;

(vi) Quality control procedures followed throughout purchasing, production, subcontracting, storage, maintenance and shipment.

§ 9–1.314 Solicitations for informational or planning purposes.

The allowance for the cost of preparing quotations referred to in FPR 1–1.314 shall be determined in accordance with AEC cost principles set forth in § 9–15.5010–13, "Bidding expense and costs of proposals."

§ 9–1.350 AEC Specifications and Standards.

§ 9–1.350–1 Special specifications and standards.

When special specifications or standards are used by a field office or Headquarters on a recurring basis or used by two or more field offices or contractors, consideration should be given to converting them to AEC specifications. Accordingly, contracting officers are urged to bring to the attention of the Director, Division of Contracts any such special specifications which they believe may be of use to more than one field office. The Director, Division of Contracts will notify field offices of the existence of any AEC specification.

§ 9–1.351 Distribution of Federal Specifications and Standards.

(a) AEC does not maintain a central distribution point for specifications and standards. Index of Federal Specifications, Standards, and Handbooks may be obtained by submission of an order from field offices to the GSA Region 3, Federal Supply Service, Buying Division, General Services Regional Office Building, Washington, D.C. 20407. Copies of Federal Specifications and Standards may be obtained in the same manner. Single copies of product specifications required for bidding purposes are available without charge at the Business Service Centers of the General Services Administration Regional Offices. Nongovernment activities should obtain copies of the Index and of Federal Specifications and Standards from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(b) Field offices and Headquarters shall maintain current copies of these indexes and supplements and shall maintain files of current copies of Federal Specifications and Standards covering all items which are purchased on a recurring basis for which specifications or standards are available. Managers of Field Offices are responsible for assuring the availability of the indexes and Federal Specifications and Standards to cost-type contractors.

§ 9–1.352 Department of Defense Index of Specifications and Standards.

These indexes may be obtained from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. Copies of Specifications and Standards are ordered from the cognizant Military activity developing each particular specification or standard.

§ 9–1.353 [Reserved]

§ 9–1.354 Prebidding and preproposal conferences.

(a) Wherever considered advantageous, particularly for the more complex, unusual, or large projects, a prebidding or preproposal conference should be held with prospective contractors and their suppliers prior to receipt of bids or proposals in connection with formally advertised or negotiated procurements.

(b) The primary objectives of such conferences are to avoid production and construction problems and contingency items in bids or proposals by:

(1) Outlawing principal features of the project.

(2) Answering questions and identifying any ambiguity or obscurity concerning the proposed work and the plans and specifications.

(3) Soliciting prospective contractors' opinions on matters such as feasibility of proposed production or construction techniques and tolerances.

(4) Soliciting prospective contractors' suggested changes in design or in provisions of the proposed contract which could result in more economical production or construction.

(c) Such conferences may also be held prior to the issuance of invitations for bids or requests for proposals when the main objective is to obtain the views of prospective contractors on matters such as production or construction techniques.

(d) Changes or clarifications found to be necessary as a result of a prebidding or preproposal conference shall be included in addenda to the invitation for bids or request for proposals.

Subpart 9–1.4—Procurement Authority and Responsibility

§ 9–1.450 General responsibility of contracting officers.

Contracting officers are responsible for:

(a) Executing and administering contracts in such a manner as to safeguard the interest of the United States in contractual relationships and making determinations of fact under contracts;

(b) Advising the contractor by letter or other appropriate means:

(1) The name of any contracting officer's representative, the extent of such representative's authority and any limitations placed thereon;

(2) The name of any site representative or other technical representative designated to provide technical surveillance of the work being performed under the contract, the extent of such representative's authority and any limitations placed thereon.

(c) Using standard contract forms, as required by the FPR and AECPR;

(d) Obtaining all necessary approvals and otherwise complying with applicable directives issued by the General Manager; Director, Division of Contracts; other Division Directors; and Managers of Field Offices;

(e) Personally signing all contracts and modifications entered into by them (this authority cannot be delegated to others, nor will the signing of contractual documents be accomplished by facsimile stamps or by proxy);

(f) Exercising care, skill, and judgment in all their actions;

(g) Assuring that funds are available and that their authority to subject the Government or its property to any risk is not being exceeded;

(h) Maintaining constant cognizance with respect to contract compliance on the part of the contractor;

(i) Securing the advice of legal, technical, and administrative staffs of the AEC as to the sufficiency of the contracts prior to their execution;

(j) Initiating any appropriate action necessary to properly assure the satisfactory performance of their contracts;

(k) Knowing and acting within the scope and limitation of their authority.

§ 9–1.451 Standards of conduct.

The business ethics of all persons charged with administration and expenditure of Government funds must be above reproach and suspicion in every respect at all times. It is important that all persons engaged in procurement and related duties adhere to and be guided by the AEC's policies and instructions on personnel conduct. Detailed rules applicable to the conduct of employees are set forth in 10 CFR Part 0.

§ 9–1.452 Disputes provisions in subcontracts under fixed-price prime contracts.

A contracting officer shall not authorize or approve the inclusion of a provision requiring his decision of disputes and providing for an appeal therefrom to

the Commission (or any component organization or board) in subcontracts under any fixed-price prime contracts.

Subpart 9–1.5—Contingent Fees

§ 9–1.500 Scope of subpart.

This subpart prescribes the use by AEC of the "covenant against contingent fees" and sets forth the policies in regard to AEC direct procurement and cost-type contractor procurement.

§ 9–1.501 Applicability.

The policies and requirements of FPR Subpart 1–1.5 shall be applied to all AEC direct and cost-type contractor procurement activities.

§ 9–1.507 Use of Standard Form 119.

§ 9–1.507–1 Form prescribed.

Each Standard Form 119 completed in connection with an AEC direct contract, together with other relevant information shall be reviewed by the Office of the General Counsel (or the Office of the Chief Counsel in the field) prior to the initiation of appropriate action. An information copy of each such form, together with a record of action taken, shall be forwarded to the Director, Division of Contracts.

Subpart 9–1.6—Debarred, Suspended, and Ineligible Bidders

§ 9–1.600 Scope of subpart.

This subpart implements and supplements the policies and procedures set forth in FPR Subpart 1–1.6 relating to the debarment, suspension, or ineligibility of bidders for any cause.

§ 9–1.602 Establishment and maintenance of a list of concerns or individuals debarred, suspended, or declared ineligible.

The Director, Division of Contracts shall establish and maintain a list of firms or individuals debarred or ineligible for contracts with the AEC and with AEC cost-type prime contractors pursuant to FPR 1–1.602. This list shall be designated as the List of Disqualified Bidders and Ineligible Contractors, and its use by all AEC procuring activities is mandatory. The Director, Division of Contracts shall periodically publish this list and distribute it to AEC contracting officers.

§ 9–1.602–1 Bases for entry on debarred, suspended, or ineligible list.

The Director, Division of Contracts, shall place all firms and individuals within the categories specified in FPR 1–1.602–1 and 1–1.604 on the List of Disqualified Bidders and Ineligible Contractors as soon as determination is made of debarment or ineligibility. AEC debarments under FPR 1–1.604 are subject to the procedural requirements in § 9–1.606.

§ 9–1.603 Treatment to be accorded firms or individuals in debarred, suspended, or ineligible status.

The Director, Division of Contracts, may determine, pursuant to FPR 1–1.603 (a), that an exception is essential to the public interest for a specific procurement action only. Such action shall be documented to reflect the determination and the justification therefor.

§ 9–1.606 Agency procedure.

§ 9–1.606–1 AEC procedural requirements.

This section establishes AEC internal procedures for giving effect to FPR Subpart 1–1.6 as required by FPR 1–1.606.

§ 9–1.606–50 Reporting procedures.

All Headquarters Divisions, Offices, Managers of Field Offices, and contracting officers are responsible for reporting any evidence of offenses or irregularities which may be grounds for debarment or suspension. The report shall be made to the Director, Division of Contracts. The report shall contain a full statement of facts, and shall be supported by appropriate exhibits. If all necessary information is not readily available, a preliminary report shall be forwarded to be followed as soon as practicable by a completely documented report.

§ 9–1.606–51 Collection of information and investigation.

(a) The Director, Division of Contracts, shall collect and evaluate information to determine whether an alleged offense or irregularity warrants the initiation of a debarment proceeding.

(b) The Director, Division of Contracts may request assistance from the Division of Inspection whenever an investigation may be required. The Division of Inspection will make a thorough investigation of the circumstances as expeditiously as possible, and will report the results to the Director, Division of Contracts.

§ 9–1.606–52 Initiation of action.

The Director, Division of Contracts, with the concurrence of the Office of the General Counsel, and after consultation with the Division of Inspection, and such offices as he deems appropriate, shall determine whether causes and conditions exist to initiate a debarment action or to issue a notice of suspension.

§ 9–1.606–53 Notice of proposed debarment.

(a) The Director, Division of Contracts shall initiate a debarment proceeding by sending a notice of proposed debarment by registered mail (return receipt requested) to the firm or individual proposed for debarment.

(b) A notice of proposed debarment will:

(1) Concisely state the facts on which the proposed debarment is predicated;

(2) Specify the period of the proposed debarment;

(3) Inform the firm or individual of the action which the AEC may take in the event a low bid or proposal is received from the firm or individual before the proposed debarment is finally determined;

(4) Inform the firm or individual of its right, within twenty (20) days of the date of the notice of the proposed debarment, or such other time as may be specified in the notice, to request a hearing;

(5) Provide that the firm or individual may submit a written reply to the notice of proposed debarment within twenty (20) days of its date, or such other time as may be specified in the notice. The reply shall set forth the facts on which the firm or individual relies and request a hearing, if one is desired.

(6) Inform the firm or individual that if no reply or request for hearing is received within twenty (20) days from the date of the notice of proposed debarment or such other time as may be specified in the notice, that the debarment will become effective on a date specified in the notice.

§ 9–1.606–54 Hearing.

A hearing, if requested, shall be conducted before the AEC Board of Contract Appeals. (See 10 CFR 3.17, "Conduct of hearings," and 10 CFR 3.21, "Reconsideration.") The AEC Board of Contract Appeals has the final authority to decide debarment cases after hearings.

§ 9–1.606–55 [Reserved]

§ 9–1.606–56 [Reserved]

§ 9–1.606–57 Final debarment determination after the forfeiture of the right to be heard.

(a) If the Director, Division of Contracts, on the basis of an analysis of all information submitted for his review, determines that the proposed debarment is not warranted, he shall notify, in writing, the firm or individual concerned within forty (40) days after the notice of proposed debarment.

(b) If the Director, Division of Contracts, on the basis of an analysis of all information submitted for his review, determines that the proposed debarment is warranted, he shall transmit his recommendation for debarment, and all information on which such recommendation is based, to the General Manager. The General Manager shall determine in writing whether to debar. If the General Manager determines to debar, the Director, Division of Contracts shall notify, in writing, the firm or individual within forty (40) days after the notice of proposed debarment. The General Manager's determination shall accompany the notice confirming the proposed debarment. The notice confirming the proposed debarment shall state the effective date and the period of the debarment. The period of the debarment shall be no greater than that specified in the notice of proposed debarment.

§ 9–1.606–58 Notice of final debarment determination.

(a) The Director, Division of Contracts shall promptly notify all Headquarters Divisions, Offices, and Managers of Field Offices of all debarment actions taken pursuant to this subpart.

(b) The Director, Division of Contracts shall notify the General Services Administration of the names of all firms or individuals placed on or removed from the List of Disqualified Bidders and Ineligible Contractors.

Subpart 9–1.7—Small Business Concerns

§ 9–1.700 General.

This subpart implements and supplements general Government policies and procedures set forth in FPR Subpart 1–1.7.

§ 9–1.702 Small business policies.

(a) *Specific policies.* (1) Headquarters and Field Offices shall cooperate with the SBA in implementing the policies and procedures set forth in FPR Subpart 1–1.7 and this subpart.

(2) Managers of Field Offices shall appoint persons under their jurisdiction to serve in a liaison capacity with SBA representatives. Managers of Field Offices shall request cost-type contractors to make similar appointments.

(3) The AEC–SBA Agreement set forth in § 9–1.751 provides a basis for cooperation between the two agencies to further the AEC small business program and the intent of Congress which is set forth in the Small Business Act. It is expected that field offices, through contracting officers, will cooperate with the SBA in establishing set-aside programs or in setting aside selected items or classes of items of procurement. Where SBA representatives are not available to screen proposed procurements and to initiate joint small business set-asides, unilateral small business set-asides shall be made by the contracting officers as appropriate.

§ 9–1.705–3 Screening of procurements.

(a) *Class set-asides.* An agreement has been reached between the AEC and the SBA that AEC would accept SBA initiation of class set-asides for formally advertised construction procurements estimated to cost between $2,500 and $500,000, including new construction, and repair, maintenance, and alteration of structures. When, in the judgment of the contracting officer, a particular procurement falling within these dollar limits is determined unsuitable for a set-aside for exclusive small business participation, he shall notify the appropriate SBA representative of this decision. Unless SBA appeals the decision (see FPR 1–1.706–2), the contracting officer shall proceed to process the procurement on an unrestricted basis. Proposed contracts for construction, and repair, maintenance, and alteration of structures having an estimated cost of more than $500,000 shall not be set aside for exclusive small business participation.

§ 9–1.708–3 Conclusiveness of certificate of competency.

If the contracting officer questions the acceptability of an SBA certificate of competency based on substantial doubt as to a particular firm's ability to perform, he shall, before award, promptly refer the matter to the Director, Division of Contracts for a final decision.

§ 9–1.709 Records and reports.

A semiannual small business report shall be prepared by each field office and forwarded to the Director, Division of Contracts not later than the thirtieth day following the end of the 6-month period covered by the report. Managers of Field Offices shall require similar reports to be prepared by cost-type contractors to accompany the field office reports. Reports shall be prepared as follows:

(a) Narrative statement regarding the operation of the program during the 6-month period.

(b) Tabulation of the following factual information:

(1) Number of contracts awarded to small business concerns during the 6-month period which have not previously received contracts.

(2) Number of small business concerns added to bidders mailing lists during the 6-month period.

(3) Number and dollar value of awards to small business concerns compared to the number and dollar value of awards suitable for small business concerns.

(4) Number and dollar value of invitations to bid and requests for proposals referred to SBA.

(5) Number and dollar value of set-asides to small business.

§ 9–1.751 AEC–SBA Agreement.

A revised agreement for cooperation was signed by the Chairman of the AEC and the Administrator of the SBA in October 1960. The term "Operations Office," as used in the agreement, shall also apply to field offices. The text of this Agreement follows:

(a) *Introduction.* The purpose of this document is to revise and to continue an agreement between the Atomic Energy Commission (AEC) and the Small Business Administration (SBA), which has resulted in a friendly cooperative relationship since the agreement was established originally in 1953. The agreement provides a basis for cooperation between the two agencies in order to further the AEC small business program and the intent of Congress which is set forth in the Small Business Act. To the extent applicable, the agreement is supplemented by the Federal Procurement Regulations (FPR's) pertaining to Small Business, which include definitions and uniform procedures for set-asides and Certificates of Competency.

(b) *Agreement.* The AEC and SBA will continue to establish and maintain liaison between appropriate combinations of AEC Operations Offices and SBA Offices for exchanges of information regarding AEC opportunities for small businesses, additional sources of qualified small business concerns, and appropriate matters.

(c) *Liaison—*

(1) *Establishment.* SBA Area Offices will continue to establish and maintain liaison with the AEC Operations Offices within their respective geographical regions. Such liaison may include arrangements with respect to the AEC Area Offices and cost-type contractors administered by an Operations Office.

Where an AEC Operations Office is located in one SBA area and the AEC Area Offices and cost-type operating contractors are located in other SBA areas, the SBA Area Office serving the area in which the AEC Area Office or cost-type operating contractor is located shall contact the AEC Operations Office concerned regarding the establishment of liaison procedures for such Area Office or cost-type contractor.

(2) *Procedures.* Detailed procedures for carrying out the exchanges of information by this agreement have been jointly developed and will continue to be maintained and modified, as experience suggests, by each combination of SBA Regional and AEC Operations Office maintaining liaison.

(3) It is not contemplated that SBA employees will operate in any area where security "Q" clearances are required.

(d) *Exchanges of information—*

(1) *Procurement, research and development, and property sales.* AEC Operations Offices (including Area Offices and cost-type contractors) will provide or arrange for the provision of information to the SBA Regional Offices with which liaison has been established regarding appropriate procurement, research and development, and property sales opportunities which are suitable for small business. In turn, the SBA Regional Offices will provide information, including the names of qualified small concerns, which will further the purpose of this agreement. The interchange of information provided in this paragraph will be in such form and will be transmitted by such means and with such frequency as seems most practical to the personnel engaged in the exchange of information.

(2) *Technical information and AEC-owned patents.* AEC will assist SBA to bring unclassified AEC research reports and AEC-owned (Government) patents to the attention of interested qualified small business concerns.

(e) *Time factor.* It is anticipated that in some circumstances the time available for the submission of bids may be too short for some small business concerns suggested by SBA to participate. In these circumstances, qualified small business concerns which are unable to participate will be added to bidders lists and invited to participate in subsequent procurements or sales.

(f) *Appropriate opportunities.* Appropriate opportunities, for the purpose of this agreement, will not include opportunities which must involve Government sources, those that security requirements will not permit to be publicly disclosed, and those where the urgency is too great to permit broad solicitation of bids or development of additional sources.

(g) *Review of agreement.* This agreement will be reviewed on a periodic basis to determine whether the purpose of the agreement is being achieved and whether expansion and/or modification would be appropriate.

Subpart 9–1.8—Labor Surplus Area Concerns

§ 9–1.807 Report on preference procurement in labor surplus areas.

The semiannual report on preference procurement in Labor Surplus Areas as set forth in FPR 1–1.807 shall also include a separate report on subcontracts from cost-type contractors.

Subpart 9–1.9—Reporting Possible Antitrust Violations

§ 9–1.901 General.

The procedures prescribed in FPR Subpart 1–1.9 apply to all procurement on a competitive basis and shall be applied to cost-type contractor procurement.

§ 9–1.902 Documents to be transmitted.

The Office of the General Counsel is responsible for reporting cases of possible antitrust violations to the Attorney General. Managers of Field Offices and Headquarters officials having contracting responsibilities shall furnish two

copies of the documents referred to in FPR 1-1.902 to the Office of the General Counsel and one copy to the Director, Division of Contracts.

Subpart 9-1.11—Qualified Products

§ 9-1.1101 Procurement of qualified products.

(a) This subpart prescribes policies and procedures for the procurement of qualified products from lists of such products established by the Government. These procedures are applicable to AEC direct procurement. Contracting officers may authorize their use on a case-by-case basis in cost-type contractor procurement.

(b) Whenever procurement of qualified products is to be made by formal advertising, AEC contracting officers shall insert in invitations for bids the provision contained in FPR 1-1.1101(b). This provision may be modified by AEC contracting officers with the advice of Counsel for use in requests for proposals.

§ 9-1.1150 Distribution of qualified products lists.

Qualified products lists are distributed by GSA directly to Headquarters and field offices. These lists shall be redistributed by contracting officers only to those persons authorized to use them. Such persons may include responsible procurement personnel of cost-type contractors. The contents of such lists shall not be divulged to unauthorized persons. AEC contracting officers shall maintain records of the distribution of the lists. Extra copies may be obtained through the Division of Contracts.

Subpart 9-1.16—Reports of Identical Bids

§ 9-1.1603-1 Cases to be reported.

Contracting officers shall require reports from cost-type contractors on identical bids or quotations received in connection with procurement under AEC contracts. The provisions of FPR 1-1.1602, 1-1.1603-1, 1-1.603-2, and 1-1.1605-2 shall be applied in connection with such reports.

§ 9-1.1603-3 Submission of reports.

Directors, Headquarters Divisions and Offices, and Managers of Field Offices are responsible for submitting to the Office of the General Counsel two copies of identical bid reports for both AEC direct procurement and cost-type contractor procurement, with a copy to the Director, Division of Contracts.

Subpart 9-1.50—Change Orders, Equitable Adjustments, and Supplemental Agreements for Fixed-Price Contracts

§ 9-1.5000 Scope of subpart.

This subpart sets forth the circumstances under which change orders, other unilateral-type contract modifications, and supplemental agreements are to be used in connection with AEC fixed-price prime contracts, and outlines general procedures to be followed in the preparation and negotiation of such modifications, including determination of necessary equitable adjustments in price or performance time.

§ 9-1.5001 General policy.

It is the policy of AEC to handle change orders and supplemental agreements to fixed-price contracts expeditiously and economically without sacrificing sound contract administration or lessening the opportunity for proper consideration of all pertinent factors in effecting equitable adjustments and settlements. Conscientious observance of this policy should reduce to a minimum formal disputes and litigation with resulting expense and delays which are harmful to all concerned.

§ 9-1.5002 Applicability.

The policies and procedures set forth in this subpart apply to all AEC fixed-price prime contracts.

§ 9-1.5003 Definitions.

For the purpose of this subpart, the following terms have the meanings set forth in this section:

(a) *Article.* "Article" means an article or clause as these terms are used in the various standard contract forms used by the AEC to designate separate and distinct contract provisions.

(b) *Change order.* "Change order" means a written directive to the contractor (1) to add, vary, or omit work within the general scope of the contract under provisions permitting or requiring such changes without the consent of the contractor, and (2) effecting, either with or without prior agreement of the contractor according to the circumstances, an equitable adjustment in the contract price or peformance time, or both.

(c) *Contract modification.* The meaning of "contract modification" is as defined in FPR 1-1.219.

(d) *Equitable adjustment or adjustment.* "Equitable adjustment" or "adjustment" means a determination or agreement that no change in contract price or performance time is to be made as well as that an increase or decrease is made in one or both of these factors.

(e) *Supplemental agreement.* "Supplemental agreement" means a negotiated, bilateral modification of a contract effecting changes in the general scope of work or other contract terms and conditions.

§ 9-1.5004 Change orders and other unilateral-type modifications within the general contract scope.

§ 9-1.5004-1 Change orders.

(a) *Use of change orders.* (1) A change order shall be used to direct an addition to or variation or omission from the work within the general scope of a contract in accordance with the contract provisions and to effect an equitable adjustment in contract price and performance time.

(2) A change order shall not be used to effect additions, alterations, or deletions of work which involve a change in the general scope of a contract or to change any of the substantive provisions of a contract, such as time of commencement, methods of payment, and refund of retained percentages.

(b) *Obligation of contractor.* Under the terms of standard fixed-price contract forms the contractor agrees in advance to perform such changes in the work as are within the general scope of the contract. A written order to the contractor making such a change is binding upon him whether or not the order contains adjustments of price and time, and he is obligated to proceed with the work as changed pending determination of equitable adjustments. If the order contains unilateral adjustments of price and time with which the contractor cannot agree, he has the right to protest or appeal from such determination in accordance with the language of the particular contract article under which the order was issued, but he must comply with the requirements of such article in order for his protest or appeal to be effective.

(c) *Method of issuance.* (1) Whenever possible, prior agreement should be reached with the contractor regarding any price and time adjustments and a complete one-part change order should be issued prior to commencement of the changed work. If agreement cannot be reached within available time, the directive portion of the change order should be issued in any case prior to commencement of the changed work.

(2) When failure to reach mutual agreement on equitable adjustments prior to issuance of a change order is due to inability to obtain adequate proposals from the contractor or to reaching an impasse in negotiations, rather than to lack of available time, a complete one-part change order should be issued as a unilateral action with price and time adjustments based on the Government estimate.

(3) A two-part change order should be used when a complete one-part change order has not been issued under either subparagraph (1) or (2) above. The first part should set forth the details of the change and contain a statement that price and time adjustments will be settled by the parties at an early date. The second part should contain the adjustments in price and time. Where appropriate, the first part of a two-part change order may establish an interim price as a basis for such partial payments as can be thoroughly substantiated by cost estimates; the interim price should not include profit or items which might be controversial. Every effort should be made by the parties to reach agreement on part two of the two-part change order as expeditiously as possible. When the parties fail to reach agreement as to equitable adjustments due to inability to obtain adequate proposals from the contractor, the reaching of an impasse in negotiations, or for any other proper reason, the second part of a two-part change order should be issued as a unilateral action with price and time adjustments based on the Government estimate.

(4) In all cases where agreement is reached with the contractor on equitable

price and time adjustments, the contractor's acceptance shall be indicated by his signature on the change order to establish that mutual agreement has been reached.

(5) According to the circumstances of the particular case, the contractor's protest or "appeal" from unilateral adjustments of price and time in a change order should be treated (i) as a claim for consideration and decision, based on findings of fact by the contracting officer, subject to further appeal, or (ii) as an appeal from the contracting officer's decision. The latter alternative should apply only when the unilateral adjustments were preceded by a full consideration of the details of the contractor's claim, a thorough effort to resolve differences by negotiation, and a decision by the contracting officer based upon formal findings of fact. See "Rules of Procedures in Contract Appeals," 10 CFR Part 3.

(d) *Adjustment of price or time.* Any equitable adjustment in price or time must be determined as of the date the change is directed. Estimated increased costs of performing the contract as changed, which are a direct result of the change order, are proper for consideration in an equitable adjustment in price. Ascertainment of costs which may be properly included in any equitable adjustment depends upon all of the facts surrounding a particular change. The following procedures shall be followed in establishing price and time adjustments for change orders:

(1) *Contractor's proposal.* The contractor shall be furnished details of the change and be requested to submit a statement that the directed change will not require a change in contract price or time or, if an increase or decrease in contract price or time will result, an estimate of cost, broken down as appropriate between features of work and into costs of labor, materials, equipment, construction equipment, taxes, bonds, insurance, overhead and profit, and the change in time for completion, if any.

(2) *Government estimate.* An independent Government estimate of the cost of the changed work shall be prepared on the basis, as applicable, of the costs of labor, materials, equipment, construction equipment, taxes, bonds, and insurance (direct costs) on which appropriate allowances for profit and overhead should be made. The change in the time of performance, if any, should also be estimated.

(3) *Use of actual costs.* Costs actually incurred may be considered, to the extent that they are determined to be both necessary and reasonable, in determining price adjustments for changes that have been completed, but they are not to be used as the basis for price adjustments since the price adjustment must be determined as of the date the change was directed.

§ 9–1.5004–2 Unilateral-type contract modifications other than change orders.

Fixed-price contracts often include provisions other than Changes articles which contemplate, as a result of specified happenings or actions, unilateral equitable adjustments in the contract price or performance time in the event of failure to reach mutual agreement. To the extent applicable, the procedures for the handling of change order equitable adjustments specified in § 9–1.5004–1 shall be followed in the treatment of such other equitable adjustments. Such other adjustments include:

(a) Adjustments in price and time resulting from differences in physical conditions as described in the "Changed Conditions" article which appears in Standard Form 23–A: General Provisions (Construction Contract) and other contracts.

(b) Certain time extensions as covered by provisions of contract articles dealing with default terminations, delays, and time extensions.

(c) Time or price adjustments resulting from suspension, delay, or interruption of work covered by applicable contract articles.

(d) Adjustments in price and time resulting from removing or tearing out of construction work which subsequently is found to meet contract requirements as covered by inspection articles.

§ 9–1.5005 Changes outside the general contract scope.

(a) *Use of supplemental agreements.* (1) A supplemental agreement is used to modify a contract when a substantive change is necessary, such as a change in the general scope of the contract, changes in basic contract articles, or a deletion or addition of contract articles.

(2) A supplemental agreement shall not be used for work additions unless the added work is so closely related to work under the existing contract, or for other reasons, that it is impracticable to accomplish the new work under a separate fixed-price contract awarded as a result of formal advertising or invited proposal procedures. The use of a supplemental agreement for additional work shall be fully justified as being in the best interest of the Government and shall satisfy AEC requirements for procurement by negotiation.

(3) Whenever time will permit, a supplemental agreement shall be issued and signed by both parties prior to the commencement of any work covered by the modification. When construction must be started before a supplemental agreement can be completed, prior agreement shall be confirmed by letter or a letter-type supplemental agreement should be issued to authorize the start of work.

(b) *Negotiation.* Since a supplemental agreement concerns a change in contract terms or in work which is not within the general scope of the contract, any price and time adjustment must be acceptable to the contractor and the supplemental agreement must be effected by negotiation with the contractor. The following procedures shall be used:

(1) *Contractor's proposal.* The contractor shall be furnished a description of the change, together with any applicable revised plans and specifications, and be requested to submit a proposal for the changed work, including a detailed estimate of any change in price or time involved in the performance of the work.

(2) *Government estimate.* An independent Government estimate shall be prepared in accordance with applicable provisions of § 9–1.5004–1(d)(2).

(3) *Agreement on price or time adjustment.* In the event negotiation with the contractor does not result in reasonable reconciliation between the contractor's estimate and the Government estimate, the contracting officer must determine whether, under the circumstances, contracting with others for the work involved would better serve the interest of the Government.

§ 9–1.5006 Preparation of change orders, other unilateral contract modifications, and supplemental agreements.

(a) Suggested outlines that may be used as guides in preparing change orders and supplemental agreements to fixed-price construction contracts are set forth in §§ 9–16.5002–10 and 9–16.5002–11, respectively.

(b) See Part 9–53 for numbering and distribution of contract modifications.

(c) See Part 9–55 for required justification and documentation.

§ 9–1.5007 Surety bonds.

Additional performance bond protection in connection with and consent of surety to change orders and supplemental agreements to fixed-price contracts shall be obtained when they are determined to be appropriate on the basis of Part 9–10.

Subpart 9–1.51 [Reserved]

Subpart 9–1.52 [Reserved]

Subpart 9–1.53—Novation Agreements and Change of Name Agreements

§ 9–1.5300 Scope of subpart.

This subpart prescribes the policy and procedures for (a) recognition of a successor in interest to contracts when such interests are required incidental to transfer of all the assets of a contractor or such part of his assets as is involved in the performance of the contract, and (b) a change of name of a contractor.

§ 9–1.5301 Agreement to recognize a successor in interest.

(a) The transfer of a Government contract by a contractor is prohibited by law (41 U.S.C. 15). However, the Government may recognize a third party as the successor in interest to a Government contract where the third party's interest is incidental to the transfer of all the assets of the contractor, or all that part of the contractor's assets involved in the performance of the contract. Examples include, but are not limited to:

(1) Sale of such assets;

(2) Transfer of such assets pursuant to merger or consolidation of corporation; and

(3) Incorporation of a proprietorship or partnership.

(b) A contractor who requests that a successor in interest be recognized shall be required to furnish the AEC office concerned (see § 9-1.5303(a)) one copy of each of the following documents as appropriate:

(1) A properly authenticated copy of the instrument by which the transfer of assets is to be effected, as, for example, a bill of sale, certificate of merger, indenture of transfer, or decree of court;

(2) A list of all contracts and purchase orders which have not been finally settled between the Atomic Energy Commission and the transferor, showing the contract number, the name and address of the purchasing office involved, the total dollar value of each contract as amended, the type of contract involved, and the balance remaining unpaid;

(3) A certified copy of the resolutions of the Board of Directors of the corporate parties authorizing the transfer of assets;

(4) A certified copy of the minutes of any stockholders' meetings of the corporate parties necessary to approve the transfer of assets;

(5) A properly authenticated copy of the certificate and articles of incorporation of the transferee if such corporation was formed for the purpose of receiving the assets involved in the performance of the Government contracts;

(6) Opinion of counsel for the transferor and transferee that the transfer is in accordance with applicable law and the effective date of transfer;

(7) Evidence of the capability of the transferee to perform the contracts;

(8) Balance sheets of the transferor and the transferee as of dates immediately prior to and after the transfer of assets;

(9) Evidence of security clearance requirements; and

(10) Consent of sureties on all contracts listed under subparagraph (2) of this paragraph where bonds are required.

(c) If it is consistent with the Government's interest to recognize a successor in interest to a contract, an agreement will be executed with the transferor and the transferee, which shall ordinarily provide in part that:

(1) The transferee assumes all the transferor's obligations and liabilities under the contract;

(2) The transferor waives all rights under the contract as against the Government;

(3) The transferor guarantees performance of the contract by the transferee (a satisfactory performance bond may be accepted in lieu of such guarantee); and

(4) Nothing in the agreement shall relieve the transferor or the transferee from compliance with any Federal, State, or local law. All agreements, prior to execution, shall be reviewed by the Office of the General Counsel or the Office of the Chief Counsel, as the case may be, for legal sufficiency. A sample form for such an agreement for use when the transferor and transferee are corporations, and all the assets of the transferor are transferred, is set forth herein. This sample form may be adapted to fit specific cases and may be used as a guide in preparing similar agreements for use in other situations.

AGREEMENT

This Agreement, entered into as of (date upon which the transfer of assets became effective pursuant to applicable State law) 19__, by and between ABC Corp., a corporation duly organized and existing under the laws of the State of _____ with its principal office in the city of _____ (hereinafter referred to as the "Transferor"); the XYZ Corp., a corporation duly organized and existing under the laws of the State of _____ with its principal office in the city of _____ (hereinafter referred to as the "Transferee"); and the United States of America (hereinafter referred to as the "Government"), represented by the U.S. Atomic Energy Commission (hereinafter referred to as the "Commission").

WITNESSETH

1. Whereas, the Commission has entered into the following contracts and purchase orders with the Transferor: _____

2. Whereas, as of _____, 19__, the Transferor assigned, conveyed, and transferred to the Transferee all the assets of the Transferor by virtue of a (term descriptive of the legal transaction involved) between the Transferor and the Transferee;

3. Whereas, the Transferee, by virtue of said assignment, conveyance, and transfer, has acquired all the assets of the Transferor;

4. Whereas by virtue of said assignment, conveyance, and transfer, the Transferee has assumed all the duties, obligations, and liabilities of the Transferor under the contracts;

5. Whereas, the Transferee is in a position fully to perform the contracts, and such duties and obligations as may exist under the contracts;

6. Whereas, it is consistent with the Government's interest to recognize the Transferee as the successor party to the contracts;

7. Whereas, there has been filed with the Commission evidence of said assignment, conveyance, or transfer, as required by AECPR 9-1.5301(b);

(Where a change of name is also involved, such as prior or concurrent change of name of the transferee, an appropriate recital shall be used; for example:)

8. Whereas, there has been filed with the Commission a certificate dated _____, 19__, signed by the Secretary of the State of _____, to the effect that the corporate name of LMN Corp. was changed to XYZ Corp. on _____, 19__;

Now, therefore, in consideration of the premises, the parties hereto agree as follows:

9. The Transferor hereby confirms said assignment, conveyance, and transfer to the Transferee, and does hereby release and discharge the Government from, and does hereby waive, any and all claims, demands, and rights against the Government which it now has or may hereafter have in connection with the contracts.

10. The Transferee hereby assumes, agrees to be bound by, and undertakes to perform each and every one of the terms, covenants, and conditions contained in the contracts. The Transferee further assumes all obligations and liabilities of, and all claims and demands against, the Transferor under the contracts, in all respects as if the Transferee were the original party to the contracts.

11. The Transferee hereby ratifies and confirms all actions heretofore taken by the Transferor with respect to the contracts with the same force and effect as if the action had been taken by the Transferee.

12. The Commission hereby recognizes the Transferee as the Transferor's successor in interest in and to the contracts. The Transferee hereby becomes entitled to all right, title, and interest of the Transferor in and to the contracts in all respects as if the Transferee were the original party to the contracts. The term "Contractor" as used in the contracts shall be deemed to refer to the Transferee rather than to the Transferor.

13. Except as expressly provided herein, nothing in this Agreement shall be construed as a waiver of any rights of the Government against the Transferor.

14. Notwithstanding the foregoing provisions, all payments and reimbursements heretofore made by the Commission to the Transferor and all other action heretofore taken by the Commission, pursuant to its obligations under any of the contracts, shall be deemed to have discharged protanto the Government's obligations under the contracts. All payments and reimbursements made by the Commission after the date of this Agreement in the name of or to the Transferor shall have the same force and effect as if made to said Transferee and shall constitute a complete discharge of the Government's obligations under the contracts, to the extent of the amounts so paid or reimbursed.

15. The Transferor and the Transferee hereby agree that the Government shall not be obligated to pay or reimburse either of them for, or otherwise give effect to, any costs, taxes, or other expenses, or any increases therein, directly or indirectly arising out of or resulting from (i) said assignment, conveyance, and transfer, or (ii) this Agreement, other than those which the Government, in the absence of said assignment, conveyance, and transfer or this Agreement, would have been obligated to pay or reimburse under the terms of the contracts.

16. The Transferor hereby guarantees payment of all liabilities and the performance of all obligations which the Transferee (i) assumes under this Agreement, or (ii) may hereafter undertake under the contracts as they may hereafter be amended or modified in accordance with the terms and conditions thereof; and the Transferor hereby waives notice of and consents to any such amendment or modification.

17. Except as herein modified, the contracts shall remain in full force and effect.

18. The term "the contracts" as used in this agreement means the contracts and purchase orders listed above [or in an attached exhibit]; and all other contracts and purchase orders, including modifications thereto, heretofore made between the AEC and the Transferor (whether or not performance and payments have been completed and releases executed, if the Government or the Transferor has any remaining rights, duties, or obligations thereunder), and modifications to such contracts and purchase orders hereafter made in accordance with their terms and conditions.

In witness whereof, each of the parties hereto has executed this Agreement as of the day and year first above written.

UNITED STATES OF AMERICA
By _____
_____
(Title)

[CORPORATE SEAL]
ABC CORPORATION
By _____
_____
(Title)

[CORPORATE SEAL]
XYZ CORPORATION
By _____
_____
(Title)

CERTIFICATE

I, _____, certify that I am the Secretary of ABC Corp., named above; that _____, who signed this Agreement on behalf of said corporation, was then _____ of said corporation; and that this agreement was duly signed for and in behalf of said corporation by authority of its governing body and is within the scope of its corporate powers.

Witness my hand and the seal of said corporation this _____ day of _____, 19__.

[CORPORATE SEAL] By _____

CERTIFICATE

I, _____, certify that I am the Secretary of XYZ Corp., named above; that _____, who signed this Agreement on behalf of said corporation, was then _____ of said corporation; and that this Agreement was duly signed for and in behalf of said corporation by authority of its governing body and within the scope of its corporate powers.

Witness my hand and the seal of said corporation this _____ day of _____, 19__.

[CORPORATE SEAL] By _____

§ 9–1.5302 Agreement to recognize change of name of contractor.

(a) A contractor who requests only that a change of name be recognized and states that the rights and obligations of the parties remain unaffected shall be required to furnish the AEC office (see § 9–1.5303(a)) concerned one copy of each of the following:

(1) A copy of the instrument by which the change of name was effected, authenticated by a proper official of the State having jurisdiction;

(2) Opinion of counsel for the contractor as to the effective date of the change of name and that it was properly effected in accordance with applicable law; and

(3) A list of all contracts and purchase orders which have not been finally settled between the Atomic Energy Commission and the transferor, showing the contract number, the name and address of the procuring activity involved, the total dollar value of each contract as amended, and the balance remaining unpaid.

(b) A format for such an agreement which shall be adapted for specific cases is set forth below.

AGREEMENT

This Agreement, entered into as of _____, 19__, by and between the ABC Corp. (formerly the XYZ Corp., and hereinafter sometimes referred to as the "contractor"), a corporation duly organized and existing under the laws of the State of _____, and the United States of America (hereinafter referred to as the "Government"), represented by the Atomic Energy Commission (hereinafter referred to as the "Commission").

WITNESSETH

1. Whereas, the Commission has entered into the following contracts and purchase orders with the XYZ Corp.: _____;

2. Whereas, the XYZ Corp., by an amendment to its certificate of incorporation, dated _____, ____ has changed its corporate name to ABC Corp.;

3. Whereas, a change of corporate name only is accomplished by said amendment, so that rights and obligations of the Government and of the contractor under the contracts are unaffected by said change; and

4. Whereas, there has been filed with the Commission documentary evidence of said change in corporate name;

Now, therefore, in consideration of the foregoing, the parties hereto agree, that the contracts covered by this agreement are hereby amended by deleting therefrom the name "XYZ Corporation" wherever it appears in the contracts and substituting therefor the name "ABC Corporation."

The term "the contracts" as used in this agreement means the contracts and purchase orders listed in clause 1 above, and all other contracts and purchase orders, including modification thereto, entered into between the AEC and the contractor (whether or not performance and payment have been completed and releases executed, if the Government or the contractor has any remaining rights, duties, or obligations thereunder).

In witness whereof, each of the parties hereto has executed this Agreement as of the day and year first above written.

UNITED STATES OF AMERICA

By _____
_____
(Title)

ABC CORPORATION

[CORPORATE SEAL] By _____
_____
(Title)

CERTIFICATE

I, _____, certify that I am the Secretary of ABC Corp., named above; that _____, who signed this Agreement on behalf of said corporation, was then _____ of said corporation; and that this Agreement was duly signed for and in behalf of said corporation by authority of its governing body and is within the scope of its corporate powers.

Witness my hand and the seal of said corporation this _____ day of _____, 19__.

[CORPORATE SEAL] By _____

§ 9–1.5303 Procedures.

(a) A contractor who wishes recognition of a successor in interest or of a change in name shall notify the AEC office with which it has the largest dollar amount of unliquidated obligations, and shall furnish that office with the pertinent documentation enumerated in §§ 9–1.5301 and 9–1.5302, as required.

(b) The AEC office (see par. (a) of this section) will take all necessary and appropriate action with respect to either recognizing or not recognizing a successor in interest or recognizing a change of name, including without limitation the following:

(1) Obtaining from the contractor a list of the affected contracts, the names and addresses of the procuring activities responsible for those contracts, and the required documentary evidence;

(2) Contacting other AEC offices concerned to determine whether there is any objection to recognizing a successor in interest;

(3) Drafting and executing a supplemental agreement to one of that office's contracts affected but covering all applicable outstanding and incomplete contracts affected by the transfer of assets or change of name; and

(4) Instituting and monitoring procedures for security clearance.

The supplemental agreement will contain a list of the contracts affected and, for distribution purposes, the names and addresses of the procuring activities having contracts subject to the supplemental agreement.

(c) The agreement and supporting documents will be reviewed for legal sufficiency by the Office of the General Counsel or the Office of the Chief Counsel, as the case may be.

(d) After execution of the supplemental agreement, the AEC office shall:

(1) Forward an authenticated copy of the supplemental agreement to the Director, Division of Contracts; and

(2) The Director, Division of Contracts will advise each of the AEC offices of the consummation of the supplemental agreement and request a letter referring to such supplemental agreement to be included in each affected contract.

(e) The contracting officer for each such affected contract shall prepare a letter which references the supplemental agreement (and cite the number of the contract with which the original relevant documents and supplemental agreement are filed) and acknowledges the change in name or successor in interest. Such letter will be given the same distribution as the affected contract.

Subpart 9–1.54—General Policy for the Avoidance of Organizational Conflicts of Interest

§ 9–1.5401 Purpose.

This subpart sets forth AEC general policy with respect to the avoidance of organizational conflicts of interest. This subpart is in addition to and not in lieu of other requirements in the AECPR concerning AEC policies for avoiding conflicts of interest. (See §§ 9–59.006 and 9–56.401(a)(2).) The Report to the President on Government Contracting for Research and Development (generally known as the Bell Report) proposed that each department and agency head develop a "Code of Conduct" for organizations in the research and development field. This subpart has been developed in accordance with that instruction.

§ 9–1.5402 Scope and applicability.

(a)(1) This subpart identifies various organizational conflicts of interest which might come into being and methods for avoidance of such conflicts. It provides that action must be taken to avoid placing a contractor in a position where his judgment might be biased or where he would have an unfair competitive advantage within the scope and intent of this subpart.

(2) If a contracting officer determines that a proposed procurement does involve a situation covered in § 9–1.5407, all prospective contractors shall be advised of the extent of restrictions on

follow-on or other work by notice in solicitations and by a clause in resulting contracts. Such notice and contract clause shall spell out the specific extent of any future restrictions on the contractor which are imposed by the contract. This, of course, does not require contract awards in circumstances that demonstrate a clear conflict of interest of a kind not specifically enumerated herein. Section 9–1.5408 shall be implemented by including in cost-type contracts, where appropriate, a provision requiring the approval of the contracting officer for the private use of information or data developed or obtained by employees of such contractor in the performance of cost-type contracts. A standard form of notice for use in solicitations or contract clause is not prescribed in this subpart since such notices and clauses must be especially adapted to apply the principle of these rules to the specific facts of each contractual situation.

(b) Except in unusual or specific situations identified by contracting officers, those parts of the rules which pertain to unfair competitive advantage are not applicable to contracts with educational institutions, or with not-for-profit organizations which conduct education and training activities, or whose facilities are used in joint programs with educational institutions for such purpose.

§ 9–1.5403 Applicability to cost-type contractor procurement.

This subpart shall be applied to procurement by cost-type contractors that construct or operate AEC plants and laboratories or perform research and development services for AEC.

§ 9–1.5404 Waiver.

A Manager of a Field Office, or Headquarters Division Director, may waive the applicability of this subpart in specific cases if he determines that such waiver will not be prejudicial to the best interests of the Government.

§ 9–1.5405 Definition.

The term "organizational conflict of interest" means a situation where a contractor, normally a corporation, has interests, either due to its other activities or its relationships with other organizations, which place it in a position that may be unsatisfactory or unfavorable (a) from the Government's standpoint in being able to secure impartial, technically sound, objective assistance and advice from the contractor, or in securing the advantages of adequate competition in its procurement; or (b) from industry's standpoint in that unfair competitive advantage may accrue to the contractor in question.

§ 9–1.5406 General policy.

(a) In order to assist in deciding what, if any, steps should be applied to avoid organizational conflicts of interest, there are two paramount principles to be considered. These are: (1) Preventing conflicting roles which might bias a contractor's judgment in relation to its work for AEC, and (2) preventing unfair competitive advantage. The ultimate test should always be: Is the contractor placed in a position where his judgment may be biased, or where he has an unfair competitive advantage?

(b) Final program decisions, such as the determination of projects or programs and their scope, which are required to meet AEC missions and objectives, are of course the responsibility of Government personnel and cannot therefore be delegated to contractor personnel. Program decisions must be based on impartial, disinterested, and the best available technical and other judgments. The effective and formal power to make such decisions must remain in the hands of full-time AEC officials. Outside technical and other advice may be weighed and used selectively to assist in developing the bases on which program decisions will be made.

(c) It is difficult to identify, and to prescribe in advance, a specific method for avoiding all of the various situations which might involve potential organizational conflicts of interest. Basically, potential conflicts of interest become acute when AEC's quest for objectivity is paramount, such as for advice, evaluations, technical and analytical services and similar assistance that lay direct groundwork for program decisions on large future procurements, research and development programs, and production. The general policy in paragraph (a) of this section cannot be automatically or routinely implemented; the application of considered judgment is necessary if that policy is to be applied in an effective, workable manner. The following sections provide guides for the application of the general policy in specific situations. However, contracting and program officials should be alert to other situations which may warrant application of the general policy.

§ 9–1.5407 Guides applicable prior to selection of contractor and execution of contract.

(a) A contractor who in connection with the performance of a study contract will be given information by AEC regarding AEC's plans or programs which is not available to interested industrial firms, should not be permitted to compete with such firms for work relating to such plans or programs.

(b) Development contractors generally should not be prohibited from consideration as a supplier for a product which they develop and design. In development work it is normal to select firms which have done the most advanced work and which are the most experienced in the field. It is to be expected that these firms will develop and design around their own prior knowledge. Also, a contractor who participates in an early stage of development is not precluded from getting a contract for a later stage of development or production. As part of AEC's overall planning for the development, design, and the production stages, consideration should be given to the likelihood of competitive solicitations for procuring parts of the design or product effort. The arrangement for such procurement should provide for the maximum competition consistent with satisfying AEC requirements. Where the designer and developer is permitted to compete with others for the furnishing of the final product, Managers of Field Offices should take appropriate steps to see that the information furnished AEC under the design and development contract is available to other potential bidders, on a timely basis.

(c) If a single contractor, other than a company which has participated in the development referred to in paragraph (b) of this section undertakes a contract which essentially is to assist the AEC or a contractor of AEC in preparation of a statement of work, or to provide material leading directly and predictably to a statement of work, to be used in the competitive procurement of a product or service, that contractor should not be allowed to supply the service, or the product or major components thereof either as a prime or subcontractor or vendor, except when it is determined and justified in accordance with established criteria that such contractor is a sole source for the required product or service. The content of a statement of work is not considered predictable if two or more contractors, unaffiliated with each other, are involved substantially in the preparation of material leading to it. Generally, feasibility studies which do not propose in detail the characteristics of a possible final product, are not work statements and a company should not be barred from bidding subsequently on the product.

(d) If a contractor agrees to prepare and furnish essentially complete specifications to be used in competitive procurement, that contractor should not be allowed to compete either as a prime or subcontractor or vendor, for a reasonable period including, at least, the initial procurement. This prohibition should not be applied to:

(1) Contractors who have furnished at AEC request specifications or data with respect to a product sold to AEC, even though the specifications or data may have been paid for separately or in the price of the product.

(2) Contractors acting as industry representatives who assist AEC in preparing, refining, or coordinating specifications, if such assistance is supervised and controlled by AEC representatives.

(3) Contracts for a developmental or prototype item. However, the principle in the concluding sentence of paragraph (b) of this section should be applied.

(4) Purchases from divisions of or companies affiliated with the performing contractor, provided such purchases are supervised and controlled by AEC representatives.

(e) A contractor performing evaluation or consulting services for AEC in connection with a competitive procurement should not be allowed to evaluate or give other consulting services: (1) On a product or service which the contractor provides; (2) on the product or services of any company with which the contractor has a consulting relationship; or (3) on his own product or on similar services which he has performed for

others. Such a contractor should not be allowed to give consulting services to prospective bidders on a procurement item for which he has performed or will perform evaluation services for AEC. It is recognized that under AEC management contracts for the operation of AEC facilities and certain research and development contracts, the performing contractor may solicit proposals and advise AEC concerning proposed purchases from competitors as well as from its own affiliated divisions or companies not directly engaged in the performance of the AEC management contract. In such cases the contracting officer should assure by appropriate review and supervision that the action taken is sound.

(f) A contractor's judgment may be biased because of past or present relationships of its officers or employees with other organizations and because of organizational relationships (e.g., interlocking directorships). In selecting a contractor to develop technical specifications in connection with competitive procurement or to perform evaluation services on technical proposals, consideration should be given to present and past relationships of the contractor's organization and personnel to the companies whose proposals are to be evaluated. In order to avoid or minimize organizational conflicts of interest and to avoid assignments of work which would create unavoidable conflicts of interest, these relationships may require that an organization be eliminated from consideration for selection, or that a reasonable period of restraint, for example, 1 year, be imposed on the organization or on the use of certain employees in the performance of contract work.

(g) Combinations of contracts for architect-engineering and construction services, which may result in self-inspection of construction work, tend to prevent a contractor from rendering unbiased decisions, or create difficulties in segregating costs between contracts, and should be avoided. However, it is recognized that sometimes it is advantageous under carefully circumscribed conditions for AEC to obligate a single firm to perform both architect-engineer and construction work, or for AEC to enter into a contract for architect-engineer and construction management services which may include performance of a segment of the construction work with the contractor's own forces. Unless otherwise authorized by the Director, Division of Contracts, the following combinations of contracts shall not be awarded to the same firm or to affiliated companies:

(1) CPFF and fixed-price contracts for construction services, for on-site architect-engineer services, or for construction and on-site architect-engineer services on different construction projects, if the performance of any portion of the work under each contract is to be concurrent and in the same general location.

(2) A fixed-price contract or contracts, for both architect-engineer and construction services on the same construction project, or a CPFF contract for architect-engineer services and a fixed-price contract for construction services on the same construction project. If a firm is to be responsible under such contractual arrangements for both design and construction services, title III architect-engineer services shall be performed by another organization selected by the AEC.

(3) A CPFF contract for both architect-engineer and construction services on the same construction project (engineer-constructor contract). If this contractual arrangement is used, the contract shall provide for performance of the title III architect-engineer services by contractor's engineering personnel who are not responsible to the contractor's construction personnel, or the title III services shall be performed by another organization selected by the AEC.

§ 9–1.5408 Commercial or other use of information and data obtained under AEC cost-type contracts.

(a) Cost-type contractors may be permitted to use, in their private activities, information and data developed or obtained in the performance of such contracts as provided in this section.

(b) The contractor shall be required to inform the contracting officer of all situations in which such information or data is proposed to be used. To assure that no unfair competitive advantage results to the contractor, the contracting officer shall be guided by the following principles in permitting the use of such information or data for private purposes:

(1) No part of the plans, specifications, cost estimates, technical information, or other data which are developed or acquired in the performance of the contract and which are required by the terms of the contract to be reported to AEC shall be used in the contractor's private activities, unless such information has been reported to AEC. Where AEC furnishes such information to the contractor for the performance of contract work, it shall not be used in the contractor's private activities, unless such information is generally available to others.

(2) Information which is reported to AEC by AEC contractors will normally be disseminated by AEC to others.

(3) Employees of management contractors operating AEC facilities may not be used to assist in the preparation of a proposal or bid for the performance of private commercial services similar or related to those being performed under the AEC contract unless such employee has been separated, with AEC approval, from performance of work under the AEC contract for such period as the contracting officer shall direct consistent with the purpose of this section.

(4) AEC management contractors operating AEC facilities, and performing services, as a part of their contract work, for other Government agencies or private organizations, should not be permitted to utilize information which is furnished by such customers, for their own private activities, unless it is generally available to others, or unless the customer authorizes such use.

(c) As used in this section, the term "cost-type contractor" shall include affiliated companies, parent organizations, or wholly owned subsidiaries.

PART 9–2—PROCUREMENT BY FORMAL ADVERTISING

Subpart 9–2.1—Use of Formal Advertising

Subpart 9–2.2—Solicitation of Bids

Subpart 9–2.4—Opening of Bids and Award of Contract

AUTHORITY: The provisions of this Part 9–2 issued under sec. 161 of the Atomic Energy Act of 1954, as amended, 68 Stat. 948, 42 U.S.C. 2201; sec. 205 of the Federal Property and Administrative Services Act of 1949, as amended, 63 Stat. 390, 40 U.S.C. 486.

§ 9–2.000 Scope of part.

This part implements and supplements the requirements for procurement of personal property and nonpersonal services (including construction) by formal advertising set forth in FPR Part 1–2.

Subpart 9–2.1—Use of Formal Advertising

§ 9–2.102 Policy.

Procurement by formal advertising for AEC direct procurement shall be followed, except where negotiation is authorized by the Federal Property and Administrative Services Act of 1949, as amended. Section 302(c)(15) of that Act authorizes negotiation when "otherwise authorized by law" (see § 9–3.200). Direct AEC procurement of supplies and services by formal advertising shall comply with the requirements of this part and FPR Part 1–2.

§ 9–2.105–50 Prebidding conferences.

See § 9–1.354.

Subpart 9–2.2—Solicitation of Bids

§ 9–2.201 Preparation of invitations for bids.

When an option to increase or decrease the quantities specified is employed, the percentage inserted in the option should not normally exceed 25 percent and in no event shall it exceed 50 percent without prior authorization of the Director of the Headquarters division or office concerned. The following language is suggested for incorporation in invitations for bids:

"The Government reserves the right to increase or decrease the quantity specified in any item of the schedule by ---- percent without change in the unit price, if at any time during the life of the contract such an increase or decrease shall be determined to be in the interests of the Government."

When the contract contains a provision for termination for convenience of the Government, the words "or decrease" in the option may be deleted.

§ 9–2.202–50 Postponement of bid openings.

(a) Whenever such action is determined by the contracting officer to be in the best interest of the Government, bid openings may be postponed by issuance and distribution to all prospective bidders of an amendment (see FPR 1–2.207) to the invitation for bids. Notices of postponement shall be issued by mail or telegraph as early as possible, but in any event prior to the time specified for the opening of bids.

(b) Bid openings shall be postponed when an important segment of prospective bidders requests additional time for filing their bids, or the contracting officer is on notice, or has reason to believe, that the specified opening date is not appropriate or is not conducive to the maximum practicable competition.

(c) Bid openings may be postponed, if determined by the contracting officer to be practicable and in the best interests of the Government, when the contracting officer has reason to believe that the bids of an important segment of bidders have been delayed in the mails for causes beyond their control, and without fault or negligence of the bidders concerned, such as, but not limited to, flood, fire, accident, heavy snow, or strikes.

§ 9–2.203–3(b) Paid advertisements.

When it is deemed necessary to use paid advertisements in newspapers, written authority for such publication shall be obtained from the Manager of a Field Office or the Director of the Headquarters division or office concerned.

Subpart 9–2.4—Opening of Bids and Award of Contract

§ 9–2.401 Receipt and safeguarding of bids.

Envelopes, or other outer covering, containing identified bids shall be time-stamped (indicating the place, date, and time of receipt) upon receipt, either in a mail room or other receiving point at the address specified in the invitation.

§ 9–2.402 Opening of bids.

At the bid opening, the relative merits of any bids shall not be discussed by the person opening the bids, or the contracting officer, with the bidders, their representatives, or with casual observers. No statements shall be issued by the bid opener or the contracting officer at a bid opening bearing on the award, the possibility of a readvertisement, mistakes in bids, etc. No oral instructions shall be given to bidders at any time during the opening. Protests of bidders and inquiries regarding the award of contract shall be referred to the contracting officer after the completion of the bid opening procedure.

§ 9–2.403 [Reserved]

§ 9–2.406 Mistakes in bids.

§ 9–2.406–3 Other mistakes disclosed before award.

Pursuant to FPR 1–2.406–3(b), the Director, Division of Contracts, is delegated authority to make the determinations under FPR 1–2.406–3. Mistakes in bids prior to award (other than obvious clerical errors) shall be submitted to the Director, Division of Contracts, accompanied by the data set forth in FPR 1–2.406–3(d)(3). The Director, Division of Contracts, will promptly notify the contracting officer of the course of action to be taken.

§ 9–2.406–4 Disclosure of mistakes after award.

Pursuant to FPR 1–2.406–4(d), the Director, Division of Contracts, has been delegated authority to make the determinations under FPR 1–2.406–4. Mistakes in bids after award shall be submitted to the Director, Division of Contracts, accompanied by the data set forth in FPR 1–2.406–4(f).

§ 9–2.407 Award.

§ 9–2.407–1 [Reserved]

§ 9–2.407–8 Protests against award.

After providing the Comptroller General with a notice of intent to make an award, and formal or informal advice is obtained concerning the current status of the case (see FPR 1–2.407–8(b)(2)), the contracting officer shall obtain approval of his superior officer to make an award where a protest has been submitted to the Comptroller General and it is necessary to make an award before the matter is resolved.

PART 9–3—PROCUREMENT BY NEGOTIATION

AUTHORITY: The provisions of this Part 9–3 issued under sec. 161 of the Atomic Energy Act of 1954, as amended, 68 Stat. 948, 42 U.S.C. 2201; sec. 205 of the Federal Property and Administrative Services Act of 1949, as amended, 63 Stat. 390, 40 U.S.C. 486.

§ 9–3.000 Scope of part.

This part implements and supplements the policies and procedures governing procurement by negotiation set forth in FPR Part 1–3.

Subpart 9–3.1—Use of Negotiation

§ 9–3.103 Dissemination of procurement information.

See 10 CFR Part 9, Public Records, for regulations relating to the availability of AEC records to the public.

Subpart 9–3.2—Circumstances Permitting Negotiation

§ 9–3.200 Scope of subpart.

Section 302(c) of the Federal Property and Administrative Services Act of 1949, as amended, authorizes the negotiation of contracts, and is applicable to

AEC procurement. Section 302(c)(15) of the Federal Property and Administrative Services Act of 1949, as amended, permits negotiation when otherwise authorized by law, provided that in such event the requirements of that Act shall apply. Accordingly when the Federal Property and Administrative Services Act of 1949, as amended, or the Atomic Energy Act of 1954, as amended, or other law is used as the basis for negotiation, the requirements of section 304 of the Federal Property and Administrative Services Act of 1949, as amended, are applicable, except as provided in these regulations.

§ 9–3.202 [Reserved]

§ 9–3.204 Personal or professional services.

Formal advertising procedures shall not be used for contracts for architect-engineer or other professional engineering services. Such contracts may be negotiated under section 302(c)(4) of the Federal Property and Administrative Services Act of 1949, as amended, or section 302(c)(15) of that Act and the Atomic Energy Act of 1954, as amended. However, the exemption provided for in § 9–3.405–5(c) does not apply to contracts negotiated under section 302(c)(4) of the Federal Property and Administrative Services Act of 1949, as amended.

§ 9–3.211 [Reserved]

§ 9–3.213 Technical equipment requiring standardization and interchangeability of parts.

If section 302(c)(15) of the Federal Property and Administrative Services Act of 1949, as amended, and the Atomic Energy Act of 1954, as amended, are used as the bases for negotiation, the example of findings and determinations set forth in FPR 1–3.213(e)(2) shall be appropriately modified to state the authority for negotiation.

§ 9–3.215 Otherwise authorized by law.

(a) The Atomic Energy Act of 1954, as amended, and the Atomic Energy Community Act of 1955, as amended, contain various exemptions from section 3709 of the Revised Statutes, as amended. Pursuant to section 310 of the Federal Property and Administrative Services Act of 1949, as amended, these references to section 3709 shall be construed to authorize procurement pursuant to section 302(c)(15) of the Federal Property and Administrative Services Act of 1949, as amended, without regard to the advertising requirements of sections 302(c) and 303 of that Act.

(b) The Atomic Energy Act of 1954, as amended, also provides in section 162 that the President may, in advance, exempt any specific action of the Commission in a particular matter from the provisions of law relating to contracts whenever he determines that such action is essential in the interest of the common defense and security.

(c) Every contract negotiated under the authority of section 302(c)(15) of the Federal Property and Administrative Services Act of 1949, as amended, and the Atomic Energy Act of 1954, as amended, shall be supported by a determination and findings justifying use of such authority.

Subpart 9–3.3—Determinations, Findings, and Authorities

§ 9–3.301 General.

Except as otherwise provided in § 9–3.302, the determinations and findings required by FPR Subpart 1–3.3 shall be made. Except as otherwise provided in § 9–3.303, the determinations and findings required by FPR Subpart 1–3.3 may be made and executed by the contracting officer.

§ 9–3.302 Determinations and findings required.

The determination and finding required by FPR 1–3.302(d) is not required when the contract is negotiated under the Atomic Energy Act of 1954, as amended.

§ 9–3.303 Determinations and findings by the Head of the Agency.

Findings and determinations supporting negotiation under the authority of the Federal Property and Administrative Services Act of 1949, section 302(c)(11) (FPR 1–3.211), with respect to contracts which will not require the expenditure of more than $25,000 may be executed by Managers of Field Offices and appropriate Headquarters Division Directors. Findings and determinations for such contracts in excess of $25,000 and in support of contracts negotiated pursuant to sections 302(c)(12) and 302(c)(13) of the Federal Property and Administrative Services Act of 1949 (FPR 1–3.212 and 1–3.213) shall be executed by the General Manager.

Subpart 9–3.4—Types of Contracts

§ 9–3.404–3 Fixed-price contract with escalation.

(a) Upward price escalation should generally be limited to 10 percent of original contract unit prices. In cases where such a limitation would not be equitable either to the contractor or the Government, appropriate higher or lower percentages may be substituted. However, in a negotiated contract, when considering a higher limitation on escalation, the profit allowed should be considered in light of the risk assumed and, therefore, lower profit factors should be sought to offset decreased risks.

(b) The escalation articles in Subpart 9–7.50 do not provide for contract price modifications being tied to general or industry-wide indexes of material prices and wage rates, because:

(1) Such price indexes reflect average increases or decreases in material prices and wage rates and, therefore, generally, do not accurately reflect increases or decreases in a particular contractor's actual payments for material and labor. Contract price changes made on this basis are likely to be unfair, either to the contractor or the Government.

(2) Statistics included either in general or industry-wide price indexes are accumulated on broad, overall coverage basis and do not accurately reflect increases or decreases in material prices or wage rates as applied to the equipment or material being purchased under a particular contract.

For the foregoing reasons, it is preferable to use price escalation articles which provide for contract price modifications based on increases or decreases in the contractor's actual payments for material and labor. When it is determined, for cogent reasons, that a price escalation article based on increases or decreases in a general or industry-wide price index must be used, every effort should be made to select an index which a study of past experience for a representative period indicates most nearly conforms to the contractor's actual experience for the same period. The contract file will set forth the reasons for using an escalation article based on a general or industry-wide price index and also why the particular index used was selected.

§ 9–3.404–5 Prospective price redetermination at a stated time or times during performance.

See contract article set forth in § 9–7.5007–5 and general discussion in § 9–3.404–51.

§ 9–3.404–7 Retroactive price redetermination after completion.

See contract article set forth in § 9–7.5007–5 and general discussion in § 9–3.404–51.

§ 9–3.404–50 Lump-sum contract for architect-engineer services with reimbursement for certain costs.

(a) Description: This type of contract normally provides for a fixed amount or lump sum for the A–E services (see § 9–3.802–50 for definition of these services) plus reimbursement of, or payment of an additional lump sum for certain costs listed below to the extent they are incurred in connection with the work and approved by the contracting officer. These costs generally are not susceptible of reasonable estimation in advance due to a wide variation in the extent the related services are required for various projects, or they are for services not normally a part of Titles I, II, and III. These costs are as follows:

(1) The actual costs of labor, materials, and equipment use and traveling expenses as applicable and required for:

(i) Topographical and other field surveys, the preparation of topographic maps, and test borings and other subsurface investigations which the architect-engineer may be required to make, including any subcontracts therefor.

(ii) Inspection of construction work at the site (resident engineer in charge, field engineers, inspectors, and the supporting field office force, including home or branch office personnel assigned to duty in the field on a temporary basis).

(iii) Services such as inspecting material and equipment at vendors' plants and expediting (when not covered by a separate procurement fee), and checking or expediting shop drawings at vendors' plants.

(iv) Furnishing more than 20 copies of any of the following: Drawings, specifications, invitations for bid, or other related documents, and revisions thereto, which are reproduced after Title II design is approved by the Commission and which are for use by the Commission and its construction contractors (but excluding "as-built" record drawings). Payment may be an allowance in lieu of the actual cost at a rate or rates approved in advance by the contracting officer, and which are comparable to going commercial rates in the particular area.

NOTE: Compensation is included in the lump sum derived from the fee schedule for all drawings, plans, and documents prepared and reproduced under Title I, except those which are reimbursable under paragraph (a)(1)(i) of this section; for all drawings, specifications, invitations for bid, and other related documents prepared and reproduced under Title II, prior to approval of Title II design by the Commission and for preparation of reproducible copies and furnishing 20 copies of such drawings and documents after approval by the Commission; and for reproducible "as-built" record drawings and marked-up "as-built" specifications prepared under Title III (including updated master linen tracings, or reproducible linen tracings from the master set, if so specified in the contract). The provisions of the applicable Government Printing and Binding Regulations must also be observed.

(v) Furnishing copies of special documents, such as completion reports, that have been prepared in accordance with instructions of the Commission.

(2) The actual cost of on-site transportation, if any, for services listed in paragraph (a)(1) (i) through (iii) of this section, above, or the cost based on a rate or rates approved in advance by the contracting officer.

(3) The cost of telegraph and long-distance telephone services required at the construction site for performance of the field engineering services.

(4) The actual costs of furniture and equipment (rental or purchase as approved in advance by the contracting officer), field office space, utilities, janitorial service, and similar items for use in performing Titles I and III field work.

(5) Compensation paid for outside expert technical assistance, including the services of material testing laboratories, as is approved in writing by the contracting officer in connection with the performance of any of the work under this contract.

(6) Expenses of such travel of the contractor's responsible supervising representative that might be required in addition to the normal supervision furnished under the fee or specified in the contract.

(b) Where the contractor's responsible supervising representative, or an officer, proprietor, executive, or administrative head of the contractor participates directly in the performance of any of the services listed in paragraph (a)(1) (i) through (iii) of this section, he may be compensated for the time actually so engaged. The rate of compensation, including the allocation of home office expenses, if any, shall be subject to approval by the contracting officer and commensurate with the cost of employing another qualified person to do such work, but the salary portion should not exceed the actual salary rate of the individual concerned.

(c) The costs listed in paragraphs (a) and (b) of this section cover services that are normal to complete Titles I, II, and III services. No profit should be included in the additional compensation for those services because the architect-engineer's profit for the service is included in the lump-sum amount determined from the fee schedule. In order to ensure adequate technical services, they may be paid for on an actual cost basis. However, if it is considered to be more advantageous to the Government, an additional lump sum should be negotiated to cover the costs. In the case of personal services such as inspectors, a daily rate may be negotiated. The calculation of the additional lump sum, or daily rate, should show clearly the amount allowed for each of the services or elements of cost.

(d) The services covered in paragraphs (a) (2), (3), and (4) of this section may be furnished by the Commission instead of reimbursing the contractor for the expenses. The type of services that will be furnished should be stated in the contract.

(e) If services are furnished that are beyond Titles I, II, and III, such as developmental work, special engineering studies, and the preparation of special documents such as operating and maintenance manuals, additional compensation, including profit, should be paid for such services. Note that preliminary proposals and construction completion reports normally are considered a part of Titles I and III.

(f) Definitions:

(1) Labor costs as used in paragraph (a) of this section include the following:

(i) Wages and salaries.

(ii) Directly related payroll costs (social security and unemployment insurance taxes, workmen's compensation insurance premiums, vacation, sick leave, benefit and welfare plans, etc., required by law, employer-employee agreement, or an established policy of the contractor).

(iii) Home or branch office overhead expenses which are applicable and properly chargeable to the work. The full overhead rate should not be applied to salaries of personnel assigned to continuous field duty. For such personnel, reimbursement should be made at a rate to cover only the cost of specific essential services and supplies furnished by the home or branch office to the field staff and which otherwise would have to be procured in the field. Where it is feasible or practical with respect to particular services or supplies, reimbursement may be made on the basis of actual costs.

(2) Labor costs as used in paragraph (a) of this section do not include any of the above costs and expenses applicable to the contractor's responsible supervising representative, or to an officer, proprietor, executive, or administrative head of the contractor, except as provided in paragraph (b) of this section.

(3) Traveling expenses as used in paragraph (a) of this section include the actual cost of travel of persons (employees and, if authorized, their dependents) and subsistence incident to such travel, and transportation of personal household goods and effects, in amounts not exceeding such limits as may be prescribed by the contracting officer, or allowances in lieu of such actual cost at rates approved by the contracting officer. The cost of transportation between living quarters and the site of the construction project of persons employed at such site is not included unless specifically approved by the contracting officer.

(g) Use of lump-sum contract:

(1) A lump-sum contract for architect-engineer services should be used wherever it is practicable to compile, in advance of the preparation of plans and specifications, adequate information specifically describing the character and extent of services required.

(2) When there is insufficient scope information available to permit contracting for complete services (Titles I, II, and III) on a lump-sum basis, and when it may be to the advantage of the Government to do so, consideration should be given to contracting only for a study contract or for the preliminary engineering (Title I), on either a reimbursable or lump-sum basis, in order to permit entering into a lump-sum contract for the remaining portion of architect-engineer services (Titles II and III), based upon information developed in the first phase.

§ 9-3.404-51 Fixed-price contracts with provision for redetermination.

(a) This type of contract is a fixed-price contract with a special provision for redetermining the contract price upward or downward. It is used to obtain reasonable prices when substantial contingency charges otherwise would be included in a contract price due to such factors as prolonged delivery schedules, unstable market conditions for material or labor, lack of fully developed specifications, or uncertainty of cost of performance. Under this type of contract, the Government assumes the risk of certain contingencies which the contractor would otherwise include in its contract price, and the contract price is ultimately redetermined only to the extent that such contingencies actually occur. The assumption of a portion of the contract risk by the Government requires the negotiation of a lower rate of profit than would be the case when all risk was assumed by the contractor. An appropriate price redetermination article shall be used in fixed-price contracts in those instances where: (1) There are insufficient data to indicate reasonableness of price; (2) the estimate of the low offeror, or the only offeror, exceeds the independent Government estimate by an unreasonable amount; (3) it is necessary or desirable to eliminate charges for contingencies from the price offered; or (4) there are other circumstances which require protection of the interests of the Government by use of a price redetermination

provision. The length of the contract period is an important factor to be considered in determining whether to provide for price redetermination. As a general rule, the longer the contract period, the greater may be the need for price redetermination. Thus, in contracts running for a year or more, a price redetermination article may well be the most appropriate means of properly protecting the Government's interest. In instances where deliveries will be made over a period of 2 or more years, it is generally desirable to provide for price redetermination on an annual basis as a minimum requirement.

(b) The price redetermination article set forth in § 9-7.5007-5 permits upward as well as downward redetermination. Under such circumstances, provision is made for setting a limit on the amount of any upward price revision by fixing a ceiling price for the contract. Where upward price redetermination is allowed, a ceiling price should be set in order to encourage the contractor to perform efficiently. The range of allowable upward price revisions from the contract or target price (which should contain substantially no allowance for contingencies) to the ceiling price should be a reasonable measure of the contingencies against which the contractor is being protected. Any costs allowed the contractor in price redetermination above the contract or target price should be without profit. An upward price revision of 10 percent of the target price is generally regarded as a reasonable limit and, except for unusual circumstances, 20 percent should be considered the maximum allowable limit.

(c) The profit margin included in the original contract price should be a reasonable measure of the risk being assumed by the contractor. Thus, where there is evidence of close pricing in the original contract price, subject to downward redetermination only, the contractor is deserving of a larger profit margin than would be the case where such contract price is known to include a substantial contingency allowance. Similarly, the greater the spread between the contract or target price and the ceiling price, the greater the extent to which, as a general rule, the Government is assuming contingent risks, and the lower the profit margin should be. Again, in a case where provision is made for a single price redetermination during the contract period, the later such redetermination is effected, the greater usually is the percentage that actual costs constitute of total costs, as redetermined, and consequently the lower the profit margin should be. Normally, the profit included in the original contract price is carried through price redetermination. However, if the contractor has performed an especially efficient and economical job, he should be rewarded with an increased profit margin, and, conversely, when this performance has been below reasonable standards, his profit margin should be reduced.

(d) Before agreeing to the use of a specific price redetermination article, the fact that the contractor has a cost accounting system of sufficient accuracy and reliability to allow the development of the cost information required by the provision of such article should be established. The price redetermination article provides for such examination and audit of the books, records, and accounts of the contractor as the contracting officer may deem necessary. The need and extent of such review of a contractor's accounting records is a matter of judgment to be determined in the light of such relevant factors as: (1) The nature and acceptability of cost and other data submitted by the contractor, (2) knowledge of the contractor's accounting policies and cost system, (3) reliability of the contractor's data on the basis of previous experience with the contractor, (4) any unusual circumstances which might affect the Government's interests, and (5) dollar amount of the contract.

(e) Ceiling or maximum prices must be established at figures which will provide an effective incentive for economical performance. Accordingly, the need for close estimating in establishing maximum prices cannot be overemphasized. Abnormally high "ceilings," "maximum prices" or "upset prices" have the potential disadvantages of cost-plus-a-percentage-of-cost contracting which must be avoided.

(f) In order to keep the maximum price closely related to the cost of work currently required under the contract, provision should be made for adjusting the initial maximum price in the event of subsequent changes in quantity, plans or specifications, delivery schedule, or other elements of the scope of the work.

(g) At the point agreed upon for redetermining the price, the firm price to be agreed upon may include an adjustment of the original profit. Such adjustment of profit is not to be based on a percentage of cost contractually established in advance, but should reflect a fair return to the contractor which takes into account his performance, cost reductions, degree of risk, or other incentive factors.

(h) (1) Multiple price redetermination, upward or downward, is accomplished by use of the article set forth in § 9-7.5007-5 with both subparagraphs (1) and (2) of paragraph (a) of such article included. Subparagraph (1) provides for a negotiated upward or downward redetermination of unit prices upon completion of delivery of a specified percentage of the principal items called for by the contract. Thereafter, under subparagraph (2), there may be upward or downward revision of prices upon the written demand of either party, subject to specified limitations on the frequency of such demands. The initial (mandatory) price redetermination is retroactive to the start of the contract period as well as prospective in its application; any subsequent redeterminations have a prospective effect only. This form of price redetermination is especially suitable for a supply contract where the quantity under procurement is large, the delivery schedule calls for deliveries over a prolonged period (usually over a year), and an accurate forecast of production costs is not feasible.

(2) This article readily lends itself to modifications to meet the special needs of different situations where price redetermination, wholly or partly prospective in effect, is desirable. Thus, it might be considered desirable (or the contractor might insist) that price redeterminations be made at specified regular intervals, rather than at irregular intervals upon the demand of either party, after the initial price revision (in which event, subparagraph (2) of paragraph (a) should be reworded to specify the redetermination or target dates after the initial price redetermination); or that only one price redetermination upward or downward be made at a specified point in the contract period (in which event, subparagraph (2) of paragraph (a) should be omitted); or, further, that only one price redetermination downward only be made at a specified point in the contract period (in which event, subparagraph (2) of paragraph (a) should be omitted and the change noted in footnote 1 to the article should be made). Where provision is made for only one price revision during the contract period, such revision should be both retroactive and prospective in effect. In a case where only one or a limited number of price redeterminations will be allowed, care should be taken in setting the points of redetermination or target dates so that the contractor will have had sufficient production experience by each target date to develop actual cost information on the basis of which reasonable prices can be set for the next prospective period. For example, where provision is made for a single price redetermination, the target date should be so set that the contractor will be able to get through the starting-up period, when costs are usually high, and be able to operate for a few months at the maximum capacity called for by the delivery requirements of the contract, when costs should be typical of expected experience for the balance of the contract, before he will have to draw off his actual cost experience for price revision. A target date set at 40 to 50 percent of completion of deliveries is usually considered desirable under such circumstances.

(i) Single price redetermination downward only, wholly retroactive. This form of price redetermination is accomplished by omitting subparagraph (2) of paragraph (a) and making the changes noted in footnotes 2 and 5 to the article, thereby providing for a single, negotiated, downward redetermination, wholly retroactive, after completion or termination of the contract. The price redetermination article, so modified, is designed primarily for use in small to moderate-sized contracts (approximately $100,000 or less) for experimental or developmental items or services. However, it may also be used in contracts of similar size for the procurement of any item or service when it is not possible to determine reasonableness of price at the time of negotiation.

(j) Single price redetermination upward or downward, wholly retroactive. This form of price redetermination is

accomplished by omitting subparagraph (2) of paragraph (a) and making the change noted in footnote 5 to the article, thereby providing for a single, negotiated, upward or downward redetermination, wholly retroactive, after completion or termination of the contract. The price redetermination article, so modified, is designed for use in negotiated contracts for supplies or services, where the quantity under procurement may be either moderate or large, and where the contract period is not extended (usually less than a year) so that it is not feasible to attempt to redetermine the contract price during the period of the contract. Care should be taken to agree upon a contract or target price that will require the contractor to do an efficient job, and, since redetermination is wholly retroactive, it is essential that a limit be placed on any upward price revisions (normally an amount not in excess of 10 percent of the contract or target price).

§ 9–3.405–5 Cost-plus-a-fixed-fee contract.

(a) Applicability:

(1) General: While it is fundamental AEC policy to use fixed-price contracts wherever feasible, it would generally be more appropriate to use a cost-plus-a-fixed-fee contract in the following circumstances:

(i) There is inadequate time to prepare, or other circumstances prevent the preparation of, plans and specifications that are sufficiently firm to provide assurance against an excessive number of change orders due to errors, discrepancies, omissions, and inadequate details. When the number of change orders increases, the advantages inherent in the fixed-price form of contracting tend to disappear.

(ii) The work involves developmental or experimental services of such a scope or duration as to make likely an excessive number of change orders or developmental or experimental services related to the work under the contract are being performed by another contractor at the same time.

(iii) The standards of performance (e.g., extremely high standards of cleanliness, purity, or quality control) are so much higher than normal industrial standards as to make it impracticable to prepare appropriate specifications clearly describing the standards required.

(b) The authority to determine under FPR 1–3.405–5(d)(1)(ix) that the application of the policy of limiting interim payments on cost reimbursement type contracts to 80 percent of costs incurred would impose undue hardship on the contractor or adversely affect the interests of the Government is delegated to Managers of Field Offices.

(c) Pursuant to section 602(d)(13) of the Federal Property and Administrative Services Act of 1949, as amended, the 10 and 6 per centum cost and fee restrictions on contracts for architect-engineer services are not applicable.

§ 9–3.406–1 Time and materials contract.

Particular care should be taken to apply material handling cost, if any, to the direct material cost and to exclude material handling costs from the overhead rate applied to direct labor. Although this type of contract provides for payment of a fixed price on a unit of time basis, it is evident that the total amount of profit under the contract is increased proportionately as the number of hours worked is increased. Therefore, it is desirable to limit the number of hours to which the rate including profit will be applicable and to reimburse the contractor at a rate which does not include profit for all hours worked in excess of such limit.

§ 9–3.408 Letter contract.

Letter contracts shall contain a provision obligating the parties to enter into a definitive contract within a specified time (preferably within 120 days) or, upon failure to do so, the Government's obligation shall be limited to reimbursement of the contract's costs incurred under the terms of the letter contract through the termination date.

Subpart 9–3.6—Small Purchases

§ 9–3.600 Scope of subpart.

The policies and procedures for the purchase of supplies and nonpersonal services from commercial sources when the aggregate amount involved in any one transaction does not exceed $2,500 shall be those prescribed in FPR Subpart 1–3.6. They are applicable only to AEC direct procurement.

§ 9–3.603–2 Data to support small purchases.

The manner of securing quotations and the nature and extent of documentation to be required for small purchases are for determination by Heads of Divisions and Offices, Headquarters, and Managers of Field Offices, but should be limited to a minimum consistent with the objective of reducing the cost of handling small purchases. Normally, confirmation of purchase orders issued after the material has been received should not be required unless such confirmation is requested by the supplier. Documentation can be accomplished by the purchaser and receiver endorsing the invoice.

§ 9–3.604 [Reserved]

§ 9–3.605–1 Standard Form 44.

The use of Standard Form 44 is optional within the AEC. Contracting and procurement officers shall be held accountable for books of Standard Form 44 issued to them. Heads of Divisions and Offices, Headquarters, and Managers of Field Offices shall issue detailed instructions, consistent with the provisions in Standard Form 44 and FPR 1–3.606–1, providing for accountability and safeguarding of the forms when used. Contracting and procurement officers, when using this form, will obtain any necessary obligation of funds and will limit procurement actions to items not otherwise restricted by law or regulation.

§ 9–3.605–2 Standard Forms 147 and 148.

The use of Standard Forms 147 and 148 is optional within the AEC. When in the judgment of the Director, Division of Headquarters Services, or Managers of Field Offices the use of the forms will simplify the procurement process, they may authorize the use of the forms.

Subpart 9–3.8—Price Negotiation Policies and Techniques

§ 9–3.800 Scope.

(a) This subpart implements and supplements the price negotiation policies and techniques set forth in FPR Subpart 1–3.8.

(b) The policies and requirements for cost-type contractor procurement with respect to price negotiation policies and techniques covered by FPR 1–3.801 through .804 and .808 are set forth in Part 9–59 and §§ 9–3.808–50 and –51. These AECPR provisions are consistent with the referenced FPR provisions and shall be applied to cost-type contractor procurement in lieu of such FPR provisions.

(c) The FPR provisions in 1–3.800, .805, .806, .807, and .809 through .814 contain requirements which apply to cost-type contractor procurement. These provisions, and the corresponding AECPR's, apply to cost-type contractor procurement. For AEC contracts covered by § 9–3.807–3, the requirements of that section and of § 9–3.814–50 shall be followed in lieu of FPR 1–3.807–3(a) and 1–3.814.

§ 9–3.801 Basic policy.

(a) Procurement by negotiation is less automatic and does not have the rigid limitation of formal advertising bid and award procedure; it requires, to a greater extent than formal advertising, the exercise of sound business judgment and increases the responsibility of the contracting officer for properly protecting the interests of the Government.

(b) The use of negotiation, as a method of procurement, does not relax the requirements for competition. Access authorizations shall not be a limiting factor in obtaining full and free competition except where time will not permit securing additional clearances. If access to classified information is required either (1) to submit proposals in response to AEC requests for such proposals, (2) to respond to requests by AEC for expressions of interest, (3) to inspect facilities in connection with subparagraph (1) or (2) of this paragraph, or (4) to attend preproposal or information conferences in connection with subparagraph (1) or (2) of this paragraph, a reasonable number of access authorizations will be furnished without charge.

(c) Renegotiation, as distinguished from original negotiation or price redetermination of a contract, is a statutory method for the elimination of excessive profits arising from contracts executed by certain designated agencies of the United States, and related subcontracts in connection with the national defense. Statutory renegotiation contemplates a review of all renegotiable income on the basis of the contractor's entire fiscal year rather than on a contract-by-contract basis. Thus, losses on some renegotiable contracts and subcontracts are offset against profits on other renegotiable business in arriving at net income subject to renegotiation. The existence of statutory renegotiation does not lessen the importance of negotiating contracts at fair prices. Renegotiation is not a substitute for careful pricing of a contract.

§ 9–3.802 Preparation for negotiation.

The contracting officer or his designee shall have sole responsibility for disseminating any additional information with respect to or clarification of requests for proposals. Such information or clarification shall be in writing, usually in the form of an amendment to the request for proposals and shall be furnished to all concerns to whom the original request was sent. Administrative and technical personnel shall not furnish any information to prospective contractors regarding any proposed procurement except through the contracting officer or his designee.

§ 9–3.804 Conduct of negotiations.

(a) Contracting officers, to the extent considered practicable, should coordinate negotiations with other AEC offices, which are negotiating or have negotiated recently with the same contractor at either the prime or subcontract level. Facts thus developed with respect to costs, technical know-how and other information can be of material value in consideration of the proposed transaction.

(b) Preliminary information as to prior contract actions, if any, and AEC offices involved can generally be obtained from Headquarters. Inquiries in this regard should be addressed to the Director, Division of Contracts, Atomic Energy Commission, Washington, D.C. 20545.

§ 9–3.805 Selection of offerors for negotiation and award.

As indicated in FPR 1–3.805–1, the procedures set forth in paragraphs (a), (b), (c), and (d) of FPR 1–3.805–1 may not be applicable in certain cases. See Part 9–56 for specific instructions to be followed for selection of contractors by board process.

§ 9–3.805–50 Negotiation of architect-engineer and cost-plus-a-fixed-fee contracts.

(a) *Exchange of information.* Prior to entering into negotiations for a CPFF contract or a lump-sum contract for architect-engineer services, essential information should be exchanged between the AEC and the contractor. The contractor should be given an opportunity to acquaint himself, if he has not already done so during the selection process, with the details of the proposed project, including the following to the extent possible: location, type of construction, numbers and classes of structures, functional purpose of structures, extent and character of services involved, time allowed for design and construction, and the estimate of cost of the project. He should also be given an opportunity to review the form of contract, to learn the security requirements under which he will be operating, and to familiarize himself with the practices and procedures followed by the AEC in administering contracts. Any AEC contract forms to be used by the contractor should be furnished to him. The AEC's policy and practices on wage and salary administration should also be explained. In turn, the contractor should furnish information to the AEC's representatives as to the organization to be used on the work; present and proposed salaries and other items necessary for the preparation of the personnel appendix to the contract; information as to contractor-owned construction plant to be utilized on the work, showing its purchase price and present value; work to be subcontracted; work to be performed in the central or branch offices (if any); and other similar information in order that the contract may be properly prepared and administered. If a discussion between the AEC and a prospective contractor involves classified information, care shall be taken to assure that the contractor's representatives have appropriate security clearances.

(b) *Conclusion of negotiations.* Negotiations relative to contract and fee shall be concluded as early as possible. When the information required by paragraph (a) of this section has been obtained, reviewed, and revised to the extent necessary, and mutually acceptable terms of contract, estimate of cost, and estimate of time of performance have been agreed to, the fixed fee should be negotiated. Except as indicated in § 9–3.408(b), negotiations relative to the fee shall be successfully concluded prior to making commitment on final selection. A complete record shall be maintained of all matters agreed to during negotiations. Should it be evident in the course of negotiations that no hope exists for a meeting of the minds within the previously determined maximum allowable (ceiling) fee, then consideration should be given to terminating negotiations and entering into a similar action with the next best qualified contractor. On conclusion of the foregoing steps, the formal contract should be prepared and executed by the parties, subject to the limitations in delegated authority and AEC requirements for Headquarters consideration of contract actions.

§ 9–3.807–1 [Reserved]

§ 9–3.807–3 Requirements for cost or pricing data.

(a) The requirements of FPR 1–3.807–3(a) need not be applied to cost-type operating contracts; onsite service contracts of a continuing nature; cost and cost-sharing contracts under which the contractor receives no fee; contracts with educational institutions; or architect-engineer contracts where lump-sum or CPFF fees are based on estimates of construction costs. They are applicable when the architect-engineer fee is based on the estimated cost of the architect-engineer's services.

(b) Managers of Field Offices shall take the necessary steps to assure Subpart 9–3.8 and FPR Subpart 1–3.8 are followed with respect to procurements under (1) cost and cost-sharing contracts under which the contractor receives no fee, cost-type contracts with educational institutions, and cost-type architect-engineer and construction contracts, where the estimated cost of procurement activities under such contracts exceeds $100,000 annually; and (2) to cost-type operating contracts and onsite service contracts of a continuing nature. Contracts subject to this paragraph shall include paragraph (a) (or equivalent language) and paragraph (b) of the "Contractor procurement" clause in § 9–7.5006–29 with respect to the contractor's obligation for requiring subcontractors to furnish cost or pricing data, and for including the article in § 9–3.814–50 in subcontracts as required by that AECPR.

§ 9–3.807–11 Overhead rate considerations.

Part 9–15 shall be applied in overhead rate considerations.

§ 9–3.807–12 Sole source items.

See § 9–3.807–54, *Price warranties.*

§ 9–3.807–52 Approvals and waiver.

(a) Managers of Field Offices, for contracts estimated to be within the limits of their delegation of authority, may, without power of redelegation, approve the findings required by FPR 1–3.807–1(b)(1)(ii)(C) and 1–3.807–3(f)(1).

(b) Managers of Field Offices, for contracts estimated to be within the limits of their delegation of authority, may, without power of redelegation, waive the requirements for cost or pricing data under the circumstances set forth in FPR 1–3.807–6 and 1–3.807–3(b) provided that any such waivers are promptly reported to the Headquarters Division of Contracts for its information and coordination with the Office of the Controller and other Headquarters staff.

§ 9–3.807–53 Development of special items.

If a negotiated fixed-price or cost-type contract or subcontract involves the development of special items and may reasonably be expected to lead to subsequent production orders, the initial contract or subcontract shall include a provision whereby the vendor agrees to accept, when requested, subsequent production orders under either a cost-plus-a-fixed-fee contract or subcontract with AEC cost-reimbursement principles and fee limitations or a fixed-price contract providing for price redetermination. In addition, the initial contract or subcontract shall include a provision whereby the Commission or its authorized representatives shall have access to and the right to examine any directly pertinent books,

documents, papers, and records related to the contract or subcontract for the purpose of determining actual cost experience under the initial contract or subcontract.

§ 9–3.807–54 Price warranties.

(a) Price warranty provisions, such as "best user," "most favored customer," or similar provisions, should not be used when the contracting officer can satisfy himself through the normal process of competition or cost and price analysis that a proposed contract price is reasonable. Such price warranty provisions shall not be used as a substitute for obtaining adequate competition or for performing price or cost analysis. Ordinarily, the most likely circumstances where it would be in the Commission's interest to require price warranties would be similar to those currently set forth in FPR 1–3.807–12, *Sole-source items*.

(b) Where price warranties are used, an appropriate price warranty provision should be included in the terms and conditions of the contract. Additionally, the contract should include the following clause with respect to the Commission's right to examine the record of the contractor:

The contracting officer or his authorized representative shall have the right to examine the records of the contractor as necessary to assure that the prices charged the Government for the items under this contract do not exceed those charged by the contractor to any other customer purchasing the same items in like or comparable quantities.

§ 9–3.808 Pricing techniques.

§ 9–3.808–50 Negotiating profit and fees.

(a) There are no precise or conclusive rules for determining the amount of profit or fixed fee allowable. Cost alone is not a true measure in the determination of a reasonable profit or fixed fee. Generally, profit or fixed fee is strongly influenced by the amount of risk involved. Determination of a fair and reasonable profit or fee, however, is a matter of judgment, based on consideration of all factors which affect performance of the contract. Among these factors for furnishing supplies or services are (1) the degree of skill required; (2) the length of contract performance; (3) the reliability, competence, and cooperation of the contractor; (4) the extent to which the contractor will benefit as a result of experience gained in the performance of the contract; (5) the degree of close pricing; (6) the amount of contractor capital to be employed; (7) the extent to which facilities or financial assistance are to be furnished by the Government; (8) complexity of the supplies or services to be furnished and the extent of subcontracting; (9) current market conditions affecting contract costs; and (10) the amount of profit which the contractor normally earns on similar items or services.

(b) Profit or fee allowances shall be determined separately for each contract. "Across-the-board" agreements with contractors as to rates of profits or fees shall not be made. The determination of a fair and reasonable profit or fee is a matter of sound business judgment.

§ 9–3.808–51 Limitation on profits and fees.

(a) Fee negotiation for cost-plus-a-fixed-fee contracts and lump-sum architect-engineer contracts shall be based upon the scope and character of the work to be performed by the contractor, shall be fair and reasonable, and shall not exceed amounts prescribed by law or direction of the General Manager.

(b) Fixed fees for cost-type contracts for community management and for transportation system operation have been subject to statutory limitations contained in past appropriation acts. The maximum fees for contracts in these categories in future fiscal years shall conform to the applicable statutory limitations.

(c) The profit included in hourly rates for time and material contracts should be held to a reasonable level. Except as provided in FPR 1–3.406–1(d), no profit shall be allowed on materials. Time and material contracts providing for a profit in excess of 10 percent of the estimated cost exclusive of material cost shall be submitted to Managers of Field Offices concerned for approval. These limitations are consistent with the normal risk attached to this method of contracting.

§ 9–3.809 Contract audit as a pricing aid.

The waiver of preaward audit review provided for in FPR 1–3.809 may be made only by the Manager of the Field Office.

§ 9–3.814–2 Audit and records.

The clause in § 9–7.5006–1 shall be used for the types of contracts listed in FPR 1–3.814–2(c).

§ 9–3.814–50 Subcontractor cost or pricing data clause.

(a) The following clause shall be inserted in all subcontracts under the prime contracts referred to in § 9–3.807–3 (b), where such subcontracts are over $100,000, and in all modifications over $100,000 to such subcontracts even though the original amount of the subcontract is $100,000 or less:

CERTIFIED COST OR PRICING DATA

(a) (1) The subcontractor shall require under the situations described in (2) below, unless exempted under the exceptions set forth in (3) below, each sub-subcontractor under this subcontract to submit cost or pricing data and to certify that, to the best of his knowledge and belief, such cost or pricing data are accurate, complete, and current.

(2) Except as provided in (3) below, certified cost or pricing data shall be submitted prior to (i) the award of each sub-subcontract, the price of which is expected to exceed $100,000, and (ii) the negotiation of the price of each change or modification to a sub-subcontract under this subcontract for which the price adjustment is expected to exceed $100,000.

(3) Certified cost or pricing data need not be furnished pursuant to this paragraph (a) where (i) the subcontractor has not been required to furnish cost or pricing data; or (ii) the price or price adjustment is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or the prices are set by law or regulation; and the subcontractor states in writing the basis for applying this exception.

(4) In submitting the cost or pricing data, the sub-subcontractor shall use the form of certificate set forth in paragraph (b) below and shall certify that the data are accurate, complete, and current. Such certificate and data (actual or identified, as provided in the certificate prescribed below) shall be submitted by sub-subcontractors to the next higher-tier sub-subcontractor, or the subcontractor, as applicable, for retention.

(b) The certificates required by this clause shall be in the form set forth below.

SUBCONTRACTOR'S CERTIFICATE OF CURRENT COST OR PRICING DATA

This is to certify that, to the best of my knowledge and belief, cost or pricing data [1] submitted in writing, or specifically identified in writing if actual submission of the data is impracticable (see FPR 1–3.807–3(h)(2), to the prime contractor in support of _____ [2] are accurate, complete, and current as of _____ [3]

(Date)

Firm _____
Name _____
Title _____

_____ [4]
(Date of execution)

(c) For purposes of verifying that certified cost or pricing data submitted in conjunction with the negotiation of this subcontract or any subcontract change or other modification involving an amount in excess of $100,000 were accurate, complete, and current, the Commission or any of its authorized representatives shall, until the expiration of 3 years from the date of final payment under this subcontract, have the right to examine those books, records, documents, papers, and other supporting data which involve transactions related to this subcontract or which will permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used therein.

(d) Whenever the price of any change or other modification to this subcontract is expected to exceed $100,000, the subcontractor agrees to furnish the Contractor certified cost or pricing data, using the certificate set forth in paragraph (b) above, unless the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation.

(e) The requirement for submission of certified cost or pricing data with respect to any change or other modification does not apply to any sub-subcontract change or other modification, at any tier, where the subcontract is firm fixed-price or fixed-price with

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[1] For definition of "cost or pricing data," see FPR 1–3.807–3.

[2] Describe the proposal, quotation, request for price adjustments, or other submission involved, giving appropriate identifying number (e.g., RFP No. _____).

[3] This date shall be the date when the price negotiations were concluded and the subcontract price was agreed to. The responsibility of the subcontractor is not limited by the personal knowledge of the subcontractor's negotiator if the subcontractor had information reasonably available (see FPR 1–3.807–5(a)) at the time of agreement, showing that the negotiated price is not based on accurate, complete, and current data.

[4] This date should be as close as practicable to the date when the price negotiations were concluded and the subcontract price was agreed upon.

escalation unless such change or other modification results from a change or other modification to the subcontract, nor does it apply to a sub-subcontract change or modification, at any tier, where the subcontract is not firm fixed-price or fixed-price with escalation, unless the price for such change or other modification becomes reimbursable under the subcontract.

(f) The subcontractor agrees to insert paragraph (c) without change[6] and the substance of paragraphs (a), (b), (d), (e), and (f) of this clause in each sub-subcontract hereunder in excess of $100,000 and in each sub-subcontract of $100,000 or less at the time of making a change or other modification thereto in excess of $100,000.

(g) If the prime contractor determines that any price, including profit or fee, negotiated in connection with this subcontract or any cost reimbursable under this subcontract was increased by any significant sums because the subcontractor, or any sub-subcontractor pursuant to this clause or any sub-subcontract clause herein required, furnished incomplete or inaccurate cost or pricing data or data not current as certified in the subcontractor's certificate of current cost or pricing data, then such price or cost shall be reduced accordingly and the contract shall be modified in writing to reflect such reduction.

(h) Failure of the contractor and the subcontractor to agree on any of the matters in paragraph (g) above shall be a dispute concerning a question of fact within the meaning of the disputes clause of this subcontract.

NOTE: Since the subcontract is subject to reduction under this clause by reason of defective cost or pricing data submitted in connection with certain sub-subcontracts, it is expected that the subcontractor may wish to include a clause in each such sub-subcontract requiring the sub-subcontractor to appropriately indemnify the subcontractor. It is also expected that any sub-subcontractor subject to such indemnification will generally require substantially similar indemnification for defective cost or pricing data required to be submitted by his lower-tier sub-subcontractors.

(b) This clause may also be used for subcontracts of $100,000 or less for which a certificate of cost or pricing data is obtained in accordance with FPR 1-3.807-3(g); and, if so used, the $100,000 amount stated in the clause should be appropriately modified.

Subpart 9-3.9—Subcontracting Policies and Procedures

§ 9-3.901 General.

(a) AEC policies and requirements for review and approval of cost-type contractor procurement are set forth or are listed in Part 9-59. The policies and requirements of that part are consistent with FPR 1-3.902 and 1-3.903 and shall be applied in the review and approval of cost-type contractor procurement systems and subcontracts for supplies and services in lieu of such FPR's, except that 1-3.902, "Make-or-buy" programs, applies where the contract clause in 1-3.902-3 is incorporated in the prime contract.

(b) Pursuant to section 602(d)(13) of the Federal Property and Administrative Services Act of 1949, as amended, the limitations in section 304(b) of that Act concerning advance notification of cost-plus-a-fixed-fee subcontracts (provided such subcontracts do not exceed an estimated cost of $500) and fixed-price subcontracts over $25,000 or 5 per centum of the total estimated cost of the prime contracts are not applicable, provided the prime contractor's procurement methods and system have been reviewed and approved in accordance with Part 9-59. See Subpart 9-51.2 for policy on subcontracts which require prior approval by AEC.

[6] The words "subcontractor" and "sub-subcontractor" may, however, be changed to describe the contractual relationship in lower-tier subcontracts.

PART 9-4—SPECIAL TYPES AND METHODS OF PROCUREMENT

AUTHORITY: The provisions of this Part 9-4 issued under sec. 161 of the Atomic Energy Act of 1954, as amended, 68 Stat. 948, 42 U.S.C. 2201; sec. 205 of the Federal Property and Administrative Services Act of 1949, as amended, 63 Stat. 390, 40 U.S.C. 486.

§ 9-4.000 Scope of part.

This part implements and supplements the policies and procedures set forth in FPR Part 1-4.

Subpart 9–4.6—Livestock Products

§ 9–4.601 General.

The requirements of FPR Subpart 1–4.6 apply to cost-type contractor procurement.

Subpart 9–4.50—Indemnification of AEC Contractors

§ 9–4.5000 Scope of subpart.

This subpart describes the established policies of the Atomic Energy Commission concerning (a) indemnification of AEC contractors against public liability for a nuclear incident arising out of or in connection with the contract activity and (b) indemnification of AEC contractors against liability for nonnuclear risks arising out of or in connection with the contract activity.

§ 9–4.5001 Applicability.

(a) With respect to indemnification against public liability for a nuclear incident the pertinent policies and procedures set forth in this subpart shall be applicable in entering into indemnity agreements with:

(1) AEC contractors engaged in the operation of production or utilization facilities,

(2) AEC contractors whose work entails the risk of public liability for a substantial nuclear incident.

(b) With respect to indemnification against liability for nonnuclear risks, the pertinent policies and procedures set forth in this subpart shall be applicable in entering into indemnity agreements with any AEC contractors.

§ 9–4.5002 Definitions.

(a) The term "AEC contractor" means any AEC prime contractor, including any agency of the Federal Government with which AEC has entered into an interagency agreement.

(b) The term "construction contractor" means an AEC contractor who is constructing an installation for AEC which, when completed, will be a production or utilization facility.

(c) The term "nuclear incident" means (1) any occurrence within the United States causing, within or outside the United States, bodily injury, sickness, disease, or death, or loss of or damage to property, or loss of use of property, arising out of or resulting from the radioactive, toxic, explosive, or other hazardous properties of source, special nuclear, or byproduct material, and (2) any such occurrence outside the United States if such occurrence involves a facility or device owned by, and used by or under contract with, the United States.

(d) The term "person indemnified" means (1) with respect to a nuclear incident occurring within the United States, the person with whom an indemnity agreement is executed and any other person who may be liable for public liability; or (2) with respect to any nuclear incident occurring outside the United States, the person with whom an indemnity agreement is executed and any other person who may be liable for public liability by reason of his activities under any contract with the Commission or any project to which indemnification under the provisions of section 170d. of the Atomic Energy Act of 1954, as amended, has been extended or under any subcontract, purchase order or other agreement, of any tier, under any such contract or project.

(e) The term "production facility" means:

(1) Any nuclear reactor designed or used primarily for the formation of plutonium or uranium 233; or

(2) Any facility designed or used for the separation of the isotopes of uranium or the isotopes of plutonium, except laboratory scale facilities designed or used for experimental or analytical purposes only; or

(3) Any facility designed or used for the processing of irradiated materials containing special nuclear material, except laboratory scale facilities designed or used for experimental or analytical purposes only.

(f) The term "public liability" means any legal liability (including liability for loss of, or damage to, or loss of use of property which is located at the site of and used in connection with the contract activity) arising out of or resulting from a nuclear incident, except: (1) Claims under State or Federal workmen's compensation acts of employees of persons indemnified who are employed at the site of and in connection with the activity where the nuclear incident occurs and (2) claims arising out of an act of war. "Public liability" also includes damage to property of persons indemnified: *Provided*, That such property is covered under the terms of any financial protection that may be required, except property which is located at the site of and used in connection with the activity where the nuclear incident occurs.

(g) The term "substantial nuclear incident"—see § 9–4.5005.

(h) The term "utilization facility" means any nuclear reactor other than one designed or used primarily for the formation of plutonium or U^{233}.

(i) The term "nuclear reactor" means an apparatus, other than an atomic weapon, designed or used to sustain nuclear fission in a self-supporting chain reaction.

§ 9–4.5003 Statutory indemnity—section 170d of the Atomic Energy Act of 1954, as amended.

Section 170d of the Atomic Energy Act of 1954, as amended, authorizes the AEC "to enter into agreements of indemnification with its contractors for the construction or operation of production or utilization facilities or other activities under contracts for the benefit of the United States involving activities under the risk of public liability for a substantial nuclear incident." Contractors identified in § 9–4.5001(a) are eligible for such statutory indemnity.

§ 9–4.5004 Authority of Managers of Field Offices to negotiate statutory indemnity agreements.

(a) Managers of Field Offices are authorized to negotiate statutory indemnity agreements with contractors identified in § 9–4.5001(a)(1).

(b) Pursuant to § 9–4.5005, Managers of Field Offices are authorized to enter into a statutory indemnity agreement whenever it has been determined that a contractor in subparagraph (2) of § 9–4.5001(a) is engaged in activities involving the risk of public liability for a substantial nuclear incident. Such a determination may be based upon either the risk of liability for the occurrence of a substantial nuclear incident in the course of performance of the contract work or the risk of liability for a substantial nuclear incident caused by a product delivered to or for AEC under the contract where such product is expected to be used in connection with a facility or device not covered by a statutory indemnity agreement. If, pursuant to § 9–4.5005, a Manager of a Field Office determines that the maximum conceivable damage which could result from a nuclear incident arising in the course of a contractor's activities falls between 1 million dollars and 60 million dollars, he shall submit the proposed indemnification with a recommendation, and all supporting data, to the Assistant General Manager for Operations for appropriate action.

§ 9–4.5005 Substantial nuclear incident.

With respect to subparagraph (2) of § 9–4.5001(a), and pursuant to the provisions of § 9–4.5004, a Manager of a Field Office may be required to determine whether a contractor's activities involve the risk of public liability for a substantial nuclear incident and thus make the contractor eligible to obtain a statutory indemnity agreement from the AEC. The determination by a Manager of a Field Office shall be based on the following criteria:

If, after a study of the maximum conceivable damage which can result from an incident arising out of or in connection with the contractor's activities, the Manager of a Field Office concludes that the maximum conceivable damage per incident to property and persons is $60 million or more, then the contractor may be found to be under risk of public liability for a substantial nuclear incident and the Manager of a Field Office is authorized to execute a statutory indemnity agreement under such a contract. If such a study of the maximum conceivable damage indicates a figure of $1 million or less, the contractor should not be considered to have a risk of public liability for a substantial nuclear incident and, therefore, should not be made a party to a statutory indemnity agreement. If the study indicates that the maximum conceivable damage falls between $1 million and $60 million, the Manager of a Field Office will submit the proposed indemnification of such contractor to the Assistant General Manager for Operations with a recommendation and all supporting data.

