Calendar No. 2669

84TH CONGRESS, 2d Session | SENATE | REPORT No. 2624

RENEGOTIATION AMENDMENTS ACT OF 1956

REPORT

OF THE

COMMITTEE ON FINANCE

UNITED STATES SENATE

TO ACCOMPANY

H. R. 11947

A bill to extend and amend the Renegotiation Act of 1951

JULY 18 (legislative day, JULY 16), 1956.—Ordered to be printed

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Mr. BYRD, from the Committee on Finance, submitted the following

REPORT

[To accompany H. R. 11947]

The Committee on Finance to whom was referred the bill (H. R. 11947) to extend and amend the Renegotiation Act of 1951, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are shown in the bill, as reported, in stricken-through type and in italic type.

I. PURPOSE

H. R. 11947 amends the Renegotiation Act of 1951, as amended, to extend the renegotiation authority for 2 years to December 31, 1958. The present expiration date is December 31, 1956. In addition, the bill incorporates the necessary amendments to carry out all but one of the recommendations of the Joint Committee on Internal Revenue Taxation made in its report on renegotiation to the Congress on May 31, 1956. This recommendation related to contracts performed abroad. Your committee believes that this bill is in fundamental conformity with the recommendations of the Joint Committee on Internal Revenue Taxation. Reducing these recommendations to specific legislation has suggested certain improvements to prevent unintended results. Changes have been made effective at the earliest practicable dates in order to enable contractors to benefit from the new provisions as soon as possible. The administration approves of all the amendments to the act provided by this bill.

II. General Statement

(A) TWO-YEAR EXTENSION

Your committee considers an extension of the renegotiation law beyond the present expiration date of December 31, 1956, to be necessary, because we are at present in a period of semimobilization with annual defense-procurement expenditures running as high as $17 billion. (See table 1.) This level of expenditures will continue for the next 2 fiscal years. The emphasis in the current defense program on rapid technological improvement in weapons makes pricing difficult. For these reasons your committee believes that a temporary extension of the renegotiation authority is presently required, although t should not become a permanent part of the law. The bill, therefore, provides that the Renegotiation Act of 1951, as amended, be extended to apply to receipts and accruals, which are attributable to performance prior to January 1, 1959.

TABLE 1.—*Estimated breakdown of renegotiable status of Department of Defense expenditures, 1951–57*

[In millions]

	Fiscal years—						
	1951	1952	1953	1954	1955	1956 estimate	1957 estimate
Extent to which renegotiation applied	$8,039	$20,293	$29,938	$22,213	$17,546	$16,500	$16,500
Extent to which renegotiation did not apply	12,004	18,529	13,775	18,271	17,993	18,075	19,047
Total expenditures	20,043	38,822	43,713	40,484	35,539	34,575	35,547

Source: Constructed from data furnished by the Department of Defense.

(B) MINIMUM AMOUNT SUBJECT TO RENEGOTIATION

Present law provides that renegotiation will not apply to contractors or subcontractors whose receipts or accruals from renegotiable contracts for fiscal years ending before June 30, 1953, are not more than $250,000, or $500,000 for fiscal years ending on or after June 30, 1953.

Under the bill, the statutory floor below which sales may not be renegotiated is raised from $500,000 to $1 million with respect to receipts or accruals for fiscal years ending after June 30, 1956. On the basis of filings in each sales volume category experienced from 1951 to 1955 this would eliminate from renegotiation 37 percent of contractors whose sales are above the present statutory floor of $500,000. Assuming the same pattern of potential recoveries from firms in each sales volume category as that experienced from 1951 to 1955, this would eliminate 9 percent of the potential recovery of excessive profits from firms now subject to renegotiation. This analysis is based on the following table which shows the number of refund cases and the amount of refunds in the sales categories under $500,000, $500,000 to $1 million, and $1 million and over, under the 1951 act, through December 31, 1955:

Renegotiable sales	Cases		Refunds	
	Number	Percent of total	Amount	Percent of total
Under $500,000	696	30.19	$21,243,000	5.59
$500,000 to $1,000,000	599	25.99	32,340,000	8.51
Over $1,000,000	1,010	43.82	326,449,000	85.90
Total	2,305	100.00	380,032,000	100.00

Because of the substantial compliance cost, renegotiation is a serious burden on small business firms. Another consideration supporting this increase in the statutory floor is the fact that only a small portion of the renegotiation recoveries comes from firms that would be affected by the amendment. This change in the statutory floor will be a substantial aid to small business. It will in addition enable the Board to concentrate on the larger cases. There will also be some benefit to small business in the provision allowing an optional filing of financial statements in the case of contractors below the statutory floor. This is discussed in part (c) below.

Under present law subcontracts of $25,000 or more involving services such as brokerage fees and commissions are subject to renegotiation. Your committee does not recommend any change in this statutory floor.

The bill provides that upon termination of the act both of the above-mentioned statutory floors be prorated in the case of a contractor with a fiscal year overlapping the termination date.

(C) STANDARD COMMERCIAL ARTICLE EXEMPTION

Under present law a standard commercial article is exempt from renegotiation when the Board finds that competitive conditions affecting the sale of the article are such as may reasonably be expected to prevent excessive profits. Each year the Board must make such a finding on each article for which application for exemption is made. This annual finding is a great burden on the Board and represents a considerable expense to industry.

In general, a standard commercial article is defined in the act as an article which is customarily maintained in stock by the manufacturer or a dealer or which is sold by two or more persons for general commercial use. In deciding whether or not to grant the exemption, the Board must often examine the circumstances of other contractors or of an entire industry in determining if the supply of the article is used to meet a significant civilian demand as well as to fill defense orders. Your committee substitutes an entirely new mandatory exemption for standard commercial articles. Under the committee bill the test that competitive conditions must be such as will reasonably prevent excessive profits is eliminated. The elimination of the competitive-conditions test represents a considerable liberalization of the exemption provision and should enable many contractors to qualify for exemption who cannot now qualify.

Your committee has placed the standard commercial article exemption on an individual-contractor basis rather than on the basis of conditions in similar or related industries as used under present law. In lieu of the competitive conditions test the bill substitutes the requirement that a certain percentage of the dollar volume of sales of the article by a particular contractor must be made under nonrenegotiable contracts.

The bill as passed the House defines a standard commercial article as—

> (*a*) An article which is customarily maintained in stock if at least 35 percent of the aggregate dollar amount of the sales of such article by the contractor during the fiscal year and the preceding fiscal year are nonrenegotiable; or
>
> (*b*) An article covered by established price quotations (the catalog test) if at least 35 percent of the aggregate dollar amount of the sales of such article by the contractor during the fiscal year and the preceding fiscal year are nonrenegotiable.

Under the above definition, the contractor would be required to aggregate his sales for the current year and the preceding year to see if he meets the 35 percent test. This could work to the disadvantage of contractors, and your committee has amended this provision to make the aggregating optional.

Present law provides that an item which is "identical in every material respect" with a standard commercial article is also exempt. "Identical in every material respect" is defined in the present act to mean of the same kind, content, and use, without necessarily being of the same specifications. Here, too, the Board must examine articles produced by other contractors or possibly by an entire industry. Comparison with similar articles produced by other contractors has made the provision difficult to apply. The bill eliminates the "same use" test in the definition of "identical in every material respect" because it has proved to be too flexible a concept, and substitutes a "reasonably comparable price" test.

Your committee has retained the exemption for substantially identical articles but has placed this exemption on an individual-contractor basis in that the substantially identical article sold by the particular contractor must be compared with an article sold by the same contractor, which article itself qualifies as a standard commercial article.

The bill also requires that 35 percent of the aggregate dollar volume of sales by the contractor of the standard commercial article or articles and the substantially identical article or articles must, during the year, be sold under nonrenegotiable contracts.

Both the stock and catalog tests as provided in (*a*) and (*b*) above will be self-executing in that they will operate automatically without application to the Board, and with the 35 percent tests will provide definite yardsticks for establishing the exemption. This is a decided improvement over present law which has no definite yardsticks. To obtain the exemption under the substantial identity test above the contractor is required to file an application with the Renegotiation Board and the Board must take action within 3 months instead of 6 months as provided under present law.

The operation of the above stock or catalog tests may be illustrated by the following example: Assume that a company manufactures and stocks or catalogs typewriters of various models which it sells under renegotiable contracts as well as to other purchasers. If at least 35 percent of the aggregate dollar amount of sales of a particular model in the fiscal year under review and the immediately preceding fiscal year is made on nonrenegotiable orders, such item will qualify under the stock or catalog test, and the sales of typewriters of that model under renegotiable contracts during the year under review are excluded from renegotiable sales without the necessity of filing an application for exemption and obtaining the approval of the Board.

In the case of similar articles that differ only by a measurable characteristic, it is still possible under the substantial identity test that all such articles will be exempt as standard commercial articles if only one of them is a standard commercial article. Thus, if a contractor sells 50 percent of his output of 3-inch pipe and 50 percent of his output of 1-inch pipe under nonrenegotiable contracts, he may be able to obtain the standard commercial article exemption for his output of 2-inch pipe which may be sold exclusively under renegotiable contracts. It will be necessary, however, to file an application with the Board and establish that the 2-inch pipe is of the same kind and content as the other pipe sizes; that the price of the 2-inch pipe is reasonably comparable with the other prices; and that 35 percent of the combined sales of the three categories of pipe are nonrenegotiable.

In some cases the above changes in present law will tighten the standard commercial article exemption. For example: Assume a contractor's total sales in a given fiscal year and the preceding fiscal year of an article which is stocked are $10 million of which $3,400,000 is sold under nonrenegotiable contracts. Under present law he could obtain an exemption if the Board made a finding that "the competitive conditions are such as will reasonably prevent excessive profits." Under the bill the article would not qualify under either the stock or catalog tests because the contractor did not sell 35 percent to purchasers other than under renegotiable contracts. He may qualify nevertheless by filing an application with the Board if the article is substantially identical with another article which he manufactures and which does qualify as a standard commercial article if by combining the total sales of both articles in the year under review he can show that of this total at least 35 percent represents sales that are not covered by renegotiable contracts. If he did not manufacture another article qualified as a standard commercial article then he could under no circumstances obtain an exemption for his renegotiable sales of the article, although he might obtain the exemption under present law.

It has been brought to the attention of your committee that, under the House bill, contractors would be required to segregate their sales on an individual article basis to meet the above substantially identical test. This might occasion considerable expense, and in some cases would be impractical or perhaps impossible because a contractor might sell thousands of separate articles and might not maintain detailed sales records for each article. Your committee, therefore, has provided an amendment whereby a contractor can obtain the exemption for two or more articles if at least one of the articles is

customarily maintained in stock or offered for sale in accordance with regularly maintained price schedules and all of such articles are of the same kind and manufactured of the same or substitute materials. In addition, all of such articles must be sold at reasonably comparable prices and at least 35 percent of the aggregate receipts or accruals from the sales of all such articles in the fiscal year are from nonrenegotiable contracts. It is further provided that this exemption applies only if the contractor at his election files at such time and in such form and detail as the Board shall by regulations prescribe an application containing such information and data as may be required by the Board. A determination must be made by the Board within a period of 6 months from the date of such filing.

By agreement between the contractor and the Board, the 3-month or the 6-month period within which the Board must act on a contractor's application may be extended.

