litigated claims of infringement or in the furnishing of evidence and information in litigated claims before the suit is instituted. The clause as revised varies from that in the Standard Form 32, and is designed for use in contracts where Standard Form 32 is not prescribed, pending subsequent revision of that form. Section 9.104, as revised, reads as follows:

§ 9.104 *Notice and assistance.* The Government should be notified by the contractor of all claims of infringement in connection with the performance of a Government contract which come to the contractor's attention. The contractor should also assist the Government, to the extent of evidence and information in the possession of the contractor, in connection with any suit against the Government, or any claim against the Government made before suit has been instituted, on account of any alleged patent infringement arising out of or resulting from the performance of the contract. Accordingly, the clause set forth below shall be included in all contracts in excess of $5,000 for supplies, construction, or experimental, developmental, or research work; except where Standard Form 32 is prescribed for use (in which case the clause may in the discretion of the contracting officer be used in lieu of that included in Standard Form 32): *Provided*, That the clause set forth below shall not be included in contracts:

(a) Where both performance and delivery are to be outside the United States, its Territories, its possessions, or Puerto Rico, unless the contract indicates that the supplies are ultimately to be shipped into the United States, its Territories, its possessions, or Puerto Rico; or,

(b) Of lesser amounts, except that as a matter of administrative convenience, the clause need not be deleted when it is a part of a standard form being used for contracts of $5,000 or less, since it is self-deleting as to such contracts:

NOTICE AND ASSISTANCE REGARDING PATENT INFRINGEMENT

The provisions of this clause shall be applicable only if the amount of this contract exceeds $5,000.

(a) The Contractor shall report to the Contracting Officer, promptly and in reasonable written detail, each notice or claim of patent infringement based on the performance of this contract of which the Contractor has knowledge.

(b) In the event of any suit against the Government, or any claim against the Government made before suit has been instituted, on account of any alleged patent infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or services performed hereunder, the Contractor shall furnish to the Government, upon request, all evidence and information in possession of the Contractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except in those cases in which the Contractor has agreed to indemnify the Government against the claim being asserted.

(R. S. 161, sec. 2202, 70A Stat. 120; 5 U. S. C. 22, 10 U. S. C. 2202)

PART 10—BONDS AND INSURANCE

Subpart F has been revised to accommodate the suggestion in the General Accounting Office letter B-118778, dated June 26, 1957, that the requirement imposed on contractors to carry property damage insurance on Government property leased to them be eliminated where the work is substantially for the Government.

SUBPART F—INSURANCE OF INDUSTRIAL FACILITIES UNDER LEASES OR FACILITIES CONTRACTS

AUTHORITY: §§ 10.600 to 10.602-2 issued under R. S. 161, as amended, sec. 2202, 70A Stat. 120; 5 U. S. C. 22, 10 U. S. C. 2202.

§ 10.600 *Scope of subpart.* This subpart sets forth the policy with respect to insurance of industrial facilities under a facilities contract or under a lease made pursuant to 10 U. S. C. 2667.

§ 10.601 *Responsibility for liabilities to third persons.* Where industrial facilities are provided by the Government under a facilities contract or a lease, the contract or lease shall require that during the period of construction, installation, alteration, repair, or use, and at any other time as directed by the Department concerned, the contractor or lessee shall insure or otherwise provide approved security for liabilities to third persons (including employees of the contractor or lessee) in the same manner and to the same extent as required in § 10.501.

§ 10.602 *Responsibility for loss or damage to facilities.*

§ 10.602-1 *Facilities contracts.* Section 13.411 of this chapter defines the responsibilities of the contractor for loss or damage to Government facilities. Therefore, facilities contracts shall provide that the contractor shall not include the cost of insurance in any contract except to the extent of insurance required or approved by the Department concerned. If a facilities contract does not restrict the use of the facilities to work performed for the Government, provision shall be made that the contractor shall procure and maintain insurance as the Department concerned may require against loss or damage to the industrial facilities.

§ 10.602-2 *Leases.* (a) Where facilities are leased pursuant to 10 U. S. C. 2667, the Government may, consistent with the policies of § 13.411 of this chapter, require the lessee to provide and maintain insurance against loss or damage to the facilities. In any event the lease shall provide that:

(1) The lessee shall provide, maintain, change, or discontinue such insurance, as the Government may from time to time require: *Provided*, That the lessee's liability for loss or damage to the facilities is modified accordingly;

(2) If any insurance requirement is changed pursuant to (1) above, an equitable adjustment in the rent shall be made so as to reflect any resulting savings or increased costs to the lessee; and

(3) The lessee shall notify the Department concerned whenever the use of the facilities in the performance of Government contracts changes so as to become 75 percent or more of the total productive capacity thereof, and conversely whenever such use changes so as to become less than 75 percent of such capacity.

(b) Generally, whenever more than 75 percent of the total productive capacity of the facilities will be used for a substantial period of time in the performance of Government contracts and the insurance costs are significant, or whenever it is deemed to be in the best interest of the Government, the Department concerned will, consistent with the policies of § 13.411, relieve the lessee from liability for loss or damage to the facilities and eliminate any requirement for insurance relating thereto. Conversely, whenever less than 75 percent of such capacity will be so used, or whenever it is deemed to be in the best interest of the Government, the Department concerned will require the lessee to be responsible for loss or damage to the facilities and provide and maintain appropriate insurance. In such cases an equitable adjustment shall be made in the rent. In determining when the Government shall so modify the responsibilities of the lessee, the percentage of use shall not be regarded as an absolute standard, but rather as an important factor to be considered.

(R. S. 161, sec. 2202, 70A Stat. 120; 5 U. S. C. 22, 10 U. S. C. 2202)

PART 12—LABOR

SUBPART A—BASIC LABOR POLICIES

Section 12.101 (c) has been revised by adding a reference to a DoD directive as follows:

§ 12.101 *Labor relations.* * * *

(c) Where any labor dispute significantly affects, or so threatenes to affect, important procurement, the Department concerned shall notify the Office of the Assistant Secretary of Defense (Manpower, Personnel, and Reserve) and any other interested Department of all information relevant thereto, in accordance with Department of Defense Directive Number 1135.3, dated 8 January 1953, Subject: Participation in Industrial Relations Matters Affecting Procurement.

(R. S. 161, sec. 2202, 70A Stat. 120; 5 U. S. C. 22, 10 U. S. C. 2202)

J. J. PHELAN, Jr.,
Acting Director for Procurement Policy, Office of Assistant Secretary of Defense (Supply and Logistics).

[F. R. Doc. 58-9902; Filed, Nov. 28, 1958; 8:49 a. m.]

[Amdt. 36]

MISCELLANEOUS AMENDMENTS TO SUBCHAPTER

The following miscellaneous amendments are made to this subchapter:

PART 7—CONTRACT CLAUSES

SUBPART A—CLAUSES FOR FIXED-PRICE SUPPLY CONTRACTS

Sections 7.103-10 and 7.103-11 have been amended to reflect the relocation of clauses and the correction of cross-references resulting from the revision to Part 8 of this subchapter.

§ 7.103-10 *Federal, State and local taxes.* Insert the clause set forth in § 11.401-1 or § 11.401-2 of this chapter, as the case may be.

§ 7.103-11 *Default.* Insert the clause set forth in § 8.707 of this chapter.

SUBPART B—CLAUSES FOR COST-REIMBURSEMENT TYPE SUPPLY CONTRACTS

Section 7.203-11 is amended to read as follows:

§ 7.203-11 *Excusable delays.* Insert the clause set forth in § 8.708.

PART 8—TERMINATION OF CONTRACTS

This revision to Part 8, expanded and rearranged, clarifies the subject of contracts terminated for the convenience of the Government to speed up the entire process from notice to terminate, through disposition of residual inventory, to settlement and payment. Existing "fair and fast" termination policies are reiterated and redefined. Comments from representative industries were carefully considered and in pertinent part adopted. Wherever uniformity could be served and duplication avoided, procedures, methods, instructions, and practices common to the Military Departments have been incorporated. By prescribing policies and procedures for the use and application of the termination for default clause, this revision codifies Department of Defense policy for termination for the default of the contractor.

Besides a new subpart F, devoted to default, other new matter includes: Reduction in time from two years to one year for submission of a claim by a prime contractor and reduction from one year to six months for filing of subcontractor claims; prompt processing of applications for partial payment; an initial conference between the contracting officer and contractor to develop a program for settlement; a plant clearance period of 90 days; application of Part 8 procedures to disposal of contractor inventory resulting from changes to a cost-reimbursement type contract; authorization for the use of the provisions of Part 8 in disposing of obsolete or excess property for which the contractor makes a charge; increasing the contracting officer's responsibility to authorize the contractor to conclude settlement of subcontracts up to $2,500; extending to all of a contractor's terminated DoD prime contracts the authority granted by any contracting offices within DoD to settle subcontracts under $10,000; and the establishment of an equitable basis for dealing with a loss contract by application of a rate of loss to all costs.

Department of Defense Contract cost principles for comprehensive use in negotiation and administration, including terminations, are being readied for promulgation. Because of the forthcoming publication of these cost principles, this Revision to Part 8 was not concerned with the consideration of costs in terminations. No attempt was made to revise the principles and standards contained in Subpart D.

Subpart D has been relettered Subpart C; the title of the new Subpart C has been changed from "General Principles Applicable to the Settlement of Terminated Fixed-Price Contracts" to "Additional Principles Applicable to the Settlement of Terminated Fixed-Price Contracts". Sections 8.400, 8.401, and 8.402 have been changed to §§ 8.300, 8.301, and 8.302 respectively, and reference to § 8.402 in new § 8.302 (b) (5) has been changed to § 8.302, and reference to § 8.406 in § 8.302 (c) (13) has been changed to § 8.306.

Part 8, as revised, now reads as follows (with the exception of §§ 8.300, 8.301, and 8.302):

Sec.
8.000 Scope and applicability of part.

Subpart A—Definitions of Terms

8.101 Definitions.
8.101-1 Amount of claim or settlement.
8.101-2 Common items.
8.101-3 Continued portion of the contract.
8.101-4 Contractor-acquired property.
8.101-5 Contractor inventory.
8.101-6 Disbursing officer.
8.101-7 Effective date of termination.
8.101-8 Government-furnished property.
8.101-9 Material.
8.101-10 Other work.
8.101-11 Partial termination.
8.101-12 Plant clearance period.
8.101-13 Plant equipment.
8.101-14 Prime contract.
8.101-15 Production equipment.
8.101-16 Salvage.
8.101-17 Scrap.
8.101-18 Serviceable or usable property.
8.101-19 Settlement agreement.
8.101-20 Settlement proposal.
8.101-21 Special machinery and equipment.
8.101-22 Special tooling.
8.101-23 Subcontract.
8.101-24 Termination claim.
8.101-25 Termination inventory.
8.101-26 Terminated portion of the contract.

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

8.200 Scope of subpart.
8.201 Authority of contracting officers.
8.202 Notice of termination.
8.203 Methods of settlement.
8.204 Duties of prime contractor after receipt of notice of termination.
8.205 Duties of contracting officer after issuance of notice of termination.
8.206 Fraud or other criminal conduct.
8.207 Audit of settlement proposals and of subcontract settlements.

Sec.
8.208 Settlement of subcontract claims.
8.208-1 Subcontractor's rights.
8.208-2 Prime contractor's rights and obligations.
8.208-3 Settlement procedure.
8.208-4 Authorization for subcontract settlements of $10,000 or less without approval or ratification.
8.208-5 Recognition of judgments and arbitration awards.
8.208-6 Delay in settlement of subcontractor claims.
8.208-7 Government assistance in settlement of subcontracts.
8.208-8 Assignment of rights under subcontracts.
8.209 Settlement agreements.
8.209-1 General.
8.209-2 Excepted items.
8.209-3 Government property.
8.209-4 No-cost settlement.
8.209-5 Partial settlements.
8.209-6 Joint settlement of two or more claims.
8.209-7 Settlement by determination.
8.210 Contracting officer's negotiation memorandum.
8.211 Review and approval of proposed settlements.
8.211-1 Settlement review boards.
8.211-2 Required review and approval.
8.211-3 Scope of review.
8.211-4 Action by board.
8.212 Payment.
8.212-1 Partial payments upon termination.
8.212-2 Final payment.
8.213 Cost principles applicable to the settlement of certain terminated research and development contracts.

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

8.300 Scope of subpart.
8.301 General standards for use of cost principles.
8.302 Statement of principles for consideration of costs.
8.303 Allowance for profit.
8.304 Adjustment for loss.
8.305 Deductions.
8.306 Completed end items.
8.307 Settlement proposals.
8.307-1 Submission of settlement proposals.
8.307-2 Bases for settlement proposals.

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

8.401 General considerations.
8.402 Election to discontinue vouchers.
8.403 Notice to the General Accounting Office.
8.404 Procedure where contractor continues to submit vouchers.
8.404-1 Submission of settlement proposal.
8.404-2 Submission of cost vouchers.
8.405 Procedure where contractor discontinues use of vouchers.
8.405-1 Submission of settlement proposal.
8.405-2 Interim negotiations.
8.405-3 Information concerning previous cost vouchers.
8.405-4 Notice to General Accounting Office of audit status date.
8.405-5 Exceptions by the General Accounting Office.
8.405-6 Final settlement.
8.406 Partial termination.
8.407 Termination for default.

Subpart E—Disposition of Termination Inventory

8.501 General.
8.501-1 Methods of disposal.

Subpart F—Termination for Default

Subpart G—Clauses

Subpart H—Forms

(NOTE: A facsimile of each of the forms listed above in §§ 8.802 to 8.807 has been filed with the Federal Register Division; copies of forms may be obtained through the contracting officer in any of the military departments.)

AUTHORITY: §§ 8.000 to 8.807 issued under R. S. 161, sec 2202, 70A Stat. 120; 5 U. S. C. 22, 10 U. S. C. 2202.

§ 8.000 *Scope and applicability of part.* (a) This part establishes uniform policies and procedures relating to the complete or partial termination of contracts for the convenience of the Government or for default. It includes uniform contract clauses with respect to termination and excusable delay, and approved termination and settlement forms.

(b) This part applies to contracts which by their terms provide for termination for the convenience of the Government or for the default of the contractor, whether or not the clauses in the contract with respect to termination and excusable delay are those set forth in Subpart G of this part. In the event the clauses actually used in the contract are inconsistent with the provisions of this part, the clauses actually used shall control to the extent of the inconsistency. Contracts which do not contain the applicable clauses may, where it is in the best interest of the Government, be amended by agreement prior to or after termination of the contract, to include or substitute such a clause.

(c) This part also applies to the disposal of contractor inventory arising out of any modification of a cost-reimbursement type contract pursuant to the Changes clause.

(d) When the Head of a Procuring Activity so authorizes, the provisions of this part may be utilized—

(1) In determining any equitable adjustment as a result of modification of any contract other than a cost-reimbursement type contract pursuant to the Changes clause;

(2) In the disposal of any property which has become obsolete or excess for any reason under a contract whenever the cost of such property is made the basis of a claim by the contractor against the Government; or

(3) In the disposal of contractor inventory generally.

SUBPART A—DEFINITIONS OF TERMS

§ 8.101 *Definitions.* As used in this part, the following terms have the meaning stated below:

§ 8.101-1 *Amount of claim or settlement.* When the action to be taken under this part depends upon the amount of a termination claim or settlement, then, in determining such amount, (a) credits for retention or other disposal of termination inventory allocated to the claim and for advance or partial payments shall not be deducted from the gross claim or settlement; but (b) amounts payable for completed articles or work at the contract price, or for the settlement or discharge of termination claims of subcontractors, shall be deducted.

§ 8.101-2 *Common items.* "Common items" means material which is common in nature to both the terminated contract and the contractor's other work.

§ 8.101-3 *Continued portion of the contract.* "Continued portion of the contract" means that portion of a partially terminated contract which relates to work or end items not already completed and accepted prior to the effective date of termination and which the contractor must continue to perform.

§ 8.101-4 *Contractor-acquired property.* "Contractor-acquired property" is property procured or otherwise provided by the contractor for the performance of a contract, whether or not the Government has title by the terms of the contract, or exercises its contractual right to take title.

§ 8.101-5 *Contractor inventory.* "Contractor inventory" means (a) any property acquired by and in the possession of a contractor or subcontractor (including Government-furnished property) under a contract pursuant to the terms of which title is vested in the Government, and in excess of the amounts needed to complete full performance under the entire contract; and (b) any property which the Government is obligated to or has an option to take over under any type of contract as a result either of any changes in the specifications or plans thereunder or of the termination of such contract (or subcontract thereunder), prior to completion of the work, for the convenience or at the option of the Government.

§ 8.101-6 *Disbursing officer.* "Disbursing officer" means the officer or agent of the office designated as the paying office under the contract, including as appropriate, Army finance and accounting officers, Air Force accounting and disbursing officers, and Navy regional accounts officers.

§ 8.101-7 *Effective date of termination.* "Effective date of termination" means the date upon which the notice of termination first requires the contractor to stop performance, in whole or in part, under the contract. If, however, the termination notice is received subsequent to the date fixed for termination, then the effective date of termination means the date on which the notice is received.

§ 8.101-8 *Government-furnished property.* "Government-furnished property" is property in the possession of or acquired directly by the Government, and subsequently delivered or otherwise made available to the contractor.

§ 8.101-9 *Material.* "Material" means property which may be incorporated into or attached to an end item to be delivered under a contract or which may be consumed or expended in the performance of a contract. It includes, but is not limited to, raw and processed material, parts, components, assemblies, and small tools and supplies which may be consumed in normal use in the performance of the contract.

§ 8.101-10 *Other work.* "Other work" means any current or scheduled work of the contractor, whether Government or commercial, other than work related to the terminated contract.

§ 8.101-11 *Partial termination.* "Partial termination" means the termination of a part, but not all, of the work which has not been completed and accepted under a contract.

§ 8.101-12 *Plant clearance period.* "Plant clearance period" means a period beginning with the effective date of the termination for convenience and ending, for each particular property classification (such as raw materials, purchased parts, and work in process) at any one plant or location, 90 days after receipt by the contracting officer of acceptable inventory schedules covering all items of that particular property classification in the termination inventory at that plant or location, or ending on such later date as may be agreed to by the contracting officer and the contractor. Final phase of a plant clearance period means that part of a plant clearance period after the receipt of acceptable inventory schedules covering all items of the particular property classification at the plant or location.

§ 8.101-13 *Plant equipment.* "Plant equipment" means personal property of a capital nature (consisting of machinery, equipment, furniture, vehicles, machine tools, accessory and auxiliary items, and production equipment, but excluding special tooling) used or capable of use in the manufacture of supplies or in the performance of services or for any administrative or general plant purpose.

§ 8.101-14 *Prime contract.* "Prime contract" means any contract as defined in § 1.201-6 of this chapter entered into by any Department or procuring activity.

§ 8.101-15 *Production equipment.* "Production equipment" means those items of plant equipment located within a manufacturing, processing, assembly, or service establishment, and used for cutting, abrading, grinding, shaping, forming, joining, measuring, testing, heating, or treating production materials or work in process.

§ 8.101-16 *Salvage.* "Salvage" means property which, because of its worn, damaged, deteriorated, or incomplete condition, or specialized nature, has no reasonable prospect of sale or use as serviceable property without major repairs or alterations but which has some value in excess of its scrap value.

§ 8.101-17 *Scrap.* "Scrap" means property that has no reasonable prospect of being sold except for the recovery value of its basic material content.

§ 8.101-18 *Serviceable or usable property.* "Serviceable or usable property" means property that has reasonable prospect of sale or use either in its existing form or after minor repairs or alterations.

§ 8.101-19 *Settlement agreement.* "Settlement agreement" means a written agreement, in the form of an amendment to the contract, between the contractor and the Government settling all or a severable portion of a settlement proposal.

§ 8.101-20 *Settlement proposal.* "Settlement proposal" means a termination claim submitted by a contractor or subcontractor in the form, and supported by the data, required by this part.

§ 8.101-21 *Special machinery and equipment.* "Special machinery and equipment" means that part of plant equipment which was acquired or constructed solely for the performance of the terminated contract or the terminated contract and other Government contracts, and as to which the contractor claims loss of useful value.

§ 8.101-22 *Special tooling.* "Special tooling" means property of such a specialized nature that its use, without substantial modification or alteration, is limited to the production of the particular supplies or performance of the particular services for which acquired or furnished. It includes, but is not limited to, jigs, dies, fixtures, molds, patterns, special taps, special gauges, and special test equipment.

§ 8.101-23 *Subcontract.* "Subcontract" means any contract as defined in § 1.201-6 of this chapter other than a prime contract, entered into by a prime contractor or a subcontractor, calling for supplies or services required for the performance of any one or more prime contracts.

§ 8.101-24 *Termination claim.* "Termination claim" means any claim by a contractor or subcontractor, permitted by the terms of a prime contract, for compensation for the termination, in whole or in part, of the prime contract or a subcontract thereunder, and any other claim which this Section authorizes to be asserted and settled in connection with a termination settlement.

§ 8.101-25 *Termination inventory.* "Termination inventory" means any items of physical property purchased, supplied, manufactured, furnished, or otherwise acquired for performance of the terminated contract and properly allocable to the terminated portion of the contract. The term does not include any facilities, material, production or other equipment, or special tooling, which are subject to a separate contract or a special contract provision governing the use or disposition thereof. Termination inventory may include contractor-acquired property and Government-furnished property as defined in § 8.101-4 and § 8.101-8.

§ 8.101-26 *Terminated portion of the contract.* "Terminated portion of the contract" means that portion of a terminated contract which relates to work or end items not already completed and accepted prior to the effective date of termination and which the contractor is not to continue to perform.

SUBPART B—GENERAL PRINCIPLES APPLICABLE TO THE SETTLEMENT OF FIXED-PRICE TYPE CONTRACTS TERMINATED FOR CONVENIENCE AND TO THE SETTLEMENT OF ALL TERMINATED COST-REIMBURSEMENT TYPE CONTRACTS

§ 8.200 *Scope of subpart.* This subpart deals with:

(a) The authority of contracting officers to terminate contracts in whole or in part (1) for the convenience of the Government; and (2) in the case of cost-reimbursement type contracts for default;

(b) Duties of the contractor and the contracting officer after issuance of the notice of termination;

(c) General procedures for the settlement of terminated contracts; and

(d) Settlement agreements.

Subpart C sets forth additional principles applicable only to fixed-price type contracts. Subpart D sets forth additional principles applicable only to cost-reimbursement type contracts. Subpart F sets forth the principles applicable to the termination of fixed-price type contracts for default.

§ 8.201 *Authority of contracting officers.* The authority of contracting officers to terminate contracts for convenience, and for default in the case of cost-reimbursement type contracts, and to enter into settlement agreements under this Subchapter is usually found in the termination clause or other provisions of the contract. Contracts shall be terminated for the convenience of the Government or for default only when such action is in the best interest of the Government, as determined in accordance with Departmental procedures.

§ 8.202 *Notice of termination.* Contracts shall be terminated for convenience, or for default in the case of cost-reimbursement type contracts, only by a written notice to the contractor (see 8.801), stating:

(a) That the contract is being terminated for the convenience of the Government (or for default) pursuant to the contract provisions authorizing such termination;

(b) The effective date of termination;

(c) The extent of termination and, if a partial termination, the portion of the contract to be continued; and

(d) Any special instructions.

A copy of the notice of termination shall be sent to any known assignee, guarantor, or surety of the contractor.

§ 8.203 *Methods of settlement.* Settlement of terminated cost-reimbursement type contracts and of fixed-price type contracts terminated for convenience may be effected by (a) negotiated agreement, (b) determination by the contracting officer, (3) in the case of cost-reimbursement type contracts, costing-out under vouchers using Standard Form 1034, or (d) a combination of these methods. Every effort shall be made to reach a fair and prompt settlement with the contractor. The negotiated agreement is the most expeditious and most satisfactory method of settling termination claims and shall be used whenever feasible. Settlement by determination shall be used only when a termination claim cannot be settled by agreement.

§ 8.204 *Duties of prime contractor after receipt of notice of termination.* The contractor, after receipt of the notice of termination and except as otherwise directed by the contracting officer, must comply with the termination clause of the contract and the notice of termination which generally require, among other things, that the contractor:

(a) Stop work immediately on the terminated portion of the contract and discontinue placing subcontracts thereunder;

(b) Terminate all subcontracts related to the terminated portion of the prime contract;

(c) Immediately advise the contracting officer of any special circumstances precluding the stoppage of work;

(d) If the termination is partial, perform the continued portion of the contract and submit promptly any request for an equitable adjustment of price with respect to the continued portion of the contract, supported by evidence of any increase in the cost thereof;

(e) Take such action as may be necessary, or as the contracting officer may direct, to protect and preserve property in the possession of the contractor in which the Government has or may acquire an interest; and, to the extent directed by the contracting officer, deliver such property to the Government;

(f) Promptly notify the contracting officer in writing of any legal proceedings against the contractor growing out of any subcontract or other commitment related to the terminated portion of the contract;

(g) Settle all outstanding liabilities and all claims arising out of termination of subcontracts, obtaining any approvals or ratifications required by the contracting officer;

(h) Promptly submit its own settlement proposal, supported by appropriate schedules; and

(i) Dispose of any termination inventory, as directed or authorized by the contracting officer.

§ 8.205 *Duties of contracting officer after issuance of notice of termination.* (a) In accordance with the termination clause in the contract and with the notice of termination, the contracting officer shall, among other things:

(1) Direct the action required of the prime contractor;

(2) Examine the settlement proposal of the prime contractor and, when appropriate, the settlement proposals of subcontractors;

(3) Promptly negotiate settlement with the contractor and enter into a settlement agreement; and

(4) To the extent that he is unable to negotiate settlement after due and diligent effort, promptly settle the contractor's claim by determination.

(b) To expedite settlement, the contracting officer shall seek assistance from specially qualified personnel (such as negotiating, legal, accounting, inspecting, engineering, and property disposal personnel) to:

(1) Assist the contracting officer in dealings with the contractor;

(2) Render advice on legal and contractual matters;

(3) Conduct accounting reviews and render advice and assistance on accounting matters; and

(4) Perform the following functions with respect to the termination inventory—

(i) Verify its existence;

(ii) Determine qualitative and quantitative allocability;

(iii) make recommendations concerning serviceability and unserviceability.

(iv) Undertake necessary screening and redistribution; and

(v) Assist the contractor in accomplishing other disposition.

(c) An initial conference shall be held with the contractor as promptly as possible to develop a definite program for effecting the settlement. Where appropriate in the judgement of the contracting officer, principal subcontractors should be present. Topics discussed at the conference should include:

(1) General principles relating to the settlement of any termination claim, including obligations of the contractor under the termination clause of the contract:

(2) Extent of the termination, point at which work is stopped, and status of any plans, drawings, and information which would have been delivered had the contract been completed;

(3) Status of any continuing work;

(4) Obligation of the contractor to terminate subcontracts and general principles to be followed in settlement of subcontractor claims;

(5) Names of subcontractors involved and the respective dates termination notices were issued to them;

(6) Contractor personnel handling, and methods for, review and settlement of subcontractor claims;

(7) Arrangements for transfer of title and delivery to the Government of any materials required by the Government;

(8) General principles and procedures to be followed in the protection, preservation, and disposition of contractor's and subcontractor's termination inventory, including the preparation of termination inventory schedules;

(9) Contractor accounting practices and preparation of DD Form 546 (Schedule of Accounting Information) (§ 8.802-9);

(10) Form in which settlement proposals shall be submitted;

(11) Accounting review of settlement proposals;

(12) Any requirement for interim financing in the nature of partial payments; and

(13) Tentative time schedule for negotiation of the settlement, including submission of settlement proposals, termination inventory schedules, and accounting information schedules by the contractor and subcontractors.

§ 8.206 *Fraud or other criminal conduct.* Whenever the contracting officer has reason to suspect fraud or other criminal conduct in connection with the settlement of a terminated contract, he shall discontinue all negotiations with the contractor and shall report the facts in accordance with § 1.111, of this chapter.