The Assistant General Manager for Operations, on such a recommendation, may take one of the following actions:

(a) Determine that the contractor is under risk of public liability for a substantial nuclear incident and that the contractor should be extended a statutory indemnity agreement.

(b) Determine that the contractor should not be extended a statutory indemnity. In this case the Assistant General Manager for

Operations may authorize the Manager of a Field Office to authorize the contractor to purchase nuclear liability insurance or to offer the contractor a general authority indemnity agreement.

§ 9–4.5006 Statutory indemnity contract article.

The contract article contained in § 9–7.5004–24 shall be incorporated in all contracts in which a statutory indemnity agreement is to be included upon a determination that the contractor is under risk of public liability for the occurrence of a substantial nuclear incident in the course of performance of the contract work. The contract article contained in § 9–7.5004–25 shall be incorporated in all contracts in which a statutory indemnity agreement is to be included upon a determination that the contractor is under risk of public liability only for a substantial nuclear incident caused by a product delivered to or for AEC under the contract where such product is expected to be used in connection with a facility or device not covered by a statutory indemnity agreement.

§ 9–4.5007 Contractual assurance.

Managers of Field Offices are authorized to include in all contracts for:

(a) Architect-engineer services in connection with the construction of a production or utilization facility;

(b) The supply of component parts (including construction contracts where the work does not entail the risk of occurrence of a substantial nuclear incident) for a production or utilization facility; and

(c) The supply of equipment or services which would be a part of, or contribute to, or be used in connection with the construction or operation of a production or utilization facility, assurances that the AEC will enter into a statutory indemnity agreement with the contractor who will operate a facility on its completion. Assurances will be given, however, only to those contractors and suppliers who might be held liable in connection with a substantial nuclear incident occurring after completion of the facility. The form of contractual assurance which shall be utilized is contained in § 9–7.5004–26.

§ 9–4.5008 "Representation" for use in subcontracts and purchase orders of prime contractor holding statutory indemnity agreement.

An AEC contractor with whom a statutory indemnity agreement has been executed in the form contained in § 9–7.5004–24 may include in any of its subcontracts and purchase orders a representation that the work under the prime contract is covered by a statutory indemnity agreement with the AEC and that this indemnity covers all persons who may be liable for public liability for any nuclear incident arising out of or in connection with the activity under the prime contract. A suggested form of "representation" follows:

> The Contractor represents that there is included in its prime contract with the Commission an indemnity agreement, entered into by the Commission under the authority of Section 170 of the Atomic Energy Act of 1954, as amended by Public Law 85–256 (the "Price-Anderson Act"), a copy of which may be obtained from the Contractor [is attached hereto]; that, under said agreement, the Commission has agreed to indemnify the Contractor and other persons indemnified, including the subcontractor, against claims for public liability (as defined in said Act) arising out of or in connection with the contractual activity; that the indemnity applies to covered nuclear incidents which (i) take place at a "contract location" (which term, as defined in the indemnity agreement, does not include the location of the subcontractor's plant and facilities); or (ii) arise out of or in the course of transportation of source, special nuclear or by-product material to or from a "contract location"; or (iii) involve items produced or delivered under the prime contract. The obligation of the Commission to indemnify is subject to the conditions stated in the indemnity agreement.

The AEC will not approve the inclusion, in the subcontracts and purchase orders of an indemnified prime contractor, of any provision whereby the prime contractor indemnifies the subcontractor or supplier against public liability for a nuclear incident since any such liability will be covered by the statutory indemnity agreement of the prime contractor.

§ 9–4.5009 Fees.

No fee will be charged an AEC contractor for a statutory indemnity agreement.

§ 9–4.5010 Financial protection requirements.

(a) AEC contractors with whom statutory indemnity agreements under the authority of section 170d of the Act are executed will not normally be required or permitted to furnish financial protection by purchase of insurance to cover public liability for nuclear incidents, except (1) that AEC contractors now covered by insurance against such liability, with the approval of the AEC may continue to carry such insurance, and (2) with the approval of the Controller, contractors engaged in the operation of AEC facilities may be required or permitted to furnish financial protection in an amount not to exceed $1 million.

(b) If nuclear liability insurance is carried by a contractor who is an AEC licensee, the AEC will pay an equitable portion of the insurance premium under its contract (or would include such an item in the calculation of a fixed price), but normally a statutory indemnity agreement would not be granted under the contract.

§ 9–4.5011 General contract authority indemnity.

(a) The AEC has general contract authority to enter into indemnity agreements with its contractors. Under such authority a certain measure of protection is extended to the AEC contractor against risk of liability, but the assumption of liability by the AEC will be expressly subject to the availability of appropriated funds. Prior to enactment of section 170 of the Atomic Energy Act of 1954, as amended, this authority was exercised in a number of AEC contracts and this type of indemnification remains in some AEC contracts.

(b) It is the policy of the AEC, subsequent to the enactment of section 170, to restrict indemnity agreements with AEC contractors, with respect to protection against public liability for a nuclear incident, to the statutory indemnity provided under section 170. However, it is recognized that circumstances may exist under which an AEC contractor may be exposed to a risk of public liability for a nuclear occurrence which would not be covered by the statutory indemnity.

(c) While it is normally AEC policy to require its contractors to obtain insurance coverage against public liability for nonnuclear risks, there may be circumstances in which a contractual indemnity may be warranted to protect an AEC contractor against liability for uninsured nonnuclear risks.

(d) If circumstances as mentioned in paragraph (b) or (c) of this section do arise, it shall be the responsibility of the Manager of a Field Office to submit to the Assistant General Manager for Operations for his review and decision all pertinent information concerning the need for or desirability of providing a general authority indemnity to an AEC contractor.

(e) Where the indemnified risk is nonnuclear, the amount of general authority indemnity extended to a fixed-price contractor should normally have a maximum obligation equivalent to the amount of insurance that the contractor usually carries to cover such risks in his other commercial operations or, if the risk involved is dissimilar to those normally encountered by the contractor, the amount that he otherwise would have reasonably procured to insure this contract risk.

(f) In the event that an AEC contractor has been extended both a statutory indemnity and a general authority indemnity, the general authority indemnity will not apply to the extent that the statutory indemnity applies.

(g) The provisions of this subsection do not restrict or affect the policy of the AEC to reimburse its cost-type contractors for the allowable cost of losses and expenses incurred in the performance of the contract work, within the maximum amount of the contract obligation. See §§ 9–7.5006–9, 9–7.5006–10, and 9–7.5006–12.

Subpart 9–4.51—Research Agreements and Contracts With Educational Institutions

§ 9–4.5100 Scope of subpart.

This subpart sets forth policies and procedures applicable to the negotiation and administration of Washington-designated special research support agreements and cost-type contracts for off-site basic research with educational institutions. To the extent applicable, these policies and procedures should also be followed for Washington-designated

contracts for off-site applied research with educational institutions, for Field Office contracts for off-site research with educational institutions, for basic or applied research with other "not-for-profit" institutions, and for educational and training activities with educational or other "not-for-profit" institutions. The policy of AEC reimbursing only AEC's share of actual costs up to a ceiling should be reflected in all AEC contracts with educational institutions.

§ 9–4.5101 Definitions.

(a) The term "Washington-designated contract" as used hereafter in this subpart means a special research support agreement or a cost-type contract which results from an authorization to an AEC Field Office from an AEC Headquarters Division or Office to enter into or continue such a contract on the basis of an approved research proposal.

(b) The term "contractor" means the educational or not-for-profit institution which enters into an agreement or contract with the Atomic Energy Commission for the performance of specified research.

(c) The term "research proposal" means a request by an institution for AEC support of a research project, together with a detailed description of the project and its relationship to the atomic energy program, and detailed information as to background and experience of principal investigators, facilities, and environment of the institution, and cost and cost-sharing arrangements, if any.

§ 9–4.5102 General.

The Atomic Energy Commission by statute is permitted to participate only in programs of research that are related to atomic energy.

§ 9–4.5103 Research program objectives.

(a) Under section 31a of the Atomic Energy Act of 1954, the AEC is directed to exercise its powers in such manner as to insure the continued conduct of research and training activities and to assist in the acquisition of an ever-expanding fund of theoretical and practical knowledge in the following fields:

(1) Nuclear processes;

(2) The theory and production of atomic energy, including processes, materials, and devices related to such production;

(3) Utilization of special nuclear material and radioactive material for medical, biological, agricultural, health, or military purposes;

(4) Utilization of special nuclear material, atomic energy, radioactive material, and processes for other purposes, including industrial uses, the generation of usable energy, and the demonstration of the practical value of utilization or production facilities for industrial or commercial purposes;

(5) The protection of health and the promotion of safety during research and production activities.

§ 9–4.5104 Contract objectives.

(a) Washington-designated research contracts are entered into by negotiation (as distinguished from formal advertising) under the authority of section 31c of the Atomic Energy Act of 1954 and section 302(c)(5) of the Federal Property and Administrative Services Act of 1949. In planning, negotiating, and administering such contracts, the objectives of AEC are to:

(1) Assure a continuing flow of new knowledge in fields related to the responsibilities of the AEC;

(2) Respect the traditions of the contracting institution and encourage the quest for new knowledge without restrictions on scientific initiative, to the extent compatible with the laws and the protection of the public interest;

(3) Provide reasonable levels of support which will increase the national capability in nuclear energy fields and enable the contracting institution to strengthen its research programs in areas of interest to AEC;

(4) Maintain effective contact with the scientific community so that:

(i) Scientists and students will be encouraged to expand their interests in fields of importance to the AEC program;

(ii) The scientific strength of the country can be brought to bear more effectively on AEC problems;

(iii) The AEC will be continuously aware of developments of value to its activities in the academic communities; and

(iv) An adequate supply of suitably trained scientists will be available for employment within the atomic energy program.

(b) The contractor is responsible for conducting the research and is expected to carry out the project or projects in a manner consistent with agreed-upon contract objectives and requirements; these include the obligation to comply with applicable laws and regulations, including the AEC's regulatory requirements. The contractor is generally expected to follow its normal business practices and to utilize its existing accounting system.

§ 9–4.5105 Submission of research proposals.

(a) Proposals for AEC assistance are usually initiated by scientists interested in doing the research. In some cases, however, the AEC may request investigators to undertake research of particular interest to the AEC. Prior to submitting a proposal, the interested scientist may discuss the project informally, either by letter, telephone, or personal visit with a member of the AEC Headquarters Program Division that has the greatest interest in the work. Also, following an informal discussion, a formal proposal may be requested. The proposal should be submitted to the appropriate AEC Headquarters Program Division and should indicate:

(1) Identity and background of the project;

(2) Objective of the investigation;

(3) Approximate types and number of personnel who would be utilized, and an approximation of the time to be devoted to the project work;

(4) Facilities, equipment, and other wherewithal to be used;

(5) Amount of money sought from AEC which, together with the institution's contributions (if any), would enable the work to be performed; and

(6) Whether the institution wishes to establish stipulated salary support amounts as the bases for charges for personal services of any professorial staff members to be utilized on the project. If the institution wishes to establish such stipulated salary support amounts, the proposal should include the following information for each professorial staff member involved:

(i) Academic year salary;

(ii) Other research projects or proposals for which salary is allocated; and

(iii) Any other duties, such as teaching assignments, administrative assignments, supervision of graduate students, or other institutional activities.

(b) Each formal proposal shall be prepared in the manner and form outlined in the "Guide for the Submission of Research Proposals," copies of which may be obtained from the U.S. Atomic Energy Commission, Washington, D.C. 20545. Preliminary inquiries regarding support should be referred to the appropriate AEC Headquarters Division. (See § 9–4.5101(a).)

§ 9–4.5106 Selection, preparation, and award of research contracts.

§ 9–4.5106–1 General.

In order to maintain a comprehensive and well-integrated research program, AEC evaluation of research proposals and selection of educational institutions to conduct scientific research is centralized in AEC Headquarters. However, AEC Field Offices in close proximity to the contractor are assigned responsibility for handling the final contract arrangements and nontechnical administration of such contracts.

§ 9–4.5106–2 Responsibilities.

(a) *Headquarters Program Divisions.* The AEC Headquarters Program Divisions interested in the particular research are responsible for evaluating the technical aspects of proposals and the amount of requested support. Such divisions also review the prospective contractor's cost and other estimates to determine the reasonableness, the propriety, the advisability of proceeding with the project, as proposed or as the proposal may in effect be amended. Specifically, Directors of AEC Headquarters Divisions are responsible for:

(1) Selecting and approving research proposals and determining the amount of AEC support;

(2) Reviewing the items in the proposal budget or itemized account of the proposed work, and, if necessary, the assistance of the appropriate AEC Field Office may be requested;

(3) Determining the ownership of property;

(4) Reviewing and following the technical progress of the work;

(5) Providing contractors with the technical guidance and direction as may be required to meet broad program objectives; and

(6) Keeping the AEC Field Offices fully informed of technical correspondence and discussions with contractors that may have contractual or nontechnical administrative implications.

(b) *Field Offices.* AEC Field Offices are responsible for the consumation of contracts with the specified institution in accordance with directives from AEC Headquarters Program Divisions, and administering and making payments under such contracts. Specifically, Managers of AEC Field Offices are responsible for:

(1) Finalizing and executing the contract (where necessary, obtaining further instructions from the AEC Headquarters Program Division);

(2) Administering the contracts in accordance with their terms and conditions and making payments thereunder;

(3) Providing technical and administrative assistance requested by AEC Headquarters Division Directors.

§ 9–4.5106–3 Review of research proposals.

(a) *Use of consultants.* If, in the judgment of the AEC Headquarters Program Division, an appraisal from representatives of the scientific community is required, reviewers may be selected on the basis of their familiarity with either the field of research or the competence of the investigator.

(b) *Field participation in proposal evaluation.* Occasionally, the AEC Headquarters Program Division may find it necessary in considering research proposals to obtain additional information from the research institution or to visit the site. In some cases, the comments, assistance, or participation of staff members of the appropriate AEC Field Office will be requested.

(c) *Review of major elements.* At the time it reviews a research proposal, the sponsoring AEC Headquarters Program Division shall review the prospective contractor's budget or itemized account of the proposed work and activities and the materials, equipment, and facilities involved, for the purpose of reaching mutual understanding of the estimated cost of the research to be contracted for and the other major aspects of the contract in contemplation. Questions about the cost elements that require further investigation may be referred to the appropriate AEC Field Office when the contract is authorized.

§ 9–4.5106–3a Compensation for personal services of professional staff.

(a) In accordance with section B.7 and section J.7 of BoB Circular No. A–21, the proposing institution and the AEC must reach an understanding regarding the basis for charges to the AEC under the contract for personal services of professional staff members. It is AEC policy to use the payroll distribution procedure of section J.7.b as the basis for charges for personal services of all nonprofessorial professional staff, and also for professorial staff in those cases in which it is not feasible to establish a stipulated salary support amount during the proposal and award process because detailed plans or knowledge of specific positions or individuals are not available.

(b) In those cases in which the proposing institution and the AEC agree to use a stipulated salary support amount as the basis for charges for personal services of a specified professorial staff member, the sponsoring AEC Headquarters Division shall either:

(1) Establish an appropriate stipulated salary support amount in accordance with the guidelines of BoB Circular No. A–21 and provide guidance to the Field Office regarding the amount of such individual stipulated salary support, or

(2) Request the Field Office to establish an appropriate stipulated salary support amount in accordance with the guidelines of BoB Circular No. A–21 and within any limitations established by the sponsoring Headquarters Division.

In establishing appropriate stipulated salary support amounts, it will be necessary for the AEC Headquarters Division or Field Office to obtain information on the academic year salary of the faculty members involved; the other research projects or proposals for which salary is allocated; and any other duties they may have, such as teaching assignments, administrative assignments, supervision of graduate students, or other institutional activities.

(c) The established stipulated salary support amount shall be provided for in the contract and shall be the basis for charges for personal services of the specified staff member unless there is a significant change in performance by the staff member (see section J.7.c of BoB Circular No. A–21 for examples of a "significant change"); if a significant change in performance occurs, the institution has the responsibility under BoB Circular No. A–21 to either:

(1) Reduce the charges to the contract proportionately, or

(2) Request an appropriate amendment of the contract to reflect the change in performance.

The contract should provide that if the alternative in subparagraph (1) of this paragraph is followed, the contractor shall notify the Commission of such reduction, with an explanation of the basis of such reduction. In accordance with section J.7.c of BoB Circular No. A–21, special provision must be made in the contract if summer salaries are to be paid under the stipulated salary support procedure; the contract should provide specifically for any stipulated salary support amount for summer salaries and provide that any research covered by stipulated summer salary support must be carried out during the summer, not during the academic year, and at locations approved in advance by the Commission.

(d) If after the award of a contract the contractor wishes to charge the AEC for the personal services of a professorial staff member for whom a stipulated salary support amount has not been established in the contract, the contractor shall use the payroll distribution procedure of section J.7.b of BoB Circular A–21 as the basis for such charges, except as the parties may otherwise mutually agree in writing.

(e) The stipulated salary support procedure shall not be used as a basis for establishing the amount of a contractor's contribution to the research work. In those cases in which the contractor is required to maintain records in support of a contribution of the cost of professorial staff, the payroll distribution procedure of section J.7.b of BoB Circular A–21 should be used.

(f) The certification required by Appendix C of § 9–16.5002–8 fulfills the certification requirement of section K of BoB Circular No. A–21, for the special research support agreement. In cost-type contracts (§ 9–16.5002–9) the payments article should provide for appropriate certification by the contractor, on payment invoices or vouchers, to meet the requirements of section K.

§ 9–4.5106–4 Notice of selection or rejection.

The proposer shall be notified by the AEC Headquarters Program Division of the decision to support or reject the proposal. In the event of approval, this notification shall advise: (a) That the proposal has been selected for support subject to completion of a satisfactory contract, (b) which AEC Field Office will negotiate and execute the contract, and (c) that the AEC assumes no obligation until a contract has been executed. A copy of the notice of approval or rejection shall be sent to the AEC Field Office concerned.

§ 9–4.5106–5 Selection of AEC Field Office.

When the AEC Headquarters Program Division has determined that a proposal will receive AEC support, an appropriate AEC Field Office will be requested to make the final contract arrangements with the institution concerned. Usually the AEC Field Office geographically nearest to the research institution will be selected, but occasionally other factors such as existing contractual relationships, will make the selection of some other AEC Field Office desirable.

§ 9–4.5106–6 Information to be furnished to Managers of AEC Field Offices.

The sponsoring AEC Headquarters Program Division shall provide the appropriate AEC Field Office with an authorizing directive early enough (usually 4 weeks) to permit timely consummation of the contract before the work is scheduled to start. The following shall be furnished:

(a) A copy of the detailed proposal and any modifications;

(b) Copies of correspondence with the research institution that are pertinent to the completion of the contract negotiation or that have some specific significance as to the preliminary review or arrangements made with the institution; and

(c) An authorizing directive (generally Form AEC–481, "Contract Authorization") which:

(1) Authorizes the execution of a specific type of contract for a specified term, with AEC support limited to a specified amount or a specified percentage of costs up to a specified Support Ceiling;

(2) Summarizes the background of the proposal and any pertinent discussion not reflected in the papers attached to the memorandum;

(3) Indicates the extent to which the scope of the work proposed has been approved;

(4) Indicates the principal investigator and other necessary details;

(5) Indicates the total estimated cost of the research and other major aspects of the contract, by reference to the proposal or otherwise;

(6) Indicates whether title to property to be acquired under the contract is to be vested in the AEC or the contractor;

(7) Indicates whether restricted data is likely to be used or developed in the course of the work and such classification and security determination as may be appropriate;

(8) Indicates directions for special reports, if any;

(9) Gives such additional information as may assist the Field Office in the finalization of the contract; and

(10) Designates the appropriate organizational unit of AEC Headquarters Program Division and individual that will have technical cognizance over the work under the contract.

§ 9–4.5106–7 Changes in scope and level.

After a contract has been authorized by the AEC Headquarters Program Division, and prior to execution of a contract, the Field Office shall not approve any significant change in technical scope, funding, specified result, performance, principal investigator, or other major aspect of the work without AEC Headquarters Program Division prior approval.

§ 9–4.5106–8 Notification of contract execution.

Promptly after execution of a contract, the appropriate AEC Headquarters Program Division should be notified of such action.

§ 9–4.5107 Standard contract forms.

§ 9–4.5107–1 General.

Outlines of standard contract forms for special research support agreements and cost-type contracts with educational institutions, for research performed in facilities owned or controlled by the contractor (as distinguished from Government-owned or Government-controlled facilities), are set forth in §§ 9–16.5002–8 and 9–16.5002–9, respectively. It is intended to provide through these documents a vehicle by which research tasks can be accomplished with a minimum of administrative effort. It is therefore important that such contracts be written in such a manner as to assure the complete understanding of the parties as to the job to be performed and the financial and administrative details connected therewith. Of special consideration is the nature of research contracting in contrast to the procurement of supplies or activities of a production nature. It is recognized that wide research latitude in the conduct of research by the institutions is generally desirable and the standard contract forms were designed to permit such latitude in the overall establishment of the rights and obligations of the parties.

§ 9–4.5107–2 Special research support agreements.

(a) The special research support agreement outlined in § 9–16.5002–8, is generally used for basic research with educational institutions when the annual AEC support under the agreement does not exceed $250,000. It provides that AEC's monetary obligation will be a specified amount, which is referred to as the Support Ceiling, or a lower adjusted amount (referred to as the Cumulative Support Cost) if actual costs chargeable to the AEC during the total period of the contract are less than expected. The ceiling on AEC's monetary support will be determined and established as a Support Ceiling at the outset of the initial contract period, generally an annual period; the initial Support Ceiling will be the amount of AEC support made available in connection with the initial contract period. In the event the AEC and the Contractor agree to extend the contract for an additional period or periods of performance, the ceiling on AEC's monetary support (Support Ceiling) would be increased to reflect any increased support by reason of the extended period or periods. The costs chargeable to the AEC (Support Cost) will be reported for each pertinent period of the contract specified in Appendix A (generally an annual period) in accordance with paragraphs (b) and (c) of this section, and the Support Cost determined for each such contract period will be accumulated for all periods of contract performance, as will the Support Ceiling. The monetary obligation of the AEC to the Contractor will not exceed the Cumulative Support Cost or the accumulated Support Ceiling, whichever is less. Upon termination, or expiration of the total period of performance, the Contractor will refund to the AEC, or make such other disposition as the AEC may direct, any funds advanced by the AEC to the Contractor in excess of the Cumulative Support Cost incurred under the contract. Payment shall be made in consideration for the Contractor's performance of research activities described in the contract and in accordance with the provisions of the contract. The Contractor shall have the right to discontinue performance of research under the contract, upon written notice to the AEC, at any time when or after the total costs chargeable to the AEC equal or exceed the Support Ceiling. Certain deviations in performance and other actions require AEC approval as stated in § 9–4.5112–5; among other approval requirements, the Contractor must obtain AEC's approval to incur costs for items set forth in Article A–II(a), during the pertinent contract period stated in Appendix A, in excess of 110 percent of the total estimated cost specified in Article A–III for the specified contract period. In those cases in which there is to be proportionate sharing of costs, the percent of the cost to be borne by the AEC will be set forth in Article A–III of the contract (see par. (c) of this section).

(b) The Contractor will be required to furnish a certified statement (within 3 months after the expiration of the pertinent contract period set forth in Appendix A—and at the termination or expiration of the contract) signed by the principal investigator and an official of the institution showing the Support Cost (see definition of "Support Cost" in § 9–16.5002–8, Article B–XXVII) of the project during the prior contract period. The statement should follow the format of Appendix C of the contract and provide a basis for comparison with the approved budget as provided in Appendix A of the contract.

(c) It is expected that in many cases the Contractor will propose to contribute to the cost of the research work. Such proposed contribution shall be set forth in Appendix A of the contract, either (1) as items under (b) or (c) of Article A–II which will be contributed solely by the Contractor without charge to the AEC, or (2) as a proportionate cost-sharing agreement in Article A–III which will provide that the Contractor will charge AEC only a specified percentage of the actual cost incurred for items under (a) of Article A–II. Proposed Contractor contributions should ordinarily be listed under (b)(1) of Article A–II when (1) the contribution is the principal investigator or other senior personnel who are likely to be involved in the research work to the same extent whether their cost is included in or excluded from proportionate cost-sharing, (2) the proposed contribution to the work is being paid for by a third party, e.g., personnel or equipment the cost of which is being reimbursed under another contract or grant from public or private sources, and (3) the proposed contribution does not involve any cash expenditure by the Contractor. Only those items, the cost of which are to be charged to the AEC or proportionately shared by the parties, should be listed under Article A–II(a). Proportionate sharing of the cost of items under Article A–II(a) should be provided for only when the Contractor agrees to pay a specified percentage of the cost of all such items, and when such sharing is expected to be of financial benefit to the AEC. In those cases in which there is to be proportionate cost-sharing, the Contractor should generally be encouraged to continue the same sharing ratio throughout the life of the

contract so as to provide for ease of administration and to avoid difficulties in determining proper charges to the AEC. When the contract provides for proportionate cost-sharing, it should be understood that the AEC will pay only the specified percentage of the actual cost of items under Article A–II(a) incurred during the pertinent contract period specified in Appendix A, up to a maximum of 110 percent of the estimated Support Cost set forth in Article A–III for the pertinent contract period unless otherwise specifically approved by the AEC, and subject to the Support Ceiling set forth in Article III.

(d) If the Contractor proposes to contribute the cost of the principal investigator(s) on the project and requests that the contribution be excluded from A–II(b), the contributed time or effort should be shown in A–II(c). In any event, Article A–I should include a statement regarding the approximate percentage of time or effort that the principal investigator(s) expects to devote to the contract work. If the principal investigator(s) is included under A–II(c), the Contractor would not be required to maintain records regarding the amount of effort contributed by the principal investigator, and the Contractor would not be required to certify in accordance with Appendix C of the contract regarding the amount of effort contributed by the principal investigator. The principal investigator may be included in Article A–II(a) for purposes of obtaining AEC reimbursement of his costs during the summer months, and excluded from Article A–II(a) for the academic year if the Contractor proposes to contribute the costs for that period. The contract generally will not require the Contractor's commitment that any particular amount of time or effort by the principal investigator(s) or other personnel will be devoted to the work under the contract. In the event a proposed Contractor contribution is included in Article A–II(b)(1), the contract should reflect the nature and extent of the Contractor's intent to contribute the item, and the Contractor shall maintain records adequate to permit the AEC to determine the extent of the contribution. The Contractor shall certify, in accordance with Appendix C of the contract, the extent to which the item or items under Article A–II(b)(1) have been contributed. Government-owned property to be procured, fabricated, or furnished under Article V or Article B–IX of the contract and other Government-furnished equipment, supplies, materials, or services should be excluded from Article A–II(a) and listed under Article A–II(b)(2). If items of Government-owned equipment are to be furnished to a Contractor by the Government, with title to be vested in the Contractor, the Consideration article (Article III) should be modified to provide that the items of equipment are being provided in consideration of the Contractor providing a specified contribution to the cost of the work, and the specified Contractor's contribution should be listed under A–II(b)(1).

(e) If the special research support agreement outlined in § 9–16.5002–8 is to be used for not-for-profit organizations other than educational institutions, Article B–XXVII, Determination of Support Cost, should be revised to provide that the AEC's commercial cost principles (Subpart 9–15.50) will be used in determining actual cost, or the contract provisions may be revised at the direction of the cognizant AEC Headquarters Division or Office to provide for a lump-sum payment to the Contractor in consideration for its performance of particular research at a specified level of effort. The special research support agreement outlined in § 9–16.5002–8 may also be used for supporting research at educational institutions in foreign countries; however, at the discretion of the cognizant AEC Headquarters Division of Office or Field Office, the outline of § 9–16.5002–8 may be revised to provide for a lump-sum payment to the foreign institution in consideration for its performance of particular research at a specified level of effort, and to limit approval requirements to those considered consistent with the nature of the support to the foreign institution. All such agreements with foreign institutions should provide that any unused AEC funds available to the foreign institution at the end of the contract term shall be used in a renewal period of the contract, returned to the AEC, or otherwise disposed of, in accordance with AEC instructions.

§ 9–4.5107–3 Cost-type contract.

The standard cost-type contract for research by educational institutions, outlined in § 9–16.5002–9, is generally used when the annual AEC support under a contract exceeds $250,000, or when the cost of the project cannot be estimated in advance with reasonable accuracy. In many cases the contractor shares in the cost of the work conducted under the contract, although this is not a prerequisite for AEC support (see Article III of § 9–16.5002–9). The contract provides for reimbursement to the contractor of allowable costs incurred, within a specified ceiling, for performance of the research in accordance with the provisions of the contract. Allowable costs are determined in accordance with Bureau of the Budget Circular A–21, FPR Subpart 1–15.3, and § 9–15.103. (For cost-type contracts with not-for-profit institutions other than educational institutions, reimbursement of costs is in accordance with the applicable AEC commercial cost principles.) Certain deviations in performance and other actions under the contract require AEC approval as specified in the contract. Such approval requirements will be in accordance with § 9–4.5112–5.

§ 9–4.5108 Ownership of property.

(a) Pursuant to Public Law 85–934, title to equipment purchased or fabricated with funds provided by AEC under contracts for the conduct of basic or applied scientific research at nonprofit institutions of higher education or at nonprofit organizations whose primary purpose is the conduct of scientific research where it is deemed to be in furtherance of the objectives of AEC, may be vested in the contractor.

(b) In addition to the authority referred to in paragraph (a) of this section, title to items of equipment and other personal property acquired by the contractor performing research may also be vested in the contractor as part of the contract arrangement, when considered appropriate from the point of view of legal considerations and the best interest of the Government.

§ 9–4.5109 Reporting requirements.

§ 9–4.5109–1 Purpose of reports.

Research reports from contractors are necessary to provide AEC, and, where appropriate, the public, with a record showing the progress achieved under projects receiving AEC support. In many instances, the research reports are of value in making information available to scientists working on closely allied problems.

§ 9–4.5109–2 Summary—200 words.

Immedfately after a contract is negotiated, a summary of approximately 200 words (SIE form) covering the purpose and scope of the project should be sent by the contractor to the appropriate AEC Field Office. In connection with each renewal proposal, the 200-word summary should be revised to include the significant results and conclusions of the former years' work and a statement of the scope and objectives of the following year.

§ 9–4.5109–3 Progress reports.

Progress reports should briefly describe the scope of the investigations undertaken and the significant results obtained. They should also explain any significant differences between the actual level of activity (expressed in the various categories of man months, facilities procured, travel performed, etc.) and that contemplated in the contract.

§ 9–4.5109–4 Technical reports.

Technical reports and articles prepared for publication during the period covered should be listed with bibliographic references. Reprints or preprints of all such material should be appended and material contained in them need not be duplicated in the report.

§ 9–4.5109–5 Special reports.

Special reports or additional progress, status, or topical reports may be requested when needed by the appropriate AEC Headquarters Program Division or AEC Field Office or may be submitted as deemed necessary by the contractor. For example, brief status reports may be requested when developments are of immediate interest or when a significant point in the investigation has been reached.

§ 9–4.5109–6 Final report.

A final report summarizing the entire investigation shall be required from the contractor upon expiration of each contract. Satisfactory completion of a contract will be contingent upon the receipt

of this report. The final report should follow the outline agreed upon for progress reports or, when a project has extended over a long period of time, the final report may refer to previously submitted technical reports for details and may be a synopsis of the entire project. Manuscripts prepared for publication should be appended.

§ 9–4.5109–7 Equipment report.

(a) An equipment report itemizing equipment having an anticipated service life of 1 year or more and an acquisition cost in excess of $100, either purchased or fabricated, when title to such equipment is vested in the contractor, shall be furnished by the contractor immediately following the expiration of the contract year, in accordance with Article B–XXI of the special research support agreement set forth in § 9–16.5002–8 (omit any item covered by Article V, Government Property, of this contract), and in accordance with the requirements of Appendix A–III of the cost-type contract set forth in § 9–16.5002–9. Where the cost of individual pieces of equipment exceeds $1,000, they shall be listed individually. Where individual items cost between $100 and $1,000, they shall also be listed individually to the extent practicable, or grouped in general categories, such as "electronics equipment" or "six motors," with the total dollar amount of such category. The cost of purchased items shall be determined by the actual invoice cost of such items, but the cost of fabricated items may be established by engineering estimates.

(b) In order to satisfy the requirements of the Grant Act (Public Law 85–934), Managers of Field Offices shall forward to the Director, Division of Contracts, not later than March 15 of each year, the original and one copy of each equipment report referred to in paragraph (a) of this section, identifying each item purchased with AEC funds and titled in the contractor under the Grant Act, submitted by contractors for the preceding calendar year.

§ 9–4.5109–8 Summary and distribution of reports.

A table summarizing the various types of reports, time for submission, number of copies and distribution is set forth below. The distribution and schedule of reports shall be as prescribed in this table, unless the authorizing program division specifies otherwise. Frequently, an annual progress report and a 200-word summary are sufficient for fundamental research, but additional reporting may be required in many cases. These reports are prepared by the contractor and submitted to the appropriate AEC Field Office for distribution. The AEC Field Office shall transmit these reports with a covering memorandum indicating: (a) The other AEC offices receiving the documents, (b) the name of the contractor, and (c) the contract number. Each copy of the document should bear the contract number.

DISTRIBUTION AND SCHEDULE OF DOCUMENTS

Type	When due	Number of copies	Disposition of copies	Remarks
1. Summary: 200 words on scope and purpose (S.I.E. Form).	At start of initial contract and each renewal period.	4	Field office (1); appropriate HQ Division (3).	
2. Renewal proposal	Not later than 3 months nor earlier than 6 months before contract expires.	6	Field office (2); appropriate HQ Division (4).	Bind separately from annual progress report.
3. Annual progress report	With renewal proposal	7	Field office (2); appropriate HQ Division (4); DTIE (1).[1]	Bind separately from renewal proposal.
4. Other progress reports (brief topical reports, etc.).	As deemed necessary by investigator or as specifically requested by appropriate HQ Division.	[2] 7	do	Desired when significant results develop or when work has direct programmatic impact.
5. Reprints	As soon as available	7	do	Form AEC–427 not required with DTIE copy.
6. Manuscripts of journal articles.	When submitted to journal.	7	do	
7. Manuscripts of oral presentations.	When submitted to conference.	7	do	Abstracts will suffice if manuscript not available.
8. Final report	When contract is completed.	6	Field office (2); appropriate HQ Division (2); DTIE (1);[1] HQ Patent Br. (1).	

[1] DTIE copies should be accompanied by one copy of Form AEC–427 (except as noted above for Item 5, reprints) and should be sent to the contract administrator for transmittal to DTIE.
[2] Or as requested.

§ 9–4.5110 Dissemination of results.

§ 9–4.5110–1 Prompt dissemination.

Prompt dissemination of research results to the scientific community is encouraged. Publication in open literature is recognized as the normal and most desirable means for reporting the finding of unclassified fundamental research. Although the AEC reserves the right to utilize, and have others utilize, to the extent it deems appropriate, the reports resulting from research contracts, the AEC will attempt, to the maximum extent reasonably practicable and consistent with the Government's best interest, to permit the institutions and the authors to effect their own publication in established technical journals. (See Part 9–9 for copyright requirements which must be observed.)

§ 9–4.5110–2 Publication.

(a) Contractors are urged to publish results through normal publication channels. As a further inducement, page charges or other printing assessments for publishing articles in recognized scientific journals or any additional costs incurred in obtaining a limited supply of reprints of articles will be considered an appropriate budget item under contracts receiving AEC support where:

(1) The document reports work supported by the Government;

(2) The charges are levied impartially on all research papers published by the journal, whether by non-Government or by Government authors;

(3) Payment of such charges is in no sense a condition for acceptance of manuscripts by the journal;

(4) The journals involved are not operated for profit;

(5) The author does not receive an emolument for the research paper.

(b) A credit line should be included in any such publication to indicate that the research has been supported, in whole or in part, by the AEC. A patent check shall be made in advance of release to the public of any material prepared for publication. Generally, however, in the case of most basic research projects, the principal investigator may publish without prior AEC approval, unless he determines that the material being released may disclose an invention. (See paragraph (b) in Appendix B–III of § 9–16.5002–8 and Appendix B–6 of § 9–16.5002–9.)

§ 9–4.5111 Extension of contracts.

§ 9–4.5111–1 Renewal of proposals.

(a) Where additional time, beyond the current expiration period, is required to continue or complete the work, the Contractor should submit six copies of a renewal proposal to the AEC Field Office that has administrative jurisdiction of the existing contract, not later than 3 months nor earlier than 6 months before the date of expiration of the contract.

(b) The renewal proposal should outline and justify a proposed program and budget for the succeeding year, showing in detail the estimated cost of the project, together with an indication of the items for which the Contractor is requesting AEC reimbursement or proportionate cost-sharing, the percentage of any such costs to be shared by the Contractor, and any items to be contributed solely by the Contractor. It should include the same type of information as that required for initial proposals or reference this information to the extent contained in earlier proposals. Any contemplated change in program or scope for the ensuing period should be justified and explained clearly, and the cost estimates and other items should be based upon past experience. Any deviation from the contract during the current period requiring AEC approval as provided for in the contract, which has not received such AEC approval, should be explained

in detail, and the AEC's right to approve or disapprove shall be the same as for a request timely made by the Contractor.

(c) The renewal proposal should include a financial statement of the work under the current contract, including:

(1) Total project costs for the current period to date, indicating the amount chargeable to the AEC;

(2) An estimate of the total costs to be incurred during the remainder of the current contract period, indicating the amount chargeable to the AEC; and

(3) Under special research support agreements, the anticipated difference, if any, between the accumulated Support Cost at the end of the current contract period and the cumulative AEC Support Ceiling.

§ 9–4.5111–2 Evaluation of requests for renewals.

(a) Requests for renewals are evaluated by the appropriate AEC Headquarters Program Division in the light of:

(1) Progress report submitted by the Contractor;

(2) Research results published in scientific media;

(3) Field visits to the research site by technical personnel;

(4) Contractor's performance; and

(5) Availability of funds and relative importance of projects in relation to other proposed research.

(b) Requests for renewals generally follow the same process of review and evaluation of technical aspects and funding, preparation, and execution of the contract, and administration as a new project, although less use would normally be made of outside consultants. Contracts authorized by AEC Headquarters Program Divisions shall not be extended for a new term or on an interim basis or modified in scope without specific prior authorization from the appropriate AEC Headquarters Program Division, except as provided in § 9–4.5111–3.

§ 9–4.5111–3 Authorization to renew.

(a) When a determination has been made to extend a contract, the sponsoring AEC Headquarters Program Division shall provide the appropriate AEC Field Office with an authorizing directive early enough (usually about 4 weeks in advance of expiration) to permit an orderly completion of the extension agreement before the expiration date. The authorizing directive should include generally the same type of information provided in the authorization of a new contract, including pertinent information concerning any changes in scope of work, level of funding, scheduled dates for completion of certain phases of work, target dates for submission of reports, etc.

(b) An authorization to renew a special research support agreement shall also state the estimated total cost of items to be included under Article A–II(a) of Appendix A for the renewal period, the percentage of such costs to be reimbursed by the AEC, and the amount of new funds authorized to increase the AEC Support Ceiling.

(c) The AEC Field Office that has administrative jurisdiction of an existing contract, may extend the term of an existing contract without authorization from the cognizant Headquarters Program Division, provided that:

(1) Any such extension does not provide for an increase in the AEC's monetary obligation under the contract;

(2) That the scope of work is not revised by such extension;

(3) That such extension is necessary to permit completion of the scope of work authorized by Headquarters, including preparation of required reports; and

(4) That any such extension will not be for a period in excess of 90 days.

§ 9–4.5112 Administration.

§ 9–4.5112–1 Responsibilities of AEC Headquarters Program Divisions.

(a) Technical representatives of AEC Headquarters Program Divisions will make, to the extent practicable, periodic site visits, at least once each year on larger projects, and no less than once every 3 years on smaller projects. A written summary of the results of all visits will be prepared and filed promptly upon return to AEC Headquarters. Copies of such reports shall be forwarded to the appropriate AEC Field Office whenever they contain information of administrative interest or other information that the AEC Headquarters Program Division determines is pertinent to the assigned responsibilities of the Field Office. These visits are for the purpose of:

(1) Determining that the research is being performed in accordance with the contract.

(2) Ascertaining that schedules are being met to insure timely submission of interim and final reports.

(3) Determining whether the project has adequate facilities, equipment, and scientific, technical, and other personnel for the specified research.

(4) Ascertaining that any equipment requested for purchase is not reasonably available within the institution.

(5) Assisting the principal investigator to clarify specific technical aspects as work progresses.

(6) Exploring future budget requirements, but without making any commitments either personal or on behalf of the AEC as to future funding level.

(7) Obtaining information regarding the status of work for administrative and technical purposes of the Program Division sponsor.

(b) AEC Headquarters Program Divisions will provide guidance to the AEC Field Offices in connection with:

(1) Any contractor requests for approval of proposed deviations or other actions requiring AEC approval which are brought to their attention by AEC Field Offices, or which have been brought to their attention through site visits, progress reports, or other contacts with the contractor;

(2) Increasing the obligational authority under any special research support agreement or cost-type contract;

(3) [Reserved]

(4) Whether or not required contractor reports are satisfactory; and

(5) The renewal or closeout of contracts; instructions in this regard should be provided at least 4 weeks prior to the expiration date of a contract.

§ 9–4.5112–2 Responsibilities of AEC Field Offices.

AEC Field Offices are responsible for the following:

(a) Assisting AEC Headquarters Program Divisions, as requested, in carrying out the functions set forth in § 9–4.5112–1.

(b) Performing the necessary administrative functions required by the terms of the contract, and making payments in accordance with the contract.

(c) [Reserved]

(d) Bringing to the attention of the appropriate AEC Headquarters Divisions:

(1) Any contractor requests for approval which are required by the contract;

(2) [Reserved]

(3) [Reserved]

(4) The upcoming expiration date of a contract whenever required instructions on renewal or closeout have not been received on a timely basis; and

(5) Any request by a contractor to revise an established stipulated salary support amount, and any notification by a contractor that it is reducing the charges to the AEC under the stipulated salary support procedure (see §9–4.5106–3a(c)).

(e) Determining whether to use the Grant Act (P.L. 85–934) or the contractor's contribution to the research as the authority for vesting title to equipment in the contractor when authorized to do so pursuant to § 9–4.5106–6(c)(6).

§ 9–4.5112–3 Payments under special research support agreements.

(a) Payments will be made to contractors under a special research support agreement in accordance with the contract provisions (see Article B–XI of § 9–16.5002–8). The letter of credit procedure, as provided for by Treasury Department Circular No. 1075, Revised, of February 13, 1967, will generally be used when the total of AEC contracts with advance financing at an institution provide for a continuing annual level of support of $250,000 or more. When the total AEC contracts with advance financing provide for an annual level of AEC support of less than $250,000, AEC will generally make advance payments covering the first 90 percent of the amount of the estimated AEC Support Cost as set forth in Article A–III of the contract. The Field Office may revise Article B–XI of § 9–16.5002–8, regarding the timing and amounts of advance payments, in accordance with the following provisions. The advance payments may be made at times and in amounts determined by the Field Office, provided that no single payment will exceed 45 percent of the estimated AEC Support Cost for the pertinent contract period except on the basis of a request from the Contractor evidencing that a specified amount is required in connection with expenditures

or commitments made under the contract. The timing and amounts of payments should be determined on the basis of limiting the amount of advances to the extent feasible consistent with effective and efficient contract administration and performance of the research, for the purpose of slowing the rate of cash withdrawals from the Treasury and thereby decreasing the financing costs to the Federal Government. In determining the timing and amounts of payments, consideration should be given to funds already available to the Contractor, the expected expenditures under the contract, any information from the Contractor regarding the need for funds, and the administrative cost of additional payments.

(b) The final payment under both of the procedures referred to in paragraph (a) of this section shall be made on the basis of determinations by the contracting officer that: (1) the required reports are satisfactory, (2) that the research was performed in accordance with the provisions of the contract, and (3) that an additional payment is required to reimburse for all costs chargeable to the AEC. If necessary in making the determinations, the contracting officer should obtain advice from the technical personnel of the AEC Headquarters Program Division based upon their visits to and other contacts with the research project during the contract period as well as their technical review of the report. It is expected that the annual progress and final reports and the Contractor's certified cost statements will provide an adequate basis for making the determinations required by subparagraphs (2) and (3) of this paragraph. If the determinations cannot be made on the basis of a consideration of the reports, visits to and other contacts with the research project during the contract period, and the Contractor's certified statements, the contracting officer may invoke the audit provision of the contract. In the event the contracting officer determines that the Contractor has not satisfied the contractual undertakings, appropriate steps shall be taken to protect the Government's interests.

§ 9–4.5112–4 Payments under cost-type contracts.

Payments for allowable costs incurred under cost-type contracts will be made in accordance with the provisions of the contract. Payments will generally be made on the basis of after-the-fact reimbursement of contractor costs upon submission by the contractor of an appropriate monthly invoice or voucher. In the event that it is determined that advance payments to the contractor are appropriate, the letter of credit procedure, as provided for by Treasury Department Circular No. 1075, Revised, of February 13, 1967, may be used when the total of AEC contracts at an institution provide for a continuing annual level of support of $250,000 or more.

§ 9–4.5112–5 AEC approval of deviations in performance and other specified actions.

(a) Contractors will be asked to inform the cognizant AEC Field Office as soon as possible of such contemplated deviations and other actions which require AEC approval. Specific deviations and actions which will require such AEC approval under special research support agreements include the following:

(1) A change of the principal investigator, or continuation of the research work without direction by an approved principal investigator. The principal investigator may increase or decrease the amount of effort which he devotes to the project without obtaining Commission approval; however, the principal investigator shall consult with the appropriate AEC Headquarters program representative if he plans to, or becomes aware that he will, devote substantially less effort to the work than anticipated in Article A–I. The purpose of such consultation will be to determine what effect, if any, the anticipated change will have on the research work;

(2) Acquisition of:

(i) An item of equipment which is not specifically itemized in the contract, if the acquisition cost is in excess of $1,000 or 2 percent of the estimated cost specified in Article A–III of the contract, whichever is greater, unless such equipment is merely a different model of an item listed in the contract, or

(ii) Any equipment which is not specifically itemized in the contract, if the cost of acquisition will cause the total equipment dollar level shown in Article A–II(a) of Appendix A of the contract to be increased by $500 or more. (If plant and capital equipment funds are provided for the acquisition of equipment, with title to be vested in the Government, the total cost of such shall not exceed the amount budgeted for such equipment unless prior AEC approval has been obtained.)

(3) Purchase of any general-purpose equipment, such as office furniture, air conditioning, etc., not specifically provided for in Appendix A of the contract, except that purchased without cost to the AEC;

(4) Incuring costs for items set forth in Article A–II(a), during the pertinent contract period stated in Appendix A, in excess of 110 percent of the estimated cost specified in Article A–III. Charges to the AEC for any such costs incurred with the approval of the AEC shall also be subject to the limitations of Article III;

(5) Any proposed foreign travel; and

(6) Such other items as in the judgment of the Program Division or the Field Office, in specific cases need to be separately identified in the contract. (When plant and capital equipment funds are provided for the acquisition of Government property, the Headquarters Program Divisions may require, in specific cases, that such funds shall be used only for acquiring the equipment designated in the contract unless prior AEC approval has been obtained.)

(b) No change in the phenomenon or phenomena under study, i.e., broad category of the research under the contract, shall be made without the specific written approval of the AEC; ordinarily, such changes, if approved by the AEC, will be accomplished through a new contract or a mutually agreed-to modification. The contractor may change the specific objectives in the research work described in the contract, provided it gives the AEC prompt notification of such changes; and the contractor may continue to follow the new objectives while the AEC determines whether it wishes to continue the program under the changed approach.

(c) The AEC Field Office will present (in any manner considered appropriate) all such requests for approval to the cognizant AEC Headquarters Division for consideration, and will issue such authorizations and modifications under the contract as are necessary and appropriate.

(d) Contractors may be requested by the AEC Field Office to provide such statements of the project's financial and program status as are believed necessary for considering requests for approval.

(e) The above approval requirements and procedures shall apply to all special research support agreements for basic research with educational institutions. The Program Division or the Field Office may include these specific approval requirements in cost-type contracts with educational institutions (§ 9–16.5002–9) to the extent necessary and appropriate. In all cases, the requirements for approval of purchases under cost-type contracts should be consistent with paragraphs (a) (2) (i) and (3) of this section. These approval requirements and procedures may also be included in contracts for applied research with educational institutions and for research with other not-for-profit organizations to the extent deemed appropriate by the cognizant AEC Headquarters Division and the AEC Field Office. In contracts for applied research, paragraph (b) of this section will generally be revised to require AEC prior approval of any change in the specific objectives of the research work.

§ 9–4.5112–6 Auditing.

(a) As a part of the AEC-wide management of the research program accomplished through these contracts, auditing of participating contractors should be carried out by the AEC Field Office administering the contract. The purpose of this program of audit, provision for which is contained in the contracts, is to corroborate that the participating institutions are properly using the funds and equipment provided by the contracts and to point up any changes needed in the contractual arrangements or in related administrative requirements in order to further the effectiveness of the

contracts in accomplishing their intended programmatic research purposes. In addition to the general objectives stated above, the principal specific objectives in the audits of special research support agreements should be to determine (1) that the amounts as submitted in the contractor's certified statement are accurate and were incurred in connection with the contract work; (2) that satisfactory documentary evidence is available in support of the costs incurred; (3) that AEC approval was obtained where required; and (4) that the proportion of total cost charged to AEC is in accordance with the percentage stipulated in the contract. For cost-type contracts, on the other hand, the audit should include a verification, by acceptable audit techniques, of the allowability, applicability, and reasonableness of the costs charged to the contract work.

(b) The review of special research support agreements will be made on a selective basis with the selected sample including all special research support agreements where the contracting officer requested that an audit be performed pursuant to the provisions of § 9–4.5112–3(b). The audit of cost-type contracts will be in accordance with criteria set forth in section 2.024 of the AEC Audit Handbook.

(c) In the event of termination prior to the expiration date of a cost-type contract or special research support agreement unless the costs incurred by the contractor are relatively small or can be otherwise adequately corroborated, an audit should be made to determine the nature of the costs and other relevant data for use in arriving at a termination settlement.

(d) While audit is not a prerequisite to AEC's making payments under a contract, audit is necessary prior to making final payment under cost-type contracts and under any special research support agreement when the contracting officer specifically requests an audit to determine whether the changes to the contract are proper or when other conditions indicate that such an audit is warranted. If any such audits result in findings which may be of value to Headquarters Divisions in their determinations regarding selection and renewal of research projects, such findings should be made available to the cognizant Headquarters Division.

§ 9–4.5112–7 Security.

As a general rule, it is not anticipated that investigators will need access to classified security information in the conduct of basic research supported or sponsored by the AEC. When, in the judgment of the principal investigator, information is developed which should be classified, he or the contracting institution will notify the appropriate AEC Field Office immediately. When in the opinion of the cognizant AEC Headquarters Program Division, the work moves into a classified area, prompt steps should be taken to notify the contractor and the appropriate AEC Field Office.

§ 9–4.5112–8 Patents.

Article B–VIII(d) of the special research support agreement set forth in § 9–16.5002–8 and Article B–7(d) of the cost-type contract set forth in § 9–16.5002–9 provide for exceptions to the requirement for inclusion of this article in subcontracts, if authorized by the Commission in writing. A letter of exception may be issued, upon request with respect to purchase orders for standard or normal facilities, equipment, materials, and supplies, and other purchase orders for products where the consideration does not include compensation or other allowance for research.

Subpart 9–4.52—Unsolicited Proposals for Research & Development Contracts Submitted by Individuals & Commercial & Not-For-Profit Organizations Other Than Educational Institutions

§ 9–4.5201 Definitions.

(a) An "unsolicited proposal" is a written offer to perform research and development work (including feasibility studies) submitted by an organization or individual solely on its own initiative and not in response to a specific request made by AEC solely to the proposer.

(b) The "responsible program official" is the Headquarters Director of the Program Division of AEC within whose area of programmatic responsibility falls the research and development work contemplated by the unsolicited proposal.

§ 9–4.5202 Policy.

(a) It is the policy of AEC to encourage organizations and individuals to originate valuable ideas for research and development work that is in furtherance of AEC's mission, and to submit such ideas in unsolicited proposals.

(b) An unsolicited proposal may be accepted upon a determination by the responsible program official or his designee that award of a contract to the proposer without going through procedures for further competition is justified on the ground that (1) the purpose of the contract is to explore an idea or carry out an initial development which (i) is submitted by the proposer on his own initiative, (ii) does not unnecessarily duplicate research work already under way or contemplated by AEC, and (iii) is not already known by AEC or has previously unrecognized merit or value; or (2) there is no substantial question as to the choice of the source (for example, where only the proposer is found fully qualified as a result of thorough technical evaluation); or (3) acceptance is otherwise specially authorized by statute.

(c) The responsible program official or his designee shall appoint a panel which shall evaluate and make a recommendation on each unsolicited proposal with respect to the criteria in paragraph (b) of this section.

§ 9–4.5203 Procedure.

Prior to negotiating a contract on the basis of an unsolicited proposal, the responsible program official or his designee shall:

(a) Determine that the work proposed is expected to be of benefit to AEC programs and the proposer is considered to be technically well-qualified to undertake the work;

(b) Make the findings and determination required to support the procurement by negotiation (see § 9–3.301); and

(c) Determine that the selection of the particular organization or individual for award of the contract without competition meets the criteria in § 9–4.5202.

Subpart 9–4.53—Resolution of Measurement Differences Concerning Source and Special Nuclear Material Transfers

§ 9–4.5300 Source and special nuclear material transfers.

This subpart describes those principles regarding the resolution of measurement differences which should be used as guides in the preparation of contracts, leases, or other agreements by AEC or cost-type contractors in which monetary payments or credits depend on the quantity and quality of source and special nuclear material.

§ 9–4.5301 Contract, lease or agreement.

(a) Every such contract, lease or agreement should contain:

(1) A description of the material to be transferred;

(2) A provision specifying the method by which the quantity and quality are to be measured and reported;

(3) A provision specifying the procedures to be used in resolving any differences arising as a result of such measurements;

(4) A provision providing for the use of an umpire to settle unresolved differences in the analytical samples; and

(5) A provision specifying in detail which party shall bear the costs of resolving a difference and what constitutes such costs.

(b) The provisions providing for resolution of measurement differences must be such that resolution is always accomplished while at the same time minimizing any advantage one party may have over the other.

Subpart 9–4.54—Contracts and Subcontracts Utilizing Uranium Enriched in the Isotope U^{235}

§ 9–4.5400 Scope of subpart.

This subpart sets forth the policies and procedures of the Atomic Energy Commission for furnishing uranium enriched in the isotope U^{235} under a lease agreement for use under AEC fixed-price contracts or subcontracts in any tier (when the contractor or subcontractor is licensed by AEC to possess and use the uranium enriched in the isotope U^{235}), which call for the production of uranium products enriched in the isotope U^{235}, including fabrication and conversion, for Government use. This subpart also sets forth policies limiting the use of cost-type contracts and subcontracts (where

all higher-tier arrangements are cost-type) for such purposes, as well as for scrap recovery services.

§ 9–4.5401 Use of lease agreement.

(a) Uranium enriched in the isotope U^{235} shall be furnished under AEC fixed-price prime contracts and fixed-price subcontracts subject to this subpart only pursuant to a standard form lease agreement executed and administered by the AEC Oak Ridge Operations Office, Post Office Box E, Oak Ridge, Tenn. 37830.

(b) Any exception to the financial responsibility of contractors and subcontractors for Government-furnished uranium enriched in the isotope U^{235} provided for in the standard contract article § 9–4.5402 and in the standard form lease agreement shall be made only with the approval of the Director, Division of Contracts, Headquarters.

§ 9–4.5402 Contract article covering uranium enriched in the isotope U^{235}.

Fixed-price contracts and fixed-price subcontracts involving uranium enriched in the isotope U^{235} to be furnished to the contractor or subcontractor pursuant to the lease agreement referred to in § 9–4.5401 shall include an article substantially as follows:

Standard Contract Article Covering Special Nuclear Material (Enriched Uranium).

(a) Except as otherwise agreed, all uranium enriched in the isotope U^{235} (hereinafter referred to as enriched uranium) used in the performance of this contract shall be material owned by the AEC which is obtained under a standard form AEC Lease Agreement (hereinafter referred to as the "Lease Agreement").

(b) The contractor shall be responsible for obtaining the enriched uranium required in the performance of this contract, including making arrangements for and/or execution of a Lease Agreement to enable the contractor and all subcontractors to order and possess enriched uranium for the purposes of this contract. Except as otherwise provided in this contract, the terms and conditions of the Lease Agreement shall govern with respect to all enriched uranium utilized, or to be utilized, in the performance of this contract. The Government shall not be responsible for any delays or liable for any damages resulting from the contractor's failure or inability to obtain such material; or resulting from cancellation of said Lease Agreement. If enriched uranium required in the performance of this contract is furnished by the Commission under the Lease Agreement, and if the term of such Lease Agreement would otherwise expire during the period of performance of this contract, the Commission may extend the term of the Lease Agreement to permit use of such material for completion of performance of work under this contract, or will make other arrangements to furnish such material pursuant to this contract.

(c) Nothing herein shall require the contractor to assume lease responsibility for any special nuclear material which is otherwise subject to and covered by a Lease Agreement.

(d) The Contracting Officer will furnish to the contractor and/or subcontractors, upon compliance with (e)(1) below, credit memorandums equal to the total amount of use charge credits provided for in this contract, which, subject to the conditions hereinafter provided, may be utilized in payment of use charges due or which may become due for special nuclear material pursuant to a Lease Agreement.

(e) The conditions applicable to the issuance and redemption of use charge credit memorandums are:

(1) The contractor shall submit applications for all use charge credits for the performance of work under this contract, and each such application shall specify the Lease Agreement number to which the credit is to be issued. The contractor shall certify in each such application that it pertains to work under this contract and is true and correct to the best of his knowledge and belief. If such credit or a portion thereof is to be issued to a subcontractor under this contract, the contractor shall specify in his application the amount of such credit and the Lease Agreement number and subcontractor to which the credit is to be issued.

(2) Except as provided in this paragraph, credit memorandums will be issued upon completion of the contract work. Where the contract includes a partial or progress payments clause, a credit memorandum will be given, if proper application is made, for use charges incurred with respect to material used under this contract for the period covered by such partial or progress payment. Where billings are made for use charges on material used in the performance of work under this contract prior to completion of the contract or before partial or progress payments are due, a credit memorandum for the amount of use charge incurred with respect to material used under this contract will be given if proper application is made.

(3) The amount of use charge credit provided for in this contract will be adjusted to reflect any changes in the Commission's published base charges and use charge rates for enriched uranium during the performance of this contract.

(4) The credit memorandums provided for in this article may be used only by the person to whom issued in payment of use charges due from such person under a Lease Agreement. It is expressly understood and agreed that such credit memoranda are not negotiable; may not be transferred to or utilized by any other person; and are not redeemable in cash. They may not be used in payment of any charges due under any other agreement for special nuclear material; nor in payment of any other obligation to the Government.

(5) The amount of use charge credit provided for in this contract shall be subject to equitable adjustment under the "Changes" article of this contract.

§ 9–4.5403 Invitations for bids and requests for proposals.

Invitations for bids or requests for proposals which will result in a fixed-price contract or fixed-price subcontract involving uranium enriched in the isotope U^{235} to be furnished under the Lease Agreement referred to in § 4.5401 shall contain as a term or condition of such invitation to bid or request for proposals the following paragraph:

Bidders (proposers) shall be responsible for obtaining under the terms and conditions of a standard lease agreement administered by AEC Oak Ridge Operations Office, uranium enriched in the isotope U^{235} (hereinafter referred to as enriched uranium) necessary for the performance of any resulting contract (or subcontract). The lease agreement requires the payment of a use charge for the enriched uranium subject to the agreement. However, Article _____ of the proposed contract, attached hereto, provides for the issuance by the Contracting Officer of a use charge credit applicable to work under the proposed contract. Bids (proposals) shall separately state, based on the quantity of material and the time (including the time necessary for recovery of scrap) required for the performance of the contract (or subcontract): (1) the total dollar amount of use charge credit, such total to include all use charge credits, if any, to lower-tier subcontractors; and (2) the total dollar amount of cash bids (quotation) price (the difference between the total bid and the total dollar amount of use charge credit) to be paid to the contractor (subcontractor). Bids (proposals) will be evaluated on the basis of the total sum of the total dollar amount of use charge credit (including all use charge credits to lower-tier subcontractors) specified by the bidder (proposer) and the cash bid (quotation) price. In addition to any other right of rejection of bids (proposals) provided for herein, the Government (contractor) specifically reserves the right to reject any bid (proposal) if, in the judgment of the Contracting Officer (representative of the contractor), the total bid (proposal) is excessive or the amount of the use charge credit specified is either unreasonably high or low in relation to the quantity of enriched uranium required and the time required for performance of the proposed contract.

§ 9–4.5404 Contracts and subcontracts for fabrication, conversion, and scrap recovery.

(a) Contracts and subcontracts for fabrication of end items using uranium enriched in the isotope U^{235} generally shall be of the fixed-price type. Cost-type contracts or subcontracts for fabrication shall be used only with the approval of the Manager of the Field Office, and this approval authority shall not be redelegated.

(b) Contracts and subcontracts for conversion or scrap recovery of uranium enriched in the isotope U^{235} shall be of a fixed-price type except as otherwise approved by the Director, Division of Contracts.

Subpart 9–4.55—Multiyear Procurement

§ 9–4.5500 Scope of subpart.

(a) This subpart sets forth policies and procedures applicable to competitive procurements on a fixed-price or unit-price basis for known requirements of supplies or services over a multiyear period when the total funds required are not available for the entire procurement at the time the procurement contract is executed. This subpart does not apply to long-term contracts which are fully obligated at the time of execution, or which are otherwise specifically authorized by law (e.g., section 161u. of the Atomic Energy Act of 1954, as amended).

(b) The policy in § 9–4.5501 shall be applied to cost-type contractor procurement.

§ 9–4.5501 Policy.

(a) It is AEC policy to use the multiyear procurement method to the maximum extent consistent with the requirements of this subpart in order to: (1) Stimulate maximum realistic competition by minimizing competitive disadvantage or disinterest in procurements involving, at least initially, substantial

capital or noncapital startup costs or make-ready expense; or (2) obtain lower prices in those procurements which provide opportunity for substantial cost savings and other advantages through assurance of continuity of production or service over longer periods of time.

(b) The multiyear procurement method shall not be used:

(1) If funds covering the procurement are limited by statute for obligation during the fiscal year in which the procurement contract is executed;

(2) When the supply or service being procured in regularly produced or provided and offered for sale in substantial quantities in a commercial market reasonably available;

(3) For quantities in excess of the planned requirements set forth in, or in support of, current approved AEC Program and Financial Plans or for periods in excess of 3 years; or

(4) When any one of the criteria set forth in § 9–4.5502 is not present.

(c) In any multiyear procurement, it is AEC policy to consider the desirability of obtaining options to renew the contract for reasonable periods at prices not to include any nonrecurring costs such as charges for plant and equipment already amortized. In addition, where a multiyear procurement involves an initial investment in plant and equipment which will constitute an appreciable portion of the cost of contract performance, it is AEC policy to consider the desirability of reserving the right, upon payment of the unamortized portion of the plant or equipment, to take title thereto under appropriate circumstances.

§ 9–4.5502 Criteria for use of multiyear procurement.

All of the following criteria must be met in order to procure on a multiyear basis:

(a) Significantly reduced unit prices can be reasonably anticipated over successive annual procurements by reason of continuity of production or service or by reason of elimination or reduction of repetitive substantial startup costs or substantial contingent expense, including such costs or expenses as preproduction engineering, special equipment or tooling, plant rearrangement, and assembly, training, or transportation of a specialized work force;

(b) There is reasonable expectation that effective competition can be obtained;

(c) There are known requirements for the supplies or services to be procured, and relatively stable production or service can be reasonably anticipated throughout the multiyear period; and

(d) The design and specifications of the item or the character of the service are expected to remain relatively stable for the multiyear period.

§ 9–4.5503 Exceptions.

Exception by reason of some overriding programmatic consideration from any limitation set forth in § 9–4.5501 or from any of the criteria set forth in § 9–4.5502 shall not be made unless approved by the Director, Division of Contracts.

§ 9–4.5504 Procedure to be followed in multiyear procurements.

(a) Formal advertising is the preferred method for use in multiyear procurement. Normally, the solicitations shall request bids or proposals on both the first year and the multiyear basis. The solicitations should also require that the unit price for each item in the multiyear requirement be the same for all years included therein, and that the portion of the cost of any plant and equipment amortized as a cost of contract performance should not exceed the ratio between the period of contract performance and the anticipated useful commercial life of such plant or equipment. If competition for future procurements of the supplies or services would be impracticable after award of a contract for the first year only, the solicitation should ask for bids only for the total multiyear requirements. Any requirements with respect to options and title to plant or equipment resulting from the policy considerations in § 9–4.5501(c) should also be set forth in the solicitation.

(b) If award is made on a multiyear basis, funds are obligated only for the first year's procurement (including any agreed-to cancellation charges), with succeeding years funded annually thereafter.

(c) Cancellation results from notification from the contracting officer (pursuant to a cancellation provision in the multiyear contract) to the contractor of nonavailability of funds for contract performance for any subsequent year or failure of the contracting officer to notify the contractor that funds have been made available for the succeeding year. A cancellation charge may be provided for where substantial startup costs or substantial contingent expenses are involved. In such cases, the contracting officer shall, for each year except the last, establish cancellation ceilings applicable to the remaining years subject to cancellation. Requirements with respect to cancellation and cancellation charges, if any, shall be set forth in the solicitation.

(d) Evaluation of offers in a multiyear procurement involves not only the determination of the lowest overall evaluated cost to the Government for both alternatives (the multiyear and the first-year alternatives), but also the comparison of the cost of buying the total requirement under a multiyear procurement with the estimated cost of buying the total requirement in successive independent procurements. All the factors to be considered for the various evaluations involved shall be set forth in the solicitation. The cancellation ceilings, if any, shall not be factors for evaluation.

(e) Award shall be made to that responsible offeror whose offer, conforming to the solicitation, will be most advantageous to the Government, price and other factors considered. In no event shall award be made at an unreasonable price.

(f) Cancellation effected pursuant to the "Cancellation" clause shall not be construed to terminate the contract pursuant to the "Termination" clause. If the contract is terminated for the convenience of the Government, the Government's liability shall not exceed the amount then obligated for contract performance (including any agreed-to cancellation ceiling).

§ 9–4.5505 Special clauses for use in multiyear contracts.

All multiyear awards made under the multiyear procurement method described herein shall contain the clauses set forth in §§ 9–7.5006–57 and 9–7.5006–58.

PART 9–5—SPECIAL AND DIRECTED SOURCES OF SUPPLY

AUTHORITY: The provisions of this Part 9-5 issued under sec. 161 of the Atomic Energy Act of 1954, as amended, 68 Stat. 948, 42 U.S.C. 2201; sec. 205 of the Federal Property and Administrative Services Act of 1949, as amended, 63 Stat. 390, 40 U.S.C. 486.

§ 9-5.000 Scope.

(a) This part implements and supplements FPR Part 1-5, Special and Directed Sources of Supply.

(b) The AECPR provisions referenced below pertain to cost-type contractor procurement: §§ 9-5.300, 9-5.500, 9-5.901, 9-5.1001, 9-5.5001, 9-5.5101, 9-5.5200, 9-5.5400, and 9-5.5500.

Subpart 9-5.3—Excess Personal Property

§ 9-5.300 Scope of subpart.

(a) This subpart implements and supplements the policies, procedures, and requirements in FPR Subpart 1-5.3 concerning the use of excess personal property as a source of supply.

(b) The policies, procedures, and requirements of FPR Subpart 1-5.3 shall be applied to cost-type contractors.

Subpart 9-5.5—Interagency Motor Pool Vehicles and Related Services Available to Government Contractors

§ 9-5.500 Scope of subpart.

(a) This subpart implements and supplements the policies and procedures in FPR Subpart 1-5.5 that govern Federal agencies in authorizing their prime cost-type contractors and cost-type subcontractors thereunder to obtain interagency motor pool vehicles and related services.

(b) The provisions of FPR Subpart 1-5.5 shall be followed in authorizing cost-type contractors and cost-type subcontractors to utilize interagency motor pool vehicles and related services.

(c) Authorized cost-type contractors and cost-type subcontractors shall be required to submit their requests for service in accordance with the provisions of FPR 1-5.503.

Subpart 9-5.9—Use of GSA Supply Sources by Contractors Performing Cost-Reimbursement Type Contracts

§ 9-5.900 Scope of subpart.

This subpart prescribes policies and procedures to be followed by AEC offices regarding the use of GSA supply sources by cost-type contractors.

§ 9-5.901 Policy.

It is AEC policy that cost-type contractors should meet their requirements from GSA sources of supply if these sources are made available to them, and if it is economically advantageous or otherwise in the best interest of the Government.

§ 9-5.902 Use of GSA supply sources by AEC cost-type contractors.

(a) Managers of Field Offices may authorize cost-type contractors to use General Services Administration (GSA) supply sources (i.e., items available through Federal Supply Schedule contracts and other GSA contracts and from GSA stores stock) in accordance with the requirements and procedures in FPR Subpart 1-5.9.

(b) Direct procurement by AEC, rather than by a cost-type contractor, shall be required where deemed necessary by the Managers of Field Offices in order to carry out special requirements of appropriation acts or other applicable laws relating to particular items.

(c) Contracting officers, when reviewing the procurement systems and methods of those cost-type contractors that have been authorized to use GSA sources of supply, shall assure that provision is made for documenting the justification of procurements from commercial sources of items available from GSA sources of supply. The Director, Division of Contracts shall be informed of instances in which GSA sources of supply are not used because of the quality of the item available from GSA.

Subpart 9-5.10—Use of Excess Aluminum

§ 9-5.1000 Scope of subpart.

This subpart implements and supplements the policies and procedures in FPR Subpart 1-5.10 concerning the use of excess aluminum in the national stockpile.

§ 9-5.1001 Policy.

(a) The FPR clauses should not be included in a contract for the operation and management of AEC facilities. However, unless such contract otherwise provides that subcontracts will be made on terms and conditions established or approved by AEC, specific language shall be included in the prime contract to carry out the requirements of this subpart.

(b) Contracting officers shall assure that contractors are informed of their responsibilities under the provisions of FPR 1-5.10.

(c) AEC offices shall submit to the Director, Division of Contracts, copies of the reports to Stockpile Disposal Division, Property Management and Disposal Services, GSA, as provided in FPR 1-5.1001-1(b) and FPR 1-5.1001-2(b).

Subpart 9-5.50—Use of Excess Materials From GSA Inventories

§ 9-5.5001 Use of excess materials from General Services Administration inventories.

(a) It is the policy of the AEC to comply with the provisions of the Federal Property Management Regulations Part 101-14, Strategic, Critical and Other Material, as supplemented from time to time by FPMR Bulletins.

(b) On January 30, 1963, the President approved a report submitted by the Executive Stockpile Committee containing various recommendations covering long-range disposals of excess stockpile materials. The report provides that Federal agencies should continue to purchase their needs for surplus stockpile materials from the General Services Administration. In order to implement this policy for AEC procurement, field offices shall carefully screen the lists of excess materials to determine the extent to which AEC requirements can be filled by use of excess stockpile materials.

(c) Property Management and Disposal Service, General Services Administration, Washington, D.C. 20405, should be contacted directly for any detailed

information concerning specifications, prices, and method of placing the order.

(d) For reimbursement of AEC orders, a Form 1080 will be issued by GSA, which should be executed by the AEC office concerned within 30 days from the date of issuance by GSA. AEC cost-type contractors will be billed directly by GSA for all orders submitted directly by them.

(e) Each field office shall submit a monthly report to the Division of Contracts, Headquarters, indicating the number of purchases of stockpile material by the field office and its cost-type contractors, and the quantity, grade, and market value of such material.

(f) Contracting officers shall require their cost-type contractors operating AEC facilities to screen the lists of excess materials and advise the AEC contracting office concerning their needs which can be filled from the General Services Administration inventories.

Subpart 9–5.51—Use of Government Sources of Supply

§ 9–5.5100 Scope of subpart.

This subpart sets forth procedures to be followed in making purchases from Government sources. (For the purchase of specific items, see Subpart 9–5.52, Procurement of Special Items.)

§ 9–5.5101 Policy.

It is AEC policy to use Government sources of supply to the fullest extent practicable, and that cost-type contractors should meet their requirements from Government sources of supply, if these sources are made available to them and if it is economically advantageous or otherwise in the best interest of the Government.

§ 9–5.5102 Use of GSA supply sources for AEC direct procurements.

(For the use of GSA supply sources by cost-type contractors, see Subpart 9–5.9.)

Items listed in Federal Supply Schedules and in Federal Supply Service stores catalogs shall be procured in accordance with FPMR 101–26.3 and 101–26.4.

§ 9–5.5103 Use of Government sources of supply other than GSA.

(a) Managers of Field Offices may authorize cost-type contractors to acquire materials and services directly from such Government sources of supply in accordance with the requirements of this subpart or the consent of agencies involved.

(b) Direct procurement by AEC, rather than by a cost-type contractor, shall be required where deemed necessary by the Managers of Field Offices in order to carry out special requirements of appropriation acts or other applicable laws relating to particular items.

§ 9–5.5104 Exclusive use on Government work.

Materials, supplies, and equipment procured from Government sources of supply under the procedures described herein must be used exclusively in connection with Government work except as otherwise authorized by Managers of Field Offices.

§ 9–5.5105 Department of Defense.

§ 9–5.5105–1 Source.

Many supply facilities and contracts of the Department of Defense are made available to AEC and its cost-type contractors. Field Offices will be notified by the Division of Contracts when such contracts and facilities are made available. Inquiries in connection with these sources may be directed to the Director, Division of Contracts. Requisitions or purchase orders shall be submitted directly to these sources, unless otherwise specified.

§ 9–5.5105–2 Requisitions.

Contractors' requisitions submitted to Defense Supply centers should include the following statement on the requisition: "The consignee of the supplies and materials requisitioned herein is acting in behalf of and as agent for the U.S. Atomic Energy Commission with respect to the expenditure of Government funds." Orders submitted directly to DoD contractors shall be accompanied by an authorization substantially similar to that in FPR 1–5.903–2.

Subpart 9–5.52—Procurement of Special Items

§ 9–5.5200 Scope of subpart.

This subpart sets forth requirements and procedures for the acquisition of special items by AEC and cost-type contractors to the extent indicated herein.

§ 9–5.5201 Motor vehicles.

§ 9–5.5201–1 Scope of section.

This section covers the acquisition of motor vehicles including new, used, forfeited, and abandoned vehicles for use by either the AEC or cost-type contractors.

§ 9–5.5201–2 [Reserved]

§ 9–5.5201–3 Consolidated purchase of new vehicles by General Services Administration.

(a) *Vehicles for use by AEC or AEC cost-type contractors.* New vehicles for use by AEC and AEC cost-type contractors shall be procured in accordance with FPMR 101–26.501.

(b) *Submission of purchase orders.* Except as determined necessary for internal accounting needs or purchasing records, orders should be made using GSA Form 1781 for vehicles covered by Federal Standard 122. AEC Form 103 or contractors' purchase order forms should be used for vehicles not covered by Federal Standard 122.

(c) *Schedule of dates for submission or orders.* Generally, Managers of Field Offices shall consolidate and submit directly to GSA their requirements for vehicles not included in volume procurements.

(d) *Replacement of used vehicles.* Managers of Field Offices and the Director, Division of Headquarters Services may arrange to sell used motor vehicles being replaced and to apply the proceeds on the purchase of similar new vehicles. However, in the event personnel are not available to make such sales, or it is in the best interest of a particular office, GSA may be requested to sell the used vehicles.

§ 9–5.5201–4 Direct purchase.

Vehicles may be procured by field offices from other sources where specific clearance has been granted by GSA or where procurement through the Federal Supply Service, GSA, would impair or adversely affect the program. The purchase price shall not exceed any statutory limitation in effect at the time the purchase is made.

§ 9–5.5201–5 Used vehicles.

Normally AEC does not purchase or authorize cost-type contractors to purchase used vehicles. However, Managers of Field Offices may authorize the purchase of used vehicles where justified by special circumstances, e.g., when new vehicles are in short supply or the vehicles are to be used for experimental or test purposes. (The passenger vehicle allocation requirements for AEC shall apply to any purchase of used vehicles except in the case of those to be used exclusively for experimental or test purposes.)

§ 9–5.5201–6 Forfeited or abandoned vehicles.

Vehicles which have been abandoned to, or seized by and forfeited to, the Government are available for transfer to Federal agencies by the Federal Supply Service, GSA, in accordance with the provisions of the Act of August 27, 1935 (40 U.S.C. sections 304f–304m). Whenever forfeited or abandoned vehicles are available for transfer to AEC, the Utilization and Disposal Service, Personal Property Division, Region 3, GSA, Washington, D.C. 20407, will notify the Division of Contracts, Headquarters, of such availability and allow AEC approximately 3 days to determine whether the vehicles can be utilized. Within that time, the Division of Contracts will make the necessary arrangements with GSA for the release of any required vehicles. (See FPMR 101–43.4.)

§ 9–5.5202 Typewriters.

§ 9–5.5202–1 Scope.

This section covers the purchase, for use by either AEC or cost-type contractors, of (a) typewriters whether to fill initial requirements or for replacement purposes and (b) typewriter repair and reconditioning services.

§ 9–5.5202–2 Definition.

"Typewriters" are manually and electrically operated machines having standard or special keyboards, designed to produce printed characters by impression of type upon paper through the medium of an inked ribbon. The term includes the varityper, hektowriter, proportional spacer, flexowriter, justowriter, and portable typewriting machines but does not include bookkeeping, billing, or teletypewriting machines.

§ 9–5.5202–3 Replacement standards.

Typewriters shall be purchased for replacement purposes in accordance with the standards established by GSA.

§ 9–5.5202–4 Purchase procedures and requirements.

(a) *Orders.* Purchase orders for typewriters, whether for replacement or otherwise, shall be prepared and transmitted to the appropriate Federal Supply Schedule contractor. AEC contracting officers shall use Form AEC–103 for such purchases. When cost-type contractors are authorized to make purchases under Federal Supply Schedules, Managers of Field Offices may authorize them to use their own purchase order forms properly identified according to FPR Subpart 1–5.9.

(b) *Electric typewriters.* Electric typewriters for use by AEC and its cost-type contractors may be purchased only when the AEC standards are met.

(c) *Regulations.* The procurement of typewriters that will be used for printing shall comply with the approval requirements of the Joint Committee on Printing.

§ 9–5.5203 Printing equipment and printing services.

§ 9–5.5203–1 Regulations.

The Joint Committee on Printing, Congress of the United States, periodically publishes "Government Printing and Binding Regulations." These regulations govern the acquisition, use, and disposal of printing equipment and the procurement of printing services. When cost-type contractors operate printing plants, Managers of Field Offices shall require such contractors to comply with those portions of the regulations covering the operation of printing plants.

§ 9–5.5203–2 Purchase, exchange, or transfer of printing equipment.

All purchases of new printing equipment (including replacements for existing equipment), transfers of equipment from one printing plant to another, or disposals of equipment as excess property must be approved by the Joint Committee on Printing, whether such actions are to be taken by AEC or by cost-type contractors. Requests for approval shall be submitted through the Publications and Visual Aids Branch, Division of Headquarters Services. When approval to purchase is granted, printing equipment should be purchased either by AEC or cost-type contractors in accordance with regular procurement procedures.

§ 9–5.5204 Alcohol.

§ 9–5.5204–1 Scope.

This section covers (a) Internal Revenue Service, Treasury Department, alcohol regulations applicable to AEC, (b) delegations of authority to submit applications to purchase tax-free alcohol or specially denatured alcohol, and (c) purchases of alcohol by AEC or cost-type contractors. To the fullest extent practicable, alcohol for use by AEC or its cost-type contractors shall be procured on a tax-free basis.

§ 9–5.5204–2 Regulations.

Internal Revenue Service regulations relating to the procurement and use of alcohol free of tax, by Government agencies, are set forth in 26 CFR 213.141–213.146. Copies of excerpts from these regulations may be secured from the Alcohol and Tobacco Tax Division, Internal Revenue Service, Treasury Department, Washington, D.C. 20224. These regulations will be followed in the procurement of alcohol.

§ 9–5.5204–3 Application forms and permits.

Treasury Department Form 1486, "Specially Denatured Spirits for Use of United States," and Treasury Department Form 1444, "Tax Free Spirits for Use of United States," shall be used for procurements of specially denatured alcohol and ethyl alcohol, respectively. Part I of each form is the application for permission to procure and Part II is the permit. If procurement from more than one warehouse is desirable, separate applications must be made for withdrawals from each warehouse. When permits are no longer required, they should be forwarded to the Alcohol and Tobacco Tax Division, Internal Revenue Service for cancellation. Alcohol procured by use of the Treasury Department forms referred to in this subsection shall be used exclusively on AEC work.

§ 9–5.5204–4 Authority to sign applications.

Specific AEC personnel have been authorized to execute Part I of Forms 1444 and 1486 by letters to the Commissioner of Internal Revenue Service without power of redelegation. Copies of such letters have been furnished to field offices. In addition, the Director, Division of Contracts has been authorized to sign and delegate to others authority to sign applications under Internal Revenue regulations relating to the procurement and use of alcohol free of tax. Only the individuals so authorized shall execute Part I of these forms. Requests by field offices for new authorizations or discontinuance of existing authorizations shall be submitted by letter to the Division of Contracts, Headquarters. Requests for new authorizations shall be accompanied in each case by a 3'' x 5'' plain card with the following information typed thereon:

Mr. _____, whose signature appears below, is authorized to sign application Forms 1444 and 1486, on behalf of the Atomic Energy Commission.

_____
(Signature)

_____
(Title)

§ 9–5.5204–5 Filing applications.

Applications shall be executed in duplicate by the authorized AEC official and mailed directly to the Director, Alcohol and Tobacco Tax Division of Internal Revenue Service, Washington, D.C. 20224. No transmittal letter is required. Where alcohol or specially denatured alcohol is for use directly by AEC, the form shall indicate that shipment shall be made to the appropriate AEC field office. Where a cost-type contractor will be the user, the form shall indicate that shipment shall be made to the Atomic Energy Commission in care of the cost-type contractor.

§ 9–5.5204–6 Forms and authorized plants.

Periodically, the Alcohol and Tobacco Tax Division, Internal Revenue Service, publishes printed lists of Distilled Spirits Plants, Bonded Warehouses and Denaturing Plants Authorized to Operate. These lists are supplied to officials authorized to submit applications. Extra copies of these lists and supplies of Forms 1444 and 1486 may be secured by written request to the Alcohol and Tobacco Tax Division, Internal Revenue Service, Washington, D.C. 20224.

§ 9–5.5204–7 Placing the order.

A signed copy of the permit shall accompany the original purchase order issued to the plant or warehouse, where it will be retained. Subsequent orders shall refer to the permit on file in the plant or warehouse. Order Form AEC–103 shall be issued by AEC for cost-type contractors' requirements, except as provided in § 9–5.5204–9.

§ 9–5.5204–8 Notice of shipment.

When alcohol is shipped, the shipper prepares the required forms as specified by Internal Revenue Service regulations and forwards them to the consignee. Upon receipt of the receiving report covering the shipment, the officer who signed the purchase order shall execute the certificate of receipt and forward it to the appropriate District Supervisor, Internal Revenue Service. The carrier transporting the alcohol shall also be given a receipt as specified by Internal Revenue Service regulations.

§ 9–5.5204–9 Orders placed by cost-type contractors.

(a) *Specially denatured alcohol.* Managers of Field Offices may authorize cost-type contractors to apply for permits to purchase specially denatured alcohol, subject to restrictions of Internal Revenue Service as to end use. In order to qualify, cost-type contractors must be bonded, must submit reports, and are subject to inspection by Internal Revenue Service.

(b) *Tax-free alcohol.* Under Internal Revenue Service regulations, cost-type contractors performing scientific or research work or operating hospitals are permitted to procure alcohol tax free. These regulations require bonding under certain circumstances, submission of reports, and inspection by Internal Revenue Service.

(c) *AEC versus cost-type contractor alcohol procurement.* Purchase may be made by either AEC or cost-type contractors, whichever is in the best interests of the Government, taking into consideration administrative costs and any other pertinent factors that may be applicable to individual situations. On purchases for recurring requirements, one of the factors to consider is that for purchases by AEC, the bonding, reporting, and inspection requirements do not apply.

§ 9–5.5204–10 Abandoned and forfeited alcohol.

Abandoned and forfeited alcohol which has come into the custody or control of any Federal agency may be obtained by following the procedure set forth in FPMR 101–43.4.

§ 9–5.5205 Helium.

§ 9–5.5205–1 Scope.

This section covers acquisition of helium for use by either AEC or cost-type contractors; and methods of shipment.

§ 9–5.5205–2 Source of supply.

To the extent that supplies are readily available, all major requirements of helium shall be purchased from the Secretary of the Interior. See Public Law 86–777, as amended (50 U.S.C. § 167d).

§ 9–5.5205–3 Method of shipment.

The usual methods of shipment are:

(a) In Government-owned helium tank cars operated from a central Government pool. The capacity of a car is approximately 275,000 cu. ft. of helium, measured at standard conditions;

(b) In standard-type cylinders which hold approximately 237 cu. ft. under normal conditions; and

(c) In specially built helium semi-trailers with a capacity of approximately 95,000 cu. ft. of helium, measured at standard conditions.

§ 9–5.5205–4 Relative shipping costs.

Shipments of helium in standard-type cylinders are approximately three times as costly as shipments in tank cars because, (a) freight costs must be paid both ways on the cylinders and only one way on tank cars, and (b) cylinder weights are greater in relation to the helium carried. It may, therefore, be more economical to obtain small quantities of helium from local distributors or nearby Government installations. Shipment of cylinders by truck may be more economical than by rail under some circumstances, depending on location and the existence of special freight rates.

§ 9–5.5205–5 Methods of purchases.

Purchases from the Secretary of the Interior for either AEC or cost-type contractors' requirements for helium is made by using Form AEC–103 (or the cost-type contractor purchase order properly identified as in the use of Government Sources of Supply) and forwarding it in duplicate to the Helium Activity, Bureau of Mines, Department of the Interior, Amarillo, Tex. Local orders may be placed either by AEC or the cost-type contractor as administratively determined by field offices.

§ 9–5.5206 Miscellaneous items.

§ 9–5.5206–1 Scope.

This section sets forth the procedures and requirements for the purchase of various miscellaneous items. These procedures and requirements shall be applied to cost-type contractors to the extent indicated in each subsection of this section.

§ 9–5.5206–2 Aircraft.

All acquisitions of aircraft by either AEC or cost-type contractors (except for temporary (30 days or less) rentals or loans) shall be approved in advance by the Director, Division of Contracts.

§ 9–5.5206–3 AEC forms.

(a) *Definition.* AEC forms are those approved by the Office of the Controller, Headquarters, for use throughout AEC.

(b) *Ordering AEC forms.* (1) AEC offices shall consolidate their requirements for each form for all installations under their jurisdiction for minimum periods of 6 months and submit them to the Publications and Visual Aids Branch, Division of Headquarters Services, as requested during February and August of each year. Forms may be requisitioned in units of ten (10) or five hundred (500).

(2) Additional requisitions within the 6-month period shall be submitted only in unusual circumstances. Such requisitions shall be submitted on Form AEC 205 to the Publications and Visual Aids Branch, Division of Headquarters Services.

(c) Cost-type contractors shall obtain their requirements for AEC forms through the AEC.

§ 9–5.5206–4 Standard, optional and other agency forms.

(a) *Source of supply.* The General Services Administration stocks for issue to agencies standard forms approved by the Bureau of the Budget or the General Accounting Office and other common-use forms, such as Treasury forms, Civil Service forms, and optional forms. The Federal Supply Stores Catalog lists forms carried in stock.

(b) *Ordering forms from Federal Supply Service.* AEC offices shall submit purchase orders for standard forms, except as specified in paragraph (c) of this section, directly to the appropriate Federal Supply Stores Depot. Orders for forms may include requests for other items normally carried in stock. Orders for quantities of forms in excess of quantities normally furnished from stock will be extracted by the stores depot and sent to GSA Region 3, Washington, D.C. 20407, to be filled either by GSA Region 3 or by the Government Printing Office.

(c) *Overprinted or altered forms.* Forms that require overprinting, serial numbering, or different grade, weight, or color of paper, or a major alteration in construction shall be requisitioned from the publications and Visual Aids Branch, Division of Headquarters Services.

(d) Cost-type contractors shall obtain their requirements for standard, optional, and other agency forms through the AEC.

§ 9–5.5206–5 Steel filing cabinets.

(a) Procurement of steel filing cabinets, by either AEC or cost-type contractors, is subject to AEC utilization requirements and the moratorium on purchase imposed by FPMR 101–25.104–2.

(b) Requirements for all letter- and legal-size general-purpose steel cabinets which cannot be met within AEC shall be submitted to the appropriate GSA regional office accompanied by or following written certification by the AEC Field Office Manager concerning the need and the actions prerequisite to ordering as outlined in FPMR 101–26.308–1 and –2.

(c) To the fullest extent possible, the five-drawer cabinet shall be procured.

(d) Requirements concerning procurement of insulated file cabinets and those required for classified records are covered in § 9–5.5206–5a.

§ 9–5.5206–5a Security cabinets.

(a) FPMR 101–25.104–2 states that the moratorium on the purchase of filing cabinets does not apply to fire-resistant insulated file cabinets and those required for storage of classified records designated as security file cabinets by GSA. However, for AEC purposes, such cabinets shall not be procured by AEC or cost-type contractors unless approved by the Manager of a Field Office on the basis that AEC utilization requirements and the "prerequisites to ordering" criteria outlined in FPMR 101–26.308–1 have been met (GSA approval not required).

(b) In the event any security cabinets are approved for purchase, the procedures established in FPMR 101–26.507 for consolidated procurement of security cabinets shall be followed.

§ 9–5.5206–6 New refrigerators.

AEC offices shall procure new refrigerators in accordance with FPMR 101–26.503. When cost-type contractors, consistent with the policy set forth in § 9–5.901, procure new refrigerators from GSA supply sources, they shall procure in accordance with FPMR 101–26.503.

§ 9–5.5206–7 New electric water coolers.

AEC offices shall procure new electric water coolers in accordance with FPMR 101–26.502. When cost-type contractors, consistent with the policy set forth in § 9–5.901, procure new electric water coolers from GSA supply sources, they shall procure in accordance with FPMR 101–26.502.

§ 9–5.5206–8 Rental of post office boxes.

AEC offices and cost-type contractors may rent post office boxes on an annual basis, or for shorter periods by quarters where necessary. Payments for annual rentals are to be made in advance at the beginning of the fiscal year, and for periods of less than a year either in advance for the whole period, or at the beginning of each quarter in which the box is to be used.

§ 9–5.5206–9 Government license tags.

(a) *In the District of Columbia.* Official Government tags shall be procured (without charge) by the Procurement, Supply and Transportation Branch, Division of Headquarters Services, from the Department of Vehicles and Traffic, District of Columbia, for all motor vehicles (except vehicles exempt for security purposes) operated principally in the Metropolitan Area of Washington, D.C.

(b) *Outside the District of Columbia.* AEC offices operating Government-owned motor vehicles for official purposes (including Government vehicles operated by cost-type contractors), principally outside the Metropolitan Area of Washington, D.C., shall (except for vehicles exempt for security purposes) procure official U.S. Government tags from the Superintendent of Industries, District of Columbia, Department of Correction, Lorton, Va., in accordance with the following instructions:

(1) Orders (Form AEC–103) shall include code letter "E" and tag numbers, delivery dates, consignment and shipping instructions, symbol of the appropriation to be charged, amount of obligation which has been established on the books of the AEC Field Office, and the signature of an officer authorized to obligate the appropriation to be charged.

(2) See FPMR 101–38.3 concerning prices to be used for obligation purposes when ordering tags.

(3) Where the size of the shipment requires use of a Government bill of lading, that document shall accompany the purchase order. Where quantities are mailable, the District of Columbia, Department of Correction, will supply the necessary postage and add the cost to the invoice. (A pair of tags weighs approximately 1 pound, 1 ounce.)

(4) The letter "E" is the prefix symbol for AEC official license tags. Block numbers have been assigned to field offices. Additional numbers will be assigned by the Division of Contracts, Headquarters, when requested.

(c) *Special plates.* Special plates for security purposes shall be purchased by AEC offices for AEC and cost-type contractors in accordance with local laws, regulations and instructions.

§ 9–5.5206–10 Lubricating and transformer oil.

AEC offices shall procure lubricating and transformer oil in accordance with FPMR 101–26.602. When cost-type contractors, consistent with § 9–5.901, procure lubricating and transformer oil from GSA supply sources, they shall procure in accordance with FPMR 101–26.602.

§ 9–5.5206–11 Arms and ammunition.

Pursuant to 10 U.S.C. 4655, the Secretary of the Army is authorized to furnish arms, suitable accouterments for use therewith, and ammunition for the protection of public money and property.

(a) The Department of the Army has granted a general clearance for Federal agencies to procure, without further reference to or clearance from that Department, all arms and ammunition of types which are not peculiar to the military services, and which are readily procurable in the civilian market.

(b) Procurement of arms and ammunition readily procurable in the civilian market shall be made in accordance with regular procurement procedure by either AEC or cost-type contractors.

(c) Procurement of arms and ammunitions for AEC or cost-type contractors which are peculiar to the military services shall be made by the AEC by submission of order Form AEC–103 to the Commanding General, U.S. Army Materiel Command, Washington, D.C. 20315.

§ 9–5.5206–12 Furniture.

AEC offices and cost-type contractors shall procure furniture in accordance with FPMR 101–26.505.

§ 9–5.5206–13 Gasoline, fuel oil (diesel and burner), kerosene, and solvents.

AEC offices and cost-type contractors shall submit their requirements for gasoline, fuel oil (diesel and burner), kerosene, and solvents to the GSA regional office servicing the State in which delivery is required in accordance with FPMR 101–26.404.

§ 9–5.5206–14 Gold.

Purchase of gold or gold scrap by the AEC or its cost-type contractors does not require licensing as long as title to the gold is vested in the Government. All such purchases, however, unless made from another Government agency shall be made from a commercial firm holding a U.S. Treasury Department gold license authorizing such transactions.

§ 9–5.5206–15 Purchases of sundry items from Government Printing Office.

AEC offices shall purchase from the Government Printing Office, Washington, D.C. 20401, paper, envelopes, inks, glues, and other supplies, as listed in the current GPO Catalog and Price List for such items; except that AEC offices may purchase such items from other sources when it is more economical to do so, taking into consideration the cost of packing and transportation.

§ 9–5.5206–16 [Reserved]

§ 9–5.5206–17 Mandatory items—prison-made and blind-made products.

AEC offices and cost-type contractors shall procure items listed in the Schedule of Products made in Federal penal and correctional institutions and in the Schedule of Blind-made Products in accordance with FPMR 101–26.601.

§ 9–5.5206–18 [Reserved]

§ 9–5.5206–19 [Reserved]

§ 9–5.5206–20 Materials handling equipment replacement standards.

Materials handling equipment shall be purchased for replacement purposes by AEC offices and cost-type contractors in accordance with the standards in FPMR 101–25.405. Managers of Field Offices are authorized to replace an item earlier than the date specified in such standards under unusual circumstances. A written justification shall be placed in the purchase file.

§ 9–5.5206–21 Calibration services.

Orders for calibration service may be placed with the National Bureau of Standards, Washington, D.C. 20234, by either AEC procurement offices or cost-type contractors. Copies of the letters authorizing cost-type contractors to order calibration services on behalf of AEC should be sent to the Bureau of Standards, Attention: "Administrative Service Division."

§ 9–5.5206–22 U.S. Code Annotated and Lifetime Federal Digest.

Appropriation Acts may provide that no part of the appropriation shall be used to pay: in excess of $4 per volume for the current and future volumes of the United States Code Annotated, and such volumes shall be purchased on condition and with the understanding that latest published cumulative annual pocket parts issued prior to the date of purchase shall be furnished free of charge; or in excess of $4.25 per volume for the current or future volumes of the Lifetime Federal Digest; or in excess of $6.50 per volume for the current or future volumes of the Modern Federal Practice Digest. When such a general limitation appears in appropriation legislation, it is applicable to both AEC and cost-type contractor procurement.

§ 9–5.5206–23 Wiretapping and eavesdropping equipment.

All procurement by AEC offices and cost-type contractors of devices primarily designed to be used surreptitiously to overhear or record conversations is prohibited.

§ 9–5.5206–24 Coal.

GSA coal purchase program: GSA makes annual contracts for direct delivery of coal in carload or larger lots based on estimates submitted by Federal agencies to GSA. This purchase program is optional for the AEC and cost-type contractors. If participation in the program is desired, estimates shall be submitted directly to the appropriate GSA regional office in accordance with FPMR 101–26.504.

§ 9–5.5206–25 Procurement of gas masks and canisters.

(a) *M9 Army assault mask.* (1) Supplies of the M9 Series Protective Field Mask (Army assault mask) are being maintained at Oak Ridge, Tennessee, and Richland, Washington, for requisition by AEC offices and cost-type contractors.

(2) The masks supplied by Oak Ridge and Richland have been refinished to serviceable condition and tested for reliability before they are placed in stock. Each mask has been equipped with an M11 canister, following rehabilitation, laundering, and tests, and is packaged individually in a transparent film bag.

(3) For requisition of masks, purchasers should state, in addition to information for shipment, quantity of masks required in large or medium size, and whether a carrier for each mask is required. Price of each mask, with or without carrier, is $6.50. Applicable purchase order or requisition should be directed as follows:

For delivery east of the Mississippi River:

Union Carbide Corp., Nuclear Division, Oak Ridge Gaseous Diffusion Plant, Post Office Box P, Oak Ridge, Tenn. 37830.

For delivery west of the Mississippi River:

ITT Federal Support Services, Inc., Post Office Box 100, Richland, Wash. 99352.

(b) *Canisters.* (1) Replacement canisters, when required, will be procured by appropriate AEC offices. The canisters for use with the M9 mask bear the following identification and unit price:

Canister, M11, FSN 4240-112-9365, $2.00.
Canister, M14, FSN 4240-203-3733, $7.82.

(2) AEC purchase orders for supplies of these canisters should be addressed to:

Commanding General, Ammunition Procurement and Supply Agency, Joliet, Ill. 60431, Attention: SMUAP-QNND.

(3) Cost-type contractors shall obtain replacement canisters through the AEC.

§ 9-5.5206-26 Procurement of electronic data processing tape.

(a) All AEC direct procurement of electronic data processing tape shall be made in accordance with the provisions of FPMR 101-26.508.

(b) AEC offices having requirements in excess of the maximum order limitation of the Federal Supply Schedule should contact GSA directly to make arrangements for obtaining the quantities needed, in accordance with the provisions of FPMR 101-26.508-1(b).

(c) AEC offices having requirements for types of electronic data processing tape other than those covered by Interim Federal Specification W-T-0051a (GSA-FSS) or current Federal Supply Schedules shall submit their requirements directly to GSA in accordance with the provisions of FPMR 101-26.508-2.

(d) Managers of Field Offices shall require all their cost-type contractors who come within the scope of § 9-59.002(b) to obtain their requirements for electronic data processing tape in accordance with the provisions of FPMR 101-26.508-1. However, when adequate justification exists, Managers of Field Offices may authorize these cost-type contractors to obtain their tape from other sources. For example, if the 800 BPI, ½-inch tape (Interim Federal Specification W-T-0051a (GSA-FSS)) will not adequately meet a contractor's technical requirements, the Manager may authorize the contractor to obtain its requirements from other sources. When a Manager does authorize a contractor to obtain its requirements from other sources, a copy of the authorization, together with a brief statement of the justification, should be sent to the Division of Contracts, Headquarters, for informational purposes.

(e) AEC offices should consolidate their requirements and the requirements of their cost-type contractors for electronic data processing tape when it appears that such action would be practical and would result in significant price advantages to the Government.

§ 9-5.5207 Special materials.

This section covers the purchase of materials peculiar to the AEC program. While purchases of these materials are unclassified, quantities, destination or use may be classified. See appropriate sections of the Classification Guide. Managers of Field Offices shall require cost-type contractors to obtain the special materials identified in the following subsections in accordance with the procedures stated therein.

§ 9-5.5207-1 [Reserved]

§ 9-5.5207-2 Heavy water.

The Division of Production controls the procurement and production of heavy water. AEC offices and cost-type contractors shall place orders directly with the Division of Production, Headquarters.

§ 9-5.5207-3 Platinum.

The New York Operations Office is responsible for maintaining the AEC platinum supply. AEC offices and cost-type contractors shall clear with the New York Operations Office as to the availability of AEC platinum prior to the purchase of platinum on the open market.

§ 9-5.5207-4 Radium and radium compounds.

(a) The Division of Raw Materials is responsible for procuring radium and radium compounds (including radium, mesothorium, radium D, and associated radioactive substances) as requested by the New York Operations Office. AEC offices and cost-type contractors shall place requirements directly with the New York Operations Office.

(b) The New York Operations Office is responsible for the procurement of services for:

(1) Storage of radium salts and sources returned.

(2) Recovery of radium from AEC-owned incapsulated radium sources. AEC offices and cost-type contractors shall obtain such services in accordance with arrangements established by the New York Operations Office.

Subpart 9-5.54—Use of Procurement and Supply Management Support Services at the Nevada Test Site and the Nuclear Rocket Development Station

§ 9-5.5400 Scope of subpart.

(a) This subpart sets forth AEC policy for the use of the procurement and supply management support services at the Nevada Test Site and the Nuclear Rocket Development Station.

(b) The provisions of this subsection shall be applied to cost-type contractors carrying out projects at the NTS and the NRDS.

§ 9-5.5401 Policy.

As an integral part of their responsibility for furnishing project-related materials, equipment, and technical services, the Nevada Operations Office and the Space Nuclear Propulsion Office—Nevada will, except in special cases, provide to the fullest practicable extent the necessary procurement and supply management support services required to support the technical efforts of all organizations sponsoring experiments or participating in the scientific aspects of experiments conducted at the NTS and the NRDS. Furthermore, all organizations that are carrying out projects or performing work at the NTS and the NRDS will make the fullest practicable use of these facilities and services to prevent unnecessary duplication to assure maximum efficiency and economy.

Subpart 9-5.55—Purchase or Lease Determinations

§ 9-5.5500 Scope of subpart.

(a) This subpart implements and supplements FPMR 101-25.5 which prescribes guidelines to be used in determining whether acquisition of particular types of equipment should be by purchase or lease.

(b) The requirements of this subpart shall be applied to cost-type contractors.

§ 9-5.5501 Policy.

(a) The guidelines prescribed in FPMR 101-25.5 for making purchase or lease determinations shall be applied to the acquisition of all types of equipment. These guidelines shall be used in making lease-versus-purchase determinations at time of original acquisition, when lease renewals are being considered, or at other times as circumstances warrant.

(b) Contracting officers shall assure the use of applicable lease-versus-purchase guidelines in all procurement and supply operations under their jurisdiction.

§ 9-5.5502 Utilization of excess equipment or interests in equipment.

Excess lists shall be consulted prior to leasing equipment in both original and renewal leasing actions. Also, leased equipment shall be offered for utilization by other AEC offices and AEC contractors prior to release whenever an accumulated credit toward purchase of the equipment will be lost.

§ 9-5.5503 Maintenance of records.

Appropriate records shall be maintained of all lease-purchase studies and other pertinent data used to support administrative actions taken.

§ 9-5.5504 Funding considerations.

Unavailability of funds is generally not adequate justification for a decision to lease when purchase is indicated by the lease-purchase study to be the more economical course of action. In such circumstances it is essential that every effort be made to follow the purchase course of action. This is true both with respect to the initial study and with respect to those studies made at the times leases are renewed or when other circumstances warrant.

§ 9–5.5505 Leasing of equipment.

If leasing of equipment is necessary, and a lease with purchase option executed, the purchase option shall be exercised at the earliest possible date, provided the lease-purchase study at that date indicates that purchase is still the more economical course of action.

PART 9–6—FOREIGN PURCHASES

Subpart 9–6.1—Buy American Act—Supply and Service Contracts

Sec.
9–6.100 Scope.
9–6.103 Exceptions.
9–6.103–2 Nonavailability in the United States.
9–6.103–3 Unreasonable cost or inconsistency with the public interest.
9–6.104–4 Evaluation of bids and proposals.
9–6.150 Duties and customs.
9–6.151 AEC list of supplies excepted from Buy American Act (supplies to be procured for public use).

Subpart 9–6.8—Balance of Payments Program

9–6.800 Scope.

AUTHORITY: The provisions of this Part 9–6 issued under sec. 161 of the Atomic Energy Act of 1954, as amended, 68 Stat. 948, 42 U.S.C. 2201; sec. 205 of the Federal Property and Administrative Services Act of 1949, as amended, 63 Stat. 390, 40 U.S.C. 486.

Subpart 9–6.1—Buy American Act—Supply and Service Contracts

§ 9–6.100 Scope.

(a) This subpart implements FPR Subpart 1–6.1.

(b) The requirements of FPR Subpart 1–6.1 and this subpart apply to cost-type contractor procurement.

§ 9–6.103 Exceptions.

§ 9–6.103–2 Nonavailability in the United States.

Contracting officers may make the determinations required by FPR 1–6.103–2, provided such determination is factually supported in writing.

§ 9–6.103–3 Unreasonable cost or inconsistency with the public interest.

Except as provided in § 9–6.104–4(a), the General Manager shall make the determination required by FPR 1–6.103–3.

§ 9–6.104–4 Evaluation of bids and proposals.

(a) If an award for more than $100,000 would be made to a domestic concern if the 12-percent factor is applied, but would not be made if the 6-percent factor is applied, Managers of Field Offices without power of redelegation may make the determination as to whether the award to the small business concern or labor surplus area concern would involve unreasonable cost or inconsistency with the public interest (see FPR 1–6.103–3).

(b) Managers of Field Offices shall submit proposed awards (in triplicate) to the Division of Contracts where:

(1) Rejection of an acceptable low foreign bid is considered necessary to protect essential national security interests such as maintenance of a mobilization base; and

(2) Rejection of any bid or proposal for other reasons of the national interest when it is considered necessary

§ 9–6.150 Duties and customs.

Whenever any procurement office purchases supplies with respect to which there might arise a claim to a refund or drawback of customs duties paid thereon (to the extent such drawback is authorized pursuant to the Tariff Act of 1930, 19 United States Code, Chapter 4), the price paid shall ordinarily include the customs duties, and accordingly the supplier will have no claim to a drawback. On the other hand, when the price to be paid for any such purpose does not include the customs duties, then the supplier will have the right to claim any drawback with respect thereto provided (a) he has reserved such right in connection with such sale or consignment, and (b) he produces evidence that such reservation was made with the knowledge and consent of the exporter.

§ 9–6.151 AEC list of supplies excepted from Buy American Act (supplies to be procured for public use).