Under present law, a contractor is entitled to waive the standard commercial article exemption if he so desires. The House bill did not provide for a waiver. Your committee is of the opinion that this would work a hardship on contractors who might want to waive the exemption because of the expense involved in developing such information as may be required to establish the exemption. Your committee's bill therefore provides that any contractor or subcontractor may waive the exemption with respect to receipts or accruals in any fiscal year from sales of any article or service by so indicating in the financial statement filed by him for such fiscal year pursuant to section 105 (e) (1), without necessarily waiving such exemption with respect to receipts or accruals in such fiscal year from sales of any other article or service. A waiver, if made, shall be unconditional, and no waiver may be made without the permission of the Board for any receipts or accruals with respect to which the contractor or subcontractor has previously filed an application for exemption.

To the extent appropriate, corresponding changes have been made in the standard commercial service exemption. The principal change is a 35-percent test.

The bill provides that the above changes be effective for fiscal years ending after June 30, 1956. The bill also provides for the suspension of the standard commercial article and service exemptions in the case of a future national emergency either proclaimed by the President or declared by the Congress. It would be in such periods in particular that we could expect to find shortages and lack of competition at numerous points in the economy, which might lead to excessive profits even in the sale of such articles or services.

(D) DEPARTMENTS COVERED BY THE ACT

Section 103 of the Act provides that contracts with certain agencies shall be subject to renegotiation, and that contracts with other agencies may be made subject to renegotiation if so designated by the President. The named and designated Departments together with the respective applicable dates are as follows:

Named in the act:
- Department of Defense
- Department of the Army
- Department of the Navy
- Department of the Air Force
- Department of Commerce
- Panama Canal Company
- Canal Zone Government
- General Services Administration
- Atomic Energy Commission
- Reconstruction Finance Corporation
- Housing and Home Finance Agency

Designated by the President:

July 1, 1951:
- Federal Civil Defense Administration
- National Advisory Committee for Aeronautics
- Tennessee Valley Authority
- Treasury Department
  - United States Coast Guard

October 1, 1951:
- Defense Materials Procurement Agency
- Interior Department
  - Bureau of Mines
  - United States Geological Survey

November 1, 1951:
- Interior Department
  - Bonneville Power Administration

July 1, 1952:
- Interior Department
  - Bureau of Reclamation

October 1, 1954:
- Federal Facilities Corporation

Table 2 is a compilation of the number of contracts entered into and the dollar amount of such contracts for the fiscal years 1951 through 1955. This table includes all of the departments and agencies covered by the act with the exception of the Reconstruction Finance Corporation and the Federal Facilities Corporation, for which there are no available data, and the Defense Materials Procurement Agency, which entered into no contracts subject to renegotiation.

TABLE 2.—*Number of contracts and amount thereof entered into by departments and agencies as provided by the 1951 Renegotiation Act or Executive order*

[Dollar figures in thousands]

	Fiscal year—					Total 1951-55
	1951	1952	1953	1954	1955	
Department of Defense (Army, Navy, and Air Force):						
Number of contracts	----------	114,993	93,125	75,596	76,589	360,303
Total value of contracts	$30,785,000	$41,248,000	$28,591,000	$11,563,000	$14,752,000	$126,742,000
United States Atomic Energy Commission:						
Number of contracts	1,020	17,906	21,975	15,418	15,068	71,387
Total value of contracts	$1,242,292	$1,101,707	$2,739,515	$1,700,191	$904,377	$7,688,172
Department of Commerce:[2]						
Number of contracts	790	792	565	260	259	2,468
Total value of contracts	$162,994	$230,161	$120,859	$65,526	$72,244	$664,754
Tennessee Valley Authority:						
Number of contracts	36,000	40,000	40,500	39,154	31,823	187,477
Total value of contracts	$200,771	$233,642	$103,512	$39,282	$25,159	$602,467
Bonneville Power Administration (Interior Department):						
Number of contracts	125	494	350	254	348	1,571
Total value of contracts	$12,749	$30,318	$24,340	$14,240	$16,556	$98,203
National Advisory Committee for Aeronautics:						
Number of contracts	----------	25,616	17,358	2,338	2,580	47,892
Total value of contracts	----------	$37,067	$36,943	$13,144	$16,198	$103,352
Bureau of Reclamation (Interior Department):						
Number of contracts	5,008	7,196	8,875	7,705	8,161	36,945
Total value of contracts	$73,752	$72,216	$20,531	$20,186	$13,967	$200,652
General Services Administration:						
Number of contracts	1,408	209	376	29	34	2,056
Total value of contracts	[1] $263,767	[1] $41,524	$32,550	$4,796	$8,573	$351,210
United States Coast Guard [3] (Treasury Department):						
Number of contracts	337	420	260	213	229	1,459
Total value of contracts	$21,192	$21,464	$10,640	$22,288	$8,162	$83,746
The Panama Canal Company and Canal Zone Government:						
Number of contracts	7	15	20	29	71	142
Total value of contracts	$2,523	$12,279	$2,560	$7,011	$2,972	$27,345
Housing and Home Finance Agency:						
Number of contracts	247	194	234	126	32	833
Total value of contracts	$14,356	$36,505	$34,105	$8,667	$2,659	$96,292
Bureau of Mines (Interior Department):						
Number of contracts	93	85	83	132	109	502
Total value of contracts	$3,749	$4,930	$3,685	$4,243	$2,086	$18,693
Geological Survey (Interior Department):						
Number of contracts	90	97	100	125	64	476
Total value of contracts	$3,875	$4,348	$2,907	$2,614	$1,259	$15,003
Federal Civil Defense Administration:						
Number of contracts	5	41	23	31	47	147
Total value of contracts	$124	$288	$74	$116	$248	$851
Number of contracts	----------	----------	----------	----------	----------	713,658
Total value of contracts	----------	----------	----------	----------	----------	$136,692,740

[1] Includes only those contracts estimated to have a total cost in excess of $25,000.
[2] Does not include contracts under the amount of $10,000.

Source: Departments and agencies covered.

With the exception of contracts with the Departments of Defense, Army, Navy, Air Force and Commerce (Maritime Administration and the Federal Maritime Board only), the Atomic Energy Commission, and the General Services Administration, most of the contracts entered into are for articles of standard specifications. Furthermore, the number of defense contracts entered into by these other

agencies and the dollar value involved has been steadily decreasing, as can be seen from the above table.

The bill eliminates all but the above eight agencies from the provisions of the act.

The bill also provides that in a period of a future national emergency proclaimed by the President or declared by the Congress, the President is authorized to designate for such period any department or agency exercising functions having a direct and immediate connection with the national defense that he considers should be covered by the renegotiation statute.

(E) TWO-YEAR CARRYFORWARD OF LOSSES

The present law provides a 1-year carryforward of losses on renegotiable contracts.

Complaints have been received that this 1-year carryforward provision is too limited. Inadequate pricing information, production difficulties, or other unforeseen contingencies may cause contractors to sustain losses for more than 1 year before realizing a profit on renegotiable business. Under present law, the only loss which may be taken into account in the profit year is the loss sustained in the year immediately preceding the profit year. A part of the remaining profits may be recovered by the Government as excessive even though the contractor has not recouped the losses sustained in earlier years on renegotiable business.

In other situations the loss sustained in a particular year may be greater in amount than the profit realized in the next year. Because of the 1-year limitation on the carryforward of losses the unabsorbed portion of the loss is not available to the contractor as an offset in any later year in which he may realize excessive profits.

The bill provides for losses to be carried forward for 2 succeeding years. If a contractor sustains losses for 2 consecutive years, the losses of both years may be offset against the profits of the third year. If a contractor has a loss the first year, profits in the second year, and profits in the third year, the loss would first be reduced by the profits of the second year before being carried forward and applied against the profits of the third year. Generally, the effect of this provision is to allow losses sustained in 1954 and later years to be carried forward 2 years.

Losses sustained on renegotiable business after the fiscal year under review may not be carried back to that year under the provisions of present law. Your committee's bill makes no change in this respect. A provision for a carryback allowance of subsequent losses would produce uncertainty and administrative difficulties.

(F) REPORTING REQUIREMENTS

Under the present law and regulations, if a contractor's renegotiable sales are below the statutory floor, he is required to file a statement of nonapplicability. This form requires the contractor to state, if applicable, that his renegotiable business was under the statutory floor ($500,000 sales or $25,000 commissions, etc.). The contractor need not show his actual figure of renegotiable sales although he is required to name other firms which he controls, which control him, or which are under common control with him. In

addition, the form calls for the firm's gross receipts and the statu its standard commercial article exemption claim.

The bill eliminates this filing requirement but provides th contractor may, at his option, make an appropriate filing, and if wi 1 year no action is taken by the Board, renegotiation is permane foreclosed in the absence of fraud or malfeasance or willful misre sentation of a material fact. This option will enable the contra to obtain a final settlement of his renegotiation status. Contrac whose renegotiable sales exceed the statutory floor of $1,000,000 still be required to file a financial statement.

The present law provides a 1-year period of limitations for the c mencement of renegotiation proceedings, dating from the filing financial statement, as well as an additional 2-year period of lin tions for the completion of such proceedings. The bill provides these limitation periods will run in the absence of fraud, malfeasa or willful misrepresentation of a material fact.

Under present law, a contractor whose contracts are subjec renegotiation is required to file a financial statement with the R gotiation Board on or before the first day of the fourth month follo the close of his fiscal year. Your committee's bill has extended to the fifth month following the close of the fiscal year so that tractors would have at least 6 weeks after filing their income returns in which to assemble the necessary data.

Table 4 shows the total number of filings by contractors under 1951 act through December 31, 1955. A filing can cover the re from one or hundreds of contracts. The table shows that there filed with the Renegotiation Board a total of 144,161 cases. Of t 127,841, or 88.7 percent, were eliminated from consideration ei because they were under the statutory minimum or because they screened out on the ground that the report showed no excessive pro There were 17,187 cases, or 11.9 percent, of the total actually assig to the regional boards for examination. Of this number 3,215 had been completed as of December 31, 1955; 11,667 had been cleared; 2,305, or 1.6 percent of the original filings, had been found to l excessive profits.

TABLE 4.—*Total filings and their disposition through Dec. 31, 1955*

	Number	Perc
Total filings received by the Board through Dec. 31, 1955	144,161	
Less:		
(1) Number below $500,000 statutory minimum 103,441		
(2) Number screened out (obviously no excessive profits) 24,400		
	127,841	
Number remaining for assignment to the Regional Boards	16,320	
Assignments made without filings and other special cases	867	
Total assignments to the Regional Boards	17,187	
Assignments:		
(1) Not completed as of Dec. 31, 1955	3,215	
(2) Completed as of Dec. 31, 1955	13,972	
(3) Cleared or otherwise disposed of	11,667	
(4) Resulting in determination of excessive profits	2,305	

Source: Renegotiation Board.

(G) COURT PROCEEDINGS

Your committee believes that the present appellate procedure in renegotiation cases should in general be retained. The Tax Court should remain the final authority on the question of the amount of excessive profits and its judgment on this point should not be reviewed by the appellate courts.

A question has arisen as to whether or not it was the original intention of the Congress that an order of the Renegotiation Board should be stayed during a review proceeding only where a bond is filed with the Tax Court. Section 108 of the act is amended by your committee to make it clear that such a bond is required to stay an order of the Board. The amendment would be retroactive to 1951.