§ 8.207 *Audit of settlement proposals and of subcontract settlements.* (a) Each settlement proposal of $1,000 or over submitted by a prime contractor shall be referred by the contracting officer to the cognizant audit agency for appropriate examination and recommendation. The contracting officer may, in his discretion, refer for audit settlement proposals of less than $1,000. The contracting officer's referral shall be in writing and shall recommend the scope of the audit, but the auditor may expand the scope of the audit if deemed advisable. The audit agency shall submit a written report and recommendations to the contracting officer, in accordance with Departmental procedures.

(b) Subcontract settlements submitted by the prime contractor to the contracting officer for approval or ratification in accordance with § 8.208 shall be referred to the cognizant audit agency for review and recommendations if (1) the settlement involves $25,000 or more; or (2) the contracting officer considers an audit, in whole or in part, desirable. The audit agency shall submit a written report and recommendations to the contracting officer, in accordance with Departmental procedures.

§ 8.208 *Settlement of subcontract claims.*

§ 8.208-1 *Subcontractor's rights.* A subcontractor has no contractual rights against the Government upon the termination of a prime contract. The rights of a subcontractor are against the prime contractor or intermediate subcontractor with whom it has contracted. Upon termination of a prime contract, the prime contractor and each subcontractor are responsible for the prompt settlement of the termination claims of immediate subcontractors.

§ 8.208-2 *Prime contractor's rights and obligations.* Each termination clause provides that, after receipt of a notice of termination and except as otherwise directed by the contracting officer, the prime contractor shall terminate all subcontracts to the extent that they relate to the performance of any work terminated by notice of termination. Prime contractors should therefore, for their own protection, include a termination clause in their subcontracts. A suggested subcontract termination clause is set forth in § 8.706. The failure of a prime contractor to include an appropriate termination clause in any subcontract, or to exercise its rights thereunder, shall not (a) affect the right of the Government to require the termination of the subcontract, or (b) increase the obligation of the Government beyond that which would have arisen if the subcontract had contained an appropriate termination clause. In any such case, the reasonableness of the prime contractor's settlement with the subcontractor should normally be measured by the aggregate amount which would be due under subparagraphs (i), (ii), and (iii) of paragraph (e) of the suggested subcontract termination clause. Reimbursement in excess of that amount shall be allowed only in unusual cases, and then only when the contracting officer is satisfied that the terms of the subcontract were negotiated in good faith and did not unreasonably increase the rights of the subcontractor.

§ 8.208-3 *Settlement procedure.* (a) Settlements with subcontractors shall be made in general conformity with the policies and principles relating to settlement of prime contracts as set forth in this subpart and in subpart C or D of this part as applicable. However, the basis and form of the subcontractor's settlement proposal must be acceptable to the prime contractor or the next higher tier subcontractor. Each such settlement shall be supported by accounting and other data sufficient for adequate review by the Government. In no event shall the Government pay to the prime contractor any amount for loss of anticipatory profits or consequential damages resulting from the termination of any subcontract (but see § 8.208-5).

(b) Except as provided in § 8.208-4 (1) all subcontractor termination inventory shall be disposed of and accounted for in accordance with Subpart E of this part, and (2) the contracting officer shall require the prime contractor to submit to him for approval or ratification all termination settlements with subcontractors. In submitting each settlement, the prime contractor shall certify that it has examined the subcontractor's claims included therein, that they are allocable to the terminated portion of the prime contract, and that the settlement is fair and reasonable, was negotiated in good faith, and is not more favorable to the subcontractor than if the Government were not involved. The contractor shall also certify that it has received from all its immediate subcontractors certifications substantially in the form of its own certification. With respect to settlements with more remote subcontractors, the contractor shall certify that it has no information leading it to doubt their reasonableness or their allocability to the terminated portion of the prime contract.

(c) The contracting officer shall promptly examine such subcontract settlement required to be submitted to him (including the basis and form of the proposal upon which the settlement was based) to satisfy himself that the subcontract termination was made necessary by the termination of the prime contract, and that the settlement was arrived at in good faith, is reasonable in amount, and is allocable to the terminated portion of the contract (or if allocable only in part, that the proposed allocation is reasonable). In considering the reasonableness of any subcontract settlement, the contracting officer shall be guided generally by the provisions of this part relating to the settlement of prime contracts, and shall comply with any applicable requirements of §§ 8.207 and 8.211 relating to audit and review. Upon completion of the examination, the contracting officer shall notify the contractor in writing of (1) his approval or ratification, or (2) his reasons for disapproval.

§ 8.208-4 *Authorization for subcontract settlements of $10,000 or less without approval or ratification.* (a) (1) The contracting officer may, upon the written request of the prime contractor, authorize it in writing to conclude settlements of $10,000 or less (see § 8.101-1) of its terminated subcontracts, without approval or ratification by the contracting officer, if:

(i) The contracting officer is satisfied with the adequacy of the procedures used by the contractor in settling termination claims (including proposals for retention, sale, or other disposal of termination inventory) of its immediate and lower tier subcontractors.

(ii) Any termination inventory included in determining the amount of the settlement will be disposed of in accordance with § 8.513, except that the disposition of such inventory shall not (*a*) be subject to review by the contracting officer under §§ 8.513-1 or 8.513-3, or (*b*) be subject to § 8.513-4; and

(iii) The settlement will be accompanied by a certificate substantially similar to the certificate set forth in the settlement proposal forms in § 8.802;

Provided, That the contracting officer shall not grant to the contractor any authority hereunder for settlements between $2,500 and $10,000 without the written approval as to that contractor of the Head of the Procuring Activity concerned, or of a deputy or principal assistant responsible for contract matters. Except as provided in subparagraph (3) of this paragraph authority granted to a prime contractor pursuant to this subparagraph (a) (1) by any contracting officer within the Department of Defense shall be applicable to all terminated prime contracts of all procuring activities within the Department of Defense.

(2) Except as provided in subparagraph (3) of this paragraph, the contracting officer without further approval or ratification shall accept, as part of the prime contractor's termination claim, any settlement of terminated lower tier subcontracts concluded by any of its immediate or lower tier subcontractors who, pursuant to subparagraph (1) of this paragraph, have been granted, by any contracting officer within the Department of Defense, authority as prime contractors to settle subcontracts: *Provided*, that the settlement of such lower tier subcontracts is within the limit of such authority.

(3) The provisions of subparagraphs (1) and (2) of this paragraph shall not apply to any contracts under the administration of any contracting officer within the Department of Defense if such contracting officer so notifies the prime contractor concerned. Such notice (i) shall be in writing, (ii) shall be issued only after written approval thereof by the Head of the Procuring Activity concerned or of a deputy or principal assist-

ant responsible for contract matters, and (iii) if subparagraph (2) of this paragraph is involved shall specify any subcontractor affected.

(b) § 8.513 shall apply to any disposal of completed end items allocable to the terminated subcontract, except that completed end items allocable to the terminated subcontract may be disposed of without review by the contracting officer under § 8.513-1 or § 8.513-3, and without screening under § 8.513-4, if the total amount thereof (at the subcontract price) when added to the amount of the settlement does not exceed $10,000.

(c) A contracting officer granting the above authorization to a contractor shall be responsible for periodically making a selective review of settlements to determine whether the contractor is making adequate reviews and fair settlements, and whether such authorization shall remain in effect. Whenever the contracting officer determines that the contractor's procedures are not adequate or that improper settlements are being made, he shall revoke the authorization by written notice to the contractor. The revocation shall take effect only from the date of receipt.

(d) Any number of separate settlements of $10,000 or less may be made with a single subcontractor. However, claims which would normally be included in a single settlement proposal, such as those based on a series of separate orders for the same item under one contract, shall be consolidated wherever possible, and shall not be divided in order to bring them within the authorization.

§ 8.208-5 *Recognition of judgments and arbitration awards.* (a) In the event a subcontractor obtains a final judgment against a prime contractor, the contracting officer shall, for the purposes of settling the prime contract, treat the amount of the judgment as a cost of settling with the subcontractor, to the extent such judgment is properly allocable to the terminated portion of the prime contract if:

(1) The prime contractor has made reasonable efforts to include in its subcontract the termination clause in § 8.706 or a similar clause excluding payment of anticipatory profits or consequential damages;

(2) The provisions of the subcontract relating to the rights of the parties upon its termination, in whole or in part, are fair and reasonable and do not unreasonably increase the common law rights of the subcontractor;

(3) The contractor has made reasonable efforts to settle the claim of the subcontractor;

(4) The contractor has given prompt notice to the contracting officer of the initiation of the proceedings in which the judgment was rendered and has not refused to give the Government control of the defense of the proceedings; and

(5) The contractor has diligently defended the suit or, if the Government has assumed control of the defense of the proceedings, has rendered such reasonable assistance as has been requested by the Government.

If the foregoing conditions are not all met, the contracting officer may allow the contractor such part of the judgment as he considers a fair amount for settling the termination claim under the subcontract, giving due regard to the policies set forth in this part for settlement of such claims.

(b) Where a contractor and his subcontractor submit a subcontractor termination claim to arbitration under any applicable law or contract provision, the contracting officer shall recognize the amount of the arbitration award as the cost of settling the claim of the subcontractor to the same extent and under the same conditions as specified in paragraph (a) of this section.

§ 8.208-6 *Delay in settlement of subcontractor claims.* Where a prime contractor is unable to settle with a subcontractor and such inability is delaying the settlement of the prime contract, the contracting officer may settle with the prime contractor, excepting from the settlement the whole or any part of the claim of such subcontractor and reserving the rights of the Government and of the prime contractor with respect thereto.

§ 8.208-7 *Government assistance in settlement of subcontracts.* In unusual cases the contracting officer may determine that it is in the best interests of the Government to offer assistance to the prime contractor in the settlement of a particular subcontract. Such a situation may exist when the prime contractor has made all reasonable efforts to negotiate the settlement without success and the contracting officer believes that with the assistance of the Government a settlement can be reached. Such assistance shall be furnished only with the consent of the prime contractor. In such cases, an agreement may be entered into by the Government, the prime contractor, and a subcontractor, covering the settlement of one or more subcontracts. In any such case, payment to the subcontractor shall be effected through the prime contractor as part of the overall settlement with the latter.

§ 8.208-8 *Assignment of rights under subcontracts.* (a) The termination clauses set forth in Subpart G of this part obligate the prime contractor to assign to the Government, in the manner, at the times, and to the extent directed by the contracting officer, all its right, title, and interest under any subcontracts terminated by reason of termination of the prime contract. The contracting officer shall not require such assignment unless he determines that it is in the best interest of the Government.

(b) In giving the Government the right to require the assignment of the prime contractor's interest in terminated subcontracts, the termination clauses set forth in Subpart G of this part also provide that the Government shall have the right, in its discretion, to settle and pay any or all claims arising out of the termination of such subcontracts. This right does not obligate the Government to settle and pay termination claims of subcontractors. As a general rule, the prime contractor is obligated to settle and pay such claims. Where, however, the contracting officer determines that it is in the best interest of the Government to settle and pay directly a subcontractor's termination claim, he shall first obtain approval in accordance with Departmental procedures. An example of a situation in which the best interest of the Government would be served by effecting a direct settlement would be where a subcontractor is the sole source for a product and it appears that a delay by the prime contractor in settlement or payment of the subcontractor's claim will jeopardize the financial position of the subcontractor. Direct settlements with subcontractors are not encouraged.

§ 8.209 *Settlement agreements.*

§ 8.209-1 *General.* When a settlement has been negotiated with respect to the terminated portion of a contract, and all required reviews have been obtained, the contractor and the contracting officer shall enter into a settlement agreement, substantially in the form set forth in the appropriate subparagraph of § 8.806. The settlement shall cover (a) any setoffs and counterclaims which the Government may have against the contractor and which may be applied against the terminated contract, and (b) all claims of subcontractors, except claims which are specifically excepted from the agreement and reserved for separate settlement.

§ 8.209-2 *Excepted items.* Where any rights or claims of the Government or of the contractor are to be excepted from the settlement, the settlement agreement shall specify the nature and extent of the excepted items. However, care shall be taken so that the wording of the exception does not create any new rights in the parties beyond those in existence prior to the execution of the settlement agreement. The separate settlement of excepted items shall be in accordance with the provisions of this Section and shall be set forth in settlement agreements.

§ 8.209-3 *Government property.* Before any settlement agreement is executed, the contracting officer shall determine the status of the Government property account for the terminated contract. If the audit of such property required by Part 31.2, paragraph 404, discloses property for which the contractor cannot account, the settlement agreement shall reserve the rights of the Government with respect to such property, or make an appropriate deduction from the amount otherwise due the contractor.

§ 8.209-4 *No-cost settlement.* (a) If no costs have been incurred by the contractor with respect to the terminated portion of the contract or if the contractor is willing to waive the costs incurred by it and if no amounts are due to the Government under the contract, a no-cost settlement agreement shall be executed substantially in the form set forth in § 8.806-6 or § 8.806-7, as applicable.

(b) Under a terminated cost-reimbursement type contract, if the contractor elects to obtain reimbursement of costs by the submission of Standard Form 1034 vouchers (costing-out), the settlement agreement shall cover only the fee, if any.

§ 8.209-5 *Partial settlements.* Every effort should be made by the contracting officer to settle in one agreement all rights and liabilities of the parties under the contract except those arising from any continued portion of the contract. Generally, contracting officers shall not attempt to make partial settlements covering particular items of the prime contractor's settlement proposal. However, when a contracting officer cannot promptly effect a complete settlement under the terminated contract, a partial settlement may be entered into: *Provided* (a), The issues on which agreement has been reached are clearly severable from other issues, and (b) the partial settlement will not prejudice the interests of the Government or the contractor in disposing of the unsettled part of the claim.

§ 8.209-6 *Joint settlement of two or more claims.* With the consent of the contractor, the contracting officer or officers concerned may negotiate jointly two or more termination claims of the same contractor under different contracts, even though such contracts are with different Military Departments. In such cases, accounting work shall be consolidated to the greatest extent practical. The settlement resulting from such joint negotiation may be evidenced by one settlement agreement covering all contracts involved or by a separate agreement for each contract involved. Where the settlement agreement covers more than one contract, it shall (a) clearly identify the contracts involved; (b) apportion the total amount of the settlement among the several contracts on some reasonable basis; (c) have attached or incorporated therein a schedule showing the apportionment; and (d) be distributed and attached to each contract involved in the same manner as other contract amendments.

§ 8.209-7 *Settlement by determination*—(a) *General.* To the extent that the contractor and contracting officer are unable to agree upon the settlement of a terminated contract or if a termination claim is not submitted within the period required by the termination clause in the contract, the contracting officer shall issue a determination of the amount due in accordance with the termination clause in the contract, including any cost principles incorporated therein by reference. The contracting officer shall comply with the provisions of §§ 8.209-1 through 8.209-6 in making any such determination.

(b) *Notice to contractor.* The contracting officer shall give the contractor not less than 15 days' notice by certified mail (return receipt requested) to submit, on or before a stated date, written evidence substantiating the amount claimed to be due.

(c) *Submission of evidence.* (1) The contractor has the burden of establishing by proof satisfactory to the contracting officer the amount claimed.

(2) The contractor may submit such vouchers, verified transcripts of books of account, affidavits, audit reports, and other documents as it may wish. The contracting officer may request the contractor to submit such additional documents and data, and may cause such accounting, investigations, and audits to be made, as he deems appropriate.

(3) The contracting officer may accept photostatic or other copies of documents and records, and shall not require original documents, unless there is a question of authenticity.

(4) If the contractor wishes to confer with the contracting officer, or if the contracting officer wishes additional information from Government personnel or from independent experts, or wishes to consult persons whose affidavits or reports have been submitted, the contracting officer, in his discretion, may hold such conferences as he deems appropriate.

(d) *Determinations.* After reviewing the information submitted or otherwise available to him, the contracting officer shall determine the amount due and shall transmit a copy of his determination to the contractor by certified mail (return receipt requested). The letter of transmittal shall advise the contractor that the determination is a final decision from which an appeal may be taken under the Disputes clause. The determination shall set forth the amount due the contractor and shall be supported by detailed schedules conforming generally to the forms for settlement proposals set forth in Subpart H of this part, and by additional information, schedules, and analyses, as appropriate. An adequate explanation shall be given for each major item of disallowance. The contracting officer need not reconsider (1) any settlement with a subcontractor, (2) any disposition of property, or (3) any other action relating to the terminated portion of the contract, where such settlement, disposition, or other action has been previously ratified or approved by him or another duly authorized contracting officer.

(e) *Preservation of evidence.* The contracting officer shall retain in appropriate files of the contracting agency all written evidence and other data or copies thereof, relied upon by him in making his determination, except that copies of original books of account, need not be made. Books of account together with other original papers and documents, shall be returned to the contractor within a reasonable time.

(f) *Appeals.* The contractor has a right of appeal, under the Disputes clause of the contract, from any settlement by determination, except that the contractor has no such right of appeal where it has failed to submit its settlement proposal within the time provided in the contract and has failed to request extension of such time. The pendency of an appeal shall not affect the authority of the contracting officer to settle the termination claim or any part thereof by a negotiated agreement with the contractor at any time before the appeal is decided.

§ 8.210 *Contracting officer's negotiation memorandum.* The contracting officer shall, at the conclusion of the settlement negotiations, prepare a memorandum setting forth the principal elements of the settlement for inclusion in the contract file and for the use of reviewing authorities. If the settlement was negotiated on the basis of individual items, the contracting officer shall specify the factors considered with respect to each item. If the settlement was negotiated on an over-all lump-sum basis, the contracting officer need not evaluate each item or group of items individually, but the total amount of the recommended settlement shall be supported in reasonable detail. The memorandum shall include explanations of matters as to which differences and doubtful questions were settled by agreement, and the factors taken into consideration in connection therewith, and any other matters which, in the opinion of the contracting officer, will assist reviewing authorities in understanding the basis for the settlement.

§ 8.211 *Review and approval of proposed settlements.*

§ 8.211-1 *Settlement review boards.* The Head of each Procuring Activity shall establish Settlement Review Boards to review proposed settlements as required by § 8.211-2 (a). Such boards shall be established in the office of the Head of the Procuring Activity and may also be established in field or regional procurement offices, as appropriate. Each Settlement Review Board should be composed of at least three qualified officers or civilian employees of the Department concerned, who shall be persons with broad business and contracting experience. The membership of each Board should include at least one lawyer, one accountant and, in appropriate cases, an engineer or industrial specialist. No person shall serve as a member of a Settlement Review Board in reviewing a settlement in which he has participated.

§ 8.211-2 *Required review and approval*—(a) *When required.* Prior to executing a settlement agreement, or issuing a determination of the amount due under the termination clause of a contract, or approving or ratifying a subcontract settlement, the contracting officer shall submit each such settlement or determination for review and approval by a Settlement Review Board if:

(1) The settlement or determination involves $25,000 or more (see § 8.101-1);

(2) The settlement or determination is limited to adjustment of the fee of a cost-reimbursement contract or subcontract and (A) in the case of a complete termination, the fee, as adjusted, is $25,000 or more; or (B) in the case of a partial termination, the fee, as adjusted, with respect to the terminated portion of the contract or subcontract is $25,000 or more;

(3) The Head of the Procuring Activity concerned determines that a review is desirable; or

(4) The contracting officer, in his discretion, desires review by the Settlement Review Board.

The review and approval of each settlement or determination in excess of $500,000 shall be by a Board at the Head of the Procuring Activity level.

(b) *Submission of information.* The contracting officer shall, in accordance with Departmental procedures, submit to the Settlement Review Board a statement of the settlement, supported by such detailed information as is required for an adequate review. This information should normally include copies of (1) the contractor's or subcontractor's settlement proposal, (2) the audit report, (3) the property disposal report and any required approvals in connection therewith, (4) the contracting officer's memorandum explaining the settlement (§ 8.210), and (5) when appropriate, the opinion of any other Settlement Review Board which has previously reviewed the settlement. The Board may, in its discretion, require the submission of additional information.

§ 8.211-3 *Scope of review.* The function of a Settlement Review Board is to determine the overall reasonableness of the proposed settlement agreement or determination from the standpoint of protecting the Government's interest. The Board may vary the scope and intensity of the review according to the size and complexity of the proposed settlement agreement or determination and any other relevant factors. It is not intended that the Board examine in detail every element entering into the proposed settlement agreement or determination, but the Board may inquire into selected elements of the proposed settlement agreement or determination to assure that it has been conducted competently and is based on adequate information.

§ 8.211-4 *Action by board.* The Settlement Review Board shall submit to the contracting officer a written opinion with respect to the proposed settlement agreement or determination and any other matter considered by the Board setting forth its approval or disapproval thereof, or other decision thereon. Failure of the Board to submit a written opinion as to any proposed settlement agreement or determination within 30 days after submission to the Board of all the information required pursuant to § 8.211-2 (b) shall operate as an approval by the Board.

§ 8.212 *Payment.*

§ 8.212-1 *Partial payments upon termination*—(a) *General.* If the contract authorizes partial payments on termination claims prior to settlement, a fixed-price prime contractor, or a cost-reimbursement prime contractor whose settlement proposal includes costs, may request such partial payments in the form set forth in § 8.802-10 at any time after submission of interim or final settlement proposals. Applications for partial payments shall be processed promptly. Partial payments to a subcontractor shall be made only through the prime contractor.

(b) *Amount of partial payment.* Before approving any partial payment requested by the contractor, the contracting officer shall have made such accounting, engineering, or other specialized reviews as he deems proper of the data required by this part to be submitted in support of the contractor's settlement proposals. If such reviews and the contracting officer's examination of the data indicate that the requested partial payment is proper, the contracting officer may, in his discretion, authorize payments as follows:

(1) An amount up to 100 percent of the contract price, adjusted in accordance with § 8.306 for undelivered acceptable items completed prior to the termination date, or completed thereafter with the approval of the contracting officer, which are included in the contractor's settlement proposals pursuant to § 8.306;

(2) An amount up to 100 percent of the amount of any subcontract settlement effected and paid by the prime contractor: *Provided,* The settlement has been approved or ratified by the contracting officer pursuant to § 8.208-3 (c) or has been authorized pursuant to § 8.208-4;

(3) An amount up to 90 percent of the direct cost of termination inventory, including costs of raw materials, purchased parts, supplies, and direct labor;

(4) A reasonable amount, not to exceed 90 percent, of other allowable costs (including manufacturing and administrative overhead) allocable to the terminated portion of the contract and not included in subparagraph (1), (2), or (3) of this paragraph; and

(5) An amount up to 100 percent of partial payments made to subcontractors in conformance with this subparagraph.

No partial payments shall be made on account of profit or fee which may be claimed with respect to the terminated portion of the contract. In exercising his discretion as to the extent to which partial payments shall be made, the contracting officer shall consider the diligence of the contractor in settling with its subcontractors and in preparing its own claim.

(c) *Recognition of assignments.* Where an assignment of claims has been made under the contract, partial payments shall not be made to other than the assignee unless the parties to the assignment consent to the payments.

(d) *Security for partial payments.* To the extent that any partial payment is made with respect to completed end items or for direct or indirect costs of termination inventory, the interests of the Government shall be protected by transfer of title to the Government of the completed end items or termination inventory concerned, or by the creation of a lien in favor of the Government, paramount to all other liens, on such completed end items or termination inventory, or by other means authorized by Departmental procedures.

(e) *Deductions in computing amount of partial payments.* There shall be deducted from the gross amount of any partial payment otherwise payable under § 8.212-1(b):

(1) All unliquidated balances of progress payments and advance payments (including interest thereon) theretofore made to the contractor, which are allocable to the terminated portion of the contract; and

(2) The amounts of all credits arising from the purchase, retention, or sale of property the costs of which are included in the application for partial payment.

(f) *Limitation on total amount: effect of overpayment.* The total amount of all partial payments shall not exceed the amount which will, in the opinion of the contracting officer, become due to the contractor by reason of the termination. If the total of partial payments made to the contractor should exceed the amount finally determined to be due to the contractor on its termination claim, the excess shall be repayable to the Government on demand, together with interest computed at the rate of 6 percent per annum from the date such excess payment was received by the contractor to the date of repayment: *Provided,* That (1) no interest shall be charged for any such excess payment attributable to a reduction in the contract termination claim by reason of retention or other disposition of termination inventory, until 10 days after the date of such retention or disposition, or such later date as determined by the contracting officer by reason of the circumstances, and (2) no interest shall be charged for overpayment under cost-reimbursement type research and development contracts (without profit or fee to the contractor) if the overpayments are repaid to the Government within 30 days after demand.

(g) *Certification and approval of partial payments.* Partial payments in a specific amount shall be made on the basis of vouchers or invoices certified by the contractor. The certification shall include, in addition to any other provisions ordinarily required to be included in such certificate, the following:

> The payment covered by this voucher is a partial payment on account of the Contractor's termination claim under contract No. ------, made pursuant to 32 CFR Part 8.

The invoice or voucher, if proper, shall be approved by the contracting officer by noting thereon the following:

> Payment in the amount of $------ approved.

§ 8.212-2 *Final payment*—(a) *Negotiated settlement.* Upon execution of a settlement agreement, a voucher or invoice showing the amount agreed upon, less any portion previously paid, shall be prepared and certified in the usual form and presented to the disbursing officer for payment. A copy of the settlement agreement shall be attached to the voucher or invoice.

(b) *Settlement by determination.* In the event of a settlement by determination:

(1) If the contractor has not appealed the determination, a voucher or invoice showing the amount so determined to be due, less any portion previously paid, shall be prepared and certified in the usual form and presented to the disbursing officer for payment; or

(2) If the contractor has appealed the determination, a voucher or invoice

showing the amount finally determined on such appeal to be due, less any portion previously paid, shall be prepared and certified in the usual form and presented to the disbursing officer for payment. Pending determination of any appeal, an invoice or voucher pursuant to subparagraph (1) of this paragraph may be presented to the disbursing officer for payment, without prejudice to the rights of either party on the appeal.

(c) *Interest.* No interest shall be paid by the Government on the amount due under a settlement agreement or a settlement by determination.

§ 8.213 *Cost principles applicable to the settlement of certain terminated research and development contracts.* (a) In considering cost data as a basis for negotiation or determination of settlements under fixed-price or cost-reimbursement type no-profits or no-fee contracts for experimental, developmental, or research work with educational or other nonprofit institutions, which contain the termination clause set forth in § 8.704, the items of cost set forth below shall be considered for reimbursement, subject to the general policies set forth in § 8.302.

(b) Costs incurred in the performance of the work terminated shall be determined on the basis of the principles set forth in Part 15, of this chapter.

(c) Subject to the general principles set forth above and irrespective of whether particular costs are treated by the contractor as direct or indirect, the costs described below shall be included to the extent allocable to the terminated portion of the contract:

(1) Claims of subcontractors, including claims common to the contract and to other work of the contractor;

(2) Costs ratified by the contracting officer which, in a particular case, cannot be discontinued immediately after the effective date of termination despite all reasonable efforts of the contractor;

(3) Settlement expenses, including:

(i) Accounting, legal, clerical, and similar costs reasonably necessary for (*a*) the preparation and presentation to the contracting officer of settlement claims and proposals and supporting data with respect to the terminated portion of the contract, and (*b*) the termination and settlement of subcontracts; and

(ii) Reasonable costs for the storage, transportation, protection, and disposition of property acquired or produced for the contract;

(4) Rental costs under leases clearly shown to have been reasonably necessary for the performance of the terminated contract, less the residual value of such leases, if—

(i) The amount of such rental claimed does not exceed the reasonable use value of the property leased for the period of the contract and such further period as may be reasonable; and

(ii) The contractor makes all reasonable efforts to terminate, assign, settle, or otherwise reduce the cost of such lease;

there also may be included the cost of alterations of such leased property: *Provided,* Such alterations were necessary for the performance of the contract, and of reasonable restoration required by the provisions of the lease;

(5) Severance pay to the extent required by law, by employer-employee agreement, or by the contractor's established policy; and

(6) The direct cost of repair of damage resulting from the removal of property for delivery to or disposal at the direction of the Government.