Antimony.
Asbestos.
Bauxite.
Bismuth.
Books, trade, text, technical, or scientific; newspapers, magazines; periodicals; printed briefs, and films; not printed in the United States, and for which domestic editions are not available.
Cadmium.
Calcium Cyanamide.
Castor oil.
Chrome ore or chromite.
Cobalt (ore and metals).
Cork.
Cryolite, natural.
Diamonds, industrial and abrasive.
Graphite, natural.
Iodine.
Jute and jute burlaps.
Logs, veneer, and lumber from balsa, greenheart, lignum vitae, mahogany, and teak.
Mica.
Nickel.
Crude petroleum, petroleum fuels, and petroleum lubricants.
Platinum and related group metals.
Radium salts, source and special nuclear materials.
Rubber, crude, and latex.
Rutile.
Shellac.
Spare parts for equipment of foreign manufacture, and for which domestic parts are not available.
Sperm oil.
Tartaric acid.
Tin.

Suggestions for changes in and additions to the above list, with appropriate justifications, shall be submitted to the Director, Division of Contracts.

Subpart 9–6.8—Balance of Payments Program

§ 9–6.800 Scope.

The policies and procedures of FPR Subpart 1–6.8 shall be applied to cost-type contractor procurement for use outside the United States.

PART 9–7—CONTRACT CLAUSES

Sec.
9–7.000 Scope of part.
9–7.000–50 Policy, cost-type contractor procurement.

Subpart 9–7.50—Use of Standard Clauses

9–7.5000 Scope of subpart.
9–7.5001 General policy.
9–7.5002 [Reserved]
9–7.5003 Deviations.
9–7.5004 Standard AEC clauses which are mandatory as to text.
9–7.5004–1 Convict labor.
9–7.5004–2 Covenant against contingent fees.
9–7.5004–3 Disputes.
9–7.5004–4 Equal opportunity.
9–7.5004–5 Officials not to benefit.
9–7.5004–6 Assignment of claims.
9–7.5004–7 [Reserved]
9–7.5004–8 [Reserved]
9–7.5004–9 [Reserved]
9–7.5004–10 Examination of records.
9–7.5004–11 Security.
9–7.5004–12 [Reserved]
9–7.5004–13 Contract Work Hours Standards Act—Overtime Compensation.
9–7.5004–14 Walsh-Healey Public Contracts Act.
9–7.5004–15 Labor (construction contracts).
9–7.5004–16 Buy American Act.
9–7.5004–17 Buy American Act (construction).
9–7.5004–18 [Reserved]
9–7.5004–19 [Reserved]
9–7.5004–20 Renegotiation.
9–7.5004–21 Classification.
9–7.5004–22 Disclosure of information.
9–7.5004–23 [Reserved]
9–7.5004–24 Nuclear hazards indemnity.
9–7.5004–25 Nuclear hazards indemnity—product liability.
9–7.5004–26 Indemnity assurance to architect-engineer or supplier prior to operation of a production or utilization facility.
9–7.5005 Standard FPR clauses not included in § 9–7.5004.
9–7.5005–1 Additional bond security.
9–7.5005–2 Changes (fixed-price supply
9–7.5005–3 Default (fixed-price supply contracts).
9–7.5005–4 Definitions.
9–7.5005–5 Extras.
9–7.5005–6 Inspection (fixed-price supply).
9–7.5005–7 Payments.
9–7.5005–8 Variation in quantity.
9–7.5005–9 Utilization of small business concerns.
9–7.5005–10 Liquidated damages.
9–7.5005–11 Federal, State, and local taxes.
9–7.5005–12 [Reserved]
9–7.5005–13 Responsibility for supplies.
9–7.5005–14 Utilization of concerns in labor surplus areas.
9–7.5005–15 Small business subcontracting program.
9–7.5005–16 Labor surplus area subcontracting program.
9–7.5005–17 Changes to make-or-buy program.
9–7.5005–18 Price reduction for defective cost or pricing data.
9–7.5005–19 Audit and records—fixed-price supply and fixed-price construction contracts.
9–7.5005–20 Subcontractor cost and pricing data.
9–7.5006 Standard AEC clauses not included in § 9–7.5004 or § 9–7.5005.
9–7.5006–1 Accounts, records, and inspection (CPFF).

AUTHORITY: The provisions of this Part 9-7 issued under sec. 161 of the Atomic Energy Act of 1954, as amended, 68 Stat. 948, 42 U.S.C. 2201; sec. 205 of the Federal Property and Administrative Services Act of 1949, as amended, 63 Stat. 390, 40 U.S.C. 486.

§ 9-7.000 Scope of part.

Since FPR Part 1-7 employs a different system of grouping contract clauses in its various subparts; e.g., by types of contracts such as fixed-price supply, the AEC use of standard clauses has been treated in a separate Subpart 9-7.50. Where appropriate, however, the individual clauses in FPR Part 1-7 are referred to, rather than repeated in Subpart 9-7.50.

§ 9-7.000-50 Policy, cost-type contractor procurement.

Contracting officers shall require cost-type contractors to use terms and conditions in connection with procurement under their AEC contracts which are adequate to protect the Government's interests consistent with their contractual obligations. In addition to the prime contract flowdown provisions, the instructions and notes in §§ 9-7.5004-3, 9-7.5004-10, and 9-7.5006-47 are to be applied to cost-type contractor procurement. Other terms and conditions shall be included as may be required as a matter of law (e.g., Contract Work Hours Standards Act—Overtime Compensation, Davis-Bacon Act, etc.) or as appropriate under the circumstances.

Subpart 9-7.50—Use of Standard Clauses

§ 9-7.5000 Scope of subpart.

This subpart sets forth (a) the general policy covering the use of standard contract clauses prescribed by the FPR and by the AECPR; (b) the applicability of policies, procedures, and standard clauses; (c) the procedures to be followed for deviating from the standard clauses; (d) the policy covering and standard form of clauses to be used in connection with price redetermination; and (e) the use of price escalation clauses.

§ 9-7.5001 General policy.

It is the policy of AEC to use standard contract clauses wherever practicable. Uniformity in form and substance of contract clauses tends to assure impartial treatment of all contractors, expedites negotiation and contract review, and facilitates contract administration.

§ 9-7.5002 [Reserved]

§ 9-7.5003 Deviations.

The standard clauses set forth or referred to in this subpart are arranged in three groups. The deviation procedures which are applicable to each group of clauses are as follows:

(a) *Standard AEC clauses which are mandatory as to text.* These clauses are set forth or are referred to in § 9-7.5004 and, where they are appropriate for use in a contract, deviations from these clauses shall not be made unless approved by the Director, Division of Contracts, after coordination with the Controller, General Counsel, and any other appropriate Headquarters office. Requests for Headquarters approval shall be submitted in triplicate and shall be accompanied by a detailed supporting statement and a draft of the proposed clause, as amended. If Headquarters approval of the contract is required, requests for approval of deviations and approval of the contract may be combined. (Minor changes in wording which may become necessary in negotiations are not considered deviations: *Provided*, Counsel determines that the change is not prohibited by statute, executive order, or administrative regulation and does not alter the meaning, intent, or basic principles expressed in these clauses.)

(b) *Standard FPR clauses not included in paragraph (a) of this section.* These clauses are referred to in § 9-7.5005. While these are not AEC mandatory-as-to-text clauses, they are standard FPR clauses and deviations from these clauses may be made only in accordance with the deviation procedures set forth in § 9-1.109.

(c) *Standard AEC clauses not included in paragraph (a) or (b) of this*

section. These clauses are set forth in § 9–7.5006 and, in addition to those referred to in paragraphs (a) and (b) of this section, constitute standard provisions for use in AEC contracts. Deviations shall not be made merely because of personal preferences. Except as provided in other subparts of the AECPR, deviations, in addition to those specifically authorized by this subpart, may be made only with the approval of the Manager of a Field Office, after consultation with counsel; except that deviations which make allowable any of the costs specifically listed as unallowable in the cost clauses set forth in § 9–7.5006, or which would conflict with the policy and principles expressed in Subpart 9–15.50 or Part 9–15 of the AECPR or other applicable directives, shall be made in prime contracts or in subcontracts only with the approval of the Director, Division of Contracts, after consultation with the Controller, General Counsel, and any other appropriate Headquarters office. The contract file shall contain a statement explaining any substantial deviation unless the reason for such deviation is obvious because of the unusual nature of the contract. Changes which become necessary as a matter of standard practice shall be reported to the Director, Division of Contracts, with a recommendation, in triplicate, as to the need for modifying the text of the standard clause.

(d) *Suggested AEC clauses.* These clauses, set forth in § 9–7.5007, constitute suggested provisions for use in AEC contracts. They may be modified in the light of specific contracting situations. No deviation procedure is required except as may be prescribed by individual field offices.

§ 9–7.5004 Standard AEC clauses which are mandatory as to text.

This section sets forth standard AEC contract clauses and refers to FPR standard clauses, both of which are mandatory as to text when used in AEC prime contracts.

§ 9–7.5004–1 Convict labor.

See FPR 1–12.203.

§ 9–7.5004–2 Convenant against contingent fees.

See FPR 1–1.503.

NOTE A: This article is required in all contracts.

NOTE B: In cost-type contracts, modify this article by adding before the initial paragraph thereof "(a) *Warranty—Termination or deduction for breach*"—and adding the following paragraph:

"(b) *Subcontracts and purchase orders.* Unless otherwise authorized by the Contracting Officer in writing, the contractor shall cause provisions similar to the foregoing to be inserted in all subcontracts and purchase orders entered into under this contract."

§ 9–7.5004–3 Disputes.

(a) See FPR 1–7.101–12.

(b) Subcontracts: The following clause implements § 9–59.003(j) with respect to disputes provisions in cost-type contractor procurement documents:

DISPUTES CLAUSE

(1) Except as otherwise provided in this _____,[1] any dispute concerning a question of fact arising under _____[2] which is not disposed of by agreement shall be decided by the AEC Contracting Officer for the prime contractor's Contract No. _____, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the prime contractor and the _____.[3] The decision of the Contracting Officer shall be final and conclusive unless within 30 days from the date of receipt of such copy the _____[3] mails or otherwise furnishes to the Contracting Officer a written appeal addressed to the Commission. The decision of the Commission or its duly authorized representative for the determination of such appeals shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this clause, the _____[3] shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the _____[3] shall proceed diligently with the performance of the _____[3] and in accordance with the Contracting Officer's decision.

(2) This disputes clause does not preclude consideration of law questions in connection with decisions provided for in paragraph (1) above: *Provided,* That nothing in this _____[3] shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

[1] Insert subcontract, purchase order, etc., as appropriate.

[2] Insert subcontract, purchase order, etc., as appropriate.

[3] Insert subcontractor, seller, etc., as appropriate.

(c) The authority of the Commission to decide appeals under the disputes clause in paragraphs (a) and (b) of this section is presently delegated to the AEC Board of Contract Appeals. See 10 CFR Part 3.

§ 9–7.5004–4 Equal opportunity.

See FPR 1–12.803–2.

§ 9–7.5004–5 Officials not to benefit.

See FPR 1–7.101–19.

§ 9–7.5004–6 Assignment of claims.

See FPR 1–30.703.

§ 9–7.5004–7 [Reserved]

§ 9–7.5004–8 [Reserved]

§ 9–7.5004–9 [Reserved]

§ 9–7.5004–10 Examination of records.

See FPR 1–7.101–10. See Notes A and B for required additions.

NOTE A: Add a paragraph (c) which provides:

Nothing in this contract shall be deemed to preclude an audit by the General Accounting Office of any transaction under this contract, subject to the following:

Paragraph (c) of the contract clause should be included whenever possible in prime contracts subject to the audit rider both for the protection of the Government and the contractor. It may be omitted only with the approval of the Director, Division of Contracts, upon a specific determination, based on consultation with the Office of the Controller and the Office of the General Counsel, that nothing in this contract purports to preclude an audit by the General Accounting Office of any transaction thereunder.

NOTE B: In cost-type prime and cost-type subcontracts, substitute the words "unless the Commission authorizes their prior disposition" for the words "or of the time periods for the particular records specified in Part 1–20 of the Federal Procurement Regulations (41 CFR Part 1–20) whichever expires earlier" in paragraphs (a) and (b).

NOTE C: *Contracts exempt from audit rider.* The examination of records clause is not required in (a) contracts with any foreign government or agency thereof or in contracts with foreign producers; (b) purchase orders not exceeding $2,500; (c) contracts or purchase orders for public utility services at rates established for uniform applicability to the general public, or (d) contracts awarded as a result of formal advertising.

NOTE D: *Nonretroactivity of audit rider.* In the case of modifications to existing prime contracts, where the basic contract was negotiated prior to July 1, 1952, and therefore not subject to the provisions of the audit rider, the contract clause may be modified so as to apply only to transactions occurring, and to subcontracts executed after the execution of the modification to the prime contract.

§ 9–7.5004–11 Security.

(a) *Contractor's duty to safeguard Restricted Data, Formerly Restricted Data, and other classified information.* In the performance of the work under this contract, the contractor shall, in accordance with the Atomic Energy Commission's security regulations and requirements, be responsible for safeguarding Restricted Data, Formerly Restricted Data, and other classified information and protecting against sabotage, espionage, loss and theft, the classified documents and material in the contractor's possession in connection with the performance of work under this contract. Except as otherwise expressly provided in this contract, the contractor shall, upon completion or termination of this contract, transmit to the Commission any classified matter in the possession of the contractor or any person under the contractor's control in connection with performance of this contract. If retention by the contractor of any classified matter is required after the completion or termination of the contract and such retention is approved by the Contracting Officer, the contractor will complete a certificate of possession to be furnished to the Atomic Energy Commission specifying the classified matter to be retained. (Note A.) If retention is approved by the Contracting Officer, the security provisions of the contract will continue to be applicable to the matter retained.

(b) *Regulations.* The contractor agrees to conform to all security regulations and requirements of the Commission.

(c) *Definition of Restricted Data.* The term "Restricted Data," as used in this clause, means all data concerning (1) design, manufacture, or utilization of atomic weapons; (2) the production of special nuclear material; or (3) the use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data category pursuant to section 142 of the Atomic Energy Act of 1954.

(d) *Definition of Formerly Restricted Data.* The term "Formerly Restricted Data," as used in this clause, means all data removed from the Restricted Data category under section 142 d. of the Atomic Energy Act of 1954, as amended.

(e) *Security clearance of personnel.* The contractor shall not permit any individual

to have access to Restricted Data, Formerly Restricted Data, or other classified information, except in accordance with the Atomic Energy Act of 1954, as amended, and the Commission's regulations or requirements applicable to the particular type or category of classified information to which access is required.

(f) *Criminal liability.* It is understood that disclosure of Restricted Data, Formerly Restricted Data, or other classified information relating to the work or services ordered hereunder to any person not entitled to receive it, or failure to safeguard any Restricted Data, Formerly Restricted Data, or any other classified matter that may come to the contractor or any person under the contractor's control in connection with work under this contract, may subject the contractor, its agents, employees, or subcontractors to criminal liability under the laws of the United States. (See the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011; 18 U.S.C. sections 793 and 794; and Executive Order 10501, as amended.)

(g) *Subcontracts and purchase orders.* Except as otherwise authorized in writing by the Contracting Officer, the contractor shall insert provisions similar to the foregoing in all subcontracts and purchase orders under this contract.

NOTE A: The certification shall identify the items and types or categories of matter retained, the conditions governing the retention of the matter and the period of retention, if known.

§ 9–7.5004–12 [Reserved]

§ 9–7.5004–13 Contract Work Hours Standards Act—Overtime Compensation.

See FPR 1–12.303 and § 9–12.103–51.

§ 9–7.5004–14 Walsh-Healey Public Contracts Act.

See FPR 1–12.605.

§ 9–7.5004–15 Labor (construction contracts).

See FPR 1–16.901–19A and § 9–12.103–51.

§ 9–7.5004–16 Buy American Act.

Supply and operating contracts—see FPR 1–6.104–5.

NOTE A: Modify FPR 1–6.104–5 as follows:

(1) In both supply and operating contracts, substitute "Commission" for "Secretary" in paragraphs (b) (iii) and (iv).

(2) In operating contracts,

(a) Substitute "used" for "delivered" in paragraph (b), and

(b) Insert a parenthetical, "(by the contractor, subcontractors, materialmen, and suppliers)," after the word "contract" in the second line of (b).

§ 9–7.5004–17 Buy American Act (construction).

Fixed-price construction contracts—see FPR 1–18.605. CPFF construction contracts—use the following clause:

(a) In acquiring construction materials, the Buy American Act (41 U.S.C. 10 a–d) provides that the Government give preference to domestic construction material. For the purpose of this clause:

(1) "Construction" means construction, alteration, or repair of any public building or public work;

(2) "Components" means those articles, materials, and supplies, which are directly incorporated in the construction material;

(3) "Construction material" means those articles, materials, and supplies, which are brought to the construction site for incorporation in the building or work; and

(4) A "domestic construction material" means (A) an unmanufactured construction material which has been mined or produced in the United States; or (B) a manufactured construction material which has been manufactured in the United States if the cost of its components which are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. For the purposes of this (a)(4)(B), components of foreign origin of the same type or kind as the products referred to in (b) (2) or (3) of this clause shall be treated as components mined, produced, or manufactured in the United States.

(b) The contractor agrees that there will be used under this contract (by the contractor, subcontractor, materialmen, and suppliers) only domestic construction materials, except construction materials:

(1) Which are for use outside the United States;

(2) Which the Government determines are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality;

(3) As to which the Commission determines the domestic preference to be inconsistent with the public interest; or

(4) As to which the Commission determines the cost to the Government to be unreasonable.

The foregoing requirements are administered in accordance with Executive Order No. 10582, dated December 17, 1954.

§ 9–7.5004–18 [Reserved]

§ 9–7.5004–19 [Reserved]

§ 9–7.5004–20 Renegotiation.

If this contract is subject to the Renegotiation Act of 1951, as amended, the following provisions shall apply:

(a) This contract is subject to the Renegotiation Act of 1951 (50 U.S.C. App. 1211, et seq.), as amended, and to any subsequent act of Congress providing for the renegotiation of contracts. Nothing contained in this clause shall impose any renegotiation obligation with respect to this contract or any subcontract hereunder which is not imposed by an act of Congress heretofore or hereafter enacted. Subject to the foregoing, this contract shall be deemed to contain all the provisions required by section 104 of the Renegotiation Act of 1951, and by any such other act, without subsequent contract amendment specifically incorporating such provisions.

(b) The contractor agrees to insert the provisions of this clause, including this paragraph (b), in all subcontracts, as that term is defined in section 103 g. of the Renegotiation Act of 1951, as amended.

§ 9–7.5004–21 Classification.

In the performance of the work under this contract, the contractor shall assign classifications to all documents, material, and equipment originated or generated by the contractor in accordance with classification guidance furnished to the contractor by the Commission. Every subcontractor and purchase order issued hereunder involving the origination or generation of classified documents, material, or equipment, shall incude a provision to the effect that in the performance of such subcontract or purchase order the subcontractor or supplier shall assign classifications to all such documents, material, and equipment in accordance with classification guidance furnished to such subcontractor or supplier by the contractor.

NOTE A: This clause is required in all contracts involving classified information.

§ 9–7.5004–22 Disclosure of information.

(a) It is mutually expected that the activities under this contract will not involve Restricted Data or other classified information or material. It is understood, however, that if in the opinion of either party this expectation changes prior to the expiration or termination of all activities under this contract, said party shall notify the other party accordingly in writing without delay. In any event, the contractor shall classify, safeguard, and otherwise act with respect to all Restricted Data and other classified information and material, in accordance with applicable law and the requirements of the Commission, and shall promptly inform the Commission in writing if and when Restricted Data or other classified information or material becomes involved. If and when Restricted Data or other classified information or material becomes involved, or in the mutual judgment of the parties it appears likely that Restricted Data or other classified information or material may become involved, the contractor shall have the right to terminate performance of the work under this contract and in such event the provisions of this contract respecting termination for the convenience of the Government shall apply.

(b) The contractor shall not permit any individual to have access to Restricted Data, or other classified information, except in accordance with the Atomic Energy Act of 1954, as amended, and the Commission's regulations or requirements.

(c) The term "Restricted Data" as used in this article means all data concerning the design, manufacture, or utilization of atomic weapons, the production of special nuclear material or the use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data category pursuant to section 142 of the Atomic Energy Act of 1954, as amended.

NOTE A: This clause should be used in place of the clauses entitled "Security," § 9–7.5004–11, and "Classification," § 9–7.5004–21, in contracts with educational institutions for offsite research that are not likely to produce Restricted Data or classified information.

§ 9–7.5004–23 [Reserved]

§ 9–7.5004–24 Nuclear hazards indemnity.

(a) This article is incorporated into this contract pursuant to the authority contained in subsection 170(d) of the Atomic Energy Act of 1954, as amended (hereinafter called the Act).

(1) The definitions set out in the Act shall apply to this article.

(2) The term "contract location" means any Commission facility, installation, or site at which contractual activity under this contract is being carried on, and any contractor-owned or -controlled facility, installation, or site at which the contractor is engaged in the performance of contractual activity under this contract.

(3) The term "extraordinary nuclear occurrence" means an event which the Commission has determined to be an extraordinary nuclear occurrence as defined in the Act. A determination of whether or not there has been an extraordinary nuclear occurrence will be made in accordance with the procedures in Subpart E of 10 CFR 140.

(b) Except as hereafter permitted or required in writing by the Commission, the Contractor will not be required to provide or maintain, and will not provide or maintain at Government expense, any form of financial protection to cover public liability. The Commission may at any time require in writing that the Contractor provide and maintain financial protection of such a type and in such amount as the Commission shall determine to be appropriate to cover public liability arising out of or in connection with the contractual activity, provided that the costs of such financial protection will be reimbursed to the Contractor by the Commission.

(c) (1) To the extent that the Contractor and other persons indemnified are not compensated by any financial protection permitted or required by the Commission, the Commission will indemnify the Contractor, and other persons indemnified, against (i) claims for public liability as described in subparagraph (2) of this paragraph (c); and (ii) the reasonable costs of investigating and settling claims, and defending suits for damage for such public liability, provided that the Commission's liability, including such reasonable costs, under all indemnity agreements entered into by the Commission under section 170 of the Act, including this contract, shall not exceed $500 million in the aggregate for each nuclear incident occurring within the United States or $100 million in the aggregate for each nuclear incident occurring outside the United States, irrespective of the number of persons indemnified in connection with this contract.

(2) The public liability referred to in paragraph (c)(1) of this section is public liability which (i) arises out of or in connection with the contractual activity; and (ii) arises out of or results from:

(A) A nuclear incident which takes place at a contract location;

(B) A nuclear incident which takes place at any other location and arises out of or in the course of the performance of contractual activity under this contract by the Contractor's employees, individual consultants, borrowed personnel or other persons for the consequences of whose acts or omissions the Contractor is liable, provided that such incident is not covered by any other indemnity agreement entered into by the Commission pursuant to section 170 of the Act; or

(C) A nuclear incident which arises out of or in the course of transportation of source, special nuclear, or byproduct materials to or from a contract location; provided such incident is not covered by any indemnity agreement entered into by the Commission with the transporting carrier, or with a carrier's organization acting for the benefit of the transporting carrier, or with a licensee of the Commission, pursuant to section 170 of the Act; or

(D) A nuclear incident which involves items (such as equipment, material, facilities, or design or other data) produced or delivered under this contract, provided such incident is not covered by any other indemnity agreement entered into by the Commission pursuant to section 170 of the Act.

(d) In the event of an extraordinary nuclear occurrence which:

(1) Arises out of or results from or occurs in the course of the construction, possession, or operation of a production or utilization facility, or

(2) Arises out of or results from or occurs in the course of transportation of source material, byproduct material, or special nuclear material to or from a production or utilization facility, or

(3) During the course of the contract activity arises out of or results from the possession, operation, or use by the Contractor or a subcontractor of a device utilizing special nuclear material or byproduct material,

the Commission, and the Contractor on behalf of itself and other persons indemnified, insofar as their interests appear, each agree to waive:

(A) Any issue or defense as to the conduct of the claimant or fault of persons indemnified, including, but not limited to:

1. Negligence;
2. Contributory negligence;
3. Assumption of the risk;
4. Unforeseeable intervening causes, whether involving the conduct of a third person or an act of God.

As used herein, "conduct of the claimant" includes conduct of persons through whom the claimant derives his cause of action;

(B) Any issue or defense as to charitable or governmental immunity;

(C) Any issue or defense based on any statute of limitations if suit is instituted within 3 years from the date on which the claimant first knew, or reasonably could have known, of his injury or damage and the cause thereof, but in no event more than 10 years after the date of the nuclear incident.

The waiver of any such issue or defense shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action. The waivers shall be judicially enforceable in accordance with their terms by the claimant against the person indemnified.

(e) The waivers set forth in paragraph (d) of this article:

(1) Shall not preclude a defense based upon a failure to take reasonable steps to mitigate damages;

(2) Shall not apply to injury or damage to a claimant or to a claimant's property which is intentionally sustained by the claimant or which results from a nuclear incident intentionally and wrongfully caused by the claimant;

(3) Shall not apply to injury to a claimant who is employed at the site of and in connection with the activity where the extraordinary nuclear occurrence takes place if benefits therefor are either payable or required to be provided under any workmen's compensation or occupational disease law;

(4) Shall not apply to any claim for punitive or exemplary damages, provided, with respect to any claim for wrongful death under any State law which provides for damages only punitive in nature, this exclusion does not apply to the extent that the claimant has sustained actual damages, measured by the pecuniary injuries resulting from such death but not to exceed the maximum amount otherwise recoverable under such law;

(5) Shall not apply to any claim resulting from a nuclear incident occurring outside the United States;

(6) Shall be effective only with respect to those obligations set forth in this agreement and in insurance policies, contracts, or other proof of financial protection;

(7) Shall not apply to, or prejudice the prosecution or defense of, any claim or portion of claim which is not within the protection afforded under (i) the limit of liability provisions under subsection 170e of the Atomic Energy Act of 1954, as amended, and (ii) the terms of this agreement and the terms of insurance policies, contracts, or other proof of financial protection.

(f) The Contractor shall give immediate written notice to the Commission of any known action or claim filed or made against the Contractor or other person indemnified for public liability as defined in paragraph (2) of section (c). Except as otherwise directed by the Commission, the Contractor shall furnish promptly to the Commission copies of all pertinent papers received by the Contractor or filed with respect to such actions or claims. When the Commission shall determine that the Government will probably be required to make indemnity payments under the provisions of section (c) above, the Commission shall have the right to, and shall, collaborate with the Contractor and any other person indemnified in the settlement or defense of any action or claim and shall have the right (1) to require the prior approval of the Commission for the payment of any claim that the Commission may be required to indemnify hereunder, and (2) to appear through the Attorney General on behalf of the Contractor or other person indemnified in any action brought upon any claim that the Commission may be required to indemnify hereunder, take charge of such action, and settle or defend any such action. If the settlement or defense of any such action or claim is undertaken by the Commission, the Contractor or other person indemnified shall furnish all reasonable assistance in effecting a settlement or asserting a defense.

(g) The indemnity provided by this article shall not apply to public liability arising out of or in connection with any activity that is performed at a licensed facility, and that is covered by a Commission indemnity agreement authorized by section 170 of the Act.

(h) The obligations of the Commission under this article shall not be affected by any failure on the part of the Contractor to fulfill its obligation under this contract, and shall be unaffected by the death, disability, or termination of existence of the Contractor or by the completion, termination or expiration of this contract.

(i) The parties to this contract enter into this article upon the condition that this article may be amended at any time by the mutual written agreement of the Commission and the Contractor and that such amendment may, by its express terms, provide that it will apply to any nuclear incidents which occur thereafter.

(j) The provisions of this article shall not be limited in any way by, and shall be interpreted without reference to, any other article of this contract [, including Article _____, Disputes]: *Provided, however,* That the following provisions of this contract: Article _____, Covenant Against Contingent Fees; Article _____, Officials Not to Benefit; Article _____, Assignment; and Article _____, Examination of Records; and any provisions later added to this contract which, under applicable Federal law, including statutes, executive orders and regulations, are required to be included in agreements of the type contained in this article, shall apply to this article.

(k) [The following section will be included in those contracts containing indemnity agreements executed under the general contract authority of the AEC.]

To the extent that the Contractor is compensated by any financial protection, or is indemnified pursuant to this article, or is effectively relieved of public liability by an order or orders limiting same pursuant to section 170e. of the Atomic Energy Act of 1954 as amended, the provisions of Article _____ (General Authority Indemnity) shall not apply.

§ 9-7.5004-25 Nuclear hazards indemnity—product liability.

(a) This article is incorporated into this contract pursuant to the authority contained in section 170d of the Atomic Energy Act of 1954, as amended (hereinafter called the Act).

(1) The definitions set out in the Act shall apply to this article.

(2) The term "product delivered under the contract" means any material; equipment; device; drawing; specification or technical data made, proposed, or acquired by the contractor in the course of performance of the contract and delivered to the Commission or to any other person as directed or approved by the Commission.

(b) Except as hereafter permitted or required in writing by the Commission, the contractor will not be required to provide or maintain, and will not provide or maintain at Government expense, any form of financial protection to cover public liability. The Commission may at any time require in writing that the contractor provide and maintain financial protection of such a type and in such amount as the Commission shall determine to be appropriate to cover public liability against which the contractor is indemnified hereunder: *Provided*, That the costs of such financial protection will be reimbursed to the contractor by the Commission.

(c)(1) To the extent that the contractor and other persons indemnified are not compensated by any financial protection permitted or required by the Commission, the Commission will indemnify the contractor, and other persons indemnified, against (i) claims for public liability as described in subparagraph (2) of this paragraph (c); and (ii) the reasonable costs of investigating and settling claims, and defending suits for damages for such public liability, provided that the Commission's liability, including such reasonable costs, under all indemnity agreements entered into by the Commission under section 170 of the Act, including this contract, shall not exceed $500 million in the aggregate for each nuclear incident occurring within the United States or $100 million in the aggregate for each nuclear incident occurring outside the United States, irrespective of the number of persons indemnified in connection with this contract.

(2) The public liability referred to in subparagraph (1) of this section is public liability which (i) arises out of or in connection with the contractual activity; and (ii) arises out of or results from a product delivered under the contract; but does not include liability for a nuclear incident which is covered by any other indemnity agreement entered into by the Commission pursuant to section 170 of the Act.

(d) The Contractor shall give immediate written notice to the Commission of any known action or claim filed or made against the Contractor or other person indemnified for public liability as defined in paragraph (2) of section (c). Except as otherwise directed by the Commission, the Contractor shall furnish promptly to the Commission copies of all pertinent papers received by the Contractor or filed with respect to such actions or claims. When the Commission shall determine that the Government will probably be required to make indemnity payments under the provisions of section (c) above, the Commission shall have the right to, and shall, collaborate with the Contractor and any other person indemnified in the settlement or defense of any action or claim and shall have the right (1) to require the prior approval of the Commission for the payment of any claim that the Commission may be required to indemnify hereunder, and (2) to appear through the Attorney General on behalf of the Contractor or other person indemnified in any action brought upon any claim that the Commission may be required to indemnify hereunder, take charge of such action, and settle or defend any such action. If the settlement or defense of any such action or claim is undertaken by the Commission, the Contractor or other person indemnified shall furnish all reasonable assistance in effecting a settlement or asserting a defense.

(e) The obligations of the Commission under this article shall not be affected by any failure on the part of the contractor to fulfill its obligation under this contract, and shall be unaffected by the death, disability or termination of existence of the contractor or by the completion, termination, or expiration of this contract.

(f) The parties to this contract enter into this article upon the condition that this article may be amended at any time by the mutual written agreement of the Commission and the contractor and that such amendment may, by its express terms, provide that it will apply to any nuclear incidents which occur thereafter.

(g) The provisions of this article shall not be limited in any way by, and shall be interpreted without reference to, any other article of this contract [, including Article _____, Disputes]: *Provided, however*, That the following provisions of this contract: Article _____, Covenant Against Contingent Fees; Article _____, Officials Not to Benefit; Article _____, Assignment; and Article _____, Examination of Records; and any provisions later added to this contract which, under applicable Federal law, including statutes, executive orders, and regulations, are required to be included in agreements of this type contained in this article, shall apply to this article.

(h) [The following section will be included in those contracts containing indemnity agreements executed under the general contract authority of the AEC.]

To the extent that the contractor is compensated by any financial protection, or is indemnified pursuant to this article, or is effectively relieved of public liability by an order or orders limiting same pursuant to section 170e of the Atomic Energy Act of 1954, as amended, the provisions of Article _____ (General Authority Indemnity) shall not apply.

§ 9–7.5004–26 Indemnity assurance to architect-engineer or supplier prior to operation of a production or utilization facility.

(a)(1) The definitions set out in the Atomic Energy Act of 1954, as amended (hereinafter called the Act), shall apply to this article.

(2) The services or supplies furnished under this agreement are intended to be used in connection with the construction and/or operation of a production or utilization facility.

(3) The Commission will use its best efforts to include in any contract for the operation of such facility, an agreement based on the then current approved form of indemnity agreement under section 170d of the Atomic Energy Act of 1954, as amended, whereby the Commission will indemnify all persons indemnified, including the contractor, against public liability for nuclear incidents arising out of or in connection with contractual activities under the contract for the operation of said facility, in accordance with the authority provided in subsection 170d of the Act.

(4)(i) The Commission will enter into an indemnity agreement, in accordance with the authority provided in subsection 170d of the Act, with the contractor, without further consideration from the contractor, at any time when all of the following circumstances are present:

(A) The services or supplies furnished under this contract are being used in connection with any activity or situation which involves a risk of substantial nuclear incident; and

(B) There is not in effect an indemnity agreement as described in subparagraph (3) of this clause, and

(C) The Commission's authority to enter into agreements of indemnification under section 170(d) of the Act has not expired or been so amended as to deprive the Commission of authority to enter into such an agreement.

(b) In that agreement the Commission will indemnify the contractor and other persons indemnified against public liability arising out of or in connection with the contractual activity of this contract.

(c) Such agreement will be based on the then current approved form of section 170d indemnity agreement used in contracts between the Commission and its contractors, and shall further include an obligation to indemnify the contractor, and persons indemnified, for such public liability arising out of or resulting from nuclear incidents occurring between the time when the services or supplies furnished under this contract are first used in connection with any activity or situation which involves risk of a substantial nuclear incident and the time when such agreement is executed.

(d) The indemnity provided by the Commission under all indemnity agreements entered into by the Commission under section 170 of the Act, including this agreement, shall not exceed $500 million in the aggregate for each nuclear incident, without regard to the number of persons indemnified, including the reasonable costs of investigating and settling claims and defending suits for damages: *Provided, however*, That with respect to incidents occurring outside the United States such aggregate indemnity shall not exceed $100 million, including such reasonable costs.

§ 9–7.5005 Standard FPR clauses not included in § 9–7.5004.

This section sets forth clauses which are not AEC mandatory-as-to-text clauses. However, these clauses are standard FPR clauses and should be used in accordance with § 9–1.109.

§ 9–7.5005–1 Additional bond security.

See FPR 1–7.101–9.

§ 9–7.5005–2 Changes (fixed-price supply contracts).

See FPR 1–7.101–2.

§ 9–7.5005–3 Default (fixed-price supply contracts).

See FPR 1–8.707.

§ 9–7.5005–4 Definitions.

See FPR 1–7.101–1. In addition, use the following where appropriate.

(a) The term "Commission" means the United States Atomic Energy Commission or any duly authorized representative thereof, including the Contracting Officer except for the purpose of deciding an appeal under the article entitled "Disputes."

(b) Additional definitions may be included as are appropriate.

§ 9–7.5005–5 Extras.

See FPR 1–7.101–3.

§ 9–7.5005–6 Inspection (fixed-price supply).

See FPR 1–7.101–5.

§ 9–7.5005–7 Payments.

See FPR 1–7.101–7.

§ 9-7.5005-8 Variation in quantity.

See FPR 1-7.101-4.

§ 9-7.5005-9 Utilization of small business concerns.

See FPR 1-1.710-3(a).

§ 9-7.5005-10 Liquidated damages.

See FPR 1-1.315-3.

§ 9-7.5005-11 Federal, State, and local taxes.

See FPR 1-11.401 (fixed-price). See § 9-11.452 (cost-type).

§ 9-7.5005-12 [Reserved]

§ 9-7.5005-13 Responsibility for supplies.

See FPR 1-7.101-6.

§ 9-7.5005-14 Utilization of concerns in labor surplus areas.

See FPR 1-1.805-3(a).

§ 9-7.5005-15 Small business subcontracting program.

See FPR 1-1.710-3(b).

§ 9-7.5005-16 Labor surplus area subcontracting program.

See FPR 1-1.805-3(b).

§ 9-7.5005-17 Changes to make-or-buy program.

See FPR 1-3.902-3.

§ 9-7.5005-18 Price reduction for defective cost or pricing data.

See FPR 1-3.814-1.

§ 9-7.5005-19 Audit and records—fixed-price supply and fixed-price construction contracts.

See FPR 1-3.814-2 (a) and (b).

§ 9-7.5005-20 Subcontractor cost and pricing data.

See FPR 1-3.814-3.

§ 9-7.5006 Standard AEC clauses not included in § 9-7.5004 or § 9-7.5005.

This section sets forth standard AEC clauses which are in addition to those referred to in §§ 9-7.5004 and 9-7.5005 and which constitute standard provisions for use in AEC contracts.

§ 9-7.5006-1 Accounts, records, and inspection (CPFF).

(a) *Accounts.* The contractor shall maintain a separate and distinct set of accounts, records, documents, and other evidence showing and supporting all allowable costs incurred, revenues or other applicable credits, fixed-fee accruals, and the receipt, use, and disposition of all Government property coming into the possession of the contractor under this contract. The system of accounts employed by the contractor shall be satisfactory to the Commission and in accordance with generally accepted accounting principles consistently applied.

NOTE A: Delete "a separate and distinct set of" from the first sentence of paragraph (a) if the contract is with a cost-type contractor using privately owned facilities whose accounts are not integrated with those of AEC.

NOTE B: If the contract includes the clause for "price reduction for defective cost or pricing data" required by FPR 1-3.814-1, paragraph (a) above should be modified by adding the words "or anticipated to be incurred" after the words "allowable costs incurred."

(b) *Inspection and audit of accounts and records.* All books of account and records relating to this contract shall be subject to inspection and audit by the Commission at all reasonable times, before and during the period of retention provided for in (d) below and the contractor shall afford the Commission proper facilities for such inspection and audit.

(c) *Audit of subcontractors' records.* The contractor also agrees, with respect to any subcontracts (including lump-sum or unit-price subcontracts or purchase orders) where, under the terms of the subcontract, costs incurred are a factor in determining the amount payable to the subcontractor of any tier, to conduct an audit of the costs of the subcontractor in a manner satisfactory to the contractor and the Commission, except when the Commission elects to waive such audit or approves other arrangements for the conduct of the audit.

(d) *Disposition of records.* Except as agreed upon by the Government and the contractor, all financial and cost reports, books of account and supporting documents, and other data evidencing costs allowable and revenues and other applicable credits under this contract, shall be the property of the Government, and shall be delivered to the Government or otherwise disposed of by the contractor either as the Contracting Officer may from time to time direct during the progress of the work or, in any event, as the Contracting Officer shall direct upon completion or termination of this contract and final audit of all accounts hereunder. Except as provided in this contract, all other records in the possession of the contractor relating to this contract shall be preserved by the contractor for a period of three (3) years after final payment under this contract or otherwise disposed of in such manner as may be agreed upon by the Government and the contractor.

NOTE: Delete paragraph (d) and substitute the following if the contract is with a cost-type contractor using privately owned facilities whose accounts are not integrated with those of AEC:

(d) *Disposition of records.* Except as agreed upon by the Government and the contractor, all financial and cost reports, books of account and supporting documents and other data evidencing costs allowable and revenues and other applicable credits under this contract in the possession of the contractor relating to this contract shall be preserved by the contractor for a period of three (3) years after final payment under this contract or otherwise disposed of in such manner as may be agreed upon by the Government and the contractor.

(e) *Reports.* The contractor shall furnish such progress reports and schedules, financial and cost reports, and other reports concerning the work under this contract as the Contracting Officer may from time to time require.

(f) *Inspections.* The Commission shall have the right to inspect the work and activities of the contractor under this contract at such time and in such manner as it shall deem appropriate.

(g) *Subcontracts.* The contractor further agrees to require the inclusion of provisions similar to those in paragraphs (a) through this paragraph (g) of this clause in all subcontracts (including lump-sum or unit-price subcontracts or purchase orders) of any tier entered into hereunder where, under the terms of the subcontract, costs incurred are a factor in determining the amount payable to the subcontractor.

NOTE: If the prime contract contains a "defective cost or pricing data" clause, this paragraph (g) shall be modified by adding the following:

The contractor further agrees to include:

(1) In each firm fixed-price subcontract in excess of $100,000 (except firm fixed-price subcontracts under the circumstances prescribed in (2) below) an audit clause, the substance of which is the "Audit" clause under paragraph (d)(2) of FPR 1-3.814-2(c).

(2) In each firm fixed-price subcontract in excess of $100,000, where the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public or prices set by law or regulation, an audit clause, the substance of which is the "Audit-Price Adjustments" clause under paragraph (d)(3) of FPR 1-3.814-2(c).

(h) *Internal audit.* The contractor agrees to conduct an internal audit and examination satisfactory to the Commission of the records, operations, expenses, and the transactions with respect to costs claimed to be allowable under this contract annually and at such other times as may be mutually agreed upon. The results of such audit, including the working papers, shall be submitted or made available to the Contracting Officer.

NOTE: This provision shall be included in (a) all cost-type contracts (or subcontracts) involving an estimated cost exceeding $5 million and expected to run more than 2 years, and (b) any other cost-type contract (or subcontract) where deemed advisable by the Manager of the Field Office and when the contractor (or subcontractor) already has an established internal audit organization.

§ 9-7.5006-2 Alterations and additions.

The following alterations in or additions to the provisions of this form of contract were made prior to execution of the contract by the parties.

§ 9-7.5006-3 [Reserved]

§ 9-7.5006-4 Changes (CPFF).

(a) *Changes and adjustment of fee.* The Contracting Officer may at any time and without notice to the sureties, if any, issue written directions within the general scope of this contract requiring additional work or directing the omission of or variation in work covered by this contract. If any such direction results in a material change in the amount or character of the work described in the clause entitled "Statement of work," an equitable adjustment of the fixed fee shall be made in accordance with the agreement of the parties and the contract shall be modified in writing accordingly. Any claim by the contractor for an adjustment under this clause must be asserted in writing within 30 days from the date of receipt by the contractor of the notification of change; provided, however, that the Contracting Officer, if he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. A failure to agree on an equitable adjustment under this clause shall be deemed to be a dispute within the meaning of the clause entitled "Disputes."

(b) *Work to continue.* Nothing contained in this clause shall excuse the contractor from proceeding with the prosecution of the work in accordance with the requirements of any direction hereunder.

§ 9-7.5006-5 [Reserved]

§ 9-7.5006-6 Contractor's organization.

(a) *Organization chart.* As promptly as possible after the execution of this contract, the contractor shall furnish to the Contracting Officer a chart showing the names, duties, and organization of key personnel to be employed in connection with the work, and shall

furnish from time to time supplementary information reflecting changes therein.

(b) *Supervising representative of contractor.* Unless otherwise directed by the Contracting Officer, a competent full-time resident supervising representative of the contractor satisfactory to the Contracting Officer shall be in charge of the work at the site at all times.

(c) *Control of employees.* The contractor shall be responsible for maintaining satisfactory standards of employee competency, conduct, and integrity and shall be responsible for taking such disciplinary action with respect to his employees as may be necessary. In the event the contractor fails to remove any employee from the contract work whom the Commission deems incompetent, careless, or insubordinate, or whose continued employment on the work is deemed by the Commission to be contrary to the public interest, the Government reserves the right to require the contractor to remove the employee.

NOTE: In contracts identified in § 9-12.5401 (b), the following paragraph shall be substituted for (c) above:

> (c) The contractor shall be responsible for maintaining satisfactory standards of employee competency, conduct, and integrity and shall be responsible for taking such disciplinary action with respect to his employees as may be necessary. The contractor shall establish such standards and procedures as are necessary to implement effectively the provisions set forth in Atomic Energy Commission Procurement Regulations 9-12.54, and such standards and procedures shall be subject to the approval of the Contracting Officer.

§ 9-7.5006-7 Copyright (General).

See § 9-9.5103.

§ 9-7.5006-8 Copyright (Motion Pictures).

See § 9-9.5106.

§ 9-7.5006-9 Allowable costs and fixed fee (CPFF operating and construction contracts).

(a) *Compensation for contractor's services.* Payment for the allowable cost as hereinafter defined, and of the fixed fee, if any, as hereinafter provided, shall constitute full and complete compensation for the performance of the work under this contract.

(b) *Fixed fee.* The fixed fee payable to the contractor for the performance of the work under this contract is $_____. There shall be no adjustment in the amount of the contractor's fixed fee by reason of differences between any estimate of cost for performance of the work under this contract and the actual cost for performance of that work. NOTE: This provision may be appropriately changed to cover situations where the fee is for a period of time or different fees are allowed for various phases of the work.

(c) *Allowable cost.* The allowable cost of performing the work under this contract shall be the costs and expenses that are actually incurred by the contractor in the performance of the contract work in accordance with its terms, that are necessary or incident thereto, and are determined to be allowable pursuant to this paragraph (c). The determination of the allowability of cost hereunder shall be based on: (1) Reasonableness, including the exercise of prudent business judgment, (2) consistent application of generally accepted accounting principles and practices that result in equitable charges to the contract work, and (3) recognition of all exclusions and limitations set forth in this clause or elsewhere in this contract as to types or amounts of items of cost. Allowable cost shall not include cost of any item described as unallowable in paragraph (e) of this clause, except as indicated therein. Failure to mention an item of cost specifically in paragraph (d) or paragraph (e) shall not imply either that it is allowable or that it is unallowable.

(d) *Examples of items of allowable cost.* Subject to the other provisions of this clause, the following examples of items of cost of work done under this contract shall be allowable to the extent indicated:

(1) *Bonds and insurance,* including self-insurance, as provided in the clause entitled "Required bonds and insurance—exclusive of Government property."

(2) *Communication costs,* including telephone services, local and long-distance calls, telegrams, cablegrams, radiograms, postage, and similar items.

(3) *Consulting services* (including legal and accounting), and related expenses, as approved by the Contracting Officer, except as made unallowable by paragraph (e) (26).

(4) *Litigation expenses,* including reasonable counsel fees, incurred in accordance with the clause of this contract entitled "Litigation and claims."

(5) *Losses and expenses* (including settlements made with the consent of the Contracting Officer) sustained by the contractor in the performance of this contract and certified in writing by the Contracting Officer to be just and reasonable, except the losses and expenses expressly made unallowable under other provisions of this contract.

(6) *Materials, supplies, and equipment,* including freight, transportation, material handling, inspection, storage, salvage, and other usual expenses incident to the procurement, use, and disposition thereof, subject to approvals required under other provisions of this contract.

(7) *Patents, purchased design, and royalty payments* to the extent expressly provided for under other provisions in this contract or as approved by the Contracting Officer; and preparation of invention disclosures, reports and related documents, and searching the art to the extent necessary to make such invention disclosures in accordance with the Patent clause of this contract.

(8) *Personnel costs and related expenses* incurred in accordance with Appendix A, or amendments thereto, such as:

(i) *Salaries and wages;* bonuses and incentive compensation; overtime, shift differential, holiday, and other premium pay for time worked; nonwork time, including vacations, holidays, sick, funeral, military, jury, witness, and voting leave; salaries and wages to employees in their capacity as union stewards and committeemen for time spent in handling grievances, or serving on labor management (contractor) committees: *Provided, however,* That the Contracting Officer's approval is required in each instance of total compensation to an individual employee at an annual rate of $_____[1] or more, when it is proposed that a total of 50 percent or more of such compensation be reimbursed under AEC cost-type contracts. Total compensation, as used here, includes only the employee's base salary and bonus and incentive compensation payments;

(ii) *Legally required contributions* to old-age and survivors' insurance, unemployment compensation plans, and workmen's compensation plans (whether or not covered by insurance); voluntary or agreed-upon plans providing benefits for retirement, separation, life insurance, hospitalization, medical-surgical and unemployment (whether or not such plans are covered by insurance);

(iii) *Travel* (except foreign travel, which requires specific approval by the Contracting Officer on a case-by-case basis); incidental subsistence and other allowances of contractor employees, in connection with performance of work under this contract (including new employees reporting for work and transfer of employees, the transfer of their household goods and effects and the travel and subsistence of their dependents);

(iv) *Employee relations, welfare, morale, etc., programs,* including incentive or suggestion awards, employee counseling services, health or first-aid clinics, and house or employee publications;

(v) *Personnel training* (except special education and training courses and research assignments calling for attendance at educational institutions which require specific approval by the Contracting Officer on a case-by-case basis), including apprenticeship training programs designed to improve efficiency and productivity of contract operations, to develop needed skills, and to develop scientific and technical personnel in specialized fields required in the contract work;

(vi) *Recruitment of personnel* (including help-wanted advertisement), including services of employment agencies at rates not in excess of standard commercial rates, employment office, travel of prospective employees at the request of the contractor for employment interviews; and

(vii) *Net cost of operating plantsite cafeterias,* dining rooms, and canteens attributable to the performance of the contract.

Appendix A may be modified from time to time, in writing, without execution of an amendment to this contract, for the purposes of effecting any changes in or additions to Appendix A as may be agreed upon by the parties.

NOTE: In appropriate circumstances, the lead sentence in subparagraph (8) may be changed to read as follows: Personnel costs and related expenses incurred in accordance with established policies, programs, and schedules, and any changes thereto during the contract term, applicable to the contractor's private operations and consistently followed throughout his organization, as approved by the Contracting Officer, such as:

Also, delete last paragraph of text which refers to modifying Appendix A.

(9) *Repairs, maintenance, inspection,* replacement and disposal of Government-owned property and the restoration or clean-up of site and facilities to the extent directed or approved by the Contracting Officer.

(10) *Subcontracts and purchase orders,* including procurements from contractor-controlled sources, subject to approvals required by other provisions of this contract.

(11) *Subscriptions* to trade, business, technical, and professional periodicals, as approved by the Contracting Officer.

(12) *Taxes, fees, and charges* levied by public agencies which the contractor is required by law to pay, *except* those which are expressly made unallowable under other provisions of this contract.

(13) *Utility services,* including electricity, gas, water, steam, and sewerage.

The following additional example of items is for use in contracts for the operation of AEC-owned facilities. Additional items for construction contracts are included under items (15), (16), and (17) below.

(14) *Establishment and maintenance of bank accounts* in connection with the work hereunder, including, but not limited to, service charges, the cost of disbursing cash, necessary guards, cashiers, and paymasters. If payments to employees are made by check,

[1] The specific dollar amount to be inserted here is subject to determination by the contracting officer, taking into account the cost principles and procedures set forth in Part 9-15, with specific reference to § 9-15.5010-14(d). In no event should the dollar amount be more than $25,000.

facilities and arrangements for cashing checks may be provided without expense to the employees, subject to the approval of the Contracting Officer.

The following additional examples of items are for use in construction contracts:

(15) *Camp operations*, to the extent approved by the Contracting Officer.

(16) *Maintenance, inspection*, repair, replacement, and transportation of construction plant and equipment, to the extent not covered by rentals or insurance and as provided in rental agreements approved by the Contracting Officer or in Appendix B.

(17) *Rental* for (i) construction plant and equipment rented by the contractor from others at rates and under written agreements approved by the Contracting Officer, and (ii) construction plant and equipment owned and furnished by the contractor under Appendix B to this contract.

(e) *Examples of items of unallowable costs.* The following examples of items of costs are unallowable under this contract to the extent indicated:

(1) *Advertising*, except (i) help-wanted advertising, and (ii) other advertising (such as costs of participation in exhibits) approved by the Contracting Officer as clearly in furtherance of work performed under the contract.

(2) *Bad debts* (including expenses of collection) and provisions for bad debts arising out of other business of the contractor.

(3) *Bidding expenses and costs of proposals.*

(4) *Bonuses* and similar compensation under any other name, which (i) are not pursuant to an agreement between the contractor and employee prior to the rendering of the services or an established plan consistently followed by the contractor, (ii) are in excess of those costs which are allowable by the Internal Revenue Code and regulations thereunder, or (iii) provide total compensation to an employee in excess of reasonable compensation for the services rendered.

(5) *Central and branch office expenses* of the contractor, except as specifically set forth in the contract.

(6) *Commissions, bonuses, and fees* (under whatever name) in connection with obtaining or negotiating for a Government contract or a modification thereto, except when paid to bona fide employees or bona fide established selling organizations maintained by the contractor for the purpose of obtaining Government business.

(7) *Contingency reserves*, provisions for.

(8) *Contributions and donations.*

(9) *Depreciation* in excess of that calculated by application of methods approved for use by the Internal Revenue Service under the Internal Revenue Code of 1954, as amended, including the straight-line, declining balance (using a rate not exceeding twice the rate which would have been used had the depreciation been computed under the straight-line method), or sum-of-the-years digits method, on the basis of expected useful life, to the cost of acquisition of the related fixed assets less estimated salvage on residual value at the end of the expected useful life.

(10) *Dividend provisions or payments* and, in the case of sole proprietors and partners, distributions of profit.

(11) *Entertainment costs*, except the costs of such recreational activities for onsite employees as may be approved by the Contracting Officer or provided for elsewhere in this contract.

(12) *Fines and penalties*, including assessed interest, resulting from violations of, or failure of the contractor to comply with, Federal, State, or local laws or regulations, except when incurred in accordance with the written approval of the Contracting Officer or as a result of compliance with the provisions of this contract.

(13) *Government-furnished property*, except to the extent that cash payment therefor is required pursuant to procedures of the Commission applicable to transfers of such property to the contractor from others.

(14) *Insurance* (including any provision of a self-insurance reserve) on any person where the contractor under the insurance policy is the beneficiary, directly or indirectly, and insurance against loss of or damage to Government property as defined in Clause _____.

(15) *Interest*, however represented (except interest incurred in compliance with the clause entitled "State and local taxes"), bond discounts and expenses, and costs of financing and refinancing operations.

(16) *Legal, accounting, and consulting services* and related costs incurred in connection with the preparation of prospectuses, preparation and issuance of stock rights, organization or reorganization, prosecution or defense of antitrust suits, prosecution of claims against the United States, contesting actions or proposed actions of the United States, and prosecution or defense of patent infringement litigation.

(17) *Losses* (including litigation expenses, counsel fees, and settlements) on, or arising from the sale, exchange, or abandonment of capital assets, including investments; losses on other contracts, including the contractor's contributed portion under cost-sharing contracts; losses in connection with price reductions to and discount purchases by employees and others from any source; and losses where such losses or expenses—

(i) Are compensated for by insurance or otherwise or which would have been compensated by insurance required by law or by written direction of the Contracting Officer but which the contractor failed to procure or maintain through its own fault or negligence;

(ii) Result from willful misconduct or lack of good faith on the part of any of the contractor's directors, corporate officers, or a supervising representative of the contractor, as defined in Clause _____ of this contract;

(iii) Represent liabilities to third persons for which the contractor has expressly accepted responsibility under other terms of this contract.

(18) *Maintenance, depreciation, and other costs* incidental to the contractor's idle or excess facilities (including machinery and equipment) other than reasonable standby facilities.

[NOTE: May be omitted when no contractor-owned equipment is being utilized in the performance of the contract.]

(19) *Membership* in trade, business, and professional organizations except as approved by the Contracting Officer.

(20) *Precontract costs*, except as expressly made allowable under other provisions in this contract.

(21) *Research and development costs*, unless specifically provided for elsewhere in this contract.

(22) *Selling costs*, except to the extent they are determined to be reasonable and to be allocable to the contract. Allocability of selling costs to the contract will be determined in the light of reasonable benefit to the agency program arising from such activities as technical, consulting, demonstration, and other services performed for such purposes as applying or adapting the contractor's product for agency use.

(23) *Storage of records* pertaining to this contract after completion of operations under this contract, irrespective of contractual or statutory requirement of the preservation of records.

(24) *Taxes, fees, and charges* in connection with financing, refinancing, or refunding operations, including the listing of securities on exchanges; taxes which are paid contrary to the clause entitled "State and local taxes"; taxes on net income and excess profits; and special assessments on land which represent capital improvement.

(25) *Travel expenses* of the officers, proprietors, executives, administrative heads and other employees of the contractor's central office or branch office organizations concerned with the general management, supervision and conduct of the contractor's business as a whole, except to the extent that particular travel is in connection with the contract and approved by the Contracting Officer.

(26) *Salary or other compensation* (and expenses related thereto) of any individual employed under this contract as a consultant or in another comparable employment capacity who is an employee of another organization and concurrently performing work on a full-time annual basis for that organization under a cost-type contract with the Commission, except to the extent that cash payment therefor is required pursuant to the provisions of this contract or procedure of the Commission applicable to the borrowing of such an individual from another cost-type contractor.

(27) *First-class air travel in excess of the cost of less than first-class air accomodations*, except when less than first-class accommodations are not reasonably available to meet necessary mission requirements, such as where less than first-class accommodations would:

(i) Require circuitous routing,

(ii) Require travel during unreasonable hours,

(iii) Greatly increase the duration of the flight,

(iv) Result in additional costs which would offset the transportation savings,

(v) Offer accommodations which are not reasonably adequate for the medical needs of the traveler.

(28) *Special construction industry "funds"* financed by employer contributions for such purposes as methods and materials research, public and industry relations, market development, and disaster relief, except as specifically provided elsewhere in this contract.

§ 9–7.5006–10 Allowable costs and fixed fee (supply contracts and research and development contracts with concerns other than educational institutions).

(a) *Compensation for contractor's services.* Payment for the allowable cost as hereinafter defined, and of the fixed fee, if any, as hereinafter provided shall constitute full and complete compensation for the performance of the work under this contract.

(b) *Fixed fee.* The fixed fee payable to the contractor for the performance of the work under this contract is $_____. There shall be no adjustment in the amount of the contractor's fixed fee by reason of differences between any estimate of cost for performance of the work under this contract and the actual cost for performance of that work.

NOTE: This provision may appropriately be changed to cover situations where the fee is for a period of time, or different fees are allowed for various phases of the work.

(c) *Allowable cost.* The allowable cost of performing the work under this contract shall be the costs and expenses that are actually incurred by the contractor, are applicable and properly chargeable, either as directly incident or as allocable through appropriate distribution or apportionment, to the performance of the contract work in accordance with its terms and are determined to be allowable pursuant to this paragraph (c). The determination of the allowability of cost hereunder shall be based on: (1) Reasonableness, including the exercise of prudent business judgment, (2) consistent application of generally accepted accounting

principles and practices that result in equitable charges to the contract work, and (3) recognition of all exclusions and limitations set forth in this clause or elsewhere in this contract as to types or amounts of items of cost. Allowable cost shall not include cost of any item described as unallowable in paragraph (e) of this clause, except as indicated therein. Failure to mention an item of cost specifically in paragraph (d) or paragraph (e) shall not imply either that it is allowable or that it is unallowable.

(d) *Examples of items of allowable cost.* Subject to the other provisions of this clause, the following examples of items of cost of work under this contract shall be allowable to the extent indicated:

(1) *Bonds and insurance* (including self-insurance) as provided in the clause entitled "Required bonds and insurance—exclusive of Government property."

(2) *Communication costs,* including telephone services, local and long-distance telephone calls, telegrams, cablegrams, radiograms, postage, and similar items.

(3) *Consulting services* (including legal and accounting) and related expenses, as approved by the Contracting Officer, except as made unallowable by paragraph (e)(24).

(4) *Litigation expenses,* including reasonable counsel fees, incurred in accordance with the clause of this contract entitled "Litigation and claims."

(5) *Losses and expenses* (including settlements made with the consent of the Contracting Officer) sustained by the contractor in the performance of this contract and certified in writing by the Contracting Officer to be just and reasonable, except the losses and expenses expressly made unallowable under other provisions of this contract.

(6) *Materials and supplies* (including those withdrawn from common stores costed in accordance with any generally recognized method that is consistently applied by the contractor and productive of equitable results).

(7) *Patents, purchased design, and royalty payments* to the extent expressly provided for under other provisions in this contract or as approved by the Contracting Officer; and preparation of invention disclosures, reports, and related documents, and searching the art to the extent necessary to make such invention disclosures in accordance with the Patent clause of this contract.

(8) *Personnel costs and related expenses* incurred in accordance with Appendix A, or amendments thereto, such as:

(i) *Salaries and wages;* bonuses and incentive compensation; overtime, shift differential, holiday, and other premium pay for time worked; nonwork time including vacations, holidays, sick, funeral, military, jury, witness, and voting leave; salaries and wages to employees in their capacity as union stewards and committeemen for time spent in handling grievances, or serving on labor management (contractor) committees: *Provided, however,* That the Contracting Officer's approval is required in each instance of total compensation to an individual employee at an annual rate of $_____[2] or more, when it is proposed that a total of 50 percent or more of such compensation be reimbursed under AEC cost-type contracts. Total compensation, as used here, includes only the employee's base salary and bonus and incentive compensation payments.

(ii) *Legally required contributions* to old-age and survivors' insurance, unemployment, compensation plans, and workmen's compensation plans (whether or not covered by insurance); voluntary or agreed-upon plans providing benefits for retirement, separation, life insurance, hospitalization, medical-surgical and unemployment (whether or not such plans are covered by insurance);

(iii) *Travel* (except foreign travel, which requires specific approval by the Contracting Officer on a case-by-case basis); incidental subsistence and other allowances of contractor employees, in connection with performance of work under this contract (including new employees reporting for work and transfer of employees, the transfer of their household goods and effects, and the travel and subsistence of their dependents);

(iv) *Employee relations, welfare, morale, etc., programs,* including incentive or suggestion awards, employee counseling services, health or first-aid clinics, and house or employee publications;

(v) *Personnel training* (except special education and training courses and research assignments calling for attendance at educational institutions which require specific approval by the Contracting Officer on a case-by-case basis) including apprenticeship training programs designed to improve efficiency and productivity of contract operations, to develop needed skills and to develop scientific and technical personnel in specialized fields required in the contract work;

(vi) *Recruitment of personnel* (including help-wanted advertisement) including services of employment agencies at rates not in excess of standard commercial rates, employment office, travel of prospective employees at the request of the contractor for employment interviews; and

(vii) *Net cost of operating plant-site cafeterias,* dining rooms, and canteens attributable to the performance of the contract.

Appendix A may be modified from time to time, in writing, without execution of an amendment to this contract for the purposes of effecting any changes in or additions to Appendix A as may be agreed upon by the parties.

NOTE: In appropriate circumstances, the lead sentence in subparagraph (8) may be changed to read as follows: "Personnel costs and related expenses incurred in accordance with established policies, programs, and schedules, and any changes thereto during the contract term, applicable to the contractor's private operations and consistently followed throughout his organization, as approved by the Contracting Officer, such as:"

Also, delete last paragraph of text which refers to modifying Appendix A.

(9) *Rentals and leases* of land, buildings, and equipment owned by third parties where such items are used in the performance of the contract, except that such rentals and leases directly chargeable to the contract shall be subject to approval by the Contracting Officer.

(10) *Repairs, maintenance, inspection,* replacement, and disposal of Government-owned property to the extent directed or approved by the Contracting Officer.

(11) *Repairs, maintenance and inspection* of contractor-owned property used in connection with the performance of this contract, including reasonable standby facilities, which are due to ordinary wear and tear from use and the action of the elements, provided such maintenance and repairs keep the property in efficient operating condition and do not add to its permanent value or appreciably prolong its intended useful life; and major repairs (including replacement) to such property, as directed or approved by the Contracting Officer when charged directly to the contract.

(12) *Special tooling,* including jigs, dies, fixtures, molds, patterns, designs and drawings, tools, and equipment of a specialized nature generally useful to the contractor only in the performance of this contract.

NOTE: Itemize any additional special equipment which may be appropriate, such as loops, mockups, experimental setups, etc.

(13) *Subcontracts, purchase orders,* and procurements from contractor-controlled sources, subject to approvals required by other provisions of this contract.

(14) *Subscriptions* to trade, business, technical, and professional periodicals, as approved by the Contracting Officer when charged directly to the contract.

(15) *Taxes, fees, and charges* levied by public agencies which the contractor is required by law to pay, *except* those which are expressly made unallowable under other provisions of this contract.

(16) *Utility services,* including electricity, gas, water, steam, and sewerage.

(17) *The costs of preparing bids and proposals,* to the extent approved by the Contracting Officer, but not to exceed 1 percent of the direct material and direct labor costs of the contract work.

(e) *Examples of items of unallowable costs.* The following examples of items of costs are unallowable under this contract to the extent indicated:

(1) *Advertising,* except (i) help-wanted advertising, and (ii) other advertising (such as costs of participation in exhibits) approved by the Contracting Officer as clearly in furtherance of work performed under the contract.

(2) *Bad debts* (including expenses of collection) and provisions for bad debts not arising out of the performance of this contract.

(3) *Bonuses* and similar compensation under any other name, which (i) are not pursuant to an agreement between the contractor and employee prior to the rendering of the services or an established plan consistently followed by the contractor, (ii) are in excess of those costs which are allowable by the Internal Revenue Code and regulations thereunder, or (iii) provide total compensation to an employee in excess of reasonable compensation for the services rendered.

(4) *Commissions, bonuses, and fees* (under whatever name) in connection with obtaining or negotiating for a Government contract or a modification thereto, except when paid to bona fide employees or bona fide established selling organizations maintained by the contractor for the purpose of obtaining Government business.

(5) *Contingency reserves,* provisions for (except provisions for reserves under a self-insurance program to the extent that the type, coverage, rates, and premiums would be allowable if commercial insurance were purchased to cover the same risk, as approved by the Contracting Officer).

(6) *Contributions and donations.*

(7) *Depreciation* in excess of that calculated by application of methods approved for use by the Internal Revenue Service under the Internal Revenue Code of 1954, as amended, including the straight-line, declining balance (using a rate not exceeding twice the rate which would have been used had the depreciation been computed under the straight-line method) or sum-of-the-years digits method, on the basis of expected useful life, to the cost of acquisition of the related fixed assets less estimated salvage or residual value at the end of the expected useful life. Amortization or depreciation of unrealized appreciation of values of assets or of assets fully amortized or depreciated on the contractor's books of account is unallowable.

[2] The specific dollar amount to be inserted here is subject to determination by the contracting officer, taking into account the cost principles and procedures set forth in Part 9–15, with specific reference to § 9–15.5010–14(d). In no event should the dollar amount be more than $25,000.

(8) *Dividend provisions or payments* and, in the case of sole proprietors and partners, distributions of profits.

(9) *Entertainment costs*, except the costs of such recreational activities for on-site employees as may be approved by the Contracting Officer or provided for elsewhere in this contract.

(10) *Fines and penalties*, including assessed interest, resulting from violations of, or failure of the contractor to comply with, Federal, State, or local laws, or regulations, except when incurred in accordance with written approval of the Contracting Officer or as a result of compliance with the provisions of this contract.

(11) *Government-furnished property*, except to the extent that cash payment therefor is required pursuant to procedures of the Commission applicable to transfers of such property to the contractor from others.

(12) *Insurance* (including any provision of a self-insurance reserve) on any person where the contractor under the insurance policy is the beneficiary, directly or indirectly, and insurance against loss of or damage to Government property as defined in Clause ———.

(13) *Interest*, however represented (except interest incurred in compliance with the clause entitled "State and local taxes"), bond discounts and expenses, and costs of financing and refinancing operations.

(14) *Legal, accounting, and consulting services*, and related costs incurred in connection with the preparation of prospectuses, preparation and issuance of stock rights, organization or reorganization, prosecution or defense of antitrust suits, prosecution of claims against the United States, contesting actions or proposed actions of the United States, and prosecution or defense of patent infringement litigation.

(15) *Losses* (including litigation expenses, counsel fees, and settlement) on, or arising from the sale, exchange, or abandonment of capital assets, including investments; losses on other contracts, including the contractor's contributed portion under cost-sharing contracts; losses in connection with price reduction to and discount purchases by employees and others from any source; and losses where such losses or expenses—

(i) Are compensated for by insurance or otherwise, or which would have been compensated by insurance required by law or by written direction of the Contracting Officer but which the contractor failed to procure or maintain through its own fault or negligence, or which could have been covered by permissible insurance in keeping with ordinary business practice but which the contractor failed to secure or maintain;

(ii) Result from willful misconduct or lack of good faith on the part of any of the contractor's directors, corporate officers, or a supervising representative of the contractor, as defined in Clause ——— of this contract;

(iii) Represent liabilities to third persons for which the contractor has expresly accepted responsibility under other terms of this contract.

(16) *Maintenance, depreciation, and other costs* incidental to the contractor's idle or excess facilities (including machinery and equipment) other than reasonable standby facilities.

(17) *Membership* in trade, business, and professional organizations except as approved by the Contracting Officer.

(18) *Precontract costs*, except as expresaly made allowable under other provisions in this contract.

(19) *Reconversion, alteration, restoration, or rehabilitation* of the contractor's facilities, except as expresaly provided elsewhere in this contract.

(20) *Research and development costs*, unless specifically provided for elsewhere in this contract.

(21) *Selling costs*, except to the extent they are determined to be reasonable and to be allocable to the contract. Allocability of selling costs to the contract will be determined in the light of reasonable benefit to the agency program arising from such activities as technical, consulting, demonstration, and other services performed for such purposes as applying or adapting the contractor's product for agency use.

(22) *Storage of records* pertaining to this contract after completion of operations under this contract irrespective of contractual or statutory requirement of the preservation of records.

(23) *Taxes, fees, and charges* in connection with financing, refinancing, or refunding operations, including the listing of securities on exchanges; taxes which are paid contrary to the clause entitled "State and local taxes"; Federal taxes on net income and excess profits; and special assessments on land which represent capital improvement.

(24) *Salary or other compensation* (and expenses related thereto) of any individual employed under this contract as a consultant or in another comparable employment capacity who is an employee of another organization and concurrently performing work on a full-time annual basis for that organization under a cost-type contract with the Commission, except to the extent that cash payment therefor is required pursuant to the provisions of this contract or procedures of the Commission applicable to the borrowing of such an individual from another cost-type contractor.

(25) *First-class air travel in excess of the cost of less than first-class air accommodations*, except when less than first-class accommodations are not reasonably available to meet necessary mission requirements, such as, where less than first-class accommodations would:

(i) Require circuitous routing,

(ii) Require travel during unreasonable hours,

(iii) Greatly increase the duration of the flight,

(iv) Result in additional costs which would offset the transportation savings,

(v) Offer accommodations which are not reasonably adequate for the medical needs of the traveler.

§ 9–7.5006–11 Allowable costs (research and development contracts with educational institutions).

(a) The Commission shall pay to the contractor for performance of this contract the allowable direct costs incident to its performance plus the allocable portion of the allowable indirect costs of the contractor, as determined in accordance with:

(1) Subpart 1–15.3 of the Federal Procurement Regulations, as that text is amended by the amendments to Bureau of the Budget Circular No. A–21 as of the date of commencement of the pertinent contract period set forth in Appendix A; and

NOTE: Subpart 1–15.3 of the FPR, along with the latest amendments to Bureau of the Budget Circular No. A–21, as of the date of execution of the contract, may be appended to the contract.

(2) The terms of this contract.

(b) In addition to other costs declared to be unallowable, the salary or other compensation (and expenses related thereto) of any individual employed under the contract as a consultant or in another comparable employment capacity who is an employee of another organization and concurrently performing work on a full-time annual basis for that organization under a cost-type contract with the Commission shall be unallowable, except to the extent that cash payment therefor is required pursuant to the provisions of the contract or procedures of the Commission applicable to the borrowing of such an individual from another cost-type contractor.

NOTE: When predetermined overhead rates are to be used, the following shall be added to the above clause (see § 9–15.103(c)):

(c) *Predetermined overhead rates.* Notwithstanding (a) above, the allowable indirect costs under this contract shall be obtained by applying predetermined overhead rates to bases agreed upon by the parties, as specified below:

(1) The contractor, as soon as possible, but not later than three (3) months after the expiration of each fiscal year, shall submit to the Contracting Officer, a proposed predetermined overhead rate or rates for use during the contract year based on the contractor's actual cost experience during the immediately preceding fiscal year, together with supporting cost data. Negotiation of predetermined overhead rates by the contractor and the Contracting Officer shall be undertaken as promptly as practicable after receipt of the contractor's proposal.

(2) Allowability of costs and acceptability of cost allocation methods shall be determined in accordance with the appended cost principles for research contracts with educational institutions.

(3) The results of each negotiation shall be set forth in an amendment to this contract and shall specify (i) the agreed predetermined overhead rates, (ii) the bases to which the rates apply, (iii) the fiscal year, unless the parties agree to a different period for which the rates apply, and (iv) the specific items treated as direct costs or any changes in the items previously agreed to be direct costs.

(4) Pending establishment of predetermined overhead rates for any fiscal year or different period agreed to by the parties, the contractor shall be reimbursed either at the rates fixed for the previous fiscal year or other period or at billing rates acceptable to the Contracting Officer subject to appropriate adjustment when the final rates for that fiscal year or other period are established.

(5) Any failure by the parties to agree on any predetermined overhead rate or rates under this clause shall not be considered a dispute concerning a question of fact for decision by the Contracting Officer within the meaning of the "Disputes" clause of this contract. If for any fiscal year or other period specified in this contract, the parties fail to agree to a predetermined overhead rate or rates prior to the close of the fiscal year for which they are being negotiated, it is agreed that the allowable indirect costs under this contract shall be determined by after-the-fact audit.

(6) Allowable indirect costs for the period until the end of the contractor's fiscal year during which performance begins shall be obtained by applying the predetermined overhead rate set forth in the contract to the bases set forth therein.

§ 9–7.5006–12 Allowable costs and fixed fee (architect-engineer contracts).

(a) *Compensation for contractor's services.* Payment for the allowable cost as hereinafter defined, and of the fixed fee, if any, as hereinafter provided shall constitute full and complete compensation for the performance of the work under this contract.

(b) *Fixed fee.* The fixed fee payable to the contractor for the performance of the work under this contract is $_____. There shall be no adjustment in the amount of the contractor's fixed fee by reason of differences between any estimate of cost for performance of the work under this contract and the actual cost for performance of that work.

NOTE: This provision may appropriately be changed to cover situations where the fee is for a period of time, or different fees are allowed for various phases of the work.

(c) *Allowable cost.* The allowable cost of performing the work under this contract shall be the costs and expenses that are actually incurred by the contractor, are applicable and properly chargeable, either as directly incident or as allocable through appropriate distribution or apportionment, to the performance of the contract work in accordance with its terms and are determined to be allowable pursuant to this paragraph (c). The determination of the allowability of cost hereunder shall be based on: (1) reasonableness, including the exercise of prudent business judgment, (2) consistent application of generally accepted accounting principles and practices that result in equitable charges to the contract work, and (3) recognition of all exclusions and limitations set forth in this clause or elsewhere in this contract as to types or amounts of items of cost. Allowable cost shall not include cost of any item described as unallowable in paragraph (e) of this clause, except as indicated therein. Failure to mention an item of cost specifically in paragraph (d) or paragraph (e) shall not imply either that it is allowable or that it is unallowable.

NOTE: This paragraph should be deleted and paragraph (c) of § 9–7.5006–9 inserted in lieu thereof for onsite architect-engineer contracts.

(d) *Examples of items of allowable cost.* Subject to the other provisions of this clause, the following examples of items of cost of work under this contract shall be allowable to the extent indicated:

(1) *Bonds and insurance* (including self-insurance) as provided in the clause entitled "Required bonds and insurance—exclusive of Government property."

(2) *Communication costs,* including telephone services, local, and long-distance telephone calls, telegrams, cablegrams, radiograms, postage, and similar items.

(3) *Consulting services* (including legal and accounting) and related expenses, as approved by the Contracting Officer, except as made unallowable by paragraph (e)(25).

(4) *Litigation expenses,* including reasonable counsel fees, incurred in accordance with the clause of this contract entitled "Litigation and claims."

(5) *Losses and expenses* (including settlements made with the consent of the Contracting Officer) sustained by the contractor in the performance of this contract and certified in writing by the Contracting Officer to be just and reasonable, except the losses and expenses expressly made unallowable under other provisions of this contract.

(6) *Materials, supplies, and equipment,* including freight, transportation, material handling, inspection, storage, salvage, and other usual expenses incident to the procurement, use, and disposition thereof, subject to approvals required under other provisions of this contract.

(7) *Patents, purchased design, and royalty payments* to the extent expressly provided for under other provisions in this contract or as approved by the Contracting Officer; and preparation of invention disclosures, reports, and related documents, and searching the art to the extent necessary to make such invention disclosures in accordance with the Patent clause of this contract.

(8) *Personnel costs* and related expenses incurred in accordance with appendix A, or amendments thereto, such as:

(i) *Salaries and wages;* bonuses and incentive compensation; overtime, shift differential, holiday, and other premium pay for time worked; nonwork time, including vacations, holidays, sick, funeral, military, jury, witness, and voting leave; salaries and wages to employees in their capacity as union stewards and committeemen for time spent in handling grievances, or serving on labor management (contractor) committees: *Provided, however,* That the Contracting Officer's approval is required in each instance of total compensation to an individual employee at an annual rate of $_____[3] or more, when it is proposed that a total of 50 percent or more of such compensation be reimbursed under AEC cost-type contracts. Total compensation, as used here, includes only the employee's base salary and bonus and incentive compensation payments.

(ii) *Legally required contributions* to old-age and survivors' insurance, unemployment compensation plans and workmen's compensation plans (whether or not covered by insurance); voluntary or agreed-upon plans providing benefits for retirement, separation, life insurance, hospitalization, medical-surgical and unemployment (whether or not such plans are covered by insurance);

(iii) *Travel* (except foreign travel, which requires specific approval by the Contracting Officer on a case-by-case basis); incidental subsistence and other allowances of contractor employees, in connection with performance of work under this contract (including new employees reporting for work and transfer of employees, the transfer of their household goods and effects, and the travel and subsistence of their dependents);

(iv) *Employee relations, welfare, morale, etc., programs,* including incentive or suggestion awards, employee counseling services, health or first-aid clinics, and house or employee publications;

(v) *Personnel training* (except special education and training courses and research assignments calling for attendance at educational institutions which require specific approval by the Contracting Officer on a case-by-case basis) including apprenticeship training programs designed to improve efficiency and productivity of contract operations, to develop needed skills, and to develop scientific and technical personnel in specialized fields required in the contract work; and

(vi) *Recruitment of personnel* (including help-wanted advertisement) including services of employment agencies at rates not in excess of standard commercial rates, employment office, travel of prospective employees at the request of the contractor for employment interviews.

Appendix A may be modified from time to time, in writing, without execution of an amendment to this contract for the purposes of effecting any changes in or additions to appendix A as may be agreed upon by the parties.

NOTE: In appropriate circumstances, the lead sentence in subparagraph (8) may be changed to read as follows: "*Personnel costs* and related expenses incurred in accordance with established policies, programs, and schedules, and any changes thereto during the contract term, applicable to the contractor's private operations and consistently followed throughout his organization, as approved by the Contracting Officer, such as:"

Also, delete last paragraph of text which refers to modifying appendix A.

(9) *Rentals and leases of land,* buildings, and equipment owned by third parties where such items are used in the performance of the contract, except that such rentals and leases when directly chargeable to the contract shall be subject to approval by the Contracting Officer.

(10) *Repairs, maintenance, inspection,* replacement, and disposal of Government-owned property to the extent directed or approved by the Contracting Officer.

(11) *Repairs, maintenance, and inspection* of contractor-owned property used in connection with the performance of this contract, including reasonable standby facilities, which are due to ordinary wear and tear from use and the action of the elements, provided such maintenance and repairs keep the property in efficient operating condition and do not add to its permanent value or appreciably prolong its intended useful life; and major repairs (including replacement) to such property, except that such major repairs when directly chargeable to the contract shall be subject to approval by the Contracting Officer.

(12) *Reproduction and art work,* including such models and mockups as may be approved by the Contracting Officer.

(13) *Structures and facilities* of a temporary nature as approved by the Contracting Officer.

(14) *Membership* in trade, business, and professional organizations, except that such memberships when directly chargeable to the contract shall be subject to approval by the Contracting Officer.

(15) *Subcontracts, purchase orders,* and procurements from contractor-controlled sources, subject to aprovals required by other provisions of this contract.

(16) *Subscriptions* to trade, business, technical, and professional periodicals, except that such subscriptions when directly chargeable to the contract shall be subject to approval by the Contracting Officer.

(17) *Taxes, fees, and charges* levied by public agencies which the contractor is required by law to pay, *except* those which are expressly made unallowable under other provisions of this contract.

(18) *Utility services,* including electricity, gas, water, steam, and sewerage.

(19) *The costs of preparing proposals* to the extent approved by the Contracting Officer, but not to exceed 1 percent of the direct material and direct labor costs of the contract work.

NOTE: This paragraph should be deleted for on-site architect-engineer contracts.

(e) *Examples of items of unallowable costs.* The following examples of items of costs are unallowable under this contract to the extent indicated:

(1) *Advertising,* except (i) help-wanted advertising, and (ii) other advertising (such as costs of participation in exhibits) approved by the Contractng Officer as clearly in furtherance of work performed under the contract.

(2) *Bad debts* (including expenses of collection) and provisions for bad debts not arising out of the performance of this contract.

(3) *Bonuses* and similar compensation under any other name, which (i) are not pursuant to an agreement between the contractor and employee prior to the rendering of the services or an established plan consistently followed by the contractor, (ii) are in excess of those costs which are allowable by the Internal Revenue Code and regulations thereunder, or (iii) provide total compensation to an employee in excess of reasonable compensation for the services rendered.

(4) *Commissions, bonuses, and fees* (under whatever name) in connection with obtaining or negotiating for a Government contract or a modification thereto, except when paid to bona fide employees or bona fide established selling organizations maintained by the contractor for the purpose of obtaining Government business.

(5) *Contingency reserves,* provisions for (except provisions for reserves under a self-insurance program to the extent that the type, coverage, rates, and premiums would be

[3] The specific dollar amount to be inserted here is subject to determination by the Contracting Officer, taking into account the cost principles and procedures set forth in Part 9–15, with specific reference to § 9–1510.10–14 (d). In no event should the dollar amount be more than $25,000.

allowable if commercial insurance were purchased to cover the same risk, as approved by the Contracting Officer).

(6) *Contributions and donations.*

(7) *Depreciation* in excess of that calculated by application of methods approved for use by the Internal Revenue Services under the Internal Revenue Code of 1954, as amended, including the straight-line, declining balance (using a rate not exceeding twice the rate which would have been used had the depreciation been computed under the straight-line method) or sum-of-the-years digits method, on the basis of expected useful life, to the cost of acquisition of the related fixed assets less estimated salvage or residual value at the end of the expected useful life. Amortization or depreciation of unrealized appreciation of values of assets or of assets fully amortized or depreciated on the contractor's books of account is unallowable.

(8) *Dividend provisions or payments* and, in the case of sole proprietors and partners, distributions of profits.

(9) *Entertainment costs*, except the costs of such recreational activities for on-site employees as may be approved by the Contracting Officer or provided for elsewhere in this contract.

(10) *Fines and penalties*, including assessed interest, resulting from violations of, or failure of the contractor to comply with, Federal, State, or local laws, or regulations, except when incurred in accordance with written approval of the Contracting Officer or as a result of compliance with the provisions of this contract.

(11) *Government-furnished property*, except to the extent that cash payment therefor is required pursuant to procedures of the Commission applicable to transfers of such property to the contractor from others.

(12) *Insurance* (including any provision of a self-insurance reserve) on any person where the contractor under the insurance policy is the beneficiary directly or indirectly, and insurance against loss of or damage to Government property as defined in Clause _____.

(13) *Interest*, however represented (except interest incurred in compliance with the clause entitled "State and local taxes"), bond discounts and expenses, and costs of financing and refinancing operations.

(14) *Legal, accounting, and consulting services* and related costs incurred in connection with the preparation of prospectuses, preparation and issuance of stock rights, organization or reorganization, prosecution or defense of antitrust suits, prosecution of claims against the United States, contesting actions or proposed actions of the United States, and prosecution or defense of patent infringement litigation.

(15) *Losses* (including litigation expenses, counsel fees, and settlements) on, or arising from the sale, exchange, or abandonment of capital assets, including investments; losses on other contracts, including the contractor's contributed portion under cost-sharing contracts; losses in connection with price reduction to and discount purchases by employees and others from any source; and losses where such losses or expenses:

(i) Are compensated for by insurance or otherwise, or which would have been compensated by insurance required by law or by written direction of the Contracting Officer but which the contractor failed to procure or maintain through its own fault or negligence, or which could have been covered by permissible insurance in keeping with ordinary business practice but which the contractor failed to secure or maintain;

(ii) Result from willful misconduct or lack of good faith on the part of any of the contractor's directors, corporate officers, or a supervising representative of the contractor, as defined in Clause _____ of this contract;

(iii) Represent liabilities to third persons for which the contractor has expressly accepted responsibility under other terms of this contract.

(16) *Precontract costs*, except as expressly made allowable under other provisions in this contract.

(17) *Reconversion, alteration, restoration, or rehabilitation* of the contractor's facilities, except as expressly provided elsewhere in this contract.

(18) *Research and development costs*, unless specifically provided for elsewhere in this contract.

(19) *Selling costs*, except to the extent they are determined to be reasonable and to be allocable to the contract. Allocability of selling costs to the contract will be determined in the light of reasonable benefit to the agency program arising from such activities as technical, consulting, demonstration, and other services performed for such purposes as applying or adapting the contractor's product for agency use.

(20) *Storage of records* pertaining to this contract after completion of operations under this contract irrespective of contractual or statutory requirement of the preservation of records.

(21) *Taxes, fees, and charges* in connection with financing, refinancing, or refunding operations, including the listing of securities on exchanges; taxes which are paid contrary to the clause entitled "State and local taxes"; Federal taxes on net income and excess profits; and special assessments on land which represent capital improvement.

(22) *Salary or other compensation* (and expenses related thereto) of any individual employed under this contract as a consultant or in another comparable employment capacity who is an employee of another organization and concurrently performing work on a full-time annual basis for that organization under a cost-type contract with the Commission, except to the extent that cash payment therefor is required pursuant to the provisions of this contract or procedures of the Commission applicable to the borrowing of such an individual from another cost-type contractor.

(23) *First-class air travel in excess of the cost of less than first-class air accommodations*, except when less than first-class accommodations are not reasonably available to meet necessary mission requirements, such as, where less than first-class accommodations would:

(i) Require circuitous routing.

(ii) Require travel during unreasonable hours.

(iii) Greatly increase the duration of the flight.

(iv) Result in additional costs which would offset the transportation savings.

(v) Offer accommodations which are not reasonably adequate for the medical needs of the traveler.

NOTE: The following additional examples of items of unallowable costs are to be used in on-site architect-engineer contracts:

(24) *Costs of preparing proposals.*

(25) *Central and branch office expenses* of the contractor, except as specifically set forth in the contract.

(26) *Travel expenses* of officers, partners, proprietors, executives, administrative heads, and other employees of the contractor's central office or branch office organization concerned with the general management, supervision, and conduct of the contractor's business as a whole, except to the extent that particular travel is in connection with the contract and approved by the Contracting Officer.

§ 9–7.5006–13 Drawings, designs, specifications.

All drawings, sketches, designs, design data, specifications, notebooks, technical and scientific data, and all photographs, negatives, reports, findings, recommendations, data and memoranda of every description relating thereto, as well as all copies of the foregoing relating to the work or any part thereof, shall be subject to inspection by the Commission at all reasonable times (for which inspection the proper facilities shall be afforded the Commission by the contractor and its subcontractors), shall be the property of the Government and may be used by the Government for any purpose whatsoever without any claim on the part of the contractor and its subcontractors and vendors for additional compensation and shall, subject to the right of the contractor to retain a copy of said material for its own use, be delivered to the Government, or otherwise disposed of by the contractor either as the Contracting Officer may from time to time direct during the progress of the work or in any event as the Contracting Officer shall direct upon completion or termination of this contract. The contractor's right of retention and use shall be subject to the security, patent, and use of information provisions, if any, of this contract.

§ 9–7.5006–14 Obligation of funds, estimates of cost (other than operating contracts).

(a) *Obligation of funds.* The amount presently obligated by the Government with respect to the contract is _____ dollars ($_____). Such amount may be increased unilaterally by the Commission by written notice to the contractor and may be increased or decreased by written agreement of the parties (whether or not by formal modification of this contract). Payments by the Government under this contract on account of allowable costs shall not in the aggregate exceed the amount obligated with respect to this contract, less the contractor's fixed fee.

(b) *Notices—Contractor excused pending increase when obligation is reached.* Whenever the contractor has reason to believe that the total cost of the work under this contract (exclusive of the contractor's fixed fee) will be greater or substantially less than the presently estimated cost of the work, the contractor shall promptly notify the Contracting Officer in writing. [In contracts which are fully obligated, substitute the words "amount obligated with respect to this contract less the contractor's fixed fee" for the words "presently estimated cost of the work."] The contractor shall also notify the Contracting Officer in writing when the aggregate of expenditures plus outstanding commitments and liabilities allowable under this contract, including the contractor's fixed fee, is equal to ninety percent (90%) (or such other percentage as the Contracting Officer may from time to time establish by notice to the contractor) of the amount then obligated with respect to this contract. When such expenditures and outstanding commitments and liabilities, including the contractor's fixed fee, equal one hundred percent (100%) of such amount, the contractor shall immediately notify the Contracting Officer and shall make no further commitments or expenditures (except to meet existing commitments and liabilities) and shall be excused from further performance of the work unless and until the Contracting Officer thereafter shall increase the amount obligated with respect to this contract.

(c) *Government's right to terminate not affected.* The giving of any notice by either

party under this article shall not be construed to waive or impair any right of the Government to terminate the contract under the provisions of the article entitled "Termination."

(d) *Estimates of cost.* The presently estimated cost of the work under this contract is _____ dollars ($_____) exclusive of the contractor's fixed fee.

NOTE A: The following sentence may be substituted for the second sentence of paragraph (b) above: "The contractor shall also notify the Contracting Officer in writing when the aggregate of expenditures plus outstanding commitments and liabilities allowable under this contract, including the contractor's fixed fee, leaves available funds sufficient to continue contract performance for only _____ days (or such other period as the Contracting Officer may from time to time establish by notice to the contractor)."

NOTE B: In contracts where revenues and receipts are anticipated and such revenues and receipts are to be available and used for payment of allowable costs, paragraphs (a) and (b) above should be changed with the approval of counsel to provide for such revenues and receipts in a manner similar to paragraphs (a) and (c), respectively, of § 9-7.5006-15.

NOTE C: In certain types of contractual situations (e.g., multiperiod of multiphase contracts), it may be necessary to identify a controlling feature (e.g., period or phase) with its related estimated cost; in such event, changes may be made in paragraph (d) above to appropriately identify the controlling feature.

§ 9-7.5006-15 Obligation of funds (operating contracts).

(a) *Obligation of funds.* The amount presently obligated by the Government with respect to this contract is _____ dollars ($_____). Such amount may be increased unilaterally by the Commission by written notice to the Contractor and may be increased or decreased by written agreement of the parties (whether or not by formal modification of this contract). Estimated revenues and receipts from others for work and services to be performed under this contract are not included in the amount obligated with respect to this contract. Such revenues and receipts, to the extent actually received by the Contractor, shall be available and used for the payment of allowable costs as provided in the article entitled "Payments and advances." Nothing in this paragraph (a) is to be construed as authorizing the Contractor to exceed limitations stated in financial plans established by the Commission and furnished to the Contractor from time to time under this contract.

(b) *Limitation on payment by the Government.* Except as otherwise provided in this contract and except for costs which may be incurred by the Contractor pursuant to the article entitled "Termination" or costs of claims allowable under the contract accruing after completion or termination and not released by the Contractor at the time of financial settlement of the contract in accordance with the article entitled "Payments and advances," payment by the Government under this contract on account of allowable costs shall not in the aggregate exceed the amount obligated with respect to this contract, less the Contractor's fixed fee. Unless expressly negated in this contract, payment on account of those costs excepted in the preceding sentence which are in excess of the amount obligated with respect to this contract shall be subject to the availability of (1) revenues and receipts deposited to the Government's account as provided in the article entitled "Payments and advances," and (2) other funds which the Commission may legally use for such purpose: *Provided*, The Commission will use its best efforts to obtain the appropriation of funds for this purpose if not otherwise available.

(c) *Notices—Contractor excused from further performance.* The Contractor shall notify the Commission in writing whenever the unexpended balance of funds (including revenues and receipts) available under paragraph (a) above, plus the Contractor's best estimate of revenues and receipts to be received during the _____ day period hereinafter specified, is in the Contractor's best judgment sufficient to continue contract operations at the programed rate for only _____ days and to cover the Contractor's unpaid fixed fee, and outstanding commitments and liabilities on account of costs allowable under the contract at the end of such period. Whenever the unexpended balance of funds (including revenues and receipts) available under paragraph (a) above, less the amount of the Contractor's fixed fee then earned but not paid, is in the Contractor's best judgment either sufficient only to liquidate outstanding commitments and liabilities on account of costs allowable under this contract or is equal to zero, the Contractor shall immediately notify the Commission and shall make no further commitments or expenditures (except to liquidate existing commitments and liabilities), and, unless the parties otherwise agree, the Contractor shall be excused from further performance (except such performance as may become necessary in connection with termination by the Government) and the performance of all work hereunder will be deemed to have been terminated for the convenience of the Government in accordance with the provisions of the article entitled "Termination."

(d) *Financial plans; cost and commitment limitations.* In addition to the limitations provided for elsewhere in this contract, the Commission may, through Financial Plans or other directives issued to the Contractor, establish controls on the costs to be incurred and commitments to be made in the performance of the contract work. Such plans and instructions may be amended or supplemented from time to time by the Commission. The Contractor hereby agrees to comply with the specific limitations (ceilings) on costs and commitments set forth in such plans and directives, to use its best efforts to comply with the other requirements of such plans and directives, and to promptly notify the Commission in writing whenever it has reason to believe the authorized financial levels of costs and commitments will be exceeded or substantially underrun.

NOTE: This paragraph (d) may be omitted in contracts which expressly or otherwise provide a contractual basis for equivalent controls in a separate article.

(e) *Government's right to terminate not affected.* The giving of any notice under this article shall not be construed to waive or impair any right of the Government to terminate the contract under the provisions of the article entitled "Termination."

§ 9-7.5006-16 Background patent rights and background technical data.

See § 9-9.5008.

§ 9-7.5006-17 Patents contractor held harmless.

See § 9-9.5010.

§ 9-7.5006-18 Patent indemnity.

See § 9-9.5009.

§ 9-7.5006-19 Patent provisions Type A.

See § 9-9.5003.

§ 9-7.5006-20 Patent provisions Type B.

See § 9-9.5004.

§ 9-7.5006-21 Patent provisions Type C.

See § 9-9.5005.

§ 9-7.5006-22 Patents—reporting of royalties.

See § 9-9.5011.

§ 9-7.5006-23 Payments and advances (cost-type contracts where funds are advanced by AEC).

(a) *Installments of fixed fee.* Ninety percent (90%) of the fixed fee shall become due and payable in periodic installments in amounts based on the proportion of the work then completed, as determined by the Contracting Officer, and the balance upon completion and acceptance of all work under this contract.

NOTE A: For operating contracts use: "The fixed fee provided for in Clause _____ shall be paid in equal monthly installments as it accrues."

NOTE B: Where a separate fixed fee is provided for a separate item of work, this subparagraph should be modified to permit payment of the entire fixed fee upon completion of that item.

(b) *Payments on Account of Allowable Costs.* The Contracting Officer and the contractor shall agree as to the extent to which payment for allowable costs or payments for other items specifically approved in writing by the Contracting Officer shall be made from advances of Government funds.

(c) *Special Bank Account—Use.* All advances of Government funds shall be withdrawn pursuant to a letter of credit in favor of the contractor or, in the option of the Government, shall be made by check payable to the contractor, and shall be deposited only in the Special Bank Account referred to in the Agreement for Special Bank Account, which is attached hereto and incorporated into this contract as an appendix. The contractor shall likewise deposit in the Special Bank Account any other revenues received by the contractor in connection with the work under this contract. No part of the funds in the Special Bank Account shall be (1) mingled with any funds of the contractor or (2) used for a purpose other than that of making payments for costs allowable under this contract or payments for other items specifically approved in writing by the Contracting Officer. If the Contracting Officer shall at any time determine that the balance on such bank account exceeds the contractor's current needs, the contractor shall promptly make such disposition of the excess as the Contracting Officer may direct.

NOTE: For Special Bank Account Agreement, see § 9-7.5006-24.

(d) *Title to funds advanced.* Title to the unexpended balance of any funds advanced and of any bank account established pursuant to this clause shall remain in the Government and be superior to any claim or lien of the bank of deposit or others. It is understood that an advance to the contractor hereunder is not a loan to the contractor, and will not require the payment of interest by the contractor, and that the contractor acquires no right, title or interest in or to such advance other than the right to make expenditures therefrom as provided in this clause.

(e) *Review and approval of costs incurred.* The contractor shall prepare and submit annually as of June 30 a voucher, for the total of net expenditures accrued (i.e., net costs incurred) for the period covered by the voucher, and the Commission, after audit and appropriate adjustment, will approve

such voucher. This approval by the Commission will constitute an acknowledgment by the Commission that the net costs incurred are allowable under the contract and that they have been recorded in the accounts maintained by the contractor in accordance with the Commission accounting policies, but will not relieve the contractor of responsibility for the Commission's assets in its care, for appropriate subsequent adjustments, or for errors later becoming known to the Commission.

NOTE: This paragraph (e) should be omitted in contracts with nonintegrated contractors.

(f) *Financial settlement.* The Government shall promptly pay to the contractor the unpaid balance of allowable costs and fixed fee upon termination of the work, expiration of the term of the contract, or completion of the work and its acceptance by the Government after (1) compliance by the contractor with the Commission's patent clearance requirements, and (2) the furnishing by the contractor of:

(1) An assignment of the contractor's rights to any refunds, rebates, allowances, accounts receivable, or other credits applicable to allowable costs under the contract;

(2) A closing financial statement; and

(3) The accounting for Government-owned property required by the clause entitled "Property."

(4) A release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract, subject only to the following exceptions:

(i) Specified claims in stated amounts or in estimated amounts where the amounts are not susceptible of exact statement by the contractor;

(ii) Claims, together with reasonable expenses incidental thereto, based upon liabilities of the contractor to third parties arising out of the performance of this contract; provided that such claims are not known to the contractor on the date of the execution of the release; and provided further that the contractor gives notice of such claims in writing to the Contracting Officer not more than six (6) years after the date of the release or the date of any notice to the contractor that the Government is prepared to make final payment, whichever is earlier; and

(iii) Claims for reimbursement of costs (other than expenses of the contractor by reason of any indemnification of the Government against patent liability), including reasonable expenses incidental thereto, incurred by the contractor under the provisions of this contract relating to patents.

In arriving at the amount due the contractor under this clause, there shall be deducted (1) any claim which the Government may have against the contractor in connection with this contract, and (2) deductions due under the terms of this contract, and not otherwise recovered by or credited to the Government. The unliquidated balance of the Special Bank Account may be applied to the amount due and any balance shall be returned to the Government forthwith.

(g) *Claims.* Claims for credit against funds advanced or for payment shall be accompanied by such supporting documents and justification as the Contracting Officer shall prescribe.

(h) *Discounts.* The contractor shall take and afford the Government the advantage of all known and available cash and trade discounts, rebates, allowances, credits, salvage, and commissions unless the Contracting Officer finds that such action is not in the best interest of the Government.

(i) *Revenues.* All revenues other than the contractor's fixed fee or fees, if any, accruing to the contractor in connection with the work under this contract shall be Government property and shall be deposited in the Special Bank Account to be available for payment of allowable cost under this contract.

(j) *Direct payment of charges—deductions.* The Government reserves the right, upon ten days' written notice from the Contracting Officer to the contractor, to pay directly to the persons concerned all amounts due which otherwise would be allowable under this contract. Any payment so made shall discharge the Government of all liability to the contractor therefor.

§ 9–7.5006–24 Special bank account agreement.

Agreement entered into this _____ day of _____, 196__, between the United States of America (hereinafter called the Government), represented herein by the United States Atomic Energy Commission (hereinafter called the "Commission"), _____, hereinafter called the 'Contractor,' a corporation under the laws of the State of _____, and _____, hereinafter called the Bank, a banking corporation under the laws of _____; located at _____.

RECITALS

(a) Under date of _____, 196__, the Commission and the Contractor entered into Contract(s) No. _____, or a Supplemental Agreement thereto, providing for the making of advances of Government funds to the Contractor. Copy of such advance provisions has been furnished to the Bank.

(b) The Commission requires that amounts advanced to the Contractor under said contract or Supplemental Agreement be deposited in a Special Bank Account or accounts with a bank designated by the Treasury Department as a depositary and financial agent of the Government (Section 10 of the Act of June 11, 1942, 56 Stat. 356; 12 U.S.C. 265), separate from any of the Contractor's general or other funds; and, the Bank being such a bank, the parties are agreeable to so depositing said amounts with the Bank.

(c) This Special Bank Account shall be designated

"_____, _____,
(Name of Contractor) (Contract No.)

United States Atomic Energy Commission Special Bank Account."

COVENANTS

In consideration of the foregoing, and for other good and valuable considerations, it is agreed that;

(1) The Government shall have title to the credit balance in said account to secure the return of all advances made to the Contractor, which title shall be superior to any lien or claim of the Bank or others with respect to such account.

(2) The Bank will be bound by the provisions of said contract or contracts relating to the deposit and withdrawal of funds in the above Special Bank Account, but shall not be responsible for the application of funds properly withdrawn from said account. After receipt by the Bank of written directions from the Contracting Officer, or from the duly authorized representative of the Contracting Officer or the Manager of the _____ Operations Office of the Commission, the Bank shall act thereon and shall be under no liability to any party hereto for any action taken in accordance with the said written directions.

(3) The Government, or its authorized representatives, shall have access to the books and records maintained by the Bank with respect to such Special Bank Account at all reasonable times and for all reasonable purposes, including, without limitation, the inspection or copying of such books and records and any and all memoranda, checks, correspondence, or documents appertaining thereto. Except as agreed upon by the Government and the Bank, all books and records pertaining to the Special Bank Account in the possession of the Bank relating to the Special Bank Account agreement shall be preserved by the Bank for a period of three (3) years after final payment under the contract to which the Special Bank Account agreement pertains or otherwise disposed of in such manner as may be agreed upon by the Government and the Bank.

(4) In the event of the service of any writ of attachment, levy of execution, or commencement of garnishment proceedings with respect to the Special Bank Account, the Bank will promptly notify the Manager, _____ Operations Office, United States Atomic Energy Commission. In witness whereof the parties hereto have caused this Agreement to be executed as of the day and year first above written.

_____
(Signatures and official titles)

§ 9–7.5006–25 Payments (cost-type contracts where funds are not advanced).

(a) *Payments on account of allowable costs.* Once each month (or at more frequent intervals, if approved by the Contracting Officer) the contractor may submit to the Contracting Officer, in such form and reasonable detail as he may require, an invoice or voucher supported by a statement of cost incurred by the contractor in the performance of this contract and claimed to constitute allowable costs. Promptly after receipt of each invoice or voucher the Government shall, subject to the provisions of (c) below, make payment thereon as approved by the Contracting Officer.

NOTE: For supply-type contracts make last sentence read "make payment to the extent of 90% thereon."

(b) *Payments on account of fixed fee.* The fixed fee shall become due and payable in periodic installments in amounts based on the proportion of the work then completed as determined by the Contracting Officer. In making such periodic payments there shall be retained (10 or 15) percent from each payment which retained amounts shall be paid upon completion and acceptance of all work under this contract; provided, however, that the Contracting Officer may at any time the amount of the retained fixed fee equals One Hundred Thousand Dollars ($100,000) make payments of any of the remaining periodic installments of the fixed fee in full.

(c) *Audit adjustments.* At any time or times prior to settlement under this contract the Contracting Officer may have invoices or vouchers and statements of cost audited. Each payment theretofore made shall be subject to reduction for amounts included in the related invoice or voucher which are found by the Contracting Officer, on the basis of such audit, not to constitute allowable cost. Any payment may be reduced for overpayments, or increased for underpayments, on preceding invoices or vouchers.

(d) *Completion voucher.* On receipt and approval of the invoice or voucher designated by the contractor as the "completion invoice" or "completion voucher" and upon compliance by the contractor with all the provisions of this contract (including, without limitation, the provisions relating to patents and provisions of (f) below) the Government shall promptly pay to the contractor any balance of allowable cost, and any part of the fixed fee which has been withheld pursuant to (b) above or otherwise not paid to the contractor. The completion invoice or voucher shall be submitted by the contractor promptly following completion of the work under this contract but in no event later than one (1) year (unless within the

year the Contracting Officer grants a further specific period of time) from the date of such completion.

(e) *Applicable credits.* The contractor agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the contractor or any assignee under this contract shall be paid by the contractor to the Government, to the extent that they are properly allocable to costs for which the contractor has been reimbursed by the Government under this contract. Reasonable expenses incurred by the contractor for the purpose of securing such refunds, rebates, credits, or other amounts shall be allowable costs hereunder when approved by the Contracting Officer.

(f) *Financial settlement.* Prior to final payment under this contract, the contractor and each assignee under this contract whose assignment is in effect at the time of final payment under this contract shall execute and deliver:

(1) An assignment to the Government in form and substance satisfactory to the Contracting Officer of refunds, rebates, credits, or other amounts (including any interest thereon) properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract; and

(2) A release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract, subject only to the following exceptions:

(i) Specified claims in stated amounts or in estimated amounts where the amounts are not susceptible of exact statement by the contractor;

(ii) Claims, together with reasonable expenses incidental thereto, based upon liabilities of the contractor to third parties arising out of performance of this contract: *Provided,* That such claims are not known to the contractor on the date of the execution of the release: *And provided further,* That the contractor gives notice of such claims in writing to the Contracting Officer not more than six (6) years after the date of the release or the date of any notice to the contractor that the Government is prepared to make final payment, whichever is earlier; and

(iii) Claims for reimbursement of costs (other than expenses of the contractor by reason of any indemnification of the Government against patent liability), including reasonable expenses incidental thereto, incurred by the contractor under the provisions of this contract relating to patents.

§ 9–7.5006–26 Property (CPFF).

(a) *Furnishing of Government property.* The Government reserves the right to furnish any property or services required for the performance of the work under this contract.

(b) *Title to property.* Title to all property furnished by the Government shall remain in the Government except as otherwise provided in this article. Except as otherwise provided by the Contracting Officer, title to all materials, equipment, supplies, and tangible personal property of every kind and description purchased by the Contractor, for the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass directly from the vendor to the Government. The Government reserves the right to inspect, and to accept or reject, any item of such property. The Contractor shall make such disposition of rejected items as the Contracting Officer shall direct. Title to other property, the cost of which is reimbursable to the Contractor under this contract, shall pass to and vest in the Government upon (i) issuance for use of such property in the performance of this contract, or (ii) commencement of processing or use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by the Government, whichever first occurs. Property furnished by the Government and property purchased or furnished by the Contractor, title to which vests in the Government, under this paragraph are hereinafter referred to as Government Property. Title to Government Property shall not be affected by the incorporation of the property into or the attachment of it to any property not owned by the Government, nor shall such Government Property or any part thereof, be or become a fixture or lose its identity as personalty by reason of affixation to any realty.

(c) *Identification.* To the extent directed by the Contracting Officer, the Contractor shall identify Government Property coming into the Contractor's possession or custody by marking or segregating in such a way, satisfactory to the Contracting Officer, as shall indicate its ownership by the Government.