The bill also provides that a decision in the Tax Court under section 108 of the act may, to the extent subject to review, be reviewed by the United States Court of Appeals for the circuit in which is located the office to which the contractor made his Federal income tax return, or if no return was made, then by the United States Court of Appeals for the District of Columbia or any United States Court of Appeals stipulated by the Attorney General and the contractor. Under present law and court decisions the contractor can obtain review only by the United States Court of Appeals for the District of Columbia, which your committee believes causes unnecessary expense and travel for contractors located a considerable distance away from Washington.

(H) ANNUAL REPORT BY THE RENEGOTIATION BOARD

Under present law the Renegotiation Board is not required to make an annual report to the Congress. Your committee believes that an annual report to the Congress should be made by the Board and the bill so provides. The Renegotiation Board concurs in this recommendation because it will afford the Board an opportunity which it does not now have to present to the public facts and figures on its operations. This report should include, but not be limited to, the following:

1. The personnel of the Board and each regional board.
2. The administrative expenses.
3. The number of filings by sales volume during the year for—
   - (*a*) Those screened out.
   - (*b*) Cases renegotiated.
   - (*c*) Number and amount of refunds.
4. The number of pending cases.
5. The changes made in the regulations.
6. Improvements made in procedure.
7. The renegotiation cases in the Tax Court and higher courts and their disposition.

Most of the matters listed above could be readily furnished by the Board under its present recordkeeping system. Such a report would be of great aid to Congress in examining the operation of renegotiation under the recommended extension, particularly the effect of the proposed amendments.

The bill provides that the first annual report cover the activities of the Board for the fiscal year ended June 30, 1956, and be filed by January 1, 1957. Thereafter the report will be filed by January 1 of each succeeding year covering the activities for the preceding fiscal year.

(I) SUBCONTRACTS UNDER TAX-EXEMPT ORGANIZATIONS

Under the present act any contract or subcontract with a tax exempt organization and any contract with a nontaxable organization is exempt from renegotiation. The present law also exempts any subcontract under an exempt contract or subcontract described in the preceding sentence. The exemption of subcontracts under such exempt contracts or subcontracts affords an undue advantage to commercial enterprises which supply materials or services to such organizations. The bill provides, therefore, that the exemption of these subcontracts be removed effective as to subcontracts made after June 30, 1956.

(J) RECEIPTS AND ACCRUALS ATTRIBUTABLE TO PERFORMANCE BEFORE THE TERMINATION DATE

The present act does not prescribe treatment for the receipt or accrual, after the termination date of the act, of amounts attributable to performance prior to the termination date, although such amounts are renegotiable. The bill provides that receipts and accruals attributable to performance before the termination date be considered to have been received or accrued not later than the termination date. This provision will enable all pre-termination performance of the contractor to be renegotiated in the fiscal year in which the termination date occurs and will make it unnecessary to conduct separate renegotiation proceedings with respect to each subsequent fiscal year in which the contractor receives or accrues amounts attributable to performance prior to the close of the termination date. A similar provision was contained in the World War II renegotiation law.

(K) TRANSACTIONS BETWEEN MEMBERS OF COMPANIES UNDER COMMON CONTROL

The bill amends section 105 (f) (3) so as to provide that fees or commissions received by an agent or broker from principals under common control with him are not to be eliminated in determining whether the group has exceeded the $25,000 floor prescribed in section 105 (f) (2) for any fiscal year ending on or after June 30, 1956. It is believed to be consistent with the separate renegotiability of commissions and fees that these transactions should retain their identity even where they are made between members of the related group. At the present time, such amounts must be eliminated and thus often escape renegotiation, leaving the Board with the sole and unsatisfactory alternative, where renegotiation is not conducted on a consolidated basis, of evaluating such commissions in the renegotiation of the principal, if the principal is renegotiable and possibly disallowing some portion thereof as unreasonable costs.

(L) THE NET WORTH FACTOR UNDER PRESENT LAW

There has been concern that the application of the net worth factor by the Renegotiation Board has not been consistent with the intent of the statute. While this factor is only one of several factors to be taken into account in determining the reasonableness of profits, the contention has been made that return on net worth has been over-

emphasized and applied in such a manner as to place an arbitrary ceiling limitation on the amount of allowable profits. It has been suggested that this factor be eliminated from the act.

It is pertinent to these industry arguments that the Board under date of February 14, 1956, issued the following press release elaborating on its use of the net worth factor:

THE RENEGOTIATION BOARD

WASHINGTON, D. C.

For immediate release
February 14, 1956

Release No. 1-56
Republic 7-7500, Ext. 4131

STATEMENT ON NET WORTH FACTOR

Because some misunderstanding apparently exists in certain quarters respecting the Renegotiation Board's interpretation and application of the so-called net worth factor (sec. 103 (e) (2) of the Renegotiation Act of 1951, as amended), the Board today issued the following statement.

Section 103 (e) (2) of the act provides that the Renegotiation Board shall, in determining excessive profits, take into consideration: "The net worth, with particular regard to the amount and source of public and private capital employed * * * ." In discharging its responsibility under this section, the Board does not regard any particular rate of return on net worth or capital employed as excessive per se. The Board does not attempt to equalize its determinations respecting the members of any given industry from the standpoint of return on net worth or capital employed, inasmuch as renegotiation obviously is not a ratemaking process. The Board does not place special emphasis on the net worth and capital-employed factor as distinguished from the other statutory factors.

The Board desires to reemphasize the fact that reasonable profits are determined in every case by an overall evaluation of all the statutory factors, and not by the application of any fixed formula with respect to rate of profit on sales or rate of return on net worth or capital employed, or any other formula. That is not to say, however, that the return on net worth can properly be ignored in an appropriate case. Excluding those industries where capital is not a significant income-producing factor, the relationship of profit realized on renegotiable business to the capital and net worth employed in renegotiable business is, and properly should be, one of the considerations (though not the sole consideration) in the final determination of excessive profits. The Board's determinations must permit the retention of profits sufficient to provide a proper incentive for the investment of equity capital. Where borrowed capital is involved, the retained profits must reflect the additional risk to which equity capital is thereby subjected.

With respect to contractors who receive Government financial assistance, the regulation under the 1951 act

[RBR 1460.11(4)] expresses a basic policy which was first enunciated under the 1943 Renegotiation Act (RR 412.2) and again under the 1948 Act [MRR 424.412-2(d)(1)]: "A contractor who is not dependent upon Government or customer financing of any type is entitled to more favorable consideration than a contractor who is largely dependent upon these sources of capital. When a large part of the capital employed is supplied by the Government or by customers, the contractor's contribution tends to become one of management only and the profit will be considered accordingly."

An example of the application of the foregoing policy is to be found in a case where an increase in Government-furnished facilities enables a contractor to achieve substantially expanded volume for defense purposes. In such a case there will often be a significant increase in contractor's rate of return on net worth over the immediately preceding years, which generally will evidence in a concrete way the effect of increased volume and increased Government assistance. Certainly the Board must consider this fact, together with all other relevant factors, in determining whether contractor's profit on the expanded renegotiable sales bears a reasonable relationship to the expanded volume. End release.

Your committee has retained the net worth factor contained in section 103 (e) (2) of the act on the assumption that in determining excessive profits no special emphasis is given to net worth and capital employed as contrasted with the other statutory factors, and that in determining excessive profits no ceiling is placed on the rate of return on net worth or capital employed.

(M) CONFLICT OF INTEREST

Under section 113 of the act, employees of the Board and the Departments through December 31, 1953, the original termination date of the act, were relieved from certain conflict of interest provisions applicable to Government employees generally. The provisions in question preclude employees, during their employment, from agreeing to act or acting as agent or attorney, or otherwise assisting, in the prosecution of claims against the Government, and also preclude employees of executive departments for a period of 2 years following the termination of their employment, from so acting with respect to any such claims pending during their employment. When the act was first adopted it was considered necessary to exempt such personnel from these restrictions in order to make it possible to obtain employees of the caliber required for the defense effort. This is still true. Accordingly, the bill provides that this provision be extended to cover employment in the Departments or the Board at any time. Section 113 contains a further provision which, in effect, permanently bars any person employed in the Board or a Department through December 31, 1953, after leaving such employment, from handling any subject matter directly connected with his former employment. The change recommended above would have the effect of imposing this prohibition upon persons employed by the Board or the Departments at any time. Without this provision, employees

would be barred for only 2 years (by another provision of law) from handling any such case. The bill does not change the provision of section 113 which prohibits any employee of the Board or a Department from prosecuting a claim against the United States while he is an employee.

(N) FINANCIAL RESULTS OF RENEGOTIATION THROUGH 1955

Table 3 shows the disposition of the assignments through December 31, 1955, in which the Board actually found excessive profits. Of the 2,305 cases, the renegotiable sales amounted to $11,278 million, and $380 million of excessive profits were determined. Part (B) of this table is an attempt to determine as far as possible the net recoveries to the Government made by the Renegotiation Board and from voluntary refunds and price reductions made to the Government. The table shows that net recoveries by the Board were $115 million, and that net recoveries from voluntary refunds and price reductions amounted to $92 million, a total of $207 million. The voluntary refunds and price reductions recorded here are only those made in cases where the contractor was actually renegotiated. The amount of voluntary refunds in cases where the contractors were screened out of renegotiation is not known. It should also be pointed out that these figures cannot be taken as absolute net recoveries because no allowance has been made for the tax deductible expenses incurred by the contractors in keeping records, segregating sales, and the like, in connection with renegotiation.

TABLE 3.—*Disposition of assignments through Dec. 31, 1955, resulting in excessive profits and the net effect of voluntary refunds and recoveries by the Renegotiation Board since enactment of the 1951 act*

A. NUMBER OF DISPOSITIONS, THEIR SALES AND EXCESSIVE PROFITS DETERMINED BY THE BOARD[1]

Type	Number	Renegotiable sales involved (in millions)	Excessive profits determined (in millions)
By agreement	2,195	$10,051	$352
By order	110	1,206	28
Total	2,305	11,278	380

B. NET RECOVERIES BY THE RENEGOTIATION BOARD AND NET RECOVERIES THROUGH VOLUNTARY REFUNDS AND PRICE REDUCTIONS TO THE GOVERNMENT[2]

		In millions
(1)	Gross recoveries by Renegotiation Board	$380
	(a) Less: Tax effect[3]	$247
	(b) Administrative expenses	18
(2)	Total offsets on gross recoveries	265
(3)	Net recoveries by the Board	115
(4)	Gross recoveries from voluntary refunds and price reductions to the Government	263
	(a) Less: Tax effect[3]	171
(5)	Net recoveries from voluntary refunds and price reductions	92
(6)	Total net recoveries by the Board and from voluntary refunds and price reductions to the Government (3)+(5)	207

[1] Source: Renegotiation Board.
[2] Source: Data on gross sales and recoveries, Renegotiation Board.
[3] Based on analysis by Internal Revenue Service.

(O) CIVIL SERVICE COVERAGE OF BOARD EMPLOYEES

Under the present law, employees of the Renegotiation Board are not covered by civil-service laws and regulations, although they are under the Classification Act of 1949. Your committee's bill amends the present law to place Board employees under the civil-service laws and regulations as well as the Classification Act of 1949.