SUBPART C—ADDITIONAL PRINCIPLES APPLICABLE TO THE SETTLEMENT OF TERMINATED FIXED-PRICE CONTRACTS

NOTE: For text of §§ 8.300, 8.301, 8.302, see §§ 8.400, 8.401, 8.402 in Title 32 of the Code of Federal Regulations, (Revised, 1954).

§ 8.303 *Allowance for profit*—(a) *General.* Profit shall be allowed only on preparations made and work done by the contractor for the terminated portion of the contract but may not be allowed on the contractor's settlement expenses (see § 8.302 (b) (27)). Anticipatory profits and consequential damages shall not be allowed (but see § 8.208-5). Any reasonable method may be used to arrive at a fair profit, separately or as a part of the whole settlement.

(b) *Factors to be considered.* In negotiating profit, factors to be considered include:

(1) Extent and difficulty of the work done by the contractor as compared with the total work required by the contract; engineering estimates of the percentage of completion ordinarily should not be required, but if available should be considered;

(2) Engineering work, production scheduling, planning, technical study and supervision, and other necessary services;

(3) Efficiency of the contractor, with particular regard to (i) attainment of quantity and quality production, (ii) reduction of costs, and (iii) economy in the use of materials, facilities, and manpower;

(4) Amount and source of capital employed, and extent of risk assumed, but profit may not be allowed on interest on borrowings allowed as a cost;

(5) Inventive and developmental contributions, and cooperation with the Government and other contractors in supplying technical assistance;

(6) Character of the business, including the source and nature of materials and the complexity of manufacturing techniques;

(7) The rate of profit which the contractor would have earned had the contract been completed;

(8) Character, extent, and difficulty of subcontracting, including selection, placement, and management of subcontracts, and engineering, technical assistance, and other services rendered but the profit shall not be measured by the amount of the contractor's payments to subcontractors for settlement of their termination claims; and

(9) The rate of profit both parties contemplated at the time the contract was negotiated.

(c) *Profit in settlements by determination.* The formula for determining profit, set forth in subparagraph (e) (ii) (C) of the termination clause for fixed-price contracts (§ 8.701) and subparagraph (e) (i) (C) of the clause for fixed-price construction contracts (§ 8.703), is applicable only to a settlement by determination (see § 8.209-7), and shall not be used in establishing the profit allowed in a settlement by negotiation.

§ 8.304 *Adjustment for loss.* (a) In the negotiation or determination of any settlement, no profit shall be allowed if it appears that the contractor would have incurred a loss had the entire contract been completed. The amount of loss shall be negotiated or determined and an adjustment in the amount of settlement shall be made as specified in paragraph (b) or (c) of this section. In estimating the cost to complete, consideration shall be given to expected production efficiencies and to other factors affecting the cost to complete.

(b) If the settlement is on an inventory basis, the contractor shall not be paid more than:

(1) The amount negotiated or determined for settlement expenses;

(2) The contract price, as adjusted, for acceptable completed end items (see § 8.306); and

(3) The remainder of the settlement amount otherwise agreed or determined (not excluding the allocable portion of initial costs (see § 8.302 (b) (13)), reduced by multiplying that remainder by the ratio of (i) the total contract price, to (ii) the total cost incurred prior to termination plus the estimated cost to complete the entire contract;

less all disposal credits and all unliquidated advance and progress payments previously made to the contractor under the contract.

(c) If the settlement is on a total cost basis, the contractor shall not be paid more than:

(1) The amount negotiated or determined for settlement expenses; and

(2) The remainder of the total settlement amount otherwise agreed or determined, reduced by multiplying that remainder by the ratio of (i) the total contract price, to (ii) that remainder plus the estimated cost to complete the entire contract;

less all disposal and other credits, all advance and progress payments, and all other amounts previously paid to the contractor under the contract.

§ 8.305 *Deductions.* From the amount payable to the contractor under a settlement, there shall be deducted (a) the agreed price for any part of the termination inventory purchased or retained by the contractor, and the proceeds of sale of any materials sold by it, which have not otherwise been paid or credited to the Government; (b) the fair value, as determined by the contracting officer, of any part of the termination inventory which, prior to transfer of title to the Government or to a buyer pursuant to Subpart E of this part, is destroyed, lost, stolen, or so damaged as to become undeliverable, except for normal spoilage or to the extent the Government has expressly assumed the risk of loss; and (c) such other amounts as appropriate in the particular case.

§ 8.306 *Completed end items.* Promptly after the effective date of termination, the contracting officer shall have all undelivered completed end items inspected and accepted if they comply with the prime contract requirements, and shall determine which accepted end items shall be delivered under the contract. The contractor shall be paid for completed end items so accepted and delivered by invoicing them at the contract price in the usual manner and shall not include such end items in its termination claim. Where completed end items, though accepted, are not to be delivered under the contract, the contractor shall include such end items in its settlement proposal at the contract price, appropriately adjusted for any saving of freight or other charges, together with any credits for their purchase, retention, or sale.

§ 8.307 *Settlement proposals.*

§ 8.307-1 *Submission of settlement proposals.* (a) Subject to the provisions of the termination clause in the contract, the contractor shall promptly submit to the contracting officer a settlement proposal setting forth the amount claimed to be due by reason of the termination. The proposal shall be submitted within one year from the effective date of the termination, unless the period has been extended in accordance with the terms of the contract.

(b) The settlement proposal shall cover all elements of the contractor's claim, including settlements with subcontractors. With the consent of the contracting officer, proposals may be filed in successive steps covering separate portions of a claim. Such interim proposals shall include all costs of a particular type, except as the contracting officer may authorize otherwise.

(c) Settlement proposals shall be in the form specified in the appropriate subparagraph of § 8.802. Where none of those forms are adequate for a particular contract, the Head of the Procuring Activity concerned may authorize appropriate modifications. Settlement proposals shall be in reasonable detail supported by adequate accounting data. Actual, standard (appropriately adjusted), or average costs, may be used in preparing settlement proposals: *Provided*, That such costs are determined in accordance with generally recognized accounting principles consistently followed by the contractor. Where actual, standard, or average costs are not reasonably available, estimated costs may be used if the method of arriving at the estimates is approved by the contracting officer. A contractor shall not be required to maintain unduly elaborate cost accounting systems merely because its contracts may subsequently be terminated.

(d) DD Form 831 (§ 8.802-3) may be used when the total claim is less than $1,000, unless otherwise instructed by the contracting officer. Claims which would normally be included in a single settlement proposal, such as those based on a series of separate orders for the same item under one contract, shall be consolidated wherever possible and shall not be divided in such a way as to bring them below $1,000.

§ 8.307-2 *Bases for settlement proposals*—(a) *Inventory basis.* Use of the inventory basis for settlement proposals is preferred. Under this basis the contractor shall claim only costs chargeable or allocable to the terminated portion of the contract, and the settlement proposal shall itemize separately:

(1) At purchase or manufacturing cost, each of the following—metals, raw materials, purchased parts, work in process, finished parts, components, dies, jigs, fixtures, and tooling;

(2) Charges such as engineering costs, initial costs, and general and administrative costs;

(3) Costs of settlements with subcontractors;

(4) Settlement expenses; and

(5) Other proper charges.

An allowance for profit (see § 8.303) or adjustment for loss (see § 8.304 (b)) shall be made to complete the gross termination claim. All unliquidated advance and progress payments, and all disposal and other credits known when the proposal is submitted, shall then be deducted.

(b) *Total cost basis.* (1) When use of the inventory basis is not practicable or will unduly delay settlement, the total cost basis may be used if approved in advance by the contracting officer.

(2) When the total cost basis is used under a complete termination, all costs incurred under the contract up to the effective date of termination shall be itemized and the costs of settlements with subcontractors and applicable settlement expenses shall be added. An allowance for profit (see § 8.303) or adjustment for loss (see § 8.304 (c)) shall be made. The contract price for all end items which have been or are to be delivered and accepted shall be deducted. All unliquidated advance and progress payments, disposal and other credits known when the proposal is submitted, shall also be deducted.

(3) When the total cost basis is used under a partial termination, the settlement proposal shall not be submitted until completion of the continued portion of the contract. The settlement proposal shall be prepared in accordance with subparagraph (2) of this paragraph except that all costs incurred to the date of completion of the continued portion of the contract shall be included.

(c) *Other bases.* Termination claims shall not be submitted on any basis other than paragraph (a) or (b) of this section without the prior approval of the Secretary concerned or his duly designated representative.

SUBPART D—ADDITIONAL PRINCIPLES APPLICABLE TO THE SETTLEMENT OF TERMINATED COST-REIMBURSEMENT TYPE CONTRACTS

§ 8.401 *General considerations.* The termination clauses for cost-reimbursement type contracts (see §§ 8.702 and 8.704) provide for the settlement of costs and of fee, if any. The provisions of the particular contract governing costs shall determine what costs are allowable.

§ 8.402 *Election to discontinue vouchers.* (a) After the effective date of termination, the contractor may elect to discontinue the use of Standard Form 1034 (Public Voucher). Such election shall be made in the manner required by the contracting officer (in the case of the Navy, the Comptroller of the Navy (Contract Audit Division)). Upon such election, the contractor shall not be permitted to resume the use of Standard Form 1034, and shall submit unreimbursed costs on the settlement proposal form prescribed in § 8.803. On the basis of such settlement proposals, partial settlements may be made from time to time as appropriate.

(b) A contractor which continues to use Standard Form 1034 may at any time thereafter elect to discontinue the use of such vouchers. A contractor shall not, however, be permitted to recover costs by the use, during the same period of time, of both Standard Form 1034 and settlement proposals, except as provided in § 8.406.

§ 8.403 *Notice to the General Accounting Office.* The contracting officer shall promptly send a copy of the notice of termination to the General Accounting Office, and shall promptly advise that office of any election by the contractor pursuant to § 8.402 to discontinue the use of Standard Form 1034.

§ 8.404 *Procedure where contractor continues to submit vouchers.*

§ 8.404-1 *Submission of settlement proposal.* If the contractor elects to continue to submit reimbursable costs on Standard Form 1034, the contractor shall submit a settlement proposal which shall be limited as to amount to its claim, if any, for a fee. The proposal shall be submitted to the contracting officer within one year from the effective date of termination, unless the period has been extended in accordance with the terms of the contract. The proposal shall be submitted in the form prescribed in § 8.803. The fee to be paid, if any, shall be established in the manner provided by the contract. Percentage of completion of the contract is generally the basis used. Where this basis is used, factors such as the extent and difficulty of the work done by the contractor (including but not limited to planning, scheduling, technical study, engineering work, production and supervision, placing and supervising subcontracts to the extent reasonably required, and work done by the contractor in (a) stopping performance, (b) settling claims of subcontractors, and (c) disposing of termination inventory) shall be compared with the total work required by the contract. The ratio of costs incurred to the total estimated cost of performing the contract is only one factor in computing the percentage of completion of the contract. This percentage may be either greater or less than that indicated by the ratio of costs incurred, depending upon the evaluation by the contracting officer of the above factors and other relevant considerations.

§ 8.404-2 *Submission of cost vouchers.* The contractor shall submit on Standard Form 1034 all costs reimbursable under the contract, including (a) its own costs allocable to the terminated portion of the contract, (b) costs of settlements with subcontractors, and (c) applicable settlement expenses. The contractor shall not be reimbursed for the costs of settlements with subcontractors unless the approvals or ratifications required pursuant to the contract have been obtained (see § 8.208).

§ 8.405 *Procedure where contractor discontinues use of vouchers.*

§ 8.405-1 *Submission of settlement proposal.* If the contractor discontinues the use of Standard Form 1034, it shall submit a settlement proposal covering both its costs and its claim, if any, for a fee. The proposal shall be submitted to the contracting officer within one year from the effective date of termination, unless the period has been extended in accordance with the terms of the contract. The proposal shall be submitted in the form prescribed in § 8.803, unless the Head of the Procuring Activity concerned authorizes modification thereof. The proposal shall contain only unvouchered costs and the contractor may not include in its settlement proposal those costs which have been finally disallowed or are the subject of a reclaim voucher.

§ 8.405-2 *Interim negotiations.* The contracting officer and the contractor shall proceed immediately to take all action required by the termination clause of the contract and by this part (including negotiation of settlements with fixed-price subcontractors), but no final settlement agreement shall be executed until there has been full compliance with §8.405-3 through § 8.405-5.

§ 8.405-3 *Information concerning previous cost vouchers.* (a) The contracting officer (in the case of the Navy, the Comptroller of the Navy (Contract Audit Division)) shall notify the appropriate disbursing officer in writing of the number of the last Standard Form 1034 cost voucher submitted to him for payment.

(b) Within 10 days from the date of payment of the last Standard Form 1034 voucher or from the date of receipt of the notice referred to in paragraph (a) of this section, whichever is later, the disbursing officer shall prepare and transmit to the contracting officer a list of all Standard Form 1043 vouchers paid under the contract, showing (1) Disbursing Office voucher number, (2) amount of voucher, (3) date of payment, (4) disbursing officer's name, symbol, and address, and (5) total amount of vouchers paid. The contracting officer shall verify the number and amounts of the vouchers listed against the records of the procuring activity, and if any discrepancies exist, shall request the disbursing officer to reconcile them. After reconciliation, the verified list shall be returned to the disbursing officer. (In the case of the Navy, the disbursing officer shall, in lieu of transmitting the list of vouchers to the contracting officer, transmit it to the Comptroller of the Navy (Contract Audit Division), for verification.)

§ 8.405-4 *Notice to General Accounting Office of audit status date.* Upon receipt of the verfied list of vouchers, the disbursing officer shall immediately transmit a Notice of Audit Status Date (DD Form 547 s) by certified mail (return receipt requested) to the Regional Office of the General Accounting Office zone in which the work on the terminated contract was being performed. Such notice fixes as the "Audit Status Date" (a) the day 60 days from the date of the receipt of the notice by the General Accounting Office, or (b) the date of the receipt by the procuring activity of the final General Accounting Office audit status letter, whichever is earlier. The disbursing officer shall send a copy of the notice to the contracting officer (in the case of the Navy, also to the Comptroller of the Navy (Contract Audit Division)), and shall state when the notice was received by the General Accounting Office.

§ 8.405-5 *Exceptions by the General Accounting Office.* (a) During the first 30 days after receipt by it of the audit status notice, the General Accounting Office will continue to issue informal inquiries before issuing exceptions; thereafter, and until the audit status date, it will issue exceptions without issuing informal inquiries. Only those exceptions listed in the General Accounting Office final audit status letter will be considered as outstanding at that time; all informal inquiries will either be converted by the General Accounting Office to exceptions at the time of issuance of that letter or be deemed to have been cleared. Upon receipt of replies to exceptions, the General Accounting Office will promptly furnish notice that the reply is satisfactory or will promptly issue a revised exception. No exceptions (other than pro forma exceptions) will be issued after the audit status date.

(b) All replies to exceptions and informal inquiries shall advise the General Accounting Office of the disposition to be made of the particular item in the final settlement and shall contain complete information justifying the payments in question. Replies shall be submitted promptly in accordance with Departmental procedures. After the audit status date, a final attempt shall be made by the contracting officer to clear with the General Accounting Office all outstanding exceptions and reclaim vouchers prior to final settlement.

§ 8.405-6 *Final settlement.* (a) The contracting officer may proceed with completion of the settlement and execution of an appropriate settlement agreement at any time after receipt of the final audit status letter. If no such letter has been received on or before the 15th day following the audit status date, the contracting officer may proceed on the basis that there are no outstanding exceptions.

(b) The fee shall be adjusted as provided in § 8.404-1.

(c) The final settlement agreement may include all claims of the Government and of the contractor under the terminated contract, except that no amount may be allowed for any item of cost which is the subject of a General Accounting Office exception, either cleared by deduction or uncleared, or for any other item of cost of the same nature, unless a reclaim voucher covering such cost has been presented by the contractor and authorized by the General Accounting Office for payment.

(d) The provisions of the contract governing the types of reimbursable costs shall constitute the basis of negotiation; however, if an overall settlement of costs is agreed upon, agreement on each separate element of cost is not necessary. In appropriate cases, differences may be compromised and doubtful questions settled by agreement. An overall settlement shall not, under any circumstances, be made the means of reimbursing contractors for costs which under the provisons of the contract are clearly not allowable.

§ 8.406 *Partial termination.* In the event of a partial termination of a cost-reimbursement type contract, the settlement shall be limited to adjustment of the fee, if any, unless the contracting officer determines that:

(a) The terminated portion is clearly severable from the balance of the contract; or

(b) Performance of the contract is virtually complete, or that performance of any continued portion is only on subsidiary items or spare parts, or is otherwise not substantial.

Subject to the foregoing exceptions, all costs under the contract, including those arising out of the partial termination, will continue to be presented in the same manner as prior to the notice of termination.

§ 8.407 *Termination for default.* The right to terminate a cost-reimbursement type contract for default is provided for in the Termination clause set forth in § 8.702. In the event of termination, the contractor shall be reimbursed its allowable costs in accordance with the clause, and an appropriate reduction shall be made in the total fee, if any, computed in accordance with the default provisions of the contract (see paragraph (e) (1) (D) (II) of the clause in § 8.702). The costs of preparing the contractor's settlement proposal are not allowable. A cost-reimbursement type contract does not contain any provision for recovery of excess costs of reprocurement after termination for default, but see paragraph (b) of the clause set forth in § 7.203-5 of this chapter with respect to failure of the contractor to replace or correct defective supplies. The procedures set forth in §§ 8.602 and 8.603 shall be used to the extent appropriate in considering the termination for default of a cost-reimbursement type contract. A ten-day notice to the contractor prior to termination for default is required in every case by the Termination clause in § 8.702.

SUBPART E—DISPOSITION OF TERMINATION INVENTORY

§ 8.501 *General.*

§ 8.501-1 *Methods of disposal.* Subject to the Government exercising its right under the termination clause in a contract to acquire title to, and require delivery of, any items of termination inventory, the contractor shall dispose of all termination inventory in the manner most favorable to the Government by the following methods, in the order of priority indicated:

(a) Purchase or retention by the prime contractor or subcontractor at cost;

(b) Return to suppliers;

(c) Sale (including purchase or retention at less than cost by the prime contractor or subcontractor); or

(d) Other disposition as hereinafter provided.

§ 8.501-2 *General restrictions on contractor's authority.* (a) The following general restrictions are in addition to specific restrictions set forth in this Subpart E.

(b) The authority of a contractor to purchase, retain, or dispose of termination inventory or to authorize or approve a purchase, retention, or disposition by a subcontractor is subject to any applicable Government restrictions on the disposition of material classified by reason of military security and any contract provisions regarding the disposition of material subject to a lien.

(c) Contractors shall not sell termination inventory to persons known by them to be officers, enlisted personnel, or civilian employees of the Department of Defense.

(d) The authority of a contractor to approve a sale or a purchase or retention at less than cost, by a subcontractor and the authority of a subcontractor to sell, or to purchase or retain at less than cost, termination inventory with the approval of the next higher-tier contractor does not include (1) a sale by a subcontractor to the next higher-tier contractor or to an affiliate of such contractor or of the subcontractor, or (2) a sale, or a purchase or retention at less than cost, by a subcontractor affiliated with the next higher-tier contractor. Each such excluded sale, purchase, or retention requires the written approval of the contracting officer. A firm shall be considered to be affiliated with another firm if they are under common control or if there is any common interest between them, by reason of stock ownership or otherwise, which is sufficient to create a reasonable doubt that the bargaining between them is completely at arm's length.

§ 8.502 *Contractor-acquired property; purchase or retention at cost, or return to suppliers.*

§ 8.502-1 *Purchase or retention at cost.* Contractors shall be encouraged to purchase or retain contractor-acquired property at cost. No part of the cost of property so purchased or retained shall be included in settlement proposals. In any instance in which a contractor purchases or retains any allocable contractor-acquired property for use in other continuing Government contracts or commercial operations, handling and transportation charges necessitated by the purchase or retention of such property may be included in the contractor's settlement proposal as "other costs"; *Provided*, That such costs are reasonable. Where property purchased or retained is for use on a continuing Government contract and is not in excess of the quantitative requirements for completion of that contract, that property shall be considered properly allocable to the continuing contract if that contract is subsequently terminated, even though its procurement would otherwise constitute undue anticipation of production schedules. If, as a result of the purchase or retention of property from a terminated contract for use on a continuing Government contract, the contractor terminates subcontracts under the continuing Government contract, the charges incurred by reason of the termination of such subcontracts may be included in the termination claim under the terminated contract.

§ 8.502-2 *Return of property to suppliers.* Contractors are authorized and shall be encouraged to return allocable quantities of contractor-acquired property to suppliers for full credit less the supplier's normal restocking charge, or 15 percent of cost, whichever is less. Contractors shall not include in their settlement proposals the cost of such property returned to suppliers in accordance with this section. Contractors may include in their settlement proposals as "other costs" the transportation, handling, and restocking charges with respect to the property so returned.

§ 8.502-3 *Cost-reimbursement type contracts.* Under cost-reimbursement type contracts, the contractor's right to purchase or retain contractor-acquired property at cost (§ 8.502-1) or return such property to suppliers (§ 8.502-2) shall be subject to the approval of the contracting officer after adjustment of previously reimbursed costs for such property.

§ 8.503 *Inventory schedules.*

§ 8.503-1 *Submission of inventory schedules.* As promptly as possible after receipt of a Notice of Termination, the prime contractor is required to submit inventory schedules to the contracting officer covering all items of termination inventory, including Government-furnished property: *Provided*, That termination inventory purchased or retained at cost, or returned to suppliers, pursuant to § 8.502 shall not be listed. Inventory schedules may be submitted prior to submission of the settlement proposal. Submission shall not be delayed in order to supply complete cost data on items of work in process where such data is not readily available. Partial schedules may be submitted from time to time when they cover substantial portions of a particular property classification in the termination inventory. Each schedule submitted shall be designated by the contractor as "partial" or "final."

§ 8.503-2 *Separate schedules.* Separate sets of schedules shall be submitted on the forms prescribed in §§ 8.802-4 through 8.802-8, for contractor-acquired property and for Government-furnished property, and, within each of those categories, for each of the following classifications:

(a) Production equipment;

(b) Serviceable aircraft or aircraft components;

(c) Other serviceable or usable materials; and

(d) Scrap or salvage.

Classification of property by the contractor in the schedules shall be subject to the approval of the contracting officer.

§ 8.503-3 *Inventory descriptions.* A commercial description, adequate for disposal and screening purposes, of all items having commercial value shall be included in the inventory schedules. Where any items of termination inventory bear a Government identification number, such number shall be listed on the inventory schedules. In the case of other items, the contractor shall furnish a description sufficient to enable the contracting officer to determine the proper disposition thereof. The contractor shall consult the contracting officer when in doubt as to the extent of description required. The contractor need not itemize material believed to be scrap or salvage if (a) such material is physically segregated in the contractor's plant; and (b) the contractor submits a statement describing the material generally, setting forth its approximate cost, and giving such other information as may be necessary for the contracting officer to determine whether the material is scrap or salvage. If the material is determined by the contracting officer to be scrap or salvage (see § 8.504), the contractor may make a single descriptive entry on an inventory schedule covering such material and indicating its approximate total cost.

§ 8.503-4 *Inventory schedule certificate.* The certificate on the inventory schedules prescribed in § 8.802-4 through § 8.802-8 shall be executed by the contractor on each schedule submitted. The certificate, among other things, tenders title to the Government of the property listed therein, unless the Government already has title thereto.

§ 8.503-5 *Common items.* Under no circumstances shall the contractor's inventory schedules include any items (except for property delivery of which has been required by the Government and except for Government-furnished property) reasonably usable on other work of the contractor without loss to it. (See § 8.302a (1) (a) (ii).)

§ 8.503-6 *Withdrawals from inventory schedules.* If at any time prior to final disposition any items of contractor-acquired property listed in the contractor's inventory schedules become reasonably usable on other work of the contractor without loss to it and this fact is known to the contractor, the contractor is required to purchase or retain such items at cost in accordance with §§ 8.502-1 or 8.502-3, whichever is applicable, and shall amend its inventory schedules and its settlement proposal accordingly. Upon notification to the contracting officer, the contractor may similarly purchase or retain at cost any other items of property included in its inventory schedules. Withdrawal of Government-furnished property included in inventory schedules is subject to approval by the contracting officer.

§ 8.503-7 *Rejection and correction of inadequate schedules*—(a) *General*. Contracting officers shall cause to be verified, to the extent practicable, the physical count and condition of inventories, including Government-furnished property, listed on the contractor's inventory schedules. If any inventory schedule submitted by a contractor is found to be inadequate, the contractor shall be promptly notified and required to correct or supplement the schedule as to the items which are deficient. Inventory schedules shall not be rejected if the information contained therein is adequate for disposal purposes, even if complete cost data on work in process are not available. Rejection of an inventory schedule shall be limited where possible to specific items thereon and shall not necessarily render the entire schedule unacceptable.

(b) *Effect on plant clearance period*. (1) Where only individual items on the inventory schedules covering all items of a particular property classification are in need of correction or amplification, the inventory schedules as submitted shall be considered acceptable for purposes of starting the final phase of a plant clearance period (see § 8.101-12). However, where the inadequacy of an inventory schedule requires the return of the entire schedule to the contractor for correction or revision, the final phase of the plant clearance period as to the property classification covered thereby shall not begin until acceptable final schedules covering that property classification have been submitted.

(2) The contracting officer shall advise the contractor of any deficiencies apparent in the inventory schedule within 15 days after receipt of the final schedule, or the schedules shall be deemed acceptable for purposes of starting the final phase of a plant clearance period. However, should substantial errors develop which were not apparent from the inventory schedules previously deemed acceptable, the final phase of a plant clearance period shall not be deemed to have commenced until corrected schedules have been submitted unless the contracting officer determines that no unwarranted delay in disposal operations was occasioned thereby.

§ 8.504 *Scrap and salvage*.

§ 8.504-1 *General*. Promptly after the submission of inventory schedules by the contractor, the contracting officer shall review, or cause to be reviewed, the contractor's treatment of any items of termination inventory as scrap or salvage (see § 8.503-3). The review shall include a careful examination of the inventory schedules and in appropriate cases physical inspection of the property involved. Prior to determining that such items are scrap or salvage, the contracting officer shall obtain such approvals as may be required by Departmental procedures. If the contracting officer determines that any of the materials listed by the contractor as scrap or salvage are serviceable or usable materials, the contractor shall, in accordance with such determination, submit revised inventory schedules (see § 8.503-7). Property determined to be scrap and which, by other Government regulations, is required to be segregated by alloy or otherwise, shall be so segregated by the contractor. Property determined to be scrap or salvage may, with the approval of the contracting officer, be sold or otherwise disposed of by the contractor in accordance with the provisions of §§ 8.505-3, 8.507, or 8.509. In appropriate cases, when approved by the contracting officer, such sales may be consolidated with the contractor's sales of scrap and salvage generated from its other work and, in such cases, the scrap warranty required by § 8.504-2 may be waived in the discretion of the contracting officer.

§ 8.504-2 *Scrap warranty*. (a) If any termination inventory is sold as scrap, a scrap warranty, substantially as set forth in § 8.805 shall be obtained.

(b) The scrap warranty may be released on behalf of the Government by the contracting officer if, as consideration for the release, the Government is paid the difference between (1) the price for which the material was sold as scrap and (2) an amount, approved by the contracting officer, not less than that which the material would bring if it were sold at a fair and reasonable price as set forth in § 8.507-2 (a), for purposes other than use as scrap. The release of the scrap warranty shall be given by the Government and the consideration paid to the Government, even though the contract containing the warranty was not made directly with the Government.

(c) In the event of resale of any material subject to a scrap warranty, the seller is required to obtain an appropriate scrap warranty from the purchaser thereof. Upon tender of this warranty to the Government, the seller shall be released by the Government from liability under his own warranty.

§ 8.505 *Screening of serviceable and usable property*.