(d) *Disposition.* The Contractor shall make such disposition of Government Property which has come into the possession or custody of the Contractor under this contract as the Contracting Officer shall direct. When authorized in writing by the Contracting Officer during the progress of the work or upon completion or termination of this contract, the Contractor may, upon such terms and conditions as the Contracting Officer may approve, sell or exchange such property, or acquire such property at a price agreed upon by the Contracting Officer and the Contractor as the fair value thereof. The amount received by the Contractor as the result of any disposition, or the amount of the agreed fair value of any such property acquired by the Contractor, shall be applied in reduction of cost allowable under this contract or shall be otherwise credited to account of the Government, as the Contracting Officer may direct. Upon completion of the work or the termination of this contract, the Contractor shall render an accounting, as prescribed by the Contracting Officer, of all Government Property which had come into the possession or custody of the Contractor under this contract.

(e) *Protection of Government Property—Classified Materials.* The Contractor shall take all reasonable precautions, as directed by the Contracting Officer, or in the absence of such directions in accordance with sound industrial practice, to safeguard and protect Government Property in the Contractor's possession or custody. Special measures shall be taken by the Contractor in the protection of and accounting for any classified or special materials involved in the performance of this contract, in accordance with the regulations and requirements of the Commission.

(f) *Risk of loss of Government property.* The Contractor shall not be liable for loss or destruction of or damage to Government Property in the Contractor's possession unless such loss, destruction or damage results from wilful misconduct or lack of good faith on the part of the Contractor's managerial personnel, or unless such loss, destruction or damage results from a failure on the part of the Contractor's managerial personnel, to take all reasonable steps to comply with any appropriate written directives of the Contracting Officer to safeguard such property under paragraph (e) hereof. The term "Contractor's managerial personnel" as used herein means the Contractor's directors, officers and any of its managers, superintendents, or other equivalent representatives who have supervision or direction of (1) all or substantially all of the Contractor's business; or (2) all or substantially all of the Contractor's operation at any one plant or separate location at which this contract is being performed; or (3) a separate and complete major industrial operation in connection with the performance of this contract; or (4) a separate and complete major construction, alteration or repair operation in connection with performance of this contract.

(g) *Steps to be taken in event of loss.* Upon the happening of any loss or destruction of or damage to Government Property in the possession or custody of the Contractor, the Contractor shall immediately inform the Contracting Officer of the occasion and extent thereof, shall take all reasonable steps to protect the property remaining, and shall repair or replace the lost, destroyed, or damaged property, if and as directed by the Contracting Officer, but shall take no action prejudicial to the right of the Government to recover therefor and shall furnish to the Government, on request, all reasonable assistance in obtaining recovery.

(h) *Government property for Government use only.* Government Property shall be used only for the performance of this contract.

§ 9–7.5006–27 Property (fixed price).

(a) (1) (For use in contracts involving Government-furnished property.) The delivery (construction) schedules set forth in this contract are based upon the expectation that the Government-furnished property referred to in Schedule _____ of this contract will be delivered on or before _____. In the event that such Government-furnished property is not delivered to the Contractor by such time, the Contracting Officer shall, if requested by the Contractor, determine if any delay has been occasioned the Contractor thereby, and if so shall grant a reasonable extension of the time for completion of performance. The Government shall not be liable to the Contractor for damages or loss of profit by reason of any delay in delivery of said Government-furnished property, except that in case of such delay, upon written request of the Contractor, an equitable adjustment shall be made in the delivery (construction) schedule of this contract, or price, or both, and in other contractual provisions affected thereby, in accordance with the procedures provided for in the article entitled "Changes."

(2) (For use in contracts involving Contractor-acquired property.) In connection with its work under this contract, the Contractor shall, within _____ acquire or manufacture for the Government's account the property listed in Schedule _____ attached hereto (hereinafter referred to as Contractor-acquired property). Such property shall be installed by the Contractor in _____, or if approved in writing by the Contracting Officer, in the plants of subcontractors. The Contractor shall insert provisions in all subcontracts under which such property is furnished to the subcontractors whereby there will be made applicable to the Government and the subcontractors substantially the same rights and obligations in respect to such property as are made applicable to the Government and the Contractor under this article.

(b) Title to all Government-furnished or Contractor-acquired property shall remain in the Government. Title thereto shall not be affected by the incorporation or attachment thereof to any property not owned by the Government, nor shall any such property, or any part thereof, be or become a fixture or lose its identity as personalty by reason of affixation to any realty. The Contractor shall maintain adequate property control records of such property consistent with good business practice and as may be prescribed by the Contracting Officer; and shall cause all such property to be clearly marked (if not so marked) to show that it is property of the Government.

(c) Government-furnished or Contractor-acquired property shall be used only for the performance of this contract.

(d) The Contractor shall, in accordance with sound industrial practice and without additional cost to the Government, maintain in operating condition, repair, protect, and preserve such Government-furnished or Contractor-acquired property until disposed of by the Contractor in accordance with this article. Should any replacement of any such property become necessary during the term of this contract other than by reason of the negligence or fault of the Contractor, the same shall be made by the Contractor at the direction of and for the account of the Commission and the title thereto shall vest in the Government and any delay occasioned thereby shall be considered an excusable delay under this contract.

(e) (1) Except for loss or destruction of, or damage to, Government-furnished or Contractor-acquired property resulting from a failure of the Contractor, due to wilful misconduct or lack of good faith of the Contractor's managerial personnel to maintain in operating condition, repair, protect, and preserve such property as required by subparagraph (d) hereof, the Contractor shall not be liable for loss or destruction of, or damage to, such property (i) caused by any peril while the property is in transit off the Contractor's premises, or (ii) caused by any of the following perils while the property is on the Contractor's premises, or on any other premises where such property may properly be located, or by removal therefrom because of any of the following perils:

"Fire; lightning; windstorm; cyclone; tornado; hail; explosion; riot attending a strike; civil commotion; vandalism and malicious mischief; aircraft or objects falling therefrom; vehicles running on land or tracks (excluding vehicles owned or operated by the Contractor or any agent or employee of the Contractor); smoke; sprinkler leakage; earthquake or volcanic eruption; flood, meaning thereby rising of rivers or streams; enemy attack or any action by the military, navy, or air forces of the United States in resisting enemy attack."

The perils as set forth above are hereinafter called "excepted perils."

The term "Contractor's managerial personnel," as used in this article, means the Contractor's directors, officers, and such of its managers, superintendents, or other equivalent representatives who have supervision or direction of (1) all of or substantially all of the Contractor's business; or (2) all or substantially all of the Contractor's operation at any one plant or separate location at which the work is being performed; or (3) a separate or complete major industrial operation in connection with performance of the contract; or (4) a separate and complete major construction, alteration, or repair operation in connection with performance of the contract.

(2) Upon the happening of loss or destruction of, or damage to, Government-furnished or Contractor-acquired property, the Contractor shall communicate with the Contracting Officer and shall take all reasonable steps to protect such property, put all such property in the best possible order, and furnish to the Contracting Officer a statement of (i) the lost, destroyed, and damaged Government-furnished or Contractor-acquired property, (ii) the time and origin of the loss, destruction, or damage, (iii) all known interests in the commingled property of which such is a part, and (iv) the insurance, if any, covering any part of or interest in such commingled property.

(3) With the approval of the Contracting Officer after loss or destruction of, or damage to, the Government-furnished or Contractor-acquired property, and subject to such conditions and limitations as may be imposed by the Contracting Officer, the Contractor shall, in order to minimize the loss to the Government or in order to permit resumption of business or the like, sell for the account of the Government, any item of such property which has been damaged beyond practicable repair, or which is so commingled or combined with property of others, including the Contractor, that separation is impracticable.

(4) Except to the extent of any loss or destruction, or damage to, Government-furnished or Contractor-acquired property for which the Contractor is relieved of liability under the foregoing provisions of this paragraph, and except for reasonable wear and tear or depreciation, or the utilization or disposition of such property in accordance with the provisions of this contract, the property shall be returned to the Government in as good condition as when received by the Contractor.

(5) In the event the Contractor is indemnified, reimbursed, or compensated for any loss or destruction of, or damage to Government-furnished or Contractor-acquired property caused by an excepted peril, it shall equitably reimburse the Government. The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any such loss, destruction or damage and upon the request of the Contracting Officer shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including the prosecution of suits, and the execution of instructions of assignment in favor of the Government) in obtaining recovery (note A).

(f) The Government shall at all times have access to the premises wherein any Government-furnished or Contractor-acquired property is located.

(g) Upon the completion of this contract, the Contractor shall submit, in a form acceptable to the Contracting Officer, inventory schedules covering all items of Government-furnished or Contractor-acquired property not consumed in the performance of this contract (including any resulting scrap), or not theretofore delivered to the Government, and shall hold the same at no charge to the Commission for a period of 60 days, unless the period of time is extended by mutual agreement. At the expiration of such period or upon the Contracting Officer's earlier order the Contractor shall dismantle, prepare for shipment and shall store or deliver said property to the Commission on cars or trucks at Contractor's plant at the expense of the Commission, or make such other disposal of said property as may be directed by the Contracting Officer. The net proceeds of any such disposal shall be credited to the contract price or shall be paid over as the Contracting Officer may direct.

NOTE A: Paragraph (e) as set forth above should be used in negotiated fixed-price contracts and subcontracts where it can be determined and the Contractor or subcontractor represents that the contract price includes no charge or reserve for insurance (including self-insurance) covering damage to Government property (a) caused by any peril while the property is in transit off the Contractor's premises or (b) caused by any of the excepted perils enumerated in the contract. In all other negotiated fixed-price contracts and in formally advertised contracts, the following paragraph should be substituted for paragraph (e): "Unless otherwise provided in this contract, the Contractor assumes the risk of and shall be responsible for any loss of or damage to Government-furnished property or Contractor-acquired property in its possession, except for reasonable wear and tear and except to the extent that such property is consumed in the performance of this contract."

§ 9–7.5006–28 [Reserved]

§ 9–7.5006–29 Contractor procurement.

(a) The Commission reserves the right at any time to require that the contractor submit for approval any or all procurements under this contract. The contractor shall not procure any item whose purchase is expressly prohibited by the written direction of the Commission and shall use such special and directed procurement sources as may be expressly required by the Commission. The contractor shall (note A) provide information concerning procurement methods, practices, and procedures used or proposed to be used and shall use methods, practices, and procedures which are acceptable to the Commission. Procurement arrangements under this contract (note B) shall not relieve the contractor of any obligation under this contract (including, among other things, the obligation properly to supervise, administer, and coordinate the work of subcontractors) and shall be in such form and contain such provisions as are required by this contract or as the Commission may prescribe.

(b) In addition to, and without derogation of any rights under paragraph (a) of this section and any other provision in this contract, the contractor shall require subcontractors to furnish cost or pricing data, and shall include in such subcontracts the clause set forth in § 9–3.814–50, except as otherwise directed or approved by the Commission (note C).

(c) Procurement or transfer of equipment, materials, supplies, or services from a contractor-controlled source (any division or other organizational component of the prime contractor (exclusive of the contracting component) and any subsidiary or affiliate of the contractor under a common control) shall be considered a procurement for the purposes of this article (note D).

NOTE A: See also § 9–59.002. When appropriate, the words ", if requested by the Contracting Officer," may be inserted here.

NOTE B: When appropriate, the words "shall be made in the name of the contractor, shall not bind nor purport to bind the Government" may be inserted here.

NOTE C: Paragraph (b) above is to be used only when the contract is subject to the provisions of § 9–3.807–3(b).

NOTE D: See also §§ 9–59.006 and 9–15.5010–19.

§ 9–7.5006–30 Taxes (CPFF).

See § 9–11.452.

§ 9–7.5006–31 Taxes (fixed-price contracts).

See FPR 1–11.401.

§ 9–7.5006–32 Workmanship and materials.

(a) *Grade of workmanship and materials.* Unless otherwise directed by the Contracting Officer or expressly provided for by specifications issued under this contract:

(1) All workmanship shall be first class; and

(2) All articles, equipment and materials incorporated in the work are to be:

(i) New and of the most suitable grade of their respective kinds for the purpose;

(ii) In accordance with any applicable drawings and specifications; and

(iii) Installed to the satisfaction and with the approval of the Contracting Officer.

Where equipment, materials, or articles are referred to in the specifications as "equal to" any particular standard, the Contracting Officer shall decide the question of equality.

(b) *Samples and test results.* If the Contracting Officer so requires, the contractor shall submit for approval samples of or test results on any materials proposed to be incorporated in the work before making any commitment for the purchase of such materials.

§ 9–7.5006–33 [Reserved]

§ 9–7.5006–34 [Reserved]

§ 9–7.5006–35 [Reserved]

§ 9–7.5006–36 Nuclear reactor safety.

(a) The contractor recognizes that the activities under this contract involve the risk of a nuclear incident which, while the chances are remote, could adversely affect the public health and safety. In the conduct of its activities hereunder, the contractor will exercise a degree of care commensurate with the risk involved.

NOTE: In contracts including activities in addition to reactor operations, this paragraph should be revised as follows:

(a) The activities under this contract include the operation of a nuclear reactor and the contractor recognizes that such operation involves the risk of a nuclear incident which, while the chances are remote, could adversely affect the public health and safety. In the operation of the nuclear reactor, the Contractor will exercise a degree of care commensurate with the risk involved.

(b) The contractor shall comply with all applicable regulations of the Commission concerning nuclear reactor safety and with those requirements (including reporting requirements and instructions) of the Commission concerning nuclear reactor safety of which it is notified in writing by the Contracting Officer.

(c) Prior to the initial startup of any nuclear reactor under this contract and prior to any subsequent startup following a change which represents a significant deviation from the procedures, equipment, or analyses described in the hazards summary report for that reactor, the contractor shall:

(1) Prepare a safety analysis report and detailed plans and procedures designed to assure the safe operation and maintenance of the reactor. These will generally cover, but not be limited to: Prestartup checklists; normal operation of the reactor and supporting auxiliaries; maintenance operation; emergency situations; and technical standards for equipment and systems.

(2) Establish nuclear safety control procedures to be used within the contractor's organization to insure appropriate review and internal approval of the detailed plans and procedures specified in (1) above.

(3) Submit to the Contracting Officer for his approval such procedures relating to nuclear safety as may be designated by him.

(4) Carry out a training program designed to assure that all personnel who will be engaged in the operations or maintenance of a nuclear reactor understand the approved plans and procedures for nuclear safety pertinent to their assignments.

(5) Obtain the approval of the Contracting Officer prior to such startup of the reactor.

(d) In the operation and maintenance of any nuclear reactor under this contract, the contractor shall:

(1) Use all reasonable efforts to assure that all operational and maintenance activities are performed by qualified and adequately trained personnel and, except as otherwise agreed in writing, are conducted under the supervision of personnel who are qualified to appraise any emergency condition and take prompt effective action with respect thereto.

(2) Operate the reactors within the operating limits which may be prescribed by the Contracting Officer. The Contracting Officer will consult with the contractor in formulating and revising such operating limits.

(3) Follow strictly the procedures relating to nuclear safety approved by the Contracting Officer as specified in (c)(3) above and submit to the Contracting Officer for his approval any proposed changes in such procedures.

(4) Establish a system of inspection approved by the Contracting Officer (including review of inspection reports by competent technical personnel) that will (i) provide frequent and periodic checks of reactor performance and of the qualifications and training of operating and maintenance personnel and (ii) provide for investigation of any unusual or unpredicted reactor conditions that might affect the safe operation of the reactor.

(5) Report promptly to the Contracting Officer any change in the physical condition of the reactor or its operating characteristics that might in the judgment of the contractor affect the safe operation of the reactor.

(6) Shut down the reactor immediately whenever so instructed by the Contracting Officer, or whenever, in the judgment of the contractor, the risk of a nuclear incident endangering persons or property warrants such action.

(7) Prepare, in cooperation with other services and facilities available at the site and with the approval of the Contracting Officer, a plan for minimizing the effects of a nuclear incident upon the health and safety of all persons on the site; cooperate with the Contracting Officer in his preparation of a plan to protect the public off the site; instruct its personnel as to their participation in such plans and any personal risk to such personnel that may be involved; and participate in such practice exercises as may be desirable to assure the effectiveness of such plans.

NOTE: The foregoing clause shall be incorporated in all contracts involving the startup and/or operation of AEC-owned, nonlicensed reactors including critical facilities. Any deviation in substance affecting the meaning, intent, or basic principles of this clause must be referred, to the Director, Division of Contracts for approval. Minor changes in wording which may become necessary in negotiations may be approved by the Manager of the Field Office after consultation with counsel.

§ 9–7.5006–37 [Reserved]

§ 9–7.5006–38 [Reserved]

§ 9–7.5006–39 [Reserved]

§ 9–7.5006–40 [Reserved]

§ 9–7.5006–41 [Reserved]

§ 9–7.5006–42 [Reserved]

§ 9–7.5006–43 [Reserved]

§ 9–7.5006–44 [Reserved]

§ 9–7.5006–45 Consultant or other comparable employment services of contractor employees.

(a) The following clause shall be included in all cost-type contracts identified in § 9–12.5401(c):

The contractor shall require all employees who are employed full-time (an individual who performs work under the cost-type contract on a full-time annual basis) or part-time (50 percent or more of regular annual compensation received under terms of a contract with the Commission) on the contract work to disclose to the contractor all consultant or other comparable employment services which the employees propose to undertake for others. The contractor shall transmit to the Contracting Officer all information obtained from such disclosures. The contractor will require any employee who will be employed full-time on the contract to agree, as a condition of his participation in such work, that he will not perform consultant or other comparable employment services for another Commission cost-type contractor under its contract with the Commission except with the prior approval of the contractor.

(b) The following clause shall be included in all cost-type contracts identified in § 9–12.5401(d):

The contractor shall require all employees who are employed full-time (an individual who performs work under the cost-type contract on a full-time annual basis) or part-time (50 percent or more of regular annual compensation received under terms of a contract with the Commission) on the contract work to disclose to the contractor all consultant or other comparable employment services which the employees propose to undertake for others. The contractor shall transmit to the Contracting Officer all information obtained from such disclosures. The contractor will require any employee who will be employed full-time on the contract work to agree, as a condition of his participation in such work, that he will not perform consultant or other comparable employment services for another Commission cost-type contractor or in the atomic energy field for another organization except with the prior approval of the contractor. If the contractor believes, with respect to any employee who is employed full-time on the contract work, that any proposed consultant or other comparable employment service for an organization in the atomic energy field other than a Commission cost-type contractor may involve: (1) A rate of remuneration significantly in excess of the employee's regular rate of remuneration; (2) a significant question concerning possible conflict with the Commission's policies regarding conduct of employees of the Commission's contractors; (3) the contractor's responsibility to report fully and promtly to the Commission all significant research and development information; or (4) the patent provisions of the contractor's contract with the Commission, the contractor shall obtain the prior approval of the Contracting Officer for such consultant or other comparable employment service.

§ 9–7.5006–46 Assignment.

Neither this contract nor any interest therein nor claim thereunder shall be assigned or transferred by the contractor except as expressly authorized in writing by the Contracting Officer.

§ 9–7.5006–47 Safety, health, and fire protection.

The contractor shall take all reasonable precautions in the performance of the work under this contract to protect the health and safety of employees and of members of the public and to minimize danger from all hazards to life and property, and shall comply with all health, safety, and fire protection regulations and requirements (including reporting requirements) of the Commission. In the event that the contractor fails to comply with said regulations or requirements of the Commission, the Contracting Officer may, without prejudice to any other legal or contractual rights of the Commission, issue an order stopping all or any part of the work; thereafter a start order for resumption of work may be issued at the discretion of the Contracting Officer. The contractor shall make no claim for an extension of time or for compensation or damages by reason of or in connection with such work stoppage.

NOTE A: The foregoing clause shall be included:

(a) In all contracts or subcontracts involving construction, all contracts or subcontracts involving use or possession of source, byproduct or special nuclear material or of production or utilization facilities which are exempt from AEC licensing requirements by AEC regulation or for which an exemption from AEC licensing has been granted by the General Manager or his designee (Ref: 10 CFR Parts 30, 40, 50, and 70), and in all other contracts or subcontracts involving work to be performed at an AEC-owned or -controlled site (an AEC-controlled site is a site leased or otherwise made available to the Government under terms which afford to the Commission rights of access and control substantially equal to those which the Commission would possess if it were the holder of the fee as agent of and on behalf of the Government);

(b) In all contracts or subcontracts involving the use of an AEC-owned particle accelerator.

NOTE B: The foregoing clause, with modifications as to its applicability or coverage, may be used in special situations where deemed warranted by the contracting officer; in such instances the modification shall clearly delineate that work for which health and safety conditions are subject to licensing controls and that work for which health and safety conditions are subject to direction of the contracting officer under the contract.

NOTE C: If a deviation is made in the article by the Manager of a Field Office, a copy of the modified clause should be forwarded to the Director, Division of Operational Safety, HQ.

§ 9-7.5006-48 Permits.

Except as otherwise directed by the Contracting Officer, the contractor shall procure all necessary permits or licenses and abide by all applicable laws, regulations, and ordinances of the United States and of the State, territory, and political subdivision in which the work under this contract is performed.

§ 9-7.5006-49 Notice of labor disputes.

Whenever an actual or potential labor dispute is delaying or threatens to delay the performance of the work, the contractor shall immediately notify the Contracting Officer in writing. Such notice shall include all relevant information concerning the dispute and its background.

§ 9-7.5006-50 Litigation and claims.

(a) *Initiating of litigation.* The contractor may, with the prior written authorization of the Contracting Officer, and shall, upon the request of the Government initiate litigation against third parties, including proceedings before administrative agencies, in connection with this contract. The contractor shall proceed with such litigation in good faith and as directed from time to time by the Contracting Officer.

(b) *Defense and settlement of claims.* The contractor shall give the Contracting Officer immediate notice in writing (1) of any action, including any proceeding before an administrative agency, filed against the contractor arising out of the performance of this contract, and (2) of any claim against the contractor, the cost and expense of which is allowable under the clause entitled "Allowable costs." Except as otherwise directed by the Contracting Officer, in writing, the contractor shall furnish immediately to the Contracting Officer copies of all pertinent papers received by the contractor with respect to such action or claim. To the extent not in conflict with any applicable policy of insurance, the contractor may with the Contracting Officer's approval settle any such action or claim, shall effect at the Contracting Officer's request an assignment and subrogation in favor of the Government of all the contractor's rights and claims (except those against the Government) arising out of any such action or claim against the contractor, and, if required by the Contracting Officer, shall authorize representatives of the Government to settle or defend any such action or claim and to represent the contractor in, or to take charge of, any action. If the settlement or defense of an action or claim against the contractor is undertaken by the Government, the contractor shall furnish all reasonable assistance in effecting a settlement or asserting a defense. Where an action against the contractor is not covered by a policy of insurance, the contractor shall, with the approval of the Contracting Officer, proceed with the defense of the action in good faith; and in such event the defense of the action shall be at the expense of the Government: *Provided, however,* That the Government shall not be liable for such expense to the extent that it would have been compensated for by insurance which was required by law or by the written direction of the Contracting Officer, but which the contractor failed to secure through its own fault or negligence.

§ 9-7.5006-51 Required bonds and insurance—exclusive of Government property (cost-type contracts).

The contractor shall procure and maintain such bonds and insurance as are required by law or by the written direction of the Contracting Officer. The terms of any such bond or insurance policy shall be submitted to the Contracting Officer for approval upon request. In view of the provisions of the article entitled "Property," the contractor shall not procure or maintain for its own protection any insurance covering loss or destruction of or damage to Government-owned property.

§ 9-7.5006-52 Priorities, allocations, and allotments.

The contractor shall follow the provisions of DMS Regulation 1 and all other applicable regulations and orders of the Business and Defense Services Administration in obtaining controlled materials and other products and materials needed to fill this order.

§ 9-7.5006-53 Soviet-Bloc controls (unclassified research contracts with educational institutions).

In connection with the contract activities, the Contractor agrees to comply with the requirements set forth in Attachment _____ of this contract relating to the countries listed therein. From time to time, by written notice to the Contractor, the Commission shall have the right to change the listing of countries in Attachment _____ upon a determination by the Commission that such change is in conformance with national policy. The Contractor shall have the right to terminate its performance under this contract upon at least sixty (60) days' prior written notice to the Commission if the Contractor determines that it is unable, without substantially interfering with its policies as an educational institution or without adversely affecting its performance, to continue performance of the work under this contract as a result of a change in Attachment _____ made by the Commission pursuant to the preceding sentence. If the Contractor elects to terminate performance, the provisions of this contract respecting termination for the convenience of the Government shall apply.

§ 9-7.5006-54 Controls in the national interest (unclassified research contracts with educational institutions).

The Contractor agrees to comply with the requirements of the Commission specified in Attachment _____ to this contract, and to such other Commission requirements of the same general nature as the parties may agree to from time to time; these requirements relate to unclassified work, and they shall not be construed to limit or affect in any way the Contractor's obligation to conform to all security regulations and requirements of the Commission pertaining to classified work.

§ 9-7.5006-55 Avoidance of conflicts of interest (contracts with universities where AEC has major investments in facilities but does not own or lease the land).

The parties agree that the university has adopted policies and procedures, designed to avoid conflict-of-interest situations, which are in substantial conformance with the Joint Statement of the Council of American Association of University Professors and the American Council on Education of December 1964, entitled "On Preventing Conflicts of Interest in Government-Sponsored Research at Universities," which policies and procedures will be applied in connection with this contract.

§ 9-7.5006-56 Statement of work (cost-type contracts).

NOTE: (a) While it is not feasible to set forth standard language which would fit every cost-type contract situation, language for this clause must be designed to describe clearly the work being undertaken; the controls, as appropriate, to be exercised by AEC over the performance of that work; and the relationship contemplated between the parties.

(b) This clause shall also include the following language with respect to subcontracting performance of the work described pursuant to (a) above. The contractor shall, when directed by the Commission, and may, but only when authorized by the Commission, enter into subcontracts for the performance of any part of the work under this article.

The foregoing language will satisfy the requirements of § 9-51.201(a), as well as any programmatic requirements which may not be anticipated or present when entering into the contract.

(c) In operating-type contracts when the contractor is expected to perform no Davis-Bacon work with his own forces, the special clause in § 9-12.403-50 shall be included in this clause.

§ 9-7.5006-57 Limitation of price and contractor performance (multiyear contracts).

(a) Funds are obligated for performance of this contract in the amount of $_____. This obligated amount is not considered sufficient for the contract performance required by and described herein for any year other than the first year. Upon availability of additional funds sufficient for performance of the full requirement for the next succeeding year, the Contracting Officer shall, not later than a date agreed to by the parties, so notify the contractor in writing and the amount of funds obligated herein for contract performance shall be increased accordingly. This procedure shall apply for each successive year in which this contract is to be performed.

(b) The Government is not obligated to the contractor for contract performance in

any monetary amount in excess of the amount obligated herein.

(c) The contractor shall not incur costs for the performance required for any year after the first year unless and until he has been notified in writing by the Contracting Officer of an increase in the obligated amount in accordance with paragraph (a) of this clause. If so notified, the contractor's performance shall be increased only to the extent required for the additional year for which funds have been obligated.

(d) In the event of termination pursuant to the clause entitled "Termination for convenience of the Government," the terms "total contract price" and "work under the contract" as used in that clause refer to the amount obligated for performance of this contract as provided in this clause plus the applicable amount, if any, established as the cancellation ceiling, and to the work under the year for which funds have been obligated. In the event of determination for default, the Government's rights under this contract shall apply to the entire multiyear requirements.

(e) Notification to the contractor of an increase or decrease in the funds obligated for performance of this contract as a result of a clause other than this clause shall not constitute the notification contemplated by paragraph (a) of this clause.

§ 9–7.5006–58 Cancellation (multiyear contracts).

(a) As used herein, the term "cancellation" means that the Government is canceling, pursuant to this clause, its requirements as set forth in this contract for all years subsequent to that in which notice of cancellation is provided. Such cancellation shall occur only, if by the date or within the time period specified in this contract, or such further time as may be agreed to, the Contracting Officer (1) notifies the contractor that funds will not be available for contract performance for any subsequent year; or (2) fails to notify the contractor that funds have been made available for performance of the requirement for the succeeding year.

(b) Except for cancellation pursuant to this clause or for termination pursuant to the clause entitled "Default," any reduction by the Contracting Officer in the work called for under this contract shall be considered a termination in accordance with the clause entitled "Termination for convenience of the Government." Cancellation pursuant to this clause shall not be construed a termination in accordance with the clause entitled "Termination for convenience of the Government."

(c) In the event of cancellation pursuant to this clause, the contractor shall not, as consideration therefor, be entitled to any cancellation charge (Note A).

NOTE A: In the event that cancellation charges are appropriate in a particular multiyear award, the following should be substituted for paragraph (c) above:

(c) In the event of cancellation pursuant to this clause, the contractor shall be paid, as consideration therefor, a cancellation charge not to exceed the cancellation ceiling described and separately set forth in this contract as being applicable at the time of cancellation.

(d) The cancellation charge is intended to cover only expenses reasonably necessary for performance which would have been recovered over the multiyear period, but which, because of the cancellation, are therefore not so recovered. The cancellation charge shall be computed and claim therefor made as would be applicable under the clause entitled "Termination for convenience of the Government," except that the cancellation charge shall not include any amount for:

(1) Labor, materials, or other expenses incurred for performance of the canceled work: *Provided*, That initial costs, preparatory expenses and other nonrecurring costs reasonably and necessarily incurred by the contractor and its subcontractors, but exclusive of any costs allocable to the completed work paid or to be paid for, may be included in such charge;

(2) Which payment has already been made to the contractor; or

(3) Anticipated profit on the canceled items, or on the costs included in the cancellation charge.

§ 9–7.5006–59 Private use of contract information and data.

Except as specifically authorized by this contract, or as otherwise approved by the Contracting Officer, information and other data developed or acquired by or furnished the contractor in the performance of this contract, shall be used only in connection with the work under this contract.

§ 9–7.5006–60 Preservation of individual occupational radiation exposure records.

Individual occupational radiation exposure records generated in the performance of work under this contract shall be subject to inspection by the Commission and shall be preserved by the contractor until disposal is authorized by the Commission, or at the option of the contractor delivered to the Commission upon completion or termination of the contract. If the contractor exercises the foregoing option, title to such records shall vest in the Commission upon delivery.

NOTE A: The foregoing clause shall be included in all contracts containing AEC standard clause § 9–7.5006–47.

§ 9–7.5007 Suggested AEC clauses.

This section sets forth suggested clauses for use in AEC contracts. The clauses may be modified in the light of specific contracting situations.

§ 9–7.5007–1 [Reserved]

§ 9–7.5007–2 Key personnel.

It having been determined that the employees whose names appear (below) (in Appendix _____, or persons approved by the Contracting Officer as persons of substantially equal abilities and qualifications, are necessary for the successful performance of this contract, the contractor agrees to assign such employees or persons to the performance of the work under this contract and shall not reassign or remove any of them without the consent of the Contracting Officer. Whenever, for any reason, one or more of the aforementioned employees is unavailable for assignment for work under the contract, the contractor shall, with the approval of the Contracting Officer, replace such employee with an employee of substantially equal abilities and qualifications.

§ 9–7.5007–3 Other contracts.

The Government may undertake or award other contracts for additional work, and the contractor shall fully cooperate with such other contractors and Government employees and carefully fit his own work to such additional work as may be directed by the Contracting Officer. The contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor or by Government employees.

§ 9–7.5007–4 [Reserved]

§ 9–7.5007–5 Price redetermination.

The price or prices stated in this contract shall be subject to redetermination in accordance with the provisions of this article. In no event shall the total contract price, as revised hereunder, exceed $_____.[4] [5]

(a) *Time for redetermination.*[6]

(1) Upon delivery of _____ percent of the total number of articles specified to be furnished[7] under this Contracting Officer may direct in the event of any termination by the Government of work under this contract,[8] the Contractor shall submit to the Contracting Officer the data specified in paragraph (c) of this article. On the basis of such information, and of any other relevant information which may be available to the Contracting Officer, the price or prices set forth in this contract shall be redetermined by agreement of the Contracting Officer and the Contractor. Any redetermined price or prices established under this subparagraph shall be effective as of the date of this contract and shall apply to all articles covered by the contract, whether already delivered or yet to be delivered.

(2) Prior to expiration or termination of this contract, but not sooner than ninety (90) days after the effective date of any price redetermination under subparagraph (1), either party to the contract may at its option by written notice addressed to the other require that the parties negotiate a further redetermination of such redetermined price or prices to become effective as of the date of the notice or some later date specified therein, and thereafter from time to time by similar notices may require that the parties again negotiate further price redeterminations to become effective as of dates not earlier than ninety (90) days after the effective date of the redetermined price or prices then in effect. The data specified in paragraph (c) shall accompany any notice by the Contractor under this subparagraph, and shall be submitted by the Contractor to the Contracting Officer within thirty (30) days after receipt of any notice hereunder from the Government. Any redetermined price or prices established under this subparagraph shall apply only to articles yet to be delivered.

(b) *Principles Governing Negotiation, Additional General Limitations and Procedures*

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[4] Whenever changes are made in the contract pursuant to the changes article, the total contract price shall be adjusted, where necessary, in accordance with such changes.

[5] If redetermination downward only is to be provided for, the following sentence should be substituted for this sentence: "The total of such redetermined prices as established pursuant to any redetermination shall in no event exceed the total contract price as set forth in this contract prior to redetermination, less any part thereof applicable to any terminated portion of the work."

[6] Where multiple redeterminations, upward or downward, are to be provided for, subparagraphs (1) and (2) should both be included in paragraph (a). Where a single redetermination only, whether upward or downward or downward only, is to be provided for, subparagraph (2) should be entirely omitted.

[7] In lieu of "Upon delivery of _____ percent of the articles specified to be furnished," any one of the following substitutes may be used:

"Upon delivery of _____ units of the articles to be furnished."

"Upon performance of (a specified portion of the work)."

"Upon delivery of articles representing _____ percent of the total contract price."

[8] In the event wholly retroactive redetermination is to be provided for, the preceding language should be revised to read: "Within _____ days after completion or termination of this contract."

Relating to Redetermined Prices. Any redetermined price or prices under this article shall be fair and reasonable under all the circumstances to the Contractor and to the Government. In the negotiation of such fair and reasonable redetermined price or prices, the Contracting Officer may take into account, as a factor in determining a reasonable profit allowance, any unwarranted delay on the part of the Contractor in submitting the data specified in paragraph (c) at a time required by this article. Any redetermined price or prices under this article shall not exceed any applicable ceiling price or prices established pursuant to applicable law and regulations. Any redetermined price or prices and the manner of making necessary adjustments with respect to payments previously made by the Government shall be set forth in an amendment or amendments which shall be signed by the Contracting Officer and the Contractor. Where negotiation is required under this article, failure to agree upon any redetermined price or prices shall be deemed a dispute concerning a question of fact within the meaning of the article of this contract entitled "Disputes." Any redetermination of prices under this article shall be without prejudice to the rights of the Government under any statute or order now in effect, or under any other article of this contract. In connection with any price redetermination hereunder, the Government may make such examination of the Contractor's accounts, records and books as the Contracting Officer may require and may make such audit thereof as the Contracting Officer may deem necessary.

(c) *Data to be submitted by the Contractor.* The data to be submitted by the Contractor under this article, itemized in such detail as the Contracting Officer may prescribe, shall consist of:

(1) A new estimate and breakdown of the unit cost and the proposed prices of the items remaining under this contract after the effective date of the price redetermination;

(2) An explanation of any differences between the last preceding estimate and the current estimate of costs;

(3) Such relevant shop and engineering data, cost records, overhead experience reports, and accounting statements as may be of assistance in determining the accuracy and reliability of the current estimate of costs;

(4) A statement of experienced costs of production hereunder at the time or times of the negotiation of the revision of prices hereunder; and

(5) Any other relevant data usually furnished in the case of negotiation of prices under a new contract.

§ 9–7.5007–6 Established price article for standard off-the-shelf items (Escalation).

This article should not be used unless a substantial portion of the contractor's business is with purchasers other than the Government. The articles can be used in open-end or indefinite quantity contracts, but its use is not limited to such contracts.

ESTABLISHED PRICE ARTICLE FOR STANDARD OFF-THE-SHELF ITEMS (ESCALATION)

(a) The Contractor hereby warrants that the unit prices stated herein at the effective date hereof are not in excess of the Contractor's applicable established prices for like quantities of the supplies covered by this contract. The Contractor shall notify the Contracting Officer of each decrease in any such established prices and each applicable contract unit price shall be decreased accordingly. Any decrease in a unit price shall become effective concurrently with the effective date of each applicable decrease in Contractor's established price and the contract shall be amended accordingly.

(b) The Contractor may at any time, or from time to time, during the performance of the contract request in writing an upward adjustment in any of the contract unit prices to be effective as from a date to be specified by the Contractor, subject to the following conditions:

(1) No unit price shall be increased in accordance with such request by a greater percentage than the applicable established price is increased.

(2) The aggregate of the increases in any unit price made under this paragraph shall not exceed 10 percent of the original applicable contract unit price.

(3) No adjusted unit price shall be effective earlier than the effective date of any increase in the applicable established price.

(c) In the event the requested adjustment in any contract unit price is acceptable to the Contracting Officer, he shall, not later than 20 days after the date of receipt by him of the request, so notify the Contractor and the contract shall be modified accordingly. If any such requested adjustment in a unit price is not acceptable to the Contracting Officer, he shall so notify the Contractor in writing within 20 days from the date of receipt by him of the Contractor's said notice; and unless an agreement can be reached as to the amount of increase, the Government may cancel without liability to either party the Contractor's right to proceed with performance of the portion of the contract which is undelivered at the time of such cancellation.

(d) If notice of cancellation is not sent to the Contractor within 30 days after receipt by the Contracting Officer of the Contractor's request, supplies delivered subsequent to the date specified in such request, and prior to the effective date of any subsequent increase or decrease in Contractor's applicable established prices, shall be paid for at the applicable increased unit prices so requested, provided such requested increases satisfy all of the conditions and do not exceed the limitations of paragraph (b).

(e) The Contractor also agrees to give the Government any and all discount benefits extended to any company, agency, organization, or individual purchasing or handling like quantities of the supplies covered by this contract.

§ 9–7.5007–7 Established price article for semistandard items (Escalation).

This article pegs the price of a semistandard item to the "nearest commercial equivalent" for which there is an established price. The article should not be used if the Contractor does not customarily deal in standard items and if the standard items or "nearest commercial equivalents" to which the contract unit prices are pegged are not items for which the Contractor has an active commercial market. As required by the provisions of paragraph (c) of the article, agreement must be reached as to the "nearest commercial equivalent" for each contract item and its established price at the date of the contract must be set forth in that paragraph. This article should not be used unless a substantial portion of the Contractor's business is with purchasers other than the Government, nor should it be used if the Contractor will accept some other more suitable article (for example, the articles suggested in §§ 9–7.5007–8 and 9–7.5007(9).

ESTABLISHED PRICE ARTICLE FOR SEMISTANDARD ITEMS (ESCALATION)

(a) The Contractor warrants that the materials covered by this contract are materials which the Contractor customarily offers for sale commercially, modified in accordance with the specifications of this contract, and that any differences between the prices provided herein at the effective date hereof and its established or published prices for like quantities of the materials which are the nearest commercial equivalents of the materials covered by this contract (hereinafter referred to as "the established prices") are due to differences in costs resulting from compliance with such specifications. If at any time during the performance of this contract any of the established prices are reduced, each applicable price set forth herein (which, as changed at any time or from time to time in accordance with the provisions of the article hereof entitled "Changes," are hereinafter referred to as "the contract prices") shall be reduced by the same percentage that such established price is reduced. Upon such a reduction in any of the established prices, the Contractor shall advise the Contracting Officer of the reduction to be made in any of the contract prices and the effective date of the reduction in the applicable established price. Any such reduced price shall be effective as to deliveries made on and after the effective date of the reduction in the applicable established price and the contract shall be modified accordingly.

(b) If at any time during the performance of the contract any of the established prices are increased, the Contractor may request in writing the same percentage increase in the applicable contract price of the material to be delivered after a date not earlier than the date the request is mailed to the Contracting Officer, provided, that the Contractor may not request under this article a unit price for any item which will exceed by more than 10 percent the original contract unit price. In the event the requested adjustment in any contract unit price is acceptable to the Contracting Officer, he shall not later than twenty (20) days after the receipt of the request so notify the Contractor and the contract shall be modified accordingly. If the requested upward adjustment in price is not acceptable to the Contracting Officer and he shall so indicate by withholding approval of it for a period of twenty (20) days from the date of delivery to him of the Contractor's written request, and if within a succeeding 10-day period the contractor shall not elect to continue deliveries at the prices in effect immediately prior to his request, then the contract shall be deemed to have been terminated for the convenience of the Government pursuant to the article hereof entitled "Terminations," only with respect to the item or items for which the Contracting Officer has so withheld approval of the requested upward adjustment.

(c) For the purposes of this section, it is agreed by the Contractor and the Government that the nearest commercial equivalent of the material covered by this contract is ---------- and that the established price therefor, at the effective date hereof, is $------.

§ 9–7.5007–8 General price escalation article involving cost breakdowns.

This article can be used in fixed-price contracts for standard, semistandard, or nonstandard items. The provision in paragraph (b) of the article limiting adjustments to amounts equivalent to at least 3 percent of the then aggregate contract price should not be considered inflexible. In the case of a large contract, the Contractor might insist on the

use of a lower percentage figure. In the case of a small contract, it might be in the interest of the Government to use a higher percentage figure. There does not appear to be any objection to the use of a reasonable dollar amount in lieu of a percentage figure.

GENERAL PRICE ESCALATION ARTICLE INVOLVING COST BREAKDOWNS

(a) The Contractor represents and warrants that the prices set forth in this contract do not include any contingency allowance to cover the possibility of increased costs of performance resulting from increases in either (1) the Contractor's rates of pay for labor employed by him; or (2) the prices which the Contractor is required to pay for material. The Contractor further represents and warrants that the net price or prices paid or to be paid by the Government under this contract do not and shall not exceed those paid by any other purchaser or consignee for like quantities of the same or similar supplies. The Contractor also agrees to give the Government any and all discount benefits extended by it to any other purchaser or consignee purchasing or handling like quantities of the same or similar supplies covered by this contract.

(b) In the event that, at any time during the performance of this contract, the Contractor shall pay rates of pay for direct labor employed by him or prices for direct material in excess of or less than those current as of the date of this contract, provided that any such change would result in an increase or decrease of at least three percent (3%) of the then aggregate contract price of the uncompleted units of the contract, then in either such event the unit prices set forth in this contract may be revised upward or downward in accordance with the provisions of paragraph (c) hereof, with respect to the units completed subsequent to the effective date of any such increase or decrease by an amount equivalent to the increase or decrease in cost per uncompleted unit occasioned by the increase or decrease in direct labor wage rates or in prices for direct material or in both.

(c) Not later than twenty (20) days after the effective date of any increase or decrease as referred to in paragraph (b) hereof, the Contractor may notify the Contracting Officer of any such increase, and shall notify the Contracting Officer of any such decrease, and with such notification shall submit a supporting cost breakdown. Such cost breakdown will:

(1) Be prepared in accordance with recognized commercial accounting principles.

(2) Indicate changes in estimated direct labor and direct material costs resulting from any increase or decrease as referred to in paragraph (b) hereof.

(3) Be signed by a responsible official of the Contractor. Upon the basis of such notification and cost breakdown, and such other data as may be available to the Contracting Officer or as shall be furnished to him upon request to the Contractor, a price adjustment to reflect the increase or decrease in costs as referred to in paragraph (b) hereof shall be determined by mutual agreement between the Contractor and the Contracting Officer, and shall be set forth in an amendment to this contract. In the event that the Contractor fails to give notice of any decrease as required herein, a downward adjustment shall be later effected with respect to units completed subsequent to the effective date of any such decrease.

(d) Price adjustments may be agreed upon, at any time and from time to time during the performance of this contract, in accordance with the provisions of this article. In no event, however, shall any price adjustments be made:

(1) For increased or decreased costs resulting from an increase or decrease as related to the original contract estimates, in number of hours of labor, in amounts of material purchased, or in overhead charges; or

(2) Which would increase or decrease the estimated dollar amount of profit per unit originally included in the contract price.

(e) The increase or accumulated increases in unit prices made under this article shall not exceed ten percent (10%) of the original contract unit price.

(f) Pending a determination of any price adjustment under this article, the Contractor shall continue deliveries hereunder. Failure of the parties to agree upon a price adjustment pursuant to the provisions of this article shall be deemed to be a dispute as to a question of fact within the meaning of the article of this contract entitled "Disputes."

§ 9–7.5007–9 General price escalation article (no cost breakdowns).

This article may be used in lieu of the article described in § 9–7.5007–8 in instances where the Contractor is either unable or unwilling to furnish a cost breakdown. In such instances, prices should be otherwise adequately justified and the contract should normally be for less than $100,000.

GENERAL PRICE ESCALATION ARTICLE (NO COST BREAKDOWNS)

(a) The Contractor represents and warrants that the prices set forth in this contract do not include any contingency allowance to cover the possibility of increased costs of performance resulting from increases in either (1) the Contractor's rates of pay for labor employed by him or (2) the prices which the Contractor is required to pay for material. The Contractor further represents and warrants that the net price or prices paid or to be paid by the Government under this contract do not and shall not exceed those paid by any other purchaser or consignee for like quantities of the same or similar supplies. The Contractor also agrees to give the Government any and all discount benefits extended by it to any other purchaser or consignee purchasing or handling like quantities of the same or similar supplies covered by this contract.

(b) In the event that, at any time during the performance of this contract, the Contractor shall pay rates of pay for direct labor employed by him or prices for direct material in excess of or less than those current as of the date of this contract, provided that any such change would result in an increase or decrease of at least 3 percent of the then aggregate contract price of the uncompleted units of the contract, then in either such event the unit prices set forth in this contract may be revised upward or downward in accordance with the provisions of paragraph (c) hereof, with respect to units completed subsequent to the effective date of any such increase or decrease by an amount equivalent to the increase or decrease in cost per uncompleted unit occasioned by the increase or decrease in direct labor wage rates or in prices for direct material or in both.

(c) Not later than twenty (20) days after the effective date of any increase or decrease as referred to in paragraph (b) hereof, the Contractor may notify the Contracting Officer of any such increase, and shall notify the Contracting Officer of any such decrease, and with such notification shall submit evidence of costs satisfactory to the Contracting Officer. Such evidence of costs (1) shall be prepared in accordance with recognized commercial accounting principles, and (2) shall be signed by a responsible official of the Contractor. Upon the basis of such notification and evidence of costs, and such other data as may be available to the Contracting Officer or as shall be furnished to him upon request to the Contractor, a price adjustment to reflect the increase or decrease in costs as referred to in paragraph (b) hereof shall be determined by mutual agreement between the Contractor and the Contracting Officer, and shall be set forth in an amendment to this contract. In the event the Contractor fails to give notice of any decrease as required herein, a downward adjustment shall be later effected with respect to units completed subsequent to the effective date of any such decrease.

(d) Price adjustments may be agreed upon, at any time and from time to time during the performance of this contract, in accordance with the provisions of this clause. In no event, however, shall any price adjustment be made for increased or decreased costs resulting from an increase or decrease as related to the original contract estimates, in number of hours of labor, in amounts of material purchased, or in overhead charges; or which would increase or decrease the estimated dollar amount of profit per unit originally included in the contract price. The increase or accumulated increases in unit prices made under this article shall not exceed 10 percent of the original contract unit price.

(e) Pending a determination of any price adjustment under this article, the Contractor shall continue deliveries hereunder. Failure of the parties to agree upon a price adjustment pursuant to the provisions of this article shall be deemed to be a dispute as to a question of fact within the meaning of the article of this contract entitled "Disputes."

§ 9–7.5007–10 Escalation article for nonstandard steel items.

This article is intended for use in those cases where the items being procured are nonstandard steel items made wholly or in major part of steel, and where the Contractor is a steel producer and actually manufactures the basic steel items, referenced in paragraph (d) of article, from which the nonstandard item is fabricated.

ESCALATION ARTICLE FOR NONSTANDARD STEEL ITEMS

(a) The Contractor represents that the prices set forth in this contract do not include any contingency allowance to cover the possibility of increased costs of performance resulting from increases in either (1) the Contractor's rates of pay for labor employed by it, or (2) the prices which the Contractor charges its manufacturing shops for the steel required in the performance of this contract.

(b) Each contract unit price shall be subject to revision, pursuant to the provisions of this article, to reflect changes in the costs of labor and steel. For the purpose of any such price revision, the proportion of the contract unit price attributable to costs of labor not otherwise included in the price of the steel item identified in paragraph (d) below, shall be _____ percent, and the proportion of the contract unit price attributable to the cost of steel shall be _____ percent.

(c) For the purposes of this clause, the term "Labor Index" shall mean the average straight time hourly earnings of the contractor's employees in the _____ (Note A) shop of the Contractor's _____ plant for any particular month. (The word "month" as used herein means "calendar month.") Unless otherwise specified in this contract, the labor index shall be computed by dividing the total straight time payroll

of the Contractor's employees in the particular shop identified above for any given month by the total number of straight time hours worked by such employees in that month. Any revision in a contract unit price to reflect changes in the cost of labor shall be computed solely by reference to the "base labor index" which shall be the average of the labor indices for the 3 months consisting of the month of _____ _____ 19__, (Note A) the month immediately preceding and the month immediately following, and to the "current labor index" which shall be the average of the labor indices for the month in which delivery of supplies is required to be made in accordance with the terms of this contract, and the month preceding.

(d) Any revision in a contract unit price to reflect changes in the cost of steel shall be computed solely by reference to the "base steel index," which shall be the Contractor's established or published price to the public, including all applicable extras of $_____ (Note B) per _____ unit for _____ _____ (Note B) (description of steel item) on _____ 19__, and the "current steel index" which shall be the Contractor's established or published price to the public of said item, including all applicable extras in effect _____ (Note B) days prior to the first day of the month in which delivery of supplies is required to be made in accordance with the terms of the contract.

(e) Each contract unit price shall be revised for each month in which, by the terms of this contract, delivery of supplies is required to be made, and such revised contract unit price(s) shall apply to the deliveries of those quantities of supplies required to be made in that month regardless of when actual delivery be made of said quantities of supplies. Each revised contract unit price for any month shall be computed by adding together the following three amounts:

(1) The amount (representing the adjusted cost of labor) obtained by multiplying _____ percent of the contract unit price by a fraction, the numerator of which shall be the current labor index and the denominator of which shall be the base labor index,

(2) The amount (representing the adjusted cost of steel) obtained by multiplying _____ percent of the contract unit price by a fraction, the numerator of which shall be the current steel index and the denominator of which shall be the base steel index, and

(3) The amount equal to _____ percent of the original contract unit price (representing that portion of such unit price which relates neither to the cost of labor nor to the cost of steel and which is therefore not subject to revision): *Provided, however,* That any revised contract unit price made pursuant to the provisions of this article shall in no event exceed 110 percent of the original contract unit price. All computations shall be made to the nearest one-hundredth of 1 cent.

(f) Pending revisions of the contract unit price(s), if any to be made pursuant to this article, the Contractor shall be paid the contract unit price(s) for deliveries made. Within thirty (30) days after the final delivery of supplies, or within such further period of time as may be authorized by the Contracting Officer, the Contractor shall furnish a statement or statements signed by the official supervising accounting with respect to this contract setting forth and certifying the correctness of (1) the average straight time hourly earnings of the Contractor's employees in the _____ shop of the Contractor which are relevant to the computations of the "base labor index" and the "current labor index," and (2) the Contractor's established or published prices to the public including all applicable extras, for like quantities of _____ which are relevant to the computation of the "base steel index" and the "current steel index." Upon request of the Contracting Officer or his duly authorized representative the Contractor shall make available its records used in the computation of the labor indices. After the receipt of such certificate by the Contracting Officer, the revised contract unit price(s) shall be computed in accordance with the provisions of this article and this contract shall be amended accordingly.

(g) In the event of any total or partial termination of any item of this contract for the convenience of the Government, the month in which notice of such termination is received by the Contractor, if prior to the month in which delivery is required by this contract, shall be considered the month in which delivery of such terminated or partially terminated item is required for the purpose of determining the current labor and materials indices under paragraph (c) and (d) hereof; provided, however, that as to the quantity of such item which is not terminated for convenience, the month in which delivery is required by this contract shall continue to apply for determining said indices. In the case of termination of any item for default on the part of the Contractor, any price revision shall be limited to the quantity of each item which has been delivered by the contractor and accepted by the Government prior to receipt by the Contractor of notice of termination for default.

(h) As used in this article, the phrase "the month in which the delivery of supplies is required to be made in accordance with the terms of this contract" shall mean any month in which under the terms of this contract a specific quantity of units of the supplies called for by this contract is required to be delivered: *Provided, however,* That in case the failure of the Contractor to make delivery of such quantity shall have arisen out of causes beyond the control and without the fault or negligence of the Contractor, the quantity not delivered shall be required to be delivered as promptly as possible after the cessation of the cause of such failure, and the delivery schedule set forth in this contract shall be amended accordingly. Such causes of failure include, but are not restricted to, acts of God or of the public enemy, acts of the Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, and defaults of subcontractors due to any of such causes unless the Contracting Officer shall determine that the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery schedule.

(i) Failure to agree upon any determination to be made under this article shall be a dispute concerning a question of fact within the meaning of the article of this contract entitled "disputes."

NOTE A: In the first blank in paragraph (c), there would be inserted the actual shop in which the basic steel item, identified in paragraph (d), would be finally fabricated or processed into the actual contract item. In the third blank of paragraph (c), there would be inserted the month in which the Contractor submitted its quotation.

NOTE B: In the third blank in paragraph (d), there would be inserted the actual standard steel mill item used by the Contractor in the manufacture of the contract item. The price which is to be inserted in the first blank in paragraph (d) is the actual price of such item, including the base price of the material and all applicable extras in effect on the date of quotation. In the fifth blank in paragraph (d), there would be inserted the number of days which represents the contractor's best estimate of the period of time required for processing said standard steel mill item in the shop identified in paragraph (c).

§ 9-7.5007-11 Price escalation article for standard steel items.

This article for the procurement of standard steel items from manufacturers is applicable to both advertised and negotiated procurement.

PRICE ESCALATION ARTICLE FOR STANDARD STEEL ITEMS

(a) The Contractor hereby warrants that the unit prices stated herein on the date set for opening of bids (or the contract date if this is a negotiated contract rather than one entered into by means of formal advertising) are not in excess of the Contractor's applicable established prices for like quantities of the supplies covered by this contract. The Contractor shall notify the Contracting Officer of each decrease in any of such established prices and each applicable contract unit price shall be decreased accordingly. Any decrease in a unit price shall become effective concurrently with the effective date of each applicable decrease in Contractor's established price and the contract shall be amended accordingly.

(b) The Contractor may at any time, or from time to time, after the date set for opening of bids (or the contract date if this is a negotiated contract rather than one entered into by means of formal advertising) and during the performance of the contract request in writing an upward adjustment in any of the contract unit prices to be effective as from a date to be specified by the Contractor, subject to the following conditions:

(1) No unit price as adjusted shall exceed the Contractor's applicable established price.

(2) The aggregate of the increases in any unit price made under this paragraph shall not exceed 10 percent (10%) of the original applicable contract unit price.

(3) No adjusted unit price shall be effective earlier than the effective date of any increase in the applicable established price and no increase shall be granted unless the Contractor's applicable established price has increased subsequent to the date set for opening of bids (or the contract date if this is a negotiated contract rather than one entered into by means of formal advertising).

(c) In the event the requested adjustment in any contract unit price is acceptable to the Contracting Officer, he shall not later than twenty (20) days after the date of receipt by him of the request so notify the Contractor and the contract shall be modified accordingly. If any such requested adjustment in a unit price is not acceptable to the Contracting Officer, he shall so notify the Contractor in writing within twenty (20) days from the date of receipt by him of the Contractor's said notice; and unless an agreement can be reached as to the amount of increase, the Government may cancel without liability to either party the contractor's right to proceed with performance of the portion of the contract which is undelivered at the time of such cancellation, except that the Contractor may make delivery of all or any of the supplies which a duly authorized officer of the company shall certify where completed or in the process of manufacture at the time of receipt of notice of such cancellation, and the Government shall pay for all supplies so delivered at the applicable unit price contained in the Contractor's said request and the contract shall be modified accordingly: *Provided,* That such certification is made within 10 days after receipt of notice of such cancellation and such requested increase satisfies all of the conditions and does not exceed the limitations of

paragraph (b). Supplies shall be deemed to be in the process of manufacture when the steel therefor is in any state of processing after the beginning of the furnace melt.

(d) During the period to such cancellation, the Contractor shall continue deliveries according to the terms of the contract and shall be paid therefor at the applicable increased unit prices so requested: *Provided*, Such requested increases satisfy all of the conditions and do not exceed the limitations of paragraph (b).

(e) If notice of cancellation is not sent to the Contractor within thirty (30) days after receipt by the Contracting Officer of the Contractor's request, supplies delivered subsequent to the date specified in such request, and prior to the effective date of any subsequent increase or decrease in Contractor's applicable established prices, shall be paid for at the applicable increased unit prices so requested, provided such requested increases satisfy all of the conditions and do not exceed the limitations of paragraph (b).

NOTE: By the deletion of the last sentence of paragraph (c) above, this clause is made suitable for use in contracts covering standard aluminum items.

§ 9–7.5007–12 Price escalation article for standard steel items (Nonproducer).

This article is intended for use in contracts with suppliers (who are not the manufacturers) of standard steel items, and ties adjustments in the contract prices to fluctuations in the manufacturer's prices to the contractor for those items.

PRICE ESCALATION ARTICLE FOR STANDARD STEEL ITEMS (NONPRODUCER)

(a) The parties agree that if, subsequent to the date set for opening of bids (or the contract date if this is a negotiated contract rather than one entered into by means of formal advertising), the manufacturer of the supplies covered by this contract reduces his price to the Contractor for such supplies, the unit price to be paid hereunder to the Contractor shall be reduced for those supplies delivered by the Contractor after the effective date of the reduction in the manufacturer's price. In each such instance, the applicable contract unit price shall be reduced by the same amount that the manufacturer's price to the Contractor is reduced. The Contractor will notify the Contracting Officer of such reductions and the contract will be modified accordingly.

(b) The Contractor may at any time, or from time to time, after the date set for opening of bids (or the contract date if this is a negotiated contract rather than one entered into by means of formal advertising), request in writing an upward adjustment in any of the contract unit prices, subject to the following conditions:

(1) No unit price shall be increased in accordance with such request unless the manufacturer of the supplies to be delivered under this contract increases his price to the Contractor for such supplies and no increase shall be granted unless the manufacturer's applicable price has increased subsequent to the date set for opening of bids (or the contract date if this is a negotiated contract rather than one entered into by means of formal advertising).

(2) No unit price shall be increased in accordance with such request except as to those supplies delivered pursuant to the terms of this contract and for which the Contractor is required to pay to the manufacturer an increased price.

(3) No unit price shall be increased by an amount greater than the amount the manufacturer's price to the Contractor is increased.

(4) The aggregate of the increases in any unit price made under this section shall not exceed 10 percent of the original applicable contract unit price.

(c) In the event the requested adjustment in any contract unit price is acceptable to the Contracting Officer, he shall not later than twenty (20) days after the date of receipt by him of the request so notify the Contractor, and the contract shall be modified accordingly. If any such requested adjustment in a unit price is not acceptable to the Contracting Officer, he shall so notify the Contractor in writing within twenty (20) days from the date of receipt by him of the Contractor's said notice; and unless an agreement can be reached as to amount of increase, the Government may cancel without liability to either party the Contractor's right to proceed with performance of the portion of the contract which is undelivered at the time of such cancellation.

(d) During the period prior to such cancellation, the Contractor shall continue deliveries according to the terms of the contract and shall be paid therefor at the applicable increased unit price so requested: *Provided*, Such requested increase satisfies all of the conditions and does not exceed the limitations of paragraph (b).

(e) If notice of cancellation is not sent to the Contractor within thirty (30) days after receipt by the Contracting Officer of the Contractor's request, supplies delivered subsequent to the date specified in such request, and prior to the effective date of any subsequent increase or decrease in Contractor's applicable price, shall be paid for at the applicable increased unit price so requested, provided such requested increase satisfies all of the conditions and does not exceed the limitations of paragraph (b).

(f) Upon the written request of the Contracting Officer, the Contractor shall furnish to the Contracting Officer the manufacturer's prices (to the Contractor) for the supplies covered by this contract that were in effect on the date set for the opening of the bids (or the contract date if this is a negotiated contract rather than one entered into by means of formal advertising).

§ 9–7.5007–13 Price escalation article for standard aluminum items.

The article for standard steel items, § 9–7.5007–11, can be made suitable for use in contracts covering standard aluminum items by deleting the last sentence of paragraph (c) of the article.

§ 9–7.5007–14 [Reserved]

§ 9–7.5007–15 Termination article for cost-plus-a-fixed-fee architect-engineer contracts.

See § 9–8.751.

§ 9–7.5007–16 Termination article for lump-sum architect-engineer contracts.

See § 9–8.752.

§ 9–7.5007–17 Termination article for operating contracts.

See § 9–8.753.

PART 9–8—TERMINATION OF CONTRACTS

AUTHORITY: The provisions of this Part 9–8 issued under sec. 161 of the Atomic Energy Act of 1954, as amended, 68 Stat. 948, 42 U.S.C. 2201; sec. 205 of the Federal Property and Administrative Services Act of 1949, as amended, 63 Stat. 390, 40 U.S.C. 486.

§ 9–8.000 Scope and applicability of part.

(a) This part implements and supplements the policies, procedures, and other requirements of FPR Part 1–8.

(b) The provisions of FPR Part 1–8 and this part may be utilized when authorized by Managers of Field Offices or, in the case of Headquarters contracts,

by the appropriate Division Director, in accordance with FPR 1-8.000(d) in the situations enumerated in FPR 1-8.000(d) (1) and (2).

(c) The policies and requirements of FPR Part 1-8 and this part shall be applied to the termination and settlement of subcontracts by cost-type contractors.

Subpart 9-8.2—General Principles Applicable to the Termination for Convenience and Settlement of Fixed-Price Type and Cost-Reimbursement Type Contracts

§ 9-8.201 General.

(a) Subject to the requirements of paragraph (b) of this section, the contracting officer may terminate a contract for the convenience of the Government and enter into a settlement agreement in accordance with FPR 1-8.2. Claims arising out of a partial termination of a contract should be processed and settled in the same manner as claims arising out of a complete termination.

(b) The General Manager shall be notified prior to taking any action to terminate (1) contracts for the operation of Government-owned facilities, (2) any prime contract or subcontract in excess of $10 million, and (3) any contract the termination of which is likely to provoke unusual interest.

§ 9-8.208-4 Authorization for subcontract settlements without approval or ratification.

The power to authorize a contractor to conclude settlements of his terminated subcontracts without approval or ratification of the contracting officer when the amount of settlement is more than $10,000, but not more than $25,000, shall be exercised by contracting officers only with the approval of the Managers of Field Offices or, in the case of Headquarters contracts, the appropriate Division Director.

§ 9-8.208-8 Assignment of rights under subcontracts.

The contracting officer's determination under FPR 1-8.208-8(b) that it is in the best interest of the Government to settle and pay direct a subcontractor's termination claim is subject to the approval of the Manager of the Field Office or, in the case of Headquarters contracts, the appropriate Division Director.

§ 9-8.211-1 Settlement review boards.

FPR 1-8.211-2(b) will not apply to proposed settlements under AEC contracts. The review of all proposed settlements under circumstances specified in FPR 1-8.211-2(a) will be by Field Office settlement review boards established by Managers of Field Offices.

§ 9-8.211-2 Required review and approval.

(a) Proposed settlement agreements or determinations in excess of contractual authority of Managers of Field Offices will be transmitted to the Director, Division of Contracts, for review and approval.

(b) Contracting officers shall not conclude proposed settlements or determinations until the approvals required by FPR 1-8.211 and this section have been obtained.

§ 9-8.212-1 Partial payments upon termination.

Protection of the Government's interest in partial payments, by means other than those specified in FPR 1-8.212-1 (d), shall be subject to approval of the Manager of the Field Office or, in the case of Headquarters contracts, the appropriate Division Director.

Subpart 9-8.3—Additional Principles Applicable to the Settlement of Fixed-Price Type Contracts Terminated for Convenience

§ 9-8.307-1 Submission of settlement proposals.

Contracting officers shall encourage contractors to use the suggested forms set forth in FPR 1-8.802, 1-8.803, and 1-8.804 in the submission of settlement proposals, inventory schedules, accounting information, and applications for partial payments. The form entitled "Schedule of Accounting Information" (FPR 1-8.804-1) need be filed only once with respect to any termination. When the standard forms are not appropriate for a particular contract, Managers of Field Offices, or, in the case of Headquarters contracts, the appropriate Division Director may authorize modifications thereof. However, the certificate shall be substantially as set forth in the form.

§ 9-8.307-2 Bases for settlement proposals.

Termination claims shall not be submitted on any basis other than the inventory or total cost basis without the prior approval of the Managers of Field Offices or, in the case of Headquarters contracts, the appropriate Division Director.

Subpart 9-8.4—Additional Principles Applicable to the Settlement of Cost-Reimbursement Type Contracts Terminated for Convenience

§ 9-8.404-1 Submission of settlement proposal.

Contracting officers should encourage contractors to submit settlement proposals in the form set forth in FPR 1-8.802-4. When necessary, Managers of Field Offices or, in the case of Headquarters contracts, the appropriate Division Director, may authorize modification of this form. However, the certificate shall be substantially as set forth in the form.

Subpart 9-8.5—Disposition of Termination Inventory

§ 9-8.501-2 General restrictions on contractor's authority.

Contracting officers may authorize contractors to sell termination inventory to AEC and other employees of the Federal Government and employees of AEC contractors on the same basis afforded the general public, provided the employees warrant in writing that they have not:

(a) Participated in the determination to dispose of the property;

(b) Participated in preparation of the property for sale;

(c) Participated in determining the method of sale; or

(d) Acquired information not otherwise available to the general public regarding usage, conditions, quality, or value of the property. The required warranty signed by the employee concerned shall be obtained prior to making award.

§ 9-8.503-1 Submission of inventory schedules.

Contracting officers should encourage contractors to submit inventory schedules in the forms set forth in FPR 1-8.803. When necessary, Managers of Field Offices or, in the case of Headquarters contracts, the appropriate Division Director, may authorize modification of these forms. However, the certificate shall be substantially as set forth in the forms.

§ 9-8.504-1 General.

Scrap determinations shall be reviewed in accordance with § 9-8.512(a).

§ 9-8.504-2 Scrap warranty.

Release from liability under scrap warranties shall be reviewed in accordance with § 9-8.512(b).

§ 9-8.505 Screening of serviceable and usable property.

(a) When the contracting officer determines that application of AEC circularization requirements would result in an appreciable increase in disposal costs involving retention of personnel after the contract has been terminated, rental of storage space, or other factors, arrangements should be made locally with GSA to screen inventory schedules on an accelerated basis.

(b) Priority in the acquisition of serviceable or usable property included in contractor's inventory shall be as follows:

(1) The AEC office administering the contract,

(2) Other activities of the AEC,

(3) Other agencies of the Government.

§ 9-8.507 Sale or other disposition of termination inventory.

§ 9-8.507-1 General.

(a) Any property which is included in the contractor's inventory schedules, which has not been acquired by the Government under § 9-8.505 or donated under § 9-8.508, may be acquired by the contractor or sold by the contractor to a third party, at any time after notification by the contracting officer that screening has been accomplished or will not be required. Generally, any such acquisition by the contractor or sale to a third party shall be on a competitive basis. Any acquisition or sale shall be in accordance with applicable laws and regulations. Any such acquisition or sale

shall be subject to the approval of the contracting officer, as part of or prior to the final settlement.

§ 9–8.507–5 Applicability of antitrust laws.

Managers of Field Offices and Headquarters officials having the contracting responsibility shall furnish two copies of the notification referred to in FPR 1–8.507–5 to the Office of the General Counsel and one copy to the Director, Division of Contracts.

§ 9–8.507–50 Sales without competition.

(a) Sales or acquisitions by the contractor without competitive bids may be authorized by the contracting officer only in exceptional or unusual cases. Subject to the terms of the contract, such sales or acquisitions without competitive bids may be negotiated at prices that are fair and reasonable and not less than the proceeds that could reasonably be expected to be obtained if the property were offered for competitive sale at that time.

(b) Any sales made under paragraph (a) of this section shall be reviewed to the extent required by § 9–8.512.

§ 9–8.507–51 Extension of credit.

Contractors shall not be required to extend credit to purchasers, and any sales made by contractors on credit shall be at their own risk.

§ 9–8.508 Donations.

It is AEC policy to utilize the established donation procedure in the disposal of termination inventory.

§ 9–8.512 Review of property disposal.

The following property disposal actions shall be reviewed by AEC employees designated to act as property disposal reviewing authorities:

(a) Determinations that termination inventory is scrap or salvage (the nature of the review of such determinations shall depend upon the acquisition cost and location of the property involved and such other considerations as the contracting officer determines to be pertinent);

(b) Release from liability under a scrap warranty, if the original acquisition cost of the material is $10,000 or more;

(c) Sales;

(d) Proposals to destroy, abandon, or donate to a public body; and

(e) Such other actions as the contracting officer deems appropriate.

Subpart 9–8.7—Clauses

§ 9–8.700–2 Applicability.

The standard clauses set forth in FPR 1–8.701 through 1–8.710 are applicable as prescribed in FPR 1–8.700–2, subject to the following:

(a) The clause set forth in FPR 1–8.702 is not required to be used in operating contracts. However, all operating contracts, regardless of whether they are for production or research and development, should contain an appropriate termination clause approved by counsel.

(b) Architect-engineer contracts should also contain an appropriate termination clause approved by counsel.

(c) Cost principles referenced in the various termination articles shall be in accordance with Part 9–15.

§ 9–8.750 [Reserved]

§ 9–8.751 Termination article for cost-plus-a-fixed-fee architect-engineer contracts.

The following article is suggested for use in cost-plus-a-fixed-fee architect-engineer contracts:

Termination—(a) *Notice of termination for default or convenience.* The Contracting Officer may at any time terminate performance of the work under this contract in whole or from time to time in part for the default of the contractor or for the convenience of the Government by written notice to the contractor stating the ground for termination. 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 and except as otherwise directed by the Contracting Officer, the contractor shall:

(1) Stop work under the contract on the date and to the extent specified in the notice of termination;

(2) Place no further orders or subcontracts for materials, services, or facilities, except as may be necessary for completion of such portion of the work under the contract as is not terminated; and

(3) Terminate all orders and subcontracts to the extent they relate to the performance of work terminated by the notice of termination.

(b) *Termination for default.* (1) If the contractor refuses or fails to prosecute the work, or any separable part thereof, with such diligence as will insure its completion within the time specified in this contract, or any extension thereof, or fails to complete said work within such time, or if the contractor fails to perform any of the other provisions of this contract, the Contracting Officer may terminate for default the contractor's right to proceed with the work or such part of the work as to which there has been delay: *Provided*, That the performance of the work shall not be terminated for default because of any delays in the completion of work due to unforeseeable causes beyond the control and without the fault or negligence of the contractor, including, but not restricted to, acts of God, or the public enemy, acts of the Government in either its sovereign or contractual capacity, acts of another contractor in the performance of a contract with the Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of both the contractor and subcontractors or suppliers, and if the contractor within ten (10) days from the beginning of any such delay (unless the Contracting Officer grants a further period of time prior to the date of final settlement of the contract) notifies the Contracting Officer in writing of the causes of delay. The Contracting Officer shall ascertain the facts and the extent of the delay and extend the time for completing the work when in his judgment the findings of fact justify such an extension, and his findings of fact thereon shall be final and conclusive on the parties hereto, subject only to appeal by the contractor to the Commission in accordance with Article _____ hereof entitled "Disputes."

(2) If, after notice of termination of this contract for default under (1) above, it is determined for any reason that the contractor was not in default pursuant to (1), or that the contractor's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the contractor pursuant to the provisions of this clause relating to excusable delays, the notice of termination shall be deemed to have been issued for the convenience of the Government under this clause, and the rights and obligations of the parties hereto shall in such event be governed accordingly.

(c) *Liability for costs on default.* If performance of the work under this contract is terminated for the default of the contractor, the Government may complete or employ any other person or persons to complete the work, and the contractor shall be liable to the Government for increased costs occasioned the Government by the default.

(d) *Terms of settlement.* Upon the termination of performance of work under this contract, full and complete settlement of all claims of the contractor with respect to the terminated work shall be made as follows:

(1) *Assumption of contractor's obligations.* The Government shall have the right in its discretion to assume all obligations, commitments, and claims that the contractor may have theretofore in good faith undertaken or incurred in connection with the terminated work, the cost of which would be allowable 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 all the rights and benefits of the contractor, related to such obligations, commitments, and claims.

(2) *Payment for allowable costs.* The Government shall treat as allowable costs all expenditures made in accordance with Article _____ hereof entitled "Allowance costs and fixed fee" not previously so allowed or otherwise credited.

(3) *Payment for termination expense.* If performance of work under the contract is terminated for the convenience of the Government, the Government shall reimburse the contractor for such further expenditures made after the date of termination for the protection of Government property and for such legal and accounting services in connection with settlement as are required or approved by the Contracting Officer.

(4) *Payments on account of fixed fee.* If performance of work under the contract is terminated for the convenience of the Government, the contractor shall be paid that portion of the fixed fee which the work actually completed so determined by the Contracting Officer, bears to the entire work under this contract less payments previously made on account of the fee. If performance of the work under the contract is terminated for the default of the contractor, no further payment on account of the fixed fee shall accrue.

(5) *Computation of amount due.* In arriving at the amount, if any, due the contractor under this clause, there shall be deducted from what would otherwise be due (i) all unliquidated advances and all other unliquidated payments on account theretofore made to the contractor, (ii) any claims of the Government against the contractor in connection with this contract, and (iii) all deductions due under the terms of this contract and not otherwise recovered by or credited to the Government.

(6) *Disposition of advances.* Upon termination of the work under this contract, any advance under this contract shall be handled as required by Article _____, "Payments and Advances."

(7) *Property accounting and release.* The contractor shall furnish the accounting for Government-owned property required by the clause entitled "Property" and the assignment, closing financial statement, and release required by the clause entitled "Payments and Advances."

(e) *Rights and remedies of the Government.* The rights and remedies of the Government provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

NOTE: Paragraph (d)(7) as set forth above should be used in contracts where funds are advanced by the AEC. For contracts where funds are not advanced, delete the requirements for a closing financial statement and change the article reference from "Payments and Advances" to "Payments" and omit paragraph (d)(6) as set forth above.

§ 9–8.752 Termination article for lump-sum architect-engineer contracts.

The following article is suggested for use in lump-sum architect-engineer contracts:

Termination—(a) *Notice of termination for default or convenience.* The Contracting Officer may at any time terminate performance of the work under this contract in whole or from time to time in part for the default of the contractor or for the convenience of the Government by written notice to the contractor stating the ground for termination. 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 and except as otherwise directed by the contracting officer, the contractor shall:

(1) Stop work under the contract on the date and to the extent specified in the notice of termination.

(2) Place no further orders or subcontracts for materials, services or facilities, except as may be necessary for completion of such portion of the work under the contract as is not terminated; and

(3) Terminate all orders and subcontracts to the extent they relate to the performance of work terminated by the notice of termination.

(b) *Termination for default.* (1) If the contractor refuses or fails to prosecute the work, or any separable part thereof, with such diligence as will insure its completion within the time specified in this contract, or any extension thereof, or fails to complete said work within such time, or if the contractor fails to perform any of the other provisions of this contract, the Contracting Officer may terminate for default the contractor's right to proceed with the work or such part of the work as to which there has been delay: *Provided,* That the performance of the work shall not be terminated for default because of any delays in the completion of work due to unforeseeable causes beyond the control and without the fault or negligence of the contractor, including, but not restricted to, acts of God, or of the public enemy, acts of the Government in either its sovereign or contractual capacity, acts of another contractor in the performance of a contract with the Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of both the contractor and subcontractors or suppliers, and if the contractor within ten (10) days from the beginning of any such delay (unless the Contracting Officer grants a further period of time prior to the date of final settlement of the contract) notifies the Contracting Officer in writing of the causes of delay. The Contracting Officer shall ascertain the facts and the extent of delay and extend the time for completing the work when in his judgment the findings of fact justify such an extension, and his findings of fact thereon shall be final and conclusive on the parties hereto, subject only to appeal by the contractor to the Commission in accordance with Article _____ hereof entitled 'Disputes.'

(2) If, after notice of termination of this contract for default under (1) above, it is determined for any reason that the contractor was not in default pursuant to (1), or that the contractor's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the contractor pursuant to the provisions of this clause relating to excusable delays, the notice of termination shall be deemed to have been issued for the convenience of the Government under this clause, and the rights and obligations of the parties hereto shall in such event be governed accordingly.

(c) *Liability for excess costs on default.* If performance of the work under the contract is terminated for the default of the contractor, the Government may complete or employ any other person or persons to complete the work, and the contractor shall be liable to the Government for any excess cost occasioned the Government thereby.

(d) *Termination and settlement for the convenience of the Government.* If performance of work is terminated for the convenience of the Government, an equitable downward adjustment in the contract price resulting in a revised price that compensates the contractor fairly under all the circumstances for work performed under the contract (except sevices and materials, the cost of which are, and shall continue to be, reimbursable under the article of this contract entitled "Payment") shall be established in accordance with the agreement of the parties. Failure to agree on such equitable adjustment and revised price under this clause shall be deemed to be a dispute within the meaning of Article _____ hereof entitled "Disputes." The contractor shall make similar provisions covering termination for convenience with respect to all subcontracts and purchase orders.

(e) *Other remedies.* The rights and remedies of the Government provided in this article shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

§ 9–8.753 Termination article for operating contracts.

The following article is suggested for use in operating contracts:

(a) This contract shall continue until _____ unless sooner terminated in accordance with the provisions which follow:

(1) The performance of work under this contract may be terminated by the Commission in whole, or from time to time in part, (i) whenever the contractor shall default in performance, and shall fail to cure the fault or failure within such period as the Commission may allow after receipt from the Commission of a notice specifying the fault or failure, or (ii) whenever for any reason the Commission shall determine any such termination is for the best interest of the Government. Termination of the work hereunder shall be effected by delivery of a notice of termination specifying whether termination is for default of the contractor or for the convenience of the Government, the extent to which performance of work under the contract shall be terminated, and the date upon which such termination shall become effective. Any such termination shall be without prejudice to any claim which either party may have against the other. If, after notice of termination under the provisions of paragraph (a)(1)(i) above, it is determined for any reason that the contractor was not in default, such notice of default shall be deemed to have been issued pursuant to paragraph (a)(1)(ii) above, and the rights and obligations of the parties hereto shall in such event be governed accordingly.

(2) Upon receipt of notice of termination, in accordance with paragraph (1) above, the contractor shall, to the extent directed in writing by the Commission, discontinue the terminated work and the placing of orders for materials, facilities, supplies, and services in connection therewith, and shall proceed, if, and to the extent required by the Commission, to cancel promptly, and settle with the approval of the Commission, existing orders, subcontracts, and commitments insofar as such orders, subcontracts, and commitments pertain to this contract.

(b) Upon the termination of this contract, full and complete settlement of all claims of the contractor and of the Commission arising out of this contract shall be made as follows:

(1) The Government shall have the right in its discretion to assume sole responsibility for any or all obligations, commitments, and claims that the contractor may have undertaken or incurred, the cost of which are allowable 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 Commission may require for the purpose of fully vesting in the Government any rights and benefits the contractor may have under or in connection with such obligations, commitments, or claims.

(2) The Government shall treat as allowable costs all expenditures made in accordance with and allowable under the article entitled "Allowable Costs and Fixed Fee," not previously so allowed or otherwise credited for work performed prior to the effective date of termination, together with expenditures as may be incurred for a reasonable time thereafter with the approval of, or as directed by, the Contracting Officer.

(3) The Government shall treat as allowable costs, to the extent not included in (b)(2) above, the costs of settling and paying claims arising out of the termination of work under orders, subcontracts, and commitments as provided in paragraph (a)(2) above.

(4) The Government shall treat as allowable costs the reasonable costs of settlement, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the termination of the contract and for the termination and settlement of orders and subcontracts thereunder, together with such further expenditures made by the contractor after the date of termination for the protection or disposition of Government property as are approved or required by the Commission: *Provided, however,* That if the termination is for default of the contractor, there shall not be included any amount for preparation of the contractor's settlement proposal.

(5) If performance of work under this contract is terminated in whole by the Government, the fixed fee of the contractor shall be prorated to and including the effective date of such termination. In addition, if the termination is for the convenience of the Government, the contractor shall be paid a fixed fee in an amount to be agreed upon as compensation for its services in closing out the work under this contract after the effective date of such termination.

The additional fixed fee is to be negotiated as soon as practicable after service of notice of termination, shall take into account the

estimate of the cost of the services and managerial effort to be rendered under this article after the effective date of termination, and shall be provided for in a supplement or amendment to this contract prior to final settlement hereunder. Pending agreement as to the amount of such fee, the contractor shall diligently proceed with the performance of the services required under this article. No additional fee will be paid if the contract is terminated due to the default of the contractor. In the event of a partial termination by the Government, an equitable adjustment shall be made in the fixed fee if such termination results in a material decrease in the level of the contractor's management effort. Any failure to agree on the right to or the amount of any adjustment shall be deemed a dispute within the purview of the article hereof entitled "Disputes."

(6) The obligation of the Government to make any of the payments required by this article or any other provisions of this contract shall be subject to any unsettled claims in connection with this contract which the Government may have against the contractor.

(c) Prior to final settlement, the contractor shall furnish a release as required in the article entitled "Payments and Advances" hereof and such accounting for Government-owned property as may be required by the Commission: *Provided, however*, That unless the Commission requires an inventory, the maintenance and disposition of records of Government-owned property in accordance with the article entitled "Accounts, Records and Inspection" hereof shall be accepted by the Commission as full compliance with all requirements of this contract pertaining to an accounting for such property.

PART 9–9—PATENTS AND COPYRIGHTS

Subpart 9–9.50—Patents, Inventions, Technical Data

Subpart 9–9.51—Copyrights

AUTHORITY: The provisions of this Part 9–9 issued under sec. 161 of the Atomic Energy Act of 1954, as amended, 68 Stat. 948, 42 U.S.C. 2201; sec. 205 of the Federal Property and Administrative Services Act of 1949, as amended, 63 Stat. 390, 40 U.S.C. 486.

Subpart 9–9.50—Patents, Inventions, Technical Data

§ 9–9.5000 Patents, inventions, technical data, and copyrights.

§ 9–9.5001 Purpose and scope of subpart.

(a) This subpart sets forth the policies and practices of the AEC in connection with patents and related matters based on the Atomic Energy Act of 1954, as amended, and the Presidential Statement on Government patent policy of October 10, 1963, and prescribes contract articles for the purpose of protecting the Government's interest by securing to the Government (1) patent rights in research and development contracts, operating and service contracts, architect-engineer contracts, special contracts and subcontracts and purchase orders thereunder, and (2) protection against patent risks in architect-engineer, construction, and supply contracts and purchase orders.

(b) The provisions of this subpart shall be followed in authorizing (1) the use of patent provisions in cost-type contractor procurement, and (2) deviations from the flowdown requirements of patent provisions in AEC and cost-type contractor contracts. The provisions of §§ 9–9.5008–7 and 9–9.5011 also shall be applied to cost-type contractor procurement. The allocation of greater patent rights under § 9–9.5005–1, the determinations of need for background patent rights under § 9–9.5008–3, and the use of the hold-harmless article in § 9–9.5010 shall be made by Managers of Field Offices.

§ 9–9.5002 Rights in inventions, technical data, and copyrights under contracts.

(a) The current practice of the AEC as to provisions relating to inventions or discoveries, technical data and copyrights to be inserted in contracts, subcontracts, purchase orders, and other arrangements entered into with or for the benefit of the Commission is determined primarily by:

(1) The character of the work to be performed under the contract; such as research or development; routine development; construction; supply; quantity production; and

(2) The industrial and patent position of the contractor in the field of work of the contract.

Where provisions relating to inventions are appropriate, a provision concerning waiver of claims for pecuniary awards or just compensation under the Atomic Energy Act of 1954, as amended, shall be included. A similar provision shall be included in employee agreements. No provision pertaining to inventions need be used where ordinary commercial materials or equipment are to be furnished "off the shelf" or in ordinary construction contracts not involving special buildings or equipment. In such instances, however, an indemnity provision as set forth in § 9–9.5009 in favor of the Government shall be obtained.

(b) Any question as to modification, interpretation, or application of the appropriate patent, inventions, technical data and copyright provisions shall be referred to the local AEC counsel for action in collaboration with the local Patent Group, or where no local Patent Group exists, with the Assistant General Counsel for Patents.

§ 9–9.5003 Type A patent provisions.

The following patent article shall be used where the principal purpose of the contract is:

(a) To conduct research or development work in the field of atomic energy at AEC expense; or

(b) For the operation of a Government-owned atomic energy research or production facility; or

(c) To conduct research or development for AEC where a major part of the equipment employed in the research and development is furnished at Government expense.

TYPE A PATENT PROVISIONS

(a) Whenever any invention or discovery is made or conceived by the contractor or its employees in the course of or under this contract, the contractor shall promptly furnish the Commission with complete information thereon; and the Commission shall have the sole power to determine whether or not and where a patent application shall be filed, and to determine the disposition of the title to and rights in and to any invention or discovery and any patent application or patent that may result. The judgment of the Commission on these matters shall be accepted as final; and the Contractor, for itself and for its employees, agrees that the inventor or inventors will execute all documents and do all things necessary or proper to carry out the judgment of the Commission.

(b) No claim for pecuniary award or compensation under the provisions of the Atomic Energy Act of 1954, as amended, shall be asserted by the contractor or its employees with respect to any invention or discovery made or conceived in the course of or under this contract.

(c) Except as otherwise authorized in writing by the Commission, the contractor

will obtain patent agreements to effectuate the purposes of paragraphs (a) and (b) of this article from all persons who perform any part of the work under this contract, except such clerical and manual labor personnel as will not have access to technical data.

(d) Except as otherwise authorized in writing by the Commission, the contractor will insert in all subcontracts provisions making this article applicable to the subcontractor and its employees.[1]

(e) It is recognized that during the course of the work under this contract, the contractor or its employees may from time to time desire to publish, within the limits of security requirements, information regarding scientific or technical developments made or conceived in the course of or under this contract. In order that public disclosure of such information will not adversely affect the patent interests of the Commission or the contractor, patent approval for release and publication shall be secured from the Commission prior to any such release or publication.[2]

(f) With respect to any U.S. Patent Application filed by the Contractor on any contract invention or discovery made or conceived in the course of the contract, the Contractor will incorporate in the first paragraph of the U.S. Patent Application the following statement:

"The invention described herein was made in the course of, or under, a contract (if desired, may substitute contract with identifying number) with the U.S. Atomic Energy Commission."

§ 9-9.5004 Type B patent provisions.

The following patent article shall be used where the criteria set forth in § 9-9.5003 are inapplicable and where:

(a) A principal purpose of the contract is to create, develop or improve products, processes, or methods which are intended for commercial use (or which are otherwise intended to be made available for use) by the general public at home or abroad, or which will be required for such use by governmental regulations; or

(b) A principal purpose of the contract is for exploration into fields which directly concern the public health or public welfare; or

(c) The contract is in a field of science or technology in which there has been little significant experience outside of work funded by the Government, or where the Government has been the principal developer of the field, and the acquisition of exclusive rights at the time of contracting might confer on the contractor a preferred or dominant position; or

(d) The services of the contractor are:

(1) For the operation of a Government-owned, nonatomic energy research or production facility; or

(2) For coordinating and directing the work of others.

TYPE B PATENT PROVISIONS

(a) Whenever any invention or discovery is made or conceived by the contractor or its employees in the course of or under this contract, the contractor shall promptly furnish the Commission with complete information thereon; and the Commission shall have the sole power to determine whether or not and where a patent application shall be filed, and to determine the disposition of the title to and the rights in and to any invention or discovery and any patent application or patent that may result: *Provided, however,* That the contractor, in any event, shall retain at least a non-exclusive, irrevocable, royalty-free license under said invention, discovery, patent application, or patent. Subject to the license retained by the contractor, as provided in this paragraph, the judgment of the Commission on these matters shall be accepted as final; and the contractor, for itself and for its employees, agrees that the inventor or inventors will execute all documents and do all things necessary or proper to carry out the judgment of the Commission.

(b) No claim for pecuniary award or compensation under the provisions of the Atomic Energy Act of 1954, as amended, shall be asserted by the contractor or its employees with respect to any invention or discovery made or conceived in the course of or under this contract.

(c) Except as otherwise authorized in writing by the Commission, the contractor will obtain patent agreements to effectuate the purposes of paragraphs (a) and (b) of this article from all persons who perform any part of the work under this contract, except such clerical and manual labor personnel as will not have access to technical data.

(d) Except as otherwise authorized in writing by the Commission, the contractor will insert in all subcontracts provisions making this article applicable to the subcontractor and its employees.

(e) It is recognized that during the course of the work under this contract, the contractor or its employees may from time to time desire to publish within the limits of security requirements, information regarding scientific or technical developments made or conceived in the course of or under this contract. In order that public disclosure of such information will not adversely affect the patent interests of the Commission or the contractor, patent approval for release and publication shall be secured from the Commission prior to any such release or publication.

(f) With respect to any U.S. Patent Application filed by the Contractor on any contract invention or discovery made or conceived in the course of the contract, the Contractor will incorporate in the first paragraph of the U.S. Patent Application the following statement:

"The invention described herein was made in the course of, or under, a contract (if desired, may substitute contract with identifying number) with the U.S. Atomic Energy Commission."

§ 9-9.5005 Type C patent provisions.

The following patent article shall be used where the criteria set forth in §§ 9-9.5003 and 9-9.5004 are inapplicable and where:

(a) The principal purpose of the contract is to build upon existing knowledge or technology to develop information, products, processes, or methods for use by the Government, and the work called for by the contract is (1) in a field of technology other than atomic energy in which the contractor has acquired technical competence (demonstrated by factors such as know-how, experience, and patent position), and (2) directly related to a area in which the contractor has an established nongovernmental commercial position; or

(b) The work to be performed or the material or equipment to be furnished by the contractor is of such character that any inventions or discoveries that may be made will probably: (1) Relate only incidentally (and not directly) to some phase of atomic energy, (2) relate to a field of work in which the contractor has an established industrial and patent position, and (3) result from routine development or production work by the contractor.

TYPE C PATENT PROVISIONS

(a) Whenever any invention or discovery is made or conceived by the contractor or its employees in the course of or under this contract, the contractor shall promptly furnish the Commission with complete information thereon; and the Commission shall have the sole power to determine whether or not and where a patent application shall be filed, and to determine the disposition of the title to and rights in and to any invention or discovery and any patent application or patent that may result; provided, however, that the contractor in any event shall retain at least a sole (except as against the Government or its account), irrevocable, royalty-free license with the sole right to grant sublicenses, under said invention, discovery, patent application or patent, such license and sublicensing rights being limited to the manufacture, use and sale for purposes other than use in the production or utilization of special nuclear material or atomic energy. Subject to the license retained by the contractor, as provided in this paragraph, the judgment of the Commission on these matters shall be accepted as final; and the contractor, for itself and for its employees, agrees that the inventor or inventors will execute all documents and do all things necessary or proper to carry out the judgment of the Commission.

(b) No claim for pecuniary award or compensation under the provisions of the Atomic Energy Act of 1954, as amended, shall be asserted by the contractor or its employees, with respect to any invention or discovery made or conceived in the course of or under this contract.

(c) Except as otherwise authorized in writing by the Commission, the contractor will obtain patent agreements to effectuate the purposes of paragraphs (a) and (b) of this article from all persons who perform any part of the work under this contract, except such clerical and manual labor personnel as will not have access to technical data.

(d) Except as otherwise authorized in writing by the Commission, the contractor will insert in all subcontracts provisions making this article applicable to the subcontractor and its employees.

(e) It is recognized that during the course of the work under this contract, the contractor or its employees may from time to time desire to publish, within the limits of security requirements, information regarding scientific or technical developments made or conceived in the course of or under this contract. In order that public disclosure of such information will not adversely affect the patent interests of the Commission or the contractor, patent approval for release and publication shall be secured from the Commission prior to any such release or publication.

(f) With respect to each invention or discovery in which the contractor is granted the principal or any exclusive rights under clause (a), the contractor agrees to provide written reports at reasonable intervals when requested by AEC as to:

(1) The commercial use that is being made or is intended to be made of such invention or discovery; and

[1] For publication and indemnity clauses for use in research and development contracts with educational institutions, see § 9-16.5002-8, Articles B-III and B-VIII, for special research support agreements; and see § 9-16.5002-9, Articles B-6 and B-7, for cost-type contracts.

(2) The steps taken by the contractor to bring the invention to a point of practical application or to make the invention or discovery available for licensing.

(g) With respect to each invention or discovery in which the contractor is granted the principal or any exclusive rights under clause (a), the contractor agrees to and does hereby grant the Commission:

(1) The right to require the granting of nonexclusive, royalty-free licenses to applicants on any such invention or discovery unless the contractor, its transferees, or assignees demonstrate to the Commission, on request, that the contractor, its transferees, or assignees have taken effective steps within three (3) years after a patent issues on such invention or discovery to bring the invention or discovery to a point of practical application, or have granted licenses thereon free or on reasonable terms, or can show cause why he, his transferees, or assignees should retain the principal or exclusive rights for a further period of time, and

(2) The right to grant licenses royalty-free or on reasonable terms to the extent that the invention or discovery is required for public use by governmental regulation, or as may be necessary to fulfill health needs, or for other public purposes stipulated in this contract.

(h) With respect to any U.S. Patent Application filed by the Contractor on any contract invention or discovery made or conceived in the course of the contract, the Contractor will incorporate in the first paragraph of the U.S. Patent Application the following statement:

"The invention described herein was made in the course of, or under, a contract (if desired, may substitute contract with identifying number) with the U.S. Atomic Energy Commission."

§ 9–9.5005–1 Administrative allocation of patent rights.

(a) The AEC may administratively accord a contractor or inventor rights under § 9–9.5003 and greater rights than the minimum rights specified in § 9–9.5004 or § 9–9.5005 in an invention or discovery made or conceived in the course of or under a contract after the invention or discovery has been identified and reported, provided (1) the AEC determines that the allocation of greater rights is consistent with the criteria set forth in said sections or (2) the accord of greater rights is a necessary incentive to call forth private risk capital and expense to bring the invention to the point of practical application or where the equities warrant such action.

(b) The according of greater rights shall be subject to:

(1) The contractor or inventor agreeing to furnish AEC with a written report, upon request, setting forth (i) the commercial use that is being made or is intended to be made of said invention or discovery, and (ii) the steps taken to bring the invention or discovery to a point of practical application, or to make the invention or discovery available for licensing (irrespective of any report under § 9–9.5005(f)).

(2) The contractor or inventor agreeing that unless effective steps have been taken to bring the invention to a point of practical application within three (3) years after the issuance of a U.S. patent therefor or unless the contractor has granted licenses on reasonable terms within three (3) years after the issuance of a U.S. patent therefor, the AEC may grant licenses royalty-free to applicants on the patents issued thereon unless the contractor, the inventor, or a transferee or assignee, if any, can show cause why the said greater rights should be continued for a further period.

(3) The retention by the Government of the right to grant licenses royalty-free or on reasonable terms to the extent that the invention or discovery is required for public use by governmental regulation, or as may be necessary to fulfill health needs, or for other public purposes stipulated in the contract.

(4) The retention by the Government in all cases of at least an irrevocable, nonexclusive, royalty-free license throughout the world for governmental purposes.

§ 9–9.5006 Right to file U.S. and foreign patent applications.

(a) In instances where a contractor desires assurance as to the right to file U.S. patent applications, the following provision (as well as such formal changes in the provisions following the inserted provisions as may be necessary) may be inserted after the word "result" in paragraph (a) of Patent Article under §§ 9–9.5003, 9–9.5004, and 9–9.5005.

Provided, however, That if the Commission determines not to file, the contractor may file any U.S. patent application subject to Commission security requirements and regulations.

(b) If the contract work is to be performed at contractor's own facilities (not Government or Commission owned or Government or Commission contractor operated facilities, or not at contractor's facilities where a major part of the equipment employed in the research and development is Government or Commission furnished) and the contractor, when reporting an invention desires to undertake U.S. and foreign filings so as to acquire irrevocable, nonexclusive license for all purposes in any U.S. patent resulting therefrom and the title and rights in any resulting foreign patents, subject to the terms and conditions hereinafter provided, the following provisions may be inserted after the word "result" in paragraph (a) of Patent Article under §§ 9–9.5003, 9–9.5004, and 9–9.5005.

Provided, however, That if the contractor, when furnishing the complete information as to any invention or discovery advises the Commission that the contractor will file at its own expense, subject to security requirements and regulations, a U.S. patent application within six (6) months of reporting, and designated foreign patent applications on such invention or discovery, subject to security requirements and regulations, the contractor shall retain:

(1) A nonexclusive, irrevocable, paid-up license for all purposes in any such U.S. patent application filed by the contractor and any U.S. patent issued thereon, and

(2) The title and rights in any such foreign patent applications or foreign patents secured by the contractor, subject to:

(i) A nonexclusive, irrevocable, paid-up license to the U.S. Government for U.S. governmental purposes and with the right of the U.S. Government to grant licenses to foreign governments for purposes of governmental use by such foreign governments pursuant to a treaty or agreement with the U.S. Government or an agency thereof.

(ii) Granting, upon request, nonexclusive royalty-free licenses to U.S. citizens, and to U.S. corporations when 75 percent or more of the voting interest is owned by U.S. citizens, for use in the production or utilization of special nuclear material or atomic energy; and agreeing to grant to foreign users and purchasers of the product of such a U.S. licensee a license, to use or sell such product to an assignee of the business or plant or as surplus, at a reasonable, nondiscriminatory royalty ordinarily to be at no greater royalty than contractor has charged its other foreign licensees.

(iii) The right of the contractor to grant such other licenses in accordance with applicable statutes and regulations.

(a) *Provided,* That if the contractor grants any licenses other than as provided in (ii) above, the same shall be for reasonable royalties or compensation, and

(b) *Provided, further,* That if, after 3 years of the issuance of a particular foreign patent, contractor, its assignee or its licensees cannot demonstrate, upon Commission request, the practical application of the subject matter covered by such foreign patent, the contractor or its assignee shall, at the Commission's request, grant licenses on any such foreign patent to others at reasonable royalties.

(3) If the contractor does not desire to prosecute the U.S. patent application or any foreign application or maintain any foreign patent, the contractor, prior to abandonment, shall afford the Commisison an opportunity to take over prosecution of any such patent application or maintain any patent.

§ 9–9.5007 [Reserved]

§ 9–9.5008 Background patent rights and background technical data.

§ 9–9.5008–1 Introduction and definitions.

(a) The Foreground Invention Rights Provisions of AEC contracts, subcontracts, and other arrangements entered into with or for the benefit of the Commission (hereafter "contracts") are not intended to give AEC any rights to practice inventions covered by "background patents" of the contractor or subcontractor (hereafter "contractor").

(b) For the purpose of this subpart "background patents" means:

(1) Inventions or discoveries actually reduced to practice before the effective date of the contract, which the contractor owns or may license without incurring liability to others other than to pay royalties.

(2) Inventions or discoveries actually reduced to practice or acquired during the contract period but not in the course of or under the contract, which the contractor owns or may license without incurring liability to others other than to pay royalties.

(3) Inventions or discoveries on which substantial work has been performed prior to the effective date of the contract although not actually reduced to practice, provided any such invention or discovery is, at the time of execution of the contract, the subject of a patent application filed by or a patent issued to the contractor and is specifically identified as a background patent by agreement of the parties of the contract. As used

in this paragraph, the performance of "substantial work" does not necessarily require that, in cases where a working model would ordinarily be constructed, such a working model of the invention be constructed prior to the effective date of the contract. To the extent that the Commission may have rights in and to any such inventions or discovery under section 152 of the Atomic Energy Act of 1954, as amended, the inclusion of the background patent provision will constitute a waiver of such rights.

§ 9–9.5008–2 Contracts in which "background patents" provisions are deemed appropriate.

The contracting officer must inquire of and secure complete information from the prospective contractor as to background patent applications and patents in order that a determination regarding need for a "background patents" provision be made in accordance with § 9–9.5008–3.

(a) A "background patents" provision should be incorporated in an AEC contract when there is a need therefor in accordance with the policy stated in § 9–9.5008–3.

(b) The inclusion of a "background patents" provision is deemed appropriate in any contract, regardless of the type or tier, if it involves research, development, or experimental work or the design, construction or operation of an AEC facility where there is a need therefor in accordance with the policy stated in § 9–9.5008–3.

(c) "Background patents" provisions should not be included in (1) purchase orders or supply contracts for items customarily offered for sale including items involving noninventive modifications, or (2) personal service contracts for performance of standard or ordinary, nontechnical services, or (3) contracts that do not involve research, development, or experimental work or operation of an AEC facility. (See § 9–9.5009 for inclusion of indemnity provisions.)

§ 9–9.5008–3 The need for the "background patents" rights.

(a) It is the policy of AEC to include a "background patents" provision in any contract of the type described in § 9–9.5008–2(b) where:

(1) AEC pays for any research and development or experimental work aimed toward the practical or specific application of a "background patented" process or article, or directed to any program of improvement of a "background patented" process or article where such research or development would significantly enhance the value of the "background patent" and it is determined that the contemplated utilization by the Government of the results of the sponsored research and development will involve the use or infringement of the "background patents," or

(2) The contractor is designing, constructing or operating an AEC facility and background patents of the contractor will probably be incorporated in, or used in the operation of that facility; or

(3) The technology is to be communicated abroad in support of specific nuclear projects and it is desired to assure those receiving the technology of their right to its use; or

(4) An AEC program requires the acquisition of "background patent" rights for private parties in the United States in order to further the development and use of atomic energy.

(b) The foregoing enumeration of circumstances deemed appropriate for incorporation of a "background patents" provision shall not be deemed all inclusive, since there may be other special circumstances where there is a need for the acquisition of such rights.

(c) Determination of need will be made by the contracting officer. Upon written request of the contractor, made within ten (10) days after the contracting officer's determination, the contracting officer's determination will be reviewed by the General Manager or his designee, who may approve or modify the determination of the contracting officer.

§ 9–9.5008–4 The scope of the "background patents" rights.

(a) When "background patent" rights are to be acquired under the preceding paragraphs, the particular scope is a matter of negotiation in each case, but shall not be broader than the foreseeable need indicated by the facts in the particular case.

(b) Ordinarily the license should be at least an irrevocable, nonexclusive license to the U.S. Government and others acting in its behalf for U.S. governmental purposes with the right of the U.S. Government to grant licenses to foreign governments generally or for use by such foreign governments pursuant to a treaty or agreement with the U.S. Government.

(c) Where "background patents" rights are acquired for third parties in accordance with § 9–9.5008–3(a)(4), it will ordinarily be sufficient for the contractor to agree to grant specific licenses to such persons as may subsequently be designated by the Commission at reasonable royalties or other reasonable compensation. Other terms and conditions delineating the scope may be specified by the General Manager, or his designee, in specific cases.

§ 9–9.5008–5 The consideration for "background patents" rights.

(a) The acquisition of license rights to "background patents," whether the contract be fixed price, cost, cost plus, or other consideration, is a matter to be negotiated. Considerations such as the following should be evaluated in determining to what extent, if any, additional consideration should be paid for "background patents" rights. In many situations an evaluation of the following factors will lead to the conclusion that the contract price should not be increased to reflect the acquisition of "background patents" rights:

(1) The value of such "background patents";

(2) The extent of the contractor's prior independent work and expenditures and the amount of the Government's expenditures under the contract;

(3) The increase in value of the "background patents" to the contractor by reason of the contract work;

(4) The nature and scope of the license to be acquired and the extent of anticipated use;

(5) Whether under the foreground patent provision the contractor is accorded the exclusive rights for purposes other than use in the production or utilization of special nuclear materials or atomic energy;

(6) The measure of the contractor's legal right to collect reasonable and entire compensation if a license is not secured; and

(7) The obligation of the contractor to pay royalties to others with respect to the "background patents."

(b) Any agreement for the payment of additional compensation for background patent rights will be made only upon the approval of the General Manager, or his designee.

§ 9–9.5008–6 Types of suggested background patents provisions.

Where it is determined that a background rights provision is necessary, the particular wording of a provision granting a license and rights to the Government may be a matter of negotiation. However, the following paragraphs are suggested for addition to the appropriate invention rights provisions as set forth in §§ 9–9.5003 through 9–9.5005:

(a) With respect to (1) research, development or experimental contracts involving process or product development; (2) design, construction, production or manufacturing contracts where research and development of process, equipment, materials, or other items of the contractor are involved; and (3) other research, development and experimental contracts, the following paragraph is suggested for addition:

In addition to the rights of the parties under the foregoing paragraphs in and to inventions or discoveries made or conceived in the course of or under this contract, the contractor agrees, and does hereby grant to the Government an irrevocable, nonexclusive, paid-up license in and to any inventions or discoveries actually reduced to practice before the effective date of the contract owned or controlled by the contractor and in and to any inventions or discoveries actually reduced to practice or acquired during the contract period but not subject to the foregoing foreground invention rights provision, which shall be utilized or embodied in the work under this contract: (If the contract is for research, development or experimental work on design, the phrase should read—"which are incorporated in the conceptual design or prototype furnished under this contract"—) (1) To make, use and to have made and used throughout the world for U.S. Government purposes, and (2) to sell and have sold such articles, material or product embodying said invention or discovery as surplus or condemned public property as provided by law. The acceptance or exercise by the Government of the aforesaid rights and license shall not prevent the Government at any time from contesting the enforceability, validity or scope of, or the title to, any rights or patents herein licensed.

(b) In facility operation contracts, the following paragraph is suggested for addition:

In addition to the rights of the parties under the foregoing paragraphs in and to inventions or discoveries made or conceived in the course of or under this contract, the contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up license in and to any inventions or discoveries actually reduced to practice before the effective date of this contract owned or controlled by the Contractor and in and to any inventions or discoveries actually reduced to practice or acquired during the contract period but not subject to the foregoing foreground invention rights provision, which shall be incorporated in the construction of or involved in the utilization of the facility by the contractor (1) to practice or to have practiced for the Government at the facility, (2) to practice and to have practiced in similar U.S. Government facilities, and (3) to sell or dispose of such facility or facilities, or any portion thereof, as provided by law. The acceptance or exercise by the Government of the aforesaid rights and license shall not prevent the Government at any time from contesting the enforceability, validity or scope of, or the title to, any rights or patents herein licensed.