III. Technical Discussion of Committee Amendments

(For a technical discussion of the bill as passed by the House, see pt. III of H. Rept. No. 2549)

SECTION 5. FILING OF FINANCIAL STATEMENTS

The present act provides that persons holding contracts and subcontracts to which this title applies shall file a financial statement on or before the first day of the fourth calendar month following the close of the fiscal year. Under its regulatory authority the Board has granted a blanket extension to the first day of the fifth month. To conform the statute to current practice, the act is amended to require such statements by the first day of the fifth month but no doubt is cast upon the Board's previous use of its general authority.

SECTION 1. STANDARD COMMERCIAL ARTICLES OR SERVICES

(*a*) *Classes of articles*

Your committee has added a new paragraph (2) to section 106 (e) of the act as amended by the House bill, providing an exemption from renegotiation for a "standard commercial class of articles." A definition of this term is provided by paragraph (4) (G) also added by your committee. In view of the generality of this provision the special rule contained in paragraph (3) of the House bill has been eliminated as unnecessary.

Under the committee amendments an exemption is provided for all articles comprising a class of articles if four conditions are met. The first condition is that at least one of the articles must be either maintained in stock or sold in accordance with a regularly maintained price schedule. Secondly, it is required that all of the articles be of the same kind and be manufactured of the same or substitute materials without necessarily being of identical specifications. Thirdly, all of the articles must be sold at reasonably comparable prices. Finally, at least 35 percent of the dollar volume of the contractor's sales in the fiscal year of the articles taken together must be nonrenegotiable without regard to this subsection or section 106 (c).

The concept of "maintained in stock" or "offered for sale in accordance with a price schedule regularly maintained" has the same meaning as in the case of the definition of a standard commercial article. The requirements of "same kind," "manufactured of the same or substitute materials," and "reasonably comparable prices" have the same meaning as in the case of articles claimed to be identical in every material respect with a standard commercial article. With respect to the requirement of "reasonably comparable prices," the House report indicated that price comparisons were of little value if

the contractor made negligible sales of articles whose prices were crucial to the comparisons. This indication will not be relevant to the operation of the class exemption under your committee's bill since it is contemplated that such classes will include articles for which sales breakdowns of the constituent articles are not available. However, it is contemplated that the contractor will be required to establish, without resort to cost analyses, that his comparisons of prices for articles within a class are reasonable. The test of 35 percent of the aggregate receipts or accruals also has the same meaning as in the case of articles claimed to be identical in every material respect with a standard commercial article.

The significance of the committee language is that a group of articles may be exempted from renegotiation even though the contractor does not maintain sales records on the individual articles comprising the group. Under the House bill language was provided to make possible the exemption of a class of articles but the House bill was so written that the contractor had to isolate sales records on at least one article in the class in order to establish a standard commercial article.

(*b*) *Filing of applications*

Your committee has amended the House bill by providing slightly different rules dealing with the filing of applications for exemption of an article identical in every material respect with a standard commercial article and by providing rules for the filing of an application for exemption of a standard commercial class of articles. In the case of an application for an article claimed to be identical in every material respect with a standard commercial article, the only change from the House bill would provide that by mutual agreement the 3-month period which the Board has to act on the application may be extended. The rules for filing an application for a standard commercial class of articles are the same as for an article identical in every material respect with a standard commercial article, except that the Board is given a 6-month period in which to act upon the application. This period may also be extended by mutual agreement.

(*c*) *Sales of preceding year*

Under the House bill an article may be a standard commercial article if it is either maintained in stock or sold from a price schedule, but only if at least 35 percent of the dollar sales of the article in the current fiscal year and the preceding fiscal year are nonrenegotiable. Under your committee's amendment this language is modified to provide that an article may qualify if it meets the 35 percent test either with respect to its sales of the current fiscal year or with respect to its combined sales in the current and preceding fiscal years.

(*d*) *Waiver of standard commercial article exemption*

The House bill removed the specific provision for a waiver of the standard commercial article exemption which is provided in the present act. This elimination had significance only in the case of that part of the exemption which did not require an application to the Board, since the making of any such applications was left specifically to the election of the contractor or subcontractor.

The new subsection (e) (5) added by your committee to section 106 of the act restores the waiver provision substantially as contained

in the present act. The contractor or subcontractor may waive the exemption provided by section 106 (e) with respect to receipts or accruals in the fiscal year with respect to any article or service. This does not exclude use of the exemption with respect to other articles or services in the same year, but the exemption may not be taken for only a part of the sales of one article or service during the year. The waiver may be exercised by a statement to this effect in the financial statement for the year.

Two limitations on the waiver are provided which are not contained in present law. No waiver may be made which is conditional upon Board action with respect to other articles. Further, if the contractor once files an application for exemption under this subsection, he may not thereafter waive the exemption except with the consent of the Board.

SECTION 10. APPLICATION OF CIVIL-SERVICE LAWS

Under the present act, employees of the Renegotiation Board are appointed subject to the Classification Act of 1949 but without regard to the civil-service laws and regulations. Your committee added a new section 10 to the bill which provides that personnel of the Board shall be subject to both the Classification Act of 1949 and the civil-service laws and regulations.

TECHNICAL AMENDMENTS

The reported bill contains several clerical and conforming amendments. The reported bill also contains, in section 5, an amendment to the second sentence of section 105 (c) of the act to make such second sentence consistent with the first sentence of such section 105 (c), as amended by the bill.

IV. Changes In Existing Law

In compliance with subsection 4 of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill are shown as follows (existing law proposed to be omitted is enclosed in black brackets; new matter is printed in italic; existing law in which no change is proposed is shown in roman):

THE RENEGOTIATION ACT OF 1951

To provide for the renegotiation of contracts, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Renegotiation Act of 1951".

TITLE I—RENEGOTIATION OF CONTRACTS

SEC. 101. DECLARATION OF POLICY

It is hereby recognized and declared that the Congress has made available for the execution of the national defense program extensive funds, by appropriation and otherwise, for the procurement of prop-

erty, processes, and services, and the construction of facilities necessary for the national defense; that sound execution of the national defense program requires the elimination of excessive profits from contracts made with the United States, and from related subcontracts, in the course of said program; and that the considered policy of the Congress, in the interests of the national defense and the general welfare of the Nation, requires that such excessive profits be eliminated as provided in this title.

SEC. 102. CONTRACTS SUBJECT TO RENEGOTIATION.

(a) IN GENERAL.—The provisions of this title shall be applicable (1) to all contracts with the Departments specifically named in section 103 (a), and related subcontracts, to the extent of the amounts received or accrued by a contractor or subcontractor on or after the first day of January 1951, whether such contracts or subcontracts were made on, before, or after such first day, and (2) to all contracts with the Departments designated by the President under section 103 (a), and related subcontracts, to the extent of the amounts received or accrued by a contractor or subcontractor on or after the first day of the first month beginning after the date of such designation, whether such contracts or subcontracts were made on, before, or after such first day[; but the provisions of this title shall not be applicable to receipts or accruals attributable to performance, under contracts or subcontracts, after December 31, 1956].

(b) PERFORMANCE PRIOR TO JULY 1, 1950.—Notwithstanding the provisions of subsection (a), the provisions of this title shall not apply to contracts with the Departments, or related subcontracts, to the extent of the amounts received or accrued by a contractor or subcontractor on or after the 1st day of January 1951, which are attributable to performance, under such contracts or subcontracts, prior to July 1, 1950. This subsection shall have no application in the case of contracts, or related subcontracts, which, but for subsection (c), would be subject to the Renegotiation Act of 1948.

(c) *TERMINATION.*—

(1) IN GENERAL.—The provisions of this title shall apply only with respect to receipts and accruals, under contracts with the Departments and related subcontracts, which are determined under regulations prescribed by the Board to be reasonably attributable to performance prior to the close of the termination date. Notwithstanding the method of accounting employed by the contractor or subcontractor in keeping his records, receipts or accruals determined to be so attributable, even if received or accrued after the termination date, shall be considered as having been received or accrued not later than the termination date. For the purposes of this title, the term "termination date" means December 31, 1958.

(2) TERMINATION OF STATUS AS DEPARTMENT.—When the status of any agency of the Government as a Department within the meaning of section 103 (a) is terminated, the provisions of this title shall apply only with respect to receipts and accruals, under contracts with such agency and related subcontracts, which are determined under regulations prescribed by the Board to be reasonably attributable to performance prior to the close of the status termination date. Notwithstanding the method of accounting employed by the contractor or subcontractor in keeping his records, receipts or accruals deter-

mined to be so attributable, even if received or accrued after the status termination date, shall be considered as having been received or accrued not later than the status termination date. For the purposes of this paragraph, the term "status termination date" means, with respect to any agency, the date on which the status of such agency as a Department within the meaning of section 103 (a) is terminated.

[(c)] (*d*) RENEGOTIATION ACT OF 1948.—The Renegotiation Act of 1948 shall not be applicable to any contract or subcontract to the extent of the amounts received or accrued by a contractor or subcontractor on or after the 1st day of January 1951, whether such contract or subcontract was made on, before, or after such first day. In the case of a fiscal year beginning in 1950 and ending in 1951, if a contractor or subcontractor has receipts or accruals prior to January 1, 1951, from contracts or subcontracts subject to the Renegotiation Act of 1948, and also has receipts or accruals after December 31, 1950, to which the provisions of this title are applicable, the provisions of this title shall, notwithstanding subsection (a), apply to such receipts and accruals prior to January 1, 1951, if the Board and such contractor or subcontractor agree to such application of this title; and in the case of such an agreement the provisions of the Renegotiation Act of 1948 shall not apply to any of the receipts or accruals for such fiscal year.

[(d)] (*e*) SUSPENSION OF CERTAIN PROFIT LIMITATIONS.—Notwithstanding any agreement to the contrary, the profit-limitation provisions of the Act of March 27, 1934 (48 Stat. 503, 505), as amended and supplemented, and of section 505 (b) of the Merchant Marine Act, 1936, as amended and supplemented (46 U. S. C. 1155 (b)), shall not apply, in the case of such Act of March 27, 1934, to any contract or subcontract if any of the receipts or accruals therefrom are subject to this title or would be subject to this title except for the provisions of section 106 [(a) (8)] (*e*) and, in the case of the Merchant Marine Act, 1936, to any contract or subcontract entered into after December 31, 1950, if any of the receipts or accruals therefrom are subject to this title or would be subject to this title except for the provisions of section 106 [(a) (8)] (*e*).

SEC. 103. DEFINITIONS.

For the purposes of this title—

[(a) DEPARTMENT.—The term "Department" means the Department of Defense, the Department of the Army, the Department of the Navy, the Department of the Air Force, the Department of Commerce, the General Services Administration, the Atomic Energy Commission, the Reconstruction Finance Corporation, the Canal Zone Government, the Panama Canal Company, the Housing and Home Finance Agency, and such other agencies of the Government exercising functions having a direct and immediate connection with the national defense as the President shall designate.]

(*a*) *DEPARTMENT.—The term "Department" means the Department of Defense, the Department of the Army, the Department of the Navy, the Department of the Air Force, the Maritime Administration, the Federal Maritime Board, the General Services Administration, and the Atomic Energy Commission. Such term also includes any other agency of the Government exercising functions having a direct and immediate connection with the national defense which is designated by the President*

during a national emergency proclaimed by the President, or declared by the Congress, after the date of the enactment of the Renegotiation Amendments Act of 1956; but such designation shall cease to be in effect on the last day of the month during which such national emergency is terminated.