§ 8.505-1 *Scope of screening*. (a) Subject to paragraphs (c) through (f) of this section, serviceable and usable property, other than production equipment, included in the contractor's inventory schedules shall be screened as follows:

(1) Inventories of aircraft and aircraft components shall be screened for possible redistribution within the Departments of the Air Force and Navy;

(2) Items, such as reserved materials, strategic and critical materials, and narcotics, shall be reported for any special screening as required by Departmental procedures; and

(3) Inventories of other items shall be screened to the extent required by the procuring activity, which may include reporting to the Utilization Division, Armed Forces Supply Support Center.

(b) Production equipment inventories shall be screened to the extent required by the procuring activity. Production equipment determined upon completion of such screening to be excess to the needs of the procuring activity shall be reported to the Utilization Division, Armed Forces Supply Support Center, for Department of Defense utilization screening, except when the acquisition value of the item is less than $300, or the condition of the item is N-4, E-4, O-4, R-3, R-4, X (salvage), or scrap (see condition codes listed on Inventory Schedules, §§ 8.802-4 through 8.802-8). However, production equipment in classes 3411 through 3419 and 3441 through 3449 (see Cataloging Handbook H 2-1, Federal Supply Classification, Office of the Assistant Secretary of Defense (Supply and Logistics)) shall be reported regardless of condition.

(c) If the contractor has been directed by the Notice of Termination to deliver any items of termination inventory to the Government no further screening of those items shall be required.

(d) If the total serviceable and usable property, other than production equipment, included in the contractor's inventory schedules has an original cost of $1,000 or less, such property need not be screened within the procuring activity unless the contracting officer determines that screening is desirable.

(e) Line items included in the contractor's inventory, having an original cost of $300 or less, need not be screened if such items are listed by the contractor on a separate schedule or schedules unless the contracting officer determines that screening is desirable. The term "line item" means all substantially similar articles under any one contract at any one location and which should be listed as a single entry in an inventory schedule.

(f) Termination inventory to which § 8.208-4 is applicable does not require screening.

§ 8.505-2 *Screening period*. Production equipment, and other property voluntarily reported by the procuring activity to the Utilization Division, Armed Forces Supply Support Center, in accordance with Departmental procedures, shall be screened within the Department of Defense for a period not to exceed 45 calendar days after the issue date of the Excess Listing covering that property prepared by the Utilization Division. Upon expiration of the screening period the contracting officer shall notify the contractor promptly that the listed inventory, except that portion for which the contracting officer has received instructions from the Utilization Division, may be sold or otherwise disposed of as hereinafter set forth.

§ 8.505-3 *Acquisition by Government*. If any item of serviceable or usable property is desired by any activity of the Department of Defense, or other agency of the Government, for stock, diversion to other contracts, or other purposes, the contractor shall deliver such property as directed by the contracting officer. The order of priority of such acquisition shall be: the procuring activity, other activities of the Department of Defense, and other Government agencies.

§ 8.506 *Government-furnished property*. Government-furnished property included in termination inventory, return of which has not been required by the Government, may be disposed of in the same manner as other termination inventory after screening in accordance with the requirements of § 8.505. The contracting officer is required to approve all such dispositions and may specify methods for preparing and routing inventory schedules covering such property.

§ 8.507 *Sale or other disposition of termination inventory.*

§ 8.507-1 *General.* Under the standard termination clauses, the contractor is required to use its best efforts to sell termination inventory, in the manner, at the times, to the extent, and at the prices directed or authorized by the contracting officer, except that the contractor (a) is not required to extend credit to any purchaser, and (b) may purchase or retain at less than cost any items of termination inventory not retained by it at cost. Any property which is included in the contractor's inventory schedules, which has not been acquired by the Government under § 8.505-3, may be purchased or retained at less than cost by the contractor or sold by the contractor to a third party as provided in § 8.507-2 or § 8.507-3 at any time after notification by the contracting officer that screening has been accomplished or will not be required. Any such purchase, retention or sale shall be subject to the approval of the contracting officer, as part of or prior to the final settlement (see § 8.512 as to review by Property Disposal Review Boards).

§ 8.507-2 *Competitive sales.* (a) Except as provided in § 8.507-3, termination inventory shall be offered for sale on a competitive basis. Generally, 3 bids shall be obtained, one of which may be submitted by the contractor. The property shall be sold to that responsible bidder whose bid is most advantageous to the Government, price and other factors considered, or purchased or retained by the contractor if its bid is most advantageous to the Government: *Provided,* That the price shall be fair and reasonable in the light of reasonable knowledge or test of the market, due regard being had for current prices for any raw materials or products for which quotations are published, and to the circumstances, nature, condition, quantity, and location of property. Any bid by the contractor shall be submitted in the same manner as and concurrently with other bids. The contractor shall not be entitled to preference in any sale.

(b) Bids shall be solicited sufficiently in advance of the opening of bids to allow bidders an adequate opportunity to prepare and submit their bids. Bids shall be solicited by any one of the methods set forth below: *Provided,* That when deemed necessary by the contractor to assure full and free competition, more than one method may be used: *And provided further,* That where the original acquisition cost of serviceable material available for sale at any one time and location is $25,000 or more, in addition to any other method of solicitation used, the sale shall also be advertised in a newspaper of general circulation as provided in subparagraph (4) of this paragraph.

(1) A notice of the proposed sale may be mailed or delivered to all prospective bidders; if this method is used, the bidders' list shall include all known responsible prospective purchasers located in the general area in which the property is located;

(2) A notice of the proposed sale may be displayed at appropriate public places;

(3) A notice of the proposed sale may be published in appropriate trade journals or magazines;

(4) A notice of the proposed sale may be published in a newspaper of general circulation in the locality in which the property is located; or

(5) Where the amount or value of the property is not large enough to warrant preparation of a formal notice of the proposed sale, or other special circumstances are present, invitations to bid may, with the contracting officer's approval, be issued orally, by telephone, or by other informal media, so long as the element of competition is maintained, and each such sale is fully documented.

(c) Any notice of a proposed sale under paragraph (b) of this section shall indicate in general terms the types of material for sale, shall give the date on or after which such material will be available for sale, and shall reserve the right to reject any or all bids submitted. So far as feasible, lots shall be offered in such reasonable quantities as to permit all bidders, small as well as large, to compete on equal terms.

§ 8.507-3 *Other sales.* (a) Sales, or purchases or retentions at less than cost by the contractor, may, if the Government's interests are adequately protected, be authorized by the contracting officer without competitive bids when essential in the interest of making a fair and prompt settlement (including the expeditious clearance of the contractor's plant).

(b) After such screening as may be required by Departmental procedures, scientific equipment allocated to terminated research and development contracts with educational institutions may be sold to or retained by the contractor for use in educational or research pursuits without obtaining competitive bids. Prices under which such equipment is transferred shall be negotiated between the contractor and the contracting officer.

(c) Sales, purchases, and retentions under paragraph (a) or (b) of this section shall be at prices which 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.

§ 8.507-4 *Proceeds of sale.* Unless otherwise provided in the contract, the proceeds of any sale, purchase or retention shall be credited to the Government as part of the settlement agreement, or otherwise credited to the price or cost of the work covered by the contract, or paid in such manner as the contracting officer may direct.

§ 8.507-5 *Applicability of antitrust laws.* Whenever any termination inventory which has or may cost the Government $1,000,000 or more (or any patents, processes, techniques, or inventions, irrespective of cost) is to be sold or otherwise disposed of to private interests, the Department concerned shall promptly notify the Attorney General and the Administrator of General Services of the proposed disposal and the probable terms or conditions thereof; and shall await advice from the Attorney General as to whether, so far as he can determine, the proposed disposition would tend to create or maintain a situation inconsistent with the antitrust laws. If the Attorney General advises that the proposed disposition would tend to create or maintain a situation inconsistent with the antitrust laws, such disposition will not be made.

§ 8.508 *Donations.* (a) Termination inventory which is to be sold or otherwise disposed of in accordance with § 8.507 may be donated for educational public health, or civil defense purposes, including research, upon allocation by the Department of Health, Education and Welfare, subject to approval by the General Services Administration, as authorized by the Federal Property and Administrative Services Act of 1949, as amended. To assist the Department of Health, Education and Welfare in locating property which is available for donation, each Military Department shall furnish that Department with a directory of activities where donable property files are maintained and may be examined.

(b) Schedules of termination inventory available for donation shall be maintained in a donable property file for a period of 10 days from the date of the decision to dispose of the property in accordance with § 8.507. Within that time the Department of Health, Education, and Welfare has the responsibility (1) to notify the contracting officer of the items selected for donation and (2) to initiate a request to the appropriate General Services Administration regional office for approval of the donation. Disposition of the property selected shall be postponed pending action by the General Services Administration; otherwise, the property shall be disposed of in accordance with § 8.507. Notification to the contracting officer by the General Services Administration of the action on the request shall constitute authority for the contracting officer to hold the property for a period not to exceed 40 days from the date of the notification required by subparagraph (1) of this paragraph or to take such action as the General Services Administration may direct. If shipping instructions are not received for the property within the 40 day period, together with provision for payment of costs of care, handling, and transportation, incurred incident to donation, the contracting officer shall dispose of the property in accordance with § 8.507.

(c) Property required for use by the Department of Defense may be withdrawn from the items available for donation at any time prior to shipment or delivery to the donee.

§ 8.509 *Destruction or abandonment.* (a) Termination inventory which is Government-furnished property or contractor-acquired property and which is not otherwise disposed of under this part, may, in accordance with General Services Administration and Departmental regulations, be destroyed or abandoned: *Provided*, That the contracting officer has determined that it has no commercial value and no value to the Government, or that the estimated cost of its care and handling is greater than the probable sale price, or that because of its nature it constitutes a danger to public health, safety, or welfare. Any such determination shall be subject to review in accordance with § 8.512.

(b) Termination inventory which has been classified by reason of military security, and which is not required for the Government's needs, shall, unless such classification is removed or changed by proper authority, be disposed of in accordance with applicable security regulations.

(c) No termination inventory shall be abandoned on the contractor's premises without the contractor's consent.

§ 8.510 *Special machinery, tooling and equipment.* Except as otherwise provided in the contract, if the settlement is to include any item of cost on account of special machinery and equipment, or special tooling, the contracting officer shall take appropriate steps to protect the Government's interest by:

(1) Requiring transfer of title to such property to the Government;

(2) Requiring the inclusion of such property in the contractor's inventory schedules, to be treated in the same manner as termination inventory; or

(3) In the event of purchase or retention by the contractor, making an equitable adjustment of the costs to be included in the settlement for such property, which adjustment shall take into account the rate of amortization thereon, the possible use thereof on other work of the contractor, the ultimate disposal value thereof, and any rights to be retained by the Government.

§ 8.511 *Removal and storage.*

§ 8.511-1 *Special storage at the expense and risk of the contractor.* The contractor may, at any time during the plant clearance period, upon written notice to the contracting officer, store any items of termination inventory, not previously disposed of, in a warehouse or other storage location, on or off its own premises, unless otherwise directed by the contracting officer within 10 days of the receipt by the contracting officer of such notice. Such storage shall in no way modify the responsibility of the contractor with respect to such property. The expense of such storage, including any removal incident thereto, shall be borne by the contractor, unless the contracting officer determines that such removal or storage is for the convenience of the Government.

§ 8.511-2 *Storage at the expense and risk of the Government.* At any time after expiration of the plant clearance period, the contractor may submit to the contracting officer, a list certified as to quantity and quality, of any items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the contracting officer, and may request the Government to remove such items or enter into a storage agreement covering them. Not later than 15 days thereafter, the Government shall accept title to such items and remove them or enter into a written storage agreement covering the same: *Provided*, That the list submitted shall be subject to verification by the contracting officer upon removal of the items (or if the items are stored, within 45 days from the date of submission of the list). Any necessary adjustment to correct the list as submitted shall be made prior to final settlement.

§ 8.512 *Review of property disposal.*

§ 8.512-1 *Property disposal review boards.* The head of each procuring activity shall establish one or more Property Disposal Review Boards. Each such Board shall be composed of at least three qualified officers or civilian employees. No person shall serve as a member of a Property Disposal Review Board in reviewing any property action in which he has participated.

§ 8.512-2 *Required review.* The following property disposal matters shall be reviewed by a Property Disposal Review Board which shall submit its recommendations to the contracting officer prior to approval or ratification by the contracting officer:

(a) A determination that material is scrap or salvage, if the original acquisition cost of the material is $25,000 or more;

(b) A release from a scrap warranty, if the original acquisition cost of the material is $10,000 or more;

(c) Any sales, purchases or retentions at less than cost made without competitive bids (see § 8.507-3) where the original acquisition cost of the materials involved exceeds $25,000;

(d) A determination to destroy or abandon material (see § 8.509) if the original acquisition cost of the material exceeds $1,000;

(e) Any property disposal matter when requested by the contracting officer; and

(f) Any property disposal matter when required by Departmental procedures.

§ 8.513 *Subcontractor termination inventory.*

§ 8.513-1 *General policy.* (a) The prime contractor and each subcontractor are primarily responsible for the disposition of the termination inventory of their respective next lower-tier subcontractors, but all such disposals shall be subject to review by the contracting officer as provided in § 8.208-3 (c) (but see § 8.208-4). The policies and provisions set forth in §§ 8.501, 8.502, 8.506, 8.508, 8.509 and 8.512, shall be applicable in the case of subcontractors. Any rights which the prime contractor has or acquires in the termination inventory of its first-tier or lower-tier subcontractors shall, to the extent directed by the contracting officer, be exercised for the benefit of the Government, in accordance with the provisions of the contract between the Government and the prime contractor.

(b) Subcontractors in all tiers will prepare inventory schedules in accordance with the requirements of this part. Normally disposition instructions for termination inventory, except serviceable and usable property, will be furnished by the next higher-tier subcontractor or the prime contractor, as the case may be. Each subcontractor may submit its next lower-tier subcontractors' inventory schedules of serviceable and usable property directly to the contracting officer for review and disposition instructions, unless otherwise directed by the contracting officer. In the interest of expediting disposition of termination inventory, the cognizant contracting officer will permit such direct submission, unless he determines that the submission of inventory schedules through all intermediate tiers of subcontractors is necessary in the best interest of the Government. When such a determination is made, it must be in writing and a copy submitted to the Head of the Procuring Activity concerned for review.

§ 8.513-2 *Inventory schedules.* The prime contractor and each higher-tier subcontractor shall obtain adequate information concerning the termination inventory for which its subcontractors claim reimbursement. For this purpose, the forms of inventory schedules set forth in §§ 8.802-4 through 8.802-8 may be used, but their use is not required if substantially equivalent information is obtained, as called for by § 8.503. In any event, full information on the condition and usability of such inventory shall be furnished, and certificates similar to those set forth in such schedules shall be obtained from the subcontractor.

§ 8.513-3 *Scrap and salvage.* The prime contractor and each higher-tier subcontractor shall review any recommendations of their respective subcontractors concerning scrap and salvage. If the prime contractor or the higher-tier subcontractor determines that any of the materials are serviceable and usable materials, it shall require the subcontractor to submit revised inventory data in accordance with such determination. The Government shall not be bound by any determination that material is scrap or salvage unless the determination, and any sale of the material as scrap or salvage, have the prior approval of the contracting officer. A scrap warranty running to the Government shall be obtained wherever such material is sold as scrap.

§ 8.513-4 *Serviceable and usable property.* Subcontractor termination inventory, which is not purchased or retained at cost, and which is determined to be serviceable and usable property shall be disposed of by:

(a) Submission for screening and possible redistribution within the Government pursuant to § 8.505; and

(b) Sales to third parties (including purchases or retentions at less than cost by the subcontractor, a higher-tier subcontractor, or the prime contractor) made in general conformity with § 8.507.

§ 8.514 *Adjustment prior to final settlement.*

§ 8.514-1 *Duty of contractors to inform Government.* By the terms of the Inventory Schedule Certificate set forth in Inventory Schedules A, B, C, D, and E (see § 8.802-4 through 8.802-8) the contractor or subcontractor is required to inform the Government of any substantial change in the status of its termination inventory arising between the date of submission of its termination inventory schedules and final disposition of such inventory.

§ 8.514-2 *Right of government to review inventory schedules.* (a) Regardless of any disposition of termination inventory pursuant to this subpart, the Government shall continue to have the right, prior to final settlement, to require additional information concerning such inventory, to contest its allocability to the terminated portion of the contract, or to exclude such inventory from the settlement on any proper grounds.

(b) If, prior to final settlement, the Government determines that any portion of the termination inventory is not allocable to the terminated contract or should be excluded from the settlement on any other grounds, the cost thereof, and any credits related thereto, shall be excluded from the settlement. If the contractor has actually paid to the Government the proceeds realized from the disposition of such inventory, the Government shall repay such proceeds to the contractor. If such inventory has been delivered to the Government, normally it should be returned to the contractor at the contractor's expense and risk.

§ 8.515 *Accounting for termination inventory.* (a) Prior to final settlement with the prime contractor, all termination inventory of the prime contractor and its subcontractors must be accounted for as follows:

(1) By purchase or retention at cost by the contractor or subcontractor, or by return to suppliers, and omission or withdrawal of such inventory from the contractor's inventory schedules (see § 8.502);

(2) By transfer to the Government (see § 8.505-3);

(3) By sale (including purchase or retention at less than cost by the contractor or subcontractor) and application of the proceeds or agreed value in reduction of the contractor's claim, or otherwise to the credit of the Government (see § 8.507);

(4) By destruction or abandonment (see § 8.509);

(5) By donation (see § 8.508); or

(6) By other disposition in accordance with the terms of the contract and of this part.

(b) In the event that any termination inventory not disposed of is lost, destroyed, damaged, or for any reason cannot be delivered by the contractor at the time of settlement of its termination claim, such termination inventory, unless the Government has expressly assumed the risk involved, or unless the contract provides otherwise, shall be accounted for as inventory purchased or retained by the Contractor, and the fair value of the inventory, as determined by the contracting officer, shall be deducted from the termination claim.

SUBPART F—TERMINATION FOR DEFAULT

§ 8.600 *Scope of subpart.* This subpart sets forth policies and procedures for the utilization and application of the Default clause set forth in § 8.707 for fixed-price supply contracts, and the "Termination for Default—Damages for Delay—Time Extensions" clause set forth in § 8.709 for fixed-price construction contracts. (For cost-reimbursement type contracts, see § 8.407.)

§ 8.601 *General.* (a) Termination for default is generally the exercise of a contractual right of the Government to terminate the contract in whole or in part by reason of the contractor's failure, actual or anticipatory, to perform its obligations under the contract.

(b) If the contractor can establish that its failure to perform arose out of causes beyond its control and without its fault or negligence, the contract clauses in §§ 8.707 and 8.709 provide that a termination for default shall be deemed to have been a termination for the convenience of the Government, and the rights and obligations of the parties shall be governed accordingly.

(c) The Government may also in appropriate cases exercise termination or cancellation rights in addition to those set forth in the contract clauses (see for example, paragraph (f) of the Default clause in § 8.707).

§ 8.602 *Termination of fixed-price supply contracts for default.*

§ 8.602-1 *The Government's right to terminate for default.* Under contracts containing the Default clause in § 8.707 the Government has the right, subject to the notice requirements of the clause, to terminate the whole or any part of the contract for default if the contractor (a) fails to make delivery of the supplies or to perform the services within the time specified in the contract, (b) fails to perform any other provision of the contract, or (c) fails to make progress so as to endanger performance of the contract.

§ 8.602-2 *Effect of termination for default.* Under a termination for default the Government is not liable for the contractor's costs on undelivered work, and is entitled to the repayment of any advance payments and of any progress payments applicable to such work. The Government may elect to take all or any part of the completed supplies and manufacturing materials (see paragraph (d) of the clause set forth in § 8.707). The Government shall pay to the contractor the contract price for such completed supplies delivered and accepted, and the amount agreed upon by the contractor and the contracting officer for such manufacturing materials delivered and accepted and for the protection and preservation of such property. The contractor shall be liable to the Government for any excess costs for supplies and services procured similar to those terminated (see § 8.602-6), and for any other damages, whether or not repurchase is effected (see § 8.602-7).

§ 8.602-3 *Procedure for default.* (a) The contracting officer shall consider the following factors in determining whether to terminate a contract for default:

(1) The provisions of the contract, and applicable laws and regulations;

(2) The specific failure of the contractor and, unless time does not permit, the excuses, if any, for such failure;

(3) The availability of the supplies or services from other sources;

(4) The urgency of the need for the supplies or services and the period of time which would be required to obtain the supplies or services from other sources as compared with the time in which delivery could be obtained from the delinquent contractor;

(5) The degree of essentiality of the contractor in the Government procurement program and the effect of a termination for default upon the contractor's capability as a supplier under other contracts;

(6) The effect of a termination for default on the ability of the contractor to liquidate guaranteed loans, progress payments, or advance payments; and

(7) Any other pertinent facts and circumstances.

(b) If the foregoing consideration indicates that termination for default is appropriate, the contracting officer should, if practicable, notify the contractor by letter of the possibility of such termination. This letter shall call the contractor's attention to its contractual liabilities in the event the contract is terminated for default and request an explanation of the contractor's failure to perform the contract. The letter may further state that failure of the contractor to present such explanation may be taken as an admission that no valid explanation exists. When appropriate, the letter may invite the contractor to discuss the matter at a conference.

(c) If, after compliance with the foregoing procedures, the contracting officer determines that termination for default is proper, he shall, where the termination is predicated upon the contractor's failure to make timely deliveries, issue a notice of termination at once. If the termination is predicated upon any other failure of the contractor, the contractor shall be given written notice specifying such failure and providing a period of 10 days (or such longer period as the contracting officer may authorize) in which to cure such failure. Where appropriate, this notice may be made a part of the letter described in paragraph (b) of this section. Upon expiration of the 10 days (or longer period), the contracting officer may issue a notice of termination for default unless he determines that the failure to perform has been cured.

(d) The notice of termination for default shall:

(1) Set forth the contract number and date;

(2) Describe the acts or omissions constituting the default;

(3) State that the contractor's right to proceed further with performance of the contract (or a specified portion of the contract) is terminated;

(4) State that the supplies or services terminated may be procured against the contractor's account, and that the contractor will be held liable for any excess costs;

(5) State that the Government reserves all rights and remedies provided by law or under the contract, in addition to charging excess costs; and

(6) State that the notice constitutes a decision that the contractor is in default as specified, and that the contractor has the right to appeal as specified in the Disputes clause.

If the contracting officer has investigated the contractor's excuses for the failure to perform, the notice of termination shall also state that it constitutes a decision that the failure to perform was not due to causes beyond the control and without the fault or negligence of the contractor, and that the contractor has the right to appeal as specified in the Disputes clause.

(e) The same distribution shall be made of the termination notice as was made of the contract. In addition, a copy shall be furnished to the disbursing officer who shall be advised to withhold further payments under the terminated contract pending additional instructions, which shall be given when sufficient information is available.

(f) If the contracting officer determines that the contractor's failure to perform arose from causes beyond its control and without its fault or negligence, the contracting officer shall not terminate the contract for default. Under such circumstances, if it is in the best interests of the Government to do so, the contracting officer may terminate the contract for the convenience of the Government.

(g) If the contracting officer has not been able to determine, prior to issuance of the notice of termination, whether the contractor's failure to perform arose from causes beyond its control and without its fault or negligence, he shall make a written decision on that point as soon as practicable after issuance of the notice of termination. Such decision shall be delivered promptly to the contractor with a notification that it has the right to appeal as specified in the Disputes clause.

§ 8.602-4 *Procedure in lieu of termination for default.* The following courses of action, among others, are available to the contracting officer in lieu of termination for default, when in the best interest of the Government:

(a) Permit the contractor, its surety, or its guarantor, to continue performance of the contract under a revised delivery schedule;

(b) Permit the contractor to continue performance of the contract by means of a subcontract, or other business arrangement with an acceptable third party: *Provided*, The rights of the Government are adequately preserved; or

(c) If the requirement for the supplies and services specified in the contract no longer exists, and the contractor is not liable to the Government for damages as provided in § 8.602-7, execute a no-cost termination settlement agreement utilizing the form set forth in §§ 8.806-6 and 8.806-7 as a guide.

§ 8.602-5 *Memorandum by the contracting officer.* In all cases where a contract is terminated for default or where a procedure authorized by § 8.602-4 is followed, the contracting officer shall prepare a memorandum for the contract file explaining fully the reasons for the action taken.

§ 8.602-6 *Repurchase against contractor's account.* (a) Where the supplies or services are still required after termination, repurchase of supplies or services which are the same as or similiar to those called for in the contract, shall be made against the contractor's account as soon as practicable after termination. Such repurchase shall be at as reasonable a price as practicable considering the quality required by the Government and the time within which the supplies or services are required. The contract of repurchase may be made for a quantity in excess of the undelivered quantity terminated for default, when such excess quantity is needed, but excess costs may be charged against the defaulting contractor for no more than the undelivered quantity terminated for default (including variations in quantity permitted by the terminated contract).

(b) If repurchase is effected at a price in excess of the price of the supplies terminated, the contracting officer shall make a written demand on the contractor for the total amount of such excess and if the contractor fails to make payment, the contracting officer shall follow Departmental procedures for collecting claims in favor of the Government.

§ 8.602-7 *Other damages.* (a) If a contract is terminated for default or if a course of action in lieu of termination for default is followed (see § 8.602-4), the contracting officer shall promptly ascertain and make demand for any liquidated damages to which the Government may be entitled under the contract. Pursuant to the contract provisions for liquidated damages in § 7.105-5, such damages are in addition to any excess cost of reprocurement.

(b) If the Government has suffered any other ascertainable damages as a result of the contractor's default, the contracting officer, on the basis of legal advice, shall take appropriate action to assert the Government's claim for such damages.

§ 8.603 *Termination of fixed-price construction contracts for default.*

§ 8.603-1 *Termination of the contractor's right to proceed.* Under contracts containing the Termination for Default—Damages for Delay—Time Extensions clause set forth in § 8.709, the Government has the right to terminate the contractor's right to proceed with the work if the contractor (a) fails to prosecute the work required by the contract, or any separable part thereof, with such diligence as will insure its completion within the time specified in the contract or any extension thereof, or (b) fails to complete the work required under the contract within such time.

§ 8.603-2 *Effect of termination for default.* If a contractor's right to proceed is terminated for default, the Government may take over and complete or cause to be completed the work, taking possession of and utilizing such materials, appliances and plant as may be on the site and necessary therefor, and the contractor and its sureties shall be liable to the Government for any excess costs caused thereby. If after taking over the work the Government is not reasonably able to complete it, or have it completed, within the time specified for completion in the defaulted contract, the contractor shall, in addition to any excess costs, be liable for liquidated damages for the delay as specified in the contract, or for actual damages caused by the delay if liquidated damages are not so specified.

§ 8.603-3 *Procedure for default.* (a) The contracting officer shall consider the following factors in determining whether to terminate a contract for default:

(1) The provisions of the contract, and applicable laws and regulations;

(2) The specific failure of the contractor and excuses, if any, for such failure;

(3) The period of time which would be required for the Government or another contractor to complete the work as compared to the time required for completion by the delinquent contractor;

(4) The effect of a termination for default on the ability of the contractor to liquidate guaranteed loans, progress payments, or advance payments; and

(5) Any other pertinent facts and circumstances.

(b) If the contracting officer determines that the contractor's failure to perform arises from causes beyond its control and without its fault or negligence, the contracting officer shall not terminate the contractor's right to proceed, nor shall the contractor be charged with liquidated or actual damages because of any delays occasioned by such causes.

(c) If the contracting officer determines that it is in the best interests of the Government to terminate for default the contractor's right to proceed, the contracting officer shall promptly send a written notice to the contractor terminating its right to proceed. The notice shall:

(1) Set forth the contract number and date;

(2) Describe the act or omissions, and the extent of the resultant delay, constituting the default;

(3) State that the contractor's right to proceed further with performance of the contract (or of a specified portion of the contract) is terminated;

(4) State that the Government may cause the contract to be completed and

that the contractor will be held liable for any excess costs;

(5) State that the Government reserves all rights and remedies provided by law or under the contract, in addition to charging excess costs;

(6) State that the notice constitutes a decision, pursuant to the Disputes clause, that the contractor is in default as specified and that the delay is not excusable; and

(7) State that the contractor has the right to appeal as specified in the Disputes clause.