(c) In contracts for design, construction or operation of nuclear reactor power facilities involving research, development or experimental work, the following paragraph is suggested for addition:

In addition to the rights of the parties under the foregoing paragraphs in and to inventions or discoveries made or conceived in the course of or under this contract, the contractor agrees to and does hereby grant to the Government an irrevocable, nonexlusive paid-up license in and to any inventions or discoveries actually reduce to practice before the effective date of the contract owned or controlled by the contractor and in and to any inventions or discoveries actually reduced to practice or acquired during the contract period but not subject to the foregoing foreground invention rights provision, which are incorporated or embodied during the term of this contract in the nuclear power plant: (If the contract is for research, development or experimental work on design of a reactor, the phrase should read—"which are incorporated in conceptual designs or prototypes furnished under this contract"—) (1) To make, use and to have made and used, throughout the world for U.S. governmental purposes in the manufacture and use of U.S. Government-owned or Government-operated reactor facilities, (2) to transfer such license with transfer of such Government-owned or Government-operated reactor facility, and (3) to sell and have sold such article, material or product, embodying such inventions or discoveries, as surplus or condemned public property as provided by law. The acceptance or exericse by the Government of the aforesaid rights and license shall not prevent the Government at any time from contesting the enforceability, validity or scope of, or title to, any rights or patents herein licensed.

(d) Where specific Headquarters instructions are issued as to the necessity for third party licenses, the following is a suggested addition to the governmental license clause:

With respect to those inventions or discoveries licensed herein, the contractor agrees to grant nonexclusive licenses for use in connection with reactor facilities (or equipment—if only equipment is involved) of a type similar to that provided for under this contract at reasonable terms to responsible private parties upon the request of the Commission. The Commission shall make such request only when such inventions or discoveries are considered by the Commission to be necessary. In the event that the contractor and prospective licensees cannot agree upon a reasonable royalty, the contractor agrees that the royalties may be fixed pursuant to the procedure set forth in section 157(c) of the Atomic Energy Act of 1954, as amended.

(e) Where the nuclear reactor facility or equipment incorporated standard commercial components or parts readily available in the open market from other sources, there may be added to the proposed contract clause, before the last sentence thereof, the following suggested provision:

Provided, however, That no license is granted herein as respects nonnuclear commercial items, components or materials incorporated, to the extent that such nonnuclear items, components, or materials are available in the open market from other commercial sources.

§ 9–9.5008–7 Background technical data.

The foregoing "Background Patents" rights provisions are limited to define patents and inventions and do not cover "background secret processes, technical information, and know-how." While Technical Data generally is covered by § 9–7.5006–13, the same does not specifically give the Government rights in earlier identified secret processes, technical data or know-how, and it is recognized that there may be cases where the acquisition of rights in such earlier material is necessary. While the particular wording of a provision granting rights to the Government is a matter of negotiation, the following paragraph is suggested for addition to the Drawings, Designs and Specification Provisions as set forth in § 9–7.5006–13 of this chapter:

In addition to the rights of the parties in technical data set forth above (§ 9–7.5006–13) the contractor agrees to and does hereby grant to the Government an irrevocable license and right to use any secret process, technical information, or know-how of the contractor, made, developed, or acquired prior to or on the effective date of expiration or completion of this contract, which shall be or is utilized, tested, or embodied in the work under this contract, or which shall be or is specifically incorporated in any scientific or technical report rendered under this contract.

It may be appropriate when it is necessary to acquire the right to use such background "secret processes, technical information and know-how" to include provisions limiting the right of the Government to disseminate and publish the same. In such event, a proviso along the following lines may be appropriate:

Provided, however, That to the extent that any such background "secret processes, technical information or know-how" when furnished or delivered is specifically identified by the contractor at the time of delivery to the Commission, the same shall not be used by the Government except in the performance of other contracts or subcontracts with or for the benefit of the Government, unless such material and information is generally available to the public or has been made available to the Government from other sources or previously by the contractor without limitation as to use.

§ 9–9.5009 Patent indemnification of Government by contractor.

(a) Under the Act of June 25, 1948 (28 U.S.C. 1498), any suit for infringement of patent by a contractor or a lower tier subcontractor in performance of a Government contract must be brought against the Government in the Court of Claims and not against the contractor where the subject matter was for the use or manufacture by or for the Government of the United States. The Atomic Energy Acts of 1946 and 1954 substitute a cause of action before the AEC Patent Compensation Board for certain types of claims, discussed in § 9–9.5017. Therefore, provision is made in §§ 9–9.5003 through 9–9.5005 for waivers of such claims as to inventions and discoveries made or conceived in the course of work under the contract. A large part of the activities of AEC are still subject to suit under the Act of June 25, 1948 (28 U.S.C. 1498), and in order that the Government may be protected from liability for any such patent infringement where ordinary commercial materials or equipment are to be furnished "off the shelf" or furnished with only minor modifications not generally involving the making of any inventions or discoveries pursuant to a construction or supply contract or a purchase order, the same should contain appropriate indemnification provisions in favor of the Government.

(b) The Patent Indemnity Article (Clause 15 of GSA Standard Form 23A, revised), which follows, may be employed in the purchase of supplies for construction work where Form AEC–103, "Order," is used and in lump-sum or cost-type construction contracts:

PATENT INDEMNITY

Except as otherwise provided, the contractor agrees to indemnify the Government and its officers, agents and employees against liability, including costs and expenses, for infringement upon any Letters Patent of the United States (except Letters Patent issued upon an application which is now or may hereafter be, for reasons of national security, ordered by the Government to be kept secret or otherwise withheld from issue) arising out of the performance of this contract or out of the use or disposal by or for the account of the Government of supplies furnished or construction work performed hereunder.

(c) In other instances where an indemnity provision is deemed appropriate, the following article should be employed:

PATENT INDEMNITY

The contractor agrees to indemnify the Government, its officers, agents, servants, and employees against liability of any kind (including costs and expenses incurred) for the use of any invention or discovery and for the infringement of any Letters Patent (not including liability, arising pursuant to sec. 183, Title 35 (1952), U.S.C., prior to the issuance of Letters Patent) occurring in the performance of this contract or arising by reason of the use or disposal by or for the account of the Government of items manufactured or supplied under this contract.

(d) The term "seller" or "vendor" should be substituted for the term "contractor" in purchase orders and the term

"buyer and" may be added before the term "Government" wherever it appears, in the event a contractor-buyer issues a subcontract or purchase order and desires to obtain from the seller the same protection as the Government obtains.

(e) Certain construction or supply contracts may call for items or parts thereof which are standard commercial supplies and also for items which require modifications in the course of the performance of the work. In such event the patent indemnity articles set forth above may be appropriately modified. To cover such circumstances, the following modification should be added at the end of the patent indemnity article:

except, however, infringement necessarily resulting from the contractor's compliance with written specifications or provisions for other than standard parts or components manufactured or supplied by the contractor or resulting from specific written instructions given by the Commission for the purpose of directing a manner of performance of the contract not normally utilized by the contractor.

(f) In some instances certain specific items should be excluded from the indemnification, and where such items or parts can be identified as nonstandard commercial components or parts the following provision may be added at the end of the patent indemnity article:

except that this indemnity shall not apply to the following items or parts (specifically identifying and listing the items or parts to be excluded).

§ 9–9.5010 Contractor held harmless by Government.

(a) As indicated in connection with the patent indemnity provisions, under the Act of June 25, 1948 (28 U.S.C. 1498) any action for patent infringement by a contractor or subcontractor in the performance of work by or for the Government is subject to suit against the Government in the Court of Claims, except in the special circumstances provided for in the Atomic Energy Acts of 1946 and 1954. While the contractor is protected from injunctive action in the performance of a Government contract, there may be special circumstances, particularly in the case of research or development work, where the contractor has not made any investigation as to the possibility of infringement in the performance of the contract and the contract price does not include any provision for the settlement of possible patent claims. In such circumstances, the following "hold harmless" article in favor of the contractor may be used in the event that the contractor specifically requests it and the facts as to the particular research or development work are as stated in the article:

It is agreed that the Government shall hold the contractor harmless from liability of any kind arising from infringement of patent rights in the course of the work performed by the contractor under this contract, in view of the following facts: (a) The contractor has not made an investigation as to the possibility of patent infringement, (b) the Government and the contractor desire to avoid the delay incident to a patent investigation, and (c) the contractor has not included in its price or fee any provision for the settlement of possible patent claims. The Contractor shall give prompt notice in writing to the Commission of any action filed of claim against the contractor for infringement of patent rights in the course of the work performed by the contractor under this contract. Except as otherwise directed by the Commission in writing, the contractor shall furnish promptly to the Commission copies of all pertinent papers received by the contractor with respect to any such action or claim. If required by the Commission, the contractor (at the Government's expense, by proper arrangement) shall assist the Government in the settlement or defense of such action or claim and shall furnish such evidence in its possession as may be required by the Government in the settlement or defense of such action or claim.

Such provision shall not be employed in a supply contract or purchase order for ordinary commercial materials or equipment.

(b) In research and development contracts if standard commercial parts or components are to be furnished, the standard commercial parts or components are to be excepted from the above article by deleting the period after the word "claims" at the end of the first sentence of the article and inserting the following exception:

excepting, however, any liability arising from the infringement of Letters Patent resulting from the contractor's furnishing or supplying standard parts or components or utilizing its normal practices or methods in the performance of the contract or to any parts, components, practices or methods as to which the contractor has secured indemnification from liability and with respect to which the contractor agrees to indemnify the Government, its officers, agents, servants and employees against liability of any kind for the use of any invention or discovery and for the infringement of any Letters Patent (not including any liability arising from section 183, Title 35 (1952), U.S.C. prior to the issuance of Letters Patent.

§ 9–9.5011 Reporting of royalties.

The Government has acquired patent rights under a large number of inventions as a result of research and development sponsored by AEC as well as by other Government agencies and as a result of purchase and other means. In instances where the Government has acquired patent rights, it is not equitable that the Government be charged royalties in connection with AEC procurement, construction, or operation. In order that AEC may be informed regarding royalty payments to be made by a contractor or subcontractor in connection with any procurement, construction, or operation where the amount of the royalty payments is reflected in the contract price, or is to be reimbursed by the Government, the negotiator shall (a) obtain from the contractor information concerning the royalty payments expected to be made in connection with the proposed procurement, construction, or operation, together with the names of the licensors and either the patent numbers involved or such other information as will permit identification of the patents and patent applications as well as the basis on which the royalties are to be paid, or (b) obtain from the contractor a certificate that the contract price includes no amount representing the payment of any royalty by the contractor directly to others in connection with the performance of the contract, or (c) insert in the contract the article set forth below:

REPORTING OF ROYALTIES

If this contract involves any royalty payments or if the amount of any royalty payments is reflected in the contract price of the contract to the Government, the contractor agrees to report in writing to the Commission (Assistant General Counsel for Patents) during the performance of this contract and prior to its completion or final settlement the amount of any royalties or other payments paid or to be paid by it directly to others in connection with the performance of this contract together with the names and addresses of licensors to whom such payments are made and either the patent numbers involved or such other information as will permit identification of the patents or other basis on which the royalties are to be paid. The approval of the Commission of any individual payments or royalties shall not estop the Government at any time from contesting the enforceability, validity or scope of, or title to, any patent under which a royalty or payments are made.

With respect to any advertised contract which may involve the payment of royalties by the contractor in performance thereof the "Reporting of Royalties" article shall be included in the invitation for bids as one of the general contract provisions. At the option of the contracting officer the following provision may be added to the above article:

If no royalties or other payments are paid directly to others, the contractor agrees so to report in writing to the Commission (Assistant General Counsel for Patents) prior to the completion of final settlement of the contract.

§ 9–9.5012 Classified contracts.

Unauthorized disclosure of classified subject matter in any manner whatsoever may be a violation not only of the Atomic Energy Acts of 1946 and 1954 but also of the Espionage Act (18 U.S.C. 37) as well as of the provisions pertaining to disclosure of information incorporated in the contract. (See Part 9–7 of this chapter.) Furthermore where a patent application is filed and the disclosure thereof and issuance of a patent would be detrimental to the national security a Secrecy Order under the provisions of section 181, title 35, United States Code will be issued by the U.S. Commissioner of Patents. Violation of the provisions of the Secrecy Order subjects the violator to the separate penalties imposed by sections 182, 186, and any rules promulgated pursuant to section 188 of title 35, United States Code.

§ 9–9.5013 Foreign patent rights.

Under the contract articles set forth in §§ 9–9.5003 through 9–9.5005, AEC has the right to determine whether and where a patent application shall be filed. AEC thereby is in a position subject to § 9–9.5006(b) to comply with Executive Order 9865 of June 14, 1947, which requires all Government agencies, wherever practicable, to acquire the right to file foreign patent applications or

inventions resulting from research conducted by the Government.

§ 9–9.5014 Procedure in administration of patent provisions.

(a) With respect to each contract, subcontract, and purchase order under his jurisdiction, each Manager of a Field Office is responsible:

(1) For assuring that contracting officers comply with the provisions of this chapter in executing and approving any contract, subcontract, or purchase order, or any supplement thereto modifying the patent provisions;

(2) For transmitting the information requested on the Patent Information Sheet, Form AEC–242, to the Assistant General Counsel for Patents;

(3) For reviewing, in consultation with the contractor, subcontractor, or vendor, arrangements for obtaining adequate patent agreements from employees and others performing work under any contract, subcontract, or purchase order containing patent provisions in favor of the Government; (The form of such patent agreement actually in use or proposed for use shall be forwarded for approval to the local Patent Group or, where no local Patent Group exists, to the Assistant General Counsel for Patents.)

(4) For forwarding a notice of completion or termination of the work and a request for patent clearance to the Assistant General Counsel for Patents for each contract, subcontract, and purchase order containing patent provisions giving rise to rights in the Government; and

(5) For withholding reimbursement of the voucher covering final payment pending receipt of the written notice of the patent clearance from the Assistant General Counsel for Patents for each such contract, subcontract, and purchase order.

(b) The Assistant General Counsel for Patents upon receipt of notification on Patent Information Sheet, Form AEC–242, will notify the person who transmits the information sheet of the Patent Group or Patent Attorney assigned to conduct the patent investigation of the reported contract, subcontract, or purchase order. Upon receipt of the notice of completion or termination as provided in paragraph (a)(4) of this section, a notice of patent clearance will be issued by the Assistant General Counsel for Patents when there has been to his best knowledge and belief compliance with the patent provisions. The patent provisions normally require that a qualified representative of the contractor or vendor furnish to the AEC:

(1) A list and identification of the notebooks kept during the course of the work;

(2) A certification that such notebooks have been examined and that, to the best of his knowledge, they contain no inventions or discoveries other than those set forth in the certification (inventions and discoveries are to be reported by case number, name of inventor, and short title);

(3) A list and identification of the technical reports rendered during the course of the work;

(4) A certification that such reports have been examined and that, to the best of his knowledge, they contain no inventions or discoveries other than those reported in subparagraph (2) of this paragraph (the certificate should include a statement that any such technical reports not yet transmitted to AEC will be so transmitted upon request);

(5) A statement that (i) the notebooks kept during the course of the work either have been turned over to AEC or are held in custody for AEC use by a designated person, and (ii) such notebooks will be submitted to AEC, Assistant General Counsel for Patents, for examination upon request. (AEC may authorize, upon request, continued use of such notebooks in additional research work under other AEC contracts.)

(c) Ordinarily, inventions and discoveries will be reported on Form AEC–213, copies of which are available at various Field and Area Offices. Reporting of inventions promptly and in advance of the completion of the work under the respective contracts will aid patent clearance. Submission of interim reports, where contracts cover an extended period, will also facilitate the disposition of patent matters and expedite the issuance of final patent clearance. The total AEC counsel, in collaboration with the local Patent Group or Patent Attorney in a Field or Area Office will assist negotiators in negotiating patent provisions. The local Patent Group or Patent Attorney will generally submit Patent Information sheets and otherwise assist Managers of Field Offices and Area Managers, contractors, subcontractors and vendors in the reporting of inventions and discoveries, the handling of patent matters and the preparation of certifications to initiate patent clearance.

§ 9–9.5015 Acquisition of patent rights.

In accordance with general Government practices, AEC may acquire rights in patents and is authorized, pursuant to section 153 of the Atomic Energy Act of 1954, after a hearing and under specified circumstances, to declare certain patents affected with the public interest.

§ 9–9.5016 Claims for patent infringement.

Any claims for alleged unauthorized use of inventions or infringement of patents should be promptly reported to the Assistant General Counsel for Patents for processing.

§ 9–9.5017 Claims under the Atomic Energy Acts of 1946 and 1954.

Under section 11 of the Atomic Energy Act of 1946 patents could not be secured on certain inventions or discoveries, and patents issued after August 1, 1946 conferred no rights to the extent that inventions or discoveries were used for certain specialized purposes. In lieu thereof provision was made in section 11 for application for an award in a proceeding before the AEC Patent Compensation Board. Under section 151a of the Atomic Energy Act of 1954, no patent shall be issued for any invention or discovery which is useful solely in the utilization of special nuclear material or atomic energy in an atomic weapon. Section 151b provides that patents issued thereafter confer no rights to the extent that such invention or discovery "is used" in atomic weapons. Section 157 provides for reasonable royalty determination in the case of the owner of a patent licensed under section 158 or subsection 153b or 153e, or any patent licensee thereunder; the grant of just compensation for the revocation of patents and patent rights pursuant to section 151; and for the grant of awards to persons making any invention or discovery useful in the production or utilization of special nuclear material or atomic energy who are not entitled to reasonable royalty or compensation therefor under the Act and who have complied with the provisions of section 151c. The AEC may also, upon the recommendation of the General Advisory Committee, and with the approval of the President, grant an award for any especially meritorious contribution to the development, use or control of atomic energy.

§ 9–9.5018 Definitions.

As used in the regulations of this part, the stated terms in singular and plural are defined as follows for the purposes hereof:

(a) "Government agency" includes any Executive department independent commission, board, office, agency, administration, authority, or other Government establishment of the Executive Branch of the Government of the United States of America.

(b) "Invention", "Invention or discovery" includes any art, machine, manufacture, design, or composition of matter, or any new and useful improvement thereof, or any variety of plant, which is or may be patentable under the Patent Laws of the United States of America or any foreign country.

(c) "Contractor" means any individual, partnership, public or private corporation, association, institution, or other entity which is a party to the contract.

(d) "Contract" means any actual or proposed contract, agreement, grant, or other arrangement, or subcontract entered into with or for the benefit of the Government.

(e) "Made", "made or conceived" when used in relation to any invention or discovery means the conception or the first actual reduction to practice of such invention or discovery in the course of or under the contract.

(f) "License for governmental purpose" means the right of the Government of the United States (including any agency thereof, State, or domestic municipal government) to practice and have practiced (made or have made, used or have used, sold or have sold) throughout the world by or on behalf of the Government of the United States.

(g) "To the point of practical application" means to manufacture in the case of a composition or product, to practice in the case of a process, or to operate in the case of a machine, and under such conditions as to establish that the invention is being worked and that its benefits are reasonably accessible to the public.

§ 9–9.5019 Rights in inventions and technical data in AEC-supported contractor independent research and development projects.

(a) Where AEC accepts a share of the cost of an independent research and development project of a contractor or subcontractor and its share of the cost bears the percentage relationships indicated in § 9–15.5010–12(h) to the total cost incurred or to be incurred for such projects during the contractor's or subcontractor's annual accounting period, the rights to be obtained in and to technical data developed and inventions or discoveries made or conceived in the course of or under such independent research and development projects shall be as set forth in § 9–15.5010–12(h).

(b) If the share of the cost provided by all of AEC's contracts and subcontracts, pursuant to the evaluation under § 9–15.5010–12(h), is expected to be less than 20 percent of the cost of any individual IR&D project of the contractor or subcontractor, a provision should be added to the contract requiring the contractor to furnish summary reports to the Commission upon request for evaluation purposes.

(c) If the share of the cost provided by all of AEC's contracts and subcontracts is expected to be 20 percent or more of the cost of any individual IR&D project of the contractor or subcontractor but less than 75 percent, then a summary report shall be furnished without a specific Commission request and a provision should be added to the contract requiring the contractor (1) to promptly report any invention or discovery made or conceived in the course of or under any such IR&D project for which support is 20 percent or more but less than 75 percent and, if requested by AEC, to submit a complete and detailed technical report, (2) to grant a nonexclusive, irrevocable, paid-up license to the Commission for Commission purposes to any resulting patent application or patent, and (3) to accord the Commission the right to use and have used for all Commission purposes the reports submitted under this provision. If the contractor includes proprietary information, the same shall be specifically identified in writing at the time of submission. If so identified, it will be treated as confidential, provided any such information is not the property of the Government, has not otherwise been made available to the Government independently of the contractor's submittal, and is information which the contractor has protected from unrestricted use by others.

(d) If the share of the cost provided by all AEC contracts and subcontracts is expected to be 75 percent or more of the cost of any individual IR&D project of the contractor or subcontractor, provisions shall be included in the contract requiring the contractor to:

(1) Furnish to AEC all technical information and data on the supported projects for unlimited dissemination and use, but insofar as such technical information and data disclose patentable subject matter, the same will not be disseminated until patenting action has been taken.

(2) Promptly report any invention or discovery made in the course of or under any such IR&D projects, and to grant a nonexclusive, irrevocable, paidup license to the Government for all purposes, with the right to grant sublicenses for all purposes in and to any such invention or discovery and to any patent application or patent thereon.

(e) (1) As a general rule, for the purpose of determining AEC technical data and patent rights as provided in paragraphs (b), (c), and (d) of this section when the share of the cost provided by all of AEC's contracts and subcontracts is expected to be close to 20 percent, or greater than 20 percent, of the cost of any individual IR&D project of the contractor or subcontractor, there should be negotiated an advance agreement on the estimated AEC share of the cost of any such project and AEC's rights would be determined on the basis of such estimates. Such rights would not change if the AEC share of the actual costs incurred is different from that previously estimated in advance. Such advance agreements should provide for amendment in case AEC contracts and subcontracts subsequently entered into significantly change the previously estimated AEC share of the cost agreed upon for any IR&D project during the pertinent period.

(2) The contracting officer and the contractor may agree in writing in certain instances that the AEC rights in technical data and patents shall be determined and established after the fact in accordance with paragraphs (a), (b), (c), and (d) of this section on the basis of the actual AEC share in the cost of any such IR&D project.

Subpart 9–9.51—Copyrights

§ 9–9.5100 Copyrights.

§ 9–9.5101 Purpose and scope of subpart.

(a) This subpart sets forth the policy and practices of the AEC as to use and publication of copyrightable materials, and contract provisions in connection with the procurement of material subject to copyright. The copyright provision to be incorporated in subcontracts shall be determined by the principles applicable to contracts.

(b) The policies and requirements of this subpart shall be applied to cost-type contractor procurement. The authorization and consent clause in § 9–9.5105 may be used only with the approval of Managers of Field Offices.

§ 9–9.5102 AEC use of copyrighted material.

AEC recognizes that the owner of copyrighted material has property rights in such material and it is the policy of AEC that it will not knowingly incorporate such copyrighted material into publications prepared by or for AEC except with the written consent of the copyright owner. The attention of copyright owners should be invited in appropriate instances to the Act of July 30, 1947 (title 17, U.S.C. sec. 8) providing that "the publication or republication by the Government either separately or in a public document, of any material in which a copyright is subsisting shall not be taken to cause any abridgement or annulment of the copyright or to authorize any use or appropriation of such copyrighted material without the consent of the copyright proprietor."

§ 9–9.5103 Rights in copyrightable material under contracts.

(a) In research and development and other contracts (including contracts for translations, or for the preparation of articles, books or other publications) under which material subject to copyright may be furnished in the form of technical or progress reports, memoranda, papers or articles prepared as to the work AEC has employed a provision under which all scientific and technical data, specifications, reports, papers, articles and other memoranda "shall be and remain the property of the Government, and the Government shall have the right to use such scientific and tecthnical data, specifications, reports and memoranda in any manner without claim for additional compensation. (See § 9–7.5006–13.) Although the foregoing provision or a similar provision is incorporated and such reports and papers are the property of the Government and any report, memoranda, paper or article composed may be considered a Government publication for which copyrights are specifically excluded in accordance with the provisions of section 8, title 17, United States Code, it is desirable to provide specifically for the disposition of any copyrightable material not comprehended by such provision.

(b) In the event that a contract does not contain a provision under which the material, reports, papers, etc., produced, composed or furnished under a contract become the property of the Government, a provision should be incorporated in the contract that the Government acquires the right to determine the disposition of copyrightable material or receives at least a royalty-free, nonexclusive and irrevocable license to such material first produced, composed or furnished under the contract, with a right to authorize others to reproduce, publish and use the same, leaving the contractor free to take out a copyright in his own name if he so desires.

(c) In the event that a contractor incorporates copyrighted material already owned by it or others in the material furnished to the Government, a provision for a license to the Government in

such material should be secured whenever appropriate.

(d) Appropriate provisions as to copyrightable material should be included in contracts whether the material subject to copyright is the main item of the contract or is merely incidental. In instances, where the translation or the preparation of articles, books, or other copyrightable material is the principal subject matter of the contract, the following article should be incorporated:

COPYRIGHT

(1) The contractor (i) agrees that the Commission shall determine the disposition of the title to and the rights under any copyright secured by the contractor or its employees on copyrightable material first produced or composed under this contract and (ii) hereby grants to the Government a royalty-free, nonexclusive, irrevocable license to reproduce, translate, publish, use and dispose of, and to authorize others so to do, all copyrighted or copyrightable work not first produced or composed by the contractor in the performance of this contract but which is incorporated in the material furnished under the contract, provided that such license shall be only to the extent the contractor now has, or prior to the completion or final settlement of the contract may acquire, the right to grant such license without becoming liable to pay compensation to others solely because of such grant.

(2) The contractor agrees that it will not include any copyrighted material in any written or copyrightable material furnished or delivered under this contract, without a license as provided for in paragraph (1) (ii) hereof, or without the consent of the copyright owner, unless specific written approval of the Contracting Officer to the inclusion of such copyrighted material is secured.

(3) The contractor agrees to report in writing to the Commission, promptly and in reasonable detail, any notice or claim of copyright infringement received by the contractor with respect to any material delivered under this contract.

(e) The foregoing provision is preferred for contracts where the reports, papers or other copyrightable material become the property of the Government. Nevertheless, in such contracts as well as in other contracts where the incorporation of a provision as to copyrightable material is appropriate the following provision may be used:

COPYRIGHT

(1) The contractor agrees to and does hereby grant to the Government, and to its officers, agents, servants and employees acting within the scope of their official duties, (i) a royalty-free nonexclusive and irrevocable license to reproduce, translate, publish, use, and dispose of, and to authorize others so to do, all copyrightable material first produced or composer under this contract by the contractor, its employees or any individual or concern specifically employed or assigned to originate and prepare such material; and (ii) a license as aforesaid under any and all copyrighted or copyrightable work not first produced or composed by the contractor in the performance of this contract but which is incorporated in the material furnished under the contract, provided that such license shall be only to the extent the contractor now has, or prior to completion or final settlement of the contract may acquire the right to grant such license without becoming liable to pay compensation to others solely because of such grant.

(2) The contractor agrees that it will not include any copyrighted material in any written or copyrightable material furnished or delivered under this contract, without a license as provided for in paragraph (1) (ii) hereof, or without the consent of the copyright owner, unless specific written approval of the Contracting Officer to the inclusion of such copyrighted material is secured.

(3) The contractor agrees to report to the Commission, promptly and in reasonable written detail, any notice or claim of copyright infringement received by the contractor with respect to any material delivered under this contract.

(f) If the circumstances warrant special arrangements, such arrangements should be reviewed at the time of negotiation, or if proposed during the course of the contract, at the time of proposal with the Managers of Field Offices and with the Assistant General Counsel for Patents.

§ 9–9.5104 Copyright indemnification of Government.

There may be certain circumstances under which it is appropriate for the contractor to indemnify the Government as respects any copyright infringement. This would be particularly true in connection with contracts where translation or preparation of articles, books or other copyrighted material is one of the important aspects of the contract. In such event the following provision is suggested for incorporation:

Except as otherwise provided, the contractor agrees to indemnify the Government, its officers, agents, servants, and employees against liability, including costs and expenses, for the infringement of any copyright in any work protected under the copyright laws of the United States arising out of the performance of this contract, including the reproduction, translation, publication or use of any such copyrighted material.

§ 9–9.5105 Government authorization and consent.

There may be special situations where the Government specifically directs a contractor to perform certain work which might constitute infringement of copyrights. If, for example, the Government requests a specific reproduction of a foreign work when it cannot be ascertained that there is a valid copyright, and the Government desires to avoid delay that would be caused by making sure, the Government would authorize and consent to the use of such possibly copyrighted material. However, it is felt that the matter of such authorization or consent by the Government should arise only in unusual cases. In such circumstances the following authorization and consent article is suggested for use:

The Government hereby grants its authorization and consent to use (specifically identified subject matter) in the course of the work to be performed by the contractor under this contract.

As the exclusive remedy for the use by the contractor under the foregoing authorization and consent is against the Government, it should be accorded only insofar as it is necessary for the contractor to perform the contract. It is not deemed an authorization and consent to the contractor to use for purposes other than fulfillment of the contract. In such instances, to assure that the contractor appreciates the limits of the authorization, the following may be added at the end:

Except for the foregoing authorization and consent, any liability arising from infringement of any copyrighted work protected under the copyright laws of the United States resulting from contractor's performance of the contract, the contractor agrees to indemnify the Government, its officers, agents, servants and employees against liability for infringement of any such copyright.

§ 9–9.5106 Copyrights in motion pictures.

In all contracts for motion pictures or for the production of motion pictures or the preparation of motion picture scripts, translations, adaptations, and the like, the following article shall be included:

COPYRIGHTS

(a) The contractor agrees that all material forming the subject matter of this contract and first produced in the performance of this contract shall be the sole property of the Government, and may not be published or reproduced, in whole or in part, or in any manner or form, other than by the Government or with its express consent. The contractor further agrees that no right at common law or inequity shall be asserted and no claim to copyright by statute shall be established by the contractor in any material first produced in the performance of this contract.

(b) The contractor agrees to grant and does hereby grant to the Government a royalty-free, nonexclusive and irrevocable license (1) to publish, translate, reproduce, use, and dispose of, in any manner, any and all copyrighted or copyrightable material not first produced or composed in the performance of this contract but which is incorporated in the material furnished under the contract; and (2) to authorize others so to do.

(c) The contractor agrees to indemnify and save and hold harmless the Government, its officers, agents and employees acting within the scope of their official duties against any liability, including costs and expenses, (1) for violation of copyright or any other proprietary rights, arising out of the reproduction, use or disposition of any copyrighted or copyrightable material furnished under this contract, or (2) based upon any libelous or other unlawful matter contained in said material.

PART 9–10—BONDS AND INSURANCE

Sec.

Subpart 9–10.2—Sureties on Bonds

Subpart 9–10.3—Insurance

AUTHORITY: The provisions of this Part 9-10 issued under sec. 161 of the Atomic Energy Act of 1954, as amended, 68 Stat. 948, 42 U.S.C. 2201; sec. 205 of the Federal Property and Administrative Services Act of 1949, as amended, 63 Stat. 390, 40 U.S.C. 486.

§ 9–10.000 Scope of part.

(a) This part implements and supplements the requirements on bonds and insurance set forth in FPR Part 1–10.

(b) The provisions of FPR 1–10.104–1 and 1–10.105–1, and the corresponding AECPR's, apply to construction subcontracts in excess of $2,000 awarded by cost-type contractors.

(c) The other policies and procedures of FPR Part 1–10 and Part 9–10 shall be applied to other types of procurement by cost-type contractors.

Subpart 9–10.1—Bonds

§ 9–10.102 Definitions.

§ 9–10.102–50 Fidelity bonds.

A blanket fidelity bond is a bond under which the obligor agrees to indemnify an employer up to an amount stated in the bond for losses caused by dishonesty on the part of all employees except those expressly excluded by written endorsement on the bond. A blanket position fidelity bond affords the employer such protection with respect to all positions except those expressly excluded by written endorsement on the bond. An individual fidelity bond affords the employer such protection with respect to a named individual, and a schedule fidelity bond protects the employer against the dishonesty of any employee or employees included in a schedule of named individuals.

§ 9–10.103 Bid guarantees.

§ 9–10.103–1 Policy on use.

(a) In addition to the restrictions on use of bid guarantees in FPR 1–10.103–1 (a), a bid guarantee may be required only for lump-sum or unit-price contracts entered into as a result of formal advertising, and may not be required for negotiated contracts. However, a bid guarantee may be required for a lump-sum or a unit-price construction subcontract under a prime cost-type contract when the subcontract is entered into under procedures similar to formal advertising.

§ 9–10.104 Performance bonds.

Performance bonds shall not be furnished at Government expense in connection with AEC cost-type contracts and cost-type subcontracts.

§ 9–10.104–1 Construction contracts.

A performance bond on Standard Form 25 (modified to name the AEC prime cost-type contractor as well as the United States of America as obligees) shall be required for all lump-sum and unit-price construction subcontracts in excess of $2,000 where the subcontracts are under cost-type prime contracts (or under cost-type subcontracts under cost-type prime contracts). The penal amounts should be as set forth in FPR 1–10.104–1(b).

§ 9–10.104–2 Other than construction contracts.

Situations in addition to those listed in FPR 1–10.104–2(b) which may warrant requiring a performance bond are:

(a) Where doubt exists as to the financial or technical ability of all possible suppliers.

(b) Where the contractor's talent is overly concentrated in a few key personnel whose illness or departure could seriously impair the contractor's ability to perform the proposed work.

(c) Where other commitments of the contractor might delay performance.

(d) Where performance of the proposed work might disrupt other operations of the contractor and impair its overall efficiency.

(e) Where the item being manufactured is a component for another article and is required by a particular date in order to avoid delay in delivery of the end product.

§ 9–10.105 Payment bonds.

Payment bonds shall not be furnished at Government expense in connection with cost-type contracts and cost-type subcontracts.

§ 9–10.105–1 Construction contracts.

A payment bond on Standard Form 25A (modified to name the AEC prime cost-type contractor as well as the United States of America as obligees) shall be required for all lump-sum and unit-price construction subcontracts in excess of $2,000 where the subcontracts are under cost-type prime contracts (or under cost-type subcontracts under cost-type prime contracts). The penal amounts should be as set forth in FPR 1–10.105–1(b).

§ 9–10.105–2 Other than construction contracts.

Determinations that it is in the best interest of the Government to require payment bonds in connection with other than construction contracts may be made by the contracting officer on individual procurements. In the case of either advertised or negotiated procurements, whenever the contracting officer has reason to believe that work under a proposed contract might be delayed because of the concern of subcontractors or suppliers over the credit standing of a potential prime contractor, he should consider the advisability of requiring a payment bond.

§ 9–10.150 Fidelity bonds.

Basic policy. Fidelity bonds shall not be required in connection with fixed-price contracts. Under cost-type contracts as a general rule, fidelity bonds should not be recommended by contracting officers for approval even though under the terms of a particular contract or subcontract losses normally covered by such bonds might fall upon the Government.

§ 9–10.151 Execution and administration of bonds.

(a) *Bid bonds.* In the case of prime actions, prior to award of a contract the contracting officer shall obtain review of the bid bond furnished with the successful bid (1) as to legal form and sufficiency by counsel, and (2) as to acceptability of the surety by the local AEC insurance representative. In the case of construction subcontract actions, prior to award of a subcontract the contracting officer or, with his approval, the cost-type contractor shall obtain review of the bid bond furnished with the successful bid, (3) as to legal form and sufficiency, and (4) as to acceptability of the surety and adequacy of the bond.

(b) *Performance and payment bonds.* In the case of prime actions, the contracting officer shall obtain review of such bonds (1) as to legal form and sufficiency, and (2) as to adequacy. In the case of construction subcontract actions, the contracting officer or, with his approval, the cost-type contractor (or cost-type subcontractor under a cost-type prime contractor), shall obtain review of such bonds (3) as to legal form and sufficiency, and (4) as to acceptability of the surety and adequacy of the bond.

§ 9–10.152 Contract articles.

Standard contract articles pertaining to bonds are set forth in FPR 1–7.101–9 and § 9–7.5006–51.

Subpart 9–10.2—Sureties on Bonds

§ 9–10.250 Corporate co-sureties.

More than one corporate surety may be accepted as surety upon any recognizance, stipulation, bond or undertaking in connection with either construction contracts or contracts other than construction contracts, provided that in no case will the liability of any such co-surety exceed the maximum penal sum in which the corporate surety is qualified to underwrite any one obligation. On bonds covering contracts other than construction contracts, where the amount of the bond is greater than the underwriting limitation of the corporate surety, the latter may reinsure with a corporation on the acceptable list of corporate sureties having the required underwriting capacity. Reinsurance agreements are not acceptable in connection with construction contracts. Corporate co-sureties need not obligate themselves for the full amount of the bond. Each corporate surety may, by setting forth the limit of its liability in the bond as a definite and specified sum, limit such liability. The co-sureties must, however, bind themselves "jointly and severally" for the purpose of allowing a joint action or actions against any or all of them.

§ 9–10.251 Partnerships as sureties.

A partnership or other unincorporated association, as such, shall not be accepted as a surety. The individual members of the partnership or association

may, of course, qualify as sureties, provided they meet the requirements set forth in FPR 1–10.203. Individual members of a partnership or association shall not, however, be acceptable as sureties on bonds under which the partnership or association, or any co-partner or member thereof, is the principal obligor.

§ 9–10.252 Substitution or replacement of a surety.

In case of financial embarrassment, failure or other disqualifying cause on the part of a surety under a bond, the contracting officer shall require the substitution of a new surety satisfactory to him.

Subpart 9–10.3—Insurance

§ 9–10.350 [Reserved]

§ 9–10.351 Contract article.

The contract article pertaining to insurance is set forth in § 9–7.5006–51.

PART 9–11—FEDERAL, STATE, AND LOCAL TAXES

AUTHORITY: The provisions of this Part 9–11 issued under sec. 161 of the Atomic Energy Act of 1954, as amended, 68 Stat. 948, 42 U.S.C. 2201; sec. 205 of the Federal Property and Administrative Services Act of 1949, as amended, 63 Stat. 390, 40 U.S.C. 486.

Subpart 9–11.2—Exemptions From Federal Excise Taxes

§ 9–11.203 Supplies and services for the exclusive use of the United States.

(a) The exemption respecting taxes on communication services or facilities has been held to extend to such services when furnished to AEC cost-type contractors who pay for such services or facilities from advances made to them by the AEC under their contracts.

(b) Additional exemptions: Where it is considered that a request for an additional exemption would be justified, a recommendation that such a request be made should be forwarded to the Controller.

(c) Exemption certificates: Where tax exemption certificates are required in connection with the foregoing taxes, the Manager of the Field Office will supply standard Government forms on request.

Subpart 9–11.3—State and Local Taxes

§ 9–11.350 Policy.

It is the policy of AEC to secure those immunities or exemptions from State and local taxes to which it is entitled under the Federal Constitution or State laws. In carrying out this policy, Managers of Field Offices shall:

(a) Take all necessary steps to preclude payment of any taxes as to which any of the foregoing immunities or exemptions are available. Advice of counsel should be sought as to the availability of such immunities or exemptions.

(b) Procure directly and furnish to contractors as Government-furnished property, equipment, material, or services when, in the opinion of the Managers of Field Offices:

(1) Such direct procurement will result in substantial savings to the Government, taking into consideration any additional administrative costs that may be involved, and

(2) Such direct procurement will not have a substantial adverse effect on the relationship between AEC and its contractor, and

(3) Such direct procurement will not have a substantial adverse effect on the AEC program or schedules.

Subpart 9–11.4—Contract Clauses

§ 9–11.450 Cost-type contracts.

Contracting officers should include an appropriate contract clause in AEC cost-type contracts (and cost-type subcontracts where the higher-tier contracts and subcontracts are cost-type) which would require that the contractor take certain actions with regard to nonpayment, payment, protest, or other treatment of specific taxes.

§ 9–11.451 Purchase orders and subcontracts under cost-type contracts.

(a) Contracting officers should assure that tax matters are appropriately treated in their review and approval of a cost-type contractor's procurement methods and system and in their review and approval of purchase order and subcontract forms as well as individual procurements by such contractor. An appropriate tax article should be included in all fixed-price purchase orders and subcontracts under cost-type contracts. Examples are set forth in FPR 1–11.401–1 and 1–11.401–2. For cost-type subcontracts, the clause in § 9–11.452 should be utilized (with appropriate adaptations).

(b) Contracting officers should also assure that fixed-price subcontracts and purchase orders of cost-type contractors contain provisions covering all tax matters which may require special consideration (see FPR 1–11.401–4).

§ 9–11.452 Cost-type contract clause.

The following clause is suggested for use in cost-type contracts:

STATE AND LOCAL TAXES

(a) The Contractor agrees to notify the Commission of any State or local tax, fee, or charge levied or purported to be levied on or collected from the Contractor with respect to the contract work, any transaction thereunder, or property in the custody or control of the Contractor and constituting an allowable item of cost if due and payable, but which the Contractor has reason to believe, or the Commission has advised the Contractor, is or may be inapplicable or invalid; [1] and the Contractor further agrees to refrain from paying any such tax, fee, or charge unless authorized in writing by the Commission. Any State or local tax, fee, or charge paid with the approval of the Commission or on the basis of advice from the Commission that such tax, fee, or charge is applicable and valid, and which would otherwise be an allowable item of cost, shall not be disallowed as an item of cost by reason of any subsequent ruling or determination that such tax, fee, or charge was in fact inapplicable or invalid.

(b) The Contractor agrees to take such action as may be required or approved by the Commission to cause any State or local tax, fee, or charge which would be an allowable cost to be paid under protest; and to take such action as may be required or approved by the Commission to seek recovery of any payments made, including assignment to the Government or its designee of all rights to an abatement or refund thereof, and granting permission for the Government to join with the Contractor in any proceedings for the recovery thereof or to sue for recovery in the name of the Contractor. If the Commission directs the Contractor to institute litigation to enjoin the collection of or to recover payment of any such tax, fee, or charge referred to above, or if a claim or suit is filed against the Contractor for a tax, fee, or charge it has refrained from paying in accordance with this article, the procedures and requirements of the article entitled "Litigation and Claims" shall apply and the costs and expenses incurred by the Contractor shall be allowable items of cost, as provided in this contract, together with the amount of any judgment rendered against the Contractor.

(c) The Government shall save the Contractor harmless from penalties and interest incurred through compliance with this article. All recoveries or credits in respect of the foregoing taxes, fees, and charges (including interest) shall inure to and be for the sole benefit of the Government.

PART 9–12—LABOR

[1] Requirement for notice may be broadened to include all State and local taxes which may be claimed as allowable costs when considered to be appropriate.

AUTHORITY: The provisions of this Part 9-12 issued under sec. 161 of the Atomic Energy Act of 1954, as amended, 68 Stat. 948, 42 U.S.C. 2201; sec. 205 of the Federal Property and Administrative Services Act of 1949, as amended, 63 Stat. 390, 40 U.S.C. 486.

§ 9-12.000 Scope of part.

(a) This part implements and supplements FPR Part 1-12.

(b) The AECPR provisions referenced below pertain to cost-type contractor procurement: 9-12.102, 9-12.202, 9-12.302, 9-12.400, 9-12.602, 9-12.800, and 9-12.902.

Subpart 9-12.1—Basic Labor Policies

§ 9-12.100 General.

(a) The policies and procedures stated in FPR Subpart 1-12.1 are recommendatory and for guidance of Federal agencies and provide that problems arising out of contractor labor relations shall be handled in accordance with agency procedures. Except as provided herein, contracting officers shall, in appropriate circumstances, follow the guidance in FPR Subpart 1-12.1.

(b) Contracting officers shall apply the principles and policies set forth in § 9-12.101 and Subpart 9-12.51 in lieu of or in modification of FPR 1-12.101 to cost-type contractors responsible for the management/operation of Government-owned and/or controlled sites and facilities; certain cost-type construction and architect-engineer contracts; and such other contracts to which these principles and policies are deemed appropriate by the Commission and which may be applied pursuant to the contractual conditions of such contract.

§ 9-12.101 Labor relations (contractor personnel management and labor relations).

The extent of Government ownership of the nation's atomic energy plant and materials, and the overriding concerns of national defense and security, impose special conditions on personnel and labor relations in the atomic energy program; namely, continuity of vital operations at AEC installations must be assured; the AEC must retain absolute authority on all questions of security; the AEC reviews labor expenses under cost-type contracts as a part of its responsibility for assuring judicious expenditure of public funds. It is the intent of AEC, despite these limitations, that personnel and labor policies throughout the atomic energy program should reflect the best experience of American industry in aiming to achieve the type of stable, democratic labor-management relationships which the Commission considers are essential to the proper development of the atomic energy program in the national interest. The Commission believes that this purpose will be served best by making broad assignments of authority and responsibility in the field of personnel management to its contractors, enabling contractors and their employees to conduct their employment relationships with maximum freedom from interference by the Government. It looks forward to the cooperation and understanding of contractor managements and labor unions in making good the spirit and goals of this policy statement in their relationships with each other and with the AEC on the contract work. The following is intended as an enunciation of the basic principles upon which AEC policy is founded:

(a) *Employment standards.* (1) Contractors are expected to bring experienced, proven personnel from their private operations to staff key positions on the contract work and to recruit other well-qualified personnel as needed, and such personnel should be employed and treated during employment without discrimination by reason of sex, age, or handicap. Contractors shall take affirmative action to insure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin.

(2) The job qualifications and suitability of prospective employees should be established by the contractor prior to employment by careful personnel investigations. Where a security clearance will be required, the applicant's suitability must be established before a request is made to the AEC for his security clearance.

(3) The contractor is responsible for maintaining satisfactory standards of employee qualifications, performance, conduct, and business ethics under his own personnel policies.

(b) *Security.* (1) The Atomic Energy Commission's responsibilities for the security of the atomic energy program will be carried out in a manner consistent with traditional American concepts of justice.

(2) On all matters of security at its installations the AEC retains absolute authority and neither the security rules nor their administration are matters for collective bargaining between management and labor. Insofar as AEC security regulations affect the collective bargaining process, the security policies and regulations will be made known to both parties. To the fullest extent feasible,

the AEC will consult with representatives of management and labor in formulating security rules and regulations that affect the collective bargaining process.

(3) Loyalty to the United States is required of all participants in the atomic energy program, including those members and representatives of labor organizations who exercise authority over bargaining units of employees engaged on classified work.

(c) *Wages, salaries, and employee benefits.* (1) Wages, salaries, and employee benefits on cost-type contracts shall be administered in a manner designed to adapt normal industry or university practices and conditions to the contract work and to provide for appropriate review by AEC. Area practices, valid patterns, and well-established commercial or academic practices of the contractors, as appropriate, form the criteria for the establishment and adjustment of compensation schedules.

(2) It is recognized that these criteria may permit a range of reasonable positions in any given collective bargaining situation. However, the aspects of wages, hours, and working conditions which are the substance of collective bargaining in normal organized industries will be left to the orderly and peaceful processes of negotiation and agreement between AEC contractor managements and employee representatives with maximum possible freedom from Government interference.

(d) *Employee relations.* (1) The handling of employee relations on contract work, including such matters as the conduct and discipline of the work force and the handling of employee grievances, is part of the normal management responsibility of the contractor.

(2) The AEC looks to contractors, in their personnel policies, to provide employees basic guarantees of fair treatment in their relationships with project management.

(e) *Collective bargaining.* (1) The AEC desires that collective bargaining in the atomic energy program be carried on insofar as possible under the arrangements normally found in American industry. Management and labor in all Government-owned, privately operated atomic energy installations are expected wholeheartedly to accept a special responsibility to seek in every way by voluntary procedures and mutual agreement the peaceful and orderly settlement of all disputes.

(2) AEC review of collective bargaining practices will be premised on the view that management's trusteeship for the operation of the Government facilities includes the duty to adopt practices which are fundamental to the friendly adjustment of disputes, and which experience has shown promote orderly collective bargaining relationships. Practices inconsistent with this view may be objected to if not found to be otherwise clearly warranted.

(3) In line with the policy of assuring continuity of operation of vital facilities, all collective bargaining agreements at Government-owned atomic energy installations should provide that grievances and disputes involving the interpretation or application of the agreement will be settled without resort to strike, lockout, or other interruption to normal operations. For this purpose each collective bargaining agreement should provide an effective grievance procedure with arbitration as its final step, unless the parties mutually agree upon some other method of assuring continuity of operations for the term of the agreement.

(4) The AEC expects its contractors and the unions representing contractor employees to cooperate fully with the Federal Mediation and Conciliation Service and the Atomic Energy Labor-Management Relations Panel which has been established by the President, and which, in the event of failure of the parties to resolve their differences by negotiation, may intervene in the interest of furthering the peaceful processes of collective bargaining and of assuring essential continuity of operations.

(f) *Personnel training.* The AEC encourages and supports personnel training programs aimed at improving work efficiency or developing needed skills which are not otherwise obtainable. AEC also encourages participation by its construction contractors in building trades apprenticeship programs under Federal, State and local apprenticeship standards.

(g) *Working conditions.* Accident, fire, health and occupational hazards associated with AEC activities will be held to a practical minimum level and controlled in the interest of maintenance of health and prevention of accidents. To this end, contractors are required to maintain comprehensive continuous preventive and protective programs appropriate to the particular activities throughout all operations subject to AEC control. Appropriate financial protection in case of occupational disability will be provided employees on AEC projects.

§ 9–12.102 Overtime, extra-pay shifts, and multishift work.

The provisions of FPR 1–12.102 and this section shall be applied to cost-type contractor procurement.

§ 9–12.102–4 Approvals.

(a) Where the cost to the Government may be affected, approval of hours of work in excess of the normal workweek is justified only in those instances and for those employees when it can be shown that overtime would provide needed and demonstrable impetus to the accomplishment of AEC objectives and that all other means of meeting these needs have been considered and found inadequate or not feasible. Accordingly, in connection with cost-type contracts, Managers of Field Offices shall:

(1) Establish controls to prevent excessive casual overtime and to assure that such overtime work is in the best interests of the Government. By casual overtime is meant (i) work in excess of the normal workweek (on in excess of an approved extended workweek) which cannot be regularly scheduled in advance, or (ii) regularly scheduled work in excess of the normal workweek for a period of 4 consecutive weeks or less.

(2) Require contractors to seek AEC approval of any proposed extended workweek schedule. By extended workweek is meant a workweek regularly scheduled and established in excess of the normal workweek for a period in excess of 4 consecutive weeks.

(3) Require contractors to seek AEC approval after the start of an extended workweek in justified instances where, due to an emergency or other unforeseen conditions, prior authorization was not feasible.

§ 9–12.103 Federal and State labor requirements.

§ 9–12.103–50 Applicability.

The labor requirements referred to in FPR 1–12.103 specifically include Federal and State programs consistent with the AEC policy of nondiscrimination in employment set forth in § 9–12.101.

§ 9–12.103–51 Retention of payroll and associated records.

Under certain cost-type contracts for the management and operation of AEC facilities, for the construction of major facilities, and for necessary miscellaneous construction incidental to the function of these facilities, the title to payroll and associated records is in the Government and such records are disposed of in accordance with AEC directions. For such contracts, the Solicitor of Labor has granted a tolerance from the Department of Labor Regulations to omit from the prescribed labor clauses the requirement for the retention of payrolls and associated records for a period of 3 years after completion of the contract. Under this tolerance, the records retention requirements for all labor clauses in the contract and the Fair Labor Standards Act is satisfied by disposal of such records in accordance with AEC directives.

Subpart 9–12.2—Convict Labor

§ 9–12.202 Applicability.

The provisions of FPR Subpart 1–12.2 apply to cost-type contractor procurement.

Subpart 9–12.3—Contract Work Hours Standards Act (Other Than Construction Contracts)

§ 9–12.302 Applicability.

The requirements of FPR Subpart 1–12.3 apply to cost-type contractor procurement to the same extent and under the same conditions such requirements apply to direct procurement. Paragraph (c) of the clause in FPR 1–12.303 should be revised to provide for the withholding of moneys from the subcontractor by the prime contractor as directed by the contracting officer.

Subpart 9–12.4—Labor Standards in Construction Contracts

§ 9–12.400 Scope of subpart.

(a) This Subpart 9–12.4 serves to implement and supplement FPR Subpart

1-12.4, Labor Standards in Construction Contracts.

(b) The provisions of FPR Subpart 1-12.4 and this subpart shall be followed in determining whether cost-type contractor procurement actions involve covered work under the Davis-Bacon Act and such provisions apply to those procurement transactions which are determined by the contracting officer to be subject to that Act.

§ 9-12.401 Statutory and regulatory requirements.

§ 9-12.401-50 Department of Labor approval.

The Department of Labor has previously reviewed and approved the criteria, standards, and guides set forth in §§ 9-12.402, 9-12.450 and 9-12.404-2 and the contract clause in § 9-12.403-50.

§ 9-12.402 Applicability.

§ 9-12.402-50 General.

The requirements set forth in FPR 1-12.401 apply to construction contracts. Although the statutes therein referenced do not contain definitions, the Secretary of Labor's regulations in 29 CFR 5.2 include definitions of "contract," "building," "work," "construction," "prosecution," "completion," "repair," "public building," and "public work." In general, contracts are classifiable as being covered by the statutes when performance by the contractor consists substantially of the erection or assembly of new plants (including laboratory or other buildings or works), or the alteration and/or repair, including painting and decorating, of new or existing plants. The fact that certain contracts may be entered into without regard to general statutory requirements as to advertising for bids or proposals, or upon a cost-type basis or otherwise, is not determinative in the classification of such contracts, activities, construction projects, or other work or services performed thereunder.

§ 9-12.402-51 Noncoverage (Davis-Bacon and Copeland Acts).

(a) The requirements set forth in FPR Subpart 1-12.4 in respect to the Davis-Bacon and Copeland Acts do not apply to the following:

(1) Contracts, regardless of their nature, not in excess of $2,000. (Does not apply to the Copeland Act.) However, no item of work the cost of which is estimated to be in excess of $2,000 shall be artificially divided into portions less than $2,000 for the purpose of avoiding the applicability of the Davis-Bacon Act.

(2) Contracts for furnishing supplies and equipment, including installation, where the installation requires only an incidental amount of work (as defined in paragraph (c) of this section) that would otherwise be considered construction, alteration and/or repair of a public building or work. (See § 9-12.450-2(g).)

(3) Contracts for servicing or maintenance work in an existing plant, including installation or movement of machinery or other equipment, and plant rearrangement, which involve only an incidental amount of work (as defined in paragraph (c) of this section) that would otherwise be considered construction, alteration and/or repair. (See § 9-12.450-2(g).)

(4) Contracts for operational or maintenance activities (e.g., production, research and development, or community services, as distinguished from contracts for construction). In general, these are contracts where performance by the contractor consists primarily of the utilization of existing facilities and the services of personnel to produce materials, conduct research and development, or provide community-type services, and of the use of or maintenance of plant. However, the classification of a contract as a contract for operational or maintenance activities does not necessarily mean that all work and activities at the contract location are not covered, since it may be necessary to separate out work which should be classified as covered. (See § 9-12.402-52.) As used in connection with "operational activities," the term "produce" means to manufacture, make, or refine special nuclear or other material; to separate material from other substances in which it is contained; or to make new material. The term "materials" includes supplies, articles, or equipment; the term "research and development" means the same as defined in the Atomic Energy Act of 1954, as amended.

(5) Contracts to be performed outside the States and the District of Columbia. (Does not apply to the Copeland Act.)

(6) Contracts for demolition, except when indispensable and preliminary to scheduled new construction.

(7) Contracts with a State or political subdivision thereof (although the requirements do apply, and the contract must so provide, to a subcontract thereunder with a private person or firm which involves the construction, alteration, and/or repair of public buildings or public works).

(8) Contracts with railroads for construction services to the extent that the services are performed by railroad employees covered by the Railway Labor Act.

(b) It should be noted, however, that the requirements do apply to work performed by laborers and mechanics employed by a construction contractor or subcontractor at the site of the work under a contract for the construction, alteration and/or repair, including painting and decorating of public buildings or public works, which is otherwise subject to these Acts whether or not such work would be covered if it were a separate contract.

(c) As used in paragraph (a) (2) and (3) of this section, "an incidental amount of work" is defined to mean work directly related to the installation, movement or rearrangement of equipment or machinery, relatively small in amount, and which does not include changes in a facility affecting its architectural or structural strength, stability, safety, size, or function as a public work. (See § 9-12.450-2(g)(3).)

§ 9-12.402-52 Administrative controls and criteria for application of the Davis-Bacon Act in operational or maintenance activities.

(a) Particular contracts or work items falling within one or more of the following criteria normally will be classified as noncovered.

(1) Individual work items estimated to cost $2,000 or less. The total dollar amount of the operating contract is not a factor to be considered and bears no relation to individual work items classified as construction, alteration and/or repair, including painting and decorating. However, no item of work, the cost of which is estimated to be in excess of $2,000, shall be artificially divided into portions less than $2,000 for the purpose of avoiding the application of the Act.

(2) Work and services that are a part of operational and maintenance activities or which, being very closely and directly involved therewith, are more in the nature of operational activities than construction, alteration, and/or repair work. This includes work and services which would involve a material risk to continuity of operations, to life or property, or to AEC operating requirements, if performed by persons other than the operating contractor's regular production and maintenance forces: *Provided, however,* That any decision that contracts or work items are noncovered for these reasons must be made by the Manager of the respective Field Office and the authority to make such a decision cannot be redelegated.

(3) Work and services, typically of a routine or recurring nature, the purpose of which is to keep facilities in a state of functional usefulness.

(4) Assembly, modification, setup, installation, replacement, removal, rearrangement, connection, testing, adjustment, and calibration of machinery and equipment. It should be noted, however, that these activities are covered if they are part of or would be a logical part of a contract for the construction of a facility, or if construction-type work, other than defined as "incidental" in § 9-12.402-51(c) is involved. (Also see § 9-12.450-2(g).)

(5) Experimental development of equipment, processes and devices, including assembly, fitting, installation, testing, reworking, and disassembly. This refers to equipment, processess and devices which are assembled for the purpose of conducting a test or experiment. The design may be only conceptual in character, and professional personnel responsible for the experiment participate in the assembly. Specifically excluded from the category of experimental development are buildings, building utility services, structural changes, and modifications to building utility services—as distinguished from temporary connections thereto. Also specifically excluded from this category is equipment to be used for continuous testing, e.g., a machine to be continuously used for testing the tensile strength of structural members. (Also see § 9-12.450-2(a) and § 9-12.450-2(h).)

(6) Experimental work in connection with peaceful uses of nuclear energy. This refers to equipment, processes and devices which are assembled and/or set in place and interconnected for the purpose of conducting a test or experiment. The nature of the test or experiment is such that professional personnel responsible for the test or experiment and/or the data to be derived therefrom necessarily must participate in the assembly and interconnections. Specifically excluded from experimental work are buildings, building utility services, structural changes, drilling, tunneling, excavation, and backfilling work which can be performed according to customary drawings and specifications, and utility services or modification to utility services—as distinguished from temporary connections thereto. Work in this category may be performed in mines or in other locations specifically constructed for test or experiments. (See also § 9–12.450–2(h).)

(7) Emergency work to combat the effects of fire, flood, earthquake, equipment failure, accident or other casualties, and to restart the operational activity following the casualty. Work which is not directly related to restarting the activity and which involves rebuilding or replacement of structure or structural components or equipment is excluded from this category. (See §9–12.450–2(d).)

(8) Decontamination, including washing, scrubbing, and scraping to remove contamination; removal of contaminated soil or other material; and painting or other resurfacing: *Provided*, That such painting or resurfacing is an integral part of the decontamination activity and does not include complete replacement of large sections of paved areas or roadways.

(9) Burial of contaminated solid waste or contained liquid; however, initial preparatory work readying the burial ground for use (for example, any grading or exacavating that is a part of initial site preparation, fencing, drilling wells for continued monitoring of contamination, construction of guard or other office space) is covered. Likewise, work subsequent to burial which involves the placement of concrete or other like activity is covered.

(b) The classification of a contract as a contract for operational or maintenance activities does not necessarily mean that all work and activities at the contract location are classifiable as outside of Davis-Bacon Act coverage, since it may be necessary to separate out work which should be classified as covered. Therefore, Managers of Field Offices shall establish and maintain controls for the careful scrutiny of proposed work assignments under such a contract to assure that:

(1) Contractors whose contracts do not contemplate the performance of covered work with the contractor's own forces are neither asked nor authorized to perform work within the scope of the Davis-Bacon Act.

(2) Where covered work is performed by a contractor whose contract contains provisions required by the Davis-Bacon Act, such work is performed as required by law and the contract. After such contractor has been informed, as provided in subparagraph (3) of this paragraph, that certain work is covered work, the Manager's responsibility to assure compliance is the same as it would be if the work were being performed under a separate construction contract.

(3) Controls provided for above include consideration by the Manager and the contractor, before work is begun or contracted out, of the relation of the Davis-Bacon Act to (i) the annual programing of work, (ii) the contractor's work orders, and (iii) work contracted out in excess of $2,000. The Manager may, if he concludes that it is consistent with AEC's responsibilities as described in this section, prescribe from time to time classes of work as to which applicability or nonapplicability of the Davis-Bacon Act is clear, for which he will require no further AEC determination on coverage in advance of the work. For all work, the controls to be established by the Manager should provide for notification to the operating contractor before work is begun as to whether such work is covered.

§ 9–12.403 Contract clauses.

Subcontracts subject to the Davis-Bacon Act under "operating type" contracts (see § 9–12.403–50 below) shall include the applicable clauses in FPR 1–12.403 with such modifications as appropriate to reflect the prime-subcontract relationship. Paragraph (f) of the clause in FPR 1–12.403–1(a) shall be modified to delete reference to a prime contract subject to the Davis-Bacon Act.

§ 9–12.403–50 Special clause for "operating type" contracts.

The following article is for use in prime contracts when the prime contractor is to perform no covered work with his own forces but may procure construction by subcontract:

Upon request of the Commission and acceptance thereof by the contractor, the contractor shall procure by subcontract the construction of new facilites or the alteration or repair of Government-owned facilities at the plant. Any subcontract entered into under this paragraph shall be subject to the written approval of the Commission and shall contain the provisions relative to labor and wages required by law to be included in contracts for the construction, alteration, and/or repair, including painting and decorating, of a public building or public work.

§ 9–12.404 Administration and enforcement.

§ 9–12.404–2 Wage determinations.

§ 9–12.404–50 Use and duration of wage determinations.

In general, the Davis-Bacon Act rates applicable to a contract at the time it is awarded continue in effect during its term regardless of whether it is a fixed-price or cost-type contract. A substantial addition, to the scope of any contract properly awarded, made more than 120 days from the date of the predetermination being used, requires a new predetermination for such additional work. However, it should be noted that:

(a) The minimum wage rates that will be paid to laborers and/or mechanics engaged on jobs which are programed on a fiscal year or shorter basis are those predetermined by the Secretary of Labor to be prevailing as of the date the program is approved by the AEC for performance by the contractor. However, substantial additions to the work programed in a fiscal year, approved by the AEC more than 120 days after the date of the predetermination being used, require a new predetermination for such additional work. Programed work will be performed by the contractor under the following conditions:

(1) Continuing contracts for minor or miscellaneous construction, alteration and/or repair, including painting and decorating;

(2) Operating contracts under which the operating contractor will perform miscellaneous covered work with his own forces.

(b) The minimum wage rates that will be paid to laborers and/or mechanics engaged on subcontracts let by an operating contractor under § 9–12.403–50 will be those in the wage determination decision of the Secretary of Labor which is current as of the date the operating contractor enters into such subcontract. (Note that a determination is not required for insertion in a prime contract for the performance of operational and maintenance activities which contains a clause such as set forth in § 9–12.403–50.)

§ 9–12.404–51 Responsibilities.

The statutes and regulations cited and summarized in FPR 1–12.401 impose direct responsibilities for administration and enforcement upon the Atomic Energy Commission. Therefore, Directors, Headquarters Divisions and Offices, and Managers of Field Offices, consistent with their assignments of responsibilities and delegations of authority, shall assure that AEC contract activities are carried out consistent with these laws and regulations.

§ 9–12.450 Decisions and other guides in difficult areas.

§ 9–12.450–1 General.

Section 9–12.402–52 necessarily uses general language, and in some cases the application of the criteria discussed therein to particular situations may not be clear. Therefore, this subsection covers more specifically some of the areas of particular concern to AEC and is promulgated to clarify the application of the criteria.

§ 9–12.450–2 Specific examples.

The following are applications of the regulations to particular situations. Additional narrative statements describing items of work and applicability of the Davis-Bacon Act will be developed from time to time and added to this subsection.

(a) *Land-based prototypes.* The Labor Department has held that the construction of a full-scale operating prototype of one reactor compartment and

of all necessary nuclear power components and systems and propulsion equipment for a submarine is covered. (See letters of Mar. 14, and July 5, 1957, from Acting Solicitor of Labor to Director of Organization and Personnel, AEC, regarding TRITON prototype.) In another ship prototype situation, the Department has held that assembling and fitting the components of nuclear steam propulsion units into the hull sections, including installation of the pressure vessels, turbogenerator sets, heat exchangers, control wiring, etc., is covered. (See letter of Oct. 22, 1956, from Solicitor of Labor to General Manager, AEC, regarding large ship reactor land prototype.) A later decision involving the same prototype indicates that these earlier rulings should not be construed as intended to cover all equipment assemblies irrespective of the status of construction and other pertinent factors.

(b) *Paving.* The construction of roads, including grading, and their repair—where such repair includes work on roadbeds before resurfacing, building up shoulders, forming ditches, culverts and bridges, and on the actual resurfacing of roads—is covered. However, recurring-type maintenance work, such as patching surface, filling chuck holes, patching shoulders, and resurfacing railroad crossings is noncovered. Similarly, patch and maintenance work on a parking lot, the replacement of bumper stops, and the repainting of parking dividers is noncovered.

(c) *Stationary boilers.* The construction, alteration and/or repair, including installation and rebuilding, of stationary boilers costing in excess of $2,000 for labor and materials is covered. In contrast, inspections may reveal need for replacement of pieces of insulation, individual tubes, or other defective parts. Such maintenance, necessary to keep the boiler in safe operating condition, is noncovered.

(d) *Startup of operating activity after fire or other catastrophe.* Rebuilding of plant following a catastrophe, such as replacement of structural members, roof trusses, walls, roof, utility services, and process piping is covered. However, where process equipment can be restarted and/or operational activities resumed prior to such rebuilding, the actual work of startup, including preliminary activity, e.g., cleaning, drying, checking, adjustment, temporary services, and temporary weather protection of equipment, essential to such resumption of operational activity, is noncovered.

(e) *Rehabilitation of facilities.* By contrast with emergency services needed to restore or maintain functional usefulness, as above described, rehabilitation (e.g., painting, change-out, rearrangement and installation of equipment, replacement or repair of damaged parts of a structure or of building services or equipment) of a nonoperable facility or of significant nonoperable portions of a facility is covered. In such rehabilitation, the startup of equipment by operating employees is noncovered.

(f) *Painting.* Although painting and decorating are specifically mentioned in the Act, painting which is closely integrated within operational and maintenance activities, and such repainting as color coding of process lines and service piping (including valves and directional arrows), is noncovered; likewise, application of various materials for localizing contamination, painting of machine tools to identify degree of contamination, preventive maintenance repainting of machine tools, equipment and plant structures is noncovered when performed with a stable work force employed by the operating contractor.

(g) *Installation, rearrangement or adjustment of equipment.* (See also paragraph (h), *Experimental installations,* of this section.)

(1) *During construction.* In the construction of a new facility—whether it is a production plant, a laboratory, or supporting facilities, such as shops and warehouses—an integral part of a construction project is the installation of equipment (including mechanical equipment, building services, instruments, etc.), which permits the facility to be utilized for the purpose for which it was intended. Normally, the initial installation, arrangement, adjustment, balancing, calibration, and checking of such equipment is a logical part of the construction contract(s) for completion of the facility and, whether or not included within the scope of such contract(s), is covered.

(2) *Plant startup.* At the time of the turnover of an AEC facility (which frequently differs in many respects from other facilities), from construction to operation activities, if the facility is turned over a section at a time, some problems of coverage may arise. It is extremely difficult, if not impossible, to write rules or criteria that can be practically applied in all situations. Usually, it is essential that final checkout of a plant prior to the startup of plant operations be performed by personnel of the operating contractor and, as such, is not covered. The important thing is to work out a practical plan that will assure: (i) Safe and effective startup of the facility, (ii) the fulfillment of obligations under applicable statutes, and (iii) continuing construction at the facility.

(3) *Equipment and equipment assemblies.* While the current construction status of a public building or public work is not controlling as to coverage of supply-installation-type contracts, this is a factor to be considered in judging the applicability of the Davis-Bacon Act. The Labor Department has ruled (Walsh-Healey Rulings and Interpretations No. 3, section 6(b)) that while contracts in excess of $10,000 for equipment, including erection or installation are subject to the Walsh-Healey Act, they may be also covered under the Davis-Bacon Act where more than an incidental amount (see § 9-12.402-51(c)) of work is involved. Examples given in this ruling include furnishing and installation of mechanical equipment such as elevators or of generators requiring prepared foundations or housing. In a specific situation, the Department has indicated that a contract for furnishing and initial installation of piping, wiring, gas exhaust fans, plumbing, sheet metal work, and related activities to install kitchen and baking equipment was comparable to the basic plumbing, wiring, and heating contracts and was covered (see letter of Aug. 12, 1958, from Acting Assistant Solicitor of Labor to the Director, AFMPP-PR-3, Procurement and Production, the Air Force (Attention: Col. Treacy), regarding the Air Force Academy). While this situation involves an initial installation, alteration or rearrangement of existing facilities involving such work to accommodate new or different equipment is also covered. Conversely, it follows that where the test of more than an incidental amount of construction is not met, and where the installation, rearrangement or adjustment of equipment is not a logical part of any current related construction project, it is noncovered.

(4) *Special leased systems.* Most, but not all, contracts involving the installation of telephone, detective and other leased systems are not covered when the work is performed by employees of the companies supplying the services and the material and equipment installed is owned by such companies. (See discussion in letter of Aug. 12, 1958, from Acting Assistant Solicitor of Labor to the Director, AFMPP-PR-3, Procurement and Production, the Air Force (Attention: Col. Treacy), regarding the Air Force Academy, of one situation in which an extension of the distribution system of the telephone company to supply service to the Air Force was held to be noncovered and of another situation in which the movement of telephone company lines by the telephone company to a location more convenient to the Air Force was held to be covered.) A contract for a telephone central system to be installed by the manufacturer and owned by the United States has been held to be covered. (See letter of Oct. 22, 1958, from the Solicitor of Labor to the Director, AFMPP-PR-3, Procurement and Production, the Air Force (Attention: Col. Treacy), regarding Patrick Air Force Base.)

(h) *Experimental installations.* Within AEC programs, a variety of experiments are conducted involving materials, fuels, coolants, processes, equipment, etc. Certain types of situations where tests and experiments have sometimes presented coverage questions are described below.

(1) *Set-ups of devices and/or processes.* The proving out of investigative findings and theories of a scientific and technical nature for extension into practical application may require the set-up of various devices and/or processes at an early or preprototype stage of development. These may vary from laboratory bench size upwards. As a rule, these set-ups are made within established facilities (normally laboratories); required utility connections are made to services provided as a part of the basic facilities; and the activity as a whole falls within the functional purpose of the facility. Such

set-ups may be for exploring mechanical or electrical design suitability, physical or chemical properties, or for collecting data to verify or reject scientific hypotheses. Such set-ups are noncovered. Preparatory work for the set-up requiring structural changes or modifications of basic utility services—as distinguished from connections thereto—is covered. Illustrative of noncovered set-ups of devices and/or processes are the following:

(i) Assembly of piping and equipment within existing "hot cell" facilities for proving out a conceptual design of a chemical processing unit;

(ii) Assembly of equipment, including adaptation and modification thereof, in existing "hot cell" facilities to prove out a conceptual design for remotely controlled machining equipment;

(iii) Assembly of the first graphite pile in a stadium at Stagg Field in Chicago;

(iv) Assembly of materials and equipment for particular aspects of the direct current thermonuclear experiments to explore feasibility and to study other ramifications of the concept of high energy injection and to collect data thereon.

(2) *Loops.* Many experiments are carried on in equipment assemblies called loops in which liquids or gases are circulated under monitored and controlled conditions. For purposes of determining Davis-Bacon coverage, loops may be classed as loop facilities or as loop set-ups. Both of these classes of loops can include in-reactor loops and out-of-reactor loops. In differentiating between clearly identified loop set-ups and loop facilities, an area exists in which there have been some questions of coverage, such as certain loops at the Material Test Reactor and Engineering Test Reactor at the National Reactor Test Site. Upon clarification of this area, further illustrations will be added. In the meantime, the differentiation between loop set-ups and loop facilities must be made on a case-by-case basis, taking into account the total criteria set forth in this subpart.

(i) *Loop set-ups.* The assembly, erection, modification and disassembly of a loop set-up is noncovered. A noncontroversial example of a loop set-up is one which is assembled in a laboratory, e.g., Oak Ridge National Laboratory, Argonne National Laboratory, and Lawrence Radiation Laboratory, for a particular test and thereafter disassembled. However, preparatory work for a loop set-up requiring structural changes or modifications of basic utility services—as distinguished from connections thereto—is covered as is material and equipment that is installed for a loop set-up which is a permanent part of the facility or which is used for a succession of experimental programs.

(ii) *Loop facilities.* A loop facility differs from a loop set-up in that it is of a more permanent character; usually, but not always, of greater size; normally involves the building or modification of a structure; sometimes is installed as a part of construction of the facility; and may be designed for use in a succession of experimental programs over a longer period of time. Examples of loop facilities are the in-reactor "K" loops at Hanford and the large Aircraft Nuclear Propulsion loop at National Reactor Test Site. The onsite assembly and erection of such loop facilities are covered. However, once a loop facility is completed and becomes operational, the criteria set forth above for operational and maintenance activities apply.

(3) *Reactor component experiments.* Other experiments are carried on by insertion of experimental components within reactor systems without the use of a loop assembly. Illustrative of reactor facilities erected for such experimental purposes are the special power excursion test reactors (SPERT) at the National Reactor Test Site, which are designed for studying reactor behavior and performance characteristics of certain reactor components. Such a facility may consist of a reactor vessel, pressurizing tank, coolant loops, pumps, heat exchangers, and other auxiliary equipment as needed. The facility also may include sufficient shielding to permit work on the reactor to proceed following a short period of power operation and buildings as needed to house the reactor and its auxiliary equipment. The erection and onsite assembly of such a reactor facility is covered work, but the components whose characteristics are under study are excluded from coverage. To illustrate, one of the SPERTs planned for studies of nuclear reactor safety is designed to accommodate various internal fuel and control assemblies as required to conduct a particular test. Accordingly, the internal structure of the pressure vessel is so designed that cores of different shapes and sizes may be placed in the vessel for investigation, or the entire internal structure may be easily removed and replaced by a structure which will accept a different core design. Similarly, the control rod assembly is arranged to provide for flexibility in the removal of instrument leads and experimental assemblies from within the core.

(4) *Tests or experiments in peaceful uses of nuclear energy.* These tests or experiments are varied in nature and some are only in a planning state. These tests or experiments consist of a single or series of nuclear or nonnuclear detonations for the purposes of acquiring data. The data can include seismic effects, radiation effects, amount of heat generated, amount of material moved and so forth. Some of these tests are conducted in existing mines while others are conducted in locations specifically constructed for the tests or experiments. In general, all work which can be performed in accordance with customary drawings and specifications as well as other work in connection with preparation of facilities is treated as covered work. Such work includes tunneling, drilling, excavation and backfilling, erection of buildings or other structures, and installation of utilities. The installation of the nonnuclear material or nuclear device to be detonated, the instrumentation, and connections between such material or device and the instrumentation are treated as noncovered work.

(5) *Tests or experiments in military uses of nuclear energy.* As is the case in § 9–12.450–2(h)(4), these tests or experiments can be varied in nature. However, under this category it is intended to include only detonations of nonnuclear material or nuclear devices. The material or devices can be detonated either underground, at ground level or above the ground. These tests or experiments have been conducted in, on, or in connection with facilities specifically constructed for such tests or experiments. As is the case with respect to tests or experiments in peaceful uses of nuclear energy, all work which can be performed in accord with customary drawings and specifications as well as other work in connection with preparation of facilities are treated as covered work. Such work includes building of towers or similar structures, tunneling, drilling, excavation and backfilling, erection of buildings or other structures, and installation of utilities. The installation of the nonnuclear material or nuclear device to be detonated, the instrumentation, and connections between such material or device and instrumentation are treated as noncovered work.

(i) *Construction site contiguous to an established manufacturing facility.* As AEC-owned property sometimes embraces several thousands of acres of real estate, a number of separat facilities may be located in areas contiguous to each other on the same property. These facilities may be built over a period of years, and established manufacturing activities may be regularly carried on at one site on the property at the same time that construction of another facility is underway at another site. On occasion, the regular manufacturing activities of the operating contractor at the first site may include the manufacture, assembly and reconditioning of components and equipment which in other industries would normally be done in established commercial plants. While the manufacture of components and equipment in the manufacturing plant is noncovered, the installation of any such manufactured items on a construction job is covered.

Subpart 9–12.6—Walsh-Healey Public Contracts Act

§ 9–12.602 **Applicability.**

§ 9–12.602–3 **Department of Labor regulations and interpretations.**

The requirements of FPR Subpart 1–12.6 and this subpart apply to procurement by cost-type contractors operating and managing AEC-owned facilities to the same extent and under the same conditions such requirements apply to direct procurement (Department of Labor Circular Letter No. 4–62, dated July 16, 1962).

§ 9–12.650 **Safety and health standards.**

Since AEC has safety and health standards compatible with those of 41 CFR 50–204, the Labor Department has agreed to accept AEC's program for inspection and evaluation of compliance in lieu of establishing its own program of inspection and evaluation to the extent

the Walsh-Healey safety and health standards are applicable to operations conducted for AEC at AEC-owned and/or controlled sites or facilities.

Subpart 9–12.7—[Reserved]

Subpart 9–12.8—Equal Opportunity in Employment

§ 9–12.800 Scope of subpart.

(a) This subpart implements FPR Subpart 1–12.8, Equal Opportunity in Employment.

(b) The provisions of FPR Subpart 1-12.8 and this subpart apply to cost-type contractor procurement.

§ 9–12.805 Administration.

§ 9–12.805–1 Duties of agencies.

(a) The Assistant to the General Manager is the AEC Contracts Compliance Officer.

(b) Heads of Divisions and Offices, Headquarters, having contract authority and Managers of Field Offices are Deputy Contracts Compliance Officers.

§ 9–12.805–50 Preaward procedure for formally advertised supply contracts of $1 million or more.

(a) In invitations for bids for formally advertised supply contracts which may result in a bid of $1 million or more, the following representation shall be obtained from bidders:

The bidder represents:
(1) That a full compliance review of the bidder's employment practices ☐ has ☐ has not been conducted by an agency of the Federal Government; that such compliance reivew ☐ has ☐ has not been conducted for the bidder's known first-tier $1 million or more subcontractors.
(2) That the most recent compliance reviews were conducted as follows: Name of contractor (known first-tier $1 million or more subcontractors); date; Federal Agency.

(b) Invitations for bids for contracts described in paragraph (a) of this section shall require a bidder to submit with his bid a copy of the latest compliance report, SF–100, which he has filed under Executive Order 11246, under Title VII of the Civil Rights Act of 1964, or as a member of Plans for Progress. If no such report has been filed, a current SF–100 shall be submitted with the bid. The invitation should also require bidders to submit such reports for their known first-tier $1 million subcontractors.

§ 9–12.805–51 Preaward contract actions—nonexempt contracts.

(a) *Formally advertised supply contracts.* Before the award of a formally advertised nonexempt contract of $1 million or more, the contracting officer shall determine by means of a preaward compliance review, as outlined in FPR 1–12.805–5(d), that the prospective contractor and each of his known first-tier subcontractors who will be awarded subcontracts of $1 million or more, are able to comply with the Equal Opportunity clause.

(b) *Other formally advertised or negotiated prime contracts.* (1) The procedures set forth in FPR 1–12.805–1(d) regarding the award of contracts shall be followed in all prime contracts for $500,000 or more.

(2) In prime contracts for less than $500,000, the procedures set forth in FPR 1–12.805–1(d) regarding the award of contracts may be applied at the discretion of the contracting officer.

(c) *Cost-type contractor procurements.* (1) Prior to approval of procurement transactions under cost-type contracts involving the operation, maintenance, servicing, management, or construction of AEC facilities (including research and development facilities), contracting officers shall:

(i) Comply with the procedures in FPR 1–12.805–5(d) with respect to any procurement of supplies of $1 million or more awarded under the competitive bid or quotation and award procedure.

(ii) Comply with the procedures in FPR 1–12.805–1(d) with respect to all procurement actions of $500,000 or more.

(2) The extent to which the procedures in FPR 1–12.805–1(d) apply with respect to procurement actions under $500,000 shall be determined by contracting officers.

(d) *Preaward affirmative action requirements for construction work to be performed under AEC prime contracts and under subcontracts awarded by cost-type contractors.* In addition to the provisions of paragraphs (b) and (c) of this section and of FPR 1–12.810 (affirmative action compliance programs):

(1) Where the Director, OFCC, has designated specific contract construction affirmative action requirements for a particular labor area, the Invitation for Bids (IFB) or Request for Proposals (RFP) for construction work in such area shall include the specific affirmative action requirements established by OFCC and such additional requirements as the contracting officer determines necessary.

(2) Contracting officers are authorized with respect to construction work not covered by subparagraph (1) of this paragraph to include in the IFB's or RFP's for such work specific affirmative action requirements.

(3) Failure by a bidder to establish his ability to meet the affirmative action requirements included in an IFB or RFP constitutes grounds for determination that the bidder does not qualify as a responsible bidder, and for rejection of his bid. In the case of procurement actions by AEC prime cost-type contractors, this determination shall be made only with the approval of the contracting officer.

(e) *Available information.* "Available information" as used in FPR 1–12.805–1(d)(2) includes either a compliance review report (no older than 1 year) prepared by the AEC or another agency (when the AEC is not the compliance agency) or sufficient statistical information and other information (relevant to the contractor's or subcontractor's EEO compliance and no older than 1 year) to permit a valid EEO evaluation. When the AEC is not the compliance agency, the agency which is the compliance agency shall be requested to furnish a compliance report.

§ 9–12.810 Affirmative action compliance programs.

§ 9–12.810–50 Definitions.

As used in FPR 1–12.810,

(a) The term "employee" means any individual on the payroll of an employer who is an employee for purposes of the employer's withholding of Social Security taxes, except that such term shall not include persons who are hired on a casual or temporary basis for a specified period of time or for the duration of a specified job; and

(b) The term "establishment" means an economic unit which produces goods or services such as a factory, office, store, or mine and, in most instances, the establishment is at a single physical location and is engaged in one, or predominantly one, type of economic activity.

Subpart 9–12.9—Service Contract Act of 1965

§ 9–12.902 Applicability.

The Service Contract Act of 1965 is not applicable to contracts for the operation and management of AEC facilities. However, subcontracts awarded by contractors operating and managing AEC facilities are subject to the Act to the same extent and under the same conditions as contracts made directly by AEC.

§ 9–12.904 Contract clauses.

Subcontracts awarded by contractors operating and managing AEC facilities shall include the applicable clause in FPR 1–12.904 with such modifications as would otherwise be appropriate had this clause been included in the prime contract, including the modification necessary if § 9–12.103–51 applies.

Subpart 9–12.50—[Reserved]

Subpart 9–12.51—Special Considerations

§ 9–12.5100 Scope of subpart.

This subpart deals with special considerations affecting construction laborers and mechanics.

§ 9–12.5101 General.

(a) As collective bargaining arrangements exist generally throughout the construction industry, the wages, hours and working conditions followed for construction laborers and mechanics normally will result from collective bargaining between management and labor. It is important that practices contributing to harmonious labor-management relations prevail throughout the AEC program. All participants in the AEC program, including employees and their unions, have a special and continuing obligation to do their part in accomplishing a stable, efficient construction operation under adequate and reasonable conditions.

(b) In some areas, AEC construction is a minor part of local construction activity, while in other areas AEC construction may at times overshadow local construction. Normally, there will be a number of contractors and subcontractors, both cost-type and lump-sum, engaged

simultaneously on a single large AEC project. It is important that adequate coordination exist among all such contractors in order that similar conditions are provided for all construction employees in a given classification at a particular location.

(c) The problem of establishing appropriate conditions for the large projects is complicated by the essential requirement that initial conditions be clearly identified and fixed prior to recruitment of the work force. This factor involves applicability of all pertinent Federal statutes, including the Davis-Bacon Act and the Labor-Management Relations Act of 1947, as amended (29 U.S.C. 141 et seq.).

§ 9–12.5102 Steps preliminary to the staffing of new cost-type projects.

Preliminary to the actual recruitment of workers, it is important that sufficient data be accumulated by the Field Office concerned to reflect area practices accurately. These data should cover in detail the pattern of bargaining in the area; the proportion of the work force employed by employer parties to collective bargaining agreements in relation to the total construction work force; the terms of local area agreements; the extent of conformance with such agreements and any accepted interpretations of them; and a description of practices which may have developed outside of the local agreements. These data will furnish the basis for decision contemplated in § 9–12.5103 and § 9–12.5104. Where the data indicate local agreements are adequate for the contemplated work, there may still be gaps that need to be filled in by additional understandings to attain the desired stability of conditions. The data obtained in the initial survey will also be used in connection with the original Davis-Bacon predetermination.

§ 9–12.5103 Role of project contractor management in collective bargaining.

AEC expects contractor management engaged in the negotiation and/or administration of collective bargaining agreements to assume responsibility for assuring conditions which are consistent with the judicious expenditure of public funds, will attract and retain the skills needed, and will give due consideration to the community's interests and established standards. To meet these responsibilities, it is important that the collective bargaining role to be played by project contractor management be clearly determined in the light of project requirements and local conditions. Prerequisite to determination of this role is a careful analysis of all relevant circumstances.

(a) *Where AEC work does not predominate.* In an area where AEC construction does not overshadow total local construction activity, and the majority of construction is performed by members of local contractor associations, AEC expects that basic conditions for labor on AEC projects will be those negotiated between the local contractor associations and local unions and generally adhered to on construction work in the area. In such situations, AEC cost-type contractors will provide for clear identification and application to the AEC work of these local agreements. In such application, the conditions to be followed on AEC work will be those which obtain in actual practice in the area covered by the agreement and are consistent with applicable laws, rather than those appearing from a literal interpretation of the language of the agreement. Conditions not covered by local agreements may be provided for by such arrangements as are necessary to meet project goals.

(b) *Where local agreements are nonexistent or inadequate.* In some areas, local agreements may be nonexistent, or inadequate, or the employer parties may not be representative of the employers of the bulk of the labor force in the area. In such event, AEC contractors are expected to carry their share of the responsibility for negotiations and to negotiate directly or in cooperation with others to establish appropriate conditions.

(c) *Where AEC work predominates.* In an area where AEC construction work is of such magnitude as to overshadow local construction, it may be desirable for Commission contractors to negotiate special project conditions (on either a craft or a multi-craft basis) as the best way to meet their obligations to AEC. Such agreements usually involve the establishment of new bargaining units and are therefore dependent upon the voluntary cooperation of the building trades unions. Normally, both the Building Trades Department (AFL–CIO) and the Division of Labor Relations, AEC, should be consulted in respect to any such proposed course of action.

§ 9–12.5104 Role of the AEC in construction labor relations.

The role of AEC in construction labor relations is a constructive role of overall cognizance consistent with AEC's ultimate responsibilities. The scope of the construction program, the complexity of the problems which may arise, and the need for coordination among contractors at the same site are factors which affect the degree of influence exercised by AEC in carrying out the following responsibilities:

(a) To assure that a careful advance survey and analysis is made of each contract situation and that the role of the contractor management is in accordance with the considerations in § 9–12.5103.

(b) To establish effective machinery for coordination among project contractor management, both cost reimbursement and lump sum.

(c) With respect to AEC contracts carried out under area practices, to assure that conditions proposed for AEC cost-reimbursement contracts are actually prevalent in the area or have other substantial foundation and that, to the extent consistent with the terms of lump-sum contracts, practices established by lump-sum contractors are not of a character that will unstabilize other AEC work.

(d) With respect to AEC contracts carried out under project agreements, as distinguished from area practices, to assure that the negotiators of project agreements, both union and management, are fully informed and take into account all relevant factors pertaining to the particular circumstances, requirements and schedules of the project, e.g., any conditions peculiar to the project, duration of project, tenure of employment, housing and travel accommodations, length of regular workweek, uniformity of shift, special subsidies, etc.

(e) To encourage contractor officials and representatives of employees to establish similar conditions among all construction employers for each class or classification of employees at a particular location.

(f) To encourage contractor officials and representatives of employees to exert every reasonable effort either to provide clear identification and application of practices under local agreements or to make and maintain project agreements on AEC construction projects.

(g) To encourage contractor officials and representatives of employees to establish reliable working contact between the AEC project contractors and any unions that are cooperating in staffing the job.

§ 9–12.5105 Initial wage rates.

The wage rates initially established under both cost-type and lump-sum contracts will not be less than, and will normally conform to, those determined by the Secretary of Labor pursuant to the requirements of the Davis-Bacon Act. On cost reimbursement work the total compensation on the AEC project will be comparable with the total compensation allowed similar workers in an appropriate area of comparison. Where the AEC project is applying the practices under local agreements, the area of comparison normally will be the geographic area within the jurisdiction of each local union cooperating in staffing the project. In this type of situation, the application of local practices and agreements will usually be carried out on an item-by-item basis. Where a project agreement has been agreed on as the foundation for project conditions, the area of comparison for each craft should be large enough to provide a sound base which will result in realistic wage rates. In the development of a project agreement, the Division of Labor Relations should be consulted.

§ 9–12.5106 Adjustments in compensation cost-type contracts.

Subject to any limitation imposed by any applicable labor laws, changes in established wage rates and working conditions under cost-type contracts may be effected as follows:

(a) *Project agreements.* Adjustments in wage rates and other job conditions established in project collective bargaining agreements may be effected by the renegotiation or modification of the agreements at appropriate times, and by the reopening of existing agreements as provided therein. The Division of Labor Relations should be consulted as to appropriate criteria to follow in review of such reopenings.

(b) *In the absence of project agreements.* In situations where AEC cost-type contractors apply local established job conditions included in applicable bargaining agreements, adjustments in wages and job conditions may coincide with changes within the locality. Wage rates may be adjusted to bring rates into conformity with new rates which are verified as established in the area at the time of their acceptance for AEC work.

§ 9–12.5107 National Joint Board for the Settlement of Jurisdictional Disputes in the Building and Construction Industry.

Construction contractors and representatives of employees are encouraged to settle craft jurisdiction disputes in accordance with the "Procedural Rules and Regulations" of the National Joint Board.

§ 9–12.5108 Specific responsibilities.

In discharging their assigned responsibilities, Directors, Headquarters Divisions and Offices, and Managers of Field Offices shall take such action as is required to accomplish the AEC role described in § 9–12.5104.

§ 9–12.5109 Responsibility of the Director, Division of Labor Relations.

The Director, Division of Labor Relations, is responsible for coordinating all activities arising under this subpart, and for maintaining liaison with the Department of Labor, the Building Trades Department (AFL-CIO) and other construction labor and employer organizations.

Subpart 9–12.52—Unemployment Compensation

§ 9–12.5200 Scope of subpart.

This subpart establishes policies and requirements concerning provision for unemployment compensation by AEC cost-type contractors.

§ 9–12.5201 Policies and requirements.

§ 9–12.5201–1 General.

Each State has its own unemployment compensation system to provide payments to workers who become unemployed involuntarily and through no fault of their own. Funds are provided for unemployment compensation benefits through a payroll tax on employers. Most AEC contractors are subject to the unemployment compensation tax laws of the States in which they are located. It is the policy of AEC to assure, both in the negotiation and administration of cost-type contracts, that economical and practical arrangements are made and practiced with respect to unemployment compensation.

§ 9–12.5201–2 Contractors exempt from State laws.

(a) Some contractors are exempt from State unemployment compensation laws, usually on grounds that they are nonprofit organizations or subdivisions of State governments. Most States, however, permit such employers to elect unemployment compensation coverage on a voluntary basis. Under such circumstances, it is AEC policy that all existing or prospective cost-type contractors shall be encouraged to provide unemployment compensation coverage or equivalent substitutes.

(b) It is also AEC policy that, prior to the award or extension of a cost-type contract for the operation of a Government-owned facility, exempt contractors or prospective contractors shall be required to submit to AEC a statement that they will either elect coverage or provide equivalent substitutes for unemployment compensation or, in the alternative, submit evidence that it is impractical to do so. In all cases where an exempt contractor or prospective contractor submits evidence that it is impractical to elect coverage or to provide an equivalent substitute, appropriate Headquarters staff shall review the position of the contractor prior to recommending an award or extension of the contract. If it is found that there are substantial reasons for not electing coverage or for not providing equivalent substitutes, a contract may be awarded or extended. Headquarters staff review and recommendation shall be based on such factors as:

(1) The specific provisions of the unemployment compensation law of the State.

(2) The extent to which the establishment of special conditions on AEC work may have an adverse effect on the contractor's general policies and operating costs in his private operations.

(3) The numerical relationship between the contractor's private work force and his employees performing only AEC work.

(4) The contractor's record with respect to work force stability and the general outlook with respect to future work force stability.

(5) In a replacement contractor situation, whether or not the prior contractor had coverage or suitable substitutes.

(6) The particular labor relations implications involved.

Subpart 9–12.53—Workmen's Compensation Insurance

§ 9–12.5300 Scope of subpart.

This subpart establishes the policies and requirements applicable to AEC cost-type contractors managing, operating, maintaining, or constructing Government-owned facilities for insurance covering workmen's compensation and employer's liability. This subpart does not apply to supply contracts for materials, equipment, services, etc., which are to be performed in the contractor's own facilities, even though such contracts may provide for reimbursement of certain costs.

§ 9–12.5301 Policies and requirements.

§ 9–12.5301–1 General.

Workmen's compensation insurance protects employers against liability imposed by workmen's compensation laws for injury or death to employees arising out of or in the course of their employment. This type of insurance is required by State laws unless employers have acceptable programs of self-insurance.

§ 9–12.5301–2 Special requirements.

Certain workmen's compensation laws contain provisions which result in limiting the protection afforded persons subject to such laws. The policy of the AEC with respect to these limitations as they affect persons employed by cost-type contractors falling within the scope of this subpart is set forth below:

(a) *Elective provisions.* Some workmen's compensation laws permit an employer to elect not to be subject to its provisions. It is the policy of AEC to require cost-type contractors to be subject to workmen's compensation provisions in jurisdictions permitting election.

(b) *Statutory immunity.* Under the provisions of some workmen's compensation laws, certain types of employers, e.g., nonprofit educational institutions, are relieved from liability. If a contractor falling within any of these categories has a statutory option to accept liability, it is the policy of AEC to require him to do so.

(c) *Limited medical benefits.* Some workmen's compensation laws limit the liability of the employer for medical care to a maximum dollar amount or to a specified period of time. In such cases, a cost-type contractor's workmen's compensation insurance policy should contain a standard extrastatutory medical coverage endorsement.

(d) *Limits on occupational disease coverage; employer's liability.* Some workmen's compensation laws do not provide coverage for all occupational diseases. In such situations, a contractor's workmen's compensation insurance policy should contain voluntary coverage for all occupational diseases.

§ 9–12.5301–3 Contractor employees' benefit plan—self-insurers.

The policies and requirements set forth in § 9–12.5301–2 apply in situations where cost-type contractors at Government-owned atomic energy installations purchase workmen's compensation insurance. With respect to self-insured contractors, the objectives specified in that subsection shall also be met. Inasmuch as self-insurers cannot comply with the technical requirements or paragraphs (c) and (d) of § 9–12.5301–2, the AEC encourages the use of a contract supplement providing for a Contractor Employees' Benefit Plan. Under unusual or unique circumstances, where adequately justified, certain contractors who are not self-insurers may also be considered eligible for a Contractor Employees' Benefit Plan.

§ 9–12.5302 Assignment of responsibilities.

§ 9–12.5302–1 General.

Directors, Headquarters Divisions and Offices, and Managers of Field Offices, consistent with their delegations of responsibilities, shall assure that AEC cost-type contract operations at Government-owned atomic energy installations are implemented consistent with the policies and requirements of § 9–12.5301.

§ 9–12.5302–2 Responsibility of Managers of Field Offices.

In discharging their assigned responsibilities Managers of Field Offices shall:

(a) Review periodically the workmen's compensation insurance programs of cost-type contractors to whom this subpart applies in the light of applicable workmen's compensation statutes to assure conformance with the requirements of § 9–12.5301.

(b) Evaluate the adequacy of coverage of "self-insured" workmen's compensation programs to determine the need for a Contractor Employees' Benefit Plan.

(c) Arrange for the establishment of procedures for both new and existing Contractor Employees' Benefit Plans which will:

(1) Permit informal agreement whenever possible between the contractor and an employee as to the origin and extent of disabilities and the amount of payments which will be made under the Benefit Plan, and

(2) Provide, in the case of failure of more informal methods, for an impartial determination of the origin and extent of disabilities and the appropriate payments to be made under a benefit plan.

(d) Submit to the Director, Division of Labor Relations, all proposals for the establishment of new Contractor Employees' Benefit Plans or the modification of existing Plans.

§ 9–12.5302–3 Responsibilities of the Director, Division of Labor Relations, and Controller, Headquarters.

The Director, Division of Labor Relations, and the Controller are responsible jointly for approving Contractor Employees' Benefit Plans.

Subpart 9–12.54—Conduct of Employees and Consultants of AEC Cost-Type Contractors and Certain Other Contractors

§ 9–12.5400 Scope of subpart.

This subpart establishes the policies of the Atomic Energy Commission concerned with maintaining satisfactory standards of conduct on the part of employees and consultants employed on AEC contract work by its cost-type contractors and certain other contractors specified in § 9–12.5401. Contracts with colleges and universities, which have adopted conflict-of-interest policies consistent with ACE–AAUP standards and which do not involve the operation of Government-owned facilities on Government-owned or Government-leased land, are governed by the "Policy of the Federal Council for Science and Technology Relating to Conflicts of Interest by Staff Members of Colleges and Universities" (adopted Mar. 29, 1966) and are not subject to this subpart.

§ 9–12.5401 Applicability.

(a) The policies set forth in this subpart are applicable to AEC contractors to the extent that (1) their contracts with the Atomic Energy Commission contain provisions making this subpart applicable; or (2) instructions have been issued under appropriate provisions of their contracts with the Atomic Energy Commission by duly authorized AEC representatives directing compliances with this subpart.

(b) The contract clause contained in the note to § 9–7.5006–6(c) requiring the contractor to establish such procedures as are necessary to implement effectively the provisions of this subpart, subject to the approval of the contracting officer, shall be included in:

(1) All new AEC cost-type contracts, and

(2) Other AEC contracts (including time and materials contracts) with respect to which the general manager or a manager of a Field Office, as appropriate, determines that the nature of the work to be performed and the duration of the contract make the application of the policies set forth in this subpart necessary in the public interest, and

(3) Major modifications (involving change in scope or other significant substantive changes) or extensions of existing contracts within the foregoing categories, except that such contract clause will be excluded from all contracts of less than $250,000.

(c) The contract clause contained in § 9–7.5006–45(a) concerning necessary approvals to be obtained by contractor employees before performing consultant or similar services for another AEC cost-type contractor, shall be included in:

(1) All new AEC cost-type contracts except those identified in paragraph (d) below, and

(2) Major modifications (involving change in scope or other significant substantive changes) or extensions of existing contracts within the foregoing category.

(d) The contract clause contained in § 9–7.5006–45(b) concerning necessary approvals to be obtained by contractor employees before performing consultant or similar services for another AEC cost-type contractor, or in the atomic energy field for another organization, shall be included in:

(1) All new AEC cost-type contracts for the design or construction of Government-owned facilities or for research or operations where a substantial portion of the land or buildings used for such research or in such operations is owned or controlled by the Government, and

(2) Major modifications (involving change in scope or other significant substantive changes) or extensions of existing contracts within the foregoing category.

(e) Exceptions to the requirements of paragraphs (b), (c), and (d) of this section will be permitted only with the approval of the General Manager.

§ 9–12.5402 Gratuities.

A contractor or his employees or consultants shall not, under circumstances which might reasonably be interpreted as an attempt to influence the recipients in the conduct of their duties, accept any gratuity or special favor from individuals or organizations with whom the contractor is doing business, or proposing to do business, in accomplishing the work under the contract. Reference should be made to the provisions of 41 U.S.C. 51–54.

§ 9–12.5403 Use of privileged information.

Employees and consultants of a contractor shall not use for personal gain or make other improper use of privileged information which is acquired in connection with their employment on the contract work. In this connection, the term "privileged information" includes, but is not limited to, unpublished information relating to technological and scientific developments; medical, personnel or security records of individuals; anticipated materials requirements or pricing actions; possible new sites for AEC program operations; and knowledge of selections of contractors or subcontractors in advance of official announcement.

§ 9–12.5404 Outside employment of contractor employees.

Employees of a contractor are entitled to the same rights and privileges with respect to outside employment as other citizens. Therefore, there is no general prohibition against employees having outside employment. However, no employee of a contractor performing work on a full-time basis under an AEC contract shall engage in employment outside his official hours of duty or while on leave if such employment will:

(a) In any manner interfere with the proper and effective performance of the duties of his position,

(b) Appear to create a conflict-of-interest situation, or

(c) Appear to subject the AEC or the contractor to public criticism or embarrassment.

§ 9–12.5405 Information statement concerning consultant or other employment service.

If the consultant or other outside employment service of the employee involves the use of information in the area of the employee's contract employment, the contractor will be responsible for requiring that the employee file with the contractor an information statement containing such information concerning the outside employment as the contractor may prescribe. As a minimum, the information statement shall include a description of any patent agreements that may be involved and the following certificate:

I acknowledge that I have read and am familiar with the published policy of the Atomic Energy Commission contained in:

(a) AECPR 9–12.54, "Conduct of Employees and Consultants of AEC Cost-Type Contractors and Certain Other Contractors," and

(b) AEC Manual Chapter 3201, "Reporting Results of Scientific and Technical Work Funded by AEC," which states in part that significant new results produced in AEC-funded scientific and technical work shall be reported to the AEC. In accordance with this policy, I agree not to withhold, or delay reporting, information acquired through my employment with _____ in favor of _____ with whom I have made or am contemplating making a consulting agreement. I have also

read and am familiar with the requirements of my employer's contract with the Commission relating to patents. To the best of my knowledge or belief, the activities to be performed under this consulting agreement will not conflict with the policy set forth in AECPR 9–12.54, the patent provisions of my employer's contract with the Commission, or with the responsibility of my employer to report fully and promptly to the AEC all significant research and development information. If in the course of my activities under this consulting arrangement it appears that such a conflict may arise, I will promptly notify and consult with my primary employer ---------- concerning such possible conflict.

§ 9–12.5406 Allowable and unallowable costs.

Reference should be made to §§ 9–7.5006–9(d)(3) and (e)(26), 9–7.5006–10(d)(3) and (e)(24), 9–7.5006–11 and 9–7–5006–12(d)(3) and (e)(22) for additional contract provisions concerning allowable and unallowable costs in connection with obtaining consultant services.

§ 9–12.5407 Incompatibility between regular duties and private interests.

Employees and consultants of a contractor shall not be permitted to make or influence any decisions on behalf of the contractor which directly or indirectly affect the interest of the Government if the employees' or consultants' personal concern in the matter may be incompatible with the interest of the Government. For example, (a) an employee or consultant of a contractor will not negotiate, or influence the letting of, a subcontract with a company in which he has an employment relationship or significant financial interest; and (b) an employee or consultant of a contractor will not be assigned the preparation of an evaluation for the Commission or for a Commission contractor of some technical aspect of the work of another organization with which he has an employment relationship or significant financial interest or which is a competitor of an organization (other than the contractor who is his regular employer) in which he has an employment relationship or significant financial interest. The contractor shall be responsible for informing employees and consultants that they are expected to disclose any incompatibilities between duties performed for the contractor and their private interests and to refer doubtful questions to the contractor.

PART 9–14—INSPECTION AND ACCEPTANCE

Sec.

AUTHORITY: The provisions of this Part 9–14 issued under sec. 161 of the Atomic Energy Act of 1954, as amended, 68 Stat. 948, 42 U.S.C. 2201; sec. 205 of the Federal Property and Administrative Services Act of 1949, as amended, 63 Stat. 390, 40 U.S.C. 486.

§ 9–14.000 Scope of part.

This part implements and supplements FPR Part 1–14 by prescribing the policies and requirements for inspection and acceptance under contracts for supplies and services, including construction contracts.

§ 9–14.108 Government inspection of supplies under subcontracts.

The limitations in FPR 1–14.108 do not apply to procurements by cost-type contractors for the account of AEC.

§ 9–14.5001 Inspection and acceptance requirements.

(a) Inspection and acceptance shall be conducted in accordance with:

(1) Provisions of the contract;

(2) This part;

(3) Instructions issued by Headquarters divisions, offices or Managers or Field Offices.

(b) The instructions referred to in subparagraph (3) of paragraph (a) of this section shall not be inconsistent with the contract or this part.

§ 9–14.5002 Contract articles relating to inspection and acceptance.

The fixed-price supply contract article covering inspection and acceptance for use by AEC is referenced in § 9–7.5005–6. The construction contract article covering inspection and acceptance for use by AEC is the "Inspection and Acceptance" article in Standard Form 23A: General Provisions (Construction Contract). Contract articles relating to inspection and acceptance, which are used by AEC cost-type contractors, should provide no less a degree of protection for the Government than are provided by the contract articles used by AEC.

§ 9–14.5003 Construction contracts.

(a) Inspection services may be performed by the architect-engineer responsible for the design. Inspection services may not be procured from a fixed-price construction contractor with respect to its own work since this would represent self-inspection. Under cost-type contracts where the construction contractor and architect-engineer are the same, some degree of self-inspection may be permitted but shall not constitute final inspection and acceptance by the Government. (See § 9–1.5407(g).)

(b) [Reserved]

(c) When one contractor is to inspect the work of another, written instructions should be furnished the inspecting contractor defining his responsibilities and stating that he is not authorized to modify the terms and conditions of the contract, nor to direct additional work, nor to waive any requirements of the contract, nor to settle any claim or dispute. Copies of these instructions should be furnished the contractor who is to be inspected, with a request that he acknowledge receipt on a copy to be returned to the contracting officer. In this manner, both contractors are on express notice of the authority, and limitations on the authority, of the inspecting contractor.

PART 9–15—CONTRACT COST PRINCIPLES AND PROCEDURES

Sec.

AUTHORITY: The provisions of this Part 9–15 issued under sec. 161 of the Atomic Energy Act of 1954, as amended, 68 Stat. 948, 42 U.S.C. 2201; sec. 205 of the Federal Property and Administrative Services Act of 1949, as amended, 63 Stat. 390, 40 U.S.C. 486.

§ 9–15.000 Scope of part.

The cost principles and the procedures for the determination and allowance of costs in connection with the negotiation and administration of AEC cost-reimbursement type contracts, except for research contracts with educational institutions which are treated in FPR Subpart 1–15.3, are set forth in Subpart 9–15.50. Standard cost articles setting forth examples of allowable and unallowable costs are included in Subpart 9–7.50. Subpart 9–15.50 also contains guidelines for use, where appropriate, in the evaluation of costs in connection with certain negotiated fixed-price type contracts.

Subpart 9–15.1—Applicability

§ 9–15.103 Cost-reimbursement research contracts with educational institutions.

(a) The cost principles in FPR Subpart 1–15.3 shall be incorporated by reference or attachment in cost-reimbursement research contracts with educational institutions to which they are applicable. However, contracts with educational institutions for the operation of AEC-owned contractor-operated research laboratories are governed by the principles in Subpart 9–15.50 and § 9–7.5006–9.