(b) SECRETARY.—The term "Secretary" means the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, the Secretary of the Air Force, the Secretary of Commerce (*with respect to the Maritime Administration*), *the Federal Maritime Board,* the Administrator of General Services, [the Chairman of] the Atomic Energy Commission, [the Board of Directors of the Reconstruction Finance Corporation, the Governor of the Canal Zone, the president of the Panama Canal Company, the Housing and Home Finance Administrator,] and the head of any other agency of the Government which the President shall designate *as a Department* pursuant to subsection (a) of this section.

(c) BOARD.—The term "Board" means the Renegotiation Board created by section 107 (a) of this Act.

(d) RENEGOTIATE AND RENEGOTIATION.—The terms "renegotiate" and "renegotiation" include a determination by agreement or order under this title of the amount of any excessive profits.

(e) EXCESSIVE PROFITS.—The term "excessive profits" means the portion of the profits derived from contracts with the Departments and subcontracts which is determined in accordance with this title to be excessive. In determining excessive profits favorable recognition must be given to the efficiency of the contractor or subcontractor, with particular regard to attainment of quantity and quality production, reduction of costs, and economy in the use of materials, facilities, and manpower; and in addition, there shall be taken into consideration the following factors:

(1) Reasonableness of costs and profits, with particular regard to volume of production, normal earnings, and comparison of war and peacetime products;

(2) The net worth, with particular regard to the amount and source of public and private capital employed;

(3) Extent of risk assumed, including the risk incident to reasonable pricing policies;

(4) Nature and extent of contribution to the defense effort, including inventive and developmental contribution and cooperation with the Government and other contractors in supplying technical assistance;

(5) Character of business, including source and nature of materials, complexity of manufacturing technique, character and extent of subcontracting, and rate of turn-over;

(6) Such other factors the consideration of which the public interest and fair and equitable dealing may require, which factors shall be published in the regulations of the Board from time to time as adopted.

(f) PROFITS DERIVED FROM CONTRACTS WITH THE DEPARTMENTS AND SUBCONTRACTS.—The term "profits derived from contracts with the Departments and subcontracts" means the excess of the amount received or accrued under such contracts and subcontracts over the costs paid or incurred with respect thereto and determined to be

allocable thereto. All items estimated to be allowed as deductions and exclusions under chapter 1 of the Internal Revenue Code (excluding taxes measured by income) shall, to the extent allocable to such contracts and subcontracts, be allowed as items of cost, except that no amount shall be allowed as an item of cost by reason of the application of a carry-over or carry-back. Notwithstanding any other provision of this section, there shall be allowed as an item of cost in any fiscal year *ending before December 31, 1956*, subject to regulations of the Board, an amount equal to the excess, if any, of costs (computed without the application of this sentence) paid or incurred in the preceding fiscal year with respect to receipts or accruals subject to the provisions of this title over the amount of receipts or accruals subject to the provisions of this title which were received or accrued in such preceding fiscal year, but only to the extent that such excess did not result from gross inefficiency of the contractor or subcontractor. For the purposes of the preceding sentence, the term "preceding fiscal year" does not include any fiscal year ending prior to January 1, 1951. Costs shall be determined in accordance with the method of accounting regularly employed by the contractor or subcontractor in keeping his records, but, if no such method of accounting has been employed, or if the method so employed does not, in the opinion of the Board, or, upon redetermination, in the opinion of The Tax Court of the United States, properly reflect such costs, such costs shall be determined in accordance with such method as in the opinion of the Board, or, upon redetermination, in the opinion of The Tax Court of the United States, does properly reflect such costs. In determining the amount of excessive profits to be eliminated, proper adjustment shall be made on account of the taxes measured by income, other than Federal taxes, which are attributable to the portion of the profits which are not excessive.

(g) SUBCONTRACT.—The term "subcontract" means—

(1) any purchase order or agreement (including purchase orders or agreements antedating the related prime contract or higher tier subcontract) to perform all or any part of the work, or to make or furnish any materials, required for the performance of any other contract or subcontract, but such term does not include any purchase order or agreement to furnish office supplies;

(2) any contract or arrangement covering the right to use any patented or secret method, formula, or device for the performance of a contract or subcontract; and

(3) any contract or arrangement (other than a contract or arrangement between two contracting parties, one of whom is found by the Board to be a bona fide executive officer, partner, or full-time employee of the other contracting party) under which—

(A) any amount payable is contingent upon the procurement of a contract or contracts with a Department or of a subcontract or subcontracts; or

(B) any amount payable is determined with reference to the amount of a contract or contracts with a Department or of a subcontract or subcontracts; or

(C) any part of the services performed or to be performed consists of the soliciting, attempting to procure, or procuring a contract or contracts with a Department or a subcontract or subontracts.

Nothing in this subsection shall be construed (i) to affect in any way the validity or construction of provisions in any contract with a Department or any subcontract, heretofore at any time or hereafter made, prohibiting the payment of contingent fees or commissions; or (ii) to restrict in any way the authority of the Board to determine the nature or amount of selling expense under subcontracts as defined in this subsection, as a proper element of the contract price or as a reimbursable item of cost, under a contract with a Department or a subcontract.

(h) FISCAL YEAR.—The term "fiscal year" means the taxable year of the contractor or subcontractor under chapter 1 of the Internal Revenue Code, except that where any readjustment of interests occurs in a partnership as defined in section 3797 (a) (2) of such code, the fiscal year of the partnership or partnerships involved in such readjustment shall be determined in accordance with regulations prescribed by the Board.

(i) RECEIVED OR ACCRUED AND PAID OR INCURRED.—The terms "received or accrued" and "paid or incurred" shall be construed according to the method of accounting employed by the contractor or subcontractor in keeping his records, but if no such method of accounting has been employed, or if the method so employed does not, in the opinion of the Board, or, upon redetermination, in the opinion of The Tax Court of the United States, properly reflect his receipts or accruals or payments or obligations, such receipts or accruals or such payments or obligations shall be determined in accordance with such method as in the opinion of the Board, or, upon redetermination, in the opinion of The Tax Court of the United States, does properly reflect such receipts or accruals or such payments or obligations.

(j) PERSON.—The term "person" shall include an individual, firm, corporation, association, partnership, and any organized group of persons whether or not incorporated.

(k) MATERIALS.—The term "materials" shall include raw materials, articles, commodities, parts, assemblies, products, machinery, equipment, supplies, components, technical data, processes, and other personal property.

(l) AGENCY OF THE GOVERNMENT.—The term "agency of the Government" means any part of the executive branch of the Government or any independent establishment of the Government or part thereof, including any department (whether or not a Department as defined in subsection (a) of this section), any corporation wholly or partly owned by the United States which is an instrumentality of the United States, or any board, bureau, division, service, office, officer, employee, authority, administration, or other establishment of the Government which is not a part of the legislative or judicial branches.

(m) TWO-YEAR LOSS CARRYFORWARD.—

(1) ALLOWANCE.—Notwithstanding any other provision of this section, the renegotiation loss deduction for any fiscal year ending on or after December 31, 1956, shall be allowed as an item of cost in such fiscal year, under regulations of the Board.

(2) DEFINITIONS.—For the purposes of this subsection—

(A) The term "renegotiation loss deduction" means, for any fiscal year ending on or after December 31, 1956, the sum of the renegotiation loss carryforwards to such fiscal year from the preceding two fiscal years.

(B) The term "renegotiation loss" means, for any fiscal year, the excess, if any, of costs computed without the application of this subsection and the third sentence of subsection (f) paid or incurred in such fiscal year with respect to receipts or accruals subject to the provisions of this title over the amount of receipts or accruals subject to the provisions of this title which were received or accrued in such fiscal year, but only to the extent that such excess did not result from gross inefficiency of the contractor or subcontractor.

(3) AMOUNT OF CARRYFORWARDS.—A renegotiation loss for any fiscal year (hereinafter in this paragraph referred to as the "loss year") shall be a renegotiation loss carryforward to the first fiscal year succeeding the loss year. Such renegotiation loss, after being reduced (but not below zero) by the profits derived from contracts with the Departments and subcontracts in the first fiscal year succeeding the loss year, shall be a renegotiation loss carryforward to the second fiscal year succeeding the loss year. For the purposes of the preceding sentence, the profits derived from contracts with the Departments and subcontracts in the first fiscal year succeeding the loss year shall be computed as follows:

(A) If such first fiscal year ends on or after December 31, 1956, such profits shall be computed by determining the amount of the renegotiation loss deduction for such first fiscal year without regard to the renegotiation loss for the loss year.

(B) If such first fiscal year ends before December 31, 1956, such profits shall be computed without regard to any renegotiation loss for the loss year or any fiscal year preceding the loss year.

SEC. 104. RENEGOTIATION CLAUSE IN CONTRACTS.

Subject to section 106 (a) the Secretary of each Department specifically named in section 103 (a) shall insert in each contract made by such Department thirty days or more after the date of the enactment of this Act, and the Secretary of each Department designated by the President under section 103 (a) shall insert in each contract made by such Department thirty days or more after the date of such designation, a provision under which the contractor agrees—

(1) to the elimination of excessive profits through renegotiation;

(2) that there may be withheld by the United States from amounts otherwise due the contractor, or that he will repay to the United States, if paid to him, any excessive profits;

(3) that he will insert in each subcontract described in section 103 (g) a provision under which the subcontractor agrees—

(A) to the elimination of excessive profits through renegotiation;

(B) that there may be withheld by the contractor for the United States from amounts otherwise due to the subcontractor, or that the subcontractor will repay to the United States, if paid to him, any excessive profits;

(C) that the contractor shall be relieved of all liability to the subcontractor on account of any amount so withheld, or so repaid by the subcontractor to the United States;

(D) that he will insert in each subcontract described in section 103 (g) provisions corresponding to those of sub-

paragraphs (A), (B), and (C), and to those of this subparagraph;

(4) that there may be withheld by the United States from amounts otherwise due the contractor, or that he will repay to the United States, as the Secretary may direct, any amounts which under section 105 (b) (1) (C) the contractor is directed to withhold from a subcontractor and which are actually unpaid at the time the contractor receives such direction.

The obligations assumed by the contractor or subcontractor under paragraph (1) or (3) (A), as the case may be, agreeing to the elimination of excessive profits through renegotiation shall be binding on him only if the contract or subcontract, as the case may be, is subject to this title. A provision inserted in a contract or subcontract, which recites in substance that the contract or subcontract shall be deemed to contain all the provisions required by this section shall be sufficient compliance with this section. Whether or not the provisions specified in this section are inserted in a contract with a Department or subcontract, to which this title is applicable, such contract or subcontract, as the case may be, shall be considered as having been made subject to this title in the same manner and to the same extent as if such provisions had been inserted.

SEC. 105. RENEGOTIATION PROCEEDINGS.