(d) The same distribution shall be made of the termination notice as was made of the contract, including a copy to the surety. In addition, a copy shall be furnished to the disbursing officer who shall be advised to withhold further payments under the terminated contract pending additional instructions which shall be given when sufficient information is available.

e) Promptly after issuance of the termination notice, the contracting officer shall determine the manner in which the work is to be completed and whether the materials, appliances, and plant which are on the site will be needed.

§ 8.603-4 *Procedure in lieu of termination for default.* If, after due consideration, the contracting officer determines that termination is not in the best interests of the Government although the contractor is in default, he may permit the contractor to continue the work, and the contractor and its sureties shall be liable to the Government for liquidated damages, as specified in the contract, or if liquidated damages are not so specified, to any actual damages occasioned by the failure of the contractor to complete the work in accordance with the terms of the contract.

§ 8.603-5 *Memorandum by the contracting officer.* In all cases where a contractor's right to proceed is terminated for default or where the procedure authorized by § 8.603-4 is followed, the contracting officer shall prepare a memorandum for the contract file explaining fully the reasons for the action taken.

§ 8.603-6 *Other damages.* In addition to any excess costs occasioned the Government in connection with the completion of the work, the contractor and its surety are liable for liquidated damages if specified in the contract, or if liquidated damages are not specified, for any actual damages occasioned by such delay. All retained percentages of progress payments previously made to the contractor and any progress payments due for work completed prior to the termination of the right to proceed shall be used for the purpose of liquidating the liability of the contractor and its surety to the Government for such excess costs and liquidated or actual damages.

SUBPART G—CLAUSES

§ 8.700 *Scope of subpart.* This subpart contains certain contract clauses related to the termination of contracts for the convenience of the Government and for default. Special purpose clauses when authorized by Departmental procedures and consistent with the policies set forth in this subchapter may be used in appropriate cases.

§ 8.701 *Termination clause for fixed-price contracts.* Except as otherwise permitted by § 8.705, the following clause shall be used in any fixed-price contract in excess of $1,000 for supplies or experimental, developmental, or research work other than (a) construction, alterations, or repair of buildings, bridges, roads, or other kinds of real property, or (b) experimental, developmental, or research work with educational or nonprofit institutions, where no profit is contemplated.

TERMINATION FOR CONVENIENCE OF THE GOVERNMENT

(a) The performance of work under this contract may be terminated by the Government in accordance with this clause in whole, or from time to time in part, whenever the Contracting Officer shall determine that such termination is in the best interests of the Government. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective.

(b) After receipt of a Notice of Termination, 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;

(3) Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination;

(4) Assign to the Government, in the manner, at the times, and to the extent directed by the Contracting Officer, all of the right, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the Government shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;

(5) Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Contracting Officer, to the extent he may require, which approval or ratification shall be final for all the purposes of this clause;

(6) Transfer title and deliver to the Government, in the manner, at the times, and to the extent, if any, directed by the Contracting Officer, (A) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of, the work terminated by the Notice of Termination, and (B) the completed or partially completed plans, drawings, information and other property which, if the contract had been completed, would have been required to be furnished to the Government;

(7) Use its best efforts to sell, in the manner, at the times, to the extent, and at the price or prices directed or authorized by the Contracting Officer, any property of the types referred to in (6) above: *Provided, however,* That the Contractor (A) shall not be required to extend credit to any purchaser, and (B) may acquire any such property under the conditions prescribed by and at a price or prices approved by the Contracting Officer; *And provided further,* That the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Government to the Contractor under this contract or shall otherwise be credited to the price or cost of the work covered by this contract or paid in such other manner as the Contracting Officer may direct;

(8) Complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and

(9) Take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to this contract which is in the possession of the Contractor and in which the Government has or may acquire an interest.

At any time after expiration of the plant clearance period, as defined in 32 CFR Part 8, as it may be amended from time to time, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the Contracting Officer, and may request the Government to remove such items or enter into a storage agreement covering them. Not later than fifteen (15) days thereafter, the Government will accept title to such items and remove them or enter into a storage agreement covering the same: *Provided,* That the list submitted shall be subject to verification by the Contracting Officer upon removal of the items, or if the items are stored, within forty-five (45) days from the date of submission of the list, and any necessary adjustment to correct the list as submitted shall be made prior to final settlement.

(c) After receipt of a Notice of Termination, the Contractor shall submit to the Contracting Officer its termination claim, in the form and with certification prescribed by the Contracting Officer. Such claim shall be submitted promptly but in no event later than one year from the effective date of termination, unless one or more extensions in writing are granted by the Contracting Officer, upon request of the Contractor made in writing within such one year period or authorized extension thereof. However, if the Contracting Officer determines that the facts justify such action, he may receive and act upon any such termination claim at any time after such one year period or any extension thereof. Upon failure of the Contractor to submit its termination claim within the time allowed, the Contracting Officer may, subject to any Settlement Review Board approvals required by 32 CFR Part 8 in effect as of the date of execution of this contract, determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.

(d) Subject to the provisions of paragraph (c), and subject to any Settlement Review Board approvals required by 32 CFR Part 8 in effect as of the date of execution of this contract, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of work pursuant to this clause, which amount or amounts may include a reasonable allowance for profit on work done: *Provided,* That such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. The contract shall be amended accordingly, and the Contractor shall be paid the agreed amount. Nothing in paragraph (e) of this clause, prescribing the amount to be paid to the Contractor in the event of failure of the Contractor and the Contracting Officer to agree upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this clause, shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to the Contractor pursuant to this paragraph (d).

(e) In the event of the failure of the Contractor and the Contracting Officer to agree as provided in paragraph (d) upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this clause, the Contracting Officer shall, subject to any Settlement Review Board approvals required by 32 CFR Part 8 in effect as of the date of execution of this contract, determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall pay to the Contractor the amounts determined as follows:

(1) For completed supplies accepted by the Government (or sold or acquired as provided in paragraph (b) (7) above) and not theretofore paid for, a sum equivalent to the aggregate price for such supplies computed in accordance with the price or prices specified in the contract, appropriately adjusted for any saving of freight or other charges;

(2) The total of—

(A) The costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but exclusive of any costs attributable to supplies paid or to be paid for under paragraph (e) (1) hereof;

(B) The cost of settling and paying claims arising out of the termination of work under subcontracts or orders, as provided in paragraph (b) (5) above, which are properly chargeable to the terminated portion of the contract (exclusive of amounts paid or payable on account of supplies or materials delivered or services furnished by subcontractors or vendors prior to the effective date of the Notice of Termination, which amounts shall be included in the costs payable under (A) above; and

(C) A sum, as a profit, equal to 2 percent of that part of the amount determined under (A) above which represents the cost of articles and materials not processed by the Contractor, plus a sum equal to 8 percent of the remainder of such amount, but the aggregate of such sums shall not exceed 6 percent of the whole of the amount determined under (A) above, which amount for the purpose of this subdivision (C) shall exclude any charges for interest on borrowings: *Provided, however*, That if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, no profit shall be included or allowed under this subdivision (C) and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss; and

(3) 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 terminated portion of the contract and for the termination and settlement of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to this contract.

The total sum to be paid to the Contractor under (1) and (2) of this paragraph (e) shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. Except for normal spoilage, and except to the extent that the Government shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the Contractor as provided in (e) (1) and (2) (A) above, the fair value, as determined by the Contracting Officer, of property which is destroyed, lost, stolen, or damaged so as to become undeliverable to the Government, or to a buyer pursuant to paragraph (b) (7).

(f) Any determination of costs under paragraph (c) or (e) thereof shall be governed by the principles for consideration of costs set forth in 32 CFR 8.302, as in effect on the date of this contract.

(g) The Contractor shall have the right of appeal, under the clause of this contract entitled "Disputes," from any determination made by the Contractting Officer under paragraphs (c) or (e) above, except that if the Contractor has failed to submit its claim within the time provided in paragraph (c) above and has failed to request extension of such time, it shall have no such right of appeal. In any case where the Contracting Officer has made a determination of the amount due under paragraph (c) or (e) above, the Government shall pay to the Contractor the following: (i) If there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the Contracting Officer, or (ii) if an appeal has been taken, the amount finally determined on such appeal.

(h) In arriving at the amount due the Contractor under this clause there shall be deducted (i) all unliquidated advance or other payments on account theretofore made to the Contractor, applicable to the terminated portion of this contract, (ii) any claim which the Government may have against the Contractor in connection with this contract, and (iii) the agreed price for, or the proceeds of sale of, any materials, supplies, or other things acquired by the Contractor or sold, pursuant to the provisions of this clause, and not otherwise recovered by or credited to the Government.

(i) If the determination hereunder be partial, prior to the settlement of the terminated portion of this contract, the Contractor may file with the Contracting Officer a request in writing for an equitable adjustment of the price or prices specified in the contract relating to the continued portion of the contract (the portion not terminated by the Notice of Termination), and such equitable adjustment as may be agreed upon shall be made in such price or prices.

(j) The Government may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor in connection with the terminated portion of this contract whenever in the opinion of the Contracting Officer the aggregate of such payments shall be within the amount to which the Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this clause, such excess shall be payable by the Contractor to the Government upon demand, together with interest computed at the rate of 6 percent per annum, for the period from the date such excess payment is received by the Contractor to the date on which such excess is repaid to the Government: *Provided, however*, That no interest shall be charged with respect to any such excess payment attributable to a reduction in the Contractor's claim by reason of retention or other disposition of termination inventory until ten days after the date of such retention or disposition, or such later date as determined by the Contracting Officer by reason of the circumstances.

(k) Unless otherwise provided for in this contract, or by applicable statute, the Contractor, from the effective date of termination and for a period of six years after final settlement under this contract, shall preserve and make available to the Government at all reasonable times at the Office of the Contractor but without direct charge to the Government, all its books, records, documents, and other evidence bearing on the costs and expenses of the Contractor under this contract and relating to the work terminated hereunder, or, to the extent approved by the Contracting Officer, photographs, micro-photographs, or other authentic reproductions thereof.

§ 8.702 *Termination clause for cost-reimbursement type contracts.* The following clause shall be used in any cost-reimbursement type contract, as defined in § 3.404, of this chapter, for supplies and experimental, developmental, or research work other than (a) construction, alterations, or repair of buildings, bridges, roads, or other kinds of real property, or (b) experimental, developmental, or research work with educational or nonprofit institutions, where no fee is contemplated.

TERMINATION

(a) The performance of work under the contract may be terminated by the Government in accordance with this clause in whole, or from time to time in part:

(1) Whenever the Contractor shall default in performance of this contract in accordance with its terms (including in the term "default" any such failure by the Contractor to make progress in the prosecution of the work hereunder as endangers such performance), and shall fail to cure such default within a period of ten days (or such longer periods as the Contracting Officer may allow) after receipt from the Contracting Officer of a notice specifying the default; or

(2) Whenever for any reason the Contracting Officer shall determine that such termination is in the best interests of the Government.

Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying whether termination is for the default of the Contractor or for the convenience of the Government, the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective. If, after notice of termination of this contract for default under (1) above, it is determined 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 the clause of this contract relating to excusable delays, the Notice of Termination shall be deemed to have been issued under (2) above, and the rights and obligations of the parties hereto shall in such event be governed accordingly.

(b) After receipt of a Notice of Termination 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;

(3) Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination;

(4) Assign to the Government, in the manner and to the extent directed by the Contracting Officer, all of the right, title, and interest of the Contractor under the orders or subcontracts so terminated, in which case the Government shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;

(5) With the approval or ratification of the Contracting Officer, to the extent he may require, which approval or ratification shall be final and conclusive for all purposes of this clause, settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, the cost of which would be reimbursable in whole or in part, in accordance with the provisions of this contract;

(6) Transfer title (to the extent that title has not already been transferred) and, in the manner, to the extent, and at the times directed by the Contracting Officer, deliver to the Government (A) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in respect of the performance of, the work terminated by the Notice of Termination, (B) the completed or partially completed plans, drawings, information, and other property which, if the contract had been completed, would be required to be furnished to the Government, and (C) the jigs, dies, and fixtures, and other special tools and tooling acquired or manufactured for the performance of this contract for the cost of which the Contractor has been or will be reimbursed under this contract;

(7) Use its best efforts to sell in the manner, at the times, to the extent, and at the price or prices directed or authorized by the Contracting Officer, any property of the types referred to in (6) above: *Provided, however*, That the Contractor (A) shall not be required to extend credit to any purchaser, and (B) may acquire any such property under the conditions prescribed by and at a price or prices approved by the Contracting Officer: *And provided further*, That the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Government to the Contractor under this contract or shall otherwise be credited to the price or cost of the work covered by this contract or paid in such other manner as the Contracting Officer may direct;

(8) Complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and

(9) Take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to this contract which is in the possession of Contractor in which the Government has or may acquire an interest.

The Contractor shall proceed immediately with the performance of the above obligations notwithstanding any delay in determining or adjusting the amount of the fee, or any item of reimbursable cost, under this clause. At any time after expiration of the plant clearance period, as defined in 32 CFR Part 8, as it may be amended from time to time, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the Contracting Officer, and may request the Government to remove such items or enter into a storage agreement covering them. Not later than fifteen (15) days thereafter, the Government will accept such items and remove them or enter into a storage agreement covering the same: *Provided*, That the list submitted shall be subject to verification by the Contracting Officer upon removal of the items, or if the items are stored, within forty-five (45) days from the date of submission of the list, and any necessary adjustment to correct the list as submitted shall be made prior to final settlement.

(c) After receipt of a Notice of Termination, the Contractor shall submit to the Contracting Officer its termination claim in the form and with the certification prescribed by the Contracting Officer. Such claim shall be submitted promptly but in no event later than one year from the effective date of termination, unless one or more extensions in writing are granted by the Contracting Officer, upon request of the Contractor made in writing within such one year period or authorized extension thereof. However, if the Contracting Officer determines that the facts justify such action, he may receive and act upon any such termination claim at any time after such one year period or any extension thereof. Upon failure of the Contractor to submit its termination claim within the time allowed, the Contracting Officer may, subject to any Settlement Review Board approvals required by 32 CFR Part 8 in effect as of the date of execution of this contract, determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.

(d) Subject to the provisions of paragraph (c), and subject to any Settlement Review Board approvals required by 32 CFR Part 8 in effect as of the date of execution of this contract, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid (including an allowance for the fee) to the Contractor by reason of the total or partial termination of work pursuant to this clause. The contract shall be amended accordingly, and the Contractor shall be paid the agreed amount.

(e) In the event of the failure of the Contractor and the Contracting Officer to agree in whole or in part, as provided in paragraph (d), as to the amounts with respect to costs and fee, or as to the amount of the fee, to be paid to the Contractor in connection with the termination of work pursuant to this clause, the Contracting Officer shall, subject to any Settlement Review Board approvals required by 32 CFR Part 8 in effect as of the date of execution of this contract, determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall pay to the Contractor the amount determined as follows:

(1) If the settlement includes cost and fee—

(A) There shall be included therein all costs and expenses reimbursable in accordance with this contract, not previously paid to the Contractor for the performance of this contract prior to the effective date of the Notice of Termination, and such of these costs as may continue for a reasonable time thereafter with the approval of or as directed by the Contracting Officer: *Provided, however*, That the Contractor shall proceed as rapidly as practicable to discontinue such costs;

(B) There shall be included therein so far as not included under (A) above, the cost of settling and paying claims arising out of the termination of work under subcontracts or orders, as provided in paragraph (b) (5) above, which are properly chargeable to the terminated portion of the contract;

(C) There shall be included therein 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 terminated portion of the contract and for the termination and settlement of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of termination inventory: *Provided, however*, That if the termination is for default of the Contractor there shall not be included any amounts for the preparation of the Contractor's settlement proposal; and

(D) There shall be included therein a portion of the fee payable under the contract determined as follows—

(I) In the event of the termination of this contract for the convenience of the Government and not for the default of the Contractor, there shall be paid a percentage of the fee equivalent to the percentage of the completion of work contemplated by the contract, less fee payments previously made hereunder; or

(II) In the event of the termination of this contract for the default of the Contractor, the total fee payable shall be such proportionate part of the fee (or, if this contract calls for articles of different types, of such part of the fee as is reasonably allocable to the type of article under consideration) as the total number of articles delivered to and accepted by the Government bears to the total number of articles of a like kind called for by this contract;

If the amount determined under this subparagraph (1) is less than the total payment theretofore made to the Contractor, the Contractor shall repay to the Government the excess amount; or

(2) If the settlement includes only the fee, the amount thereof will be determined in accordance with subparagraph (D) above.

(f) The Contractor shall have the right of appeal, under the clause of this contract entitled "Disputes," from any determination made by the Contracting Officer under paragraph (c) or (e) above, except that if the Contractor has failed to submit its claim within the time provided in paragraph (c) above and has failed to request extension of such time, it shall have no such right of appeal. In any case where the Contracting Officer has made a determination of the amount due under paragraph (c) or (e) above, the Government shall pay to the Contractor the following: (i) If there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the Contracting Officer, or (ii) if an appeal has been taken, the amount finally determined on such appeal.

(g) In arriving at the amount due the Contractor under this clause there shall be deducted (i) all unliquidated advance or other payments theretofore made to the Contractor, applicable to the terminated portion of this contract, (ii) any claim which the Government may have against the Contractor in connection with this contract, and (iii) the agreed price for, or the proceeds of sale of, any materials, supplies, or other things acquired by the Contractor or sold pursuant to the provisions of this clause and not otherwise recovered by or credited to the Government.

(h) In the event of a partial termination, the portion of the fee which is payable with respect to the work under the continued portion of the contract shall be equitably adjusted by agreement between the Contractor and the Contracting Officer, and such adjustment shall be evidenced by an amendment to this contract.

(i) The Government may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor in connection with the terminated portion of the contract whenever in the opinion of the Contracting Officer the aggregate of such payments shall be within the amount to which the Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally determined to be due under this clause, such excess shall be payable by the Contractor to the Government upon demand together with interest computed at the rate of 6 percent per annum, for the period from the date such excess payment is received by the Contractor to the date on which such excess is repaid to the Government: *Provided, however*, That no interest shall be charged with respect to any such excess payment attributable to a reduction in the Contractor's claim by reason of retention or other disposition of termination inventory until ten days after the date of such retention or disposition, or such later date as determined by the Contracting Officer by reason of the circumstances.

(j) The provisions of this clause relating to the fee shall be inapplicable if this contract does not provide for payment of a fee.

(k) Unless otherwise provided for in this contract, or by applicable statute, the Contractor from the effective date of termination and for a period of six years after final settlement under this contract, shall preserve and make available to the Government at all reasonable times at the office of the Contractor, but without direct charge to the Government, all its books, records, documents, and other evidence bearing on the cost and expenses of the Contractor under this contract and relating to the work terminated hereunder, or, to the extent approved by the Contracting Officer, photographs, micro-photographs, or other authentic reproductions thereof.

§ 8.703 *Termination clause for fixed-price construction contracts.* The following clause shall be inserted in all fixed price construction contracts amounting to more than $1,000, except that contracting officers may, at their discretion, omit the termination clause from fixed-price construction contracts under $5,000 when the probability of termination for convenience is remote, such as contracts for repairs, improvements, or additions to existing structures:

TERMINATION FOR CONVENIENCE OF THE GOVERNMENT

(a) The performance of work under this contract may be terminated by the Government in accordance with this clause in whole, or from time to time in part, whenever the Contracting Officer shall determine that such termination is in the best interest of the Government. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective.

(b) After receipt of a Notice of Termination, 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;

(3) Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination;

(4) Assign to the Government, in the manner, at the times, and to the extent directed by the Contracting Officer, all of the right, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the Government shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;

(5) Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Contracting Officer to the extent he may require, which approval or ratification shall be final for all the purposes of this clause;

(6) Transfer title and deliver to the Government, in the manner, at the times, and to the extent, if any, directed by the Contracting Officer, (A) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of, the work terminated by the Notice of Termination, and (B) the completed or partially completed plans, drawings, information, and other property which, if the contract has been completed, would have been required to be furnished to the Government;

(7) Use its best efforts to sell, in the manner, at the times, to the extent, and at the price or prices directed or authorized by the Contracting Officer, any property of the types referred to in (6) above: *Provided, however,* That the Contractor, (A) shall not be required to extend credit to any purchaser, and (B) may acquire any such property under the conditions prescribed and at a price or prices approved by the Contracting Officer: *And provided further,* That the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Government to the Contractor under this contract or shall otherwise be credited to the price or cost of the work covered by this contract or paid in such other manner as the Contracting officer may direct;

(8) Complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and

(9) Take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to this contract which is in the possession of the Contractor and in which the Government has or may acquire an interest.

At any time after expiration of the plant clearance period, as defined in 32 CFR Part 8, as it may be amended from time to time, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the Contracting Officer, and may request the Government to remove such items or enter into a storage agreement covering them. Not later than fifteen (15) days thereafter, the Government will accept title to such items and remove them or enter into a storage agreement covering the same: *Provided,* That the list submitted shall be subject to verification by the Contracting Officer upon removal of the items, or if the items are stored, within forty-five (45) days from the date of submission of the list, and any necessary adjustment to correct the list as submitted shall be made prior to final settlement.

(c) After receipt of a Notice of Termination, the Contractor shall submit to the Contracting Officer its termination claim, in the form and with the certification prescribed by the Contracting Officer. Such claim shall be submitted promptly but in no event later than one year from the effective date of termination, unless one or more extensions in writing are granted by the Contracting Officer, upon request of the Contractor made in writing within such one year period or authorized extension thereof. However, if the Contracting Officer determines that the facts justify such action, he may receive and act upon any such termination claim at any time after such one year period or extension thereof. Upon failure of the Contractor to submit its termination claim within the time allowed, the Contracting Officer may, subject to any Settlement Review Board approvals required by 32 CFR Part 8 in effect as of the date of execution of this contract, determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.

(d) Subject to the provisions of paragraph (c), and subject to any Settlement Review Board Approvals required by 32 CFR Part 8 in effect as of the date of execution of this contract, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of work pursuant to this clause, which amount or amounts may include a reasonable allowance for profit on work done: *Provided,* That such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. The contract shall be amended accordingly, and the Contractor shall be paid the agreed amount. Nothing in paragraph (e) of this clause, prescribing the amount to be paid to the Contractor in the event of failure of the Contractor and the Contracting Officer to agree upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this clause, shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to the Contractor pursuant to this paragraph (d).

(e) In the event of the failure of the Contractor and the Contracting Officer to agree as provided in paragraph (d) upon the whole amount to be paid to the Contractor by reason of the Termination of work pursuant to this clause, the Contracting Officer shall, subject to any Settlement Review Board approvals required by 32 CFR Part 8 in effect as of the date of execution of this contract, determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall pay to the Contractor the amounts determined as follows:

(1) With respect to all contract work performed prior to the effective date of the Notice of Termination, the total (without duplication of any items) of—

(A) The cost of such work;

(B) The cost of settling and paying claims arising out of the termination of work under subcontracts or orders as provided in paragraph (b) (5) above, exclusive of the amounts paid or payable on account of supplies or materials delivered or services furnished by the subcontractor prior to the effective date of the Notice of Termination of work under this contract, which amounts shall be included in the cost on account of which payment is made under (A) above; and

(C) A sum, as a profit, equal to 2 percent of the part of the amount determined under (A) above which represents the cost of articles or materials delivered to the site but not incorporated in the work in place on the effective date of the Notice of Termination, plus a sum equal to 8 percent of the remainder of such amount, but the aggregate of such sums shall not exceed 6 percent of the whole of the amount determined under (A) above, which amount for purposes of this subdivision (C) shall exclude any charges for interest on borrowings: *Provided, however,* That if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, no profit shall be included or allowed under this subdivision (C) and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate or loss; and

(2) The reasonable cost of the preservation and protection of property incurred pursuant to paragraph (b) (9); and any other reasonable cost incidental to termination of work under this contract, including expense incidental to the determination of the

amount due to the Contractor as the result of the termination of work under this contract.

The total sum to be paid to the Contractor under (i) above shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. Except for normal spoilage, and except to the extent that the Government shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the Contractor under (i) above, the fair value, as determined by the Contracting Officer, of property which is destroyed, lost, stolen, or damaged so as to become undeliverable to the Government, or to a buyer pursuant to paragraph (b) (7).

(f) Any determination of costs under paragraph (c) or (e) hereof shall be governed by the principles for consideration of costs set forth in 32 CFR 8.302 as in effect on the date of this contract.

(g) The Contractor shall have the right of appeal, under the clause of this contract entitled "Disputes," from any determination made by the Contracting Officer under paragraphs (c) or (e) above, except that if the Contractor has failed to submit its claim within the time provided in paragraph (c) above and has failed to request extension of such time, it shall have no such right of appeal. In any case where the Contracting Officer has made a determination of the amount due under paragraph (c) or (e) above, the Government shall pay to the Contractor the following: (i) If there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the Contracting Officer, or (ii) if an appeal has been taken, the amount finally determined on such appeal.

(h) In arriving at the amount due the Contractor under this clause there shall be deducted (i) all unliquidated advance or other payments on account theretofore made to the Contractor, applicable to the terminated portion of this contract, (ii) any claim which the Government may have against the Contractor in connection with this contract, and (iii) the agreed price for, or the proceeds of sale of, any materials, supplies, or other things kept by the Contractor or sold, pursuant to the provisions of this clause, and not otherwise recovered by or credited to the Government.

(i) If the termination hereunder be partial, prior to the settlement of the terminated portion of this contract, the Contractor may file with the Contracting Officer a request in writing for an equitable adjustment of the price or prices specified in the contract relating to the continued portion of the contract (the portion not terminated by the Notice of Termination), and such equitable adjustment as may be agreed upon shall be made in such price or prices; however, nothing contained herein shall limit the right of the Government and the Contractor to agree upon the amount or amounts to be paid to the Contractor for the completion of the continued portion of the contract when said contract does not contain an established contract price for such continued portion.

(j) The Government may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor in connection with the terminated portion of this contract whenever in the opinion of the Contracting Officer the aggregate of such payments shall be within the amount to which the Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this clause, such excess shall be payable by the Contractor to the Government upon demand, together with interest computed at the rate of 6 percent per annum, for the period from the date such excess payment is received by the Contractor to the date on which such excess is repaid to the Government: *Provided, however*, That no interest shall be charged with respect to any such excess payment attributable to a reduction in the Contractor's claim by reason of retention or other disposition of termination inventory until ten days after the date of such retention or disposition, or such later date as determined by the Contracting Officer by reason of the circumstances.

(k) Unless otherwise provided for in this contract, or by applicable statute, the Contractor, from the effective date of termination and for a period of six years after final settlement under this contract, shall preserve and make available to the Government at all reasonable times at the office of the Contractor, but without direct charge to the Government, all its books, records, documents, and other evidence bearing on the costs and expenses of the Contractor under this contract and relating to the work terminated hereunder, or, to the extent approved by the Contracting Officer, photographs, microphotographs, or other authentic reproductions thereof.

§ 8.704 *Research and development contracts with educational and other nonprofit institutions.*

§ 8.704-1 *Termination clause.* The following clause shall be used in any contract for experimental, developmental, or research work (whether fixed-price or cost-reimbursement type) with an educational or nonprofit institution: *Provided*, Such contract incorporates, or was negotiated on the basis of, the cost principles set forth in Part 15, Subpart C of this chapter; and *Provided further* such contract is placed on a no-fee or no-profit basis.

TERMINATION FOR THE CONVENIENCE OF THE GOVERNMENT

(a) The performance of work under this contract may be terminated, in whole or from time to time in part, by the Government whenever for any reason the Contracting Officer shall determine that such termination is in the best interests of the Government. Termination of work hereunder shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of work under the contract is terminated and the date upon which such termination becomes effective.