(b) Overhead rates shall be determined by after-the-fact audit, except as provided in paragraph (c) of this section.

(c) Predetermined fixed overhead rates may be used in cost-type research and development contracts with educational institutions (Public Law 87–638). The use of such rates is permissive and not mandatory. In determining whether or not predetermined fixed overhead rates should be used in a particular contract, consideration should be given to the degree of stability shown in overhead rates and their bases over a period of years. All anticipated changes in the contractor's volume and overhead shall be taken into consideration. In establishing such predetermined overhead rates the following guidelines shall be used:

(1) The contractor, as soon as possible, but not later than three (3) months after the expiration of each fiscal year, shall submit to the contracting officer, a proposed predetermined overhead rate or rates for use during the contract year based on the contractor's actual cost experience during the immediately preceding fiscal year, together with supporting cost data.

(2) Negotiation of predetermined fixed overhead rates shall be for a period of 1 year only and should generally be based on an audit of the institution's costs for the year immediately preceding the year in which the rate is being negotiated. If this is not possible, an earlier audit may be used, but appropriate steps should be taken to identify and evaluate significant variations in costs incurred or bases used which may have a bearing on the reasonableness of the rate proposed by the contractor. (Audits by other Government agencies may be utilized.) In the case of smaller contracts ($100,000 or less), an audit made at an earlier date is acceptable provided (i) there have been no significant changes in the contractor's organization, and (ii) it is reasonably apparent that having another audit made would result in little effect on the rate to be finally agreed upon.

(3) Predetermined overhead rates shall not be used for operating contracts (see Subpart 9–15.50).

(4) The use of predetermined fixed overhead rates in the following circumstances must have the approval of the Manager of the Field Office:

(i) Where AEC-owned facilities and equipment exceed $1,000,000;

(ii) Where estimated reimbursable costs for the contract are expected to exceed $1 million annually;

(iii) Where there has been no recent audit of the overhead; or

(iv) Where there have been frequent or wide fluctuations in overhead rates and their bases over a period of years.

Subpart 9–15.50—Cost Principles and Procedures

§ 9–15.5000 Scope of subpart.

(a) This subpart sets forth the general policy and principles for the determination of allowable costs which are applicable to the negotiation and administration of cost-type contracts. Contracting officers shall take action to make this subpart applicable to cost-type subcontracts by: (1) Directing compliance by the prime contractor if consistent with his currently existing contract; or (2) conditioning future contracting approval of subcontracting procedures or subcontracts upon such compliance.

(b) This subpart also provides guidance for the evaluation of costs in negotiated fixed-price contracts and subcontracts where costs incurred are a factor in determining the amount payable. In determining the allowable costs of research and development performed by educational institutions under cost-type contracts and cost-type subcontracts the provisions of FPR Subpart 1–15.3 adapted from BoB Bulletin No. A–21 for common use by Federal agencies, will control. Research-type operating contracts will be governed by the provisions of §§ 9–15.5005 and 9–7.5006–9.

(c) The terms "reimbursement" and "reimbursable" are used interchangeably in this subpart in relation to "allowable costs" as a matter of editorial convenience. No "reimbursement" is actually involved in those situations where the cost-type contractor makes payments for "allowable costs" from Government funds advanced to him by the AEC.

(d) Standard cost articles setting forth examples of allowable and unallowable costs are included in §§ 9–7.5006–9 through 9–7.5006–12.

§ 9–15.5001 Definitions.

(a) "Cost-type contract" includes cost, cost sharing, and cost-plus-a-fixed-fee contracts.

(b) "Cost-type subcontract" is a cost-type arangement in any tier under a cost-type prime contract where all higher-tier arrangements are on a cost basis.

(c) "Operating contract" is a cost-type contract for the operation of a Government-owned facility, such as a production facility or a research and development facility.

(d) "Construction contract" is a contract for the construction, alteration, or repair of public buildings and public works.

(e) "Architect-engineer contract" is a contract for architect-engineer services related to the construction, alteration, or repair of public buildings and public works.

(1) "Off-site architect-engineer contract" is a contract where the design work is performed in the contractor's central or branch office.

(2) "On-site architect-engineer contract" is a contract where relatively complete staffing is required for the design work at an office other than a central or branch office of the contractor, and where a minimum of support is required from the contractor's central or branch office staff. The office where the design work is performed may be at the construction site or any other location.

(f) "Supply contract" is a contract for supplies and services, other than operating, construction, architect-engineer, experimental, developmental, or research work and personal services.

(g) "Research and development contract" is a contract for basic research (directed toward the increase of knowledge in science), applied research (involving the determination and expansion of the potentialities of new scientific discoveries or improvement in technology, materials, processes, methods, devices, and techniques including attempts to "advance the state of the art"), or development (the systematic use of scientific knowledge which is directed toward the production of, or improvements in, useful products to meet specific performance requirements, but exclusive of manufacturing and production engineering).

§ 9–15.5002 Responsibilities.

(a) The Controller is responsible for developing and revising the policy and procedures for the determination of allowable costs, and for seeing that they are properly coordinated with the General Counsel, the Director, Division of Contracts, and with other Divisions and Offices having joint interests.

(b) Directors of Headquarters Divisions and Offices negotiating contracts,

and Managers of Field Offices are responsible for following the policy, principles and standards set forth herein in establishing the compensation provisions of contracts and subcontracts and for submission of deviations for Headquarters consideration.

(c) The General Counsel is responsible for the preparation and interpretation of contracts.

§ 9–15.5003 Deviation.

Deviations from the policy and principles set forth in this subpart shall not be made unless such action is authorized by the Director, Division of Contracts, after consultation with the Controller, General Counsel, and any other appropriate Headquarters office, on the basis of a written justification stating clearly the special circumstances involved. Where appropriate, any approved deviation shall be reflected in the compensation provisions of the contract.

§ 9–15.5004 [Reserved]

§ 9–15.5005 General policy.

The general policy of the AEC in connection with cost-type contracts and with cost-type subcontracts is as follows:

§ 9–15.5005–1 Actual cost basis.

(a) AEC reimburses its contractors for allowable costs actually incurred in the performance of their contracts in accordance with their terms. Such allowable costs are those provided for in the contract to the extent that they are necessary or incident and either directly attributable or equitably allocable to the work under the contract. This broad expression of the AEC's reimbursement policy is further developed and elaborated upon throughout this subpart.

(b) (1) AEC uses retrospective or after-the-fact determination, usually called the "actual cost basis," to establish the amount reimbursable to its contractors for their allowable costs. This general policy precludes the use of predetermined fixed-overhead percentage rates except for provisional payment under paragraph (d) of this section.

(2) It is recognized, however, that the total volume of work with a particular contractor in some cases may be so small that computation of the actual indirect costs may not be justified. In such cases it may be administratively desirable to adopt some alternative, such as a predetermined amount for indirect costs. However, a departure from the actual cost basis under a cost-type contract is considered administratively undesirable if the amounts involved are significant, and the use of either a predetermined amount for indirect costs, except under the circumstances noted above, or other alternatives (such as a fixed billing rate for labor and overhead per direct labor hour) shall be submitted to Headquarters for approval. Any firm amount established for indirect costs, whether small or significant, and any other alternative, shall be supported by a well-considered conclusion that the firm amount or other alternative will result in approximately the same compensation for the costs concerned as would likely result from determination on the actual cost basis. The negotiation of predetermined fixed amounts, fixed billing rates, etc., shall be made on the basis of actual cost experience and satisfactory cost projections, and in accordance with the principles and standards set forth in this subpart. Such amounts, rates, etc., will cover allowances only for allowable costs.

(c) When firm compensation for any otherwise allowable cost is negotiated, the items of such cost covered by the fixed amount shall be set forth in the contract or appropriate appendices as unallowable with maximum clarity in order to distinguish between allowable costs subject to reimbursement and costs which are covered by the negotiated fixed amount, and hence excluded from allowable cost in the case of the particular contract.

(d) Provisional payments on account of indirect costs incurred under the contract shall be provided for only after review of the contractor's system of accounting, including items treated as indirect costs and methods of distributing them or on the basis of previous audits or past experience with the particular contractor. Based on such a review, a provisional overhead rate or rates shall be established taking into consideration the prior year's experience adjusted to eliminate nonrecurring costs and to reflect any new conditions which may be applicable to the future. Such rate or rates shall be applied to an appropriate base or bases for computation of the provisional payments. The elements of indirect cost and the base or bases used in computing provisional payments, shall not be construed as indicating the elements of expense to be distributed or the base or bases of distribution to be employed in the periodic determination of actual overhead. The actual overhead shall be determined not less often than annually and the provisional payments made shall be adjusted accordingly. Prior to final settlement of the entire contract the actual overhead so determined periodically shall be subject to appropriate subsequent adjustment including errors subsequently becoming known. The amount of any adjustment shall promptly be paid or credited by the AEC to the contractor or by the contractor to the AEC as the review has determined.

§ 9–15.5005–2 Compensation through fee.

(a) AEC compensates operating, construction and on-site architect-engineer contractors through the fixed fee for general and administrative expenses incurred in the general management and administration of the contractor's business as a whole by the contractor's home, divisional or branch offices.

(b) In a particular case, the contractor may be compensated on the basis of allowable cost, rather than through the fixed fee for some or all of the expenses described in paragraph (a) of this section if the Director, Division of Contracts, the Manager of the Field Office, or a representative having the authority to approve the contract, authorizes use of this alternative approach and determines that the negotiated fixed fee reflects proper downward adjustment from that which would otherwise have been established. In the case of no-fee contracts (including contracts providing for nominal or token fees), this category of expense may be either reimbursed on the basis of actual costs or compensated through a predetermined fixed amount.

(c) The above-stated policy does not preclude the payment of expenses merely because they are incurred or accounted for at or by the contractor's home, divisional or branch offices; where expenses of a type typically incurred at construction or operation sites in support of the contract work, are, by reason of a particular contractor's greater centralization, incurred at such offices, rather than at the operation site, such expenses may be reimbursed.

(d) In the case of on-site architect-engineer contracts, the contracting officer may approve performance of some of the work in the contractor's central or branch office location. The direct costs of such work and an equitable portion of such indirect costs at the central office or branch office location as are properly applicable and apportionable to such work are allowable. In such cases, the indirect costs attributable to the performance at a central office or branch office location of work related directly and solely to individual contracts shall be distinguished with care from general and administrative expenses incurred by the contractor's home or branch offices in the general management, supervision, and conduct of its business, since these general administrative expenses are usually compensated for through fee and, in any event, where allowable, are related to and apportionable over all work under the supervision of the office concerned.

(e) As to work performed by an operating contractor in its own facilities, see § 9–15.5007–3.

§ 9–15.5005–3 General basis for determination of costs.

The total reimbursable cost of an AEC cost-type contract is the sum of the allowable direct costs necessary or incident to the performance of the contract, plus the properly allocable portion of the allowable indirect costs, less applicable income and other credits. In determining allowability and reimbursability of costs, there shall be considered also:

(a) Reasonableness, including the exercise of prudent business judgment;

(b) Application of generally accepted accounting principles and practices appropriate to identify and measure costs of performing the contract in accordance with this subpart;

(c) All exclusions of and limitations on types and amounts of items of cost set forth in the contract; and

(d) Approvals by the contracting officer required under the contract terms.

(For examples of allowable and unallowable costs see §§ 9–7.5006–9 through 9–7.5006–12.)

§ 9–15.5005–4 Cost determination based on audit.

(a) The amount reimbursable under cost-type contracts shall be determined in accordance with the terms of the respective contracts on the basis of audit. In the event that the contractual terms differ or are inconsistent (see § 9–15.5003 for approval of deviations) with the principles stated herein the contractual terms control. The audit is performed directly by AEC (or by the cognizant Federal agency pursuant to arrangements made by the AEC) in the case of cost-type contracts. Contracting officers shall assure that cost-type prime contractors assume the responsibility for audit of subcontractors (and provide for the audit of lower tier subcontractors by the subcontractor immediately preceding in the contractual chain) except as noted in this paragraph. Exceptions may be made to this general principle of subcontractors being audited by the next higher-tier contractor, where the latter is interrelated with the subcontractor involved, does not have the necessary audit facilities or for other reasons is not in a position to perform the subcontract audit in a manner satisfactory to the AEC. In the event of such exception, the subcontract audit responsibility shall rest with the successively higher-tier contractor (or ultimately AEC), but responsibility for determining the costs reimbursable to the subcontractor remains with the next higher-tier contractor on the basis of such audit.

(b) *Audit by other Federal agencies:* Where the amount of cost-type work to be performed for AEC in a particular facility is less than that being performed at the same facility for other Federal agencies, arrangements may be made to have the cognizant agency perform the audit of the AEC contract or subcontract. These arrangements shall be made administratively between AEC and the other agency involved, and wherever possible shall provide for the cognizant agency to audit against the AEC cost principles. In no case, however, shall the arrangements preclude determination by the AEC contracting officer of the allowable and unallowable costs in accordance with AEC cost principles set forth in §§ 9–7.5006–9 through 9–7.5006–12. Steps appropriate in the light of the magnitude and nature of the costs shall be taken by the contracting officer to ascertain that the audit results properly reflect the application of AEC cost principles (particularly as to types and amounts of items of cost including incidence, allocability, and equitable distribution thereof).

§ 9–15.5005–5 Contractor's system of accounting.

(a) (1) Careful AEC study of the contractor's usual accounting procedures shall be made prior to arriving at an understanding with the contractor as to the accounting system to be employed by the contractor during the period of contract performance.

(2) The contractor's customary accounting practices are usually accepted if they conform to generally accepted accounting principles, produce equitable results, are consistently applied, are not in conflict with the provisions of this subpart, are conducive to accurate costing of the contract work, and produce reports required by the AEC.

(b) It is the AEC's policy to discourage firm contractual provisions relating to the contractor's accounting system (including methods for computing indirect costs) which preclude appropriate retrospective modification. No firm contractual provision shall be included in the contract where there is no previous Government contracting experience with the contractor's methods of operation and accounting. Contracting officers may, however, include firm contractual provisions when there is a comprehensive understanding of the contractor's methods of operation and accounting as a result of Government contracting experience in dealing with the contractor and the contracting officer makes a determination, based on an AEC study thereof, that the contractor's accounting procedures are likely to produce equitable results in the future as in the past. Such firm contractual provisions shall be subject to adjustment retroactively at the request of either party to the contract when the method of overhead determination has become inequitable as a result of

(1) Any substantial difference accruing between the cost patterns of work under the contract and other work of the contractor; or

(2) Any significant change occurring in the nature of the business, the extent of subcontracting, fixed asset improvement program, the inventories, the volume of sales and production, manufacturing processes, the contractor's products, or other relevant circumstances.

§ 9–15.5006 Advance understandings on particular cost items.

It is important that agreement between AEC and its contractors be reached in advance of the incurrence of costs in categories where reasonableness or allocability are difficult to determine in order to avoid possible subsequent disallowance or dispute. Any such agreement should be incorporated in cost-type contracts and should govern the cost treatment covered thereby. But the absence of such agreement on any element of cost will not, in itself, serve to make that element either allowable or unallowable. Examples of costs on which advance agreements may be particularly important are:

(a) Deferred maintenance costs;

(b) Precontract costs;

(c) Professional or technical consulting services;

(d) Reconversion costs;

(e) Research and development costs;

(f) Royalties;

(g) Selling and distribution costs;

(h) Unemployment insurance experience ratings;

(i) Employee compensation, travel including relocation costs, and other personnel costs. AEC utilizes two basic methods of achieving and recording understandings with contractors as to the allowability of employee compensation, travel, and other personnel costs: Negotiation of a personnel appendix to the contract which sets forth the policies, programs, and schedules which are accepted as the basis for determining the allowability of costs; or reviewing and reaching agreement on established policies, programs, and schedules (and any changes thereto during the contract term) applicable to the contractor's private operations which are acceptable for contract work and which will be consistently followed throughout the contractor's organization. Generally, a personnel appendix to the contract is utilized in contracts for work in Government-owned facilities, and in other contract situations when one or more of the following circumstances exist: When policies, programs, and schedules are established specifically for contract work; when the contractor's work is predominantly or exclusively made up of negotiated Government contract work; when contract work is so different from the organization's private work that existing established policies, programs, and schedules cannot reasonably be extended to and consistently applied on contract work; or, when established policies, programs, and schedules proposed for contract work are not sufficiently definitive to permit a clear advance mutual understanding of allowable costs and to provide a basis for audit. Managers of Field Offices are authorized to select the alternative method of achieving and recording advance understanding that they find most appropriate after considering the facts of the particular contract situation. In the case of contracts with an estimated annual expenditure of less than $250,000 for performance of work not located at Government-owned facilities, Managers of Field Offices may waive advance understandings in the area of compensation, travel, and other personnel costs where they believe that the circumstance does not warrant their use. Employee compensation, travel, and other personnel costs as used in this paragraph include:

(1) Compensation for personal services, including wages and salaries, bonuses and incentives, premium payments, pay for time not worked, and supplementary compensation and benefits, such as pension and retirement, group insurance, severance pay plans, and other forms of compensation covered by § 9–15.5010–14;

(2) Morale, health, welfare, and food service and dormitory costs;

(3) Training and education costs; and

(4) Employee travel costs, including travel on official business, relocation of employees, foreign travel, travel of executive officers, and special or mass personnel movement.

§ 9–15.5007 Direct and indirect costs.

§ 9–15.5007–1 Explanation of direct costs and indirect costs.

(a) The classification of an item of cost as a direct cost or as an indirect cost

has reference to the manner in which the particular cost is charged to or lodged against the products manufactured, work done, or services performed. In general, direct costs are those which are identified as having been incurred specifically for or on account of a particular product (or lots of similar products), work order, job, or contract. Materials, labor, or expenses which relate specifically and solely to the manufacture of a particular product or to the performance of a distinct job or work are broad examples of direct costs.

(b) Indirect costs are comprised of items of material, labor, and expenses which benefit not only a particular product or a specific unit of work but also other production or work and are so related to the particular product or specific task that the amount of the cost which should properly be lodged against it cannot be precisely determined, at least without effort entirely disproportionate to the increased accuracy achieved. There is no universal rule that under every accounting system certain items of cost shall be treated as direct or as indirect costs. It is essential, however, that within the accounting system of any given organization each item of cost be consistently treated in the same manner. Also, since indirect costs must ultimately be lodged against the various products, work orders, jobs or contract which benefit from their incurrence, it is necessary to establish ways or means of apportioning or distributing these indirect costs equitably to all work concerned. Since the means of accomplishing this distribution of indirect costs are necessarily somewhat arbitrary and not precisely correct, accuracy is best attained by treating as direct costs all items of cost which are susceptible of such handling and by limiting to the greatest practical extent the number of items of cost which are treated as indirect costs. The contractor's accounting system should be examined and modified so that such results are achieved. (See § 9–15.5005–5.)

§ 9–15.5007–2 Treatment of indirect costs.

(a) The contractor's indirect costs, which must be appropriately identified and supported by adequate documentation, must be carefully examined with the objective of excluding for reimbursement purposes all types of indirect costs that are either unallowable in nature (see list of examples in standard cost articles §§ 9–7.5006–9 through 9–7.5006–12) or not properly allocable to performance of work under the AEC contract. It may be that only a portion of a given pool of indirect costs will fail to meet these tests and require such exclusion. After excluding all such expenses, the remaining indirect costs require allocation by an acceptable method or methods that result in equitable charges to the AEC contract. Any item or items of indirect cost that are so excluded in whole or in part shall include an amount for absorption of their appropriate share of other related indirect and administrative expenses. Some examples of indirect costs that should include a fair share of other indirect and administrative expenses are: research and development costs, selling expenses, and bidding and proposal costs.

(b) The methods of allocation of indirect costs shall be determined in accordance with the policy and procedure outlined in § 9–15.5005–5(b). Careful reviews shall be made from time to time as appropriate, particularly where there is a significant change in the nature or volume of activity, to determine whether the method or methods of allocation previously used continue to be equitable. The ultimate objective in allocating indirect costs is to charge fair shares of the various expenses concerned to the AEC contract work. The appropriate method or methods of allocation are dependent upon the particular circumstances and conditions; hence, no general rules can be stated as to particular methods or bases of allocating indirect costs applicable and appropriate in all cases. One method may be determined to be appropriate for allocating certain indirect costs but not others, in which case a different method or methods must be established which will equitably allocate the other indirect costs. This means that it may be necessary to establish separate pools of indirect costs for particular items of expense and to use separate methods of allocation for each pool in order to establish equitable results.

§ 9–15.5007–3 Company general and administrative expenses.

Although the AEC generally compensates operating, construction and on-site architect-engineer contractors through fee for company general and administrative expenses (see § 9–15.5005–2), it allows such company general and administrative expenses under off-site architect-engineer, supply, and research contracts with commercial contractors performing the work in their own facilities. Contractor's general and administrative expenses may, however, be included for reimbursement under AEC off-site architect-engineer, supply, and research contracts only to the extent that they are established, after careful examination, to be allowable in nature and properly allocable to the work. Work performed in a contractor's own facilities under an operating or construction contract may likewise be allowed to bear the properly allocable portion of allowable company general and administrative expense.

§ 9–15.5008 Negotiated fixed-price contracts where costs incurred are a factor in determining the amount payable.

§ 9–15.5008–1 General policy.

See § 9–3.807 and FPR 1–3.807.

§ 9–15.5008–2 Cost data.

Where the use of cost data is required by § 9–3.807 and FPR 1–3.807, the cost principles outlined in this subpart, including the items listed as unallowable costs in the standard cost articles, §§ 9–7.5006–9 through 9–7.5006–12 of this chapter, shall be applicable in the accounting reviews of contractor's proposals for pricing and in the preparation of the advisory accounting reports which are to be used as a guide by the contracting officer in negotiating the final price. An exception to this is the treatment of contingency reserves or allowances in connection with estimates of future costs. If contingencies are known to exist in such cases and the effects may be gauged within reasonable limits (such as anticipated costs of defective work), consideration thereof may be included in the estimates. Where conditions are known that may give rise to a contingency but the effects cannot be reasonably estimated (such as general business risks), the contingency should not be included as a cost factor but should be disclosed as a separate item for the consideration of the contracting officer.

§ 9–15.5008–3 Contractor's cost accounting system.

Where a fixed price contract with price redetermination provisions (including the incentive type) is involved, it should be determined at the inception of the contract that the contractor's accounting system is maintained in accordance with generally accepted accounting principles and practices and will equitably reflect the costs of contract performance. This may be done either on the basis of a survey of the accounting system, previous experience with the contractor, or by such other means as may be considered satisfactory to the contracting officer.

§ 9–15.5009 Treatment of indirect costs.

For purposes of allowability, indirect costs, like direct costs, are subject to the requirements of § 9–15.5005–3 with respect to the general basis for determination of costs.

§ 9–15.5009–1 Direct charging of costs.

The nature of some types of cost, possibly significant in amount, and their relationship to the contractor's work may be such as to necessitate their treatment as indirect costs. However, in order to secure the most accurate and equitable results, the various types of cost normally treated as indirect costs by the contractor under its regular accounting procedures should be examined to determine which types should, for purposes of reimbursement under the AEC contract, be treated as direct costs. Such action should be taken whenever the increased accuracy that results is sufficiently material to justify the expenditure of the additional time, effort, and expense entailed. Where a type of cost is charged direct to the AEC contract, no item of a similar character which on the same basis is properly chargeable only to other work should be included in indirect costs apportioned to the AEC contract. Treatment of items of cost as direct charges, consistently as to both the AEC contract and the contractor's other work, should be employed to the fullest extent practicable, correspondingly reducing the volume of costs to be treated as indirect costs that require distribution by arbitrary methods which are not precise and accurate and therefore, at best, produce only approximate results.

§ 9–15.5009–2 Appropriate departmentization.

Appropriate departmentization for cost-reimbursement purposes should be effected between different kinds of productive activity, such as:

(a) Between manufacturing involving substantial expenses of machinery depreciation, machinery operation and maintenance, space, electric energy, tools, etc., and research generating relatively small overhead costs;

(b) Between heavy manufacturing requiring expensive equipment and power machinery, and light manufacturing which by comparison is practically a hand operation;

(c) Between research work requiring an elaborate layout of laboratory facilities and equipment, and research involving primarily the application of mental effort and requiring little or no equipment.

The objective and result should be to burden manufacturing work, or different kinds of manufacturing work, and research work, or different kinds of research work, each with the indirect costs properly applicable to the respective kind of work. If a nondepartmentized plant or individual department is so constituted that the indirect costs, rather than relating fairly proportionately to all work in the plant or department, particularly to the work under the AEC contract, relate more to some work than to other work, consideration should be given to further departmentization. The costing refinement may be made on a quasi-department basis from data furnished by the existing accounting system or developed on as reasonable an analysis as the facts and circumstances permit. The further departmentization should preferably be incorporated into the contractor's own accounting system.

§ 9–15.5009–3 Distribution of service department costs to production departments.

The total indirect costs of each productive department include an appropriate share of the costs incurred by the nonproductive or so-called service departments, such as the maintenance department, the power plant department, stores handling department, and tool room department. The basis used to distribute the costs of each individual service department should result in equitable allocation of the service department costs to the productive departments, particularly those productive departments in which work under the AEC contract is performed. In the case of each service department the distribution method used should be appropriate in the circumstances, whether it be based on number of workers, floor space occupied, measurable services, total labor costs, total labor hours, some other basis, or a combination of methods.

§ 9–15.5009–4 Distribution of indirect costs of productive departments to work done.

In order to distribute the indirect costs of a productive department to the work done in the particular department, it is necessary that the apportionment be based on a factor which is common to all work performed in the particular department and which closely approximates the extent to which the services represented by the indirect costs of the department are utilized in performing the work done on the individual contracts and work orders. The variety and complexity of production work makes it difficult to determine the most appropriate and equitable common denominator for distributing a department's indirect costs to the department's work. Since, insofar as the use made of services represented by a productive department's indirect costs is concerned, the major factor common to all work of the department is either direct labor cost or the time required for performance, the methods commonly used for distributing a department's indirect costs, each of which is based on one of these two factors, are:

(a) The direct labor cost method.

(b) The direct labor hour method.

(c) The departmental hourly rate method.

(d) The machine hours method.

Which of these methods is most appropriate for a particular department depends on whether distribution of the department's indirect costs equitably should be proportionate to the department's costs of direct labor, hours of direct labor, or hours of machine use. If the contractor's departmentization follows sound and recognized lines of organizational subdivision, one of these methods usually will be found sufficiently accurate and equitable to be accepted. If not, departmental refinement or quasi-departmentization may be required, or combinations of the above methods or the development of other methods equitable in the particular circumstances may be necessary.

§ 9–15.5009–5 General and administrative expenses.

(a) *Allowability.* As indicated in § 9–15.5005–3, a contractor's general and administrative expenses may be accepted for apportionment to work under an AEC off-site architect-engineer (see also § 9–3.404–50(f)(1)(iii)), supply, or research contract only to the extent that they are established, after careful examination, to be allowable in nature and, on the basis of incidence to its performance, properly allocable to the work. The following are a few examples of expenses which, although not unallowable because of their basic nature, are not incident to the performance of an AEC contract:

(1) The salaries and expenses of corporate officers, and their staffs, whose services do not apply to the performance of the AEC contract work, e.g., those whose services are devoted to sales activities promoting the marketing of the contractor's manufactured products; or to matters completely separate from the contractor's manufactured products, such as the merchandising of products made by others; or to the handling of investments so substantial as to constitute in effect a separate business.

(2) Legal and other expenses in connection with applications for patents for the contractor's account.

(3) Outgoing freight costs, in applicable to the AEC contract products because delivery of such products is taken f.o.b. contractor's plant.

(4) Expenses (depreciation, operation, and maintenance of buildings and equipment, labor, and other costs) applicable to warehousing and storage of the contractor's products but not incident to the products under the AEC contract because they are delivered upon completion.

(5) Expenses of maintenance and repairs which would normally have been performed in an accounting period prior to the period of performance of the AEC contract but which for some reason—possibly abnormal operating conditions, shortages or high costs of material or labor, or lack of funds—have been deferred.

(b) *Allocation.* No one method of distribution can be stated to be always most equitable and best for purposes of distributing a contractor's allowable and properly allocable general and administrative expenses to individual jobs and, specifically, to work for AEC. Careful consideration of the expenses themselves, of differences in work performed, and of the relationship of the expenses to the different kinds of productive activity is necessary in each case to assure that the method used produces fair and equitable results in the particular circumstances. Several of the methods frequently employed are briefly discussed below.

(1) Total manufacturing costs (including material) may in many cases be an appropriate basis for distributing general and administrative expenses to jobs in connection with which the relation to one another of the component cost elements is substantially the same as the cost pattern of the contractor's work generally. However, they would be an inappropriate basis in the case of a job whose material cost component, due to heavy material purchases and subcontracting, is abnormally high by comparison with the general cost pattern of the contractor's total work. In such a case the normal general and administrative expense rate applicable to total manufacturing cost, arrived at on the basis of the general cost pattern of the contractor's work, should be appropriately adjusted because of the special circumstances pertaining to the particular job, or a different basis of allocation should be used to distribute general and administrative expenses to the job. For cost reimbursement purposes, total manufacturing costs generally constitute a more appropriate base for the distribution of general and administrative expenses than does either the total cost of goods sold or total sales. Each of these latter bases may be deficient and inequitable in that it distributes general and administrative expenses to work sold rather than to work performed during the period concerned.

(2) Processing costs are used in many cases as the basis for allocating general and administrative expense. If the major indirect costs attributable to material—such as purchasing, receiving, inspecting or testing, internal handling (to stockrooms and to jobs directly and from stockrooms), storing, inventorying, controlling, and issuing materials—are either included in indirect manufacturing costs or segregated and treated separately as material burden or material-handling expense, it will probably be more equitable to exclude material cost from, than to include it in, the base for allocating general and administrative expense. However, exclusion of material cost from the base for allocation of general and administrative expense where the administrative costs attributable to materials are accounted for as general and administrative expenses might well be subject to the criticism that costs which contribute to the generation of general and administrative expenses are not included in the base for their allocation.

(3) Direct labor cost alone is sometimes used as the basis for allocating general and administrative expenses. However, in many cases use of this method would be inappropriate since it fails to recognize that processing costs other than direct labor and also, to some extent at least, material costs serve to generate and to benefit from the incurrence of general and administrative expense. The propriety of this method would be subject to serious questions in a situation where the cost pattern of a particular job (i.e., the portion of the cost representing labor, other processing costs, and material) differs significantly from the normal cost pattern of the contractor's total work.

(c) *Allocation of home office expenses of multiplant organizations.* In the case of a multiplant organization there will be, in addition to the general and administrative expenses of the individual plants, overall company general and administrative expenses. These latter expenses require distribution or apportionment to all of the company's plants and other activities on an equitable basis or bases. Generally, these overall company expenses are not distributed to the company's various activities as a single pool of expense. Rather, individual classifications of expense or categories of similar types of expenses are spread separately on varied bases—such as number of employees, total payrolls, total manufacturing costs, services rendered, time devoted, and allocations based on the results of detailed studies and analyses in prior years. The total activities of an organization may include, in addition to manufacturing, separate and distinct operations (such as sale and distribution of standard commercial products of the company's own manufacture, merchandising of products made by and purchased from other manufacturers, and investment activities) so varied and dissimilar as to render extremely difficult the problem of determining the proper factors to serve as common denominators for the fair and equitable allocation of the overall company expenses. Moreover, each expenditure within a given expense classification probably does not benefit all activities in the same way and to the same extent as does any other expenditure in the same expense classification. The foregoing serves to emphasize that the relationship of company general and administrative expenses to individual plants and other activities is not susceptible of precise evaluation. The objective must be, as to the particular classification or categories of such expense, a basis of apportionment which accomplishes its reasonable and equitable, though admittedly only approximately correct, distribution to the company's various activities, particularly those in which work for AEC is performed.

§ 9–15.5010 Application of basic principles to particular situations.

This guide contains examples of the application of the policy and principles outlined in Subpart 9–15.50 to particular situations.

§ 9–15.5010–1 Consideration of costs confined to locations involved.

If a contractor does work for AEC at two or more plants, offices, or departments, the indirect costs of each plant, office, or department will be applied only to the work of the particular plant, office, or department. Separate treatment of plants, offices, and departments for accounting purposes is always important; this importance is further accentuated if one of them is furnished with AEC equipment. Similarly, where a contractor that operates more than one plant, office, or department does work for AEC at only one particular location, only the costs applicable to the particular location involved should be considered in costing the AEC work. The costs related to the other plants, offices, or departments which do not perform services in connection with the AEC contract, are inapplicable to the work under the AEC contract.

§ 9–15.5010–2 Field work.

Where a contractor conducts operational activities both at its plant and at field locations, the apportionment to the field work of indirect operating costs incurred at the plant should be confined to only those expenses which are actually applicable to the field work. For example, indirect labor, idle time of direct labor, and other indirect costs applicable only to the contractor's operational activities at the plant location should not be apportioned to field work. Moreover, if the indirect operating expenses applicable to field work as well as work at the plant are apportioned on the basis of direct labor, direct labor at the field location should, for purposes of the apportionment at least, be distinguished from indirect labor at that location on a basis paralleling the classification of labor as between direct labor and indirect labor at the plant location. Similarly, if idle time of personnel normally treated as direct labor is involved at the field location, such idle time should be excluded from direct labor for purposes of distributing indirect operating costs incurred at the plant that are applicable to the field work. Also, if the field operation's direct labor cost involves wage or salary increments for services abroad or in isolated areas, such increments should be excluded from the direct labor cost base for purposes of distributing applicable indirect operating costs.

§ 9–15.5010–3 Use of Government-owned facilities.

If the Government furnishes the contractor, or the contractor acquires at Government expense, Government-owned equipment with which to do all or a significant amount of the work under the AEC contract, on which equipment the Government is bearing the expenses of depreciation, maintenance, insurance, and taxes, appropriate procedures must be established to avoid apportioning to AEC work performed with AEC-owned equipment a share of the expenses of depreciation, maintenance, insurance, and taxes on the contractor's equipment not used to perform such work. If the Government-owned equipment is placed in a segregated area, that area should be accounted for as a separate department. If the Government-owned equipment is not placed in a separate area, other steps must be taken to avoid what would amount to a double equipment burden on work performed with the Government-owned facilities. Such work should be so accounted for as to be relieved of charges for expenses related to contractor's equipment not used in its performance.

§ 9–15.5010–4 Contractor's costs covering plant and equipment.

Charges relating to contractor-owned plant and equipment should be restricted to the applicable costs, such as depreciation, maintenance, insurance, and taxes, and should not be on a rental basis. (Compensation in excess of cost is covered by the fixed fee.) Rentals of plant and equipment owned by third parties are normally allowable if the rates are reasonable in the light of the type, value, and condition of the property involved and option and other provisions of the lease agreement. However, where the plant and equipment used by the contractor is rented by the contractor under a sale and lease-back agreement, only the normal costs (such as depreciation, maintenance, insurance, and taxes) that would have been incurred if the contractor had retained legal title to the facilities should be allowed. Allowances for plant and equipment rented under agreements that are not arms-length transactions should be similarly restrictive.

§ 9–15.5010–5 Overtime, shift, and holiday premiums.

(a) Overtime, shift, and holiday premiums are allowable only to the extent provided in the contract or approved by the contracting officer. The amount of such premiums charged to an AEC contract shall be equitable in relation to the

amount of such costs charged to other work currently performed in the contractor's plant and the factors which necessitate this incurrence of the cost. When the necessity for overtime, shift, and holiday work arises from inadequacy of the contractor's plant or department to perform its total workload on a purely straight-time basis, inclusions in overhead for apportionment to all work of the plant or department, as the case may be, appears appropriate. When particular work, AEC or other, is being specially expedited to a point that its fair share of the contractor's purely straight-time efforts on a single-shift basis will not get the particular job completed within the time desired, direct charging of the related premiums appears appropriate.

(b) When premiums for overtime, shift, and holiday work are charged direct to the work concerned, if the operating overhead of the plant or related department is distributed on the basis of direct labor (cost or hours), the premiums should be excluded from the direct labor base for purposes of the overhead distribution. That is, the direct labor base should be, as appropriate, direct labor straight-time costs or direct labor hours actually worked. While the premiums for authorized overtime, shift, and holiday work are acceptable as reimbursable costs, it is generally recognized that direct labor hours worked on an overtime, shift, or holiday basis should participate in indirect costs to the same extent as hours worked on a straight-time basis.

§ 9–15.5010–6 Outside technical and professional consultants.

Technical and professional consultants, as used here, refers to private individuals acting in their own behalf who make their services available on a fee or per diem basis. Consultant arrangements may permit bringing to contract work the services of outstanding specialists who would not be available on a full-time basis, or whose employment on a full-time basis would not be economically feasible. Costs of such outside consultant services are normally allowable (however, see §§ 9–7.5006–9(e)(26); 9–7.5006–10(e)(24); 9–7.5006–11(b); and 9–7.5006–12(e)(22)): *Provided*, That, the services are essential to and will make a material contribution to the performance of contract work; the services may be performed more economically or more successfully by a consultant than by the contractor's regular personnel; the fee or per diem charged is reasonable; and when approved by the contracting officer. If the cost of such services is charged directly to the AEC contract, the cost of like items properly chargeable only to other work of the contractor must be eliminated from indirect costs allocable to the AEC contract (see § 9–15.5009–1).

§ 9–15.5010–7 Preparatory and make-ready costs.

Since indirect costs are usually apportioned to individual jobs wholly or substantially on the basis of the direct labor applied to the particular job, a contract will absorb no overhead by apportionment prior to the inception of the actual performance of direct work on the contract. The effort of the contractor's overhead organization in preparing for one job and in getting it underway will thus be absorbed by jobs previously commenced and still being performed; later the job which in its initial stages of preparation and make-ready was relieved of expenses that were actually applicable to it will partially absorb, through their apportionment as overhead, similar costs equally applicable in fact to other, subsequently undertaken jobs. This procedure is in accordance with generally accepted accounting practices and normally is reasonably equitable in its results. The initial advantages and subsequent disadvantages to the individual contract that result from consistent application of the procedure tend to offset each other and balance out. It is quite appropriate, however, to employ the direct-charge method in connection with overhead costs in preparing for actual performance by segregating such preparatory and make-ready costs and identifying them specifically with the contract to which the effort actually pertains. However, if preparatory and make-ready costs are charged direct to an AEC contract, care must be taken, as performance of the AEC contract work proceeds toward completion, to segregate subsequent indirect expenses similarly applicable to the preparation for and commencement of other jobs and to account for them as direct charges to these other jobs.

§ 9–15.5010–8 Severance pay.

(a) Severance pay is a payment, in addition to regular salaries and wages but exclusive of payments for vested rights under pension plans, by an organization to personnel whose employment is terminated. Severance pay is allowable as a cost only to the extent that it is required by law, employer-employee agreement, or established policy that constitutes in effect an implied agreement on the contractor's part.

(b) Severance payments are divided into two categories as follows:

(1) Those due to normal, recurring turnover. The actual costs of such payments shall be regarded as expense applicable to the current fiscal year and equitably apportioned to the contractor's activities during that period. Accruals of such normal severance pay will be acceptable in lieu of actual severance pay if the accruals are reasonable in the light of payments actually made due to normal severance over a representative past period.

(2) Those due to abnormal or mass terminations resulting from abrupt cessation of substantial work and inability of remaining work to afford continuing employment at the same level. The actual costs of such severance payments shall be regarded as expense applicable to the approximate average of the entire periods of employment of the terminated employees and equitably apportioned to the contractor's activities during such average period. (Accruals of such abnormal or mass severance pay are not allowable in view of its conjectural nature.)

(c) It will usually be acceptable to apportion severance payments on the basis of the ratio of total severance payments to a suitable base for the period established pursuant to paragraph (b) (1) or (2) of this section, such as payrolls of all employees, direct salaries and wages, etc. The rate so determined shall be applied to the corresponding element of cost on the individual contracts. The rate should be determined on the basis of the operations of individual activities or other organizational units, such as departments, where such separate computations effect more accurate and equitable results. Severance pay should ordinarily not be considered as directly applicable to any particular contract or contracts. The foregoing applies to cost-type supply and research contracts with commercial organizations.

(d) Subject to paragraph (a) of this section, the following standards apply in determining allowability of costs for severance pay plans of operating contractors:

(1) Payments should be made only upon involuntary termination by reduction in force (RIF) of an employee which results in a permanent separation from the employment of the contractor. However, payments may also be made upon voluntary separation of an employee within a RIF grouping but not otherwise scheduled for termination which thereby eliminates the need for terminating another employee involuntarily.

(2) Payments should not be provided for in the event of (i) temporary layoffs, (ii) employment with a replacement contractor (employer) where continuity of employment with credit for prior length of service is preserved under substantially equal conditions of employment, (iii) early or normal retirement, or (iv) continued employment by the contractor at another facility, subsidiary, affiliate, or parent company of the contractor.

(e) The subject of severance pay with reference to educational institutions is discussed in FPR 1–15.309–36.

§ 9–15.5010–9 Precontract costs.

Precontract costs are those incurred prior to the effective date of the contract directly pursuant to the negotiation and in anticipation of the award of the contract where such incurrence is necessary to comply with the proposed contract delivery schedule. Such costs are allowable to the extent that they would have been allowable if incurred after the date of the contract. They do not include costs of preparing bids or of participation in the negotiation. The allowability of precontract costs is dependent upon appropriate coverage in the contract.

§ 9–15.5010–10 Plant reconversion costs.

Plant reconversion costs are those incurred in the restoration or rehabilitation of the contractor's facilities to approximately the same condition existing immediately prior to the commencement of the contract work, fair wear and tear excepted.

§ 9–15.5010–11 Depreciation.

(a) Depreciation is allowable subject to the following:

(1) The charge represents normal depreciation on a contractor's plant, and equipment.

(2) The charge to current operations is a distribution of the cost of acquisition of a tangible capital asset, less estimated residual value, over the estimated useful life of the asset in a systematic and logical manner.

(3) Any generally accepted accounting method consistently applied to the assets concerned having the approval of the Internal Revenue Service for Federal income tax purposes, if subject to the Internal Revenue Code of 1954, as amended, may be used including:

(i) The straight-line method;

(ii) The declining balance method, using a rate not exceeding twice the rate which would have been used had the annual allowance been computed under the method described in subdivision (i) of this subpararaph;

(iii) The sum of the years-digits method;

(iv) Any other consistent method productive of an annual allowance which, when added to all allowances for the period commencing with the use of the property and including the current year, does not, during the first two-thirds of the useful life of the property, exceed the total of such allowances which would have been used had such allowances been computed under the method described in subdivision (ii) of this subparagraph.

(4) If a nonprofit or tax exempt organization, the method shall be such that it could have had the approval of the Internal Revenue Service had the organization been subject to the Internal Revenue Code of 1954, as amended.

(5) The contractor must use the same approved method of depreciation for costing his contract work as for costing his other work at the same facility.

(6) The method of depreciation shall produce equitable and reasonable results.

(b) Depreciation of the following is unallowable:

(1) Idle or excess facilities (machinery and equipment) other than reasonable standby facilities;

(2) Assets fully amortized or depreciated on the contractor's books;

(3) Unrealized appreciation of values of assets;

(4) Accelerated amortization under Certificates of Necessity or other system in excess of normal depreciation as computed under paragraph (a) of this section.

(c) In entering into contracts involving the use of "special facilities" under section 161 of the Atomic Energy Act of 1954 as amended (section 7 of Public Law 85–681 approved Aug. 19, 1958), the percentage of the total cost of such special facilities devoted to contract performance and chargeable to the Commission should not exceed the ratio between the period of contract deliveries and the anticipated useful life of such facilities.

§ 9–15.5010–12 Research and development.

(a) AEC does not accept a general allocation of independent research and development costs. Such costs are considered unallowable except to the extent specifically set forth in the contract. Research and development costs may be made allowable only to the extent to which they provide a direct or indirect benefit to the contract work.

(b) Independent research and development may be determined to be of benefit to the contract work when it is in the general field of the contract work and where the results may well have some future bearing on the contract work. The words "direct or indirect benefit" are used to allow some flexibility and to permit some basic research in the general field of the contract work.

(c) The determination that an independent research and development project is of benefit to the contract requires the exercise of technical judgment. It is not sufficient that the project relate to the field of atomic energy; technical staff must find that it is related to the contract work. Areas of interest which may relate to the contract work include: Technological methods or processes, materials research, work in the same technical field, etc. For example, independent materials research on aluminum alloy properties might be related to the contract work if a contract concerns the manufacture of fuel elements using aluminum alloy. Beryllium research, on the other hand, would not be relevant in this case. Such research might, however, relate to other AEC contracts. In master contracts or in contracts where several tasks are involved, to be of benefit the independent research and development project must relate to one or more of the tasks.

(d) A technical appraisal of each of the projects included in the contractor's independent research and development program is necessary to identify any that may be acceptable under the above principle for allocation to the AEC contract work. In addition to excluding any projects which do not provide a direct or indirect benefit to the AEC contract work, the following shall also be excluded: (1) Any research and development projects primarily of a promotional nature, such as projects directed toward the development of new business or projects connected with proposals for new business (e.g., a new reactor concept the contractor wants to sell), (2) any studies or projects which are in fact undertaken in whole or in part for other sources, and (3) any such otherwise acceptable project which duplicates research and development work sponsored by AEC. The cost of research and development which has not met the test of benefit to the contract work should be excluded from any distribution or allocation of overhead to the contract.

(e) Where technical staff of proper skill and qualification is not available or the questions cannot be easily resolved by Field Offices, Headquarters staff should be called into consultation.

(f) After segregating the research and development which has been determined to be of benefit to the AEC contract work, the cost thereof shall be allocated to the contract work using the method approved by AEC for the distribution of other overhead expenses.

(g) When AEC is the predominant customer, special consideration must be given to whether the independent research and development of benefit to the contract work should be performed as part of the contract work. This is necessary to avoid the apportionment to the AEC of most, if not all, of independent research and development costs over which the AEC would have no direct control. Only an amount which is reasonable under the circumstances should be allowed. Contracting officers may find it desirable to:

(1) Specify a maximum dollar limitation of independent research and development costs, an allocable portion of which will be accepted by AEC, or an allocable share of a percentage of the contractor's independent research and development program which will be accepted by AEC.

(2) Obligate the contractor to give the contracting officer advance notice of any termination of an accepted project or changes which require the contracting officer's approval.

(h) Where AEC shares in the cost of an independent research and development [1] project of a contractor or subcontractor and its share of the cost (predetermined or actual) bears the percentage relationship indicated below to the total cost for such project during the contractor's or subcontractor's annual accounting period, the following rights shall be obtained in and to technical data and inventions or discoveries made or conceived in the course of or under such project during the contractor's or subcontractor's accounting period:

[1] The term "independent research and development" means either research or development or both. Because of the insignificant amount involved, the situation covered by § 9–15.5010–12(k) does not involve a contribution to a contractor's independent research and development project within the meaning of this section.

AEC's Share	Technical data acquired	Patent rights acquired
Less than 20 percent.	Summary reports, to the extent requested by AEC, will be furnished on specific independent research and development projects.	None.
20 percent or more, but less than 75 percent.	Summary reports shall be furnished of the pertinent IR&D project indicating the progress and specifying whether any inventions or discoveries were made or conceived during the pertinent accounting period and, if requested by AEC, a complete and detailed technical report shall also be furnished.	Nonexclusive, irrevocable, paid-up license to AEC for AEC purposes.
75 percent or more.	All technical information and data on IR&D projects will be furnished AEC for dissemination and use as AEC sees fit, but insofar as such technical information and data disclose patentable subject matter, the same will not be disseminated until patenting action has been taken.	Nonexclusive, irrevocable, paid-up license to the Government for all purposes, with the right to grant sub-licenses for all purposes.

Upon a determination of the percentages as hereinabove provided, the appropriate patent and technical data provision shall be incorporated in the contract in accordance with § 9–9.5019.

(i) Determination of the percentage of AEC's share of the cost of a contractor's independent R&D project shall be made on the basis of the share of such cost provided by all AEC contracts and subcontracts during the contractor's or subcontractor's annual accounting period.

(j) The field office with the predominant contract interest will be responsible for determining the percentage of the total support provided or to be provided by AEC when AEC shares in the costs of an independent research and development project and for including the appropriate contract provisions required.

(k) When the cost of the work involved in segregating the independent research and development which benefits the contract work is disproportionate to the amounts involved, a flat amount not exceeding either (1) 5 percent of the contractor's total estimated cost of independent research and development, or (2) 5 percent of the total estimated cost of direct labor and material under the contract, whichever is less, may be negotiated.

(l) The costs of independent research and development, whether or not accepted as allowable cost, shall include an amount for absorption of their appropriate share of related indirect and administrative costs.

(m) As in any overhead determination, there shall be proper coordination among field offices (and Headquarters, where desirable) in determining the amount of independent research and development which is allowable where more than one office has a contract or contracts with the same contractor. Where the amount is significant and more than one office is involved, the guidance of Headquarters should be sought.

(n) Any limitation on the reimbursement of independent research and development is not to be used to justify an increase in the fee.

§ 9–15.5010–13 Bidding expense and costs of proposals.

(a) The costs of preparing bids or proposals (successful or unsuccessful), which are incurred at or properly chargeable to the division, plant, or other principal organizational component at which the contract work is being performed, will be allowable if the subject matter of the bids and proposals is applicable to the AEC program. The subject matter is assumed to be applicable to the AEC program if the bid or proposal is made either (1) to the AEC or to an AEC contractor for work to be performed under an AEC contract, or (2) to others for the performance of work determined by the contracting officer to be of benefit to the AEC program.

(b) The costs of preparing bids or proposals shall be allocated only as indirect costs. Bidding costs of the current accounting period of both successful and unsuccessful bids and proposals normally will be treated as allowable indirect costs, in which event no bidding costs of past accounting periods shall be allowable in the current period to the AEC contract.

(c) The costs of preparing bids or proposals shall include an amount for absorption of their appropriate share of related indirect and administrative costs.

(d) The share of bidding expenses and costs of proposals shall not exceed 1 percent of the direct material (exclusive of capital equipment) and the direct labor costs of the contract work. The expense pools should exclude negotiating and promotional expense, expense properly allocable to research and development, and the expense of salesmen, representatives, or agents who do not provide technical services in connection with the bid or proposal. When the specific expense of bids and proposals allocable to the AEC program cannot readily be determined, a statistical proportion of the number of proposals applicable to the AEC program to the total number of proposals may be used unless such a proportion would produce unreasonable results.

§ 9–15.5010–14 Compensation for personal services.

(a) *Definition.* Compensation for personal services includes all remuneration paid currently or accrued, in whatever form and whether paid immediately or deferred, for services rendered by employees of the contractor during the period of contract performance. It includes, but is not limited to, salaries, wages, directors' and executive committee members' fees, bonuses (including stock bonuses), incentive awards, employee stock options, employee insurance, fringe benefits, and contributions to pension, annuity, and management employee incentive compensation plans.

(b) *Allowability.* Except as otherwise specifically provided in this § 9–15.5010–14, costs of compensation for personal services are to be treated as allowable to the extent that:

(1) Compensation is paid in accordance with policies, programs, and procedures that effectively relate individual compensation to the individual's contribution to the performance of contract work, result in internally consistent treatment of employees in like situations, and effectively relate compensation paid within the organization to that paid for similar services outside the organization;

(2) Total compensation of individual employees is reasonable for the services rendered; and

(3) Costs are not in excess of those costs which are allowable by the Internal Revenue Code and regulations thereunder.

(c) *Reasonableness.* Compensation is reasonable to the extent that the total amount paid or accrued is comparable to compensation paid for similar work in the private competitive economy in the labor market in which the contractor competes. The application of this basic standard of reasonableness may vary according to the contract situation.

(1) When the contractor is substantially engaged in private competitive business, compensation paid employees on private work will usually be an acceptable standard of comparison for evaluating the reasonableness of compensation paid employees performing similar work under AEC contracts provided that sufficient information is available to the AEC to permit a determination that compensation is, in fact, consistent.

(2) In other contract situations, information on compensation paid elsewhere in the labor market(s) for similar work, usually as measured by compensation surveys found acceptable by the AEC, will be the standard of comparison for evaluating the reasonableness of compensation paid employees engaged in work under AEC contracts.

(3) The standard of comparison (i.e., subparagraph (1) or (2) of this paragraph) for a particular contract situation is determined by the contracting officer after consideration of such factors as the extent and nature of the organization's private competitive business; extent to which contract work would be physically and organizationally integrated with private work; and the contractor's systems for determining, evaluating, and controlling compensation levels.

(4) It is AEC policy that contractors justify the reasonableness of proposed compensation costs and provide to the contracting officer any supporting information he deems necessary to his evaluation of reasonableness.

(d) *Review and approval of compensation paid individual employees.* In determining the reasonableness of compensation, the compensation of each individual contractor employee normally need not be subjected to review and approval. Generally, the compensation paid individual employees should be left to the judgment of contractors subject to the limitations of AEC-approved compensation policies, programs, classification systems, and schedules, and amounts of money authorized for wage and salary increases for groups of employees. However, all cases of individual total compensation of $25,000 or more shall require review and approval on an individual basis. In addition, it will often be necessary that employee compensation be subjected to review and approval on an individual basis at a level below $25,000 when the contracting officer finds it appropriate for the particular situation. The contract shall specifically provide for the approval by the contracting officer of the cost of compensating an individual contractor employee above the level determined by the contracting officer (or $25,000) if a total of 50 percent or more of such compensation is reimbursed under AEC cost-type contracts. For purposes of determining the level for individual review and approval, total compensation as used in this paragraph includes only the employee's base salary and bonus or incentive compensation. As in the case of other personnel and compensation costs, it is intended that contracting officer review and approval of individual compensation normally will be prior to incurrence of costs.

(e) *Special considerations in determining allowability.* Certain conditions require special consideration and possible limitation as to allowability for contract cost purposes where amounts appear excessive. Among such conditions are the following:

(1) Compensation to owners of closely held corporations, partners, sole proprietors, or members of the immediate families thereof, or to persons who are contractually committed to acquire a substantial financial interest in the contractor's enterprise. Determination should be made that such compensation is reasonable for the actual personal services rendered rather than a distribution of profits.

(2) Any change in a contractor's compensation policy resulting in a substantial increase in the contractor's level of compensation, particularly when it is concurrent with an increase in the ratio of Government contracts to other business, or any change in the treatment of allowability of specific types of compensation due to changes in Government policy.

(3) Compensation in lieu of salary for services rendered by partners and sole proprietors will be allowed to the extent that it is reasonable and does not constitute a distribution of profits.

(f) *Limitations on certain forms of compensation.* In addition to the general requirements in paragraphs (a) through (e) of this section, certain forms of compensation are subject to further requirements as specified in paragraphs (g) through (o) of this section.

(g) *Salaries and wages.* Salaries and wages for current services include gross compensation paid to employees in the form of cash, products, or services, and are to be treated as allowable. However, premiums for overtime in excess of statutory requirements, extra-pay shifts, and multishift work are to be treated as allowable to the extent approved by the contracting officer.

(h) *Bonuses and incentive compensation.* Incentive compensation and cash bonuses based on production, cost reduction or efficient performance; suggestion awards; and safety awards are to be treated as allowable to the extent that the contractor's overall compensation plan is determined to be reasonable and such costs are paid or accrued pursuant to an agreement entered into in good faith between the contractor and the employees before the services were rendered, or pursuant to an established plan followed by the contractor so consistently as to imply, in effect, an agreement to make such payment (but see § 9–15.5006). In determining reasonableness, it will be necessary to take into account not only bonuses and incentive compensation payments charged directly to the contract but also payments charged indirectly to the contract through overhead. Bonuses, awards, and incentive compensation, when any of them are deferred, are to be treated as allowable to the extent provided in paragraph (k) of this section.

(1) Bonuses and incentive compensation paid to employees other than those whose pay is directly reimbursed will not be made allowable in onsite construction, architect-engineer, and operating contracts where home office general and administrative expense is unallowable.

(2) Employer contributions to incentive compensation plans for the purpose of establishing a reserve for the payment of incentive compensation for services performed in the future are unallowable.

(i) *Bonuses and incentive compensation paid in stock.* Costs of bonuses and incentive compensation paid in the stock of the contractor or of an affiliate are to be treated as allowable to the extent set forth in paragraph (h) of this section (including the incorporation of the principles of paragraph (k) of this section for deferred bonuses and incentive compensation), subject to the following additional requirements:

(1) Valuation placed on the stock transferred shall be the fair market value at the time of transfer, determined upon the most objective basis available; and

(2) Accruals for the cost of stock prior to the issuance of such stock to the employees shall be subject to adjustment according to the possibilities that the employees will not receive such stock and their interest in the accruals will be forfeited.

Such costs otherwise allowable are to be made subject to adjustment according to the principles set forth in paragraph (k) (3) of this section. (But see § 9–15.5006.)

(j) *Stock options.* The cost of options to employees to purchase stock of the contractor or of an affiliate is to be made unallowable.

(k) *Deferred compensation.* (1) As used herein, deferred compensation includes all remuneration, in whatever form, for which the employee is not paid until after the lapse of a stated period of years or the occurrence of other events as provided in the plans, except that it does not include normal end of accounting period accruals. It includes (i) contributions to pension, annuity, stock bonuses, and profit-sharing plans, (ii) contributions to disability, withdrawal, insurance, survivorship, and similar benefit plans, and (iii) other deferred compensation, whether paid in cash or in stock.

(2) Deferred compensation is to be treated as allowable to the extent that (i) except for past service pension and retirements costs, it is for services rendered during the contract period; (ii) it represents, together with all other compensation, a reasonable overall compensation plan; (iii) it is paid pursuant to an agreement entered into in good faith between the contractor and employees before the services are rendered, or pursuant to an established plan followed by the contractor so consistently as to imply, in effect, an agreement to make such payments; and (iv) for a plan which is subject to approval by the Internal Revenue Service, it falls within the criteria and standards of the Internal Revenue Code and the regulations of the Internal Revenue Service. (But see § 9–15.5006.)

(3) For determining the allowable cost of deferred compensation, contractual provision shall be made for appropriate adjustments for credits or gains, including those arising out of both normal and abnormal employee turnover, or any other contingencies that can result in a forfeiture by employees of such deferred compensation. Adjustments shall be made only for forfeitures which directly or indirectly inure to the benefit of the contractor; forfeitures which inure to the benefit of other employees covered by a deferred compensation plan with no reduction in the contractor's costs will not normally give rise to adjustment in contract costs. Adjustments for normal employee turnover shall be based on the contractor's experience and on foreseeable prospects, and shall be reflected in the amount of cost currently allowable. Such adjustments will be unnecessary to the extent that the contractor can demonstrate that his contributions take into account normal forfeitures. Adjustments for possible future abnormal forfeitures shall be effected according to the following rules:

(i) Abnormal forfeitures that are foreseeable and which can be currently evaluated with reasonable accuracy, by actuarial or other sound computation, shall be reflected by an adjustment of current costs otherwise allowable; and

(ii) Abnormal forfeitures, not within subdivision (i) of this subparagraph may be made the subject of agreement between the Government and the contractor either as to an equitable adjustment or a method of determining such adjustment.

(4) In determining whether deferred compensation is for services rendered during the contract period or is for future services, consideration shall be given to conditions imposed upon eventual payment, such as, requirements of continued employment, consultation after retirement, and covenants not to compete.

(l) *Fringe benefits.* Fringe benefits are allowances and services provided by the contractor to his employees as compensation in addition to regular wages and salaries. Subject to the determination that total compensation is reasonable (see § 9–15.5010–14(c)), costs of fringe benefits such as pay for vacations, holidays, sick leave, military leave, employee insurance, pension, and retirement plans, and supplemental unemployment benefit plans are to be treated as allowable, provided such fringe benefits meet the following conditions:

(1) The benefits contribute to the performance of contract work and are appropriate for reimbursement from public funds;

(2) Such benefit plans as exist in the contractor's private operations that are inconsistent with AEC published requirements are appropriately modified or disallowed;

(3) Employee benefit plans especially established to meet the particular needs of the contract are in conformity with published AEC policy and standards ;

(4) Appropriate controls under the contract are established to assure that employees on contract work are treated

no more or no less favorably than employees in the contractor's private operation except to the extent that subparagraphs (2) and (3) of this paragraph apply;

(5) To the fullest extent possible, definite limitations or terminal points are established for each of the various benefit plans, so that AEC's full liability with respect thereto is established under the contract; and

(6) AEC has access to all information necessary to complete understanding of the means of computing or determining the extent of the benefits afforded under the various benefit plans.

(m) *Severance pay.* See § 9–15.5010–8.

(n) *Training and education expenses.* See §§ 9–7.5006–9, 9–7.5006–10, and 9–7.5006–12 (d)(8)(v).

(o) *Location allowances.* See FPR 1–12.105.

§ 9–15.5010–15 Air travel.

It is the policy of the AEC to require the use of less than first-class air accommodations for all cost-reimbursed travel, except when less than first-class accommodations are not reasonably available to meet necessary mission requirements. For example, less than first-class accommodations are considered not reasonably available where less than first-class accommodations would:

(a) Require circuitous routing,

(b) Require travel during unreasonable hours,

(c) Greatly increase the duration of the flight,

(d) Result in additional costs which would offset the transportation savings,

(e) Offer accommodations which are not reasonably adequate for the medical needs of the traveler.

The difference in cost between first-class air accommodations and less than first-class accommodations is an unallowable cost except as provided for in this section.

§ 9–15.5010–16 Page charges in scientific journals.

It is a policy of the AEC to permit AEC contractors to budget for and pay page charges for scientific journal publication as a necessary part of research costs, in all cases where:

(a) The research papers report work supported by the Government.

(b) The charges are levied impartially on all research papers published by the journal, whether by non-Government or by Government authors.

(c) Payment of such charges is in no sense a condition for acceptance of manuscripts by the journal.

(d) The journals involved are not operated for profit.

(e) The author does not receive an emolument from the journal for the research paper.

§ 9–15.5010–17 Special funds in the construction industry.

Costs of special "funds," financed by employer contributions, in the construction industry for such purposes as methods and materials research, public and industry relations, market development, disaster relief, etc., are unallowable except as specifically provided in the contract.

§ 9–15.5010–18 Employee morale, health, welfare, and food service and dormitory costs.

(a) Employee morale, health, and welfare activities are those services or benefits provided by the contractor to its employees to improve working conditions, employer-employee relations, employee morale, and employee performance. These activities include such items as house or employee publications, health or first-aid clinics, recreation, employee counseling services and, for the purpose of this section, food service and dormitory costs. However, these activities do not include and should be differentiated from compensation for personal services as defined in § 9–15.5010–14. Food and dormitory services include operating or furnishing facilities for cafeterias, dining rooms, canteens, lunch wagons, vending machines, living accommodations, or similar types of services for the contractor's employees at or near the contractor's facilities or site of the contract work.

(b) Except as limited by paragraph (c) of this section, the aggregate of costs incurred on account of all activities mentioned in paragraph (a) of this section, less income generated by all such activities is allowable to the extent that the net aggregate cost of all such activities as well as the net cost of each individual activity is reasonable and allocable to the contract work. Additionally, advance understandings with respect to the costs mentioned in paragraph (a) of this section are to be reached prior to the incurrence of these costs as required in § 9–15.5006.

(c) Losses from the operation of food and dormitory services may be included as costs incurred under paragraph (b) of this section, only if the contractor's objective is to operate such services at least on a break-even basis. Losses sustained because food services or lodging accommodations are furnished without charge or at prices or rates which obviously would not be conducive to accomplishment of the above objective, are not allowable except in those instances where the contractor can demonstrate that unusual circumstances exist, such that, even with efficient management, operation of the services on a break-even basis would require charging inordinately high prices, or prices or rates higher than those charged by commercial establishments offering the same services in the same geographical areas. Typical examples of such unusual circumstances are: (1) Where the contractor must provide food or dormitory services at remote locations where adequate commercial facilities are not reasonably available, or (2) where it is necessary to operate a facility at a lower volume than the facility could economically support. Cost of food and dormitory services shall include an allocable share of indirect expenses pertaining to these activities.

(d) In those situations where the contractor has an arrangement authorizing an employee association to provide or operate a service such as vending machines in the contractor's plant, and retain the profits derived therefrom, such profits shall be treated in the same manner as if the contractor were providing the service (but see par. (e) of this section).

(e) Contributions by the contractor to an employee organization, including funds set over from vending machine receipts or similar sources, may be included as cost incurred under paragraph (b) of this section only to the extent that the contractor demonstrates that an equivalent amount of the costs incurred by the employee organization would be allowable if incurred by the contractor directly.

§ 9–15.5010–19 Procurements or transfers from contractor-controlled sources by certain cost-type contractors (See § 9–59.006(b)).

Allowance for all equipment, materials, supplies, and services which are sold or transferred between any division, subsidiary, or affiliate of the contractor under a common control shall be on the basis of cost incurred in accordance with the terms of the contract, except that when it is the established practice of the transferring organization to price interorganization transfers of equipment, materials, supplies, and services at other than cost for commercial work of the contractor or any division, subsidiary, or affiliate of the contractor under a common control, allowance may be at a price when:

(a) It is or is based on an "established catalog or market price of commercial items sold in substantial quantities to the general public" in accordance with FPR 1–3.807–1(b)(2); or

(b) It is the result of "adequate price competition" in accordance with FPR 1–3.807–1(b)(1) (i) and (ii), and is the price at which an award was made to the affiliated organization after obtaining quotations on an equal basis from such organization and one or more outside sources which normally produce the item or its equivalent in significant quantity: *Provided*, That in either case:

(1) The price is not in excess of the transferor's current sales price to his most favored customer (including any division, subsidiary, or affiliate of the contractor under a common control) for a like quantity under comparable conditions, and

(2) The price is not determined to be unreasonable by the contracting officer: *Provided, however*, That if the price is determined unreasonable, such determination must be supported by an enumeration of facts on which it is based and approved at a level above the contracting officer.

The price determined in accordance with paragraph (a) of this section should be adjusted, when appropriate, to reflect the quantities being procured and may be adjusted upward or downward to reflect the actual cost of any modifications necessary because of contract requirements.

§ 9–15.5010–20 Relocation costs.

(a) Relocation costs, for the purpose of this Subpart 9–15.50, are costs incident to the permanent change of duty assignment of an existing employee for a period of no less than 12 months or upon recruitment of a new employee.

(b) Relocation costs may include, but are not limited to, the type of costs covered in paragraphs (c) and (d) of this section and are allowable to the extent therein set forth: *Provided*—

(1) The move is for the benefit of the employer;

(2) Reimbursement is in accordance with an established policy or practice consistently followed by the employer in connection with his private operations, and such policy or practice is designed to motivate employees to relocate promptly and economically;

(3) The costs are not otherwise unallowable under the provisions of the contract or any other paragraph of this Subpart 9–15.50; and,

(4) The amounts to be reimbursed shall not exceed the actual (or reasonably estimated) expenses.

(c) Allowable relocation costs include the following types of expenses:

(1) Travel expenses, including costs of transportation, lodging, subsistence, and reasonable incidental expenses of the employee and members of his immediate family and transportation of his household and personal effects to the new location;

(2) Expenses incurred incident to locating a new home, such as advance trips by employees and spouses to locate living quarters, and temporary lodging and subsistence;

(i) The period for incurrence of costs of the type covered in this subparagraph (2) shall be kept to the minimum number of days necessary under the circumstances but shall not, in any event exceed a cumulative total of 30 days including advance trip and travel time.

(3) Other necessary and reasonable expenses normally incident to relocation, such as costs of canceling an unexpired lease, disconnecting and reinstalling household appliances, and purchase of insurance against damages to or loss of personal property.

(i) Costs of canceling an unexpired lease under this subparagraph (3) shall not exceed three times the monthly rental.

(d) The following types of relocation expenses are allowable but the combined total of costs covered in subparagraphs (1) and (2) of this paragraph shall not exceed 8 percent of the sales price of the property sold:

(1) Closing costs (i.e., brokerage fees, legal fees, appraisal fees, etc.) incident to the sale of the actual residence owned at old location by the employee when notified of the transfer;

(2) Continuing costs of ownership of the vacant former actual residence being sold, such as maintenance of building and grounds (exclusive of fixing-up expenses), utilities, taxes, property insurance, etc., after settlement date or lease date of new permanent residence.

(e) Relocation costs incurred incident to recruitment of new employees are subject to this § 9–15.5010–20 except that expenses of the type covered in paragraphs (c)(3) and (d) (1) and (2) of this section are allowable only in connection with the relocation of existing employees and are not allowable for newly recruited employees. Where relocation costs incurred incident to recruitment of a new employee have been allowed either as an allowable direct or indirect cost and the newly hired employee resigns for reasons within his control within 12 months after hire, the contractor shall be required to refund or credit such relocation costs to the Government.

(f) Relocation costs of the following types are unallowable whether incurred by the employee or by the employer:

(1) Loss on sale of home;

(2) Acquisition of a home in a new location (i.e., brokerage fees, legal fees, appraisal fees, etc.);

(3) Continuing mortgage principal and interest payments on residence being sold;

(4) Payments for employee income taxes incident to reimbursed relocation costs.

PART 9–16—PROCUREMENT FORMS

AUTHORITY: The provisions of this Part 9–16 issued under sec. 161 of the Atomic Energy Act of 1954, as amended, 68 Stat. 948, 42 U.S.C. 2201; sec. 205 of the Federal Property and Administrative Services Act of 1949, as amended, 63 Stat 390, 40 U.S.C. 486.

§ 9–16.000 Scope of part.

This part implements FPR Part 1–16 which prescribes the standard forms for use in connection with the procurement of supplies, nonpersonal services, and construction and supplements FPR Part 1–16 by prescribing certain AEC additions to the standard forms which are used for such procurements and by setting forth AEC contract outlines for various categories of contracts.

§ 9–16.050 General policy.

It is the policy of AEC to use standard forms prescribed by FPR Part 1–16 wherever practicable. Uniformity in form and substance tends to insure impartial treatment of all contractors, expedites negotiation and contract review, and facilitates contract administration.

§ 9–16.051 Applicability.

This part and FPR Part 1–16 are applicable to direct procurements of supplies, nonpersonal services, and construction.

§ 9–16.052 Deviations.

Deviations in the standard forms set forth in FPR Part 1–16 shall be made only in accordance with FPR 1–1.009 and § 9–1.109. Deviations in the AEC additions to the standard forms prescribed by this part may be made if necessary in individual cases, if approved by Counsel. A notation of the reasons for deviating

from the AEC additions to the standard forms shall be included in the justification in support of the contract. Deviations in the text of articles may be made in accordance with §§ 9–1.109 and 9–7.5003. If it becomes necessary to deviate as a matter of standard practice from the AEC additions to the standard forms prescribed by this part such changes shall be reported to the Director, Division of Contracts, so that consideration can be given to modification of the AEC additions to the standard forms. The AEC contract outlines set forth in this part are suggested as models for certain categories of contracts with a view to standardization, to the extent practicable, of contracts in general use. If it becomes necessary to depart as a matter of standard practice from these suggested contract outlines, suggested revisions shall be reported to the Director, Division of Contracts in order that appropriate changes in the outlines may be made from time to time.

Subpart 9–16.1—Forms for Advertised Supply Contracts

§ 9–16.100 Scope of subpart.

This subpart prescribes the AEC additions to the standard forms prescribed by FPR Subpart 1–16.1 for use in procuring supplies by formal advertising.

§ 9–16.104–50 AEC additions to Standard Form 32, General Provisions (Supply Contract) (June 1964 edition).

(a) The following additional articles and provisions shall be added to Standard Form 32:

23. Alterations and additions.

The following alterations in or additions to the provisions of Standard Form 32, General Provisions, of this contract were made prior to execution of the contract by the parties:

1. Definitions.

(i) The following new paragraph (b) is substituted for paragraph (b) of this clause:

"(b) The term 'contracting officer' means the person executing this contract on behalf of the Government and includes his successor or any duly authorized representative of any such person."

(ii) The following paragraph (d) is added to this clause:

"(d) The term 'Commission' means the United States Atomic Energy Commission or any duly authorized representative thereof, including the Contracting Officer except for the purpose of deciding an appeal under the article entitled 'Disputes'."

24. Patent Indemnity.

The Contractor agrees to indemnify the Government, its officers, agents, servants and employees against liability of any kind (including costs and expenses incurred) for the use of any invention or discovery and for the infringement of any Letters Patent (not including liability, arising pursuant to section 183, title 35 (1952, United States Code, prior to the issuance of Letters Patent) occurring in the performance of this contract or arising by reason of the use or disposal by or for the account of the Government of items manufactured or supplied under this contract.

25. Reporting of Royalties.

If this contract is in an amount which exceeds $10,000 and if any royalty payments are directly involved in the contract or are reflected in the contract price to the Government, the contractor agrees to report in writing to the Commission (Assistant General Counsel for Patents) during the performance of this contract and prior to its completion or final settlement the amount of any royalties or other payments paid or to be paid by it directly to others in connection with the performance of this contract together with the names and addresses of licensors to whom such payments are made and either the patent numbers involved or such other information as will permit identification of the patents or other basis on which the royalties are to be paid. The approval of the Commission of any individual payments or royalties shall not estop the Government at any time from contesting the enforceability, validity or scope of, or title, to, any patent under which a royalty or payments are made.

26. Renegotiation (§ 9–7.5004–20).

27. Federal, State, and local taxes (FPR 1–11.401–1).

Consistent with the language of this article, a provision may be added on advice of Counsel specifically excluding from the contract price designated State and local taxes. Such added provision will not be regarded as a deviation.

28. Notice of labor disputes (§ 9–7.5006–49).

29. Termination for the convenience of the Government (FPR 1–8.701 or 1–8.705–1, as appropriate).

30. Permits (§ 9–7.5006–48).

31. Priorities, allocations, and allotments (§ 9–7.5006–52).

(b) Such of the following clauses as are appropriate shall also be added to Standard Form 32 and numbered in the proper sequence:

1. Specal clauses not inconsistent include:

(i) Security (§ 9–7.5004–11). Specific security requirements not disclosed in this clause, such as physical security requirements shall be included or incorporated by reference to the maximum extent feasible and made readily available to prospective bidders.

(ii) Small business subcontracting program (FPR 1–1.710–3(b), under the circumstances set forth in that section).

(iii) Labor surplus area subcontracting program (FPR 1–1.805–3(b), under the circumstances set forth in that section).

(iv) Classification (§ 9–7.5004–21).

(c) Additional special clauses not inconsistent with the above may be added with the approval of Counsel.

Subpart 9–16.3—Purchase and Delivery Order Forms

§ 9–16.300 Scope of subpart.

This subpart supplements FPR Subpart 1–16.3 by prescribing the administrative requirements for the use of AEC Standard Order Form 103 (February 1963). Illustration of this form is contained in § 9–16.951.

§ 9–16.350 Applicability.

AEC Standard Order Form 103 (February 1963) shall be used only for direct AEC procurement.

§ 9–16.351 AEC Standard Order Form 103 (February 1963)—Instructions for Use.

AEC Standard Order Form 103 (February 1963) is a combination purchase order-delivery order and is designed for the following uses incident to direct AEC procurement actions:

(a) As a delivery order, regardless of amount, for ordering supplies or services:

(1) Under existing contracts, including contracts or agreements made by other Government agencies, provided the order is issued in accordance with and subject to the terms and conditions of the basic contract or agreement to which specific reference is made on the form;

(2) From other Government agencies.

(b) As a purchase order for open market or negotiated purchases when the amount is not in excess of $2,500 and when use of GSA Standard Form 44 (Purchase Order—Invoice—Voucher), or Standard Form 147 (Order, Invoice, Voucher) is not practicable.

(c) As a purchase order for negotiated purchases when the amount exceeds $2,500. When so used, the terms and conditions of the forms should be supplemented by the applicable requirements of a negotiated fixed-price supply contract set forth in the outline of a negotiated fixed-price supply contract, § 9–16.5002–1. Contracting officers should satisfy themselves that the Government's interests are adequately protected through use of the AEC Standard Order Form 103 rather than a more formal contractual document.

(d) GSA Standard Form 36 (Continuation Sheet, Supply Contract) shall be used as a continuation sheet when required.

§ 9–16.352 [Reserved]

§ 9–16.353 Numbering AEC Standard Order Form 103.

AEC Standard Order Form 103 shall be numbered in accordance with the instructions in Part 9–53 "Numbering and Distribution of Contracts and Orders."

Subpart 9–16.4—Forms for Advertised Construction Contracts

§ 9–16.400 Scope of subpart.

This subpart prescribes the AEC additions to the standard forms prescribed by FPR Subpart 1–16.4 for use in procuring construction by formal advertising.

§ 9–16.404 Terms, conditions, and provisions.

The deletion of the words in clause 5 of Standard Form 23A authorized by FPR 1–16.404(e) shall not be made without the prior approval of the Director, Division of Contracts.

§ 9–16.404–50 AEC authorized additions to Standard Form 19.

(a) Although certain additions to Standard Form 19 are authorized by this section, employing them tends to defeat the purpose of the short form, and careful consideration should be given to the need for any addition before it is included.

(b) The following additional clauses in Standard Form 19 are authorized, if required or deemed appropriate under certain circumstances:

(1) Safety, health and fire protection (§ 9–7.5006–47).

(2) Security (§ 9–7.5004–11).

(3) Assignment (§ 9–7.5006–46).

(4) Renegotiation (§ 9–7.5004–20).

(5) Price adjustment for suspension, delay, or interruption of the work (FPR 1–7.602–1).

(6) The following wage determination clause:

The wage rates set forth are the minimum rates which may be paid to the classifications of laborers and mechanics designated therein pursuant to the Davis-Bacon Act (Act of Mar. 3, 1931, as amended; 40 U.S.C. 276a et seq.). The Commission does not represent that said minimum wage rates do now, nor that they will at any time in the future, prevail in the locality of the work for such laborers or mechanics; nor that such mechanics or laborers are or will be obtainable at said rates for work under this contract; nor that said rates represent the most recent wage determination by the Secretary of Labor with respect to such classifications of laborers or mechanics in the locality of the work.

(7) Priorities, allocations, and allotments (§ 9–7.5006–52).

§ 9–16.404–51 AEC addition to Standard Form 20.

The following addition shall be made to Standard Form 20:

Wage determination. The wage rates set forth are the minimum rates which may be paid to the classifications of laborers and mechanics designated therein pursuant to the Davis-Bacon Act (Act of Mar. 3, 1931, as amended; 40 U.S.C. 276a et seq.). The Commission does not represent that said minimum rates do now, nor that they will at any time in the future, prevail in the locality of the work for such laborers or mechanics; nor that such mechanics or laborers are or will be obtainable at said rates for work under this contract; nor that said rates represent the most recent wage determination by the Secretary of Labor with respect to such classifications of laborers or mechanics in the locality of the work.

§ 9–16.404–52 AEC additions to Standard Form 23A, General Provisions (Construction Contract) (June 1964 edition).

(a) The following additional articles and provisions shall be added to Standard Form 23A:

22. Alterations and additions.

The following alterations in or additions to the provisions of Standard Form 23A, General Provisions, of this contract were made prior to execution of the contract by the parties:

1. Definitions. The following paragraph (c) is added to this clause:

"(c) The term 'Commission' means the United States Atomic Energy Commission or any duly authorized representative thereof, including the Contracting Officer except for the purpose of deciding an appeal under the article entitled 'Disputes.'"

23. Safety, health, and fire protection (§ 9–7.5006–47).

24. Termination for convenience of the Government (FPR 1–8.703).

25. Federal, State, and local taxes (FPR 1–11.401–1).

Consistent with the language of this clause, a provision may be added on advice of Counsel specifically excluding from the contract price designated State and local taxes. Such added provision will not be regarded as a deviation.

26. Renegotiation (§ 9–7.5004–20).

27. Notice of labor disputes (§ 9–7.5006–49).

28. Priorities, allocations, and allotments (§ 9–7.5006–52).

(b) Such of the following clauses as are appropriate shall also be added to Standard Form 23A and numbered in proper sequence:

(1) Security (§ 9–7.5004–11). Specific security requirements not disclosed in this clause, such as physical security requirements, shall be included or incorporated by reference to the maximum extent feasible and made readily available to prospective bidders.

(2) Price adjustment for suspension, delay, or interruption of the work (FPR 1–7.602–1).

(3) Classification (§ 9–7.5004–21).

(4) Small business subcontracting program (FPR 1–1.710–3(b)).

(c) Additional special clauses not inconsistent with the above may be added with the approval of Counsel.

Subpart 9–16.9—Illustration of Forms

§ 9–16.950 Scope of subpart.

This subpart contains illustrations of AEC forms used in the procurement and contracting function.

§ 9–16.951 AEC Forms.

AEC forms are illustrated in this section to show their text, format, and arrangement and to provide a ready source of reference. The AEC forms set forth in the following subsections also show the AEC form numbers in parenthesis.[1]

§ 9–16.951–2 (AEC 103a) Purchase Order Terms.

1. *Definitions.* As used throughout this contract, the following terms shall have the meaning set forth below:

(a) The term "Commission" means the United States Atomic Energy Commission or any duly authorized representative thereof, including the Contracting Officer except for the purpose of deciding an appeal under the clause entitled "Disputes."

(b) The term "Contracting Officer" means the person executing this contract on behalf of the Government, and includes his successors or any duly authorized representatives of any such person.

2. *Vendor's billing instructions.* Vendor's invoices shall contain the following information: Contract or proposal number (if any), order number, and item number, description of supplies or services, sizes, quantities, unit prices, and extended totals. Bill of lading number and weight of shipment will be shown for shipments made on Government bills of lading. If prepaid parcel-post charges are billed, the gross weight and shipping point must be shown on the invoice.

3. *Convenant against contingent fees.* The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty the Government shall have the right to annul this contract without liability, or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

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

5. *Equal opportunity in employment.* The Equal Opportunity clause in FPR 1–12.803–2 is incorporated herein by reference and is applicable unless this contract is exempt under the rules and regulations of the Secretary of Labor issued pursuant to Executive Order No. 11246 of September 24, 1965 (30 F.R. 12319, Sept. 28, 1965).

6. *Convict Labor.* In connection with the performance of work under this contract, the Contractor agrees not to employ any person undergoing sentence of imprisonment at hard labor.

7. *Buy American Act.* (a) In acquiring end products, the Buy American Act (41 U.S.C. 10a–d) provides that the Government give preference to domestic source end products. For the purpose of this clause:

(i) "Components" means those articles, materials, and supplies, which are directly incorporated in the end products;

(ii) "End products" means those articles, materials, and supplies, which are to be acquired under this contract for public use; and

(iii) A "domestic source end product" means (A) an unmanufactured end product which has been mined or produced in the United States, and (B) an end product manufactured in the United States if the cost of the components thereof which are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. For the purposes of this (a)(iii)(B), components of foreign origin of the same type or kind as the products referred to in (b) (ii) or (iii) of this clause shall be treated as components mined, produced or manufactured in the United States.

(b) The Contractor agrees that there will be delivered under this contract only domestic source end products, except end products:

(i) Which are for use outside the United States;

(ii) Which the Government determines are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality;

(iii) As to which the Commission determines the domestic preference to be inconsistent with the public interest; or

(iv) As to which the Commission determines the cost to the Government to be unreasonable.

(The foregoing requirements are administered in accordance with Executive Order No. 10582, dated Dec. 17, 1954.)

8. *Discounts.* In connection with any discount offered, time will be computed from date of delivery of the supplies to carrier when delivery and acceptance are at point of origin, or from date of delivery at destination or port of embarkation when delivery and acceptance are at either of these points, or from date correct invoice or voucher is received in the office specified by the Government if the latter date is later than the date of delivery. Payment is deemed to be made for the purpose of earning the discount, on the date of mailing of the Government check.

9. *Inspection.* Except as may be otherwise provided in this contract, final inspection and acceptance will be made at destination. Supplies rejected at destination for nonconformance with specifications shall be removed by the Contractor at his expense promptly after notice of rejection.

10. *Contract Work Hours Standards Act—Overtime Compensation.* This contract, to the extent that it is of a character specified in the Contract Work Hours Standards Act—Overtime Compensation (40 U.S.C. 327–330)

[1] Form AEC 103 can be obtained from AEC Headquarters.

and is not covered by the Walsh-Healey Public Contracts Act (41 U.S.C. 35–45), is subject to the following provisions and to all other provisions and exceptions of said Contract Work Hours Standards Act.

(a) No contractor or subcontractor contracting for any part of the contract work shall require or permit any laborer or mechanic to be employed on such work in excess of 8 hours in any calendar day or in excess of 40 hours in any workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times his basic rate of pay for all hours worked in excess of 8 hours in any calendar day or in excess of 40 hours in such workweek, whichever is the greater number of overtime hours.

(b) In the event of any violation of the provisions of paragraph (a), the Contractor and any subcontractor responsible for such violation shall be liable to any affected employee for his unpaid wages. In addition, such Contractor or subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed, with respect to each individual laborer or mechanic employed in violation of the provisions of paragraph (a), in the sum of $10 for each calendar day on which such employee was required or permitted to work in excess of 8 hours or in excess of 40 hours in a workweek without payment of the required overtime wages.

(c) The Contracting Officer may withhold, or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor, the full amount of wages required by this contract and such sums as may administratively be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for liquidated damages as provided in paragraph (b).

(d) The Contractor shall insert paragraphs (a) through (d) of this clause in all subcontracts, and shall require their inclusion in all subcontracts of any tier.

(e) The Contractor shall maintain payroll records containing the information specified in 29 CFR 516.2(a). Such records shall be preserved for 3 years from the completion of the contract.

11. *Federal, State, and local taxes.* Except as may be otherwise provided in this contract, the contract price includes all applicable Federal taxes in effect on the date of this contract but does not include any State or local sales, use, or other tax directly applicable to the completed supplies or services covered by this contract nor any other tax from which the Contractor or this transaction is exempt. Upon request of the Contractor, the Government shall furnish a tax exemption certificate or similar evidence of exemption with respect to any such tax not included in the contract price pursuant to this clause. For the purpose of this clause, the term "date of this contract" means the date of the Contractor's quotation or, if no quotation, the date of this purchase order.

12. *Renegotiation.* If this contract is subject to the Renegotiation Act of 1951, as amended, the contract shall be deemed to contain all the provisions required by section 104 of said Act.

(13) *Priorities, Allocations, and Allotments.* The Contractor shall follow the provisions of DMS Regulation 1 and all other applicable regulations and orders of the Business and Defense Services Administration in obtaining controlled materials and other products and materials needed to fill this order.

Subpart 9–16.50—Contract Outlines

§ 9–16.5000 Scope of subpart.

This subpart contains AEC contract outlines for certain categories of contracts.

§ 9–16.5001 Applicability.

The AEC contract outlines set forth herein are applicable to all AEC direct procurement which is within the scope of the various categories covered by the outlines.

§ 9–16.5002 Contract outlines.

The AEC contract outlines are set forth in this section to show their format, text, and arrangement and to provide a ready source of reference. Clauses may be omitted or added with the approval of Counsel. The Director, Division of Contracts, may from time to time amend this section to provide contract outlines for additional categories of contracts.

§ 9–16.5002–1 Outline of a negotiated fixed-price supply contract.

(1) Appropriate provisions setting forth description of supplies, delivery requirements, shipping instructions, and price.

(2) Standard Form 32: General Provisions (Supply Contract).

(3) AEC additions to Standard Form 32, General Provisions—§ 9–16.104–50.

(4) Examination of records—§ 9–7.5004–10.

(5) Priorities, allocations, and allotments § 9–7.5006–52.

§ 9–16.5002–2 Outline of a cost-plus-a-fixed-fee supply contract (performed by commercial concerns in contractor's facilities).

(1) Definitions—§ 9–7.5005–4.

(2) Statement of work—§ 9–7.5006–56.

(3) Changes—§ 9–7.5006–4.

(4) Obligation of funds, estimates of cost (other than operating contracts)—§ 9–1.5006–14.

(5) Allowable costs and fixed fee—§ 9–7.5006–10.

(6) Payments—§ 9–7.5006–25, or, if appropriate, Payments and advances—§ 9–7.5006–23.

(7) Accounts, records, and inspection—§ 9–7.5006–1.

(8) Drawings, designs, specifications—§ 9–7.5006–13.

(9) Examination of records—§ 9–7.5004–10.

(10) Required bonds and insurance—Exclusive of Government property—§ 9–7.5006–51.

(11) Property—§ 9–7.5006–26.

(12) Taxes—§ 9–11.452.

(13) Contractor procurement—§ 9–7.5006–29.

(14) Patents—Appropriate patent article or articles in accordance with Part 9–9.

(15) Security—§ 9–7.5004–11, when required.

(16) Contract Work Hours Standards Act—Overtime Compensation—FPR 1–12.303 with the modification necessary if § 9–12.103–51 applies; or Walsh-Healey Public Contracts Act, FPR 1–12.605, if the contract exceeds $10,000.

(17) Notice of labor disputes—§ 9–7.5006–49.

(18) Buy American Act—§ 9–7.5004–16.

(19) Termination for default or for convenience of the Government—FPR 1–8.702.

(20) Litigation and claims—§ 9–7.5006–50.

(21) Renegotiation—§ 9–7.5004–20.

(22) Classification—§ 9–7.5004–21, in all contracts involving classified information.

(23) Disputes—FPR 1–7.101–12, modified by substituting "Commission" for "Secretary." (See § 9–7.5004–3.)

(24) Utilization of small business concerns—FPR 1–1.710–3(a), as required by that section.

(25) Small business subcontracting program—FPR 1–1.710–3(b), as required by that section.

(26) Utilization of concerns in labor surplus areas—FPR 1–1.805–3(a), as required by that section.

(27) Labor surplus area subcontracting program—FPR 1–1.805–3(b), as required by that section.

(28) Changes to make-or-buy program—FPR 1–3.902–3, as required by that section.

(29) Covenant against contingent fees—§ 9–7.5004–2.

(30) Officials not to benefit—FPR 1–7.101–19.

(31) Equal opportunity—FPR 1–7.101–18.

(32) Convict labor—FPR 1–12.203.

(33) Assignment—FPR 1–7.101–8 or § 9–7.5006–46 as appropriate.

(34) Priorities, allocations and allotments—§ 9–7.5006–52.

(35) Excusable delays—FPR 1–8.708.

(36) [Reserved]

(37) Permits—§ 9–7.5006–48.

(38) Price reduction for defective cost or pricing data—FPR 1–3.814–1(a), as required by that section.

(39) Subcontractor cost and pricing data—FPR 1–3.814–3(a), as required by that section.

(40) Consultant or comparable employment services of contractor employees—§ 9–7.5006–45(a).

§ 9–16.5002–3 Outline of negotiated fixed-price construction contract.

1. Standard Forms 19, "Invitation, Bid and Award;" 19.A., "Labor Standards Provisions;" 23, "Construction Contract;" and 23.A., "General Provisions (Construction Contract)" and any AEC additions thereto which are authorized by this part may be used where the AEC enters directly into a fixed-price construction contract, by competitive proposals or by other means of negotiation.

2. The Standard Forms should be modified in the following respects:

a. Delete the word "publicly" before the word "opened" wherever it appears.

b. Delete the word "bid" or "bids" wherever used and insert the word "proposed" or "proposals."

c. Delete the word "bidder" and insert the word "offeror" wherever it appears.

d. Delete the word "bidding" wherever it appears and insert the word "proposal."

3. Add the following clauses to the Standard forms:

a. Examination of records—§ 9–7.5004–10.

b. Priorities, allocations, and allotments—§ 9–7.5006–52.

§ 9–16.5002–4 Outline of a cost-plus-a-fixed-fee-construction contract.

This contract, entered into the _____ day of _____, 19__, effective as of the _____ day of _____, 19__, between the United States of America (hereinafter called the "Government"), acting through the United States Atomic Energy Commission (hereinafter called the "Commission"), and _____ (hereinafter called the "Contractor").

Witnesseth that:

Whereas, the Commission finds that the common defense and security require that construction of certain facilities, hereinafter more particularly described, that _____; and

(A statement of grounds which permit contracting without formal advertising and render a contract on a lump sum or unit price basis impracticable, should be inserted in this recital.)

Whereas, the Contractor is willing to undertake the performance of such construction work on a cost-plus-a-fixed-fee basis; and

Whereas, the Commission finds that the Contractor is best qualified to perform the work, all relevant factors considered; and

Whereas, the Commission certifies that this negotiated contract is authorized by and executed under the Atomic Energy Act of 1954, as amended, in the interest of the common defense and security.

Now therefore, the parties hereto agree as follows:

Article I—Definitions. Insert contract clause as set forth in § 9–7.5005–4.

Article II—Statement of work. Insert contract clause set forth in § 9–7.5006–56.

Article III—Changes. Insert contract clause set forth in § 9–7.5006–4.

Article IV—Obligation of funds, estimates of cost (other than operating contracts). Insert contract clause set forth in § 9–7.5006–14.

Article V—Allowable costs and fixed fee. Insert contract clause set forth in § 9–7.5006–9.

(Payments for the use of the contractor's own construction plant and equipment are made subject to an appendix to be attached at the time of execution of the construction contract or subsequently added by agreement of the parties. Payment for rental by the prime contractor of construction plant and equipment from third parties is made subject to rental agreements to be approved by the contracting officer. If such rental agreements are modified to include the services of operators, adjustments may be required to avoid conflicts with the labor provisions of the construction contract. See Subpart 9–18.50.)

Article VI—Payments. Insert contract clause set forth in § 9–7.5006–25 using 10 percent in the second sentence of subparagraph (b).

NOTE A. An election is permitted between straight reimbursement for allowable costs incurred and claimed by the Contractor and the system approved by the AEC of advances to the Contractor. A firm agreement should be reached at the outset as to one or the other of these methods of making payment for allowable costs and the appropriate article included in the contract. Payments on account of the fixed fee will in any case be made only as earned and claimed in accordance with contract provisions. (See Part 9–30.)

NOTE B. If it is contemplated that advances will be made to the Contractor, substitute the clause set forth in § 9–7.5006–23 and require special bank account agreement as set forth in § 9–7.5006–24.

Article VII—Assignment. Insert contract clause set forth in § 9–7.5006–46.

Article VIII—Accounts, records, and inspection. Insert contract clause set forth in § 9–7.5006–1.

NOTE: The provisions in this clause relating to records and accounts are designed to permit the use of AEC's integrated accounting system whether the reimbursement method or the advances method of payment is employed.

Article IX–Examination of records. Insert contract clause set forth in § 9–7.5004–10.

Article X—Workmanship and materials. Insert contract clause as set forth in § 9–7.5006–32.

Article XI—Property. Insert contract clause set forth in § 9–7.5006–26.

Article XII—Required bonds and insurance-exclusive of Government property. Insert contract clause set forth in § 9–7.5006–51.

Article XIII—State and local taxes. The Contractor agrees to notify the Contracting Officer of any tax, fee, or charge:

(a) From which exemption is granted by State or local law, or

(b) Which is invalid under any provision of the Constitution of the United States levied or purported to be levied on the Contractor in respect of this Contract and to refrain from paying any such tax, fee, or charge unless otherwise authorized by the Contracting Officer. The Contractor further agrees to take such steps as may be required by the Contracting Officer to cause any such tax, fee, or charge to be paid under protest and, if so directed by the Contracting Officer, to cause to be assigned to the Government or its designee any and all rights to the abatement or refund of any such tax, fee, or charge, or to permit the Government to join with the Contractor in any proceedings for the recovery thereof or to sue for recovery in the Contractor's name.

The Government shall save the Contractor harmless from penalties and interest incurred through compliance with this article.

Article XIV—Litigation and claims. Insert contract clause set forth in § 9–7.5006–50.

Article XV—Contractor procurement. Insert contract clause set forth in § 9–7.5006–29.

Article XVI—Safety, health, and fire protection. Insert contract clause set forth in § 9–7.5006–47.

Article XVII—Contractor's organization. Insert contract clause set forth in § 9–7.5006–6.

Article XVIII—Key personnel. Insert contract clause set forth in § 9–7.5007–2.

Article XIX—Patent indemnity. Insert General Provision "15" of Standard Form 23A.

NOTE A: Basically, no patent provisions beyond the usual indemnity clause should be included. Alteration of this clause as to specified items is a matter to be dealt with by negotiation, if the question is raised by a prospective contractor. In particular cases involving technical facilities, the inclusion of additional provisions relating to title and rights in inventions and discoveries, with appropriate alteration of the indemnity clause, will be required in the interest of the Government. The patent indemnity clause may be modified by deleting the opening words, "Except as otherwise provided," and by adding at the end of the article an exception set forth in (1) or (2) below under circumstances therein.

(1) Certain construction contracts may call for items or parts thereof which are standard commercial supplies and also for items which require modifications in the course of the performance of the work. In such event the patent idemnity article set forth above may be appropriately modified. To cover such circumstances, the following modification should be added at the end of the patent indemnity article:

", except, however, infringement necessarily resulting from the contractor's compliance with written specifications or provisions for other than standard parts or components manufactured or supplied by the contractor or resulting from specific written instructions given by the Commission for the purpose of directing a manner of performance of the contract not normally utilized by the contractor."

(2) In some instances certain specific items should be excluded from the indemnification, and where such items or parts can be identified as nonstandard commercial components or parts, the following provision may be added at the end of the patent indemnity article:

"except that this indemnity shall not apply to the following items or parts (specifically identifying and listing the items or parts to be excluded)."

NOTE B: The alterations of the indemnity clause should be made upon the advice of the Field Patent Group or, in the absence of such group, on the advice of the Office of the Assistant General Counsel for Patents.

Article XX—Security. Insert contract clause set forth in § 9–7.5004–11.

NOTE: The security clause includes a provision under which the contractor agrees to conform to all security regulations and requirements of the AEC. This provision will support security actions which are not expressly mentioned in the security article but are required by the AEC, whether in the form of general rules or "one-time" requirements. Examples are actions to promote physical security and control of classified matter.

Article XXI—Disputes. Insert contract clause as set forth in § 9–7.5004–3.

Article XXII—Labor.

(a) *Davis-Bacon Act (Act of Mar. 3, 1931, as amended; 40 U.S.C. 276a and following)*—Insert contract clause set forth in Standard Form 19A with the modification necessary if § 9–12.103–51 applies.

NOTE: This clause includes provisions required by regulations of the Department of Labor. Part 3, Title 29, Subtitle A, Code of Federal Regulations (7 F.R. 687 as amended) and Part 5, Title 29, Subtitle A, Code of Federal Regulations (16 F.R. 4430) as amended.

(b) *Contract Work Hours Standards Act—Overtime Compensation.* Insert contract clause set forth in Standard Form 19A with the modification necessary if § 9–12.103–51 applies.

(c) *Apprentices*—Insert contract clause set forth in Standard Form 19A.

(d) *Payrolls and payroll records.* Insert contract clause set forth in Standard Form 19A.

(e) *Compliance with Copeland Regulations.* Insert contract clause set forth in Standard Form 19A.

(f) *Withholding of funds.* Insert contract clause set forth in standard Form 19A.

(g) *Subcontracts.* Insert contract clause set forth in Standard Form 19A.

(h) *Equal opportunity.* Insert contract clause set forth in FPR 1–7.101–18.

(i) *Convict labor.* Insert contract clause set forth in FPR 1–12.203.

(j) *Contract termination—Debarment.* Insert contract clause set forth in Standard Form 19A.

Article XXIII—Notice of labor disputes. Insert contract clause set forth in § 9–7.5006–49.

Article XXIV—Covenant against contingent fees. Insert contract clause as set forth in § 9–7.5004–2.

NOTE: In the event a contractor is unwilling to include a covenant against contingent fees in subcontracts and purchase orders, or if the contracting officer deems such inclusion inadvisable, the matter shall be brought to the attention of the Director, Division of Contracts with a statement of the reasons.

Article XXV—Officials not to benefit. Insert contract clause as set forth in § 9–7.5004–5.

Article XXVI—Buy American Act. Insert contract clause as set forth in § 9–7.5004–17.

Article XXVII—Termination for default or for convenience of the Government. Insert contract clause set forth in FPR 1–8.702 with the modification required by FPR 1–8.700–2(a)(3).

Article XXVIII—Drawing, designs, specifications. Insert contract clause set forth in § 9–7.5006–13.

Article XXIX—Permits. Insert contract clause set forth in § 9–7.5006–48.

Article XXX—Renegotiation. Insert contract clause set forth in § 9–7.5004–20, if the

contract is subject to the Renegotiation Act of 1951, as amended.

Article XXXI—Alterations and additions. Insert contract clause set forth in § 9–7.5006–2.

Article XXXII—Utilization of small business concerns. Insert contract clause set forth in FPR 1–1.710–3(a) under the conditions and in the manner prescribed in that section.

Article XXXIII—Priorities, allocations, and allotments. Insert contract clause set forth in § 9–7.5006–52.

In witness whereof, the parties hereto have executed this contract as of the day and year above written:

UNITED STATES OF AMERICA

By _____

_____

(Title)

UNITED STATES ATOMIC ENERGY COMMISSION

_____

(Contractor)

By _____

_____

(Title)

I, _____, certify that I
(Attestor)

am the _____ of the
(Title)

Contractor named in this contract; that _____ who signed this
(Signatory)

contract on behalf of said Contractor was then _____ of said Con-
(Title)

tractor; that this contract was duly signed for and on behalf of said Contractor by authority of its governing body and is within the scope of its legal powers.

In witness whereof, I have hereunto affixed my hand and the seal of said Contractor.

[SEAL] _____

§ 9–16.5002–5 Outline of a cost-plus-a-fixed-fee architect-engineer contract.

This contract, entered into the _____ day of _____, 19__, effective as of the _____ day of _____, 19__, between the United States of America (hereinafter called the "Government"), acting through the United States Atomic Energy Commission (hereinafter called the "Commission"), and _____ (hereinafter called the "Contractor").

Witnesseth that:

Whereas, the Commission finds that the common defense and security require the furnishing of architect-engineer services for a construction project, hereinafter more particularly described, that _____ and

A statement of grounds which render a contract on a lump-sum basis impracticable, should be inserted in this recital.

Whereas, the Contractor is willing to undertake the performance of such architect-engineer services on a cost-plus-a-fixed-fee basis; and

Whereas, the Commission, finds that the Contractor is best qualified to perform such services, all relevant factors considered; and

Whereas the Commission certifies that this negotiated contract is authorized by and executed under the Atomic Energy Act of 1954, as amended, in the interest of the common defense and security;

NOTE: The appropriate authority under the Federal Property and Administrative Services Act of 1949, as amended, should also be cited.

Now therefore, the parties hereto agree as follows:

Article I—Definitions. Insert contract clause as set forth in § 9–7.5005–4.

Article II—Statement of work.

(a) *Description of construction project.* The construction project for which architect-engineer services are to be furnished comprises _____

_____

NOTE: As full a description as is feasible of the construction project should be inserted. If the architect-engineer work is to cover auxiliary facilities required for construction, this paragraph should include a reference to such facilities.

_____

The construction project will be located at _____ on a site _____.

(b) *Statement of architect-engineer services.* The Contractor shall furnish for the construction project the architect-engineer services described in Title _____, below, subject to such further detailed requirements as may be appended to this Contract by agreement of the parties.

NOTE: This paragraph shall be modified if necessary to omit inappropriate matter or to adapt it to particular circumstances. More detailed requirements, applying security, safety and other policy standards to the preparation of drawings and specifications may be incorporated in an appendix to the contract.

TITLE I—PRELIMINARY SERVICES

(1) Conduct or arrange for, by subcontract or otherwise as approved by the Contracting Officer, and supervise all necessary topographical and other field surveys, the preparation of maps, and necessary test borings and other subsurface investigations.

(2) Consult and collaborate with the Commission or its designees to determine the requirements which will govern design of the project and to establish architectural and engineering criteria for such design.

(3) Conduct preliminary studies, and prepare preliminary sketches, drawings, layout plans, outline specifications and reports showing features and characteristics of the design proposed to meet the Commission's requirements.

(4) Prepare preliminary estimates of cost and time schedules for (i) completion of the design and working drawings and specifications, and (ii) construction.

(5) Prepare preliminary estimates of material quantities required for construction.

TITLE II—DESIGN SERVICES

(1) Upon approval by the Commission of preliminary plans and estimates, undertake the design of the construction project.

(2) Undertake restudy and redesign work due to such changes and deviations within the scope of the construction project from approved preliminary work as may be required by the Commission.

(3) Prepare and revise, for the approval of the Commission, and furnish working drawings, details and specifications for construction, and contract bidding documents in such form and quantity and including such provisions as may be required by law or the directions of the Commission.

(4) Prepare, or when directed by the Commission, participate with others in the preparation of, a detailed estimate of the cost of construction based on the approved design and working drawings and specifications.

(5) Assist the Commission and its designees in securing, analyzing, and evaluating proposals and bids for materials, equipment, and services required for construction.

(6) When requested, consult with and advise the Commission on any questions which may arise in connection with the architect-engineer services described in this contract.

TITLE III—SUPERVISION OF CONSTRUCTION

(1) Furnish and maintain governing lines and benchmarks to provide horizontal and vertical controls to which construction may be referred.

(2) Check and approve, or require revision of, all vendors' shop drawings to assure conformity with the approved design and working drawings and specifications.

(3) Inspect the execution of construction so as to assure adherence to approved drawings and specifications.

(4) Inspect construction workmanship and materials, and equipment, and report to the Commission as to their conformity or nonconformity to the approved drawings and specifications.

(5) Make or procure such field or laboratory tests of construction workmanship and materials, and equipment, as the Commission may require or approve.

(6) Prepare estimates of reasonable amounts of increase or decrease in contract price and/or contract completion term for contract modifications, evaluate proposals submitted by the constructor for such contract adjustments and make recommendations to the Contracting Officer for use in negotiating.

(7) Prepare reports and make recommendations on status of deliveries of materials and equipment as the Commission may require or approve.

(8) Prepare monthly and other reports of the progress of construction, as may be required and partial, interim and final estimates and reports of quantities and values of construction work performed, for payment or other purposes.

(9) Furnish _____ set(s) of reproducible "as built" record drawings of the type specified by the Commission and _____ set(s) of markedup specifications showing construction as actually accomplished.

Article III—Changes. Insert contract clause set forth in § 9–7.5006–4.

Article IV—Obligation of funds, estimates of cost (other than operating contracts). Insert contract clause set forth in § 9–7.5006–14.

Article V—Allowable costs and fixed fee. Insert contract clause set forth in § 9–7.5006–12.

NOTE: For onsite architect-engineer contracts central and branch office expenses may be included in allowable costs only if expressly authorized by the Contracting Officer.

Article VI—Payments. Insert clause set forth in § 9–7.5006–25 using 10 percent in the second sentence of subparagraph (b).

NOTE A: Normally, payment for architect-engineer allowable costs incurred and claimed is made on the basis of straight reimbursement. Provision is made, however, for advancing funds to the contractor should that be deemed advisable. Payments on account of the fixed fee shall in any case be made only as earned and claimed in accordance with contract provisions. See Part 9–30.

NOTE B: If it is contemplated that advances will be made to the contractor, substitute the clause set forth in § 9–7.5006–23 and require special bank agreement set forth in § 9–7.5006–24.

Article VII—Assignment. Insert contract clause set forth in § 9–7.5006–46.

Article VIII—Accounts, records, and inspection. Insert contract clause set forth in § 9–7.5006–1.

NOTE: The provisions relating to records and accounts are designed to permit the use of AEC's integrated accounting system whether the reimbursement method or the advance method of payment is employed.

Article IX—Examination of records. Insert contract clause as set forth in § 9–7.5004–10.