(a) PROCEEDINGS BEFORE THE BOARD.—Renegotiation proceedings shall be commenced by the mailing of notice to that effect, in such form as may be prescribed by regulation, by registered mail to the contractor or subcontractor. The Board shall endeavor to make an agreement with the contractor or subcontractor with respect to the elimination of excessive profits received or accrued, and with respect to such other matters relating thereto as the Board deems advisable. Any such agreement, if made, may, with the consent of the contractor or subcontractor, also include provisions with respect to the elimination of excessive profits likely to be received or accrued. If the Board does not make an agreement with respect to the elimination of excessive profits received or accrued, it shall issue and enter an order determining the amount, if any, of such excessive profits, and forthwith give notice thereof by registered mail to the contractor or subcontractor. In the absence of the filing of a petition with The Tax Court of the United States under the provisions of and within the time limit prescribed in section 108, such order shall be final and conclusive and shall not be subject to review or redetermination by any court or other agency. The Board shall exercise its powers with respect to the aggregate of the amounts received or accrued during the fiscal year (or such other period as may be fixed by mutual agreement) by a contractor or subcontractor under contracts with the Departments and subcontracts, and not separately with respect to amounts received or accrued under separate contracts with the Departments or subcontracts, except that the Board may exercise such powers separately with respect to amounts received or accrued by the contractor or subcontractor under any one or more separate contracts with the Departments or subcontracts at the request of the contractor or subcontractor. By agreement with any contractor or subcontractor, and pursuant to regulations promulgated by it, the Board may in its discretion conduct renegotiation on a consolidated basis in order prop-

erly to reflect excessive profits of two or more related contractors or subcontractors. Renegotiation shall be conducted on a consolidated basis with a parent and its subsidiary coporations which constitute an affiliated group under section 141 (d) of the Internal Revenue Code if all of the corporations included in such affiliated group request renegotiation on such basis and consent to such regulations as the Board shall prescribe with respect to (1) the determination and elimination of excessive profits of such affiliated group, and (2) the determination of the amount of the excessive profits of such affiliated group allocable, for the purposes of section 3806 of the Internal Revenue Code, to each corporation included in such affiliated group. Whenever the Board makes a determination with respect to the amount of excessive profits, and such determination is made by order, it shall, at the request of the contractor or subcontractor, as the case may be, prepare and furnish such contractor or subcontractor with a statement of such determination, of the facts used as a basis therefor, and of its reasons for such determination. Such statement shall not be used in the Tax Court of the United States as proof of the facts or conclusions stated therein.

(b) METHODS OF ELIMINATING EXCESSIVE PROFITS.—

(1) IN GENERAL.—Upon the making of an agreement, or the entry of an order, under subsection (a) of this section by the Board, or the entry of an order under section 108 by The Tax Court of the United States, determining excessive profits, the Board shall forthwith authorize and direct the Secretaries or any of them to eliminate such excessive profits—

(A) by reductions in the amounts otherwise payable to the contractor under contracts with the Departments, or by other revision of their terms;

(B) by withholding from amounts otherwise due to the contractor any amount of such excessive profits;

(C) by directing any person having a contract with any agency of the Government, or any subcontractor thereunder, to withhold for the account of the United States from any amounts otherwise due from such person or such subcontractor to a contractor, or subcontractor, having excessive profits to be eliminated, and every such person or subcontractor receiving such direction shall withhold and pay over to the United States the amounts so required to be withheld;

(D) by recovery from the contractor or subcontractor, or from any person or subcontractor directed under subparagraph (C) to withhold for the account of the United States, through payment, repayment, credit, or suit any amount of such excessive profits realized by the contractor or subcontractor or directed under subparagraph (C) to be withheld for the account of the United States; or

(E) by any combination of these methods, as is deemed desirable.

(2) INTEREST.—Interest at the rate of 4 per centum per annum shall accrue and be paid on the amount of such excessive profits from the thirtieth day after the date of the order of the Board or from the date fixed for repayment by the agreement with the contractor or subcontractor to the date of repayment, and on amounts required to be withheld by any person or subcontractor

for the account of the United States pursuant to paragraph (1) (C), from the date payment is demanded by the Secretaries or any of them to the date of payment. When The Tax Court of the United States, under section 108, redetermines the amount of excessive profits received or accrued by a contractor or subcontractor, interest at the rate of 4 per centum per annum shall accrue and be paid by such contractor or subcontractor as follows:

(A) When the amount of excessive profits determined by the Tax Court is greater than the amount determined by the Board, interest shall accrue and be paid on the amount determined by the Board from the thirtieth day after the date of the order of the Board to the date of repayment and, in addition thereto, interest shall accrue and be paid on the additional amount determined by the Tax Court from the date of its order determining such excessive profits to the date of repayment.

(B) When the amount of excessive profits determined by the Tax Court is equal to the amount determined by the Board, interest shall accrue and be paid on such amount from the thirtieth day after the date of the order of the Board to the date of repayment.

(C) When the amount of excessive profits determined by the Tax Court is less than the amount determined by the Board, interest shall accrue and be paid on such lesser amount from the thirtieth day after the date of the order of the Board to the date of repayment, except that no interest shall accrue or be payable on such lesser amount if such lesser amount is not in excess of an amount which the contractor or subcontractor tendered in payment prior to the issuance of the order of the Board.

Notwithstanding the provisions of this paragraph, no interest shall accrue after three years from the date of filing a petition with the Tax Court pursuant to section 108 of this title in any case in which there has not been a final determination by the Tax Court with respect to such petition within such three-year period.

(3) SUITS FOR RECOVERY.—Actions on behalf of the United States may be brought in the appropriate courts of the United States to recover, (A) from the contractor or subcontractor, any amount of such excessive profits and accrued interest not withheld or eliminated by some other method under this subsection, and (B) from any person or subcontractor who has been directed under paragraph (1) (C) of this subsection to withhold for the account of the United States, the amounts required to be withheld under such paragraph, together with accrued interest thereon.

(4) SURETIES.—The surety under a contract or subcontract shall not be liable for the repayment of any excessive profits thereon.

(5) ASSIGNEES.—Nothing herein contained shall be construed (A) to authorize any Department or agency of the Government, except to the extent provided in the Assignment of Claims Act of 1940, as now or hereafter amended, to withhold from any assignee referred to in said Act, any moneys due or to become due, or to recover any moneys paid, to such assignee under any contract with any Department or agency where such moneys have been assigned

pursuant to such Act, or (B) to authorize any Department or agency of the Government to direct the withholding pursuant to this Act, or to recover pursuant to this Act, from any bank, trust company or other financing institution (including any Federal lending agency) which is an assignee under any subcontract, any moneys due or to become due or paid to any such assignee under such subcontract.

(6) INDEMNIFICATION.—Each person is hereby indemnified by the United States against all claims on account of amounts withheld by such person pursuant to this subsection from a contractor or subcontractor and paid over to the United States.

(7) TREATMENT OF RECOVERIES.—All money recovered by way of repayment or suit under this subsection shall be covered into the Treasury as miscellaneous receipts. Upon the withholding of any amount of excessive profits or the crediting of any amount of excessive profits against amounts otherwise due a contractor from appropriations from the Treasury, the Secretary shall certify the amount thereof to the Treasury and the appropriations of his Department shall be rendered by an amount equal to the amount so withheld or credited. The amount of such reductions shall be transferred to the surplus fund of the Treasury.

(8) CREDIT FOR TAXES PAID.—In eliminating excessive profits, the Secretary shall allow the contractor or subcontractor credit for Federal income and excess profits taxes as provided in section 3806 of the Internal Revenue Code.

(c) PERIODS OF LIMITATIONS.—[No] *In the absence of fraud or malfeasance or willful misrepresentation of a material fact, no* proceeding to determine the amount of excessive profits for any fiscal year shall be commenced more than one year after [the statement required] *a financial statement* under subsection (e) (1) of this section is filed with the Board with respect to such year, and, *in the absence of fraud or malfeasance or willful misrepresentation of a material fact,* if such proceeding is not commenced prior to the expiration of one year following the date upon which such statement is so filed, all liabilities of the contractor or subcontractor for excessive profits received or accrued during such fiscal year shall thereupon be discharged. If an agreement or order determining the amount of excessive profits is not made within two years following the commencement of the renegotiation proceeding, then, *in the absence of fraud or malfeasance or willful misrepresentation of a material fact,* upon the expiration of such two years all liabilities of the contractor or subcontractor for excessive profits with respect to which such proceeding was commenced shall thereupon be discharged, except that (1) if an order is made within such two years pursuant to a delegation of authority under subsection (d) of section 107, such two-year limitation shall not apply to review of such order by the Board, and (2) such two-year period may be extended by mutual agreement.

(d) AGREEMENTS TO ELIMINATE EXCESSIVE PROFITS.—For the purposes of this title the Board may make final or other agreements with a contractor or subcontractor for the elimination of excessive profits and for the discharge of any liability for excessive profits under this title. Such agreements may contain such terms and conditions as the Board deems advisable. Any such agreement shall be conclusive according to its terms; and, except upon a showing of fraud or malfeasance or a willful misrepresentation of a material fact, (1) such

agreement shall not for the purposes of this title be reopened as to the matters agreed upon, and shall not be modified by any officer, employee, or agent of the United States, and (2) such agreement and any determination made in accordance therewith shall not be annulled, modified, set aside, or disregarded in any suit, action, or proceeding. Notwithstanding any other provision of this title, however, the Board shall have the power, pursuant to regulations promulgated by it, to modify any agreement or order for the purpose of extending the time for payment of sums due under such agreement or order, and shall also have the power to set aside and declare null and void any such agreement if, upon a request made to the Board within three years from the date of such agreement, the Board finds as a fact that the aggregate of the amounts received or accrued by the other party to such agreement during the fiscal year covered by such agreement was not more than the minimum amounts subject to renegotiation specified in section 105 (f) for such fiscal year.

(e) INFORMATION AVAILABLE TO BOARD.—

(1) FURNISHING OF FINANCIAL STATEMENTS, ETC.—Every person who holds contracts or subcontracts, to which the provisions of this title are applicable, shall, in such form and detail as the Board may by regulations prescribe, file with the Board, on or before the first day of the [fourth] *fifth* calendar month following the close of this fiscal year, a financial statement setting forth such information as the Board may by regulations prescribe as necessary to carry out this title. [In addition to the statement required under the preceding sentence, every such person shall at such time or times and in such form and detail as the Board may by regulations prescribe, furnish the Board any information, records, or data which are determined by the Board to be necessary to carry out this title. Any person who willfully fails or refuses to furnish any statement, information, records, or data required of him under this subsection, or who knowingly furnishes any such statement, information, records, or data containing information which is false or misleading in any material respect, shall, upon conviction thereof, be punished by a fine of not more than $10,000 or imprisonment for not more than one year, or both.] *The preceding sentence shall not apply to any such person with respect to a fiscal year if the aggregate of the amounts received or accrued under such contracts and subcontracts during such fiscal year by him, and all persons under control of or controlling or under common control with him, is not more than the applicable amount prescribed in subsection (f) (1) or (2) of this section; but any person to whom this sentence applies may, if he so elects, file with the Board for such fiscal year a financial statement setting forth such information as the Board may by regulations prescribe as necessary to carry out this title. The Board may require any person who holds contracts or subcontracts to which the provisions of this title are applicable (whether or not such person has filed a financial statement under this paragraph) to furnish any information, records, or data which are determined by the Board to be necessary to carry out this title and which the Board specifically requests such person to furnish. Such information, records, or data may not be required with respect to any fiscal year after the date on which all liabilities of such person for excessive profits received or accrued during such fiscal year are discharged. Any person who willfully fails or*

refuses to furnish any statement, information, records, or data required of him under this subsection, or who knowingly furnishes any statement, information, records, or data pursuant to this subsection containing information which is false or misleading in any material respect, shall, upon conviction thereof, be punished by a fine of not more than $10,000 or imprisonment for not more than one year, or both.