(b) After receipt of the Notice of Termination the Contractor shall cancel its outstanding commitments hereunder covering the procurement of materials, supplies, equipment and miscellaneous items. In addition the Contractor shall exercise all reasonable diligence to accomplish the cancellation or diversion of its outstanding commitments covering personal services and extending beyond the date of such termination to the extent that they relate to the performance of any work terminated by the notice. With respect to such cancelled commitments the Contractor agrees to (i) settle all outstanding liabilities and all claims arising out of such cancellation of commitments, with the approval or ratification of the Contracting Officer, to the extent he may require, which approval or ratification shall be final for all purposes of this clause, and (ii) assign to the Government, in the manner, at the time, and to the extent directed by the Contracting Officer, all of the right, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the Government shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.

(c) The Contractor shall submit its termination claim to the Contracting Officer promptly after receipt of a Notice of Termination, but in no event later than one year from the effective date thereof, unless one or more extensions in writing are granted by the Contracting Officer upon written request of the Contractor within such one year period or authorized extension thereof. Upon failure of the Contractor to submit its termination claim within the time allowed, the Contracting Officer may, subject to any Settlement Review Board approvals required by 32 CFR Part 8 in effect as of the date of execution of this contract, determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.

(d) Any determination of costs under paragraph (c) shall be governed by the cost principles set forth in 32 CFR 8.213, as in effect on the date of this contract.

(e) Subject to the provisions of paragraph (c) above, and subject to any Settlement Review Board approvals required by 32 CFR Part 8 in effect as of the date of execution of this contract, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the termination under this clause, which amount or amounts may include any reasonable cancellation charges thereby incurred by the Contractor and any reasonable loss upon outstanding commitments for personal services which it is unable to cancel: *Provided, however*, That in connection with any outstanding commitments for personal services which the Contractor is unable to cancel, the Contractor shall have exercised reasonable diligence to divert such commitments to its other activities and operations. Any such agreement shall be embodied in an amendment to this contract and the Contractor shall be paid the agreed amount.

(f) The Government may from time to time, under such terms and conditions as it may prescribe, make partial payments against costs incurred by the Contractor in connection with the terminated portion of this contract, whenever, in the opinion of the Contracting Officer, the aggregate of such payments is within the amount to which the Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this clause, such excess shall be payable by the Contractor to the Government upon demand: *Provided*, That if such excess is not so paid upon demand, interest thereon shall be payable by the contractor to the Government at the rate of 6 percent per annum, beginning 30 days from the date of such demand.

(g) The Contractor agrees to transfer title and deliver to the Government, in the manner, at the time, and to the extent, if any, directed by the Contracting Officer, such information and items which, if the contract had been completed, would have been required to be furnished to the Government, including:

(1) Completed or partially completed plans, drawings and information; and

(2) Materials or equipment produced or in process or acquired in connection with the performance of the work terminated by the notice.

Other than the above, any termination inventory resulting from the termination of the contract may, with the written approval of the Contracting Officer, be sold or acquired by the Contractor under the conditions prescribed by and at a price or prices approved by the Contracting Officer. The proceeds of any such disposition shall be applied in reduction of any payments to be made by the Government to the Contractor under this contract or shall otherwise be credited to the price or cost of work covered by this contract or paid in such other manner as the Contracting Officer may direct. Pending final disposition of property arising from the termination, the Contractor agrees to take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to this contract which is in the possession of the Contractor and in which the Government has or may acquire an interest.

(h) Any disputes as to questions of fact which may arise hereunder shall be subject to the "Disputes" clause of this contract.

§ 8.704-2 *Suggested clause for subcontracts.* The above clause, suitably altered to indicate the relationship between the prime contractor and subcontractor, is suggested for use in subcontracts placed with educational or nonprofit institutions: *Provided*, Such subcontracts incorporate, or are negotiated on the basis of, the cost principles set forth in Part 15, Subpart C of this chapter; and *Provided further*, such subcontracts are placed on the no-fee or no-profit basis.

§ 8.705 *Short form termination clause for fixed-price supply and service contracts.* In order to facilitate:

(a) The handling of purchases under fixed-price supply contracts above $1,000 but under $5,000; and

(b) The obtaining of services where it is intended that a termination claim will not be made in the event of termination for the convenience of the Government, such as contracts for, but not limited to, rental of unreserved garage space, meals for inductees, laundry, and dry-cleaning services;

the short form termination clause set forth below is authorized for use in lieu of any other clause providing for termination for the convenience of the Government: *Provided*, Such contracts obligate the Government to order or otherwise to be liable for a minimum quantity:

TERMINATION FOR CONVENIENCE OF THE GOVERNMENT

The performance of work (supplies or services) under this contract may be terminated, in whole or in part, whenever the Contracting Officer shall determine that such action is in the best interest of the Government. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of work under this contract is terminated, and the date upon which such termination becomes effective. If this contract is for supplies and is so terminated, fair compensation, within the meaning of, and as provided by 32 CFR Part 8, as in effect on the date of this contract, will be paid to the Contractor, and any termination inventory will be disposed of in accordance with said part. If this contract is for services and is so terminated, the Government shall be liable only for payment in accordance with the payment provisions of this contract for services rendered prior to the effective date of termination.

§ 8.706 *Subcontract termination clause.* The following termination clause is suggested for use in fixed-price subcontracts:

TERMINATION

(a) The performance of work under this contract may be terminated, in whole or from time to time in part, by the buyer in accordance with this clause. Termination of work hereunder shall be effected by delivery to the seller of a Notice of Termination specifying the extent to which performance of work under the contract is terminated, and date upon which such termination becomes effective.

(b) After receipt of a Notice of Termination and except as otherwise directed by the buyer, the seller 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 portions of the work under the contract as may not be terminated.

(3) Terminate all orders and subcontracts to the extent that they relate to the performance of any work terminated by the Notice of Termination;

(4) Assign to the buyer, in the manner, and to the extent directed by the buyer, all of the right, title and interest of its seller under the orders of subcontracts so terminated;

(5) Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts subject to the approval or ratification of the buyer to the extent he may require, which approval or ratification shall be final for all the purposes of this clause;

(6) Transfer title and deliver to the buyer in the manner, to the extent, and at the times directed by the buyer (A) the fabricated or unfabricated parts, work in process, completed work, supplies and other material produced as a part of, or acquired in connection with the performance of, the work terminated by the Notice of Termination, and (B) the completed or partially completed plans, drawings, information, and other property which, if the contract had been completed, would be required to be furnished to the buyer;

(7) Use his best efforts to sell in the manner, to the extent, at the time, and at the price or prices directed or authorized by the buyer, any property of the types referred to in (6) above: *Provided, however*, That the seller (A) shall not be required to extend credit to any purchaser, and (B) may acquire any such property under the conditions prescribed by and at a price or prices approved by the buyer: *And provided further*, That the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the buyer to the seller under this contract or shall otherwise be credited to the price or cost of the work covered by this contract or paid in such other manner as the buyer may direct;

(8) Complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and

(9) Take such action as may be necessary or as the buyer may direct for protection and preservation of the property related to this contract which is in the possession of the seller and in which the buyer or the Government has or may acquire an interest.

(c) After receipt of a Notice of Termination, the seller shall submit to the buyer its termination claim, in the form and with the certification prescribed by the buyer. Such claim shall be submitted promptly, but not later than six (6) months from the effective date of termination. Upon failure of the seller to submit its termination claim within the time allowed, the buyer may determine, on the basis of information available to it, the amount, if any, due to the seller in respect to the termination and such determination shall be final. After the buyer has made a determination under this paragraph, it shall pay the seller the amount so determined.

(d) Subject to the provisions of paragraph (c) the seller and the buyer may agree upon the whole or any part of the amount or amounts to be paid to the seller by reason of the total or partial termination of work pursuant to this clause, which amount or amounts may include a reasonable allowance for profit on work done and the buyer shall pay the agreed amount or amounts: *Provided*, That such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. Nothing in paragraph (e) below prescribing the amount to be paid to the seller in the event of the failure of the seller and the buyer to agree upon the whole amount to be paid to the seller by reason of the termination of work pursuant to this clause, shall be deemed to limit, restrict, or otherwise determine or effect the amount or amounts which may be agreed upon to be paid to the seller pursuant to this paragraph (d).

(e) In the event of the failure of the seller and the buyer to agree as provided in paragraph (d) upon the whole amount to be paid to the seller by reason of the termination of work pursuant to this clause, the buyer, but without duplication of any amounts agreed upon in accordance with paragraph (d), shall pay to the seller the following amounts:

(1) For completed supplies accepted by the buyer (or sold or acquired as provided in paragraph (b) (7) above) and not theretofore paid for, forthwith a sum equivalent to the aggregate price for such supplies computed in accordance with the price or prices specified in the contract, appropriately adjusted for any saving of freight or other charges;

(2) In respect of the work terminated as permitted by this clause, the total (without duplication of any items) of—

(A) The cost of such work, including initial costs and preparatory expenses allocable thereto, exclusive of any costs attributable to supplies paid or to be paid for under (1) above; and

(B) The cost of settling and paying claims arising out of the termination of work under subcontracts or orders as provided in paragraph (b) (5) above, exclusive of the amounts paid or payable on account of supplies or materials delivered or services furnished by the subcontractor prior to the effective date of the Notice of Termination of work under this contract, which amounts shall be included in the cost on account of which payment is made under (A) above; and

(C) A sum, as a profit, equal to 2 percent of the part of the amount determined under (A) above which represents the cost of articles and materials not processed by the seller, plus a sum equal to 8 percent of the remainder of such amount, but the aggregate of such sum shall not exceed 6 percent of the whole of the amount determined under (A) above, which amount for the purpose of this subdivision (C) shall exclude any charges for interest on borrowings: *Provided, however*, That if it appears that the seller would have sustained a loss on the entire contract had it been completed, no profit shall be included or allowed under this subdivision (C) and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss; and

(3) 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 terminated portion of the contract and for the termination and settlement of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of the property allocable to this contract.

The total sum to be paid to the seller under (1) and (2) above shall not exceed the total contract price reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. Except for normal spoilage and except to the extent that the buyer or the Government shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the seller under (1) and (2) (A) above the fair value as determined by the buyer of property which is destroyed, lost, stolen, or damaged so as to become undeliverable to the buyer or to a purchaser pursuant to paragraph (b) (7).

(f) The obligation of the buyer to make any payments under this clause shall be subject to deductions with respect to (i) all unliquidated advance or other payments on account theretofore made to the seller applicable to the terminated portion of this contract, (ii) any claim which the buyer may have against the seller, in connection with this contract, and (iii) the agreed price for, or the proceeds of sale of, any materials, supplies, or other things retained by the seller or sold, and not otherwise recovered by or credited to the buyer.

(g) If the termination hereunder be partial, prior to the settlement of the terminated portion of this contract, the seller may file with the buyer a request in writing that an equitable adjustment be made in the price or prices specified in the contract for the work in connection with the continued portion not terminated by the Notice of Termination, and the appropriate equitable adjustment shall be made in such price or prices.

(h) The buyer may, from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the seller in respect to the terminated portion of the contract, whenever in the opinion of the buyer the aggregate of such payments shall be within the amount to which the seller will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed upon or determined to be due under this clause, such excess shall be payable by the seller to the buyer upon demand, together with interest computed at the rate of 6 percent per annum, for the period from the date such excess payment is received by the seller to the date on which such excess is repaid: *Provided, however*, That no interest shall be charged with respect to any such excess payment attributable to a reduction in the seller's claim by reason of retention or other disposition of termination inventory until ten days after the date of such retention or disposition, or such later date as determined by the buyer by reason of the circumstances.

(i) For the purpose of paragraphs (c) and (e) above, the amounts of the payments to be made by the buyer to the seller shall be determined in conformity with the policies and principles set forth in 32 CFR Part 8 in effect at the date of this contract. Unless otherwise provided for in this contract, or by applicable statute, the seller, for a period of six (6) years after final settlement under the contract shall make available to the buyer and the Government at all reasonable times at the office of the seller all its books, records, documents, or other evidence bearing on the costs and expenses of the seller under the contract and in respect of the termination of work hereunder or, to the extent approved by the Government, photographs, microphotographs, or other authentic reproductions thereof.

§ 8.707 *Default clause for fixed-price supply contracts.* The following clause shall be used in all fixed-price supply contracts as defined in § 7.102.

DEFAULT

(a) The Government may, subject to the provisions of paragraph (c) below, by written notice of default to the Contractor, terminate the whole or any part of this contract in any one of the following circumstances:

(1) If the Contractor fails to make delivery of the supplies or to perform the services within the time specified herein or any extension thereof; or

(2) If the Contractor fails to perform any of the other provisions of this contract, or so fails to make progress as to endanger performance of this contract in accordance with its terms, and in either of these two circumstances does not cure such failure within a period of 10 days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure.

(b) In the event the Government terminates this contract in whole or in part as provided in paragraph (a) of this clause, the Government may procure, upon such terms and in such manner as the Contracting Officer may deem appropriate, supplies or services similar to those so terminated, and the Contractor shall be liable to the Government for any excess costs for such similar supplies or services: *Provided*, That the Contractor shall continue the performance of this contract to the extent not terminated under the provisions of this clause.

(c) Except with respect to defaults of subcontractors, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the failure to perform must be beyond the control and without the fault or negligence of the Contractor. If the failure to perform is caused by the default of a subcontractor, and if such default arises out of causes beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either of them, the Contractor shall not be liable for any excess costs for failure to perform, unless 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.

(d) If this contract is terminated as provided in paragraph (a) of this clause, the Government, in addition to any other rights provided in this clause, may require the Contractor to transfer title and deliver to the Government, in the manner and to the extent directed by the Contracting Officer, (i) any completed supplies, and (ii) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing materials") as the Contractor has specifically produced or specifically acquired for the performance of such part of this contract as has been terminated; and the Contractor shall, upon direction of the Contracting Officer, protect and preserve property in possession of the Contractor in which the Government has an interest. Payment for completed supplies delivered to and accepted by the Government shall be at the contract price. Payment for manufacturing materials delivered to and accepted by the Government and for the protection and preservation of property shall be in an amount agreed upon by the Contractor and Contracting Officer; failure to agree to such amount shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Dispute".

(e) If, after notice of termination of this contract under the provisions of paragraph (a) of this clause, it is determined that the failure to perform this contract is due to causes beyond the control and without the fault or negligence of the Contractor or subcontractor pursuant to the provisions of paragraph (c) of this clause, such notice of default shall be deemed to have been issued pursuant to the clause of this contract entitled "Termination for Convenience of the Government," and the rights and obligations of the parties hereto shall in such event be governed by such clause. (Except as otherwise provided in this contract, this paragraph (e) applies only if this contract contains such clause.)

(f) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

§ 8.708 *Excusable delays clause for cost-reimbursement type supply contracts.* The following clause shall be used in all cost-reimbursement type supply contracts as defined in § 7.202.

EXCUSABLE DELAYS

Except with respect to defaults of subcontractors, the Contractor shall not be in default by reason of any failure in performance of this contract in accordance with its terms (including any failure by the Contractor to make progress in the prosecution of the work hereunder which endangers such performance) if such failure arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to: acts of God or of the public enemy; acts of the Government in either its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes; freight embargoes; and unusually severe weather; but in every case the failure to perform must be beyond the control and without the fault or negligence of the Contractor. If the failure to perform is caused by the failure of a subcontractor to perform or make progress, and if such failure arises out of causes beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either of them, the Contractor shall not be deemed to be in default, unless (i) the supplies or services to be furnished by the subcontractor were obtainable from other sources, (ii) the Contracting Officer shall have ordered the Contractor in writing to procure such supplies or services from such other sources, and (iii) the Contractor shall have failed to comply reasonably with such order. Upon request of the Contractor, the Contracting Officer shall ascertain the facts and extent of such failure and, if he shall determine that any failure to perform was occasioned by any one or more of the said causes, the delivery schedule shall be revised accordingly, subject to the rights of the Government under the clause hereof entitled "Termination."

§ 8.709 *Default clause for fixed-price construction contracts.* (a) The following clause shall be used in all fixed-price construction contracts.

TERMINATION FOR DEFAULT—DAMAGES FOR DELAY—TIME EXTENSIONS

(a) 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, the Government may, by written notice to the Contractor, terminate its right to proceed with the work or such part of the work as to which there has been delay. In such event the Government may take over the work and prosecute the same to completion, by contract or otherwise, and the Contractor and its sureties shall be liable to the Government for any excess cost occasioned the Government thereby, and for liquidated damages for delay, as fixed in the specifications or accompanying papers, until such reasonable time as may be required for the final completion of the work, or if liquidated damages are not so fixed, any actual damages occasioned by such delay. If the Contractor's right to proceed is so terminated, the Government may take possession of and utilize in completing the work such materials, appliances, and plant as may be on the site of the work and necessary therefor.

(b) If the Government does not terminate the right of the Contractor to proceed, as provided in paragraph (a) hereof, the Contractor shall continue the work, in which event the Contractor and its sureties shall be liable to the Government, in the amount set forth in the specifications or accompanying papers, for fixed, agreed and liquidated damages for each calendar day of delay until the work is completed or accepted, or if liquidated damages are not so fixed, any actual damages occasioned by such delay.

(c) The right of the Contractor to proceed shall not be terminated, as provided in paragraph (a) hereof, nor the Contractor charged with liquidated or actual damages, as provided in paragraph (b) hereof because of any delays in the completion of the work due to unforseeable 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 due to such causes: *Provided*, That the Contractor shall within 10 days from the beginning of any such delay, unless the Contracting Officer shall grant a further period of time prior to the date of final settlement of the contract, notify the Contracting Officer in writing of the causes of delay. 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 as provided by the Disputes clause of this contract.

(d) If, after notice of termination of this contract under the provisions of paragraph (a) of this clause, it is determined that the failure to perform this contract was due to causes beyond the control and without the fault or negligence of the Contractor pursuant to paragraph (c) of this clause, such notice of termination shall be deemed to have been issued pursuant to the Termination for Convenience of the Government clause of this contract, and the rights and obligations of the parties hereto shall in such event be governed by such clause.

(e) 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.

(b) During a period of national emergency, paragraph (c) of the above clause may be changed by deleting the word "unforeseeable" and inserting the phrase "other than normal weather," after the word "causes" where it first appears in the first sentence.

(c) Standard Form 23a is prescribed for use in all formally advertised construction contracts. That Form contains, as clause 5, paragraphs (a) through (c) of the above clause. When that Form is used, paragraphs (d) and (e) of the above clause shall be added to the Form by means of an Alterations in Contract clause (see § 7.105-1 of this chapter).

SUBPART H—FORMS

§ 8.800 *Scope of subpart.* This subpart contains certain forms related to the termination and settlement of contracts.

§ 8.801 *Notice of termination.*

§ 8.801-1 *Telegraphic notice of termination.* (a) The following form of telegraphic notice is approved for use where a contract is being completely terminated:

TELEGRAPHIC NOTICE—COMPLETE TERMINATION

Date ____________________

XYZ Corporation
New York, New York

Your contract No. ______ is hereby terminated in its entirety pursuant to clause ______ of the contract effective [Here insert "Immediately" or "On __________, 19__." (Inserting the date) or "As soon as you have delivered thereunder including previous deliveries the following items" (listing items)]. Immediately stop all work, terminate subcontracts and place no further orders except to extent (Insert if applicable—Necessary to perform any portion thereof not terminated hereby or) that you or a subcontractor wish to retain and continue for own account any work in process or other materials. Telegraph similar instructions to all subcontractors and suppliers. Letter and instruction follow.

____
(Name and Rank)
Contracting Officer

(b) The following form of telegraphic notice is approved where a contract is being partially terminated:

TELEGRAPHIC NOTICE OF PARTIAL TERMINATION

Date____________________

XYZ Corporation
New York, New York

Your contract No. ______ is hereby partially terminated pursuant to clause ______ of the contract effective on __________ 19__, on which date you will reduce its total number of items to be delivered as follows (inserting instructions as to reduced deliveries). Immediately stop all work, terminate subcontracts and place no further orders except to extent necessary to perform any portion thereof not terminated hereby or that you or a subcontractor wish to retain and continue for own account any work in process or other materials. Telegraph similar instructions to all subcontractors and suppliers. Letter and instructions follow.

____
(Name and Rank)
Contracting Officer

§ 8.801-2 *Letter notice of termination.* (a) The following form of Notice of Termination of prime contract is approved for use. With appropriate modifications it is suitable for use in terminating subcontracts.

LETTER NOTICE OF TERMINATION TO PRIME CONTRACTORS

[At the top of the Notice set out all special details relating to the particular termination: e. g., name and address of company, number of prime contract terminated, service involved, appropriation or allotment, etc.

Two alternative forms of paragraph No. 1 are set out below. If this written termination notice confirms a telegraphic notice previously sent, use the first of the alternative paragraphs No. 1 below. If no previous telegraphic notice has been sent, use the second.]

1. *Effective date of termination.* This letter will confirm the Government's telegram to you dated __________, 19__, terminating [in part] your Contract No. ______ (hereinafter referred to as "the contract") for the convenience of the Government, in accordance with the clause thereof entitled "Termination for the Convenience of the Government" [or, in the case of a cost-reimbursement-type contract, "Termination"]. Such termination is effective on the date and in the manner stated in such telegram, reference to which is hereby made [or copy of which is attached hereto].

(or)

1. *Effective date of termination.* You are notified that your Contract No. ______ (hereinafter referred to as "the contract") is hereby terminated [in part] for the convenience of the Government, in accordance with the clause hereof entitled "Termination for the Convenience of the Government" [or, in the case of a cost-reimbursement-type contract, "Termination"]. Such termination will be effective: __________ [Here insert either "immedately upon your receipt of this Notice" or "on __________, 19__." (inserting the date) or "as soon as you have delivered under the contract the following number of each of the items listed below, including those heretofore delivered, to wit: ____" or, "on __________, 19__, on which date you are hereby directed to reduce the total number of items to be delivered under the contract as follows": (here insert instructions as to reduced deliveries.)]

2. *Cessation of work and notification to your immediate subcontractors.* (a) You shall stop all work, make no further shipments, and place no further orders in connection with the contract, except (1) to the extent necessary to perform any portion thereof not terminated by this Notice, or (2) to the extent that you may wish to retain and continue any work in process or other materials for your own account, or (3) to the extent the Contracting Officer authorizes you to continue work-in-process for reasons of safety, or to clear [or avoid damage to] equipment or to avoid immediate complete spoilage of work-in-process having a definite commercial value, or otherwise to prevent undue loss to the Government. [If you believe the authorization referred to in subparagraph (3) above is necessary or advisable, you shall immediately notify the Contracting Officer by telephone or personal conference and obtain instructions.] You shall keep adequate records of your compliance with this paragraph 2 (a) showing (i) the date you received your Notice of Termination, (ii) the effective date of such termination, and (iii) the extent of completion of performance on such effective date.

(b) You shall give notice of termination to each of your immediate subcontractors (including suppliers) who will be affected by the termination of your contract. In such notice you shall (1) give him the number of your contract with the Government, (2) state that it has been terminated (or terminated in part, if that is the case) for the convenience of the Government, (3) give him the name and address of the Contracting Officer, (4) instruct him to stop all work, to make no further shipments, to place no more orders, and to terminate all subcontracts under this contract with you (subject to the same exceptions stated in paragraph 2 (a)), (5) direct him to submit his settlement proposal promptly in order to expedite settlement, and (6) request him to give similar notice and instructions to his immediate subcontractors.

(c) You shall notify the Contracting Officer of the number of articles completed under the contract and still on hand, and arrange with him for their delivery or other disposal.

(d) You shall forthwith transfer title to and deliver to the Government, in accordance with any instructions of the Contracting Officer, all items of termination inventory (including subcontractor termination inventory which under the terms of the subcontract or purchase order concerned you have the right to take over) of the following types or classes: [insert proper identification or "none".]

(e) You shall notify the Contracting Officer of any pending legal proceedings which relate to any subcontracts or purchase orders under the terminated contract or which have resulted in or which are intended to result in a lien or encumbrance on any termination inventory other than termination inventory you propose and are authorized to purchase, retain, or dispose of. (The Contracting Officer shall also be promptly notified of any such proceedings brought after receipt of this Notice.)

(f) You shall take such other action as may be required by the Contracting Officer or under the termination clause contained in your contract.

(3) *Termination inventory.* In connection with settlement of your claim, it will be necessary to establish that all your termination inventory and that of your subcontractors has been properly accounted for. For detailed information, see 32 CFR Part 8, Subpart F.

4. *Completed end items.* Subject to 32 CFR 8.306, you will invoice acceptable completed end items under the contract in the usual way and not include them in your settlement proposal.

5. *Submission of settlement proposal.* To assist you in prompt submission of your settlement proposal, there is enclosed one set of the standard forms.

6. *Patents.* Your attention is called to any provisions of the contract which may require you to make a disclosure of, and to deliver to the Government instruments of license or assignment respecting all inventions, discoveries, and patent applications made by you in the performance of the contract. You are urged to forward such disclosures and instruments of license or assignment to the Contracting Officer promptly, inasmuch as these contractual obligations must be complied with before execution of the final settlement agreement. This paragraph may be disregarded if the contract contains no such patent provisions.

7. *Settlements with subcontractors.* You remain liable to your subcontractors and suppliers for claims arising by reason of the termination of their subcontracts or orders. You are requested to settle such termination claims as promptly as possible. For purposes of reimbursement by the Government, such settlements will be governed by the provisions of 32 CFR Part 8.

8. The Office named below will be in charge of the settlement of your claim. As to any matters not covered by this Notice, you should consult the Office named below.

9. Please acknowledge receipt of this Notice as shown below.

(Contracting officer)

(Name of office)

(Address)

Enclosures.

Acknowledgment of Notice

The undersigned hereby acknowledges receipt of a signed copy of the foregoing Notice on __________, 19__. Two copies of this Notice, both signed, are herewith returned.

(Name of contractor)

By ---------------------

(Title)

§ 8.802 *Forms*[1] *for settlement of fixed-price contracts.* The forms set forth below are prescribed for use in settling terminated fixed-price contracts.

§ 8.802-1 *DD Form 540—Settlement Proposal—Inventory Basis.*

§ 8.802-2 *DD Form 541—Settlement Proposal—Total Cost Basis.*

§ 8.802-3 *DD Form 831—Settlement Proposal—Short Form.*

§ 8.802-4 *DD Form 542—Inventory Schedule A—Metals in Mill Product Form. DD Form 542c—Inventory Schedule A—Continuation Sheet.*

§ 8.802-5 *DD Form 543—Inventory Schedule B—Raw Materials. DD Form 543c—Inventory Schedule B—Continuation Sheet.*

§ 8.802-6 *DD Form 544—Inventory Schedule C—Work in Process. DD Form 544c—Inventory Schedule C—Continuation Sheet.*

§ 8.802-7 *DD Form 545—Inventory Schedule D—Dies, Jigs, Fixtures, etc. and Special Tools. DD Form 545c—Inventory Schedule D—Continuation Sheet.*

§ 8.802-8 *DD Form 832—Inventory Schedule E—Short Form for Use with DD Form 831 only.*

§ 8.802-9 *DD Form 546—Schedule of Accounting Information.*

§ 8.802-10 *DD Form 548—Application for Partial Payment.*

§ 8.803 *DD Form 547—Settlement Proposal for Cost-Reimbursement Type Contracts.*

§ 8.804 *DD Form 547s—Notice of Audit Status Date.*

§ 8.805 *Scrap warranty.* A warranty in the general format set forth below shall be executed by a purchaser of material as scrap (on direct purchase from the Government or on subsequent resale) in accordance with the requirements of § 8.504.

SCRAP WARRANTY

In consideration of the transfer to the undersigned of the property covered by this Agreement at a value based upon its being used as scrap, the undersigned represents and warrants to the United States as follows:

(1) The property covered by this Agreement will be used only as scrap, either in its existing condition or after further preparation, unless and until the undersigned is released from this warranty.