Article X—Responsibility for design and working drawings and specifications. The granting of approvals by the Commission under the paragraph entitled "Statement of Architect-Engineer Services" of the article entitled "Statement of Work" shall not affect the responsibility of the Contractor for the design, nor for the correctness of working drawings and specifications.

Article XI—Property. Insert contract clause set forth in § 9-7.5006-26.

Article XII—Drawings, designs, specifications. Insert contract clause set forth in § 9-7.5006-13.

Article XIII—Required bonds and insurance—exclusive of Government property. Insert contract clause set forth in § 9-7.5006-51.

Article XIV—State and local taxes. The Contractor agrees to notify the Contracting Officer of any tax, fee, or charge (a) from which exemption is granted by State or local law, or (b) which is invalid under any provision of the Constitution of the United States levied or purported to be levied on the Contractor in respect of this Contract and to refrain from paying any such tax, fee, or charge unless otherwise authorized by the Contracting Officer. The Contractor further agrees to take such steps as may be required by the Contracting Officer to cause any such tax, fee, or charge to be paid under protest and, if so directed by the Contracting Officer, to cause to be assigned to the Government or its designee any and all rights to the abatement or refund of any such tax, fee, or charge, or to permit the Government to join with the Contractor in any proceedings for the recovery thereof or to sue for recovery in the Contractor's name. The Government shall save the Contractor harmless from penalties and interest incurred through compliance with this article.

Article XV—Litigation and claims. Insert contract clause set forth in § 9-7.5006-50.

Article XVI—Subcontracts and purchase orders—When subcontracts authorized—Requirements applicable to subcontracts and purchase orders. The Contractor shall, when ordered by the Contracting Officer, and may, but only when authorized by the Contracting Officer, enter into subcontracts in writing for the performance in whole or in part of the work described in paragraph entitled "Statement of Achitect-Engineer Services" of the article entitled "Statement of Work." Purchase orders shall not be entered into by the Contractor for items whose purchase is expressly prohibited by the written directions of the Contracting Officer. All subcontracts for the performance in whole or in part of the work described in paragraph entitled "Statement of Architect-Engineer Services" of the article entitled "Statement of Work" shall be submitted to the Contracting Officer for approval. The Government reserves the right at any time to require that the Contractor submit any or all other contractual arrangements, including but not limited to purchase orders or classes of purchase orders, for approval, and provide information concerning methods, practices, and procedures used or proposed to be used in subcontracting and purchasing. The Contractor shall use methods, practices, or procedures in subcontracting or purchasing which are acceptable to the Commission. Subcontracts and purchase orders (note A) shall be made in the name of the Contractor, shall not bind or purport to bind the Government, shall not relieve the Contactor of any obligation under this Contract (including among other things, the obligation properly to supervise and coordinate the work of subcontractors), and shall be in such form and contain such provisions as are required by this Contract or as the Contracting Officer may prescribe.

NOTE A: The words "shall be made in the name of the Contractor, shall not bind nor purport to bind the Government" are optional and may be used or omitted, as appropriate.

NOTE B: Paragraph (c) of § 9-7.5006-29 shall be included in the contract if it is contemplated that the contractor will be required to procure any equipment, materials, supplies, or services of the kind and character manufactured or sold by contractor-controlled sources.

Article XVII—Safety, health, and fire protection. Insert contract clause set forth in § 9-7.5006-47.

Article XVIII—Contractor's organization. Insert contract clause set forth in § 9-7.5006-6.

NOTE: For offsite architect-engineer contracts, substitute the following for paragraph (b):

"A competent supervising representative of the Contractor satisfactory to the Contracting Officer shall be in charge of the work at all times."

Article XIX—Key personnel. Insert contract clause set forth in § 9-7.5007-2.

Article XX—Patents. Insert contract clause set forth in § 9-9.5003.

NOTE: The patent clause should not be departed from except upon the advice of the Field Patent Group or in the absence of such group on the advice of the Office of the Assistant General Counsel for Patents. In each case it will be necessary to determine whether or not it will be appropriate to add the indemnity clause with or without modifications. The patent indemnity clause is Clause 15 of Standard Form 23A. For modifications to indemnity clause see note "A" under Article XIX, Patent Indemnity, § 9-16.5002-4.

Article XXI—Security. Insert contract clause set forth in § 9-7.5004-11.

NOTE: The security clause includes a provision under which the contractor agrees to conform to all security regulations and requirements of the AEC. This provision will support security actions which are not expressly mentioned in the security clause but are required by the AEC, whether in the form of general rules or "one-time" requirements. Examples are actions to promote physical security and control of classified matter.

Article XXII—Disputes. Insert contract clause as set forth in § 9-7.5004-3.

Article XXIII—Labor.

(a) *Contract Work Hours Standards Act—Overtime Compensation.* Insert contract clause set forth in FPR 1-12.303 with the modification necessary if § 9-12.103-51 applies.

(b) *Equal opportunity.* Insert contract clause set forth in FPR 1-7.101-18.

(c) *Convict labor.* Insert contract clause set forth in FPR 1-12.203.

Article XXIV—Covenant against contingent fees. Insert contract clause as set forth in § 9-7.5004-2.

Article XXV—Officials not to benefit. Insert contract clause as set forth in § 9-7.5004-5.

Article XXVI—Buy American Act. Insert contract clause as set forth in § 9-7.5004-17.

Article XXVII—Termination. Insert contract clause set forth in § 9-8.751.

Article XXVIII—Permits. Insert contract clause set forth in § 9-7.5006-48.

Article XXIX—Renegotiation. Insert contract clause set forth in § 9-7.5004-20, if the contract is subject to the Renegotiation Act of 1951, as amended.

Article XXX—Classification. Insert contract clause set forth in § 9-7.5004-21 when required.

Article XXXI—[Reserved]

Article XXXII—Alterations and additions. Insert contract clause set forth in § 9-7.5006-2.

In the event the contractor will be required to perform procurement activities, the following articles shall be included in the contract as appropriate.

Article XXXIII—Utilization of small business concerns. Insert contract clause set forth in FPR 1-1.710-3(a) under the conditions and in the manner prescribed in that section.

Article XXXIV—Small business subcontracting program. Insert contract clause set forth in FPR 1-1.710-3(b) under the conditions and in the manner prescribed in that section.

Article XXXV—Utilization of concerns in labor surplus areas. Insert contract clause set forth in FPR 1-1.805-3(a) under the conditions and in the manner prescribed in that section.

Article XXXVI—Labor surplus area subcontracting program. Insert contract clause set forth in FPR 1-1.805-3(b) under the conditions and in the manner prescribed in that section.

Article XXXVII—Priorities, allocations, and allotments. Insert contract clause set forth in § 9-7.5006-52.

In witness whereof, the parties hereto have executed this Contract as of the day and year above written:

UNITED STATES OF AMERICA

By ----------

---------- (Title)

UNITED STATES ATOMIC ENERGY COMMISSION

---------- (Contractor)

By ----------

---------- (Title)

I, ---------- (Attester), certify that I am the ---------- (Title) of the Contractor named under this contract; that ---------- (Signatory) who signed this contract on behalf of said Contractor was then ---------- (Title) of said Contractor; that this contract was duly signed for and on behalf of said Contractor by authority of its governing body and is within the scope of its legal powers.

In witness whereof, I have hereunto affixed my hand and the seal of said Contractor.

[SEAL] ----------

§ 9-16.5002-6 Outline of a lump-sum architect-engineer contract (with cost reimbursement features).

NOTE: The outline provides for lump-sum compensation for certain services and cost reimbursement for other services. If it is desired that the cost reimbursement portion be made on a lump-sum basis or on the basis of negotiated rates (e.g., a fixed amount per day) appropriate revisions in the form of contract will be required (including revision of the introductory recitals and of the articles entitled "Payment" and "Termination").

This contract, entered into the ------ day of ----------, 19--, effective as of the ------ day of ------, 19--, between the United States of America (hereinafter called the "Government"), acting through the U.S. Atomic Energy Commission (hereinafter called the "Commission"), and ---------- (hereinafter called the "Contractor").

Witnesseth that:

Whereas, the Commission finds that the common defense and security require the furnishing of architect-engineer services for a construction project, hereinafter more particularly described; and

Whereas the Contractor is willing to undertake the performance of certain services on a lump-sum basis and of certain other services on a cost-reimbursable basis; and

Whereas, the Commission finds that the Contractor is best qualified to perform such services, all relevant factors considered; and

Whereas, the Commission certifies that this negotiated contract is authorized by and executed under the Atomic Energy Act of 1954,

as amended, in the interest of the common defense and security;

NOTE: The appropriate authority under the Federal Property and Administrative Services Act of 1949, as amended, should also be cited.

Now therefore, the parties hereto agree as follows:

Article I—Definition. Insert contract clause in accordance with § 9-7.5005-4.

Article II—Statement of work.

(a) *Description of construction project.* The construction project for which architect-engineer services are to be furnished comprises—

As full a description as is feasible should be inserted. If the architect-engineer work is to cover auxiliary facilities required for construction, this paragraph should include a reference to such facilities.

---------- The construction project will be located at ---------- on a site ----------

(b) *Statement of architect-engineer services.* The Contractor shall, within the shortest reasonable time, furnish for the construction project the architect-engineer services described in Title ------, below, subject to such further detailed requirements as may be appended to this Contract by agreement of the parties.

This paragraph (entitled "Statement of Architect-Engineer Services" of the clause entitled "Statement of Work") shall be modified if necessary to omit inappropriate matter, or to adapt it to particular circumstances. More detailed requirements, applying security, safety, and other policy standards to the preparation of drawings and specifications, may be incorporated in an appendix to the contract.

NOTE: This form of contract provides for completion of the architect-engineer services "within the shortest reasonable time." The form may be modified to provide for completion of separable parts of the work at different times. Modifications of this character will require corresponding modifications of the default provisions of the clause entitled "Termination."

TITLE I—PRELIMINARY SERVICES

(1) Conduct or arrange for, by subcontract or otherwise as approved by the Contracting Officer, and supervise all necessary topographical and other field surveys, the preparation of maps, and necessary test borings and other subsurface investigations.

(2) Consult and collaborate with the Commission or its designee to determine the requirements which will govern the design of the project and to establish architectural and engineering criteria for such design.

(3) Conduct preliminary studies, and prepare preliminary sketches, drawings, layout plans, outline specifications and reports, showings features and characteristics of the design proposed to meet the Commission's requirements. If more than three studies, including sketches, drawings, plans, outline specifications, or documents are required because of changes initiated by the Commission, an equitable adjustment in the lump-sum compensation will be made in accordance with provisions of the changes article.

(4) The drawings, plans, and outline specifications and documents shall be prepared in such form and furnished in such quantity as directed by the Commission.

Specific quantities of the drawings, plans, outline specifications, and documents should be indicated here or elsewhere in the contract.

(5) Prepare preliminary estimates of cost and time schedules for (i) completion of the design and working drawings and specifications, and (ii) construction.

(6) Prepare preliminary estimates of material quantities required for construction.

TITLE II—DESIGN SERVICES

(1) Upon approval by the Commission of preliminary plans and estimates, undertake the design of the construction project.

(2) Undertake restudy and redesign work due to minor deviations from the approved preliminary work as may be required by the Commission.

(3) Prepare and revise, for the approval of the Commission, and furnish complete sets of contract bidding documents including, working drawings, details and specifications for construction, in such form and quantity and including such provisions as may be required by law or the directions of the Commission.

Specific quantities of drawings and specifications should be indicated here, or elsewhere in the contract.

(4) Prepare, or when directed by the Commission participate with others in the preparation of, a detailed estimate of the cost of a construction based on the approved design and working drawings and specifications.

(5) Assist the Commission and its designees in securing, analyzing, and evaluating construction bids or proposals.

(6) When requested, consult with and advise the Commission on any questions which may arise in connection with the architect-engineer services described in this Contract.

TITLE III—SUPERVISION OF CONSTRUCTION

(1) Furnish and maintain governing lines and bench marks to provide horizontal and vertical controls to which construction may be referred.

(2) Check and approve, or require revision of, all vendors' shop drawings to assure conformity with the approved design and working drawings and specifications.

(3) Inspect the execution of construction so as to assure adherence to approved working drawings and specifications.

(4) Inspect construction workmanship and materials, and equipment, and report to the Commission as to their conformity or nonconformity to the approved working drawings and specifications.

(5) Make or procure such field or laboratory tests of construction workmanship and materials, and equipment, as the Commission may require or approve.

(6) Prepare estimates of reasonable amounts of increase or decrease in Contract price and/or Contract completion time for contract modifications, evaluate proposals submitted by the constructor for such contract adjustments and make recommendations to the Contracting Officer for use in negotiating.

(7) Prepare reports and make recommendations on status of deliveries of materials and equipment as the Commission may require or approve.

(8) Prepare monthly and other reports of the progress of construction, as may be required, and partial, interim and final estimates and reports of quantities and values of construction work performed, for payment or other purposes.

(9) Furnish ------ set(s) of reproducible "as-built" record drawings of the type specified by the Commission and ------ set(s) of mark-up specifications, showing construction as actually accomplished.

Article III—Drawings, designs, specifications. Insert contract clause set forth in § 9-7.5006-13.

Article IV—Changes. The Contracting Officer may at any time issue written directions requiring additional work or directing the omission of or variations in work covered by this Contract and within the general scope thereof. If any such direction results in a change in the amount of character of the work covered by the lump-sum compensation provided for herein, an equitable adjustment in such compensation shall be made and the contract modified in writing accordingly. Any claim of the Contractor for adjustment under this article must be asserted in writing within 30 days from the date of receipt by the Contractor of the notification of change: *Provided, however,* That the Contracting Officer, if he determines that the facts justify such action, may receive and consider, and adjust any such claim asserted at any time prior to the date of final settlement of the Contract. If the parties fail to agree upon the adjustment to be made the dispute shall be determined as provided in the article entitled "Disputes." Nothing provided in this clause shall excuse the Contractor from proceeding with the prosecution of the work as changed. Except as otherwise herein provided, no charge for any extra work or material will be allowed.

Article V—Payment.

(a) *Lump-sum compensation.* The Contractor shall be paid the lump sum of $------ which shall constitute full compensation for all services and materials furnished under this Contract except for the costs hereinafter specified in the paragraph entitled "Reimbursement for Certain Costs."

(b) *Reimbursement for certain costs.* The Contractor shall be entitled, in addition to payment of the lump sum hereinbefore provided for, to reimbursement for the following costs to the extent approved by the Contracting Officer, but not to exceed a total of $------

(1) The actual costs of labor, materials, and equipment use and traveling expenses, and approved subcontracts and transportation of things, required for topographical and other field surveys, the preparation of maps, and test borings and other subsurface investigations under this Contract.

(2) The actual costs of labor, and materials and equipment use and traveling expenses for the resident engineer in charge, field engineers and inspectors, part-time inspectors from the home or branch office, and the supporting Field Office force as required at the site of the construction project for inspection of construction;

(3) The actual costs of labor and materials and traveling expenses for expediting or inspecting material and equipment, and checking or expediting shop drawings at vendors' plants;

(4) The actual cost of onsite transportation for services listed in (1) through (3) above;

(5) The actual costs of labor, materials, and equipment use, or an allowance in lieu of such actual cost at a rate or rates approved in advance by the Contracting Officer, for copies in excess of 20 prints of drawings, specifications, invitations for bid, or other related documents, and revisions thereto, which are reproduced after Title II design is approved by the Commission and which are for use by the Commission and its construction contractors. (This does not include "as-built" record drawings and specifications as required under Title III services.)

(6) Compensation paid for such outside expert technical assistance, including the services of materials testing laboratories, as is approved in writing by the Contracting Officer in connection with the performance of any of the work under this contract; and

(7) Expenses of such travel of the Contractor's responsible supervising representative that might be required in addition to the normal supervision furnished under the fee or specified in the contract.

NOTE A: If some payments are to be made either on the basis of actual costs or negotiated rates (e.g. a fixed amount per man-day), a limit to the total amount that may be so paid without a modification to the

contract should be provided in the payment article for control purposes.

NOTE B: Include other items listed under § 9-3.404-50 that are applicable.

NOTE C: Include the definitions for "labor cost" and "traveling expenses" as set forth in § 9-3.404-50(f).

(c) *Partial payments on account of lump-sum compensation.* Ninety (90) percent of the lump-sum compensation shall become due and payable in monthly installments in amounts based on the proportion of the work then completed, as determined by the Contracting Officer, and the balance upon completion and acceptance of all work under this contract.

(d) *Reimbursement payments.* (1) Payments for costs which are reimbursable under the provisions of the paragraph entitled "Reimbursement for certain costs" shall be made to the Contractor at intervals stipulated by the Contractor and the Contracting Officer and upon completion and acceptance of the work under this contract.

(2) Notwithstanding any other provision of this contract, when the amount for which the Contractor shall be entitled to reimbursement equals the maximum amount the Government has agreed to reimburse the Contractor under this contract and any modification thereto, the Contractor shall not be expected or required to incur further expenses or obligations under paragraph (b) of this Article unless and until the Government first increases the maximum amount stipulated in paragraph (b) by appropriate modificaton thereof, nor shall the Government be obligated to reimburse the Contractor for expenses beyond that amount.

(e) *Final payment.* Upon completion of the work and its acceptance by the Government, and upon the furnishing by the Contractor of a release, in such form and with such exceptions as may be approved by the Contracting officer, of all claims against the Government under or arising out of this contract, the Government shall promptly pay to the Contractor the unpaid balance of the lump-sum compensation and reimbursable costs less (i) deductions due under the terms of this contract, and (ii) any sum required to settle any unsettled claim which the Government may have against the Contractor in connection with this contract.

(f) *Supporting documents.* Claims for payment shall be accompanied by such supporting documents and justifications as the Contracting Officer shall prescribe.

(g) *Records and accounts relating to reimbursable costs—Inspection and audit.* The Contractor agrees to keep books of account, records, documents, and other evidence bearing on costs which are reimbursable under the provisions of the paragraph entitled "Reimbursement for certain costs." The method of accounting employed by the Contractor with reference to such costs shall be subject to the approval of the Commission, but no material change shall be required therein if it conforms to generally accepted accounting practice. All such books of account, records, documents, and other evidence relating to such reimbursable costs shall be subject to inspection and audit by the Commission at all reasonable times, and the Contractor shall afford the Commission proper facilities for such inspection and audit. Subject to such other disposition as may be agreed upon by the Contractor and the Commission, the Contractor shall, for a period of three (3) years after final payment under this contract, or of the time periods for the particular records specified in Part 1-20 of the Federal Procurement Regulations (41 CFR Part 1-20), whichever expires earlier, preserve such of the books of account, records, documents, and other evidence relating to reimbursable costs as are not furnished by the Contractor to the Government in support of payments under the contract.

Article VI—Examination of records. Insert contract clause as set forth in § 9-7.5004-10.

Article VII—State and local taxes. Insert contract clause as set forth in FPR 1-11.401-1.

Article VIII—Assignment. Insert contract clause set forth in § 9-7.5006-46.

Article IX—Responsibility for design and working drawings and specifications. The granting of approvals by the Commission under the paragraph entitled "Statement of architect-engineer services" of the clause entitled "Statement of work" shall not affect the responsibility of the Contractor for the design, nor for the correctness of working drawings and specifications.

Article X—Subcontracts. The Contractor shall not enter into any contractual commitment to a third party which involves the performance in whole or in part of a specific part of the work described in paragraph entitled "Statement of architect-engineer services" in the article entitled "Statement of work" without the written approval of the Contracting Officer. However, this article is not applicable to a contract of employment.

NOTE: Paragraph (c) of § 9-7.5006-29 should be included in the contract if deemed deemed necessary.

Article XI—Contractor's organization. Insert contract clause set forth in § 9-7.5006-6.

NOTE: For off-site-architect-engineer contracts, substitute the following for paragraph (b):

"A competent supervising representative of the Contractor satisfactory to the Contracting Officer shall be in charge of the work at all times."

Article XII—Key personnel. Insert contract clause set forth in § 9-7.5007-2.

Article XIII—Patents. Insert contract clause set forth in § 9-9.5003.

NOTE: The patent clause should not be departed from except on the advice of the Field Patent Group, or in the absence of such Group, on the advice of the Office of the Assistant General Counsel for Patents. In each case it will be necessary to determine whether or not it will be appropriate to add the indemnity clause, with or without modifications. NOTE: The patent indemnity clause is Clause 15 of Standard Form 23A. For modifications to this indemnity clause see Note "A" under Article XIX, Patent indemnity, § 9-16.5003-4.

Article XIV—Security. Insert contract clause set forth in § 9-7.5004-11.

NOTE: The security clause includes a paragraph to the effect that the Contractor agrees to conform to all security regulations and requirements of the AEC. To the maximum extent feasible, specific security regulations and requirements, which are not expressly set forth in the security clause but to which the Contractor may become subject under the paragraph referred to above, shall either be set forth or incorporated by reference in an appendix to the contract.

Article XV—Disputes. Insert contract clause set forth in FPR 1-7.101-12.

Article XVI—Labor.

(a) *Contract Work Hours Standards Act—Overtime Compensation.* Insert contract clause set forth in FPR 1-12.303 with the modification necessary if § 9-12.103-51 applies.

(b) *Equal opportunity.* Insert contract clause set forth in FPR 1-7.101-18.

(c) *Convict labor.* Insert contract clause set forth in FPR 1-12.203.

Article XVII—Covenant against contingent fees. Insert contract clause set forth in FPR 1-1.503.

Article XVIII—Officials not to benefit. Insert contract clause set forth in FPR 1-7.101-19.

Article XIX—Safety, health, and fire protection. Insert contract clause set forth in § 9-7.5006-47.

Article XX—Permits. Insert contract clause set forth in § 9-7.5006-48.

Article XXI—Termination. Insert contract clause as set forth in § 9-8.752.

Article XXII—Renegotiation. Insert contract clause set forth in § 9-7.5004-20 if the Contract is subject to the Renegotiation Act of 1951, as amended.

Article XXIII—Classification. Insert contract clause set forth in § 9-7.5004-21 when required.

Article XXIV [Reserved]

Article XXV—Utilization of small business concerns. Insert contract clause set forth in FPR 1-1.710-3(a) under the conditions and in the manner prescribed in that section.

Article XXVI—Small business subcontracting program. Insert contract clause set forth in FPR 1-1.710-3(b) under the conditions and in the manner prescribed in that section.

Article XXVII—Utilization of concerns in labor surplus areas. Insert contract clause set forth in FPR 1-1.805-3(a) under the conditions and in the manner prescribed in that section.

Article XXVIII—Labor surplus area subcontracting program. Insert contract clause set forth in FPR 1-1.805-3(b) under the conditions and in the manner prescribed in that section.

Article XXIX—Property. If the Government furnishes the Contractor property, or authorizes the Contractor to procure property (such as office furniture and equipment), a property clause should be included similar to the one in § 9-7.5006-27.

Article XXX—Reports. (The nature and quantity of any reports, such as reports of the progress of the architect-engineer work, which will be required of the Contractor shall be set forth in this article or incorporated by reference in this article and in an appendix to be attached to the contract. Contracting Officers will be expected to require in most cases that reports be furnished at intervals disclosing the progress of the architect-engineer work.)

Article XXXI—Alterations and additions. The following alterations in or additions to the provisions of this form of contract were made prior to the execution of the contract by the parties:

In witness whereof, the parties hereto have executed this contract as of the day and year above written.

UNITED STATES OF AMERICA

By _____

_____

(Title)

UNITED STATES ATOMIC ENERGY COMMISSION

_____

(Contractor)

By _____

_____

(Title)

I, _____, certify that I
(Attester)
am the _____ of the Con-
(Title)
tractor named under this contract; that _____ who signed this
(Signatory)
contract on behalf of said Contractor was then _____ of said Con-
(Title)
tractor; that this contract was duly signed for and on behalf of said Contractor by authority of its governing body and is within the scope of its legal powers.

In witness whereof, I have hereunto affixed my hand and the seal of said Contractor.

[SEAL] _____

§ 9–16.5002–7 Outline of a letter contract.

1. Contract number, date, name, and address of Contractor.

2. Direction to Contractor to proceed immediately to furnish the supplies or to perform the work specified, followed by as detailed description of the supplies to be furnished or work to be performed as is practicable, together with desired delivery date or date of completion.

3. Provision that letter contract contains and resulting definitive contract will contain all applicable provisions required by Federal Law, Executive Order, or regulations.

4. Provision for (a) submission by the Contractor of a quotation and/or estimate supported by a cost breakdown and agreement to enter into negotiation of a definitive contract immediately and (b) type of definitive contract to be used.

5. Provision for (a) approval by the Contracting Officer of subcontracts and purchase orders of specified types and dollar limits as required by Subpart 9–51.2 and (b) dollar limitation on total amount the Contractor may expend or obligate pending execution of the definitive contract.

6. Time limit within which letter contract will be superseded by definitive contract (normally within 120 days). Provision for termination either (a) at any time for the convenience of the Government, or (b) in event the parties fail to agree upon the terms of, and to execute, a definitive contract within the time specified on any extension.

7. Provision for the reimbursement of the Contractor for all reasonable and necessary costs for work performed when the termination is for the convenience of the Government or in the event the parties fail to agree upon the terms of a definitive contract within the time specified, or any extension thereof. In the latter case the provision should exclude the payment of profit or fee.

8. The total payments under paragraph 7 above shall be limited to the total dollar amount authorized to be expended by the letter contract and shall be contingent upon transfer of title to the Government of all material (including specifications and drawings), tools, machinery, and work in process for which the Contractor is receiving reimbursement or the obtaining of an appropriate disposal credit to the Government for them.

9. Appropriate security provisions.

10. Appropriate tax provisions.

11. Appropriate disputes provisions.

12. Appropriate examination of records provisions.

13. Provision against assignment without prior approval in writing of the Contracting Officer.

NOTE: Ordinarily, letter contracts will not contain any provision for payments to the Contractor, except in the event of its termination, since it is contemplated that a definitive contract will be executed within a short period of time. If it becomes necessary to provide for such payments in the letter contract, such additional provisions as are necessary for the protection of the Government's interest shall be included.

§ 9–16.5002–8 Outline of special research support agreement with educational institutions.

Contract No. _____

This agreement, entered into the _____ day of _____, 19__, effective the _____ day of _____, 19__, by and between the United States of America (hereinafter referred to as the "Government"), as represented by the U.S. Atomic Energy Commission (hereinafter referred to as the "Commission"), and _____ (hereinafter referred to as the "Contractor").

Witnesseth That:

Whereas the Commission desires to have the Contractor perform certain research work, as hereinafter provided; and

Whereas, this agreement is authorized by the Atomic Energy Act of 1954, as amended, and section 302(c)(15) of the Federal Property and Administrative Services Act of 1949, as amended;

Now, therefore, the parties agree as follows:

ARTICLE I—THE RESEARCH TO BE PERFORMED

(a) The Contractor shall, to the best of its ability, furnish personnel, facilities, equipment, materials, supplies, and services, except such as are furnished by the Government, necessary for the performance of the research provided for in Appendix A hereto, and shall perform the research and report thereon pursuant to the provisions of this contract. It is understood that Appendix A, a guide to the performance of this contract, may be deviated from by the Contractor subject to the specific requirements of this contract.

(b) This work shall be conducted under the direction of _____ or such other member of the Contractor's staff as may be mutually satisfactory to the parties.

NOTE A: The description of the research in Appendix A may be omitted and Appendix A appropriately modified to incorporate, by pertinent references to the proposal or other documents, the type of data necessary to describe the research as called for by Appendix A; and where there is no cost sharing, other features may be referenced in lieu of insertion in Appendix A. In such cases, the referenced material will be retained as part of the permanent contract file.

ARTICLE II—THE PERIOD FOR PERFORMANCE

The period of performance under this contract shall commence on _____ 19__ and expire on _____ 19__. Performance may be extended for additional periods by the mutual written agreement of the parties. It is presently expected that this contract will be extended by mutual agreement until _____ 19__.[1]

ARTICLE III—CONSIDERATION

(a) In full consideration of the Contractor's performance hereunder, the Commission shall furnish the equipment, supplies, materials, and services, if any, listed in Article A–II(b)(2) and pay the Contractor the sum of $_____, hereinafter called the "Support Ceiling" which sum shall be subject to adjustment as hereinafter provided.

(b) Payments to the Contractor shall equal the "Cumulative Support Cost" of performance of this contract, as the term "Cumulative Support Cost" is defined in Article B–XXVII:[2] *Provided, however,* And notwithstanding any other provision of this contract, that the Government's monetary liability under this contract shall not exceed the Support Ceiling specified in (a) above. The Commission shall not pay more than the Support Ceiling or an amount equal to the Cumulative Support Cost, whichever is less. The Contractor shall be obligated to perform under this contract throughout the agreed-upon period of performance, and to bear all costs which the Commission has not agreed to pay: *Provided, however,* That the Contractor shall have the right to cease to perform the research provided for in this contract, upon written notice to the Commission to that effect, at any time when or after the Cumulative Support Cost equals or exceeds the Support Ceiling.

(c) The Support Ceiling specified in (a) above may be revised as the parties may mutually agree in writing. In the event the stated period of contract performance is extended, the Support Ceiling will be revised to reflect any increased Commission support for the extended period or periods.

(d) Upon termination, or expiration of the total period of performance, the Contractor shall promptly refund to the Commission (or make such disposition as the Commission may in writing direct) any sums paid by the Commission to the Contractor under this contract, through direct payment or under letter of credit, in excess of the cumulative Support Cost incurred in performance under the contract.

ARTICLE IV—ADDITIONAL CONTRACT PROVISIONS

Appendix B attached hereto and made a part hereof, sets forth additional general contract provisions of this contract.

ARTICLE V—GOVERNMENT PROPERTY

The following items of property procured or fabricated by the Contractor are hereby listed as "Government Property." [List all property and equipment, title to which is to remain in the Government. Insert the word "none" if title to all of the property is to be vested in the Contractor: If title to property procured or fabricated by the Contractor is to remain in the Government, add appropriate provisions for payment for such property from plant and equipment funds. Such funds should be in addition to, and not a part of, the "Support Ceiling" funds provided under Article III.]

In witness whereof, the parties have executed this contract.

UNITED STATES OF AMERICA

By _____

_____

(Title)

UNITED STATES ATOMIC ENERGY COMMISSION

_____

(Contractor)

By _____

_____

(Title)

---

[1] This sentence is optional and may be omitted.

[2] The term Cumulative Support Cost refers to the cost of items under A–II(a) of Appendix A, for the initial contract period plus any extension periods, that may be properly chargeable to the AEC. If proportionate cost-sharing is involved, the Support Cost is the AEC's share of such costs, and it does not include the cost of items excluded from Article A–II(a), such as items to be contributed solely by the Contractor or property to be furnished by the Government. Charges to the AEC will be reported after the conclusion of each contract period set forth in Appendix A (generally an annual period); in addition to the limitations on charges to the AEC provided for by this Article III, charges to the AEC for a specified contract period may not exceed 110 percent of the estimated Support Cost for that contract period except as approved by the AEC (see Article B–XXVIII). The estimated Support Cost for each pertinent period of contract performance will be set forth in Article A–III. If Article A–III of Appendix A provides that the cost of the items listed under Article A–II(a) is to be proportionately shared by the parties, the charges to the AEC shall be determined by applying the AEC's sharing percentage set forth in Article A–III to the cost for items under Article A–II(a) incurred during the specified contract period; such charges to the AEC shall also be subject to the 110 percent limitation mentioned above as well as to the provisions of this Aritcle III.

I, _____, certify that I
(Attester)
am the _____ of the Con-
(Title)
tractor named under this contract; that _____ who signed this
(Signatory)
contract on behalf of said Contractor was then _____ of said Con-
(Title)
tractor; that this contract was duly signed for and on behalf of said Contractor by authority of its governing body and is within the scope of its legal powers.

In witness whereof, I have hereunto affixed my hand and the seal of said Contractor.

[SEAL] _____

Contractor _____
Contract No. _____

APPENDIX A

For the contract period _____ through _____.

Article A–I. *Research to be performed by Contractor.* [Insert description of research activity and state the approximate percentage of time or effort which the principal investigator(s) expects to devote to the work.]

Article A–II. *Ways and means of performance.*

[The listings under (a), (b), and (c) below should be in a form to permit determination of which items of cost are to be chargeable to AEC or proportionately shared, and which items are to be contributed solely by the Contractor or solely by the AEC; the listing should also permit application of the approval requirements of the contract. Excessive detail in listing should be avoided.]

(a) Items for which support will be provided as indicated in A–III, below. [Do not include in this paragraph (a) any items which are to be contributed solely by the Contractor; see § 9–4.5107–2(c).]

(1) Salaries and wages. [List categories of personnel, according to scientific discipline or other designation, and the number of personnel in each category expected to participate in the research work. If any stipulated salary support amounts for professional staff members are established in accordance with § 9–4.5106–3a, the stipulated amounts, along with any limitations or requirements on the use of such stipulated amounts (see § 9–4.5106–3a(c)) should be provided for in the contract.]

(2) Supplies and materials. [List separately any significant items of a special nature.]

(3) Equipment to be purchased or fabricated by the Contractor. [List equipment to be purchased or fabricated by the Contractor and for which title is to remain in the Contractor and state the total dollar amount budgeted for such equipment. Such equipment may be set forth in general classifications as specifically as possible if it is not feasible to list them individually. However, any individual piece of equipment, the estimated cost of which is over $1,000, will be separately identified. Except where the contract may otherwise specifically provide, equipment for the purpose of this paragraph A–II shall mean an item of personal property having a useful life expectancy in excess of 1 year and an acquisition cost in excess of $100.]

(4) Publications.

(5) Travel.

(6) Other.

[List separately each significant type of cost included in this category. Indicate briefly the kinds of costs that will not be separately identified.]

(7) Indirect costs based upon predetermined rate of _____ percent.

[Show factor or factors of cost to which rate applies—generally, direct salaries and wages.]

(b) Items, if any, significant to the performance of this contract, but excluded from computation of Support Cost and from consideration in proportioning costs. [See § 9–4.5107–2(c).]

(1) *Items to be contributed by the Contractor.* In accordance with Article B–II(c), if a proposed Contractor contribution is included in this paragraph (b)(1), the Contractor shall maintain records adequate to permit the Commission to determine the extent of the contribution. If the time or effort of the principal investigator(s) is to be contributed by the Contractor and excluded from A–II(a) and A–II(b), the contributed time or effort should be listed under A–II(c).

(2) *Items to be contributed by the Government.*

(c) Time or effort of principal investigator(s) contributed by Contractor but excluded from computation of Support Cost and from consideration in proportioning costs. [Where covered under A–II(a) or A–II(b)(1) above, state: "None." See § 9–4.5107–2(d).]

Article A–III. The total estimated cost of items under A–II(a) above for the contract period stated in this Appendix A is $ _____; the Commission will pay _____ percent of the actual costs of these items incurred during the contract period stated in this Appendix A, subject to the provisions of Article III and Article B–XXVII. The estimated AEC Support Cost for the contract period stated in this Appendix A is $ _____.

Contractor: _____
Contract No. _____

APPENDIX B

For the contract period _____ through _____.

ARTICLE B–I—DEFINITIONS

(a) The term "Commission" means the U.S. Atomic Energy Commission or any duly authorized representative thereof, including the contracting officer except for the purpose of deciding an appeal under the article entitled "Disputes."

(b) The term "Contracting Officer" means the person executing this contract on behalf of the Government and includes his successors or any duly authorized representative of any such person.

(c) Except as otherwise provided in this contract, the term "subcontracts" includes purchase orders under this contract.

ARTICLE B–II—INSPECTION, REPORTS, RECORDS, AND ACCOUNTS

(a) The Commission shall have the right to inspect, in such manner and at all reasonable times as it deems appropriate, all activities of the Contractor arising in the course of its undertakings under this contract.

(b) The Contractor shall make progress and other reports in such manner and at such times as specified in Article B–XXI. The Contractor shall also make such other reports to the Commission, with respect to its activities under this contract, as the Commission may reasonably require from time to time.

(c) The Contractor agrees to keep records and books of account, in accordance with generally accepted accounting principles and practices, and consistent with the requirements of BoB Circular No. A–21 as constituted on the effective commencement date of the contract period, covering its costs and expenditures for items included under Article A–II(a) of Appendix A and which are in furtherance of the research work under this contract. In the event a contractor contribution is listed in Article A–II(b), the Contractor shall maintain records adequate to permit the Commission to determine the extent of the contribution. If professional staff members are included under Article A–II(b), the Contractor shall maintain records on such personnel in accordance with the payroll distribution procedure of section J 7.b. of BoB Circular No. A–21.

(d) The Commission shall at all reasonable times be afforded access to the premises and to these books and records and to related correspondence, receipts, vouchers, memoranda, and other data of the Contractor; and the Contractor shall preserve such books and papers, without additional compensation therefor, for a period of three (3) years after completion of this contract.

ARTICLE B–III—PUBLICATION OF RESULTS

(a) Research results obtained under this contract shall be made available to all through normal and accepted channels without restriction except that no Restricted Data as defined in the Atomic Energy Act of 1954, as amended, or other classified information shall be disclosed to unauthorized persons. Published results shall indicate that the research was supported by the Commission. _____ copies of each article submitted by the Contractor for publication shall be promptly sent to the Commission. The Contractor shall also inform the Commission when the article is published and furnish _____ copies of the article as finally published.

NOTE: In determining the numbers of copies to be required, reference should be made to § 9–4.5109–8.

(b) It is recognized that during the course of the work hereunder or subsequent thereto, the Contractor, its employees, or its subcontractors, may from time to time desire to publish, within the limit of security requirements, information regarding technical or scientific developments arising in the course of the contract. In order that public disclosure of such information will not adversely affect the patent interest of the Commission, patent approval for release shall be secured from the Commission prior to any such publication.

(In contracts for Theoretical Physics, High Energy Physics, Medium Energy and Neutron Physics, Mathematics, Computer Techniques and Programing, Medical Studies, Biological Studies, Ecological Studies, Meteorology, Solid-State Physics, Geology, Radiation Effects, Theoretical Chemistry, Analytical Chemistry, Crystal Structure, Spectroscopy, Thermodynamics, Chemical Kinetics, Hazards Evaluation, Liquid-State Studies, Cryogenics, Environmental Stream Pollution, and Site Selection, the following provision may be substituted for the last sentence of Article B–III.)

"In order that public disclosure of such information will not adversely affect the patent interest of the Commission, such information shall be withheld from public disclosure if it discloses an invention, or discovery which shall be promptly reported to the Commission, and in such case, it shall be withheld for a period of four (4) months after submission of the information to the Commission for patent review and possible patent application, unless the Commission approves earlier release."

ARTICLE B–IV—DISCLOSURE OF INFORMATION

Insert § 9–7.5004–22.

ATICLE B–V RESPONSIBILITY FOR THE WORK

(a) The Contractor is solely responsible for the conduct of the work.

(b) In instances where the carrying out of the contract work involves a Commission license, the provisions of the pertinent license shall prevail over any inconsistent provisions of this contract.

ARTICLE B–VI—FELLOWSHIPS

The Contractor agrees that, unless the Commission shall give its prior written approval, the Contractor shall not use any of the funds provided by the Commission under this contract to pay the stipend of any appointment for which commensurate services are not rendered under this contract or to pay any part of the stipend of a fellowship of any kind.

ARTICLE B–VII—WRITTEN MATERIAL

(a) The Contractor hereby grants to the Government a royalty-free, nonexclusive, irrevocable license to reproduce, translate, publish, use and dispose of, and to authorize others to do so, all copyrightable material produced or composed or delivered to the Government or its designees under this contract, including work not first produced or composed by the Contractor in the course of performance under this contract but incorporated in the material produced or composed or delivered under this contract (but only to the extent that the Contractor now has, or prior to final settlement of the contract may have, the right to grant such license to such previously produced or composed work without becoming liable to pay compensation to others solely because of such grant).

(b) The Contractor agrees that except as the Commission may otherwise specifically authorize in writing, the Contractor will not include in any report or other material delivered under this contract, or in any published material relating to the work under this contract, any copyrighted material owned by others which such owners have not consented to have so included.

(c) The Commission will not publish in advance of the Contractor's publication without prior consultation with the Contractor.

ARTICLE B–VIII—PATENTS

Insert § 9–9.5003 modified by deleting paragraphs (d) and (e) and substituting therefor the following paragraph (d):

"(d) Except as otherwise authorized in writing by the Commission, the Contractor will insert in all subcontracts and purchase orders other than purchase orders for standard commercial items, provisions making this article applicable to the subcontract or purchase order. Except as otherwise authorized in writing by the Commission, the Contractor will insert in purchase orders for standard commercial items a provision indemnifying the Government against liability for use of any invention or discovery and for the infringement of any Letters Patent arising by reason of the purchase, use, or disposal by or for the account of the Government of items manufactured or supplied under the purchase order."

ARTICLE B–IX—PROPERTY ITEMS

(a) Except as otherwise provided in this paragraph (a) and paragraph (b) of this Article B–IX, title to all material, supplies, and equipment purchased or otherwise acquired by the Contractor in the performance of its research activities shall be and remain in the Contractor. Said materials, supplies, and equipment shall be used for the benefit of research under this contract and any extensions or successor contracts hereto: *And provided*, There is no interference with said research, shall be made available for use by investigators working on any Federal research agreement at the same location. Subject to these priorities, the materials, supplies, and equipment may be used as the Contractor wishes. Except as otherwise agreed in writing, title to any items of property listed as "Government property" shall pass directly to the Government; such property shall be subject to paragraphs (b), (c), (d), (e), and (f) of this Article B–IX.

(b) Subject to the mutual agreement of the Commission and the Contractor, the Government may furnish the Contractor items of equipment, materials, supplies, or facilities for use by the Contractor in the performance of the contract work; title to these items shall remain in the Government unless otherwise agreed in writing. Such items of property and the items of property listed elsewhere in this contract as Government property, are hereinafter referred to as "Government property." Title to Government property shall not be affected by the incorporation or attachment thereof to any property not owned by the Government nor shall any such property, or any part thereof, be or become a fixture or lose its identity as personalty by reason of affixation to any realty.

(c) To the extent practicable, the Contractor shall cause all items of Government property to be suitably marked with an identifying mark or symbol indicating that the items are the property of the Government. The Contractor shall maintain at all times and in a manner satisfactory to the Commission records showing the use and disposition of Government property. Such records shall be subject to Commission inspection at all reasonable times and the Commission shall be all reasonable times have access to the premises wherein any items of Government property are located. Unless otherwise authorized in writing by the Commission, the Contractor shall use Government property only for the purposes of this contract: *Provided, however*, That the Contractor is hereby authorized to use items of equipment constituting Government property for other Federal research agreements to the extent such use (1) does not interfere with its work under this contract, (2) is not prohibited by provisions of the other Federal agreements, and (3) is promptly reported by the Contractor to the Commission under this contract.

(d) The Contractor shall promptly notify the Commission of any loss or destruction of or damage to Government property. It is understood that the Contractor shall not be liable for any such loss, destruction, or damage, unless same results from wilful misconduct or lack of good faith on the part of any corporate officer of the Contractor, or of one or more of the Contractor's representatives having supervision or direction of all or substantially all of the activities under this contract. If the Contractor is liable for any such loss, destruction, or damage, it shall promptly account therefor to the satisfaction of the Commission; if the Contractor is not liable therefor, and is indemnified, reimbursed, or otherwise compensated for such loss, destruction, or damage, it shall promptly account therefor to the satisfaction of the Commission.

(e) With the written approval of the Commission, the Contractor may sell, transfer, or otherwise dispose of items of Government property to such parties and upon such terms as so approved, or itself acquire title to items of Government property upon such terms as may mutually agreed upon in writing by the Contractor and the Commission. The proceeds of any such disposition, and any agreed price of any such Contractor acquisition, shall be paid by the Contractor to the Government, or credited on account of Commission payments to be made under this contract, as the Commission may direct. Subject to the other provisions of this contract, the Contractor shall deliver Government property to the Commission upon request (suitably packed and shipped at the Government's expense).

(f) The Contractor shall utilize for the benefit of the work under this contract such items of property available to the Contractor by reason of its activities under other Federal research agreements as are appropriate for utilization under this contract pursuant to the provisions of the pertinent Federal agreements.

ARTICLE B–X—TERMINATION FOR CONVENIENCE OF THE GOVERNMENT

Insert FPR 1–8.704–1.

ARTICLE B–XI—PAYMENTS

(a) The Commission shall make payments to the Contractor with respect to the amount of consideration perscribed in Article III of this contract as follows:

(1) A maximum of 45 percent of the estimated AEC Support Cost as set forth in Article A–III of this contract following execution of this contract (and following the effectuation of each extended period).

(2) A maximum of an additional 45 percent of the estimated AEC Support Cost as set forth in Article A–III of this contract upon receipt of a request or requests from the Contractor evidencing that the amount requested is then required in connection with the work under the contract.

NOTE: Subparagraphs (1) and (2) of this paragraph (a) may be revised, as deemed appropriate by the field office, in accordance with § 9–4.5112–3(a).

(3) If, following submission of an annual progress report, the contract is to be extended for an additional period of performance, an additional payment may be made at the time of execution of the extension which, when added to the payments already made under (1) and (2) above for the expiring period, will not exceed the currently estimated AEC Support Cost for the expiring period; a concluding payment for the pertinent period, if appropriate, may be made following submission of a certified statement showing the AEC Support Cost and evidencing the Contractor's performance under the contract.

(4) If the contract is not to be extended, the final payment of the consideration provided for in Article III of this contract shall be made following submission by the Contractor of a final report required by Article B–XXI, in form and content satisfactory to the Commission, and submission of a certified statement showing the AEC Support Cost and evidencing the Contractor's performance under the contract.

(b) The payments made pursuant to paragraph (a) above shall not prejudice or otherwise affect adversely any of the Government's rights under the contract. For purposes of settlement in the event of termination pursuant to Article B–X hereof, these payments shall not be construed as evidentiary, and any excess payment in the light of Article B–X shall be promptly returned to the Commission.

(c) The Commission, at its option, may invoke the following with respect to any amount of the contract consideration remaining to be paid at any given time:

(1) The Commission shall issue a letter of credit as provided for by Treasury Department Circular No. 1075, Revised, of February 13, 1967, under which payments to the Contractor with respect to the amount of consideration provided for in Article III of this contract will be made. The Contractor agrees that the first ninety (90) percent of the estimated AEC Support Cost as set forth in Article A–III of the contract will be under the letter of credit and will be subject to the submission by the Contractor of a Payment Voucher on Letter of Credit (TUS 5401), in accordance with procedures

based upon Treasury Department Circular No. 1075, Revised, of February 13, 1967, which are agreed to by the parties. Following submission by the Contractor of a final report provided for in Article B–XXI, in form and content satisfactory to the Commission, and submission of a certified statement showing the total expenditures and evidencing the Contractor's performance under the contract, and upon submission by the Contractor to the Commission of such invoices or vouchers as are satisfactory to the Commission, the Commission shall pay the Contractor the concluding payment of the consideration provided for in Article III of this contract, or said concluding payment will be included under the letter of credit and will be subject to submission by the Contractor of a Payment Voucher on Letter of Credit, in accordance with the procedure described above. If, following submission of an annual report, the contract is extended for an additional period of performance, an additional payment may similarly be made at the time of execution of the extension which, when added to the payments already made for the expiring period, will not exceed the currently estimated AEC Support Cost for the expiring period; a concluding payment for the pertinent period if appropriate, may be made following submission of a certified statement showing the AEC Support Cost for the pertinent period and evidencing the Contractor's performance under the contract.

(2) The Commission reserves the right to increase, decrease, or cancel the amount covered by the letter of credit, provided that such action is required because of a change in the amount of consideration provided for in Article III or is taken pursuant to subparagraph (c) (1) of this article. The issuance and use of a letter of credit and receipt of funds pursuant thereto shall not prejudice or otherwise adversely affect any of the Government's rights under the contract.

ARTICLE B–XII—EQUAL OPPORTUNITY

Insert FPR 1–12.803–2.

ARTICLE B–XIII—CONVICT LABOR

Insert FPR 1–12.203.

ARTICLE B–XIV—CONTRACT WORK HOURS STANDARDS ACT—OVERTIME COMPENSATION

Insert Article set forth in FPR 1–12.303.

ARTICLE B–XV—DISPUTES

Insert FPR 1–7.101–12, modified by substituting "Commission" for "Secretary." (See § 9–7.5004–3.)

ARTICLE B–XVI—OFFICIALS NOT TO BENEFIT

Insert FPR 1–7.101–19.

ARTICLE B–XVII—COVENANT AGAINST CONTINGENT FEES

Insert FPR 1–1.503.

ARTICLE B–XVIII—EXAMINATION OF RECORDS

Insert FPR 1–7.101–10.

ARTICLE B–XIX—BUY AMERICAN ACT

Insert FPR 1–7.101–14, modified in accordance with § 9–7.5004–16.

ARTICLE B–XX—ASSIGNMENT; SUBCONTRACTING

Neither this contract nor any interest therein nor claim thereunder shall be assigned or transferred by the Contractor, except as expressly authorized in writing by the Commission. The Contractor shall not subcontract any research or development work under this contract, except as expressly authorized in writing by the Commission.

ARTICLE B–XXI—REPORTS AND RENEWAL PROPOSALS

The Contractor shall furnish six (6) copies of the following reports and renewal proposals, if any, addressed to appropriate Field Office.

PROGRESS REPORT

The progress report shall briefly describe the scope of investigations undertaken and the significant results obtained. It shall also indicate compliance with the contract requirements and any failures to comply. The report shall indicate the approximate percentage of time or effort which the principal investigator(s) has devoted to the project since the beginning of the current term of the agreement and indicate the amount of effort which is expected to be devoted during the remainder of the current term. Technical reports and articles prepared for publication shall be listed with bibliographic references. Reprints or preprints of all such material shall be appended and material contained therein need not be duplicated in the report. Progress reports shall be submitted approximately 3 months in advance of the expiration of the current contract term and shall give the Contractor's best estimate of the probable events and occurrences in regard to the remainder of the current contract term. Except as the Commission may otherwise request, no further progress report will be required for any contract year unless there has been a significant change in scientific results or contract compliance between the latest progress report by the Contractor and its actual experience; this shall be reported promptly.

FINAL REPORT

Upon termination or expiration of the total period of performance, the contractor shall submit, promptly, a summary of its activities for the entire period, including a list of publications issued during the total term of the contract and copies of any reprints not previously submitted, as well as a comprehensive evaluation of progress in the area of research supported by the contract.

RENEWAL PROPOSALS

A renewal proposal, if any, shall be submitted along with the technical progress report, and each of the two documents shall be separately bound.

REPORT OF EQUIPMENT PURCHASED OR FABRICATED

The Contractor shall itemize equipment having a useful life expectancy in excess of 1 year and an acquisition cost in excess of $100 purchased or fabricated by the Contractor when title to such equipment is vested in the Contractor pursuant to the Grant Act (Public Law 85–934)—omit any items appearing in Article V—and submit a report thereof within 3 months after the expiration of the contract year specified in Article II. Where the cost of individual pieces of equipment exceeds $1,000, they will be listed individually. Where individual items cost $100 to $1,000, they will also be individually listed to the extent practical or grouped in general categories, such as "electronic equipment" or "six motors," with the total dollar amount of such category. The cost of purchased items shall be determined by the actual invoice cost of such items, but the cost of fabricated items may be established by engineering estimates. This report may be submitted in conjunction with the certified statement required by Article B–XXVII of this contract.

ARTICLE B–XXII—FOREIGN TRAVEL

Foreign travel shall be subject to the prior approval of the Contracting Officer.

ARTICLE B–XXIII—PRIORITIES, ALLOCATIONS, AND ALLOTMENTS

Insert § 9–7.5006–52.

ARTICLE B–XXIV—UTILIZATION OF CONCERNS IN LABOR SURPLUS AREAS

Insert the clause set forth in FPR 1–1.805–3(a) under the conditions and in the manner prescribed in that section.

ARTICLE B–XXV—UTILIZATION OF SMALL BUSINESS CONCERNS

Insert the clause set forth in FPR 1–1.710–3(a) under the conditions and in the manner prescribed in that section.

ARTICLE B–XXVI—SOVIET-BLOC CONTROLS

Insert the clause set forth in § 9–7.5006–53.

ARTICLE B–XXVII—DETERMINATION OF SUPPORT COSTS

(a) The term "Support Cost" as used in this contract means the Commission's share [1] of the sum of costs incurred by the Contractor for items included under Article A–II(a) of Appendix A which are in furtherance of the work hereunder, which are incurred in accordance with the provisions of this contract, and which are reported to the AEC in accordance with (b) below. The term "Cumulative Support Cost" as used in this contract means the total of the Support Cost incurred during the initial contract period plus any extension periods of the contract.

(b) Within 3 months after the end of each contract period set forth in Appendix A, and within 3 months after the termination or expiration of the total period of performance, the Contractor shall furnish a certified statement, executed by an official of the Contractor and also signed by the principal investigator, showing the Contractor's cost, and evidencing its performance under the contract, during the contract term just completed. The statement shall show all costs incurred during the pertinent contract term set forth in Appendix A for items under Article A–II(a) of Appendix A, including the Contractor's share, if any, of such costs, and show the extent of the Contractor's contribution of items listed under Article A–II(b) (1) of Appendix A. Costs included in the certified statement may include the following: Expenditures of cash; the cost of material and supplies transferred from stores inventory; and the amount due the Contractor for indirect costs in accordance with the rate and factor or factors shown in Appendix A of the contract for the pertinent contract period. The costs for the pertinent contract period shall be consistent with the principles of the Bureau of the Budget Circular A–21, as constituted on the effective commencement date of said period. The certified statement shall be in the form set forth in Appendix C.

(c) The Contractor understands that the Commission expects to rely on this certified statement for determining the Support Cost for the pertinent contract period. With respect to any period in which proportionate cost-sharing is applicable, the Support Cost for the pertinent period will be determined by applying the percentage figure included in Article A–III for the pertinent period, to the certified cost of items included under Article A–II(a) incurred during the pertinent contract period. All charges to the AEC shall be

[1] In those cases in which there is no proportionate sharing of costs, the Commission's "share" will be 100 percent. With respect to any period in which proportionate cost-sharing is applicable pursuant to Article A–III, it is understood that the Support Cost for that specified period will equal the stipulated percent of the sum of costs incurred by the Contractor during the stated period for items under A–II(a) of Appendix A, not to exceed 110 percent of the estimated Support Cost set forth in Article A–III for that contract period except as otherwise approved by the AEC.

subject to the approval requirements of this contract. The Contractor is expected to maintain auditable records as contemplated by Article B–II(c) to substantiate the costs incurred for items under Article A–II(a) and to show the extent of the Contractor's contribution of items listed under Article A–II(b)(i).

ARTICLE B–XXVIII—ADDITIONAL APPROVALS

(a) In addition to such approvals as are specifically required by other provisions of this contract, the Contractor shall obtain the Commission's approval for:

(1) Acquisition of:

(i) An item of equipment, not itemized in Appendix A, involving an acquisition cost in excess of $1,000 or 2 percent of the total estimated cost specified in A–III of Appendix A, whichever is greater, unless such equipment is merely a different model of an item listed in Appendix A. (When plant and equipment funds are provided for the acquisition of Government property, the Headquarters Program Divisions may require, in specific cases, that such funds be used only for acquiring the equipment designated in Article V, unless prior AEC approval has been obtained.)

(ii) Any equipment not itemized in Appendix A, the acquisition cost of which will cause the equipment dollar level shown in Article A–II(a) of Appendix A to be increased by $500 or more. (If plant and equipment funds are provided for the acquisition of equipment, with title to be vested in the Government, the total cost of such equipment acquisitions shall not exceed the amount budgeted for such equipment unless prior AEC approval has been obtained.)

(2) Purchase of any general-purpose equipment, such as office furniture or air conditioning, not specifically provided for in Appendix A, except that purchased without cost to the Commission.

(3) Incurring costs during the pertinent contract period set forth in Appendix A, for items set forth in Article A–II(a), in excess of 110 percent of the estimated cost specified in Article A–III for the pertinent contract period; charges to the Commission for any such costs incurred with the approval of the Commission shall also be subject to the limitations of Article III.

(4) A change of the principal investigator, or continuation of the research work without direction by an approved principal investigator. The principal investigator may increase or decrease the amount of effort which he devotes to the project without obtaining Commission approval; however, the principal investigator shall consult with the appropriate AEC Headquarters program representatives if he plans to, or becomes aware that he will, devote substantially less effort to the work than anticipated in Article A–I. The purpose of such consultation will be to determine what effect, if any, the anticipated change will have on the research work.

(b) No change in the phenomenon or phenomena under study, i.e., broad category of the research under this contract, shall be made without the specific written approval of the Commission; ordinarily, such changes, if approved by the Commission, will be accomplished through a new contract or a mutually agreed-to modification. The Contractor may change the specific objectives in the research work described in this contract, provided it gives the Commission prompt notification of such changes; and the Contractor may continue to follow the new objectives while the Commission determines whether it wishes to continue the program under the changed approach.

APPENDIX C

U.S. ATOMIC ENERGY COMMISSION

Statement of Costs

1. Name and address of Contractor:_____

_____

2. Contract number:_____

3. Beginning and ending date of pertinent contract period:_____

_____

4. Costs incurred during the pertinent contract period. [List only those costs which are to be reimbursed by the AEC or proportionately shared by the parties in accordance with Article A–II(a) and Article A–III.]

Cost categories [1]	*Amount*
a. *Salaries and wages*_____ [List personnel included in Article A–II(a) of Appendix A in same detail as shown in the Contractor's payroll distribution or time and attendance records.]	$_____
b. *Supplies and materials*_____ [Show in same detail as in Appendix A.]	_____
c. *Equipment*_____ [List separately the cost of each piece of equipment separately listed in Appendix A to the contract or for which separate approval was obtained from AEC.]	_____
d. *Publications*_____	_____
e. *Travel*_____	_____
f. *Other*_____ [List separately each type of cost included in this category.]	_____
g. *Total Direct Expenditures*_____	$_____
h. *Indirect Charges*_____ [Indicate percent and expenditures to which percent is applied.]	_____
5. *Total Costs* for items under Article A–II(a) for pertinent contract period_____	_____
6. *Support Cost* for the pertinent contract period set forth in Appendix A, as defined in Article B–XXVII of the contract, chargeable to AEC for the pertinent contract period (percent of Total Costs using percent shown in Article A–III of Appendix A for pertinent period of contract)_____	_____
7. *Cumulative Support Cost* (Support Cost under this statement plus Support Cost for previous periods of the contract)_____	_____
8. *Accumulated Support Ceiling* in Article III of the contract_____	_____
9. Provide information regarding contributions by the Contractor of items listed in Article A–II (b) of Appendix A during pertinent contract period. State the extent of the Contractor's actual contribution; the measure of such contributions should be in the same terms as the Contractor's commitment under Article A–II(b), e.g., time, dollar, etc_____	_____

I hereby certify that this report is true and correct to the best of my knowledge and belief and that the costs listed herein were incurred in connection with the performance of the research provided for under this contract and in accordance with the terms and conditions set forth therein.

_____
(Name and title of principal investigator)

_____ _____
(Signature) (Date)

_____
(Name and title of business officer)

_____ _____
(Signature) (Date)

[1] The listing of categories should be consistent with the itemization in Appendix A.

§ 9–16.5002–9 Outline of cost-type contract for research and development with educational institutions.

Contract No. _____

This contract, entered into the _____ day of _____, 19__, effective as of the ____ day of _____, 19__, by and between the United States of America (hereinafter referred to as the "Government") as represented by the U.S. Atomic Energy Commission (hereinafter referred to as the "Commission"), and _____ (hereinafter referred to as the "Contractor"). Witnesseth that:

Whereas, the Commission desires to have the Contractor perform certain research work, as hereinafter provided; and

Whereas, the contract is authorized by law, including the Atomic Energy Act of 1954. [Additional Whereas clauses may be added as appropriate.]

Now therefore, the parties agree as follows:

ARTICLE I—THE RESEARCH TO BE PERFORMED

The Contractor shall to the best of its ability furnish personnel, facilities, equipment, materials, supplies and services (except such as are furnished by the Government) necessary for the performance of the research provided for in Appendix "A" attached hereto and made a part hereof and shall perform the research and report thereon pursuant to the provisions of this contract.

ARTICLE II—THE PERIOD OF PERFORMANCE

The period for performance under this contract shall commence on _____, 19__, and expire on _____: *Provided however*, That this period may be extended for additional periods by written agreement of the parties.

When authorized or directed by the appropriate Headquarters Program Division, one of the following alternative Articles II may be substituted for the above:

ARTICLE II—THE PERIOD OF PERFORMANCE

ALTERNATE A

It is presently estimated that the term of the contract [as modified by Modification No. _____] will run through _____ 19__, and the Contractor agrees based on this estimate to submit its recommendations each year respecting the work program for the subsequent year, as elsewhere in this contract provided for. Neither party guarantees the correctness of this estimate, and, in any event, it is agreed that the period of performance will expire at the end of _____ 19__ [note that this will be a yearly period], or on any anniversary of said date during the said estimated term, if the parties do not mutually agree in writing to extend the period of performance for an additional yearly period.

ALTERNATE B

It is presently estimated that the term of the contract [as modified by Modification No. _____] will run through _____ 19__, and the Contractor agrees based on

this estimate to submit its recommendations each year respecting the work program for the subsequent year, as elsewhere in this contract provided for. Neither party guarantees the correctness of this estimate, and, in any event, it is agreed that the period of performance will expire at the end of _____, 19__ [note that this will be a yearly period], or on any anniversary of said date during the said estimated term, unless the Commission, at its option, by written notice to the Contractor prior to the expiration of the pertinent period, extends the period of performance for an additional yearly period.

ARTICLE III—CONSIDERATION

Payment for allowable costs, as hereinafter provided, shall constitute complete compensation to the Contractor for the performance of the research described in Article I [Note A].

NOTE A: If and as an individual transaction requires, either or both of the following features will be incorporated in the contract:

a. Specific mention of the contributions to be made by the Contractor, with the contract provisions indicating that the contributions are to be measured against the allowable cost system or otherwise pursuant to a defined yardstick.

b. Specific exclusion from allowable costs of the particular items that the parties agree shall not be reimbursable to the Contractor.

ARTICLE IV—OBLIGATION OF FUNDS, ESTIMATES OF COST

Insert § 9-7.5006-14, appropriately revised to reflect the no-fee position of educational institutions.

ARTICLE V—KEY PERSONNEL

The key personnel referred to in Article _____, Appendix "B" are as follows:

_____

_____

ARTICLE VI—GENERAL CONTRACT PROVISIONS

Appendix "B," attached hereto and made a part hereof, sets forth additional General Contract Provisions of this contract.

In witness whereof, the parties have executed this contract.

UNITED STATES OF AMERICA

By _____

_____

(Title)

UNITED STATES ATOMIC ENERGY COMMISSION

_____

(Contractor)

_____ By _____

_____

(Title)

I, _____, certify that I
(Attester)

am the _____ of the Con-
(Title)

tractor named under this contract; that _____ who signed this
(Signatory)

contract on behalf of said Contractor who was then _____ of said
(Title)

Contractor; that this contract was duly signed for and on behalf of said Contractor by authority of its governing body and is within the scope of its legal powers.

In witness whereof, I have hereunto affixed my hand and the seal of said Contractor.

[SEAL] _____

APPENDIX A

Contractor: _____

Contract No. _____

I. *Research to be performed.* Insert description of research activity.

II. *Equipment title to which is to be vested in the Contractor.* Title to the following equipment shall vest and remain in the Contractor. Title to additional items of equipment may be vested in the Contractor if approved in writing by the Contracting Officer. [List all equipment to be purchased or fabricated by the Contractor, where it is known at the time the contract is executed that title to such equipment will vest in and remain in the Contractor. Where the estimated cost of individual pieces of equipment exceeds $1,000, they will be listed individually. Where individual pieces cost between $100 and $1,000, they shall also be listed individually to the extent practicable, or grouped to general categories, such as "electronic equipment" or "six motors," with the total dollar amount of such category. Insert the word "none" if title to all property is to be vested in the Government.]

III. *Reports.* Set forth reporting and report distribution requirements, including reports of equipment having a useful life expectancy in excess of 1 year and an acquisition cost in excess of $100 purchased or fabricated by the Contractor where title is to be vested in the Contractor. Where the cost of individual pieces of equipment exceeds $1,000 they will be listed individually. Where individual items cost $100 to $1,000, they will also be individually listed to the extent practicable, or grouped in general categories, such as "electronic equipment" or "six motors," with the total dollar amount of such category. The cost of purchased items shall be determined by the actual invoice cost of such items, but the cost of fabricated items may be established by engineering estimates. Reproduction of final reports shall be performed consistent with Government Printing and Binding Regulations.

APPENDIX B

Contractor: _____

Contract No. _____

General Contract Provisions

ARTICLE B-1—DEFINITIONS

Insert § 9-7.5005-4.

ARTICLE B-2—ALLOWABLE COSTS

Insert § 9-7.5006-11.

Provisional overhead rate may be established by an appropriate paragraph (c) in lieu of the paragraph (c) entitled "Predetermined Overhead Rates." If any stipulated salary support amounts for professorial staff members are established in accordance with § 9-4.5106-3a, the stipulated amounts, along with any limitations or requirements on the use of such stipulated amounts (see § 9-4.5106-3a(c)) should be provided for in this article, or in another article or separate document referenced in this article.

ARTICLE B-3—STIPENDS AND FELLOWSHIPS

The Contractor agrees that, unless the Commission shall give its prior written approval, the Contractor shall not use any of the funds supplied by the Commission under this contract to pay the stipend of any appointment for which commensurate services are not rendered under this contract or to pay any part of the stipend of a fellowship of any kind.

ARTICLE B-4—ACCOUNTS, RECORDS, INSPECTION AND REPORTS

(a) *Accounts.* The Contractor shall maintain accounts, records, documents, and other evidence showing and supporting [Note A] all allowable costs incurred, revenues or other applicable credits, and the receipt, use, and disposition of all Government property coming into the possession of the Contractor under this contract. The system of accounts employed by the Contractor shall be satisfactory to the Commission and in accordance with generally accepted accounting principles consistently applied and consistent with the requirements of BoB Circular No. A-21 as constituted on the effective commencement date of the contract period.

NOTE A: When the Contractor is making a contribution as provided for in subparagraph (a) of Note A to Article III—Consideration—substitute "the total project costs of the type allowable under Article B-2 above, including the Contractor's contribution," for the words "all allowable costs."

(b) *Inspection and audit of accounts and records.* All books of account and records relating to this contract shall be subject to inspection and audit by the Commission at all reasonable times, before and during the period of retention provided for in (d) below, and the Contractor shall afford the Commission proper facilities for such inspection and audit.

(c) *Audit of subcontractors' records.* The Contractor also agrees with respect to any subcontracts (including lump-sum or unit-price subcontracts or purchase orders) where, under the terms of the subcontract, costs incurred are a factor in determining the amount payable to the subcontractor or vendor of any tier, that such subcontracts will permit the conduct of an audit by the Government and by the Contractor of the cost of the subcontract in a manner satisfactory to the Contracting Officer, or in the case of lower tier subcontracts have the audit conducted by the next higher tier subcontractor or vendor in a manner satisfactory to the Contractor and the Contracting Officer, except where the Contracting Officer elects to waive such audit or to approve other arrangements for the conduct of the audit. The Government agrees to perform such audits, to the extent it deems audit necessary, provided the Contractor gives the Contracting Officer timely notice in writing of the fact that it is unable to perform such audit with its own forces.

(d) *Disposition of records.* Except as agreed upon by the Government, and the Contractor, all financial and cost reports, books of account and supporting documents, and other data evidencing cost allowable and revenues and other applicable credits under this contract in the possession of the Contractor relating to this contract shall be preserved by the Contractor for a period of three (3) years after final payment under this contract or otherwise disposed of in such manner as may be agreed upon by the Government and the Contractor.

(e) *Reports.* The Contractor shall make progress and other reports in such manner and at such times as specified in Appendix A. In addition, the Contractor shall furnish such other progress reports and schedules, financial and cost reports, and other reports concerning the work under this contract as the Contracting Officer may from time to time require.

(f) *Inspections.* The Commission shall have the right to inspect the work and activities of the Contractor under this contract, in such manner and at all reasonable times as it shall deem appropriate.

(g) *Subcontracts.* The Contractor further agrees to require the inclusion of provisions similar to those in paragraphs (a) through this paragraph (g) of this clause in all subcontracts (including lump-sum or unit-price subcontracts or purchase orders) of any tier entered into hereunder where, under the terms of the subcontract, costs incurred are a factor in determining the amount payable to the subcontractor.

(h) *Conferences.* The Contractor shall confer with the Commission at mutually agreeable times and places in regard to the Contractor's activities under the contract.

ARTICLE B-5—DISCLOSURE OF INFORMATION

Insert § 9-7.5004-22.

ARTICLE B–6—PUBLICATION OF RESULTS

(a) Research results obtained under this contract shall be made available to all through normal and accepted channels without restriction except that no restricted data as defined in the Atomic Energy Act of 1954 or other classified information shall be disclosed to unauthorized persons. Such publication shall indicate that the research was supported by the Commission. A copy of each article submitted by the Contractor for publication shall be promptly sent to the Commission. The Contractor shall also inform the Commission when the article is published and furnish a copy of the article as finally published.

(b) It is recognized that during the course of the work hereunder or subsequent thereto, the Contractor, its employees, or its subcontractors may, from time to time, desire to publish, within the limit of security requirements, information regarding technical or scientific developments arising in the course of the contract. In order that public disclosure of such information will not adversely affect the patent interest of the Commission, patent approval for release shall be secured from the Commission prior to any such publication. Note A.

NOTE A: In contracts for theoretical physics, high energy physics, medium energy and neutron physics, mathematics, computer techniques and programing, medical studies, biological studies, ecological studies, meteorology, solid state physics, geology, radiation effects, theoretical chemistry, analytical chemistry, crystal structure, spectroscopy, thermodynamics, chemical kinetics, hazards evaluation, liquid state studies, cryogenics, environmental stream pollution, and site selection the following provision may be substituted for last sentence of Article B–6 above:

"In order that public disclosure of such information will not adversely affect the patent interest of the Commission, such information shall be withheld from public disclosure if it discloses an invention, or discovery which shall be promptly reported to the Commission, and in such case, it shall be withheld for a period of four (4) months after submission of the information to the Commission for patent review and possible patent application, unless the Commission approves earlier release.

ARTICLE B–7—PATENTS

Insert § 9–9.5003 modified by deleting paragraphs (d) and (e) and substituting therefor the following paragraph:

(d) Except as otherwise authorized in writing by the Commission the Contractor will insert in all subcontracts and purchase orders, other than purchase orders for standard commercial supplies, provisions making this article applicable to the subcontract or the purchase order. Except as otherwise authorized in writing by the Commission, the Contractor will insert in purchase orders for standard commercial supplies a provision indemnifying the Government against liability for the use of any invention or discovery and for the infringement of any Letters Patent arising by reason of the purchase, use or disposal by or for the account of the Government of items manufactured or supplied under the purchase order.

ARTICLE B–8—WRITTEN MATERIAL

(a) The Contractor hereby grants to the Government a royalty-free, nonexclusive, irrevocable license to reproduce, translate, publish, use and dispose of, and to authorize others to do so, all copyrightable material produced or composed or delivered to the Government or its designees under this contract, including work not first produced or composed by the Contractor in the course of performance under this contract but incorporated in the material produced or composed or delivered under this contract (but only to the extent that the Contractor now has, or prior to final settlement of the contract may have, the right to grant such license to such previously produced or composed work without becoming liable to pay compensation to others solely because of such grant).

(b) The Contractor agrees that, except as the Commission may otherwise specifically authorize in writing, the Contractor will not include in any report or other material delivered under this contract, or in any published material relating to the work under this contract, any copyrighted material owned by others which such owners have not consented to have so included.

(c) The Commission will not publish in advance of the Contractor's publication without prior consultation with the Contractor.

ARTICLE B–9—ASSIGNMENT

Neither this contract nor any interest therein nor claim thereunder shall be assigned or transferred by the Contractor, except as expressly authorized in writing by the Commission.

ARTICLE B–10—TERMINATION FOR THE CONVENIENCE OF THE GOVERNMENT

Insert FPR 1–8.704–1.

ARTICLE B–11—FOREIGN TRAVEL

Foreign travel shall be subject to the prior approval of the Contracting Officer.

ARTICLE B–12—CONVICT LABOR

Insert FPR 1–12.203.

ARTICLE B–13—CONVENANT AGAINST CONTINGENT FEES

Insert § 9–7.5004–2.

ARTICLE B–14—DISPUTES

Insert FPR 1–7.101–12, modified by substituting "Commission" for "Secretary." (See § 9–7.5004–3.)

ARTICLE B–15—EQUAL OPPORTUNITY

Insert FPR 1–7.101–18.

ARTICLE B–16—OFFICIALS NOT TO BENEFIT

Insert FPR 1–7.101–19.

ARTICLE B–17—SAFETY, HEALTH, AND FIRE PROTECTION

When applicable under criteria set forth in note A of § 9–7.5006–47 insert the clause set forth in § 9–7.5006–47 modified by omission of the last sentence.

ARTICLE B–18—PERMITS

Insert § 9–7.5006–48 modified by substituting "Except as the parties hereto may otherwise mutually agree" for "Except as otherwise directed by the Contracting Officer."

ARTICLE B–19—EXAMINATION OF RECORDS

Insert § 9–7.5004–10.

ARTICLE B–20—CONTRACT WORK HOURS STANDARDS ACT—OVERTIME COMPENSATION

Insert Article in FPR 1–12.303 with the modification necessary if § 9–12.103–51 applies.

ARTICLE B–21—BUY AMERICAN ACT

Insert FPR 1–7.101–14, modified in accordance with § 9–7.5004–16.

ARTICLE B–22—LITIGATION AND CLAIMS

(a) *Initiation of litigation.* If the Government requires the Contractor to initiate litigation, including proceedings before administrative agencies, in connection with this contract, the Contractor shall proceed with the litigation in good faith as directed from time to time by the Contracting Officer: *Provided, however,* That in those instances in which such an assignment would be legally effective and enable the litigation or proceeding to be instituted and carried on for the Government's purposes the Contractor shall have the right to assign the cause to the Government for the latter's initiation or prosecution. In the latter case the Contractor shall cooperate fully with the Government and provide such assistance as the Government shall request in the prosecution of the litigation.

(b) *Defense and settlement of claims.* The Contractor shall give the Contracting Officer immediate notice in writing (1) of any action, including any proceeding before an administrative agency, filed against the Contractor, arising out of the performance of this contract and which would, if successful, constitute a directly allowable cost and (2) of any claim against the Contractor the cost and expense of which is an allowable cost under the article entitled "Allowable Costs." Except as otherwise directed by the Contracting Officer, in writing, the Contractor shall furnish immediately to the Contracting Officer copies of all pertinent papers received by the Contractor with respect to such action of claims. To the extent not in conflict with any applicable policy of insurance, the Contractor may, with the Contracting Officer's approval, settle any such action or claim, shall effect at the Contracting Officer's request an assignment and subrogation in favor of the Government of all the Contractor's rights and claims (except those against the Government) arising out of any such action or claims against the Contractor, and, if required by the Contracting Officer, shall authorize representatives of the Government to settle or defend any such action or claim and to represent the Contractor in, or to take charge of, any action: *Provided, however,* To the extent not inconsistent with the Government's interests, the Contractor may, at his own expense, be associated with the representatives of the Government in settlement or defense of any such claim or action. If the settlement or defense of an action or claim against the Contractor is undertaken by the Government, the Contractor shall furnish all reasonable assistance in effecting a settlement or asserting a defense. Where an action against the Contractor is not covered by a policy of insurance, the Contractor shall, with the approval of the Contracting Officer, proceed with the defense of the action in good faith; and in such event the defense of the action shall be at the expense of the Government: *Provided, however,* That the Government shall not be liable for such expense to the extent that it would have been compensated for by insurance which was required by law or by the written direction of the Contracting Officer, but which the Contractor failed to secure through its own fault or negligence. The Contractor's "charitable defense" (i.e., such defense as is available to the Contractor as a matter of law because of the Contractor's eleemosynary character) shall not be asserted if the assertion of such a defense contravenes the Contractor's established policy.

ARTICLE B–23—BONDS AND INSURANCE

Insert § 9–7.5006–51 modified by adding the following sentence: "Nothing herein shall preclude the Contractor from obtaining or maintaining insurance at its own cost and expense to cover any insurable interest it may have in such 'Government-owned property.'"

ARTICLE B–24—DRAWINGS, DESIGNS, SPECIFICATIONS

Insert § 9–7.5006–13 modified by adding the following sentence: "Theses are excepted from the purview of this Article."

ARTICLE B–25—KEY PERSONNEL

It having been determined that the individuals, if any, whose names appear elsewhere in this contract as "key personnel," or other persons mutually acceptable as persons of substantially equal abilities and qualifications are necessary for the successful performance of this contract, the Contractor agrees, insofar as it is able, to make available such employees or persons for the performance of the work under this contract. Whenever for any reason, one or more of the aforementioned employees is unavailable for performance of the work under the contract, the Contractor shall use its best efforts to replace such employee with an employee of substantially equal abilities and qualifications who is satisfactory to the Contracting Officer.

ARTICLE B–26—PROPERTY

(a) *Furnishing of Government property.* The Government reserves the right to furnish any property, and such services as may be mutually agreed upon, for the performance of the work.

(b) *Title to property.* Title to all property furnished by the Government shall remain in the Government except as otherwise provided in this article. Except as otherwise provided by the Contracting Officer, title to all materials, equipment, supplies, and tangible personal property of every kind and description purchased by the Contractor, the cost of which is allowable as a direct item of cost under this contract, shall pass directly from the vendor to the Government. The Government reserves the right to inspect and in lieu of and prior to the Contractor's inspection and acceptance or rejection to accept or reject any item of such property. The Contractor shall make such disposition of rejected items as the Contracting Officer shall direct. Title to other property, the cost of which is reimbursable to the Contractor under this contract, shall pass to and vest in the Government upon: (i) Issuance for use of such property in the performance of this contract, or (ii) commencement of processing or use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by the Government, whichever first occurs. Property furnished by the Government and property purchased or furnished by the Contractor, title to which vests in the Government under this paragraph, are hereinafter referred to as Government property. Title to Government property shall not be affected by the incorporation of the property into or the attachment of it to any property not owned by the Government, nor shall such Government property, or any part thereof, be or become a fixture or lose its identity as personalty by reason of affixation to any realty.

(c) *Identification.* To the extent directed directed by the Contracting Officer, the Contractor shall identify Government property coming into the Contractor's possession or custody by making or segregating in such a way, satisfactory to the Contracting Officer, as shall indicate its ownership by the Government.

(d) *Disposition.* The Contractor shall make such disposition of Government property which has come into the possession or custody of the Contractor under this contract as the Contracting Officer shall direct. When authorized in writing by the Contracting Officer during the progress of the work or upon completion or termination of this contract, the Contractor may, upon such terms and conditions as the Contracting Officer may approve, sell or exchange such property, or acquire such property at a price agreed upon by the Contracting Officer and the Contractor as the fair value thereof. The amount received by the Contractor as the result of any disposition, or the amount of the agreed fair value of any such property acquired by the Contractor, shall be applied in reduction of costs allowable under this contract, or shall be otherwise credited to account of the Government, as the Contracting Officer may direct. Upon completion of the work or the termination of this contract the Contractor shall render an accounting, as prescribed by the Contracting Officer, of all Government property which has come into the possession or custody of the Contractor under this contract.

(e) *Protection of Government property—classified materials.* The Contractor shall take all reasonable precautions, as directed by the Contracting Officer, or in the absence of such directions in accordance with sound practice, to safeguard and protect Government property in the Contractor's possession or custody. Special measures shall be taken by the Contractor in the protection of and accounting for any classified or special materials involved in the performance of this contract, in accordance with the regulations and requirements of the Commission.

(f) *Risk of loss of Government property.* The Contractor shall not be liable for loss or destruction of or damage to Government property in the Contractor's possession unless such loss, destruction or damage results from willful misconduct or lack of good faith on the part of the Contractor's managerial personnel, or unless such loss, destruction or damage results from a failure on the part of the Contractor's managerial personnel, to take all reasonable steps to comply with any appropriate written directives of the Contracting Officer to safeguard such property under paragraph (e) hereof. The term "Contractor's managerial personnel" as used herein means [insert appropriate definition.]

(g) *Steps to be taken in event of loss.* Upon the happening of any loss or destruction of or damage to Government property in the possession or custody of the Contractor, the Contractor shall immediately inform the Contracting Officer of the occasion and extent thereof, shall take all reasonable steps to protect the property remaining, and shall repair or replace the lost, destroyed, or damaged property if and as directed by the Contracting Officer, but shall take no action prejudicial to the right of the Government to recover therefor and shall furnish to the Government, on request, all reasonable assistance in obtaining recovery.

(h) *Government property for Government use only.* Government property shall be used only for the performance of this contract, except as otherwise approved by the Contracting Officer.

ARTICLE B–27—SUBCONTRACTS AND PURCHASE ORDERS

The Contractor shall not subcontract any part of the research and development effort without the written approval of the Contracting Officer. Purchase orders shall not be entered into by the Contractor for items whose purchase is expressly prohibited by the written direction of the Contracting Officer. The Government reserves the right, at any time, to require that the Contractor submit any or all other contractual arrangements, including, but not limited to, subcontracts, purchase orders or classes of purchase orders, for approval, and provide information concerning methods, practices and procedures used or proposed to be used in subcontracting and purchasing. The Contractor shall use methods, practices, or procedures in subcontracting and purchasing which are acceptable to the Contracting Officer. Subcontracts and purchase orders shall be made in the name of the Contractor, shall not bind nor purport to bind the Government, shall not relieve the Contractor of any obligation under this contract (including, among other things, the obligation properly to supervise and coordinate the work of subcontractors) and shall be in such form and contain such provisions as are required by this contract or as the Contracting Officer may prescribe.

ARTICLE B–28—UTILIZATION OF CONCERNS IN LABOR SURPLUS AREAS

Insert the clause set forth in FPR 1–1.805–3(a) under the conditions and in the manner prescribed in that section.

ARTICLE B–29—LABOR SURPLUS AREA SUBCONTRACTING PROGRAM

Insert the clause set forth in FPR 1–1.805–3(b) under the conditions and in the manner prescribed in that section.

ARTICLE B–30—UTILIZATION OF SMALL BUSINESS CONCERNS

Insert the clause set forth in FPR 1–1.710–3(a) under the conditions and in the manner prescribed in that section.

ARTICLE B–31—SMALL BUSINESS SUBCONTRACTING PROGRAM

Insert the clause set forth in FPR 1–1.710–3(b) under the conditions and in the manner prescribed in that section.

ARTICLE B–32—COMMISSION LICENSE

In instances where the carrying out of the contract work involves a Commission license, the provisions of the pertinent license shall prevail over any inconsistent provisions of this contract.

ARTICLE B–33—PAYMENTS

Insert § 9–7.5006–25, modified by substitution of (b) for (c) in last sentence of paragraph (a), omission of paragraph (b) and the words "and any part of the fixed fee which has been withheld pursuant to (b) above or otherwise not paid to the Contractor" in paragraph (d) and relettering of the paragraphs. An additional paragraph should be added to provide for appropriate certification by the Contractor, on payment invoices or vouchers, to meet the requirements of section K of BoB Circular No. A–21.

ARTICLE B–34—PRIORITIES, ALLOCATIONS, AND ALLOTMENTS

Insert § 9–7.5006–52.

ARTICLE B–35—TAXES

(a) The Contractor agrees to notify the Commission of any State or local tax, fee, or charge levied or purported to be levied or purported to be levied on or collected from the Contractor with respect to the contract work or any transaction thereunder and constituting an allowable item of cost if due and payable, but which, in the opinion of the Contractor or under the position of the Commission as communicated to the Contractor, is inapplicable or invalid; and the Contractor further agrees to refrain from paying any such tax, fee, or charge unless authorized by the Commission. Any State or local tax, fee, or charge paid with the approval of the Commission or on the basis of advice from the Commission that such tax, fee, or charge is applicable and valid, and which would otherwise be an allowable item of cost, shall not be disallowed as an item of cost by reason of any subsequent ruling or determination that such tax, fee, or charge was in fact inapplicable or invalid.

(b) The Contractor agrees to take such action as may be required or approved by the Commission to cause any such tax, fee, or charge referred to above to be paid under protest and to take such actions as may be required or approved by the Commission to seek recovery of any payment made, including assignment to the Government or its designee of all rights to an abatement or refund

thereof, and granting permission for the Government to join with the Contractor in any proceeding for the recovery thereof or to sue for recovery in the name of the Contractor. If the Commission directs the Contractor to institute litigation to enjoin the collection of or to recover payment of any such tax, fee, or charge referred to above, or if a claim or suit is filed against the Contractor for a tax, fee, or charge he has refrained from paying in accordance with this Article, [the procedures and requirements of Article _____, "Litigation and Claims," shall apply] [1] and the costs and expenses incurred by the Contractor shall be allowable items of cost, as provided in this contract, together with the amount of any judgment rendered against the Contractor.

(c) The Government shall save the Contractor harmless from penalties and interest incurred through compliance with this article.

ARTICLE B-36—SOVIET-BLOC CONTROLS

Insert the clause set forth in § 9-7.5006-53.

ARTICLE B-37—CONSULTANT OR OTHER COMPARABLE EMPLOYMENT SERVICES OF CONTRACTOR EMPLOYEES

Insert clause set forth in either paragraph (a) or (b) of § 9-7.5006-45 as appropriate.

If a substantial portion of the land or buildings used for the research under the contract are owned or controlled by AEC, add the following Article:

ARTICLE B-38—CONTROLS IN THE NATIONAL INTEREST

Insert the clause set forth in § 9-7.5006-54.

ARTICLE B-39—SOURCE AND SPECIAL NUCLEAR MATERIALS

Source and special nuclear material involved in the performance of the work under this contract shall be obtained and handled in accordance with the Commission's requirements and procedures.

ARTICLE B-40—NUCLEAR REACTOR SAFETY

Insert clause set forth in § 9-7.5006-36 when required by that section.

When the estimated cost of the contract is $250,000 or more add the following article:

ARTICLE B-41—CONDUCT OF EMPLOYEES [2]

The Contractor shall be responsible for maintaining satisfactory standards of employee competency, conduct, and integrity and shall be responsible for taking such disciplinary action with respect to his employees as may be necessary. The Contractor shall establish such standards and procedures as are necessary to implement effectively the provisions set forth in Atomic Energy Commission Procurement Regulations 9-12.54 and such standards and procedures shall be subject to the approval of the Contracting Officer.

ARTICLE B-42—ADDITIONAL APPROVALS

In addition to such approvals as are specifically required by other provisions of this contract, the Contractor shall obtain the Commission's approval for:

(Insert appropriate additional approval requirements in accordance with § 9-4.5112-5.)

§ 9-16.5002-10 Outline of a change order for fixed-price construction contracts.

U.S. ATOMIC ENERGY COMMISSION

(Insert Office and Location)

Modification No. _____
Change Order to Contract No. _____
Date: _____

Name of Contractor: _____
Address: _____

GENTLEMEN:

(1) Reference is made to Clause(s) _____ of the General Provisions to your Contract No. _____, dated _____, for the construction of _____, located at _____

(2) It has been determined that in view of (insert here the reasons for modification of the contract), it is necessary and in the best interest of the Government to modify said contract in certain particulars as follows:

NOTE: Insert here details of the changes, including as appropriate: reference to pertinent portions of existing or added drawings and specifications; change in quantities, together with unit prices if applicable; and the amount of the increase or decrease in contract price, a statement that there is no adjustment in price, or a statement that agreement as to price will be reached at an early date.

(3) It is understood and agreed that on account of the foregoing modification of said contract additional time will (will not) be allowed.

NOTE: If additional time is allowed or if the contract time is decreased because of the change, state definitely the change in time; if agreement as to time has been deferred, include a statement to that effect.

(4) All other terms and conditions of said contract as it heretofore may have been modified shall be and remain the same.

(5) Therefore if the foregoing modification of said contract is satisfactory, please indicate your acceptance in the space provided below and return _____ copies to this office. The extra copy of the modification is your record.

THE UNITED STATES OF AMERICA
By: UNITED STATES ATOMIC ENERGY COMMISSION
By _____
(Contracting Officer)
(or Authorized Representative of Contracting Officer)

The foregoing modification of said contract is hereby accepted.

By _____
(Name of company)
Title _____

§ 9-16.5002-11 Outline of a supplemental agreement for fixed-price construction contracts.

(a) A description of the nature and scope of the changes in the work.

(b) A description of the manner in which the terms or conditions of the contract are being modified or the circumstances that qualify the action as a change in the general scope of the contract.

(c) The amount the contract price is increased or decreased.

(d) The adjustment in time for completion, or a statement that there is no such adjustment.

(e) A statement that, except as modified by the supplemental agreement, the provisions of the contract shall remain in full force and effect.

§ 9-16.5002-12 Outline of agreement for rental of contractor-owned construction equipment.

NOTE: This form of agreement is for use where AEC rents construction equipment from a prime cost-type construction contractor, and is designed for use as an appendix to a prime cost-type construction contract.

Attached to and made a part of Contract No. _____

Contractor: _____

The following provisions shall govern the use and rental of the contractor's construction plant and equipment (hereinafter called the "equipment") under the contract:

1. *Equipment rented.* The contractor agrees to furnish for his own use in the performance of the contract the equipment itemized in Schedule 1 (attached to and made part of this agreement). Each item of the equipment shall be clearly marked with the identification number assigned to it on Schedule 1. The contractor and the Commission may from time to time amend Schedule 1 by deleting items or adding items.

2. *Payments.* As provided in the article of the contract entitled "Allowable Costs and Fixed Fee," the allowable costs of the performance of the contract shall include:

(a) *Rental.* Rental of equipment, for rental periods determined in accordance with paragraph 4 and at the rates set forth in Schedule 1 applied in accordance with paragraph 3.

(b) *Transportation.* Transportation of equipment in accordance with paragraph 5.

(c) *Repair.* Maintenance, repair, and replacement of equipment to the extent provided in paragraphs 6 and 7.

Payment shall be made in accordance with procedures set forth in the article of the contract entitled "Payments."

3. *Application of rates.* The rates set forth in Schedule 1 shall be applied in accordance with the following rules:

(a) *Basis of rates.* Rates are based upon one shift of 8 hours per day, 40 hours per week, or 176 hours per month (of 30 consecutive days).

(b) *Apportionment of rates.* The monthly rate and its pro rata shall apply to all rental periods of 1 month or more. The weekly rate and its pro rata shall apply to all rental periods of 1 week or more up to 1 month. The daily rate and its pro rata shall apply to all rental periods up to 1 week.

(c) *Overtime.* If the equipment is rented by the day, the rate for overtime is one-sixteenth (1/16) of the daily rate for each hour of use in any day in excess of 8 hours; if it is rented by the week, the rate for overtime is one-eightieth (1/80) of the weekly rate for each hour of use in any week in excess of 40 hours; and if it is rented by the month, the overtime rate is one-three hundred and fifty-second (1/352) of the monthly rate for each hour of use in excess of 176 hours in any one 30 consecutive day period.

(d) *Insurance.* Rental rates include the cost of insurance or self-insurance covering loss of or damage to the equipment during rental periods, as indicated in Schedule 1 and copy of policy attached. The Contractor agrees to maintain this insurance coverage for loss of or damage to the equipment during the entire term of this agreement.

NOTE: When rental rates do not include the cost of insurance or self-insurance, substitute the following paragraph:

"Rental rates do not include any factor representing the cost of insurance or self-insurance covering loss of or damage to the equipment during rental periods."

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[1] When the contract does not include a Litigation and Claims article, substitute the following for the phrase enclosed by brackets: "The Contractor shall comply with the procedures and requirements of the Commission."

[2] This article is included only in contracts within the scope of Subpart 9-12.54. In the case of contracts not within the scope of Subpart 9-12.54 but where AEC has major investments in facilities, see the clause set forth in § 9-7.5006-55.

4. *Rental period.* The rental period for which rental is payable for an item or equipment shall consist of a base period, beginning upon the date stipulated in a written notice from the Contracting Officer to the contractor that the Commission has accepted the item of equipment at the jobsite, and ending upon the date stipulated in a written notice from the Contracting Officer to the contractor that use of the item of equipment is terminated, subject to the following additions, deductions, and conditions:

(a) *In-transit time.* There shall be added to the base period (1) the actual in-transit time of inbound transportation from one point of shipment to the jobsite, not exceeding the time required for such transportation by commercial carrier via the most expeditious routing available, of any item of equipment subsequently accepted by the Commission, and (2) the actual in-transit time of outbound return transportation from the jobsite, to the original point of inbound shipment, or other destination at equal or less distance from the jobsite, not exceeding the time required for such transportation by commercial carrier via the most expeditious routing available, of any item of equipment whose use has been terminated by the Commission.

(b) *Delay due to repairs.* (1) The time required for repair of equipment shall be deducted from the base period if such repair is necessitated by willful misconduct or lack of good faith on the part of the contractor's managerial personnel,[1] or made necessary by defects not reasonably ascertainable on initial inspection by the Commission.

(2) If an item of equipment has been accepted by the Commission, the subsequent withdrawal by the contractor of such item from the work for necessary repairs (due to causes other than those mentioned in the preceding paragraph) shall not interrupt the running of the base period unless the Contracting Officer finds that the contractor has not exercised due diligence in effecting the repairs or in returning the item to use and in such event the time which the Contracting Officer finds to have been excessive shall be deducted from the base period.

(c) *Time for repairs on termination.* In the event the Commission in accordance with paragraph 6(c) elects to effect repair or replacement of an item of equipment prior to scheduled return shipment, the time required for such repair or replacement shall be added to the base period.

(d) *Trial period.* If initial inspection by the Commission discloses that the condition of an item of equipment is doubtful, it will not be accepted by the Commission without a trial period of operation to prove such item upon terms and conditions agreed upon by the contractor and the Commission. If the equipment is found unacceptable in the trial period, no rental, transportation, or other expenses will be due the contractor.

(e) *Rental limitation.* When the aggregate of rental paid for an item of equipment equals 75 percent of its appraised value, as agreed upon by the contractor and the Contracting Officer at or prior to the time of acceptance by the Commission and set forth in the initial inspection report, the rental period shall cease as to such item for purposes of rental payment. Such item shall thereafter remain available for use under the contract without further rental payments but otherwise in accordance with the terms and conditions of this agreement, until the contractor receives written notice from the Contracting Officer that use of the item is terminated. The limitation of rental to 75 percent of the agreed value shall apply to the total of all rental due under this paragraph 4. A failure to agree as to the value of an item of equipment shall be deemed to be a dispute within the meaning of the article of the contract entitled "Disputes."

5. *Transportation.* Inbound transportation of equipment, f.o.b. cars from the original point of shipment to the jobsite, and outbound return transportation of shipment f.o.b. cars to the original point of shipment or to another destination selected by the contractor at equal or less distance from the jobsite, shall be at the expense of the Government, subject to the following conditions:

(a) *Limitation on return transportation.* The Government shall not bear any expense for outbound return transportation in excess of the amount paid for inbound transportation to the jobsite, except additional amounts representing or equivalent to increases in freight rates applicable to the route to the original point of shipment.

(b) *Limitation on long distance transportation.* Transportation over a distance in excess of 500 miles shall be subject to the approval of the Contracting Officer.

(c) *Transportation by other than common carrier.* The expense borne by the Government hereunder for transportation by a method other than common carrier shall be the actual expense of such transportation as shown by evidence satisfactory to the Contracting Officer, but shall in no case exceed the amount which would be paid for such transportation by a suitable and available common carrier unless otherwise authorized by the Contracting Officer.

(d) *Loading and unloading.* Only such costs of loading and unloading equipment as are incurred at the jobsite shall be borne by the Government.

(e) *Equipment not in required condition.* The Government shall not bear the expense of transportation of any item of equipment which arrives at the job in a condition which does not fulfill the requirements of paragraph 6(a) and which is not placed in the condition required under paragraph 6(a) by the contractor at the contractor's expense within a reasonable time.

6. *Condition of equipment*—(a) *Condition on delivery.* The equipment shall, on delivery at the jobsite, be in good operating condition to render efficient, economical, and continuous service, and shall be equipped with necessary and required safety devices according to ICC regulations and other applicable Federal and State laws. Each item of the equipment shall have been registered by the contractor at the contractor's own expense with all Federal, State, and local authorities requiring registration, and registration plates or other evidence of registration shall be displayed in accordance with the requirements of the registering authority; the cost of subsequent registration shall also be borne by the contractor. If any item of equipment on arrival at the jobsite is not in the condition required by this paragraph, its use on the work shall not be permitted unless and until it is placed in the condition required by this paragraph at the contractor's expense and within a reasonable time. If any such item is not placed in the condition required by this paragraph within a reasonable time, the Contracting Officer may reject the item and require its removal from the jobsite, and in that event the Government shall not be liable for rental, transportation, or any other expense in connection with such item.

(b) *Condition on the job.* Equipment accepted by the Commission shall be maintained by the contractor in the condition required for its operation until use of the equipment is terminated by the Contracting Officer. Maintenance and repair required to keep accepted equipment in such condition during such time and replacement (at the agreed value set forth in the initial inspection report, less depreciation) of accepted equipment lost or destroyed during such time, shall be at the expense of the Government unless such maintenance, repair, or replacement is made necessary by loss or damage covered by any policy of insurance (or self-insurance), or caused by willful misconduct or lack of good faith on the part of the contractor's managerial personnel, or is made necessary by defects not reasonably ascertainable on initial inspection by the Commission.

(c) *Condition on termination.* Upon termination by the Commission of the use of any item of equipment, the item shall be returned by the Commission to the contractor at the job site in as good condition as when received by the Commission (as shown by the initial inspection report) less normal wear and tear, except for any loss or damage which is due to willful misconduct or lack of good faith on the part of the contractor's managerial personnel, or defects not reasonably ascertainable on initial inspection by the Commission, or which is covered by any policy of insurance (or self-insurance). If the inspection report to be made immediately prior to the scheduled return shipment of an item of equipment discloses the necessity for repairs or replacement the cost of which is the responsibility of the Government under this paragraph, the Commission may at its election either (1) effect such repairs or replacements or (2) allow the contractor the agreed estimated reasonable cost of such repairs (or the agreed value set forth in the initial inspection report, less depreciation, if replacement is required), and a sum in lieu of rental for the time estimated by the Contracting Officer to be necessary for such repairs. Failure to agree as to the estimated reasonable cost of affecting such repairs or replacement under (2) above, shall be deemed to be a dispute within the meaning of the article of the contract entitled "Disputes."

(d) *Inspection.* For the purpose of establishing the condition of the equipment, each item of equipment shall be inspected, tested and inventoried by representatives of the Commission, and at the contractor's option, together with representatives of the contractor, prior to its acceptance by the Commission and also immediately prior to scheduled return shipment. The results of such inspections and tests, and the inventories compiled, shall be incorporated in reports submitted to the contractor and to the Contracting Officer. For any item of equipment which the contractor has failed to inspect, test, and inventory, or has failed to report as provided herein, the contractor agrees that the report submitted hereunder by a representative of the Commission shall be conclusive evidence of the condition as of the date of inspection.

(e) *Excessive repairs.* The Contracting Officer may deduct from payments otherwise due the contractor any amounts previously allowed the contractor under this agreement for repairs made at the Government's expense which the Contracting Officer finds to have been in excess of the requirements of this agreement.

7. *Protection of equipment—steps to be taken in event of loss.* (a) The contractor shall take all reasonable and necessary precautions to safeguard and protect the equipment. Any loss of or damage to the equipment will be at the contractor's risk to the extent that such loss or damage is required to be covered by insurance under paragraph 3(d) of this agreement.

NOTE: When paragraph 3(d) of the agreement provides that rental rates do not include any factor representing the cost of

[1] The term "managerial personnel" as used in this agreement is as defined in the article of the contract entitled "Property."

insurance or self-insurance covering loss of or damage to the equipment during rental periods, the following paragraph (a) shall be used:

"(a) The contractor shall take all reasonable and necessary precautions to safeguard and protect the equipment. Any loss of or damage to the equipment will be at the contractor's risk to the extent that such loss or damage is covered by any policy of insurance (or self-insurance)."

(b) Upon the happening of any loss or damage which is at the risk of the Government under this agreement, the contractor shall immediately notify the Contracting Officer of the occasion and extent thereof, shall at the Contracting Officer's request effect an assignment and subrogation in favor of the Government of all the contractor's rights and claims (except those against the Government) arising out of any such loss or damage, shall, if required by the Contracting Officer, authorize representatives of the Government to settle or prosecute to final judgment any such claims, and shall furnish to the Government on request all reasonable assistance in obtaining recovery.

8. *Liquidation of indebtedness.* The contractor warrants full and complete title and right to possession of all the equipment, subject only to those liens, encumbrances or claims to title or possession securing the indebtedness detailed on Schedule 1, Part 2. The contractor agrees to apply such portion of the rental payment hereunder as may be necessary for the prompt discharge of such indebtedness. If at any time any person holding a lien, encumbrance, or claim against any item of equipment shall submit to the Commission evidence that the contractor is not discharging the indebtedness secured thereby in accordance with the terms under which the indebtedness is payable or dischargeable, the Commission shall have the right upon three (3) days' written notice to the contractor to impound such part of the unpaid rental hereunder, as the Commission in its sole discretion deems necessary, until the rights of the contractor and any such person are determined and all just and proper claims of such person are satisfied: *Provided*, That nothing contained in this paragraph shall be construed to require the contractor to pay to such person any sum not required to be paid by the terms under which the indebtedness was incurred or to pay any sum prior to the time it becomes due.

9. *Taxes.* Unless otherwise directed by the Contracting Officer under the article of the contract entitled "State and Local Taxes," the contractor shall at the contractor's own expense pay and discharge any and all taxes levied upon any item of the equipment.

SCHEDULE 1

PART 1—ITEMS AND RENTAL RATES

Item No.	*Item description (equipment No.; type of equipment; serial No.; manufacturer; year of model; original point of shipment; etc.)*

Description of any insurance coverage for loss or damage to equipment [1]

Item	*Rental Rates*

[1] Attach certified copy of insurance policy.

(Continue, if necessary, on reverse side or on separate sheets.)

PART 2—LIENS, ENCUMBRANCES AND CLAIMS

The following is a complete and correct statement of the amount or amounts of any and all indebtedness secured by liens or other encumbrances of any nature, legal or equitable, which are held any person, firm or corporation against the equipment, items Nos. 1 through _____.

_____
(Contractor)

By _____
_____
(Title)

Item No.	*Name and address of present creditor*

Present unpaid balance	*Amounts and dates of future payments*

(Continue, if necessary, on reverse side or on separate sheets.)

§ 9–16.5002–13 Outline of agreement for rental of third party owned construction equipment.

NOTE: This form of agreement is for use where an AEC prime cost-type construction contractor rents construction equipment (without operator) from a third party.

This agreement, made and entered into this _____ day of _____, 19__, by and between _____
_____
(hereinafter called the "lessor")
and _____
(hereinafter called the "lessee")

Witnesseth:

Whereas, the lessee has entered into a contract, dated _____, _____, _____ (hereinafter called the "construction contract"), with the United States of America (hereinafter called the "Government"), represented by the U.S. Atomic Energy Commission (hereinafter called the "Commission"), for the performance of certain construction work in connection with the construction _____ at _____; and

Whereas, the lessor is the owner of certain construction plant and equipment (hereinafter called the "equipment"), listed on the attached Schedule 1 attached to and made a part of this agreement; and

Whereas, the lessee desires to rent the equipment for use in performing the construction contract:

Now, therefore, in consideration of the mutual covenants and conditions herein set forth, it is agreed as follows:

Article I—Equipment rented. The lessor agrees to furnish for use by the lessee in the performance of the construction contract the equipment itemized in Schedule 1 at time specified as follows:

Each item of the equipment shall be clearly marked with the identification number assigned to it on Schedule 1. The lessor and the lessee may from time to time amend Schedule 1 by deleting or adding items.

Article II—Payments. Payments shall be made by the lessee to the lessor at monthly intervals on invoices rendered by the lessor for:

(a) *Rental.* Rental of equipment, for rental periods determined in accordance with the article entitled "Rental Period" and at the rates set forth in Schedule 1 applied in accordance with the article entitled "Application of Rates."

(b) *Transportation.* Transportation of equipment in accordance with the article entitled "Transportation."

(c) *Repair.* Maintenance, repair, and replacement of equipment to the extent provided in the articles entitled "Conditions of Equipment" and "Protection of Equipment—Steps to be Taken in Event of Loss."

Article III—Application of rates. The rates set forth in Schedule 1 shall be applied in accordance with the following rules:

(a) *Basis of rates.* Rates are based upon one shift of 8 hours per day, 40 hours per week, or 176 hours per month (of 30 consecutive days).

(b) *Apportionment of rates.* The monthly rate and its pro rata shall apply to all rental periods of 1 month or more. The weekly rate and its pro rata shall apply to all rental periods of 1 week or more up to 1 month. The daily rate and its pro rata shall apply to all rental periods up to 1 week.

(c) *Overtime.* If the equipment is rented by the day, the rate for overtime is one-sixteenth ($\frac{1}{16}$) of the daily rate for each hour of use in any day in excess of 8 hours; if it is rented by the week, the rate for overtime is one-eightieth ($\frac{1}{80}$) of the weekly rate for each hour of use in any week in excess of 40 hours; and if it is rented by the month, the overtime rate is one-three hundred and fifty-second ($\frac{1}{352}$) of the monthly rate for each hour of use in excess of 176 hours in any one 30-consecutive-day period.

(d) *Insurance.* Rental rates include the cost of insurance or self-insurance covering loss of or damage to the equipment during rental periods as indicated in Schedule 1 and copy of policy attached. The lessor agrees to maintain this insurance coverage for loss of or damage to the equipment during the entire term of this agreement.

NOTE: When rental rates do not include the cost of insurance or self-insurance, substitute the following paragraph:

"Rental rates do not include any factor representing the cost of insurance or self-insurance covering loss of or damage to the equipment during rental periods."

Article IV—Rental period. The rental period for which rental is payable for an item of equipment shall consist of a base period, beginning upon the date stipulated in a written notice from the lessee to the lessor that the lessee has accepted the item of equipment at the jobsite, and ending upon the date stipulated in a written notice from the lessee to the lessor that use of the item of equipment is terminated, subject to the following additions, deductions, and conditions.

(a) *In-transit time.* There shall be added to the base period (1) the actual in-transit time of inbound transportation from the point of shipment to the jobsite, not exceeding the time required for such transportation by commercial carrier via the most expeditious routing available, of any item of equipment subsequently accepted by the lessee, and (2) the actual in-transit time of outbound return transportation from the jobsite to the original point of inbound shipment, or other destination at equal or less distance from the jobsite, not exceeding the time required for such transportation by commercial carrier via the most expeditious routing available, of any item of equipment whose use has been terminated by the lessee.

(b) *Trial period.* If initial inspection by the lessee discloses that the condition of an item of equipment is doubtful, it will not be accepted by the lessee without a trial period of operation to prove such item upon terms and conditions agreed upon by the lessor and the lessee and approved by the Commission. If the equipment is found unacceptable in the trial period, no rental,

transportation, or other expenses will be due the lessor.

(c) *Delay due to repairs.* (1) The time required for repair of equipment shall be deducted from the base period if such repair is necessitated by wilful misconduct or lack of good faith on the part of the lessor, if an individual, or the partners or corporate officers of the lessor, or a supervising repesentative of the lessor, or made necessary by defects not reasonably ascertainable on initial inspection by the lessee.