(2) AUDIT OF BOOKS AND RECORDS.—For the purpose of this title, the Board shall have the right to audit the books and records of any contractor or subcontractor subject to this title. In the interest of economy and the avoidance of duplication of inspection and audit, the services of the Bureau of Internal Revenue shall, upon request of the Board and the approval of the Secretary of the Treasury, be made available to the extent determined by the Secretary of the Treasury for the purpose of making examinations and audits under this title.

(f) MINIMUM AMOUNTS SUBJECT TO RENEGOTIATION.—

(1) IN GENERAL.—If the aggregate of the amounts received or accrued during a fiscal year (and on or after the applicable effective date specified in section 102 (a)) by a contractor or subcontractor, and all persons under control of or controlling or under common control with the contractor or subcontractor, under contracts with the Departments and subcontracts described in section 103 (g) (1) and (2), is not more than $250,000, in the case of a fiscal year ending before June 30, 1953, or $500,000, in the case of a fiscal year ending on or after June 30, 1953, *or $1,000,000, in the case of a fiscal year ending after June 30, 1956,* the receipts or accruals from such contracts and subcontracts shall not, for such fiscal year, be renegotiated under this title. If the aggregate of such amounts received or accrued during the fiscal year under such contracts and subcontracts is more than $250,000, in the case of a fiscal year ending before June 30, 1953, or $500,000, in the case of a fiscal year ending on or after June 30, 1953, *or $1,000,000, in the case of a fiscal year ending after June 30, 1956,* no determination of excessive profits to be eliminated for such year with respect to such contracts and subcontracts shall be in an amount greater than the amount by which such aggregate exceeds $250,000, in the case of a fiscal year ending before June 30, 1953, or $500,000, in the case of a fiscal year ending on or after June 30, 1953, *or $1,000,000, in the case of a fiscal year ending after June 30, 1956.*

(2) SUBCONTRACTS DESCRIBED IN SECTION 103 (g) (3).—If the aggregate of the amounts received or accrued during a fiscal year (and on or after the applicable effective date specified in section 102 (a)) by a subcontractor, and all persons under control of or controlling or under common control with the subcontractor, under subcontracts described in section 103 (g) (3) is not more than $25,000, the receipts or accruals from such subcontracts shall not, for such fiscal year, be renegotiated under this title. If the aggregate of such amounts received or accrued during the fiscal year under such subcontracts is more than $25,000, no determination of excessive profits to be eliminated for such year with respect to such subcontracts shall be in an amount greater than the amount by which such aggregate exceeds $25,000.

(3) COMPUTATION.—In computing the aggregate of the amounts received or accrued during any fiscal year for the purposes of

[paragraphs (1) and (2)] *paragraph (1)* of this subsection, there shall be eliminated all amounts received or accrued by a contractor or subcontractor from all persons under control of or controlling or under common control with the contractor or subcontractor and all amounts received or accrued by each such person from such contractor or subcontractor and from each other such person. If the fiscal year is a fractional part of twelve months, the $250,000 amount, the $500,000 amount, *the $1,000,000 amount,* and the $25,000 amount shall be reduced to the same fractional part thereof of the purposes of paragraphs (1) and (2). In the case of a fiscal year beginning in 1950 and ending in 1951, the $250,000 amount and the $25,000 amount shall be reduced to an amount which bears the same ratio to $250,000 or $25,000, as the case may be, as the number of days in such fiscal year after December 31, 1950, bears to 365, but this sentence shall have no application if the contractor or subcontractor has made an agreement with the Board pursuant to section 102 (c) for the application of the provisions of this title to receipts or accruals prior to January 1, 1951, during such fiscal year. *In the case of a fiscal year beginning on or before the termination date and ending after the termination date, the $1,000,000 amount and the $25,000 amount shall be reduced to an amount which bears the same ratio to $1,000,000 or $25,000, as the case may be, as the number of days in such fiscal year before the close of the termination date bears to 365.*

SEC. 106. EXEMPTIONS.

(a) MANDATORY EXEMPTIONS.—The provisions of this title shall not apply to—

(1) any contract by a Department with any Territory, possession, or State, or any agency or political subdivision thereof, or with any foreign government or any agency thereof; or

(2) any contract or subcontract for an agricultural commodity in its raw or natural state, or if the commodity is not customarily sold or has not an established market in its raw or natural state, in the first form or state, beyond the raw or natural state, in which it is customarily sold or in which it has an established market. The term "agricultural commodity" as used herein shall include but shall not be limited to—

(A) commodities resulting from the cultivation of the soil such as grains of all kinds, fruits, nuts, vegetables, hay, straw, cotton, tobacco, sugarcane, and sugar beets;

(B) natural resins, saps, and gums of trees;

(C) animals, such as cattle, hogs, poultry, and sheep, fish and other marine life, and the produce of live animals, such as wool, eggs, milk and cream; or

(3) any contract or subcontract for the product of a mine, oil or gas well, or other mineral or natural deposit, or timber, which has not been processed, refined, or treated beyond the first form or state suitable for industrial use; or

(4) any contract or subcontract with a common carrier for transportation, or with a public utility for gas, electric energy, water, communications, or transportation, when made in either case at rates not in excess of published rates or charges filed with, fixed, approved, or regulated by a public regulatory body, State

Federal, or local, or at rates not in excess of unregulated rates of such a public utility which are substantially as favorable to users and consumers as are regulated rates. In the case of the furnishing or sale of transportation by common carrier by water, this paragraph shall apply only to such furnishing or sale which is subject to the jurisdiction of the Interstate Commerce Commission under Part III of the Interstate Commerce Act or subject to the jurisdiction of the Federal Maritime Board under the Intercoastal Shipping Act, 1933, and to such furnishing or sale in any case in which the Board finds that the regulatory aspects of rates for such furnishing or sale, or the type and nature of the contract for such furnishing or sale, are such as to indicate, in the opinion of the Board, that excessive profits are improbable; or

(5) any contract or subcontract with an organization exempt from taxation under section 101 (6) of the Internal Revenue Code, but only if the income from such contract or subcontract is not includible under section 422 of such code in computing the unrelated business net income of such organization; or

(6) any contract which the Board determines does not have a direct and immediate connection with the national defense. The Board shall prescribe regulations designating those classes and types of contracts which shall be exempt under this paragraph; and the Board shall, in accordance with regulations prescribed by it, exempt any individual contract not falling within any such class or type if it determines that such contract does not have a direct and immediate connection with the national defense. In designating those classes and types of contracts which shall be exempt and in exempting any individual contract under this paragraph, the Board shall consider as not having a direct or immediate connection with national defense any contract for the furnishing of materials or services to be used by the United States, a Department or agency thereof, in the manufacture and sale of synthetic rubbers to a private person or to private persons which are to be used for nondefense purposes. If the use by such private person or persons shall be partly for defense and partly for nondefense purposes, the Board shall consider as not having a direct or immediate connection with national defense that portion of the contract which is determined not to have been used for national defense purposes. The method used in making such determination shall be subject to approval by the Board. Notwithstanding section 108 of this title, regulations prescribed by the Board under this paragraph, and any determination of the Board that a contract is or is not exempt under this paragraph, shall not be reviewed or redetermined by the Tax Court or by any other court or agency; or

(7) any subcontract directly or indirectly under a contract or subcontract to which this title does not apply by reason of any paragraph, other than paragraph [(8)] *(1), (5), or (8)*, of this subsection; or

[(8) any contract or subcontract for the making or furnishing of a standard commercial article or a standard commercial service, unless the Board makes a specific finding that competitive conditions affecting the sale of such article or such service are such as will not reasonably prevent excessive profits. This paragraph

shall apply to any such contract or subcontract only if (1) the contractor or subcontractor files, at such time and in such form and detail as the Board shall by regulations prescribe, such information and data as may be required by the Board under its regulations for the purpose of enabling it to reach a decision with respect to the making of a specific finding under this paragraph, and (2) within a period of six months after the date of filing of such information and data, the Board fails to make a specific finding that competitive conditions affecting the sale of such article or such service are such as will not reasonably prevent excessive profits, or (3) within such six-month period, the Board makes a specific finding that competitive conditions affecting the sale of such article or such service are such as will reasonably prevent excessive profits. Any contractor or subcontractor may waive the exemption provided in this paragraph with respect to receipts or accruals in any fiscal year by including a statement to such effect in the financial statement filed by such contractor or subcontractor for such fiscal year pursuant to section 105 (e) (1). Any specific finding of the Board under this paragraph shall not be reviewed or redetermined by any court or agency other than by the Tax Court of the United States in a proceeding for a redetermination of the amount of excessive profits determined by an order of the Board. For the purpose of this paragraph—

[(A) the term "article" includes any material, part, component, assembly, machinery, equipment, or other personal property;

[(B) the term "standard commercial article" means an article—

[(1) which, in the normal course of business, is customarily manufactured for stock, and is customarily maintained in stock by the manufacturer or any dealer, distributor, or other commercial agency for the marketing of such article; or

[(2) which is manufactured and sold by more than two persons for general civilian industrial or commercial use, or which is identical in every material respect with an article so manufactured and sold;

[(C) the term "identical in every material respect" means of the same kind, manufactured of the same or substitute materials, and having the same industrial or commercial use or uses, without necessarily being of identical specifications;

[(D) the term "service" means any processing or other operation performed by chemical, electrical, physical, or mechanical methods directly on materials owned by another person;

[(E) the term "standard commercial service" means a service which is customarily performed by more than two persons for general civilian industrial or commercial requirements, or is reasonably comparable with a service so performed;

[(F) the term "reasonably comparable" means of the same or a similar kind, performed with the same or similar materials, and having the same or a similar result, without necessarily involving identical operations; and

[(G) the term "persons" does not include any person under control of, or controlling, or under common control with any other person considered for the purposes of subparagraph (B) (2) of this paragraph; or]

(9) any contract, awarded as a result of competitive bidding, for the construction of any building, structure, improvement, or facility, other than a contract for the construction of housing financed with a mortgage or mortgages insured under the provisions of title VIII of the National Housing Act, as now or hereafter amended.

(b) COST ALLOWANCE.—In the case of a contractor or subcontractor who produces or acquires the product of a mine, oil or gas well, or other mineral or natural deposit, or timber, and processes, refines, or treats such a product to and beyond the first form or state suitable for industrial use, or who produces or acquires an agricultural product and processes, refines, or treats such a product to and beyond the first form or state in which it is customarily sold or in which it has an established market, the Board shall prescribe such regulations as may be necessary to give such contractor or subcontractor a cost allowance substantially equivalent to the amount which would have been realized by such contractor or subcontractor if he had sold such product at such first form or state. Notwithstanding any other provisions of this title, there shall be excluded from consideration in determining whether or not a contractor or subcontractor has received or accrued excessive profits that portion of the profits, derived from receipts and accruals subject to the provisions of this title, attributable to the increment in value of the excess inventory. For the purposes of this subsection the term "excess inventory" means inventory of products, hereinbefore described in this subsection, acquired by the contractor or subcontractor in the form or at the state in which contracts for such products on hand or on contract would be exempted from this title by subsection (a) (2), or (3) of this section, which is in excess of the inventory reasonably necessary to fulfill existing contracts or orders. That portion of the profits, derived from receipts and accruals subject to the provisions of this title, attributable to the increment in value of the excess inventory, and the method of excluding such portion of profits from consideration in determining whether or not the contractor or subcontractor has received or accrued excessive profits, shall be determined in accordance with regulations prescribed by the Board.