(2) In the event the undersigned is released from this warranty, any payment agreed on as consideration for such release shall be made to the United States, regardless of whether this warranty shall have been executed at the request of the United States.

(3) In the event the undersigned sells the property covered by this Agreement prior to release of this warranty, the undersigned will obtain from the purchaser and tender to the United States a warranty identical to this executed by the purchaser, and upon receipt of such other warranty, this warranty will be released by the United States.

(4) All obligations of the undersigned under this warranty shall expire five years from the date hereof.

(Name)

(Address)

(Date)

§ 8.806 *Forms of settlement agreement.* (See § 8.209.)

§ 8.806-1 *Settlement agreement for use in settling fixed-price prime contracts after complete termination.*

This Supplemental Agreement of Settlement, entered into this ______ day of ________, 19__ between the United States of America (hereinafter called "The Government") represented by the Contracting Officer executing this contract, and __________

(i) A corporation organized and existing under the Laws of the State of __________;

(ii) A partnership consisting of __________;

(iii) An individual doing business as __________

(hereinafter called "the Contractor").

Witnesseth that:

Whereas, the Contractor and the Government have entered into Contract No.______ under date of ____________, 19__ which, together with any and all amendments, changes, modifications, and supplements thereto, is hereinafter referred to as "the contract"; and

Whereas, the Termination for Convenience of the Government clause of the contract provides that the performance of work under the contract may at the convenience of the Government be terminated by the Government in whole, or from time to time in part, whenever the Contracting Officer shall determine that such termination is in the best interests of the Government, and that the Contractor and the Contracting Officer may agree upon the whole or any part of the amount to be paid to the Contractor by reason of such termination; and

Whereas, by notice of termination dated __________ the Government advised the Contractor of the complete termination of the contract for the convenience of the Government; and

Whereas, as used herein the following terms shall have the meanings hereinafter set forth:

The term "termination inventory" means any items of physical property purchased, supplied, manufactured, furnished, or otherwise acquired for performance of the contract which are properly allocable to the terminated portion of the contract, but shall not include any facilities, materials, production or other equipment, or special tooling, which are subject to a separate contract or a special contract provision governing the use or disposition thereof. Termination inventory may include Government-furnished property and contractor-acquired property, as defined below.

(i) Government-furnished property is property in the possession of or acquired directly by the Government, and delivered or otherwise made available to the Contractor.

(ii) Contractor-acquired property is property procured or otherwise provided by the Contractor for the performance of a contract, whether or not the Government has title by the terms of the contract, or exercises its contractual right to take title.

The term "subcontract" means any contract as defined in 32 CFR 1.201-6 other than

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[1] A facsimile of each of the forms listed below have been filed with the Federal Register Division; copies of forms may be obtained through the Contracting Officer in any of the military departments.

a prime contract, entered into by a prime contractor or a subcontractor, calling for supplies or services required for the performance of any one or more prime contracts.

The term "scrap" means property that has no reasonable prospect of being sold except for the recovery value of its basic material content.

Now, therefore, the parties hereto do mutually agree as follows:

ARTICLE 1. The Contractor certifies that all contract termination inventory (including scrap) has been retained or otherwise acquired by it, sold to third parties, returned to suppliers, stored for the Government, delivered to the Government, otherwise properly accounted for, and all proceeds or retention prices thereof, if any, have been taken into account in arriving at this agreement.

ART. 2. a. The Contractor certifies that, prior to the execution of this agreement, each of the Contractor's immediate subcontractors whose claim is included in the claim settled by this agreement has furnished to the Contractor a certificate stating (i) that all of its subcontract termination inventory (including scrap) has been retained or otherwise acquired by it, sold to third parties, returned to suppliers, stored for the Government, delivered to the Government, or otherwise properly accounted for, and all proceeds or retention prices thereof, if any, were taken into account in arriving at the settlement of the subcontract or subcontracts, and (ii) that the subcontractor has received from each of the immediate subcontractors whose claim was included in its claim for a substantially similar certificate.

b. The Contractor hereby transfers and conveys to the Government all the right, title, and interest, if any, which the Contractor has received, or is entitled to receive, in and to subcontract termination inventory, if any, not otherwise properly accounted for, and hereby assigns to the Government any and all of its rights relating thereto.

ART. 3. The Contractor certifies that, with respect to all items of termination inventory the costs of which were taken into account in arriving at the amount of this settlement, or in the settlement of any subcontract claim included in this settlement: (i) all such items are properly allocable to the terminated portion of the contract; (ii) such items are not in excess of the reasonable quantitative requirements of the terminated portion of the contract; (iii) such items do not include any items reasonably usable without loss to the Contractor, on its other work; and (iv) the Contractor has informed the Contracting Officer of any substantial change in the status of such items between the dates of its termination inventory schedules and the date of this agreement.

ART. 4. In all cases where the Contractor has not previously made such payments, the Contractor shall, within ten (10) days after receipt of the payment provided for hereunder, pay to each of its immediate subcontractors (or to their respective assignees) the respective amounts to which they are entitled, after deducting, if the Contractor so elects, any amounts then due and payable to the Contractor by such subcontractors.

ART. 5. a. The Contractor has received the sum of $______ on account of work and services performed, or articles delivered, under the completed portion of the contract. The Government as part of this negotiated settlement hereby confirms and acknowledges the right of the Contractor, subject to the provisions of Article 6 hereof, to retain such sum heretofore paid and agrees that such sum constitutes a portion of the total amount to which the Contractor is entitled in settlement of the Contract.

b. In addition, upon execution of this agreement the Government agrees to pay to the Contractor or its assignee, upon presentation of properly certified invoices or vouchers, the sum of $______ [insert net amount of settlement], arrived at by deducting from the sum of $______ [for claim submitted on inventory basis, insert gross amount of settlement; for claim submitted on total cost basis, insert gross amount of settlement less amount set forth in 5a above], (1) the amount of $______ representing all unliquidated partial or progress payments previously made on account to the Contractor or its assignee and all unliquidated advance payments (with interest, if any, thereon), and (2) the amount of $______ representing all applicable property disposal credits [and (3) the amount of $______ representing all other amounts due the Government under this contract except as hereinafter provided in Article 6].* Said sum, together with all other sums heretofore paid, constitutes payment in full and complete settlement of the amount due the Contractor by reason of the complete termination of work under the contract and of all other claims and liabilities of the Contractor and the Government under the contract, except as hereinafter provided in Article 6.

ART. 6. Notwithstanding any other provision of this agreement, the following rights and liabilities of the parties under the contract are hereby reserved:

[The following list of reserved or excepted rights and liabilities is intended to cover those which should most frequently be reserved, and which should in any event be scrutinized at the time a settlement agreement is signed (see 32 CFR 8.209-2). The suggested language of the enumerated excepted items on the list may be varied in the discretion of the Contracting Officer to cover more accurately the exceptions needed in a particular case. Where greater accuracy or completeness may be achieved by a reference to the number of the contract clause or provision covering the matter in question, this method of enumerating reserved rights and liabilities may be followed. Omit any of the following which are not applicable and add any additional exceptions or reservations required.]

(1) All rights and liabilities, if any, of the parties under the Renegotiation Act of 19__ [insert reference to applicable Renegotiation Act].

(2) All rights and liabilities of the parties arising under the contract articles, if any, or otherwise which relate to reproduction rights, patent infringements, inventions, applications for patent and patents, including rights to assignments, invention reports and licenses, covenants of indemnity against patent risks and bonds for patent indemnity obligations, together with all rights and liabilities under any such bond.

(3) All rights of the Government to take the benefit of any adjustments of royalties under the Royalty Adjustment Act of 1942 (35 U. S. C. 89-96) and to take the benefit of agreements reducing or otherwise affecting royalties paid or payable in connection with the performance of the contract.

(4) All rights and liabilities of the parties under the contract relating to options (except options to continue or increase the work under the contract), covenants not to compete, covenants of indemnity.

(5) All rights and liabilities of the parties under agreements with respect to the future care and disposition by the Contractor of Government-owned property remaining in its custody.

(6) All rights and liabilities of the parties under the contract with respect to any contract termination inventory stored for the Government pursuant to Article 1 hereof.

(7) All rights and liabilities of the parties under the contract with respect to any and all Government property furnished to the Contractor for the performance of this contract.

(8) All rights and liabilities of the parties arising under the contract, or otherwise, concerning defects in, or guarantees or warranties relating to, any articles or component parts furnished to the Government by the Contractor pursuant to the contract or this agreement.

(9) All rights and liabilities, if any, of the parties under those clauses inserted in the contract because of the requirements of Acts of Congress and Executive Orders, including without limitation, any applicable clauses relating to the following topics: labor law, contingent fees, domestic articles, employment of aliens, "officials not to benefit." [If the contract contains clauses of this character inserted for reasons other than requirements of Acts of Congress or Executive Orders, the suggested language should be appropriately modified.]

In witness whereof, etc.

*To be inserted where appropriate.

§ 8.806-2 *Settlement agreement for use in settling fixed-price prime contracts after partial termination.*

This Supplemental Agreement of Settlement, entered into this ______ day of ______ ____, 19__ between the United States of America (hereinafter called "the Government") represented by the Contracting Officer executing this contract, and ________

(i) A corporation organized and existing under the Laws of the State of __________;

(ii) A partnership consisting of ________ ____;

(iii) An individual doing business as __________;

(hereinafter called "the Contractor").

Witnesseth that:

Whereas, the Contractor and the Government have entered into Contract No. ______ under date of __________, 19__ which, together with any and all amendments, changes, modifications, and supplements thereto, is hereinafter referred to as "the contract"; and

Whereas, the Termination for Convenience of the Government clause of the contract provides that the performance of work under the contract may at the convenience of the Government be terminated by the Government in whole, or from time to time in part, whenever the Contracting Officer shall determine that such termination is in the best interests of the Government, and that the Contractor and Contracting Officer may agree upon the whole or any part of the amount to be paid to the Contractor by reason of such termination; and

Whereas, by notice of termination dated __________ the Government advised the Contractor of the partial termination of the contract for the convenience of the Government as of the date and to the extent provided in such Notice, to which reference is hereby made as to the part terminated, and said part is hereinafter referred to as the "terminated portion of the contract"; and

Whereas, as used herein, the following terms shall have the meanings hereinafter set forth:

The term "termination inventory" means any items of physical property purchased, supplied, manufactured, furnished, or otherwise acquired for performance of the contract which are properly allocable to the terminated portion of the contract, but shall not include any facilities, materials, production or other equipment, or special tooling, which are subject to a separate contract or a special contract provision governing the use or disposition thereof. Termination inventory may include Government-furnished property and contractor-acquired property as defined below.

(i) Government-furnished property is property in the possession of or acquired directly by the Government, and delivered or otherwise made available to the Contractor.

(ii) Contractor-acquired property is property procured or otherwise provided by the

Contractor for the performance of a contract, whether or not the Government has title by the terms of the contract, or exercises its contractual right to take title.

The term "subcontract" means any contract as defined in 32 CFR 1.201-6 other than a prime contract, entered into by a prime contractor or a subcontractor, calling for supplies or services required for the performance of any one or more prime contracts.

The term "scrap" means property that has no reasonable prospect of being sold except for the recovery value of its basic material content.

Now, therefore, the parties hereto do mutually agree as follows:

ARTICLE 1. The terminated portion of the contract is designated as follows: (specify the terminated portion clearly as to items, including (i) item numbers, (ii) descriptions, (iii) quantity terminated, (iv) unit price of items, (v) total price of terminated items, and (vi) any other explanation necessary to avoid uncertainty or misunderstanding.)

ART. 2. The Contractor certifies that all contract termination inventory (including scrap) has been retained or otherwise acquired by it, sold to third parties, returned to suppliers, stored for the Government, delivered to the Government, or otherwise properly accounted for, and all proceeds or retention prices thereof, if any, have been taken into account in arriving at this agreement.

ART. 3. a. The Contractor certifies that, prior to the execution of this agreement, each of the contractor's immediate subcontractors whose claim is included in the claim settled by this agreement has furnished to the Contractor a certificate stating (i) that all its subcontract termination inventory (including scrap) has been retained or otherwise acquired by it, sold to third parties, returned to suppliers, stored for the Government, delivered to the Government, or otherwise properly accounted for, and all proceeds or retention prices thereof, if any, were taken into account in arriving at the settlement of the subcontract or subcontracts and (ii) that the subcontractor has received from each of the immediate subcontractors whose claim was included in its claim a substantially similar certificate.

b. The Contractor hereby transfers and conveys to the Government all the right, title and interest, if any, which the Contractor has received, or is entitled to receive, in and to subcontract termination inventory, if any, not otherwise properly accounted for, and hereby assigns to the Government any and all of its rights relating thereto.

ART. 4. The Contractor certifies that, with respect to all items of termination inventory the costs of which were taken into account in arriving at the amount of this settlement, or in the settlement of any subcontract claim included in this settlement: (i) all such items are properly allocable to the terminated portion of the contract; (ii) such items are not in excess of the reasonable quantitative requirements of the terminated portion of the contract; (iii) such items do not include any items reasonably usable, without loss to the Contractor, on its other work; and (iv) the Contractor has informed the Contracting Officer of any substantial change in the status of such items between the dates of its termination inventory schedules and the date of this agreement.

ART. 5. In all cases where the Contractor has not previously made such payments, the Contractor shall, within ten (10) days after receipt of the payment provided for hereunder, pay to each of its immediate subcontractors (or to their respective assignees) the respective amounts to which they are entitled, after deducting, if the Contractor so elects, any amounts then due and payable to the Contractor by such subcontractors.

ART. 6. Upon execution of this agreement, the Government agrees to pay to the Contractor or its assignee, upon presentation of properly certified invoices or vouchers, the sum of $______ [insert net amount of settlement], arrived at by deducting from the sum of $______ [insert gross amount of settlement], (1) the amount of $______ representing all unliquidated partial or progress payments previously made on account to the Contractor or its assignee and all unliquidated advance payments (with interest, if any, thereon) applicable to the terminated portion of the contract and (2) the amount of $______ representing all applicable property disposal credits. Said sum, together with all other sums heretofore paid, constitutes payment in full and complete settlement of the amount due the Contractor with respect to the terminated portion of the contract, except as hereinafter provided in Article 7.

ART. 7. Upon payment of said sum of $______ [insert net amount of settlement], all obligations of the Contractor to perform further work or services or to make further deliveries under the terminated portion of the contract and all obligations of the Government to make further payments or to carry out other undertakings in connection therewith shall cease: *Provided, however,* That nothing herein contained shall impair or affect in any way any covenants, terms or conditions of the contract relating to the completed or continued portion thereof: *And provided further,* That, with respect to the terminated portion of the contract, the following rights and liabilities of the parties are reserved.

[The following list of reserved or excepted rights and liabilities relating to the terminated portion of the contract is intended to cover those which should most frequently be reserved, and which should in any event be scrutinized at the time a settlement agreement is signed (see 32 CFR 8.209-2). The suggested language of the enumerated excepted items on the list may be varied in the discretion of the Contracting Officer to cover more accurately the exceptions needed in a particular case. Where greater accuracy or completeness may be achieved by a reference to the number of the contract clause or provision covering the matter in question, this method of enumerating reserved rights and liabilities may be followed. Omit any of the following which are not applicable and add any additional exceptions or reservations required.]

(1) All rights and liabilities, if any, of the parties under the Renegotiation Act of 19__ [insert reference to applicable Renegotiation Act].

(2) All rights of the Government to take the benefit of any adjustments of royalties under the Royalty Adjustment Act of 1942 (35 U. S. C. 89-96) and to take the benefit of agreements reducing or otherwise affecting royalties paid or payable in connection with the performance of the contract.

(3) All rights and liabilities, if any, of the parties under those clauses inserted in the contract because of the requirements of Acts of Congress and Executive Orders, including, without limitation, any applicable clauses relating to the following topics: labor law, contingent fees, domestic articles, employment of aliens, "officials not to benefit." [If the contract contains clauses of this character inserted for reasons other than requirements of Acts of Congress or Executive Orders, the suggested language should be appropriately modified.]

(4) All rights and liabilities of the parties arising under the contract articles, if any, or otherwise which relate to reproduction rights, patent infringements, inventions, applications for patent and patents, including rights to assignments, invention reports and licenses, covenants of indemnity against patent risks and bonds for patent indemnity obligations, together with all rights and liabilities under any such bond.

(5) All rights and liabilities of the parties arising under the contract, or otherwise, concerning defects in, or guarantees or warranties relating to, any articles or component parts furnished to the Government by the Contractor pursuant to the contract or this agreement.

(6) All rights and liabilities of the parties with respect to any contract termination inventory stored for the Government pursuant to Article 2 hereof.

In witness whereof, etc.

§ 8.806-3 *Partial settlement agreement, for use in settling fixed-price prime contracts after complete or partial termination where settlement pertains only to settlements with subcontractors.*

This supplemental agreement of settlement, entered into this ________ day of __________, 19__ between the United States of America (hereinafter called "the Government") represented by the Contracting Officer executing this contract, and __________

(i) A corporation organized and existing under the Laws of the State of __________;

(ii) A partnership consisting of __________;

(iii) An individual doing business as __________;

(hereinafter called "the Contractor").

Witnesseth that:

Whereas, the Contractor and the Government have entered into Contract No. ______ under date of __________, 19__ which, together with any and all amendments, changes, modifications, and supplements thereto, is hereinafter referred to as "the contract"; and

Whereas, the Termination for Convenience of the Government clause of the contract provides that the performance of work under the contract may at the convenience of the Government be terminated by the Government in whole, or from time to time in part, whenever the Contracting Officer shall determine that such termination is in the best interests of the Government, and that the Contractor and Contracting Officer may agree upon the whole or any part of the amount to be paid to the Contractor by reason of such termination; and

Whereas, by notice of termination dated __________ the Government advised the Contractor of the [complete termination of the contract for the convenience of the Government;] * [partial termination of the contract for the convenience of the Government as of the date and to the extent provided in such Notice, to which reference is hereby made as to the part terminated, and said part is hereinafter referred to as "the terminated portion of the contract";] * and

Whereas, the Contractor, in connection with the performance of the contract, has entered into the following subcontracts [among others]: ** [insert here a list of the terminated subcontracts included in this settlement], which subcontracts were terminated by the Contractor in accordance with the termination for convenience clause of the contract and in accordance with the Notice of Termination received by it from the Government; and

Whereas, the parties desire to settle that portion of the termination claim of the Contractor which is based upon the termination of the subcontracts listed herein; and

Whereas, as used herein, the following terms shall have the meanings hereinafter set forth:

The term "termination inventory" means any items of physical property purchased, supplied, manufactured, furnished, or otherwise acquired for performance of the contract which are properly allocable to the

*Insert appropriate phrase.

**Insert where appropriate.

terminated portion of the contract, but shall not include any facilities, materials, production or other equipment, or special tool— which are subject to a separate contract or a special contract provision governing the use or disposition thereof. Termination inventory may include Government-furnished property and contractor-acquired property as defined below.

(i) Government-furnished property is property in the possession of or acquired directly by the Government, and delivered or otherwise made available to the Contractor.

(ii) Contractor-acquired property is property procured or otherwise provided by the Contractor for the performance of a contract, whether or not the Government has title by the terms of the contract, or exercises its contractual right to take title.

The term "subcontract" means any contract as defined in 32 CFR 1.201-6 other than a prime contract, entered into by a prime contractor or a subcontractor, calling for supplies or services required for the performance of any one or more prime contracts.

The term "scrap" means property that has no reasonable prospect of being sold except for the recovery value of its basic material content.

Now, therefore, the parties hereto do mutually agree as follows:

ARTICLE 1. a. The Contractor certifies that, prior to the execution of this agreement, each of the Contractor's immediate subcontractors whose claim is included in the claim settled by this agreement has furnished to the Contractor a certificate stating (i) that all its subcontract termination inventory (including scrap), has been retained or otherwise acquired by it, sold to third parties, returned to suppliers, stored for the Government, delivered to the Government, or otherwise properly accounted for, and all proceeds or retention prices thereof, if any, were taken into account in arriving at the settlement of the subcontract or subcontracts and (ii) that the subcontractor has received from each of the immediate subcontractors whose claim was included in its claim a substantially similar certificate.

b. The Contractor hereby transfers and conveys to the Government all the right, title and interest, if any, which the Contractor has received, or is entitled to receive, in and to such subcontract termination inventory, to the extent that it is not otherwise properly accounted for, and hereby assigns to the Government any and all of its rights relating thereto.

ART. 2. In all cases where the Contractor has not previously made such payments, the Contractor shall, within ten (10) days after receipt of the payment provided for hereunder, pay to each of its immediate subcontractors (or to their respective assignees) the respective amounts to which they are entitled, after deducting, if the Contractor so elects, any amounts then due and payable to the Contractor by such subcontractors.

ART. 3. The Contractor certifies that, with respect to all items of subcontract termination inventory the costs of which were taken into account in arriving at the amount of this settlement, or in the settlement of any subcontract claim included in this settlement: (i) All such items are properly allocable to the terminated portion of the contract; (ii) such items are not in excess of the reasonable quantitative requirements of the terminated portion of the contract; (iii) such items do not include any items reasonably usable, without loss to the Contractor, on its other work; and (iv) the Contractor has informed the Contracting Officer of any substantial change in the status of such items between the dates of its termination inventory schedules and the date of this agreement.

ART. 4. Upon execution of this agreement the Government agrees to pay to the Contractor or its assignee, upon presentation of properly certified invoices of vouchers, the sum of $______, which sum, [together with the amount of $______ heretofore paid the Contractor as partial, progress, or advance payments],* constitutes payment in full and complete settlement, except as hereinafter provided in Article 5, of the amount due the Contractor with respect to that portion of its termination claim which is based upon termination of the subcontracts listed hereinabove. [The first sum to be inserted above should be the net amount of this partial settlement, arrived at by deducting from the gross amount of settlements with subject subcontractors as approved by the Contracting Officer; the second amount to be inserted above, which is that portion of partial, progress, or advance payments liquidated by this agreement.]

ART. 5. Notwithstanding any other provision of this agreement, the following rights and liabilities of the parties under the contract are hereby reserved:

[Insert here a list of the reserved or excepted rights and liabilities of the Government and the Contractor (see 32 CFR 8.209-2). Reference is made to instructions set forth in Article 6 of the agreement set forth in 32 CFR 8.806-1 and Article 7 of the agreement set forth in 32 CFR 8.806-2, and to the reserved or excepted rights and liabilities set forth in those articles, which may be used as appropriately modified to meet the requirements of any given settlement hereunder.]

In witness whereof, etc.

§ 8.806-4 *Settlement agreement for use in settling cost-reimbursement type prime contracts after complete termination where settlement includes costs.*

This Supplemental Agreement of Settlement, entered into this ______ day of __________, 19__ between the United States of America (hereinafter called "the Government") represented by the Contracting Officer executing this contract, and __________

(i) A corporation organized and existing under the Laws of the State of __________;

(ii) A partnership consisting of __________;

(iii) An individual doing business as __________;

(hereinafter called "the Contractor").

Witnesseth that:

Whereas, the Contractor and the Government have entered into Contract No. ______ under date of __________, 19__ which, together with any and all amendments, changes, modifications, and supplements thereto, is hereinafter referred to as "the contract"; and

Whereas, the Termination clause of the contract provides that the performance of work under the contract may at the convenience of the Government be terminated by the Government in whole, or from time to time in part, whenever the Contracting Officer shall determine that such termination is in the best interests of the Government, and that the Contractor and Contracting Officer may agree upon the whole or any part of the amount to be paid to the Contractor by reason of such termination; and

Whereas, by notice of termination dated __________ the Government advised the Contractor of the complete termination of the contract for the convenience of the Government; and

Whereas, as used herein, the following terms shall have the meanings hereinafter set forth:

The term "termination inventory" means any items of physical property purchased, supplied, manufactured, furnished, or otherwise acquired for performance of the contract which are properly allocable to the terminated portion of the contract, but shall not include any facilities, materials, production or other equipment, or special tooling, which are subject to a separate contract or a special contract provision governing the use or disposition thereof. Termination inventory may include Government-furnished property and contractor-acquired property as defined below.

(i) Government-furnished property is property in the possession of or acquired directly by the Government, and delivered or otherwise made available to the Contractor.

(ii) Contractor-acquired property is property procured or otherwise provided by the Contractor for the performance of a contract, whether or not the Government has title by the terms of the contract, or exercises its contractual right to take title.

The term "subcontract" means any contract as defined in 32 CFR 1.201-6 other than a prime contract, entered into by a prime contractor or a subcontractor, calling for supplies or services required for the performance of any one or more prime contracts.

The term "scrap" means property that has no reasonable prospect of being sold except for the recovery value of its basic material content.

Now therefore, the parties hereto do mutually agree as follows:

ARTICLE 1. The Contractor certifies that all contract termination inventory (including scrap) has been retained or otherwise acquired by it, sold to third parties, returned to suppliers, stored for the Government, delivered to the Government, or otherwise properly accounted for, and all proceeds or retention prices thereof, if any, have been taken into account in arriving at this agreement.

ART. 2. a. The Contractor certifies that, prior to the execution of this agreement, each of the Contractor's immediate subcontractors whose claim is included in the claim settled by this agreement has furnished to the Contractor a certificate stating (i) that all of its subcontract termination inventory (including scrap) has been retained or otherwise acquired by it, sold to third parties, returned to suppliers, stored for the Government, delivered to the Government, or otherwise properly accounted for, and all proceeds or retention prices thereof, if any, were taken into account in arriving at the settlement of the subcontract or subcontracts and (ii) that the subcontractor has received from each of the immediate subcontractors whose claim was included in its claim a substantially similar certificate.

b. The Contractor hereby transfers and conveys to the Government all the right, title and interest, if any, which the Contractor has received, or is entitled to receive, in and to subcontract termination inventory, if any, not otherwise properly accounted for, and hereby assigns to the Government any and all of its rights relating thereto.

ART. 3. The Contractor certifies that, with respect to all items of termination inventory the costs of which were taken into account in arriving at the amount of this settlement, or in the settlement of any subcontract claim included in this settlement: (i) all such items are properly allocable to the terminated portion of the contract; (ii) such items are not in excess of the reasonable quantitative requirements of the terminated portion of the contract; (iii) such terms do not include any items reasonably usable, without loss to the Contractor, on its other work; and (iv) the Contractor has informed the Contracting Officer of any substantial change in the status of such items between the dates of its termination inventory schedules and the date of this agreement.

ART. 4. In all cases where the Contractor has not previously made such payments, the Contractor shall, within ten (10) days after receipt of the payment provided for hereunder, pay to each of its immediate subcontractors (or to their respective assignees) the respective amounts to which they are entitled, after deducting, if the Contractor so elects, any amounts then due and payable to the Contractor by such subcontractors.

ART. 5. a. The Contractor has received the sum of $______ on account of work and services performed, or articles delivered, under the contract prior to the effective date of termination. The Government as part of this negotiated settlement hereby confirms and acknowledges the right of the Contractor, subject to the provisions of Article 6 hereof, to retain such sum heretofore paid and agrees that such sum constitutes a portion of the total amount to which the Contractor is entitled in complete and final settlement of the contract.

b. In addition, upon execution of this agreement the Government agrees to pay to the Contractor or its assignee, upon presentation of properly certified invoices or vouchers, the sum of $______ [insert net amount of settlement], arrived at by deducting from the sum of $______ [insert net amount of settlement less amount set forth in Article 5a above], (1) the amount of $______ representing all unliquidated partial or progress payments previously made on account to the Contractor or its assignee and all unliquidated advance payments (with interest, if any, thereon) and (2) the amount of $______ representing all applicable property disposal credits [and (3) the amount of $______ representing all other amounts due the Government under this contract except as hereinafter provided in Article 6].* Said sum, together with all other sums heretofore paid, constitutes payment in full and complete settlement of the amount due the Contractor by reason of the complete termination of work under the contract and of all other claims and liabilities of the Contractor and the Government under the contract, except as hereinafter provided in Article 6.