(2) If arrangements are made for the lessor to repair an item of equipment, the withdrawal of such item from work for necessary repairs (due to causes other than those mentioned in the preceding paragraph) subsequent to acceptance of the item by the lessee shall not interrupt the running of the base period unless the lessee or the Commission finds that due diligence in effecting the repairs or in returning the item to use has not been exercised. In the latter event the time found to have been excessive shall be deducted from the base period.

(d) *Time for repairs on termination.* In the event the lessee in accordance with the article entitled "Condition of Equipment" elects to effect repair or replacement of an item of equipment prior to scheduled return shipment of the item, the time required for such repair or replacement shall be added to the base period.

Article V—Transportation. Inbound transportation of equipment, f.o.b. cars from the original point of shipment to the jobsite, and outbound return transportation of equipment f.o.b. cars to the original point of shipment or to another destination selected by the lessor at equal or less distance from the jobsite, shall be at the expense of the lessee, subject to the following conditions:

(a) *Limitation on return transportation.* The lessee shall not bear any expense for outbound return transportation in excess of the amount paid for inbound transportation to the jobsite, except additional amounts approved by the Commission representing or equivalent to increases in freight rates applicable to the route to the original point of shipment.

(b) *Limitation on long distance transportation.* Transportation over a distance in excess of 500 miles shall be subject to the approval of the lessee and the Commission.

(c) *Transportation by other than common carrier.* The expense borne by the lessee hereunder for transportation by a method other than common carrier shall be the actual expense of such transportation as shown by evidence satisfactory to the lessee and the Commission, but shall in no case exceed the amount which would be paid for such transportation by a suitable and available common carrier unless otherwise authorized by the lessee and the Commission.

(d) *Loading and unloading.* Only such costs of loading and unloading equipment as are incurred at the job site shall be borne by the lessee.

(e) *Equipment not in required condition.* The lessee shall not bear the expense of transportation of any item of equipment which arrives at the job site in a condition which does not fulfill the requirements of the article entitled "Condition of equipment" and which is not placed in the condition required under that article by the lessor at the lessor's expense within a reasonable time.

Article VI—Condition of equipment—(a) Condition on delivery. The equipment shall, on delivery at the job site, be in good operating condition to render efficient, economical and continuous service, and shall be equipped with necessary and required safety devices according to ICC regulations and other applicable Federal and State laws. Each item of the equipment shall have been registered by the lessor at the lessor's own expense with all Federal, State, and local authorities requiring registration, and registration plates or other evidence of registration shall be displayed in accordance with the requirements of the registering authority. The cost of subsequent registration shall also be borne by the lessor. If any item of equipment on arrival at the job site is not in the condition required by this paragraph, its use on the work shall not be permitted unless and until it is placed in the condition required by this paragraph at the lessor's expense and within a reasonable time. If any such item is not placed in the condition required by this paragraph within a reasonable time the lessee may reject the item and require its removal from the job site, and in that event the lessee shall not be liable for rental, transportation, or any other expense in connection with such item.

(b) *Condition on the job.* Maintenance and repair necessary to keep accepted equipment in the condition required for its operation until use of the equipment is terminated by the lessee, and replacement (at the value agreed upon by the lessor and the lessee with the approval of the Commission at or prior to the time of acceptance by the lessee and set forth in the initial inspection report, less depreciation) of accepted equipment lost or destroyed during such time, shall be at the expense of the lessee. Except, however, such maintenance, repair, or replacement will not be at the expense of the lessee if it is made necessary by loss or damage covered by any policy of insurance (or self-insurance), or caused by wilful misconduct or lack of good faith on the part of the lessor, if an individual, or the partners or corporate officers of the lessor, of a supervising representative of the lessor, or is made necessary by defects not reasonably ascertainable on initial inspection by the lessee.

(c) *Condition on termination.* Upon termination by the lessee of the use of any item of equipment, the item shall be returned by the lessee to the lessor at the jobsite in as good condition as when received by the lessee (as shown by the initial inspection report), less normal wear and tear, except for any loss or damage which is due to wilful misconduct or lack of good faith on the part of the lessor, if an individual, or the partners or corporate officers of the lessor or a supervising representative of the lessor, or defects not reasonably ascertainable on initial inspection by the lessee, or which is covered by any policy of insurance (or self-insurance). If the inspection report to be made immediately prior to the scheduled return shipment of an item of equipment discloses the necessity for repairs or replacements the cost of which is the responsibility of the lessee under this paragraph, the lessee may, at its election, either (1) effect such repairs or replacements, or (2) with the approval of the Commission, allow the lessor the agreed estimated reasonable cost of such repairs (or the agreed value less depreciation, if replacement is required), and a sum in lieu of rental for the time estimated by the lessee to be necessary for such repairs.

(d) *Inspection.* For the purpose of establishing the condition of the equipment, each item of equipment shall be inspected, tested, and inventoried by representatives of the lessee and, at the lessor's option, together with representatives of the lessor (and of the Commission, if the Commission so elects), prior to its acceptance by the lessee and immediately prior to scheduled return shipment. The results of such inspections and tests, and the inventories compiled, shall be incorporated in reports submitted to the lessor and to the lessee (and to the Commission if the Commission so requires). For any item of equipment which the lessor has failed to inspect, test, and inventory, or has failed to report as provided herein, the lessor agrees that the report submitted hereunder by a representative of the lessee shall be conclusive evidence of the condition as of the date of inspection.

(e) *Excessive repairs.* The Commission may require the lessee to deduct from payments otherwise due the lessor any amounts previously allowed the lessor under this agreement for repairs made at the lessee's expense which the Commission finds to have been in excess of the requirements of this agreement.

Article VII—Protection of equipment—Steps to be taken in event of loss. (a) The lessee shall take all reasonable and necessary precautions to safeguard and protect the equipment. Any loss of or damage to the equipment will be at the lessor's risk to the extent that such loss or damage is required to be covered by insurance under Article III(d) of this agreement.

NOTE: When Article III(d) of the agreement provides that rental rates do not include any factor representing the cost of insurance or self-insurance covering loss of or damage to the equipment during rental periods, the following paragraph (a) shall be used:

"(a) The lessee shall take all reasonable and necessary precautions to safeguard and protect the equipment. Any loss of or damage to the equipment will be at the lessor's risk to the extent that such loss or damage is covered by any policy of insurance (or self-insurance)."

(b) Upon the happening of any loss or damage which is at the risk of the lessee under this agreement, the lessee shall immediately notify the lessor of the occasion and extent thereof, and the lessor shall thereupon, at the lessee's request effect an assignment and subrogation in favor of the lessee or the Government of all the lessor's rights and claims (except those against the lessee or the Government) arising out of any such loss or damage, shall, if required by the lessee or the Government, authorize representatives of the lessee or the Government to settle or prosecute to final judgment any such claims, and shall furnish to the lessee or the Government on request all reasonable assistance in obtaining recovery.

Article VIII—Liquidation of indebtedness. The lessor warrants full and complete title and right to possession of all the equipment, subject only to those liens, encumbrances or claims to title or possession securing the indebtedness detailed on Schedule 1, Part 2. The lessor agrees to apply such portion of the rental payable hereunder as may be necessary for the prompt discharge of such indebtedness. If at any time any person holding a lien, encumbrance, or claim against any item of the equipment shall submit to the lessee evidence that the lessor is not discharging the indebtedness secured thereby in accordance with the terms under which the indebtedness is payable or dischargeable, the lessee shall have the right upon three (3) days' written notice to the lessor to impound such part of the unpaid rental hereunder as the lessee, with the approval of the Commission, deems necessary until the rights of the lessor and any such person are determined and all just and proper claims of such person are satisfied: *Provided*, That nothing contained in this paragraph shall be construed to require the lessor to pay to such person any sum not required to be paid by the terms under which the indebtedness was incurred or to pay any sum prior to the time it becomes due.

Article IX—Taxes. Unless otherwise directed by the Commission, the lessor shall at the lessor's own expense pay and discharge any and all taxes levied upon any item of equipment.

Article X—Examination of records. Insert article in accordance with § 9-7.5004-10.

Article XI—Covenant against contingent fees. Insert article in accordance with § 9-7.5004-2.

Article XII—Renegotiation. Insert contract article set forth in § 9–7.5004–20 if the agreement is subject to the Renegotiation Act of 1951, as amended.

Article XIII—Definition. As used herein the term "Commission" means the U.S. Atomic Energy Commission or any duly authorized representative thereof, including the Contracting Officer under the construction contract.

In witness whereof, the lessor and the lessee have executed this agreement as of the day and year above written.

LESSOR:
By ---

(Title)

LESSEE:
By ---

(Title)

SCHEDULE 1

PART 1—ITEMS AND RENTAL RATES

Item No.	*Item description (equipment No.; type of equipment; serial No.; manufacturer; year of model; original point of shipment; etc.)*
---	---
---	---

Description of any insurance coverage for loss or damage to equipment [1] — *Item rental rates*

(Continue, if necessary, on reverse side or on separate sheets.)

[1] Attach certified copy of insurance policy.

PART 2—LIENS, ENCUMBRANCES AND CLAIMS

The following is a complete and correct statement of the amount or amounts of any and all indebtedness secured by liens or other encumbrances of any nature, legal or equitable, which are held by any person, firm or corporation against the equipment, items numbered 1 through ---

---
LESSOR:

(Title)

Item No.	*Name and address of present creditor*
---	---
---	---

Present unpaid balance — *Amounts and dates of future payments*

(Continue, if necessary, on reverse side or on separate sheets.)

§ 9–16.5002–14 Outline of inspection report of equipment.

(a) *Inspection report for cranes, draglines, etc.*

Project ---
Date ---
Location ---
Code No. --- License No. ---
Description ---

(Attachments listed on reverse side)
Date and time of arrival ---
Via ---
Owner's name and address ---

Motor No. ---
Serial --- Year manufactured ---
Other pertinent Nos. ---
Size --- Type ---
No. of cylinders --- Horsepower ---
Type power --- Lifting capacity ---
Manufacturer ---
Address ---
Shipping weight ---
Cost new ---
Present valuation est.[1] ---
Estimated cost to place in good operating condition [2] ---
Crawler treads ---
Boom hoist shaft and bearings ---
Adjustments remaining ---
Main drive chain or gear ---
Crawler tread pins ---
Main driving pinion ---
Crawler frame ---
Main clutch ---
Drive sprockets ---
General condition of motor ---
Hoist drum gear ---
Cab lock holds ---
Boom hoist brake facing ---
Boom hoist brake holds ---
Boom hoist brake lining ---
Shows sign of oil consumption ---
Boom hoist clutch ---
Hoist brake holds ---
Remarks ---

---

[1] Attach an explanation of the valuation estimate.

[2] Attach an explanation of the major and minor repairs needed.

At time of inspection, equipment was --- in good operating condition. In our opinion, the valuation of $--- placed upon this equipment is --- fair and reasonable. We mutually agree upon a valuation of $---.

(Signed) ---
(Inspector)
(Signed) ---
(Inspector)

(b) *Give complete description of all attachments, spare parts, etc.*

CLAMSHELL BUCKET

Make --- Model ---
Serial --- Size --- Type ---
Number of teeth --- Number of sheaves ---
Condition of sheaves ---
Condition of sheave shafts upper ---
Condition of sheaves lower ---
Condition of sheave shafts lower ---
Condition of center shaft ---
Condition of center shaft castings ---
Condition of arm pins ---
Condition of teeth ---
Condition of bucket general ---

DRAG BUCKET

Condition of teeth ---
Condition of chain ---
Condition of sheave ---
General condition ---
Fair lead ---
Fair lead sheaves ---

SHOVEL ATTACHMENTS

Condition boom --- Length ---
Dipper stick ---
Crowd gears ---
Sheaves ---
Buckets ---
Bucket latch ---
Number teeth ---
Condition teeth ---
Pins and bushings ---

BACK HOE

Condition boom --- Length ---
Dipper stick ---
Crowd gears ---
Sheaves ---
Buckets ---
Bucket latch ---
Number of teeth ---
Condition of teeth ---
Pins and bushings ---

Miscellaneous attachments such as—Hydraulic Control System, Air System, Light Plants, Starting Motor. Give full description, numbers, condition tools, etc.

Unit transferred to --- Date ---
General condition ---

PART 9–17—EXTRAORDINARY CONTRACTUAL ACTIONS TO FACILITATE THE NATIONAL DEFENSE

Sec.
9–17.000 Scope of part.

Subpart 9–17.1—General

9–17.101 Authority.
9–17.105 Reports.

Subpart 9–17.2—Requests for Contractual Adjustment

9–17.207–1 Filing requests.
9–17.208 Processing cases.
9–17.208–4 Records.

Subpart 9–17.3—Residual Powers

9–17.304 Records.

Subpart 9–17.4—Records of Requests and Dispositions

9–17.402 Final records.

Subpart 9–17.5—Act and Executive Order

9–17.550 Contract Adjustment Board.

AUTHORITY: The provisions of this Part 9–17 issued under Sec. 161 of the Atomic Energy Act of 1954, as amended, 68 Stat. 948, 42 U.S.C. 2201; sec. 205 of the Federal Property and Administrative Services Act of 1949, as amended, 63 Stat. 390, 40 U.S.C. 486.

§ 9–17.000 Scope of part.

This part establishes procedures to implement and supplement FPR Part 1–17.

Subpart 9–17.1—General

§ 9–17.101 Authority.

The General Manager and Deputy General Manager are authorized to approve actions in accordance with the authority vested in the Atomic Energy Commission by Public Law 85–804 and Executive Order No. 10789, as amended. This authority is not redelegated. No request for relief for any amount shall be granted or denied and no contract or amendment or modification of a contract or advance payment shall be made or refused pursuant to this part prior to approval by the General Manager or Deputy General Manager.

§ 9–17.105 Reports.

The Director, Division of Contracts is responsible for preparing the annual re-

port to the Congress required by FPR 1-17.105.

Subpart 9-17.2—Requests for Contractual Adjustment

§ 9-17.207-1 Filing requests.

The request of a contractor shall be filed in quintuplicate.

§ 9-17.208 Processing cases.

Managers of Field Offices and Directors of Headquarters Divisions shall submit to the Director, Division of Contracts four copies of the following:

(a) The form of request decribed in FPR 1-17.202-2,

(b) The preliminary record required by FPR 1-17.207-3, and

(c) The facts and evidence described in FPR 1-17.207-4, unless the Director, Division of Contracts shall approve their omission, and

(d) A recommended course of action.

§ 9-17.208-4 Records.

The Director, Division of Contracts shall maintain the records required by FPR 1-17.208-4.

Subpart 9-17.3—Residual Powers

§ 9-17.304 Records.

The Director, Division of Contracts shall retain a copy of the memorandum required by FPR 1-17.303(a).

Subpart 9-17.4—Records of Requests and Dispositions

§ 9-17.402 Final records.

The Director, Division of Contracts, shall prepare the final record described in FPR 1-17.402.

Subpart 9-17.5—Act and Executive Order

§ 9-17.550 Contract Adjustment Board.

A Contract Adjustment Board, composed of the Director, Division of Contracts or his duly authorized representative, as chairman, and representatives of the General Counsel, of the Controller, and of interested Headquarters Divisions designated by the Director, Division of Contracts as members shall review cases submitted to the Director, Division of Contracts pursuant to this part and shall make recommendations to the General Manager or Deputy General Manager regarding the disposition of such cases.

PART 9-18—PROCUREMENT OF CONSTRUCTION AND CONTRACTING FOR ARCHITECT-ENGINEER SERVICES

Sec.

AUTHORITY: The provisions of this Part 9-18 issued under sec. 161 of the Atomic Energy Act of 1954, as amended, 68 Stat. 948, 42 U.S.C. 2201; sec. 205 of the Federal Property and Administrative Services Act of 1949, as amended, 63 Stat. 390, 40 U.S.C. 486.

§ 9-18.000 Scope of part.

This part implements and supplements the contracting procedures peculiar to construction contracts set forth in FPR Part 1-18 and also sets forth related AEC requirements for architect-engineer service contracts.

Subpart 9-18.1—General Provisions

§ 9-18.102-1 General.

See also § 9-1.705-3.

§ 9-18.108 Government estimates.

A Government estimate of costs shall also be prepared for construction subcontracts under cost-type contracts. The services of the architect-engineer, operating contractor, or construction contractor will be used as appropriate in the preparation of Government estimates.

§ 9-18.111 Concurrent firm fixed-price and cost-type construction contracts.

See § 9-1.5407(g).

§ 9-18.112 Construction contracts with design architect-engineers.

See § 9-1.5407(g).

§ 9-18.150 Abstracts of construction bids and proposals.

Managers of Field Offices shall submit a copy of the certified abstract of bids or a certified copy of the abstract of proposals to the Director, Division of Construction for each fixed-price contract and subcontract to be entered into by AEC and its cost-type contractors for construction projects on a formal advertising or an invited proposal basis which is estimated to equal or exceed $250,000 and which will require on-site labor. Each abstract shall be submitted promptly and shall include the Government estimate.

Subpart 9-18.2—Formal Advertising

§ 9-18.203-1 Preparation of invitations for bids.

(a) The following procedure shall be followed in furnishing copies of constructions plans and specifications:

(1) On all invitations, plans and specifications will be available on request to all prospective bidders, including general contractors, subcontractors, and material and equipment suppliers. Where the cost of reproduction is $10 or more, the charge shall be a minimum of $10 and subject to a maximum of $25, depending upon the size of the project and the number of drawings and the volume of specifications involved. Where the cost of reproduction is less than $10, the Field Office Manager has authority to make distribution at cost of reproduction, or free of charge, as a particular situation dictates.

(2) No refund for the return of plans and specifications will be made except when the invitation is canceled or no award is made under the invitation. Under such circumstances, refund of payments will be made upon return of the plans and specifications in good condition to the issuing office.

(3) Plans and specifications will be issued without charge to such organizations as The Associated General Contractors of America, American Road Builders' Association, Dodge Reports, Blue Reports, Brown's Letters, Inc., and others that maintain public plan display rooms.

§ 9-18.205 Prebid conferences.

See also § 9-1.354.

Subpart 9-18.3—Negotiations

§ 9-18.303 Price negotiation policies and procedures.

See also Subpart 9-1.50 and § 9-3.405-5.

§ 9-18.305 Subcontracting policies and procedures.

The provisions of FPR 1-18.305(b) and Part 9-59 apply to the procurement of construction services by AEC cost-type contractors.

§ 9-18.306-2 Cost-reimbursement type contracts.

(c) *Conclusion of negotiations.* Architect-engineer letter contracts should also include the basis for determining the fee, which establishes the possible range of fees for the work.

§ 9-18.306-3 Selection of a cost-reimbursement type contractor.

See Part 9-56.

§ 9–18.306–50 Preparation for negotiation—architect-engineer and cost-plus-a-fixed-fee construction contracts.

(a) *General.* Before attempting to negotiate a contract, the following information should be prepared:

(1) *Description of the work.* A sufficiently detailed description and cost estimate of the work should be provided to permit an evaluation of services to be performed by the various participants and the degree of complexity of its principal components. For lump-sum A–E contracts, the information as to the work should be in more detail and on a firmer basis, particularly as to estimated costs, than for a CPFF contract. The estimated cost of the component items (including the costs of material and equipment furnished by AEC) and their descriptions, insofar as available, should be included as follows:

(i) Major buildings and other structures for which complete designs and specifications are to be prepared by the architect-engineer, including number and cost of each type, with as much information as is available (within security requirements) as to the functional requirements for such structures.

(ii) Major utilities, including classifications and costs in as much detail as practicable.

(iii) Special equipment to be procured by the operating contractor, construction contractor, or architect-engineer, or furnished by the AEC.

(iv) Special equipment to be designed by the architect-engineer.

(v) Special equipment to be installed by the construction contractor.

(2) *Estimated cost and time for completion.* A statement should be provided indicating total estimated cost of the work exclusive of the construction contractor's fee, and to the extent available, identifying labor, material, and indirect costs, and any amount included for contingencies; estimated cost of architect-engineer services; and estimated time of completion of design or construction work, with an explanation of the basis for establishing the completion schedules.

(b) *Extent of services*—(1) *Architect-engineer contracts.* A written statement should be prepared which gives the extent to which the services of the architect-engineer include any of the services set forth below.

(i) Title I—Provide the necessary topographical and other field surveys, test borings, and other subsurface investigations; prepare preliminary studies, sketches, layout plans, and outline specifications; and prepare reports including estimates of cost of the proposed project and of all structures, utilities, and appurtenances thereto.

(ii) Title II—Provide complete design of the work including preparation of all required preliminary and final working drawings, specifications, estimates, and contract documents; assist in securing, analyzing and evaluating bids or proposals for construction; and consult with the AEC on all questions arising in connection with the services performed by the architect-engineer.

(iii) Title III—Provide complete architect-engineer supervision and inspection of construction under the direction of a responsible representative, check shop drawings, and furnish record drawings to show construction has actually accomplished.

(iv) Process design. Process design normally requires the preparation of flow diagrams showing each operating step to perform the process; material and heat balances where required; determination of the nature, capacity and design characteristics of production equipment; the general design of connecting flow lines to handle the calculated rates of product and byproduct flow; and schematic layouts.

(v) Procurement of materials and equipment. (Describe fully.)

(vi) Other special services. (Describe fully.)

(2) *Cost-plus-a-fixed-fee construction contracts.* See also FPR 1–18.306.2.

(3) *Cost-plus-a-fixed-fee engineer-constructor contracts.* A written statement should be prepared which gives the extent to which the services of the contractor cover the services set forth in subparagraphs (1) and (2) of this paragraph.

(4) *Procurement of special equipment.* Contracts for procurement services only are rarely used. Procurement of special equipment is generally contracted for in conjunction with CPFF contracts for construction, operating, or architect-engineer services. In special situations, procurement of other equipment and construction materials is also contracted for in conjunction with CPFF contracts for operating or architect-engineer services. The description of procurement services in subdivision (ii) of this subparagraph is applicable to all of these cases.

(i) Special equipment is equipment for which the purchase price is of such a magnitude compared to the cost of installation as to improperly reflect the amount of technical direction and management effort required of the contractor. The determination of the specific items of equipment in this category requires application of judgment and careful study of the circumstances involved for each project. This category of equipment would generally include items such as:

(a) Major items of prefabricated process or research equipment.

(b) Major items of preassembled equipment such as packaged boilers, generators, machine tools, and large electrical equipment.

In some cases it would also include special apparatus or devices such as reactor vessels and reactor charging machines.

(ii) Description of procurement services: Procurement as herein considered is an activity involving judgment, knowledge, and experience relating to the manufacture, use or application of the article or process to be purchased. It may include the development or location of sources of supply, and generally includes preparation of bidding documents, solicitation of proposals, analysis of proposals received (including where necessary technical and sometimes complicated evaluation of performance characteristics of the equipment of different manufacturers), inspection at manufacturer's plant as distinguished from inspection supplied under title III services of an architect-engineer contract, and evaluation of production capacities to meet required delivery. Procurement includes necessary coordination with participating contractors and the AEC for especially designed equipment, general and specific expediting, and special assistance to the manufacturers in helping to locate scarce materials and machine tools and in supporting allocations for critical materials where this is a necessary function. Procurement normally includes inspection and receiving upon delivery at the site (this may be a joint activity where the procuring agent is not the constructor) and payment. All onsite physical activities after delivery, including unloading, warehousing, hauling, and installation, are considered a construction activity and not procurement.

(iii) Selection of procuring agent: Coordination, timing, and technical know-how are important factors to be considered in the selection of a procuring agent. The advantages and disadvantages of placing full responsibility in one contractor for construction and procurement, or split responsibility where the procurement is placed under a contract with the architect-engineer or operating contractor, should be evaluated in the light of the above factors.

§ 9–18.307 Negotiations.

See also § 9–3.805–50.

Subpart 9–18.6—Buy American Act

§ 9–18.600 Scope.

(a) This subpart implements FPR Subpart 1–18.6.

(b) The requirements of FPR Subpart 1–18.6 and this subpart apply to cost-type contractor procurement.

§ 9–18.602–1 General.

(a) Contracting officers may make the determinations required by FPR 1–18.602–1(b) and (c).

(b) The General Manager only may make the determination required by FPR 1–18.602–1(a) and may authorize deviations described in FPR 1–18.603–3.

§ 9–18.606 Violations of Buy American Act provisions in construction contracts.

Contracting officers shall make a complete written report (in triplicate) to the General Manager, through the Director, Division of Contracts, of each violation of the Buy American Act provisions in contracts for construction. See FPR 1–18.606 and Subpart 9–1.6.

§ 9–18.650 Excepted supplies to be used in the construction, alteration, or repair of any public work.

The following list shall be noted in the specifications:

Antimony.
Asbestos.
Bauxite.
Chrome ore or chromite.
Cobalt.
Cork.
Graphite.
Jute and jute burlaps.
Logs, veneer, and lumber from balsa, greenheart, lignum vitae, mahogany, and teak.
Mica.
Nickel.
Rubber, crude and latex.
Shellac.
Tin.

Subpart 9–18.50—Rental of Construction Equipment

§ 9–18.5000 Scope of subpart.

This subpart sets forth general policy and instructions which shall be applied to rental of construction equipment for use by AEC cost-type contractors.

§ 9–18.5001 General policy.

It is the policy of the AEC:

(a) To use presently owned AEC construction equipment to the fullest extent. Careful investigation shall be made of the equipment available not only at the Field Office concerned, but at other field offices, to determine whether such equipment can be economically utilized on the job. The Director, Division of Contracts, can assist in the investigation of excess equipment available in other offices.

(b) To rent construction equipment, where available, rather than purchase it, unless, in the case of third-party-owned equipment, the Field Office determines that accrued rentals on a particular item of equipment will approximate the cost of ownership of it; except, however, that individual items of construction equipment having an original cost of less than $1,000 ordinarily should be purchased and not rented. Where it is clearly to the advantage of the Government, items having a cost of less than $1,000 may be rented with the approval of the Manager of the Field Office. Whenever it is practical, cost and other factors considered, contractor-owned equipment shall be rented in preference to renting third-party-owned equipment.

(c) To pay rental for construction equipment at rates not higher than those prevailing in the locality, except under unusual circumstances, and at as low a rate as is consistent with securing modern equipment in good operating condition. Costs of repair, job interruption due to poor equipment, transportation and in-transit rental may well offset any apparent savings in rental rates. Rental paid shall be subject to any Government price ceiling regulations that may be in effect.

§ 9–18.5002 Rental of contractor-owned equipment.

§ 9–18.5002–1 Rental agreement.

The terms and conditions governing rental by the AEC of construction equipment from a prime cost-type construction contractor are set forth in § 9–16.5002–12, Outline of agreement for rental of contractor-owned construction equipment. This form of agreement is designed for use as an appendix to an AEC cost-type construction contract. It may be modified for rental of equipment under other contractual arrangements, such as an operating contractor renting from a cost-type construction subcontractor, and it may be modified for use as a separate contract or as an attachment to a subcontract. Some of the aspects of this agreement to which particular attention should be given are set forth in §§ 9–18.5002–2 through 9–18.5002–9.

§ 9–18.5002–2 Rental period.

The base rental period shall extend from the time the equipment is accepted at the job site until the contractor is notified in writing by the AEC's representative that the equipment is no longer required. Subject to applicable limitations covered in the rental agreement form, the contractor shall be paid rental during the in-transit time and during the time required for equipment repair or replacement prior to return to the contractor.

§ 9–18.5002–3 Rental rates.

(a) Rates for rental of contractor-owned equipment shall be fair and equitable. The rental rates contemplate that the AEC will pay incoming and outgoing transportation costs and rental during in-transit time for both inbound and outbound transportation of equipment; however, terms more favorable to the AEC may be negotiated where appropriate. The rental rates to be paid for the use of contractor-owned equipment under normal conditions should not exceed 65 percent of the rates quoted in the latest edition of the Associated Equipment Distributors' "Compilation of Averaged Rental Rates for Construction Equipment." However, Managers of Field Offices may approve rates in excess of 65 percent of the current A.E.D. schedule when local conditions require higher rates. When it becomes necessary as a general practice to exceed 65 percent of the current A.E.D. schedule, the Manager of the Field Office shall advise the Director, Division of Contracts, explaining the circumstances.

(b) For items of equipment that are not covered by the A.E.D. schedule, use the latest edition of "Contractors' Equipment Ownership Expense" document published by The Associated General Contractors of America, Inc., and information on prevailing local rates for developing rates that would be consistent with the 35 percent reduction in the A.E.D. rates (i.e., taking into consideration the expeneses paid by the Government under the rental agreement).

§ 9–18.5002–4 Application of rates.

The rental rates shall be applied in accordance with the following rules:

(a) *Basis of rates.* The rates shall be based upon one shift of 8 hours per day, 40 hours per week, or 176 hours per month of a 30-consecutive-day period.

(b) *Apportionment of rates.* The monthly rate and its pro rata shall apply to all rental periods of 1 month or more. The weekly rate and its pro rata shall apply to all rental periods of 1 week or more up to 1 month. The daily rate and its pro rata shall apply to all rental periods up to 1 week.

(c) *Overtime.* Inasmuch as there are certain elements of cost to an equipment owner which do not change even though the equipment is used on more than one shift per day, it is believed equitable to pay a lower rental rate during a second and third shift than would be paid during a single shift. Therefore, the rental agreement form provides for payment for overtime at a rate equal to one-half the rate for the first shift.

§ 9–18.5002–5 Insurance.

(a) Generally, rental rates should include the cost of insurance or self-insurance covering loss of or damage to the equipment during rental periods. The rental agreement for contractor-owned equipment is so worded.

(b) However, if the contracting officer determines that it is not practical to include the cost of such insurance in the rental rates, paragraphs 3(d) and 7(a) shall be amended as indicated in the applicable notes following these paragraphs in § 9–16.5002–12.

§ 9–18.5002–6 Rental limitation.

The rental agreement form provides that when the total amount of rental paid to the contractor for any one unit of equipment equals 75 percent of the mutually agreed value of that unit as set forth in the initial inspection report, the equipment is to remain available for the work under the construction contract as long as it will be required without any further rental payments to the contractor. The rental ceiling of 75 percent of the agreed-upon value of the equipment applies to all rental paid including rental paid during intransit time to and from the site of the work and down time for any operating repairs or restoration of the equipment after it is no longer needed at the site. The purpose of this provision is to prevent the Government from paying rental in excess of the contractor's investment, and it is included in lieu of an "option to purchase" clause. Once a particular piece of equipment has been released, the contractor will not be required to return it to the job under the original rental period.

§ 9–18.5002–7 Record of negotiation.

The record of negotiation shall set forth the information used to determine the reasonableness of the rental rates, including a breakdown of the contractor's equipment ownership expense similar to that itemized in The Associated General Contractors of America's document, "Contractors' Equipment Ownership Expense."

§ 9–18.5002–8 Responsibility for repair and replacement.

The rental agreement describes the responsibilities of the parties with respect to maintenance and repair necessary to the operation of the rented equipment, or replacement of such equipment. The AEC's responsibility includes repairs

resulting from normal wear and tear, provided they were necessary in order to continue the equipment in service. However, when the equipment is no longer required on the job, the extent of the AEC's obligation is only to return the equipment to the contractor in as good operating condition as when received less normal wear and tear.

§ 9–18.5002–9 Equipment condition and inspection.

(a) *Inspection.* Construction equipment shall be given a rigid and detailed inspection by representatives of the AEC and, at the contractor's option, by representatives of the contractor, before its shipment and acceptance or use on the job. Equipment shall be inspected under actual workloads insofar as practicable. In cases where it is not practical to inspect equipment prior to its shipment to the jobsite, the contractor should be informed of the extent of inspection and the expected condition of his equipment. In the event the equipment does not meet required standards, the transportation, rental, or any other expenses shall not be paid by the AEC unless at contractor's expense the equipment is repaired to acceptable standards in a reasonable length of time. A similar inspection shall be made immediately prior to scheduled return shipment of an item of equipment.

(b) *Inspection report.* The detailed inspection report shall follow in general § 9–16.5002–14—Outline of inspection report of equipment, and shall be signed by each representative inspecting. The initial-inspection report shall be used at the time of release as a basis for determining the repairs necessary to place the equipment in as good operating condition as when accepted, less normal wear and tear. After necessary repairs are completed, a final-inspection report shall be completed by representatives of the AEC and, at his option, the contractor.

(c) *Trial period and defects.* If initial detailed inspection discloses that the condition of the equipment is doubtful, arrangements should be made with the contractor for a trial period of operation to prove the equipment, with provision that if equipment is found unacceptable in the trial period, no rental, transportation, or other expenses will be due the contractor. Repairs to equipment which fails in service due to defects not reasonably ascertainable on initial inspection shall be at the contractor's expense.

§ 9–18.5003 Rental of third-party-owned equipment.

§ 9–18.5003–1 Rental agreement.

The terms and conditions governing rental of construction equipment without operators from a third party are in accordance with §§ 9–18.5002–2, 9–18.5002–4, 9–18.5002–8, and 9–18.5002–9, and they are set forth in § 9–16.5002–13—Outline of agreement for rental of third-party-owned construction equipment. Managers of Field Offices shall assure that these terms and conditions are used by AEC cost-type construction contractors and that similar terms and conditions are used by other AEC cost-type contractors or subcontractors in renting construction equipment from a third party. These terms and conditions may be suitably modified to provide for rental of equipment with operators. Some of the aspects of this agreement to which particular attention should be given are set forth below in this section.

§ 9–18.5003–2 Rental rates.

Third-party equipment shall be rented on the basis of competitive bids, rental rates, transportation costs, and other factors being considered. The rental specifications shall be based on the circumstances of a particular case, including the length of rental period, the availability of equipment in certain localities, and the work requirements.

§ 9–18.5003–3 Insurance.

The provisions of § 9–18.5002–5(a) also apply to the rental of construction equipment from a third party. However, if the contracting officer determines that the rental rates are not to include the cost of insurance or self-insurance covering loss of or damage to the equipment, Articles III(d) and VII(a) of the rental agreement shall be amended as indicated in the applicable notes following these articles in § 9–16.5002–13—Outline of agreement for rental of third-party-owned construction equipment.

§ 9–18.5003–4 Option to purchase equipment.

When accrued rentals on a particular item of equipment will likely approximate the appraised value of equipment and a decision has been made not to purchase in accordance with § 9–18.5001(b), consideration shall be given to including in the rental agreement an option to purchase the equipment.

PART 9–20—RETENTION REQUIREMENTS FOR CONTRACTOR AND SUBCONTRACTOR RECORDS

Subpart 9–20.1—Purpose and Applicability

Sec.
9–20.102–2 Exemption of Atomic Energy Commission contracts.

AUTHORITY: The provisions of this Part 9–20 issued under sec. 161 of the Atomic Energy Act of 1954, as amended, 68 Stat. 948, 42 U.S.C. 2201; sec. 205 of the Federal Property and Administrative Services Act of 1949, as amended, 63 Stat. 390, 40 U.S.C. 486.

Subpart 9–20.1—Purpose and Applicability

§ 9–20.102–2 Exemption of Atomic Energy Commission contracts.

The requirements of FPR Part 1–20 do not apply to AEC cost-type contracts and cost-type subcontracts. (See also note B of § 9–7.5004–10 and par. (d) of § 9–7.5006–1.)

PART 9–30—CONTRACT FINANCING

Sec.
9–30.000 Scope of part.

Subpart 9–30.1—Forms of Financing

9–30.102 Guaranteed loans—description.
9–30.109 Partial payments—description.

Subpart 9–30.2—Basic Policies

9–30.209 Order of preference.

Subpart 9–30.4—Advance Payments

9–30.400 Scope of subpart.
9–30.403 Interest.
9–30.404 Standards—amounts—need.
9–30.406 Responsibility—delegation of authority.
9–30.414 Agreement for special bank account and contract provisions.

Subpart 9–30.5—Progress Payments Based on Costs

9–30.517 Contract financing office clearance.
9–30.528 Consideration for amendments providing for progress payments.

Subpart 9–30.7—Assignment of Claims

9–30.701 General.
9–30.703 Contract clause—Assignment of Claims.
9–30.708 Examination of assignment.

AUTHORITY: The provisions of this Part 9–30 issued under sec. 161 of the Atomic Energy Act of 1954, as amended, 68 Stat. 948, 42 U.S.C. 2201; sec. 205 of the Federal Property and Administrative Services Act of 1949, as amended, 63 Stat. 390, 40 U.S.C. 486.

§ 9–30.000 Scope of part.

This part implements and supplements FPR Part 1–30 for use in the placement and administration of contracts for the procurement of materials and services by or for the account of AEC.

Subpart 9–30.1—Forms of Financing

§ 9–30.102 Guaranteed loans—description.

The following implements the FPR stating AEC Procedure, Criteria and Policies:

(a) *Procedure.* The procedure for obtaining a guaranteed loan is essentially the same as the procedure for obtaining a conventional loan. The contractor or prospective contractor, who requires additional funds to perform the contract, applies to his bank for a loan or credit of the required amount. The amount may be such that the bank can grant the loan for its own account. However, if for any reason the bank deems it necessary to require a guarantee, the bank may apply to AEC through the appropriate Federal Reserve Bank for the required guarantee. AEC certification of guaranteed loan applications shall be made only by the General Manager or his delegate for that purpose.

(b) *Criteria.* The following criteria apply to the approval of guaranteed loans by AEC:

(1) The materials or services to be furnished by the contractor are necessary to the national defense.

(2) Such materials or services cannot practicably be obtained from alternate sources without delaying or impeding the national defense (see below) except that no small business concern shall be held ineligible for the issuance of such guarantee by reason of alternative sources of supply.

(3) The contractor has demonstrated his inability to obtain the necessary financing in conventional credit channels without the guarantee.

(4) There is reasonable assurance that the loan can be repaid.

(5) The contractor is competent to perform the contract.

Eligibility under subparagraphs (1), (2), and (5) of this paragraph is determined on the basis of findings by the appropriate Field Office. Eligibility under subdivisions (3) and (4) of this paragraph is determined by the Office of the Controller, based on information contained in the application, the Federal Reserve Bank's report, and information furnished by the Field Office concerned.

(c) *Policies.* The following policies governing the exercise by AEC of its loan guarantee authority have been established by the Commission:

(1) The use of the loan guarantee authority is not restricted to contracts or subcontracts of any particular types or classes. Each case is to be evaluated on its own merits and under the particular circumstances applicable thereto.

(2) The fact that a contract has been awarded as a result of competitive bidding should not of itself render the loan ineligible for guarantee by AEC if the contractor is financially responsible and his need for working capital is the result of the impact of the defense program.

(3) The guarantee authority should, in general, not be used in connection with loans to contractors required to furnish performance bonds, except in those cases in which the time likely to be required for the surety or the AEC to take over in the event of default will result in delays which cannot be tolerated by the particular program concerned. When performance bonds have been furnished, the surety shall be required to subordinate its rights in favor of the guaranteed loan.

(4) The criterion that the materials or services to be provided cannot readily be procured from alternative sources does not require the finding that the materials or services are absolutely unobtainable elsewhere. The criterion should be so applied as to permit guarantees of loans when, although the materials or services can be obtained elsewhere, such factors as the urgency of supply schedules, technical capacity of the contractor, comparative prices, and time and expense involved in reletting the contract, including termination payments, establish that it is to the Government's advantage not to resort to alternative sources merely because the contractor or subcontractor may require a guaranteed loan.

(5) If it is known at the time the contract is to be awarded that the low offeror who is technically qualified and competent to furnish the required materials and services will require a guaranteed loan, the contracting officer should obtain appropriate staff advice and in reaching a decision should consider at least the following:

(i) The savings to be realized by awarding the contract to the low offeror;

(ii) The risk to the Government in guaranteeing a loan;

(iii) The likelihood, if award is made to the second low offeror, of his applying for a guaranteed loan at a later date.

Extreme care should be exercised in rejecting a low bid or proposal simply because the low offeror requires a guaranteed loan.

(6) The amount of the loan should bear a reasonable relationship to the value and terms of the contract, the probable investment required to be made by the contractor in payrolls and inventories, etc., the frequency with which contract payments are to be made, and the borrower's current working capital position.

(7) Borrowings for working capital purposes under guaranteed loans shall be limited to the amount necessary to perform the defense contracts for which the loan is sought. In order that the contractor will also use his own funds in the performance of the contracts, amounts outstanding under the loan or line of credit shall be limited to an amount not to exceed 90 percent of the borrower's investment in his defense contracts regardless of the total amount of the loan or line of credit authorized. The borrower's investment includes all items for which the borrower would be entitled to payment on performance or termination of defense contracts, but does not include any items for which no work has been done nor expenditures made.

(8) Unless there are exceptional circumstances, the loan should mature not later than 30 days after the estimated date of final payment under the contract.

§ 9–30.109 Partial payments—description.

Partial payments, as a financing device, may be used in conjunction with other methods of financing, such as guaranteed loans.

Subpart 9–30.2—Basic Policies

§ 9–30.209 Order of preference.

(a) With respect to cost-type procurement generally, contracting officers shall require contractors to employ private financing with or without assignment of contract payments (FPR Subpart 1–30.7). Periodic interim reimbursement on account of incurred cost and payment of fixed fee (if any) will normally be made, reducing the amount of necessary financing for working capital (§ 9–7.5006–25). In some instances, where no other means of adequate financing is available on reasonable terms, the AEC may approve (in order of preference) a guaranteed loan or an advance payment for performance of the contract.

(b) Partial payments, as provided for in the standard form of supply contract (FPR 1–16.901–32), should be considered as a form of contractor financing in the second place in the order of preference.

Subpart 9–30.4—Advance Payments

§ 9–30.400 Scope of subpart.

This subpart does not apply to financing arrangements for contracts with AEC prime integrated cost-type contractors who are financed through special arrangements.

§ 9–30.403 Interest.

(a) Interest at the rate of 5 percent will be charged on all advance payments, provided that advance payments may be made without interest:

(1) Pursuant to FPR 1–30.403,

(2) In CPFF contracts for construction or engineering services, or

(3) Where the contract provides that title to the advance has been retained by the Government (§ 9–7.5006–23).

§ 9–30.404 Standards—amounts—need.

The total advance payment shall not exceed 90 percent of the value of the uncompleted portion of the contract and shall not include any portion of the anticipated profit or the fixed fee.

§ 9–30.406 Responsibility—delegation of authority.

The Manager of the Field Office or his delegate shall have the responsibility and authority for making the findings and determinations referenced in FPR 1–30.406.

§ 9–30.414 Agreement for special bank account and contract provisions.

(See § 9–7.5006–23–24 under which the Government retains title to the funds advanced.)

Subpart 9–30.5—Progress Payments Based on Costs

§ 9–30.517 Contract financing office clearance.

The prior approval specified here shall be obtained from the Office of the Controller.

§ 9–30.528 Consideration for amendments providing for progress payments.

To the extent applicable and appropriate, these provisions may also relate to a Partial Payments clause. If justified, an amendment for this purpose may be made without consideration pursuant to FPR Part 1–17 and Part 9–17. When any such amendment is made, the consent of sureties, if any, should be obtained.

Subpart 9–30.7—Assignment of Claims

§ 9–30.701 General.

FPR 1–30.701 is implemented as follows:

(a) In the case of prime contracts, when it has been determined that the financing of defense contracts will be facilitated in the interest of the AEC program, it is the policy of AEC that such contracts provide, or be amended without consideration (see Assignment of Claims Act of 1940) to provide, that payments to be made to an assignee shall not be subject to reduction or setoff:

(1) For any liability of any nature of the assignor to the United States or any department or agency thereof which arises independently of such contracts;

(2) For any liability of the assignor on account of:

(i) Renegotiation under any renegotiation statute or under any statutory renegotiation article in the contract;

(ii) Fines;

(iii) Penalties (which term does not include amounts which may be collected or withheld from the assignor in accordance with, or for failure to comply with, the terms of the contract);

(iv) Taxes, social security contributions, or the withholding or nonwithholding of taxes or social security contributions, whether arising from or independently of such contract.

(b) In the case of subcontracts, when loans are made for the purpose of financing performance of subcontracts under AEC prime contracts, financing institutions (or the Government as guarantor in those instances in which such loans are guaranteed) should not be required to incur risks of loss by reason of possible diversion of assigned subcontract proceeds for payment of other claims of the prime contractor against the borrower otherwise unrelated to the assigned subcontracts. In the interest of national defense financing, Managers of Field Offices shall require the adoption of these policies and practices by AEC prime contractors with respect to AEC subcontract work. Managers should inform the Controller of each AEC contractor who is unwilling to adopt policies consistent with this paragraph and the reasons given in support of the contractor's position.

§ 9–30.703 Contract clause—Assignment of Claims.

The last two sentences of paragraph (a) of the clause in FPR 1–30.703 shall also be deleted in all contracts for transportation services.

§ 9–30.708 Examination of assignment.

(b) In classified contracts, the assignee should ordinarily be furnished, upon request, with the following information, as applicable, in lieu of a copy of the contract:

(1) Name and address of the AEC prime contractor;

(2) Prime contract number and date;

(3) AEC office and address receiving the material or service;

(4) Subcontract number or purchase order number;

(5) Date of the subcontract or purchase order;

(6) Date on which prime contract, subcontract or purchase order is to be completed;

(7) Total amount of the subcontract or purchase order;

(8) Dollar amount remaining to be delivered on prime contract, subcontract or purchase order; and

(9) A statement as to the assignability of the prime contract, subcontract or purchase order.

(c)(1) It is AEC policy that any assignment of claims shall cover all amounts payable under the contract and not already paid. Partial assignments shall not be permitted unless they are primarily for the benefit of the Government, as exampled in FPR 1–30.708(c)(1).

PART 9–51—REVIEW AND APPROVAL OF CONTRACT ACTIONS

Sec.

AUTHORITY: The provisions of this Part 9–51 issued under sec. 161 of the Atomic Energy Act of 1954, as amended, 68 Stat. 948, 42 U.S.C. 2201; sec. 205 of the Federal Property and Administrative Service Act of 1949, as amended, 63 Stat. 390, 40 U.S.C. 486.

§ 9–51.000 Scope of part.

This part sets forth administrative requirements for the review and approval of certain contract actions, exclusive of contractor selection (Part 9–56).

§ 9–51.001 Definition.

(a) For the purpose of this part, the term "contract actions" includes:

(1) Actions relating to the letting of contracts, subcontracts, agreements with other governmental agencies, and subsequent modifications, extensions and terminations thereof.

(2) Questions of contract policy or procedure which arise in the course of contract negotiation and administration.

(b) For the purpose of this part, the term "contract actions" does not include administrative functions associated with contract administration, such as the development, interpretation and modification of contract cost principles, financial plan and budget operations, labor relations, safety, security, audit, salary, and wage administration, foreign travel, programmatic matters (program scope, technical requirements or specifications, project schedules, etc.), and the administration of construction activities. Such matters are handled directly between Feld Offices and the Headquarters Division or Office having cognizance over the matter involved.

Subpart 9–51.1—Headquarters Review and Approval of Field Office Contract Actions

§ 9–51.100 Scope of subpart.

This subpart sets forth the administrative requirements for Headquarters review and approval of field office contract actions.

§ 9–51.101 General instructions regarding submissions to Headquarters.

(a) Except as provided in paragraph (b) of this section:

(1) The field offices at Chicago, Richland, Nevada, Idaho, New York, Oak Ridge, Savannah River, San Francisco, Albuquerque, and the Brookhaven Office will communicate directly with the Director, Division of Contracts, on all contract actions requiring Headquarters consideration.

(2) The field offices at Schenectady and Pittsburgh will communicate directly with the Director, Division of Naval Reactors, on all contract actions requiring Headquarters consideration.

(3) The Grand Junction Office will communicate directly with the Division of Raw Materials on all contract actions requiring Headquarters consideration.

(b) All field offices will communicate directly with the Director, Division of Construction on all contract actions for electric power and gas utility services.

(c) Contract actions requiring Headquarters review and approval shall be submitted to Headquarters sufficiently in advance of the proposed date for final action by the field office to permit an orderly study and analysis of the proposed contract action. Requests for approval of contracts and subcontracts shall be accompanied by six copies of the proposed contract document together with the required supporting data, also in sextuplicate.

§ 9–51.102 Contract actions requiring Headquarters review and approval.

(a) Contract actions requiring the advance attention of the General Manager and Commission. Managers of Field Offices will submit the following contract actions for advance Headquarters approval:

(1) Contract actions involving estimated costs for the contract period in excess of $10 million shall be subject to Commission approval. A modification to an existing contract which has the effect of bringing the total amount of the contract in excess of $10 million will be brought to the attention of the Commission for its information.

(2) All contractual matters of a new or unusual nature, or matters likely to provoke unusual public interest, and all prime contracts with foreign parties in excess of $300,000 are brought to the Commission's attention prior to approval.

(b) Contract actions in excess of authority delegated to Managers of Field Offices, requiring advance Headquarters review and approval. Managers of Field Offices will submit contract actions in excess of authority delegated to them for advance Headquarters approval including:

(1) Preliminary contractual agreements when there is reason to believe that the resulting contract or subcontract may exceed delegated authority.

(2) Any proposed contract or subcontract which by the exercise of any option or options therein would exceed delegated authority.

(3) Any proposed contract or subcontract, regardless of amount, which in the opinion of the Manager of the Field Office will, as a result of extension, follow-on work, or otherwise increase the contract or subcontract, or lead to a contract or subcontract with the same contractor, in an amount in excess of his delegated authority.

(4) Extension or modification which within itself includes increases in excess of delegated authority.

(c) Other contract actions requiring advance Headquarters approval. Managers of Field Offices will submit requests for the extension of operating contracts regardless of amount and the extension of onsite service-type contracts in excess of their delegated authority, and for deviation from prescribed contract policy for advance Headquarters approval.

(d) Cost-plus-incentive-fee, fixed-price incentive contracts or other incentive arrangements in excess of $1 million require advance Headquarters approval. For such contracts and arrangements of $1 million and below, a copy of the contract and summary of the incentive arrangement should be furnished the Director, Division of Contracts, for information after execution.

(e) Modifications to contracts or subcontracts previously approved by Headquarters need not be submitted for Headquarters consideration when they involve only periodic modifications (1) to establish scope and/or estimated costs within the approved general scope and fixed fees, provided the fee negotiated is within the allowable fee limits of AEC fee policy, or (2) to increase (or decrease) the funds obligated or the contractual limitations on expenditures, when funds for such purposes have been allotted and set forth in approved financial plans.

§ 9–51.103 Supporting data for contract actions requiring Headquarters advance approval.

§ 9–51.103–1 Negotiation.

Requests for approval of contracts and subcontracts to be entered into as a result of negotiation shall be accompanied by the information required by § 9–55.102.

§ 9–51.103–2 Formal advertising.

Requests for approval of contracts and subcontracts to be entered into as a result of formal advertising shall be accompanied by:

(a) Copy of the invitation to bid and any amendments;

(b) A list of persons or firms invited to bid;

(c) Information relating to posting or publishing notices of the invitation and copies of all paid advertisements, if any were used;

(d) Copy of abstract of bids;

(e) An evaluation of the reasonableness of the low bid accepted including a comparison with the independent Government cost estimate, if applicable;

(f) Copy of bid received from contractor to whom award is proposed; and

(g) If award is proposed to be made to other than the lowest bidder, a complete statement of the reasons therefor.

§ 9–51.103–3 Requests for renewals and extensions.

Requests for the renewal or extension of contracts or subcontracts which require Headquarters approval shall be accompanied by:

(a) Summary description of scope of work, and brief listing of some of the important projects which have been handled under this contract. A list of any important projects planned for assignment in the future should be included.

(b) A short statement concerning adequacy of contractor performance. The last annual management appraisal should be summarized and incorporated in the submission.

(c) A summary of the major contract provisions of the existing contract should be attached as an appendix with particular attention to indemnity, patents, conduct of work (control over work) and termination, as well as those which deviate from current AEC policies.

(d) Indicate cost level and fee (or management allowance) over past term and expected cost level in the future.

(e) Include an outline of the principal issues to be negotiated with arguments pro and con, as well as the AEC recommended position.

(f) A brief discussion of the possibilities of obtaining a suitable replacement contractor, where appropriate.

(g) Reference to the specific standard contract clauses (FPR or AECPR, as appropriate) to be used in the proposed contractual document, together with a draft of suggested deviations, if any, from other applicable standard clauses, with full justification for any such proposed deviations and the text of proposed contract provisions not covered by standard clauses.

(h) Other appropriate recommendations, if any, supported by adequate justification.

§ 9–51.103–4 Questions of contract policy and procedure.

Questions of contract policy and procedure which arise in the course of contract negotiation and administration on which Headquarters consideration is required or desired by the field office shall be accompanied by sufficient information to permit adequate review and analysis of the problem involved.

§ 9–51.103–5 Time of submission.

Requests for approval of contractual documents shall be submitted and approval shall be obtained prior to execution by either party.

Subpart 9–51.2—Subcontracts Requiring Prior Authorization by AEC

§ 9–51.200 Scope of subpart.

This subpart sets forth the requirement for AEC approval of cost-type contractors' procurement actions.

§ 9–51.201 Types of actions.

Managers of Field Offices shall require cost-type contractors to obtain the approval of AEC prior to entering into any subcontracts or purchase orders within the following categories:

(a) *Contracts entered into under section 41.* Prior approval shall be required for the subcontracting of any work a contractor is obligated to perform under a contract entered into under section 41 of the Atomic Energy Act of 1954, as amended.

(b) *Specified materials, equipment, or services.* Managers of Field Offices shall take such action as may be required to insure compliance with the procedure for purchases from contractor-controlled sources or the procurement of specific items, or classes of items which by the terms of the contract may require AEC approval.

(c) *Specified types of procurements.* Approval shall be required prior to entering into subcontracts in excess of $500 on a cost, cost-plus-a-fixed-fee or time and material basis.

(d) *Specified dollar amounts.* Approval shall be required prior to entering into subcontracts or purchase orders above specified dollar amounts. Dollar limits will be established at the discretion of Managers of Field Offices, taking into consideration such factors as the nature of work under each contract, the estimated cost of work under the contract, the contractor's procurement organization, other controls exercised over the contractor's procurement operations, and policies with respect to approvals established by Headquarters or Field Offices. Except as provided in paragraph (e) of this section, subcontracts or purchase orders in excess of the following amounts shall require prior AEC approval:

(1) Construction and architect engineer contracts, $10,000.

(2) Offsite research and development contracts, $5,000.

(3) All other contracts, $25,000.

(e) *Exceptions.* In the event a Manager of a Field Office determines (1) that application of any of the dollar amount limitations established in paragraph (d) of this section would impair the AEC program of the Field Office concerned or would be impracticable of application under the circumstances, or

(2) that it would be in the best interests of the Government to establish less stringent limitations, he may, upon making such determination, approve a dollar amount up to $100,000. Requests to establish dollar amount levels in excess of $100,000 shall be submitted to the Director, Division of Contracts, for approval.

(f) *Emergency approvals.* Managers of Field Offices may, in their discretion, give oral approval (or approval by telephone or teletype) to any subcontract or purchase order requiring AEC approval under this § 9–51.201 in instances of compelling or unusual urgency, such as circumstances under which an AEC program would be seriously hampered or delayed if supplies or services are not obtained by a certain date and time does not permit the obtaining of formal approval. Such emergency approvals shall be confirmed in writing.

Subpart 9–51.3—Other Approval Requirements

§ 9–51.301 Other approval requirements.

Nothing in this Part 9–51 shall be construed as precluding the establishment of additional approval requirements by Headquarters or Managers of Field Offices with respect to contracts or subcontracts under their jurisdiction.

Subpart 9–51.4—Contract and Subcontract Review Requirements

§ 9–51.400 Scope of subpart.

This subpart sets forth the administrative requirement for independent review of proposed contracts and subcontracts by AEC.

§ 9–51.401 Applicability.

All prime contracts and subcontracts under cost-type prime contracts in excess of $100,000 shall be reviewed in conformance with this subpart. Such reviews shall be made prior to award in all cases. Managers of Field Offices may, if considered appropriate, exempt basic research lump-sum contracts with educational institutions from the independent contract review board requirements of this subpart.

§ 9–51.402 Responsibilities.

Each Manager of a Field Office shall establish procedures in accordance with this subpart providing for an independent review of proposed contract and subcontract actions and to review termination settlements.

§ 9–51.403 Assignment of review functions.

Responsibility for independent review of contract and subcontract actions shall be assigned to a Contract Review Board established under § 9–51.403–1, or such independent review shall be accomplished under the alternate review procedures set forth in § 9–51.403–2.

§ 9–51.403–1 Contract Review Boards.

(a) *Organization.* Each Contract Review Board shall consist of not less than three members with broad business and contracting experience. A majority of representatives on each Board shall be permanent board members. Other members may be drawn from panels of designated persons as may be appropriate for cases under consideration. To the extent practicable, no person shall serve as a member of a Contract Review Board in reviewing a contract action in which he has participated, or a contractor selection (Part 9–56), unless such action is subject to approval under § 9–51.102, or the Manager of the Field Office shall determine that his participation in the review of the particular contract provides continuity of experience or is otherwise in the best interest of the Government. The Chairman of each Board in a Field Office shall be designated by the Manager of the Field Office concerned and each Board shall be furnished with such staff assistance as may be requested by the Board and approved by the Manager of the Field Office. Contract Review Boards may be assigned additional functions at the discretion of Managers of Field Offices provided such functions are related to procurement and are not inconsistent with the Board's responsibility as set forth in this subpart.

(b) *Purpose of review.* In negotiated procurements, the primary function of contract review is to provide an independent review and analysis of contract and subcontract actions for the purpose of determining whether the negotiations (1) were competently conducted, (2) were based on adequate information, (3) were in conformance with established policies and procedures, and (4) resulted in a contract or subcontract (i) with a responsible contractor and (ii) that adequately protects the interests of the Government, including the reasonableness of the fixed fee or profit (if any) in cost-type procurements, the reasonableness of price in fixed-price-type contracts or subcontracts including the reasonableness of intermediate or final repricing due to price redetermination, escalation, etc., with comparison of the proposed price with the independent Government cost estimate, if applicable. With respect to awards resulting from formal advertising, review will include such matters as determining the responsibility of the contractor (§ 9–1.310), the reasonableness of the price of the proposed award, including comparison with the independent Government cost estimate, if applicable, the adequacy of competition, the advisability of rejecting all bids and readvertising or negotiating, and, in the case of a proposed award to other than the low bidder, whether such action is in the best interest of the Government.

(c) *Method and extent of review.* When review is required by this Part 9–51 or for termination settlements, the negotiator or purchasing officer (or contract administrator in the case of subcontracts) shall submit a statement justifying the proposed action with such detailed information as may be required for an adequate review. Procedures for the submission of such statements shall be issued by each field office. Contract Review Boards shall determine the overall reasonableness of proposed actions from the standpoint of protecting the interests of the Government. Such Boards may vary the scope and extent of reviews according to the size and complexity of individual cases and other relevant factors.

(d) *Results of review.* Contract Review Boards shall document the scope and extent of the review and submit written recommendations to Managers of Field Offices (or to such other approving officials as may be appropriate) on each proposed contract or subcontract action reviewed. In the event the approving official departs from the recommendation of the Review Board, the basis for such action shall be appropriately documented in the files.

§ 9–51.403–2 Alternate review procedures.

Where it is impracticable to establish a Contract Review Board, or where additional procedures are appropriate to supplement a Contract Review Board, the following procedures shall be followed:

(a) *For procurement effected through competition.* Contracts and subcontracts to be entered into as a result of formal advertising and subcontracts which meet the criteria established in § 9–59.003(b)(1) may be reviewed by such alternate procedures as may be prescribed by Managers of Field Offices.

(b) *For procurement effected by negotiation.* Contracts and subcontracts other than those covered in paragraph (a) of this section may be reviewed by such alternate procedures as may be prescribed by Managers of Field Offices: *Provided:*

(1) In the judgment of the Manager of the Field Office concerned supplemental procedures are necessary, or it is impracticable to establish a Contract Review Board as set forth in §9–51.403–1;

(2) The alternate procedures assure an adequate independent review of contract and subcontract actions; and

(3) The following principles are observed in establishing the alternate procedures:

(i) Contract or subcontract actions requiring review under a field office (or area office with respect to contract or subcontract actions within the approval authority of an Area Manager in those instances where Area Managers have been delegated contracting or approving authority in excess of $100,000) to the fullest extent practicable shall be reviewed by the same reviewers regardless of the nature of the work under the individual contracts in order to assure continuity of experience and uniformity of treatment.

(ii) Reviewers shall have a broad background of business and contracting experience in private industry or Government.

(iii) Advice in specialized fields such as engineering, law, and accounting shall be readily available to the reviewers.

(iv) Reviewers shall not negotiate or assist in the negotiation of any contract or subcontract, including contractor selection (Part 9–56), except when the contract or subcontract shall be subject to approval under § 9–51.102, or where the approving authority shall determine

that the reviewer's participation provides continuity of experience or is otherwise in the best interest of the Government.

(c) The requirement of § 9–51.403–1 (b), (c), and (d), with respect to Contract Review Boards shall be met.

Subpart 9–51.5—Contracts or Subcontracts Requiring Advance Notice

§ 9–51.500 Scope of subpart.

Notice of intent to enter into contracts or subcontracts within the categories set forth below shall be required as indicated therein. These requirements are not established for approval purposes but are for information only.

§ 9–51.501 Contracts for electric power.

Proposed contracts or subcontracts for the supplying of electric power shall be reported by Managers of Field Offices to the Director, Division of Construction, unless all of the following conditions exist:

(a) The requirement is for a maximum demand of less than 5,000 kilowatts for which service is available or can be made available;

(b) The power is to be furnished at rates, terms, and conditions of an established rate schedule approved by the State public service commission having jurisdiction;

(c) Power is to be furnished without a contribution to the service, or an advance or special payment of any kind (including provisions covering payments in the event of cancellation prior to expiration date) by or on behalf of AEC, other than a contribution or payment required by an approved rate schedule under paragraph (b) of this section; and

(d) The estimated cost of the power does not exceed $500,000 per year during the life of the proposed contract or subcontract.

§ 9–51.502 Contracts for gas.

Proposed contracts or subcontracts for the supplying of natural or manufactured gas shall be reported by Managers of Field Offices to the Director, Division of Construction, unless all of the following conditions exist:

(a) The gas is to be furnished at rates, terms, and conditions of an established rate schedule approved by the State public service commission having jurisdiction;

(b) The gas is to be furnished without a contribution to the service or an advance or special payment of any kind (including provisions covering payments in the event of cancellation prior to expiration date) by or on behalf of AEC;

(c) The gas is to be furnished without an investment by AEC in facilities to be installed off the property, other than a contribution or payment required by an approved rate schedule under paragraph (a) of this section; and

(d) The estimated annual cost of the gas does not exceed $120,000 per year during the life of the proposed contract or subcontract.

§ 9–51.503 Contracts let under long-term contract authority.

Managers of Field Offices shall advise the Controller, with a copy to the Director, Division of Contracts, of any intent to utilize the long-term contract authority provided by subsection u, section 161 of the Atomic Energy Act of 1954 as amended by Public Law 85–681 (72 Stat. 633). Such advance notice should be provided at an early stage of planning on any such proposed contract action.

Subpart 9–51.6—Contracts and Subcontracts Requiring Clearance With the Bureau of the Budget

§ 9–51.600 Scope of subpart.

This subpart sets forth requirements for the clearance of contracts and subcontracts with the Bureau of the Budget.

§ 9–51.601 Actions requiring clearance.

In accordance with the Federal Reports Act of 1942 and Bureau of the Budget Circular A–40, contracts and subcontracts which will result in the collection of information on identical items at the request of or for AEC by the contractor or subcontractor, from 10 or more respondents, require clearance from the Assistant Director of the Bureau of the Budget and inscribing thereon an approval number or notation.

§ 9–51.602 Procedure for obtaining clearance, extension of clearance, or exemption.

Requests for clearance of contracts and subcontracts or material revision or change in previously approved contracts or subcontracts, extension of clearance beyond scheduled expiration date, or exemption from clearance shall be submitted by Managers of Field Offices or Directors, Headquarters Divisions or Offices to the Director, Division of Contracts for coordination with and transmittal by the Controller to the Assistant Director of the Bureau of the Budget. Such requests shall be in the form and contain all of the pertinent information required by paragraphs 4, 5, 6, and 7 of BoB Circular A–40.

PART 9–53—NUMBERING AND DISTRIBUTION OF CONTRACTS AND ORDERS

Sec.

AUTHORITY: The provisions of this Part 9–53 issued under sec. 161 of the Atomic Energy Act of 1954, as amended, 68 Stat. 948, 42 U.S.C. 2201; Sec. 205 of the Federal Property and Administrative Services Act of 1949, as amended, 63 Stat. 390, 40 U.S.C. 486.

§ 9–53.000 Scope of part.

This part sets forth the administrative requirements and procedures for numbering, distributing, and filing of contracts (including letter contracts, all appropriation transfers, and working fund agreements), modifications thereto, and the numbering of orders (including purchase orders).

Subpart 9–53.100—Contracts

§ 9–53.101 Numbering of contracts.

(a) Contracts are numbered with approved letter symbols and serial numbers primarily for identification, audit, and filing purposes. Prefixes for AEC contract numbers for prime contracts executed by each AEC office, are set forth in § 9–53.106.

(b) The letters "AT" in each prefix denote the Atomic Energy Commission. The number before the hyphen within the parentheses designates the State or area within which the procurement office is located, and the number after the hyphen identifies the procurement office within that State or area. The States were assigned numbers in numerical sequence according to the alphabetical listing before Alaska and Hawaii were admitted to the Union. Alaska will be assigned number 52 and Hawaii assigned number 53. The Headquarters office is assigned number 49 with separate numbers assigned to each of the procurement offices, the Pacific Area is assigned number 50, and Puerto Rico is assigned number 51. The number following the hyphen outside the parentheses is the serial number assigned to the contract. The numbering of contracts shall be centrally controlled by each office for which contract prefix numbers have been designated.

(c) If a prefix is required for an office not listed in this part, it should be requested from the Director, Division of Contracts.

(d) The numerical series for sales contracts begins with the serial number "1" prefixed by the same contract symbol as prescribed for other contracts plus the letter "S" following the parentheses. Thus, the first sales contract for the Albuquerque Operations Office is numbered AT(29–2)S–1.

(e) A number shall be assigned to (1) all contracts, involving the payment of $20,000 or more on a single payment voucher, and (2) all multiple payment contracts regardless of amount. Contracts involving the payment of less than $20,000 on a single payment voucher may or may not be numbered, depending upon the needs of the office. However, in case of doubt as to whether the amount to be paid under a contractual document is more or less than $20,000 or whether more than one payment will be necessary, the contract shall be numbered. Numbers are to be placed in the upper right-hand corner on the original and all copies of contracts or purchase orders and amendments and supplements thereto.

(f) On a modification or extension of a contract that has been transferred from one contracting office to another, the contract should be renumbered with

the prefix number of the new administering office.

§ 9–53.102 Numbering modifications.

All modifications of contracts including change orders and supplemental agreements, shall be numbered in one continuous series, even though the contract is modified by both supplemental agreements and change orders. In the upper right-hand corner of the supplemental agreement or change order will be inserted "Modification No. ------," followed by the words "Supplemental Agreement to" or "Change Order to." For example, if the first modification to a contract (definitive contract or letter contract) is by supplemental agreement, the heading will read:

Modification No. 1, Supplemental Agreement to Contract No. ------.

If the modification on the same contract is by change order, the heading will read:

Modification No. 2, Change Order to Contract No. ------.

§ 9–53.103 Maintenance of contract files.

Managers of Field Offices and Heads of Headquarters Divisions and Offices shall maintain a file or files of all contracts executed or administered by such office or division. The location and distribution of contract files in the various offices and divisions are the responsibility of the Managers or Directors concerned.

§ 9–53.104 Distribution of contracts.

(a) *Basic distribution.* Managers of Field Offices and Heads of Headquarters Divisions and Offices who execute or administer contracts are responsible for making the following minimum distribution of such contracts:

(1) One original signed copy to the contract files of the office administering the contract, except when such copy is required for distribution to the General Accounting Office under subparagraph (3) of this paragraph. In the latter case a duplicate signed copy will be furnished to the office administering the contract;

(2) One signed copy to the contractor. However, in the case of formally advertised supply contracts, a purchase order or Notice of Award may be furnished in lieu of a signed copy of the contract;

(3) One original signed copy to the General Accounting Office when required by GAO Manual, Title 7–4510.50. This regulation provides in part as follows:

The original of all contracts with common carriers of all types for linehaul freight or passenger transportation services, including passenger charter agreements but excluding contracts for local storage, drayage, and hauling, shall be transmitted promptly, to the General Accounting Office, Service Subdivision, Transportation Division, Washington, D.C. 20548.

(4) One signed copy to the AEC field finance office servicing the procurement office and for Headquarters to the Central Accounts Branch, Office of the Controller.

(b) *Additional distribution of contracts.* Each Manager of a Field Office shall make the following additional distribution of conformed copies of contracts including modifications and amendments thereto within its jurisdiction:

(1) To the Office of the General Counsel, one copy of:

(i) Each contract, and each subcontract under a cost-type contract, where the proposed contract action was submitted for Headquarters approval prior to execution:

(ii) Each engineering or architect-engineering prime contract, and each engineering or architect-engineering subcontract under a cost-type prime contract, involving an expenditure (actual or estimated) of $500,000 or more.

(2) To the appropriate Headquarters division or office, one copy of each contract sponsored by such division or office.

(3) To the Division of Contracts, one copy of each contract and subcontract where the proposed action was submitted for Headquarters approval prior to execution.

§ 9–53.105 Responsibilities.

The Office of the General Counsel, and the divisions or offices, Headquarters, receiving a copy of contracts pursuant to § 9–53.104(b), shall maintain a file of such contracts and shall be responsible for making the contract file available to Headquarters divisions and offices upon request.

§ 9–53.106 Assigned contract prefixes.

Prefixes for AEC contract numbers for each procurement office are set forth as follows:

Active offices	*Contract prefix*
San Francisco	AT(04–3)–
Canoga Park	AT(04–4)–
Grand Junction	AT(05–1)–
Rocky Flats	AT(05–2)–
Idaho Falls	AT(10–1)–
Chicago	AT(11–1)–
Paducah	AT(15–1)–
Kansas City	AT(23–3)–
Nevada	AT(26–1)–
New Brunswick	AT(28–1)–
Princeton	AT(28–2)–
Los Alamos	AT(29–1)–
Albuquerque	AT(29–2)–
New York	AT(30–1)–
Brookhaven	AT(30–2)–
Schenectady	AT(30–3)–
Dayton	AT(33–1)–
Portsmouth	AT(33–2)–
Fernald	AT(33–4)–
Pittsburgh	AT(36–1)–
Savannah River	AT(38–1)–
Oak Ridge	AT(40–1)–
Richland	AT(45–1)–
Headquarters:	
Headquarters Services	AT(49–1)–
General Manager	AT(49–2)–
Military Application	AT(49–3)–
Production	AT(49–4)–
Reactor Development and Technology	AT(49–5)–
Raw Materials	AT(49–6)–
Biology and Medicine	AT(49–7)–
Research	AT(49–8)–
Labor Relations	AT(49–10)–
Isotopes Development	AT(49–11)–
Technical Information	AT(49–12)–
Personnel	AT(49–13)–
Space Nuclear Propulsion	SNP–
International Affairs	AT(49–14)–
Space Nuclear Systems	AT(49–15)–
Peaceful Nuclear Explosives	AT(49–16)–
Eniwetok	AT(50–1)–
Puerto Rico	AT(51–1)–
Inactive Offices	
Los Angeles	AT(04–1)–
Berkeley	AT(04–2)–
Hartford	AT(06–1)–
Wilmington	AT(07–1)–
Spoon River	AT(11–2)–
Iowa (Burlington)	AT(13–1)–
Ames	AT(13–2)–
Detroit	AT(20–1)–
Centerline	AT(20–2)–
St. Louis	AT(23–2)–
Sandia	AT(29–3)–
Lockland	AT(33–3)–
Pantex	AT(41–1)–
Milwaukee	AT(47–1)–
Headquarters:	
Special Projects	AT(49–9)–

Subpart 9–53.200—Orders

§ 9–53.201 Numbering of orders (Form AEC–103).

Procurement offices shall number all orders (Form AEC–103), including purchase orders, with a prefix symbol to identify the issuing office, followed by a symbol consisting of the last two digits of the fiscal year of issuance. In addition, procurement offices may assign such secondary symbols and suffixes as may be required for their particular needs. This prefix shall precede the serial number assigned to the order on a chronological basis, starting with the number "1" at the beginning of each fiscal year. For example, the first order issued by Chicago Operations Office in the 19xx fiscal year would be "CH–XX–1."

§ 9–53.202 Procurement office symbols.

The symbols assigned for the purpose of identifying AEC procurement offices issuing orders are set forth as follows:

Procurement office	*Order prefix*
Albuquerque	AL–
Brookhaven	BH–
Chicago	CH–
Cincinnati	CI–
Canoga Park	CP–
Dayton	DA–
Fernald	FN–
Grand Junction	GJ–
Idaho	ID–
Kansas City	KC–
Los Angeles	LA–
Los Alamos	LS–
New Brunswick	NB–
Nevada	NV–
New York	NY–
Oak Ridge	OR–
Pinellas	PA–
Paducah	PD–
Portsmouth	PM–
Pittsburgh	PT–
Puerto Rico	PR–
Richland	RL–
Rocky Flats	RF–
San Francisco	SAN–
Schenectady	SNR–
St. Louis	SL–
Savannah River	SR–
Headquarters Services	WA–

PART 9–54—CONTRACT REPORTING

Sec.
9-54.000 Scope of part.
9-54.001 Applicability.
9-54.002 Responsibilities.
9-54.003 Definition of "procurement action."

AUTHORITY: The provisions of this Part 9-54 issued under sec. 161 of the Atomic Energy Act of 1954, as amended, 68 Stat. 948, 42 U.S.C. 2201; sec. 205 of the Federal Property and Administrative Services Act of 1949, as amended, 63 Stat. 390, 40 U.S.C. 486.

§ 9–54.000 Scope of part.

This part sets forth the policies and procedures established for uniform reporting to Headquarters of essential data on procurement actions. Such data will be used for management purposes, for informational reports and to furnish information on procurement required by Congressional Committees, General Services Administration, Small Business Administration, Department of Labor, Renegotiation Board, and the President's Committee on Equal Employment Opportunity.

§ 9–54.001 Applicability.

(a) *Field Offices.* Managers of Field Offices shall report data for each AEC procurement office and shall require reports from each cost-type prime contractor (except when total procurement actions under the contract are estimated at less than $250,000 on an annual basis) and each first-tier cost-type subcontractor under a cost-type prime contract (except when procurement actions under the subcontract are estimated at less than $250,000 on an annual basis).

(b) *Contractors.* If a contractor has more than one procurement office, data will be reported separately for each office. Also, if a contractor has more than one contract subject to these reporting requirements, data will be reported separately for each contract.

§ 9–54.002 Responsibilities.

(a) The Director, Division of Contracts, is responsible for maintaining a central file of contract data and for the issuance of all reports and analyses of procurement actions on an AEC-wide basis.

(b) Division Directors, Heads of Offices, Headquarters, are responsible for the preparation of all reports covering direct procurement actions taken by Headquarters divisions and offices and the collection, summarization, and review of all reports required from cost-type prime and subcontractors under contracts administered by Headquarters divisions.

(c) Managers of Field Offices are responsible for the preparation of:

(1) All reports covering direct procurement actions by their offices and the collection, summarization and review of all cost-type prime and subcontractor reports under contracts administered by their offices, and

(2) Reports on Headquarters-designated contracts, and contracts directed by other offices under procurement directives; the office which executes and administers the contract (regardless of where funds are obligated) shall report that contract as one of its procurement actions.

§ 9–54.003 Definition of "procurement action".

(a) "Procurement action" as used in relation to the contract reporting system for prime contracts and subcontracts includes:

(1) All contracts and subcontracts (including both new contracts and contracts superseding preliminary instruments) and purchase orders;

(2) All preliminary contractual instruments such as letter contracts;

(3) All amendments, supplements, modifications, changes, cancellations, and terminations including letters changing the contract amount;

(4) Contracts which cover guaranteed rental;

(5) All orders placed against other Government agencies (such as orders on Federal Supply centers or working fund agreements covering work or services performed for AEC by other Government agencies);

(6) All payments to utility companies. Payments against such contracts are to be reported on the basis of estimated annual expenditures, with an adjustment made at the end of each year to indicate actual payments under the contract or subcontract during the fiscal year;

(7) All orders against existing open-end or indefinite quantity contracts, including contracts with any other Government agency, such as job orders, task orders, or delivery orders. Orders against such contracts should be reported under the basic contract. Individual orders may be reported when placed for the articles, supplies, or services rendered, or as an alternative, the estimated total amount under the contract may be reported; and

(8) Contracts for the acquisition of uranium bearing ores, concentrates, and other source materials.

(b) The term "procurement action" excludes:

(1) Contracts for the acquisition of land;

(2) Purchases paid for in cash;

(3) Orders placed against other AEC offices or contractors involving transfers of excess equipment or surplus material; and

(4) Transportation by Government bill of lading and transportation of personnel by Government travel order. With respect to contract purpose, contractual arrangements falling within object classifications 01 Personal Services; 11 Grants, Subsidies, and Contributions; 13 Refunds, Awards, and Indemnities; 15 Taxes and Assessments; and 16 Investments and Loans, shall be excluded.

PART 9–55—JUSTIFICATION AND DOCUMENTATION OF PROCUREMENT ACTIONS

Sec.
9-55.000 Scope of part.

Subpart 9–55.1—Justification of Procurement

9-55.100 Scope of subpart.
9-55.101 Formal advertising.
9-55.102 Negotiated procurements.
9-55.102-1 Applicability.
9-55.102-2 Justification of AEC direct negotiated contracts.
9-55.102-3 Procurement by cost-type contractors.

Subpart 9–55.2—Documentation

9-55.200 Scope of subpart.
9-55.201 Procurement files.
9-55.202 Documentation of AEC direct negotiated contracts.
9-55.203 Documentation of AEC procurement through formal advertising.
9-55.204 Documentation—cost-type contractor procurement.
9-55.205 Approval files—cost-type contractor procurement.

AUTHORITY: The provisions of this Part 9-55 issued under sec. 161 of the Atomic Energy Act of 1954, as amended, 68 Stat. 948, 42 U.S.C. 2201; sec. 205 of the Federal Property and Administrative Services Act of 1949, as amended, 63 Stat. 390, 40 U.S.C. 486.

§ 9–55.000 Scope of part.

This part sets forth the administrative requirements for the justification of AEC direct and cost-type contractor procurement actions for equipment, supplies, and services (including construction) and for the establishment and maintenance of complete files of documents in support of such procurement actions.

Subpart 9–55.1—Justification of Procurements

§ 9–55.100 Scope of subpart.

This subpart sets forth the type of information required for justification of AEC direct and cost-type contractor procurements.

§ 9–55.101 Formal advertising.

Justification for AEC formally advertised procurements shall consist of the information required by § 9–55.203.

§ 9–55.102 Negotiated procurements.

Justification for AEC direct and cost-type contractor procurements shall consist of the information required by §§ 9–55.102–2 and 9–55.102–3, respectively.

§ 9–55.102–1 Applicability.

This section is applicable to all negotiated contracts and subcontracts (including letters of intent or letter contracts) and modifications thereof involving additional supplies or services, except: (a) Contracts or subcontracts for $2,500 or less, (b) orders against Federal Supply Schedules, (c) orders placed against other Government agencies, (d) orders placed against other AEC offices, and (e) orders placed under one AEC management cost-type contract against another AEC management cost-type contract.

§ 9–55.102–2 Justification of AEC direct negotiated contracts.

The justification of negotiated prime contracts required for actions in excess

of $100,000 shall be in the form of a narrative statement covering, to the extent applicable to the particular transaction, the general type of information as indicated in paragraphs (a) through (i) of this section. Actions under $100,000 shall be supported by files containing substantially the same information required by paragraphs (a) through (i) of this section. The scope and detail of information to be included in the contract file should generally be determined on the basis of the nature, dollar value, and complexity of the transaction involved.

(a) Name and address of proposed contractor.

(b) Location of plant- or work-site for performance of the contract.

(c) Contract number, including amendment number if applicable.

(d) Name of prime contractor.

(e) Nature of contract action (letter contract, conversion of letter contract, extension of existing contract, etc., as well as type of contract—cost, CPFF, incentive, etc.).

(f) A reference to the program basis for the contract, including scope of the work or description of supplies or services being procured, delivery or construction schedules, period of contract, quantities, unit prices, and total price or estimated cost. If the procurement action is a contract modification the relation to the program under the basic contract and the effect thereof should be shown.

(g) A statement justifying the use of negotiation in lieu of formal advertising.

(h) The methods of solicitation employed and the information requested from sources of supplies or services; the distribution and response to such solicitations or requests; and the basis upon which it is concluded that such solicitations or requests were sufficient to assure such full and free competition as is consistent with the procurement of the required supplies or services. This shall include:

(1) A brief summary of the request for proposal used as a basis for solicitation;

(2) Number of firms invited to submit proposals and a list of firms quoting, together with their respective quotations; and

(3) The reason for selection of the proposed contractor, when award is to be made to other than the low offeror or there is a wide margin between the acceptable quotation and other quotations received.

(i) The history of negotiations with the proposed contractor, including the consideration given to appropriate factors, and the basis upon which it is concluded that the results of the negotiations are advantageous to the Government. This shall include:

(1) A brief summary or principal points involved in negotiation and the final results thereof, indicating price changes, if any, during negotiations and explanations therefor;

(2) A comparison of the proposed contract with previous procurements of the same or similar supplies or services, including dates or previous procurements, quantities, changes in specifications from last purchase, if any, and justification for changes in price;

(3) For all contracts involving construction and related engineering services, the cost breakdown resulting from contract negotiations which was used to arrive at the total price or estimated cost for fee or profit computation purposes;

(4) For all contracts for the operation or management of AEC facilities on a cost or CPFF basis, a complete explanation of provisions agreed on for reimbursing costs generated elsewhere than at the project site, together with complete justification for fixed fee, if any;

(5) For each supply, production, and research and development contract, an appropriately detailed analysis of cost and price reflecting final negotiation, with suitable consideration of the policies and principles stated in FPR Part 1–3, Part 9–3, and § 9–15.5008, including comments showing appropriate review and evaluation of major elements of cost and price by financial, technical, and other qualified personnel;

(6) Names and locations, when available, of prospective subcontractors and estimated amounts of respective subcontracts which will exceed $100,000;

(7) A statement as to whether the contract will contain any form of price redetermination or escalation, including reasons for inclusion or omission;

(8) General types and value of Government property to be furnished, or already furnished to the proposed contractor and which will be used in performance of the work;

(9) A statement as to whether the financial condition of the proposed contractor is considered satisfactory, whether the contract is to be partly or wholly financed by Government funds, whether guaranteed loans are involved, whether the contractor's accounting system is satisfactory and adequate to furnish information required by AEC under the contract, and whether or not accounts under the contract are to be integrated with AEC accounts (if a performance bond is to be furnished, state name of bonding company and amount of bond);

(10) A statement as to the technical ability and past performance of the proposed contractor (if the contractor is presently performing other AEC contracts, state uncompleted contract value, status of work thereunder and the effect of proposed additional contracts or backlog on the proposed contract);

(11) The amount of funds available and encumbered for the proposed contract, including appropriation, allotment number, subprogram class and budget item;

(12) The basis for establishing delivery requirements or other performance schedules;

(13) Any other pertinent data in the form of explanations, comments, or comparisons concerning any unusual or new phases of the procurement or negotiations relating thereto (comments or report of the Division of Finance of the Field Office concerned as to the financial and pricing aspects of the proposed contract should be included under this paragraph. Recent and current contracts of the contractor with other field offices and other Government agencies with particular emphasis on a comparison of business aspects of such contracts with the proposed contract should also be commented upon); and

(14) In the case of contract actions requiring Headquarters approval, the name of the AEC negotiator responsible for the transaction, together with his telephone number.

§ 9–55.102–3 Procurement by cost-type contractors.

(a) A written justification, consisting of all information and data upon which it has been determined that the procurement is in the best interests of the Government, shall be required for procurements by cost-type contractors. The scope and detail of such justification shall be consistent with the nature, dollar value, and complexity of the procurement involved.

(b) Except as may be otherwise required by FPR 1–3.811(a)(4), a written justification is not required when cost-type contractors use the competitive bid or quotation and award method of procurement, which includes the basic steps and objectives set forth in § 9–59.003(b)(1), provided award is made without entering into negotiations.

Subpart 9–55.2—Documentation

§ 9–55.200 Scope of subpart.

This subpart sets forth the administrative requirements for the establishment and maintenance of complete files of documents in support of AEC direct and cost-type contractor procurement actions for equipment, supplies, and services (including construction).

§ 9–55.201 Documentation of AEC direct negotiated contracts.

Files of essential documents for substantially all contracts and modifications made without formal advertising, except files for small purchases (less than $2,500) see Subpart 9–3.6 shall include the following:

(a) Copy of the procurement directive, requisition or other document upon which the procurement is based;

(b) Justification of negotiation required by § 9–55.102;

(c) Copy of request for proposals, including drawings and specifications when applicable or references thereto;

(d) List of prospective contractors solicited;

(e) Abstract of proposals both oral and written;

(f) Copies of written proposals or confirming quotations received;

(g) "Findings and Determinations" required by Part 9–3;

(h) Basis upon which it has been determined that the contractor was financially and technically able to perform;

(i) Cost breakdown or other appropriate information used to determine reasonableness of price in making award, including a statement on the analysis of the price;

(j) Approval of appropriate reviewing authority when required;

(k) Conformed copy of contract or purchase order with specific reference to any unusual contract provisions and reasons therefor;

(l) Related correspondence; and
(m) Copies of any modifications.

§ 9–55.203 Documentation of AEC procurement through formal advertising.

The file covering a procurement by formal advertising shall include the following:
(a) Copy of the procurement directive, requisition or other document upon which procurement is based;
(b) Copy of the bid invitation;
(c) List of prospective bidders solicited;
(d) Copies of addenda or supplemental notices;
(e) Abstract of bids;
(f) Copy of successful bid;
(g) Evaluation of the reasonableness of the low bid accepted, including comparison with the independent Government cost estimate, if applicable;
(h) Copy of notice of award;
(i) Conformed copy of contract;
(j) Copies of unsucessful bids;
(k) Copies of any modifications;
(l) Justification for award to other than the low bidder and other circumstances justifying award, such as basis for making the award in case of equal low bids;
(m) If performance or payment bond requirements on lump-sum or unit-price construction contracts and subcontracts do not conform to the requirements of Part 9–10, state the reason; and
(n) Related correspondence.

§ 9–55.204 Documentation—cost-type contractor procurement.

Contracting officers shall assure that cost-type contractors establish and maintain procurement files which contain those documents essential to present an adequate and accurate record of the transaction.

§ 9–55.205 Approval files—cost-type contractor procurement.

A file shall be established in the field office which will document the review of each cost-type contractor procurement action submitted for approval to AEC.

PART 9–56—SELECTION OF CONTRACTORS BY BOARD PROCESS

Sec.

AUTHORITY: The provisions of this Part 9–56 issued under sec. 161 of the Atomic Energy Act of 1954, as amended, 68 Stat. 948, 42 U.S.C. 2201; sec. 205 of the Federal Property and Administrative Services Act of 1949, as amended, 63 Stat. 390, 40 U.S.C. 486.

§ 9–56.000 Scope of part.

This part sets forth AEC policies for the use of Contract Proposal Evaluation Boards and policies governing particular types of contracts.

§ 9–56.001 Applicability.

(a) The policies and requirements of this part are to be used in the selection of:
(1) Operating contractors; and
(2) Participants under the Power Demonstration Program.
(b) Also, they are to be used for contracts estimated to exceed $500,000 in the selection of:
(1) Research and development contractors;
(2) Architect-engineer contractors, including those for advance engineering;
(3) Cost-type construction contractors; and
(4) Any other contractor where a judgment of relative technical and managerial capabilities of a group of firms must be made in which the primary objective is the selection of the best qualified firm.
(c) The policies and requirements of this part shall be used for the selection of the contractors for contracts referred to in paragraph (b) of this section estimated to cost less than $500,000 whenever it is considered likely that later phases of the same project will cause the contract to exceed $500,000.
(d) The policies and principles of this part are also applicable to the selection of contractors for contracts estimated to cost less than $500,000, however, less formal procedures and practices than those described in this part may be followed, depending on the circumstances in each particular selection, at the discretion of the designating official.
(e) Reserved.
(f) The policies and requirements of this part do not apply to the following:
(1) Extensions of contracts where it has been appropriately determined that formal selection procedures need not be followed;
(2) Formally advertised contracts or fixed-price negotiated contracts in which price is the primary consideration;
(3) Research and development contracts entered into under the criteria in Subpart 9–4.51 or 9–4.52;
(4) Determination as to whether a given scope of work should be performed in AEC-owned or in commercial facilities; and
(5) Determination as to which existing AEC operating contractor should perform a given scope of work.
(g) In paragraphs (b), (c), and (d) of this section, the $500,000 limit applies to the related construction costs for A–E contracts. For A–E contracts, including selections for advance engineering work, where a related construction cost cannot be determined, the limit in the provisions applies to estimated contract cost of $50,000.

§ 9–56.002 Policy, cost-type contractor procurement.

For the selections of subcontractors under AEC cost-type contracts of the type identified in AECPR 9–56.001(b), evaluations normally should be made on the basis of group judgment by representatives experienced in technical and business areas appropriate to the requirement, using weighted evaluation factors established prior to receipt of proposals. Numerical ratings should be supplemented with supporting narrative explanations of the important judgments involved in arriving at such ratings.

Subpart 9–56.1—Contract Proposal Evaluation Boards

§ 9–56.100 Scope of subpart.

This subpart sets forth AEC policy, concerning the use of Contract Proposal Evaluation Boards.

§ 9–56.101 Use of Contract Proposal Evaluation Boards.

It is the policy of AEC to use Contract Proposal Evaluation Boards in the selection of contractors for contracts of the type referred to in § 9–56.001 (a), (b), and (c).

§ 9–56.102 Purpose of Contract Proposal Evaluation Boards.

The use of Contract Proposal Evaluation Boards is designed to:

(a) Facilitate the selection of contractors;
(b) Provide for selection of the best contractor for a given job;
(c) Insure consistent treatment of firms under consideration; and
(d) Help promote mutual understanding between AEC and its prospective contractors.

Subpart 9–56.2 [Reserved]

Subpart 9–56.3 [Reserved]

Subpart 9–56.4—Policy Governing Particular Types of Contracts

§ 9–56.401 Replacement of contractors operating AEC-owned plants or laboratories.

(a) Where any of the following conditions exist, contractors operating AEC-owned plants or laboratories at AEC-owned locations are subject to replacement at the time their contracts are proposed for extension, and they will not be considered for selection to continue to operate such plants or laboratories,

unless that action would be contrary to the Government's interest and if other qualified firms are available:

(1) Marginal performance;

(2) Conflict of interests between commercial and contract activities when found to outweigh the advantages of using contractors who are demonstrating a sufficient interest in the field of atomic energy to have maintained their own commercial program and thus are assisting in establishing a private, competitive nuclear industry; or

(3) Overconcentration of the firm's activities in the Atomic Energy Commission's program.

(b) Where any of the following conditions apply, the normal selection process, (i.e., requesting proposals from industry and others) will be considered for the selection of contractors described in paragraph (a) of this section at the time such existing contracts are proposed for extension, if qualified firms are available:

(1) Where the existing operating contractor's performance is considered not better than average; or

(2) Where the circumstances underscore the high desirability of giving adequate opportunity to other organizations to compete for the business of supplying services to the AEC.

§ 9–56.402 Replacement of service-type contractors performing services of a continuing nature for the AEC at AEC-owned locations.

The policy set forth in § 9-56.401 above is applicable to the replacement of onsite service-type contractors.

§ 9–56.403 Selection of new onsite service contractors.

Normally a firm will not be considered for selection for an onsite service contract where the work to be performed under the AEC contract, together with work being performed for other Government agencies and others, would place the firm in a predominant position in a field of industrial activity germane to the contract work, unless that action would be contrary to the Government's interest and if other qualified firms are available.

§ 9–56.404 Selection of research and development contracts for work in commercial facilities.

In selecting recipients of research and development work, it is basic AEC policy to assign the work where it can be done most effectively and efficiently. Where it is otherwise appropriate to assign the work to a commercial concern, it is also the policy of the AEC to make such wide distribution of contract awards as will encourage broad participation by qualified research and development contractors performing work in their own facilities in order to:

(a) Maintain a competitive industrial base; and

(b) Prevent firms from attaining a predominant position in a major segment of the atomic energy industry.

§ 9–56.405 Selection of contractors for engineering and construction work.

(a) It is the policy of the AEC to encourage broad participation by qualified architect-engineers and constructors in the atomic energy programs to the fullest extent practicable in order to:

(1) Avoid undue concentration of work with any firm or group of firms in a particular field of work (architect-engineer or construction); and

(2) Develop and maintain a broad base of contractors with atomic energy experience and/or nuclear capability which may be used for AEC or commercial requirements.

(b) A firm currently under contract to AEC or to a cost-type AEC contractor shall not be invited to submit a proposal for work in the same field if the proposed project would be performed concurrently with the existing contract and if the estimated cost of the new construction work involved is in excess of $10 million or the estimated cost of the architect-engineer services is in excess of $1 million where a construction cost estimate cannot be determined. If, for cogent reasons, the designating official believes that such a firm should be invited, approval shall be obtained from the Division of Contracts. This requirement shall not apply to:

(1) Firms currently engaged only on AEC fixed-price construction contracts awarded as a result of formal advertising or invited bids;

(2) Any firm currently engaged on AEC contracts in the same field, the total of which involves construction costs of less than $10 million; or

(3) Any architect-engineer firm after it has completed title II work, exclusive of checking shop drawings, even though it still has title III inspection services to perform.

(c) Normally, only those firms which are compatible with the size and complexity of the job requirements should be invited; that is, for a small relatively simple job, firms whose resources and qualifications are far in excess of the job requirements should not be solicited, and where size and simplicity of the job permit, invitees should be limited to the geographic area of the job.

PART 9–59—ADMINISTRATION OF COST-TYPE CONTRACTOR PROCUREMENT ACTIVITIES

Sec.

AUTHORITY: The provisions of this Part 9–59 issued under sec. 161 of the Atomic Energy Act of 1954, as amended, 68 Stat. 948, 42 U.S.C. 2201; sec. 205 of the Federal Property and Administrative Services Act of 1949, as amended, 63 Stat. 390, 40 U.S.C. 486.

§ 9–59.000 Scope of part.

This part establishes AEC policy and requirements for administration of cost-type contractor procurement.

§ 9–59.001 General.

(a) AEC utilizes cost-type contractors for the operation of its facilities, for the performance of research and development, and for other services. Such contractors are generally selected for technical and managerial capabilities, and are expected to make full use thereof in order to achieve the flexibility and high-quality products and services required for AEC programs.

(b) Procurement activities of AEC cost-type contractors are governed by the requirements of applicable contract provisions. Federal Procurement Regulations generally are not directly applicable to AEC cost-type contractors. There are, however, requirements of certain Federal laws, executive orders, and regulations, including Federal Procurement Regulations, which pertain to procurements by cost-type contractors. These requirements, together with implementing AEC Procurement Regulations, and certain additional AECPR's which apply to contractor procurement, are listed in § 9–59.004. In addition, AEC has established certain procurement policies for its cost-type contractors. These are found in § 9–59.003.

§ 9–59.002 Responsibility of contracting officers.

(a) Contracting officers are responsible for assuring that procurement by cost-type contractors conforms to contract requirements and provides effective and timely support to agency programs. In carrying out this responsibility, contracting officers: (1) Assure that AEC cost-type contracts include those provisions required by law or regulations, and such other provisions as are appropriate to implement AEC policies and requirements; (2) review contractor procurement systems (including policies) as required by this section and in accordance with the provisions of their contracts; (3) review individual procurement actions of certain types or above stated dollar levels established in accordance with Subpart 9–51.2; and (4) make periodic appraisals of the contractor's performance of the procurement function in accordance with criteria established by the Director, Division of Contracts.

(b) Contracting officers shall require cost-type contractors to submit written descriptions of procurement systems and methods used or proposed to be used in the contract work when:

(1) The contract is for the construction, operation, or maintenance of an AEC facility (including research and development facilities) which is segregated from the contractor's regular business; or,

(2) The contract provides for substantial procurement services incident to the construction of AEC facilities; or

(3) The contractor has set up a separate supply function under AEC contracts; or

(4) Expected procurement is considered sufficiently significant by the contracting officer to warrant such action.

(c) In reviewing cost-type contractor descriptions of procurement systems and methods, contracting officers shall assure that such statements are not inconsistent with this part.

§ 9–59.003 Policies for cost-type contractor procurement.

The following policies are established for cost-type contractor procurement. Within these policies it is expected that procurement systems and methods will vary according to the types and kinds of procurement to be made, the needs of the particular programs, and the experience, methods, and practices of the particular contractor. In the development of procurement systems and methods, contractors should be encouraged to make maximum utilization of their experience and initiative to the extent consistent with the requirements of this part.

(a) Procurement systems and methods utilized for AEC contract work should be well defined and consistently applied and should accord with good business practices for the type and amount of procurement involved.

(b) Procurement should be effected in the manner most advantageous to the Government—price, quality, and other factors considered. In order to assure this objective and the award of business on an impartial basis, procurement (from sources other than Government sources) shall be effected by methods calculated to assure such full and free competition as is consistent with securing the required supplies and services. Generally, procurement actions are carried out through one of the following methods:

(1) *Competitive bids or quotations and award.* The competitive bid or quotation and award method of procurement, which normally assures the greatest degree of full and free competition, generally involves the following basic steps and objectives:

(i) Preparation of invitations for bids or requests for quotations setting forth the contract terms and conditions and describing the requirement clearly, accurately, and completely, but avoiding unnecessarily restrictive specifications or requirements.

(ii) Publicizing such invitations or requests by distribution to a reasonable number of prospective bidders and by such other means as may be appropriate, in sufficient time to permit the preparation and submission of bids or quotations before the time set for opening or receipt of bids or quotations.

(iii) Handling bids or quotations in a manner which provides fair and equal treatment to all prospective contractors.

(iv) Making an award to the prospective contractor whose bid or quotation, conforming to the invitation or request, will be most advantageous to the Government, price and other factors considered. However, if upon evaluation of written bids or quotations it is determined to be in the best interests of the Government to enter into negotiations with prospective contractors before award, such negotiations should be conducted in accordance with (2) below with respect to according fair and equal treatment to prospective contractors.

(2) *Negotiation.* Procurement by this method normally should be conducted by competitive negotiations through the solicitation and evaluation of proposals, from an adequate number of qualified sources to assure effective competition, consistent with securing the required supplies or services. Negotiated procurement involves advance planning, description of procurement and delivery requirements, and consideration of the effect these requirements may have on prices and competition. Requests for proposals should describe the property or services required as completely as possible; allow sufficient time for the submission of proposals; and establish a closing date for receipt of proposals. Proposals should be handled in a manner which provides fair and equal treatment to all prospective offerors. Selection of offerors for negotiation and award shall be consistent with FPR 1–3.805 and § 9–3.805.

(c) Price or cost analyses shall be performed in accordance with the requirements of FPR 1–3.807 and § 9–3.807, Pricing Techniques and FPR 1–3.809 and § 9–3.809, Contract audit as a pricing aid. Profits and fees paid shall be consistent with limitations established in § 9–3.808–51.

(d) Supplies and services normally should be procured through the use of suitable specifications, standards, and/or purchase descriptions which clearly and accurately describe the supplies or services to be procured. If such specifications, standards, and/or purchase descriptions are not available and it is impractical or uneconomical to prepare them, "brand name or equal" descriptions may be used, provided the particular physical, functional, or other characteristics of the brand name item which are deemed essential are clearly identified and described.

(e) A fair proportion of supplies and services shall be procured from small business concerns.

(f) The need for access authorizations to classified information shall not be a limiting factor in obtaining competition except where time will not permit securing additional access authorizations.

(g) Awards shall be made only to responsible prospective contractors. Awards shall not be made to firms or individuals on the AEC List of Disqualified Bidders and Ineligible Contractors.

(h) Selection of the type of contract to be used should be based on consideration of the nature of the supplies and services required and other circumstances surrounding the procurement. The cost-plus-percentage-of-cost system of contracting shall not be used in any event.

(i) Small purchases (less than $2,500) should be made by methods designed to (1) obtain fair and reasonable prices, (2) reduce administrative costs of making such purchases to the minimum required to establish the propriety of placing the order at the price paid with the supplier concerned, and (3) improve opportunities for small business concerns within the local trade area to obtain a fair proportion of purchases.

(j) Subcontracts and purchase orders for supplies and services for the AEC work normally should include provisions for resolving disputes to the same extent and in the same manner as in similar AEC direct contracts. A disputes clause which can be used to carry out this policy is set forth in § 9–7.5004–3(b).

§ 9–59.004 AECPR–FPR provisions pertaining to cost-type contractor procurement.

The AECPR–FPR provisions referenced below pertain to cost-type contractor procurements and are listed in this part to facilitate administration. Some of these provisions are implementations of statutory or other requirements and AEC-wide policies, which provide little or no basis for the exercise of judgment. However, to the extent such provisions permit or provide for the exercise of judgment, contracting officers should be guided by good business practice and the best interests of the Government.

Subject	*Reference*
Federal Paper Specifications.	9–1.305–1(b).
Contingent Fees	9–1.501.
Small Business and Labor Surplus Area Concerns.	9–1.710–1 (a) and (c), 9–1.702(b)(2), 1–1.805–1.
Qualified Products	9–1.11.
Organizational Conflicts of Interest.	9–1.5403.
Price Negotiation Policies and Techniques.	1–3.8, 9–3.800.
Subcontracting Policies and Procedures.	1–3.9, 9–3.901.
Livestock Products	9–4.601.
Indemnity Representation.	9–4.5008.
Measurement Differences, SSNM Transfers.	9–4.5300.
Enriched Uranium Agreements.	9–4.5400.
Multiyear Procurement	9–4.5500.
Special and Directed Sources.	1–1.319, 9–5.000.
Foreign Purchases	9–6.100, 9–6.800, 9–18.600.
Clauses	9–7.000–50, 9–14.–5002, 9–7.5003(c).
Termination	9–8.000.
Patents and Copyrights	9–9.5001, 9–9.–5101.
Bonds and Insurance	9–10.000.
Taxes	9–11.203, 9–11.–350, 9–11.4.
Labor	9–12.000, 1–12.8.
Cost Principles	9–15.50.
Construction	9–18.150, 1–18.–305(b), 9–18.–305, 9–18.50, 9–18.108.
Contract Finance	1–30.4, 1–30.5, 9–30.4, 9–30.5, 9–30.7.
Approval of Contracts	9–51.200, 9–51.–400, 9–51.500, 9–51.600.
Procedures for handling mistakes under cost-type contractor procurement.	9–59.005.
Contractor-controlled sources.	9–59.006.
Subcontractor Selection	9–56.002, 9–56.–405.

Records and Reports

Subject	*Reference*
Small Business and Labor Surplus Reports.	9–1.709, 9–1.807.
Possible Antitrust Violations.	9–1.901.
Identical Bids	9–1.1603.
Dissemination of Procurement Information.	9–3.103.
Contract Reporting	9–54.
Justifications	9–55.102–3, 9–55.204.

§ 9–59.005 Procedures for handling mistakes under cost-type contractor procurement.

(a) Managers of Field Offices may authorize the withdrawal of bids or the correction of mistakes in bids submitted to, and contracts awarded by, cost-type contractors in accordance with this section.

(1) Contractors may permit the withdrawal of bids upon a showing of clear and convincing evidence of the alleged mistake.

(2) Contractors may correct obvious clerical errors in bids disclosed prior to award, regardless of amount.

(3) Except as provided in paragraph (4) of this section, contractors may correct other mistakes in bids and contracts as provided in this section.

(4) Managers' of Field Offices approval shall be required for:

(i) Any corrections of mistakes which would cause the bid or contract price (*a*) to exceed that of the second low bid, or (*b*) to displace one or more lower acceptable bids;

(ii) Any corrections of mistakes in bids, other than obvious clerical errors, in procurement actions which require AEC approval;

(iii) Any correction of mistakes in contracts disclosed after award which exceed $1,000; and

(iv) Any rescission of a contract.

(b) Corrections of mistakes are authorized under paragraph (a) (3) and (4) of this section when:

(1) There is clear and convincing evidence to support both the assertion of a mistake and the amount thereof;

(2) The mistake was made in good faith;

(3) The mistake is of such a nature that correction thereof is justified by considerations of fair dealing; and

(4) The mistake is of the type that would be corrected under the contractor's private procurement practices, or with respect to mistakes in bids in excess of $1,000, or which otherwise require approval of Managers of Field Offices, a determination is made that relief would be granted under applicable Federal law.

(c) The authority of this section may not be used to make a bid responsive.

(d) Where rescission is an appropriate remedy, the Manager may authorize a modification in a specific amount, or approve revisions in other terms and conditions, in lieu of rescission.

(e) Where a contract is executed or work is continued after assertion of a mistake, the alleged mistake may be considered on its merits as of the time it was asserted, provided the contract was executed or the work continued pursuant to an understanding that such action did not constitute a waiver of any rights.

(f) Corrections of mistakes or other remedial actions taken pursuant to this section shall be documented by a written statement setting forth the circumstances and basis for such action and shall be made a part of the procurement file.

(g) When correction of mistakes or other relief cannot be granted under the criteria of this section, Managers of Field Offices may deny the request or forward the file to the Director, Division of Contracts, with their recommendation for action.

§ 9–59.006 Procurement from contractor-controlled sources.

(a) When a cost-type contractor maintains a separate procurement function for performance of work in AEC facilities on AEC sites, procurement from contractor-controlled sources (any division, subsidiary, or affiliate of the contractor under a common control) may be treated in the same manner as procurement from other sources provided:

(1) The procurement is made under the same terms and conditions as would apply if the purchase was from a third party;

(2) The procurement is made in accordance with policies and procedures particularly designed to permit fair and open competition which have been approved by the contracting officer; and

(3) The procurement is made in a manner which results in legally enforceable terms and conditions.

When any of the conditions above cannot be met, procurements involving contractor-controlled sources should be made directly by, or with the prior approval of, AEC.

(b) Guidance with respect to reimbursement for procurements or transfers from contractor-controlled sources by cost-type contractors other than those identified in paragraph (a) of this section is set forth in § 9–15.5010–19. In these cases adequate provisions should be made to give the Government the benefit of customary warranties and protection against patent infringement applicable under the circumstances.

(c) Subcontracts for performance of contract work itself (as distinguished from procurement of supplies and services needed in connection with the performance of work) require AEC authorization which may involve an adjustment of the contractor's fixed fee (see, for example, § 9–7.5006–56, Note (a)). If the cost-type contractor seeks authorization to have some part of the contract work performed by a contractor-controlled source, and the contractor's performance of that work was a factor in the negotiated fixed fee, AEC approval would normally require (1) that the contractor-controlled source perform such work on a cost basis without profit or (2) an equitable downward adjustment to the contractor's (i.e., the contracting component's) fixed fee.

Effective date. These regulations are effective upon publication in the FEDERAL REGISTER.

Dated at Germantown, Md., this 17th day of September 1969.

For the U.S. Atomic Energy Commission.

JOSEPH L. SMITH,
Director, Division of Contracts.

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