ART. 6. Notwithstanding any other provision of this agreement the following rights and liabilities of the parties under the contract are hereby reserved:

[The following list of reserved or excepted rights and liabilities is intended to cover those which should most frequently be reserved, and which should in any event be scrutinized at the time a settlement agreement is signed (see 32 CFR 8.209-2). The suggested language of the enumerated excepted items on the list may be varied in the discretion of the Contracting Officer to cover more accurately the exceptions needed in a particular case. Where greater accuracy or completeness may be achieved by a reference to the number of the contract clause or provision covering the matter in question, this method of enumerating reserved rights and liabilities may be followed. Omit any of the following rights which are not applicable and add any additional exceptions or reservations required.]

(1) Claims by the Contractor against the Government for items of cost which are the subject of General Accounting Office exceptions (or other items of cost of the same nature), which are excluded from the settlement without prejudice to the rights of either party, as follows: [Insert the amounts and describe the claims not waived by Contractor.]

(2) Claims by the Contractor against the Government, as to which his right of reimbursement is disputed, which are excluded without prejudice to the rights of either party as follows: [Insert the amounts and describe the claims with respect to which findings have been made by the Contracting Officer disallowing the item and with respect to which the Contractor has taken, or intends to take, timely appeal.]

(3) Claims by the Contractor against the Government which are unknown in amount and which involve costs claimed to be reimbursable under the contract, as follows: [Insert the estimated amounts and describe the claims.]

(4) Claims by the Contractor against the Government whose existence is unknown, based upon responsibility of the Contractor to third parties and which involve costs reimbursable under the contract.

(5) Claims by the Government against the Contractor which are based upon refunds, rebates, credits, or other accounts not now known to the Government, together with interest thereon, now due or which may become due the Contractor from third parties to the extent that such amounts arise out of transactions for which reimbursement has been made to the Contractor under the contract. Any such amounts which may hereafter become due to the Contractor from any third party or other source shall be paid to the Government within 30 days after receipt by the Contractor. Interest at 6 percent per annum shall accrue and shall be paid to the Government on any such accounts as remain unpaid after the 30-day period.

(6) All rights and liabilities, if any, of the parties under the Renegotiation Act of 19__. [Insert reference to applicable Renegotiation Act.]

(7) All rights and liabilities of the parties arising under the contract articles, if any, or otherwise which relate to reproduction rights, patent infringements, inventions, applications for patent and patents, including rights to assignments, invention reports and licenses, covenants of indemnity against patent risks and bonds for patent indemnity obligations, together with all rights and liabilities under any such bond.

(8) All rights of the Government to take the benefit of any adjustments of royalties under the Royalty Adjustment Act of 1942 (35 U. S. C. 89-96) and to take the benefit of agreements reducing or otherwise affecting royalties paid or payable in connection with the performance of the contract.

(9) All rights and liabilities of the parties under the contract relating to options (except options to continue or increase the work under the contract), covenants not to compete, covenants of indemnity.

(10) All rights and liabilities of the parties under agreements with respect to the future care and disposition by the Contractor of Government-owned property remaining in its custody.

(11) All rights and liabilities of the parties under the contract with respect to any contract termination inventory stored for the Government pursuant to Article 1 hereof.

(12) All rights and liabilities of the parties under the contract with respect to any and all Government property, furnished to or acquired by the Contractor for the performance of this contract.

(13) All rights and liabilities of the parties arising under the contract, or otherwise, concerning defects in, or guarantees or warranties relating to, any articles or component parts furnished to the Government by the Contractor pursuant to the contract or this agreement.

(14) All rights and liabilities, if any, of the parties under those clauses inserted in the contract because of the requirements of Acts of Congress and Executive Orders, including, without limitation, any applicable clauses relating to the following topics: labor law, contingent fees, domestic articles, employment of aliens, "officials not to benefit." [If the contract contains clauses of this character inserted for reasons other than requirements of Acts of Congress or Executive Orders, the suggested language should be appropriately modified.]

In witness whereof, etc.

§ 8.806-5 *Settlement agreement for use in settling cost-reimbursement type prime contracts after complete termination where settlement is limited to fee.*

This Supplemental Agreement of Settlement, entered into this ______ day of __________, 19__ between the United States of America (hereinafter called "the Government") represented by the Contracting Officer executing this contract, and __________

(i) A corporation organized and existing under the Laws of the State of __________;

(ii) A partnership consisting of __________

(iii) An individual doing business as __________;

(hereinafter called "the Contractor").

Witnesseth that:

Whereas, the Contractor and the Government have entered into Contract No. ______ under date of __________, 19__ which, together with any and all amendments, changes, modifications, and supplements thereto, is hereinafter referred to as "the contract"; and

Whereas, the Termination clause of the contract provides that the performance of work under the contract may at the convenience of the Government be terminated by the Government in whole, or from time to time in part, whenever the Contracting Officer shall determine that such termination is in the best interests of the Government, and that the Contractor and Contracting Officer may agree upon the whole or any part of the amount to be paid to the Contractor by reason of such termination; and

Whereas, by notice of termination dated __________ the Government advised the Contractor of the complete termination of the contract for the convenience of the Government; and

Whereas, settlement of said terminated contract has been limited to adjustment of the fee.

Now, therefore, the parties hereto do mutually agree as follows:

ARTICLE 1. a. The Contractor has received the sum of $______ on account of its fee under the contract prior to the effective date of termination.

b. In addition, upon execution of this agreement, the Government agrees to pay to the Contractor or its assignee, upon presentation of properly certified invoices or vouchers, the sum of $______ [insert net amount to be paid on account of fee]. Said sum, together with all other sums heretofore paid on account of fee, constitutes payment in full and complete settlement of the amount due the Contractor on account of its fee under the contract.

ART. 2. The Contractor's allowable costs under the contract will continue to be reimbursed on Standard Form 1034 cost vouchers in accordance with the applicable provisions of the contract and of 32 CFR Part 8.

ART. 3. Notwithstanding any other provision of this agreement the following rights and liabilities of the parties under the contract are hereby reserved.

[The following list of reserved or excepted rights and liabilities is intended to cover those which most frequently be reserved, and which should in any event be scrutinized at the time a settlement agreement is signed (see 32 CFR 8.209-2). The suggested language of the enumerated excepted items on the list may be varied in the discretion of the Contracting Officer to cover more accurately the exceptions needed in a particular case. Where greater accuracy or completeness may be achieved by a reference to the number of the contract clause or provision covering the matter in question, this method of enumerating reserved rights and liabilities may be followed. Omit any of the following which are not applicable

* To be inserted where appropriate.

and add any additional exceptions or reservations required.]

(1) All rights and liabilities, if any, of the parties under the Renegotiation Act of 19__ [insert reference to applicable Renegotiation Act].

(2) All rights and liabilities of the parties arising under the contract articles, if any, or otherwise which relate to reproduction rights, patent infringement, inventions, applications for patent and patents, including rights to assignments, invention reports and licenses, covenants of indemnity against patent risks and bonds for patent indemnity obligations, together with all rights and liabilities under any such bond.

(3) All rights of the Government to take the benefit of any adjustments of royalties under the Royalty Adjustment Act of 1942 (35 U. S. C. 89-96) and to take the benefit of agreements reducing or otherwise affecting royalties paid or payable in connection with performance of the contract.

(4) All rights and liabilities of the parties under the contract relating to options (except options to continue or increase the work under the contract), convenants not to compete, covenants of indemnity.

(5) All rights and liabilities of the parties under agreements with respect to the future care and disposition by the Contractor of Government-owned property remaining in its custody.

(6) All rights and liabilities of the parties under the contract with respect to any and all Government property, furnished to or acquired by the Contractor for the performance of this contract.

(7) All rights and liabilities of the parties arising under the contract, or otherwise, concerning defects in, or guaranties or warranties relating to, any articles or component parts furnished to the Government by the Contractor pursuant to the contract or this agreement.

(8) All rights and liabilities, if any, of the parties under those clauses inserted in the contract because of the requirements of Acts of Congress and Executive Orders, including, without limitation, any applicable clauses relating to the following topics: labor law, contingent fees, domestic articles, employment of aliens, "officials not to benefit." [If the contract contains clauses of this character inserted for reasons other than requirements of Acts of Congress or Executive Orders, the suggested language should be appropriately modified.]

In witness whereof, etc.

§ 8.806-6 *No cost settlement agreement partial termination.*

This Supplemental Agreement of Settlement, entered into this ______ day of __________, 19__, between the United States of America (hereinafter called "the Government"), represented by the Contracting Officer executing this contract, and ________

(i) A corporation organized and existing under the Laws of the State of __________;

(ii) A partnership consisting of __________;

(iii) An individual doing business as __________;

(hereinafter called "the Contractor").

Witnesseth that:

Whereas, the Contractor and the Government have entered into Contract No. _______ under date of __________, 19__ which, together with any and all amendments, changes, modifications, and supplements thereto, is hereinafter referred to as "the contract"; and

Whereas, the contract provides that the performance of work thereunder may at the convenience of option of the Government be terminated by the Government in whole, or from time to time in part, whenever any such termination is determined to be for the best interest of the Government, and that the Contractor and Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of such termination; and

Whereas, by the Notice of Termination dated __________, 19__, the Government advised the Contractor of the partial termination of the contract for the convenience or at the option of the Government as of the date and to the extent provided in such Notice, to which reference is hereby made as to the part terminated, and said part is hereinafter referred to as "the terminated portion of the contract"; and

Whereas, the Contractor is willing to waive unconditionally any claim against the Government by reason of such termination.

Now, therefore, the parties hereto agree as follows:

ARTICLE 1. The terminated portion of the contract is designated as follows: (Specify the terminated portion clearly as to items including (i) item numbers, (ii) descriptions, (iii) quantity terminated, (iv) unit price of items, (v) total price of terminated items, and (vi) any other explanation necessary to avoid uncertainty or misunderstanding.)

ART. 2. The Contractor hereby unconditionally waives any claim against the Government arising under the terminated portion of the contract or by reason of its termination including, without limitation, all obligation of the Government to make further payments or to carry out other undertakings in connection with said terminated portion, and the Government acknowledges that the Contractor has no obligation to perform further work or services or to make further deliveries of articles or materials under the terminated portion of the contract: *Provided, however,* That nothing herein contained shall impair or affect in any way any other covenants, terms or conditions of the contract. And *Provided further,* That, with respect to the terminated portion of the contract, the following rights and liabilities of the parties are reserved:

(List reserved or excepted rights and liabilities: see 32 CFR § 8.209-2 and Article 7 of the agreement set forth in 32 CFR § 8.806-2.)

In witness whereof, etc.

§ 8.806-7 *No cost settlement agreement—complete termination.*

This supplemental agreement of settlement, entered into this ______ day of ______ ____, 19__, between the United States of America (hereinafter called "the Government"), represented by the Contracting Officer executing this contract, and _________

(i) A corporation organized and existing under the Laws of the State of __________;

(ii) A partnership consisting of __________;

(iii) An individual doing business as __________;

(hereinafter called "the Contractor").

Witnesseth that:

Whereas, the Contractor and the Government have entered into Contract No. ______ under date of __________, 19__, which, together with any and all amendments, changes, modifications, and supplements thereto, is hereinafter referred to as "the contract"; and

Whereas, the contract provides that the performance of work thereunder may at the convenience or option of the Government be terminated by the Government in whole, or from time to time in part, whenever any such termination is determined to be for the best interest of the Government, and that the Contractor and Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of such termination; and

Whereas, by the Notice of Termination dated __________, 19__, the Government advised the Contractor of the termination of the contract for the convenience or at the option of the Government; and

Whereas, the Contractor is willing to waive unconditionally any claim against the Government by reason of such termination;

Now, therefore, the parties hereto agree as follows:

ARTICLE 1. The Contractor hereby unconditionally waives any claim against the Government by reason of the termination of the contract and, except as set forth below, releases it from any and all obligations arising under the contract or by reason of its termination, and the Government agrees that all obligations arising under the contract or by reason of its termination, shall be deemed to be concluded; except as follows:

(List reserved or excepted rights and liabilities; see 32 CFR 8.209-2 and Article 6 of the agreement set forth in 32 CFR 8.806-1.)

In witness whereof, etc.

§ 8.807 *DD Form 1114—Instructions for Use of Contract Termination Settlement and Inventory Schedule Forms.*[1]

PART 10—BONDS AND INSURANCE

SUBPART A—BONDS

The cross reference in § 10.103-1 (b) has been changed to § 8.707. Section 10.103-1 (b), as revised, reads as follows:

§ 10.103 *Performance bonds.*

§ 10.103-1 *Performance bonds in connection with contracts other than construction contracts.* * * *

(b) It shall be furnished by the contractor within the time specified in the contract; and if it is not so furnished, the contracting officer shall notify the contractor that if the bond is not furnished within 10 days after receipt of such notice, the contract shall be terminated pursuant to paragraph (a) (ii) of the "Default" clause of § 8.707.

(Sec. 201, 55 Stat. 839, as amended, sec. 2202, 70A Stat. 120; 50 U. S. C. App. 611, 10 U. S. C. 2202. Interprets or applies secs. 2301-2314, 70A Stat. 127-133; 10 U. S. C. 2301-2314, E. O. 9001, 6 F. R. 6787, as amended by E. O. 9296, 8 F. R. 1429, 3 CFR, 1943 Cum. Supp.)

J. J. PHELAN, Jr.,
Acting Director for Procurement Policy, Office of Assistant Secretary of Defense (Supply and Logistics).

[F. R. Doc. 58-9903; Filed, Nov. 28, 1958; 8:49 a. m.]

TITLE 6—AGRICULTURAL CREDIT

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

Subchapter D—Regulations Under Soil Bank Act

[Amdt. 25]

PART 485—SOIL BANK

SUBPART—CONSERVATION RESERVE PROGRAM

INCORRECT OR INCOMPLETE INFORMATION UNDER 1956 PROGRAM

The regulations governing the conservation reserve part of the Soil Bank

[1] A facsimile of this form has been filed with the Federal Register Division; copies of the form may be obtained through the contracting officer in any of the military departments.

Program, 21 F. R. 6289, as amended, are hereby further amended by inserting a new § 485.186 immediately following § 485.185 to read as follows:

§ 485.186 *Incorrect or incomplete information under 1956 program.* (a) Pursuant to the provisions of Public Law 85-413, 85th Congress, the Administrator, CSS, may, if he deems it desirable in order to provide fair and equitable treatment to a producer, authorize compensation for certain losses suffered by such producer under the conservation reserve program as a result of the circumstances set forth below:

(1) Incorrect or incomplete information was furnished to the producer by a representative of the Secretary authorized to furnish information under the program;

(2) The producer relied, in good faith, on such information and entered into a conservation reserve contract in 1956 or took action with the intention of entering into a contract in such year; and

(3) The producer is not entitled to receive under the provisions of the regulations the payment which was stipulated in the contract or which would have been stipulated if a contract had been entered into.

(b) Compensation shall be paid to the producer under this section in an amount which the Administrator determines will reimburse the producer for: (1) The net loss suffered by the producer as a direct result of his destruction of a crop or his refraining from harvesting or grazing in an attempt to qualify for an annual payment, except that compensation for such loss plus any annual payment already received shall not exceed the annual payment stipulated in the contract for the year in which such action was taken or which would have been stipulated for such year if a contract had been entered into on the basis of the incorrect or incomplete information, and (2) the net loss suffered by the producer as a direct result of action which he took in an attempt to qualify for a cost-sharing payment, except that compensation for such loss plus any cost-sharing payment already received shall not exceed the payment for such cost-sharing practice stipulated in the contract or which would have been stipulated if a contract had been entered into on the basis of the incorrect or incomplete information: *Provided,* That no producer shall be paid any compensation under this section for loss suffered as a result of action which he took or refrained from taking after December 31, 1957, in an attempt to qualify for an annual or cost-sharing payment.

(c) Compensation shall be made under this section by means of a Commodity Credit Corporation sight-draft, payable to the producer or his assignee.

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

Issued at Washington, D. C., this 24th day of November 1958.

[SEAL] TRUE D. MORSE,
Acting Secretary.

[F. R. Doc. 58-9908; Filed, Nov. 28, 1958; 8:50 a. m.]

TITLE 7—AGRICULTURE

Subtitle A—Office of the Secretary of Agriculture

PART 5—DETERMINATION OF PARITY PRICES

REVISION OF PARITY PRICE OF A COMMODITY

This document prescribes rules of procedure relating to public hearings under section 301 (a) (1) (F) of the Agricultural Adjustment Act of 1938, as amended (7 U. S. C. 1301 (a) (1) (F)), conducted for the purpose of determining whether the parity price for an agricultural commodity is seriously out of line with the parity prices of other agricultural commodities and the proper relationship between the parity price of such commodity and the parity prices of other agricultural commodities. Since there is an immediate need for such rules of procedure, these rules shall become effective immediately upon publication in the FEDERAL REGISTER. The regulations issued by the Department of Agriculture relating to the determination of parity prices (21 F. R. 761) are hereby amended by adding the following new section:

§ 5.6 *Revision of the parity price of a commodity*—(a) *Initiation of hearings.* The "modernized" parity formula specified in section 301 (a) (1) of the Agricultural Adjustment Act of 1938, as amended, takes into consideration the average prices received by farmers for agricultural commodities during the last ten years and is designed gradually to adjust relative parity prices of specific commodities for persistent or continuing changes in demand and supply conditions which are reflected in market prices. Accordingly, only in rare cases is it possible for the parity price of any agricultural commodity to become seriously out of line with the parity prices of other agricultural commodities. In any case, however, in which producers of any agricultural commodity believe that the parity price of such commodity, as computed pursuant to the provisions of section 301 (a) (1), is seriously out of line with the parity prices of other agricultural commodities, a request for a public hearing under section 301 (a) (1) (F) may be submitted to the Secretary of Agriculture by a substantial number of interested producers. The producers shall also furnish to the Secretary, with such request or separately, data supporting their conclusion that the parity price of such commodity is seriously out of line with the parity prices of other commodities. Upon receipt of such a request with supporting data, or at any time upon the Secretary's own motion, this Department will make a preliminary study of the relationship between the parity price of such commodity and the parity prices of other commodities, and if the Secretary concludes that there appears to be reasonable grounds for believing that the parity price of such commodity is seriously out of line with the parity prices of other agricultural commodities, a hearing will be held pursuant to the provisions of section 301 (a) (1) (F).

(b) *Notice of hearing.* If the Secretary of Agriculture determines that such a hearing shall be held, he shall issue a notice of the hearing, which shall be filed with the Hearing Clerk of the United States Department of Agriculture, who shall promptly (1) cause such notice to be published in the FEDERAL REGISTER, and (2) mail a copy thereof to each of the producers who requested the hearing and to grower organizations known to be interested in the hearing. Legal notice of the hearing shall be deemed to be given upon filing such notice with the FEDERAL REGISTER for publication, and failure to give notice in the manner otherwise provided in this paragraph shall not affect the legality of the notice. The notice of hearing shall state the purpose of the hearing and the time and place of the hearing. The time of the hearing shall not be less than fifteen days after the date of publication of the notice in the FEDERAL REGISTER, unless the Secretary shall determine that an emergency exists which requires a shorter period of notice, in which case the period of notice shall be that which the Secretary determines to be reasonable in the circumstances.

(c) *Conduct of hearing*—(1) *Presiding officer.* Each hearing held under section 301 (a) (1) (F) shall be presided over by a Hearing Examiner of the Office of Hearing Examiners of the United States Department of Agriculture or such other employee of the Department as the Secretary may designate for the purpose.

(2) *Time and place of hearing.* Each hearing shall be heard at the time and place set forth in the notice of hearing but may be continued by the presiding officer from day to day or adjourned to a later date or to a different place without notice other than the announcement thereof at the hearing.

(3) *Order of procedure.* At the commencement of the hearing, the presiding officer shall file as an exhibit a copy of the FEDERAL REGISTER containing the notice of the hearing and shall then outline briefly the procedure to be followed. Evidence shall then be received from interested persons in such order as the presiding officer shall prescribe.

(4) *Submission of evidence.* The hearing shall be conducted in such a way as to obtain a clear and orderly record. All interested persons appearing at the hearing shall be given reasonable opportunity to offer data, views, or arguments relevant to (i) whether the parity price for the agricultural commodity involved is or is not seriously out of line with the parity prices of other agricultural commodities, and (ii) the proper relationship between the parity price of such commodity and the parity prices of other agricultural commodities and the revisions, if any, which should be made in computing the parity price of such commodity. All documentary exhibits shall be submitted in duplicate. The presiding officer shall, insofar as possible, exclude irrelevant, immaterial, or unduly repetitious evidence but shall not apply technical judicial rules of evidence. Every witness shall be subject to questioning by the presiding officer or by any

other representative of the Department, but cross-examination by other persons shall not be allowed, except in the discretion of the presiding officer. The proceedings at the hearing shall be transcribed verbatim.

(5) *Written arguments.* The presiding officer shall fix a time, not to exceed ten days from the close of the hearing, within which interested persons may file written arguments with the Hearing Clerk.

(d) *Preparation and issuance of determination*—(1) *Preparation of recommendation.* As soon as practicable after the close of the hearing, the presiding officer, or such employees of the Department as may be assigned for the purpose, shall review, consider, and weigh all evidence of probative value, views, and arguments which have been submitted, and may consider other pertinent information and data which is available in the Department of Agriculture, and shall submit a recommendation thereon to the Secretary.

(2) *Determination by the Secretary.* As soon as possible after receipt of the recommendation, the Secretary shall determine whether the parity price of such commodity computed in accordance with section 301 (a) (1) appears to be seriously out of line with the parity prices of other agricultural commodities, whether the facts require a revision of the method of computing the parity price of such commodity, and the revision, if any, which is required in the method of computing the parity price of such commodity. Such determination by the Secretary shall be final. The Secretary's determination shall be filed with the Hearing Clerk who shall cause the determination to be published promptly in the FEDERAL REGISTER. The Hearing Clerk shall also mail a copy of the determination to each producer and grower organization which participated in or is known to be interested in the hearing. Upon application to the Hearing Clerk, any person shall be entitled to a copy of the determination.

(Sec. 301, 52 Stat. 38, as amended; 7 U. S. C. 1301)

Done at Washington, D. C., this 25th day of November 1958.

[SEAL] TRUE D. MORSE,
Acting Secretary of Agriculture.

[F. R. Doc. 58-9917; Filed, Nov. 28, 1958; 8:52 a. m.]

Chapter III—Agricultural Research Service, Department of Agriculture

PART 301—DOMESTIC QUARANTINE NOTICES

SUBPART—FRUITS AND VEGETABLES FROM PUERTO RICO OR VIRGIN ISLANDS

MOVEMENT OF FRESH OKRA FROM PUERTO RICO OR VIRGIN ISLANDS

On September 24, 1958, there was published in the FEDERAL REGISTER (23 F. R. 7431), a notice of rule making concerning an amendment of § 301.58-3 (a) of the regulations supplemental to the quarantine relating to Fruits and Vegetables from Puerto Rico or the Virgin Islands (7 CFR 301.58-3 (a)). After due consideration of all relevant matters, and under the authority contained in sections 8 and 9 of the Plant Quarantine Act of 1912, as amended (7 U. S. C. 161, 162), 7 CFR 301.58-3 (a) is hereby amended to read as follows:

§ 301.58-3 *Fruits and vegetables the movement of which is authorized.*[1] (a) Subject to the conditions provided in this section, and to any treatment prescribed by the Director of the Plant Quarantine Division, the following fruits and vegetables may be moved when they are free from plant litter, are marked in compliance with § 301.58-6, and have been inspected by an inspector and certified by him to be free from injurious insect infestation (including the West Indian fruitfly and the bean pod borer) or to have been given prescribed treatment:

Citrus fruits (orange, grapefruit, lemon, citron, and lime);
Corn (sweet corn on cob);
Peppers;
String beans, lima beans, faba beans, and pigeonpeas, in the pod, and fresh okra. However, products within this subparagraph will be certified for movement to ports other than Baltimore, Maryland, or any Atlantic Coast port north thereof only when they have been treated as prescribed by the Director of the Plant Quarantine Division, and under the supervision of an inspector. Such products may be certified for movement to Baltimore, Maryland, and Atlantic Coast ports north thereof without such treatment, but untreated fresh okra may be so certified only for immediate processing or consumption in these northern areas.

This amendment shall become effective on December 30, 1958.

This amendment authorizes the movement of fresh okra from Puerto Rico or the Virgin Islands of the United States to Baltimore, Maryland, and Atlantic Coast ports north thereof under certification but without further treatment. Fresh okra that has been examined by an inspector and found free from injurious insect infestation and is so certified, may enter at the ports designated without constituting a hazard of spreading dangerous insects. This subsection also allows the movement of fresh okra from Puerto Rico or the Virgin Islands of the United States to any mainland port when it has been treated and so certified.

Provisions not proposed in the notice of rule making limit the fresh okra that may be moved to certain northern areas under certification but without treatment to fresh okra for immediate processing or consumption in these areas. It was the intent of the proposal to assure that fresh okra moved in the above manner is not reshipped to cotton-growing States, thereby eliminating any remote possibility of spreading the pink bollworm to such localities. The additional provisions have been added to clarify this intent. It is not believed that the provisions not included in the notice of rule making will be objectionable to affected persons, and it does not appear that further public rule making procedure will make new information available to the Department. Therefore, it is found upon good cause under section 4 of the Administrative Procedure Act (5 U. S. C. 1003) that further notice of rule making and other public procedure on the amendment in question are impracticable and unnecessary.

(Secs. 8, 9, 37 Stat. 318, as amended; 7 U. S. C. 161, 162)

Done at Washington, D. C., this 25th day of November 1958.

[SEAL] M. R. CLARKSON,
Acting Administrator,
Agricultural Research Service.

[F. R. Doc. 58-9914; Filed, Nov. 28, 1958; 8:51 a. m.]

[1] The following are not considered raw or unprocessed fruits and vegetables within the meaning of § 301.58: Coconuts, breadnuts, dried peas and beans, dried seeds, dried or cured medicinal plants and herbs, annatto seeds (achiote), gourd (higuero), cannonball fruit (Couroupita guianensis), and cut flowers.

Chapter IV—Federal Crop Insurance Corporation, Department of Agriculture

PART 401—FEDERAL CROP INSURANCE

SUBPART—REGULATIONS FOR THE 1958 AND SUCCEEDING CROP YEARS

COUNTY DESIGNATED FOR SOYBEAN CROP INSURANCE

Orangeburg County, South Carolina, is hereby added to the list of counties, published August 6, 1958 (23 F. R. 5951), as supplemented by an appendix published September 30, 1958 (23 F. R. 7569), which were designated for soybean crop insurance for the 1959 crop year pursuant to authority contained in paragraph (a) of § 401.1 of the above-identified regulations, as amended.

(Secs. 506, 516, 52 Stat. 73, as amended, 77 as amended; 7 U. S. C. 1506, 1516)

[SEAL] F. N. MCCARTNEY,
Manager,
Federal Crop Insurance Corporation.

[F. R. Doc. 58-9916; Filed, Nov. 28, 1958; 8:52 a. m.]

PART 401—FEDERAL CROP INSURANCE

SUBPART—REGULATIONS FOR THE 1958 AND SUCCEEDING CROP YEARS

COUNTIES DESIGNATED FOR GRAIN SORGHUM CROP INSURANCE

Pursuant to authority contained in paragraph (a) of § 401.1 of the above-identified regulations, as amended, the following counties have been designated for grain sorghum crop insurance for the 1959 crop year.

Kansas: Stafford.
Oklahoma: Caddo.
Texas: Hale.

(Secs. 506, 516, 52 Stat. 73, as amended, 77, as amended; 7 U. S. C. 1506, 1516)

[SEAL] F. N. MCCARTNEY,
Manager,
Federal Crop Insurance Corporation.

[F. R. Doc. 58-9918; Filed, Nov. 28, 1958; 8:52 a. m.]