(c) PARTIAL MANDATORY EXEMPTION FOR DURABLE PRODUCTIVE EQUIPMENT.—

(1) IN GENERAL.—The provisions of this title shall not apply to receipts or accruals (other than rents) from contracts or subcontracts for new durable productive equipment, except (A) to that part of such receipts or accruals which bears the same ratio to the total of such receipts or accruals as five years bears to the average useful life of such equipment as set forth in Bulletin F of the Bureau of Internal Revenue (1942 edition) or, if an average useful life is not so set forth, then as estimated by the Board and (B) to receipts and accruals from contracts for new durable productive equipment in cases in which the Board finds that the new durable productive equipment covered by such contracts cannot be adapted, converted, or retooled for commercial use.

(2) DEFINITION.—For the purpose of this subsection, the term "durable productive equipment" means machinery, tools, or other productive equipment which has an average useful life of more than five years.

(d) PERMISSIVE EXEMPTIONS.—The Board is authorized, in its discretion, to exempt from some or all of the provisions of this title—

(1) any contract or subcontract to be performed outside of the territorial limits of the continental United States or in Alaska;

(2) any contracts or subcontracts under which, in the opinion of the Board, the profits can be determined with reasonable certainty when the contract price is established, such as certain classes of (A) agreements for personal services or for the purchase of real property, perishable goods, or commodities the minimum price for the sale of which has been fixed by a public regulatory body, (B) leases and license agreements, and (C) agreements where the period of performance under such contract or subcontract will not be in excess of thirty days;

(3) any contract or subcontract or performance thereunder during a specified period or periods if, in the opinion of the Board, the provisions of the contract are otherwise adequate to prevent excessive profits;

(4) any contract or subcontract the renegotiation of which would jeopardize secrecy required in the public interest;

(5) any subcontract or group of subcontracts not otherwise exempt from the provisions of this section, if, in the opinion of the Board, it is not administratively feasible in the case of such subcontract or in the case of such group of subcontracts to determine and segregate the profits attributable to such subcontract or group of subcontracts from the profits attributable to activities not subject to renegotiation.

The Board may so exempt contracts and subcontracts both indivually and by general classes or types.

(e) MANDATORY EXEMPTION FOR STANDARD COMMERCIAL ARTICLES AND SERVICES.—

(1) ARTICLES AND SERVICES.—The provisions of this title shall not apply to amounts received or accrued in a fiscal year under any contract or subcontract for an article or service which (with respect to such fiscal year) is—

(A) a standard commercial article;

(B) an article which is identical in every material respect with a standard commercial article; or

(C) a service which is a standard commercial service or is reasonably comparable with a standard commercial service.

(2) CLASSES OF ARTICLES.—The provisions of this title shall not apply to amounts received or accrued in a fiscal year under any contract or subcontract for an article which (with respect to such fiscal year) is an article in a standard commercial class of articles.

(3) APPLICATIONS.—Paragraphs (1) (B) or (C) and paragraph (2) shall apply to amounts received or accrued in a fiscal year under any contract or subcontract for an article or service only if—

(A) the contractor or subcontractor at his election files, at such time and in such form and detail as the Board shall by regulations prescribe, an application containing such information and data as may be required by the Board under its regula-

tions for the purpose of enabling it to make a determination under the applicable paragraph, and

(B) the Board determines that such article or service is, or fails to determine that such article or service is not, an article or service to which such paragraph applies, within the following periods after the date of filing such application:

(i) in the case of paragraph (1) (B) or (C), three months;

(ii) in the case of paragraph (2), six months; or

(iii) in either case, any longer period stipulated by mutual agreement.

(4) DEFINITIONS.—For the purposes of this subsection—

(A) the term "article" includes any material, part, component, assembly, machinery, equipment, or other personal property;

(B) the term "standard commercial article" means, with respect to any fiscal year, an article—

(i) which either is customarily maintained in stock by the contractor or subcontractor or is offered for sale in accordance with a price schedule regularly maintained by the contractor or subcontractor, and

(ii) from the sales of which by the contractor or subcontractor at least 35 percent of the receipts or accruals in such fiscal year, or of the aggregate receipts or accruals in such fiscal year and the preceding fiscal year, are not (without regard to this subsection and subsection (c) of this section) subject to this title;

(C) an article is, with respect to any fiscal year, "idential in every material respect with a standard commercial article" only if—

(i) such article is of the same kind and manufactured of the same or substitute materials (without necessarily being of identical specifications) as a standard commercial article from sales of which the contractor or subcontractor has receipts or accruals in such fiscal year,

(ii) such article is sold at a price which is reasonably comparable with the price of such standard commercial article, and

(iii) at least 35 percent of the aggregate receipts or accruals in such fiscal year by the contractor or subcontractor from sales of such article and sales of such standard commercial article are not (without regard to this subsection and subsection (c) of this section) subject to this title;

(D) the term "service" means any processing or other operation performed by chemical, electrical, physical, or mechanical methods directly or materials owned by another person;

(E) the term "standard commercial service" means, with respect to any fiscal year, a service from the performance of which by the contractor or subcontractor at least 35 percent of the receipts or accruals in such fiscal year are not (without regard to this subsection) subject to this title;

(F) a service is, with respect to any fiscal year, "reasonably comparable with a standard commercial service" only if—

(i) such service is of the same or a similar kind, performed with the same or similar materials, and has the same or a similar result, without necessarily involving identical operations, as a standard commercial service from the performance of which the contractor or subcontractor has receipts or accruals in such fiscal year, and

(ii) at least 35 percent of the aggregate receipts or accruals in such fiscal year by the contractor or subcontractor from the performance of such service and such standard commercial service are not (without regard to this subsection) subject to this title, and

(G) the term "standard commercial class of articles" means, with respect to any fiscal year, two or more articles with respect to which the following conditions are met:

(i) at least one of such articles either is customarily maintained in stock by the contractor or subcontractor or is offered for sale in accordance with a price schedule regularly maintained by the contractor or subcontractor,

(ii) all of such articles are of the same kind and manufactured of the same or substitute materials (without necessarily being of identical specifications),

(iii) all of such articles are sold at reasonably comparable prices, and

(iv) at least 35 percent of the aggregate receipts or accruals in the fiscal year by the contractor or subcontractor from sales of all of such articles are not (without regard to this subsection and subsection (c) of this section) subject to this title.

(5) WAIVER OF EXEMPTION.—Any contractor or subcontractor may waive the exemption provided in paragraphs (1) and (2) with respect to his receipts or accruals in any fiscal year from sales of any article or service by including a statement to such effect in the financial statement filed by him for such fiscal year pursuant to section 105 (e) (1), without necessarily waiving such exemption with respect to receipts or accruals in such fiscal year from sales of any other article or service. A waiver, if made, shall be unconditional, and no waiver may be made without the permission of the Board for any receipts or accruals with respect to which the contractor or subcontractor has previously filed an application under paragraph (3).

(6) NONAPPLICABILITY DURING NATIONAL EMERGENCIES.—Paragraphs (1) and (2) shall not apply to amounts received or accrued during a national emergency proclaimed by the President, or declared by the Congress, after the date of the enactment of the Renegotiation Amendments Act of 1956.

SEC. 107. RENEGOTIATION BOARD.

(a) CREATION OF BOARD.—There is hereby created, as an independent establishment in the executive branch of the Government, a Renegotiation Board to be composed of five members to be appointed by the President, by and with the advice and consent of the Senate. The Secretaries of the Army, the Navy, and the Air Force, respectively, subject to the approval of the Secretary of Defense, and the

Administrator of General Services shall each recommend to the President, for his consideration, one person from civilian life to serve as a member of the Board. The President shall, at the time of appointment, designate one member to serve as Chairman. The Chairman shall receive compensation at the rate of $17,500 per annum, and the other members shall receive compensation at the rate of $15,000 per annum. No member shall actively engage in any business, vocation, or employment other than as a member of the Board. The Board shall have a seal which shall be judicially noticed.

(b) PLACES OF MEETINGS AND QUORUM.—The principal office of the Board shall be in the District of Columbia, but it or any division thereof may meet and exercise its powers at any other place. The Board may establish such number of offices as it deems necessary to expedite the work of the Board. Three members of the Board shall constitute a quorum, and any power, function, or duty of the Board may be exercised or performed by a majority of the members present if the members present constitute at least a quorum.

(c) PERSONNEL.—The Board is authorized, subject to the Classification Act of 1949 [(but without regard to the civil-service laws and regulations)] *and the civil-service laws and regulations*, to employ and fix the compensation of such officers and employees as it deems necessary to assist it in carrying out its duties under this title. The Board may, with the consent of the head of the agency of the Government concerned, utilize the services of any officers or employees of the United States, and reimburse such agency for the services so utilized. Officers or employees whose services are so utilized shall not receive additional compensation for such services, but shall be allowed and paid necessary travel expenses and a per diem in lieu of subsistence in accordance with the Standardized Government Travel Regulations while away from their homes or official station on duties of the Board.

(d) DELEGATION OF POWERS.—The Board may delegate in whole or in part any function, power, or duty (other than its power to promulgate regulations and rules and other than its power to grant permissive exemptions under section 106 (d)) to any agency of the Government, including any such agency established by the Board, and may authorize the successive redelegation, within limits specified by it, of any such function, power, or duty to any agency of the Government, including any such agency established by the Board. But no function, power, or duty shall be delegated or redelegated to any person pursuant to this subsection or subsection (f) unless the Board has determined that such person (other than the Secretary of a Department) is responsible directly to the Board or to the person making such delegation or redelegation and is not engaged on behalf of any Department in the making of contracts for the procurement of supplies or services, or in the supervision of such activity; and any delegation or redelegation of any function, power, or duty pursuant to this subsection or subsection (f) shall be revoked by the person making such delegation or redelegation (or by the Board if made by it) if the Board shall at any time thereafter determine that the person (other than the Secretary of a Department) to whom has been delegated or

redelegated such function, power or duty is not responsible directly to the Board or to the person making such delegation or redelegation or is engaged on behalf of any Department in the making of contracts for the procurement of supplies or services, or in the supervision of such activity.

(e) ORGANIZATION AND OPERATION OF BOARD.—The Chairman of the Board may from time to time divide the Board into divisions of one or more members, assign the members of the Board thereto, and in case of a division of more than one member, designate the chief thereof. The Board may also, by regulations or otherwise, determine the character of cases to be conducted initially by the Board through an officer or officers of, or utilized by, the Board, the character of cases to be conducted initially by the various agencies of the Government authorized to exercise powers of the Board pursuant to subsection (d) of this section, the character of cases to be conducted initially by the various divisions of the Board, and the character of cases to be conducted initially by the Board itself. The Board may review any determination in any case not initially conducted by it, on its own motion or, in its discretion, at the request of any contractor or subcontractor aggrieved thereby. Unless the Board upon its own motion initiates a review of such determination within ninety days from the date of such determination, or at the request of the contractor or subcontractor made within ninety days from the date of such determination initiates a review of such determination within ninety days from the date of such request, such determination shall be deemed the determination of the Board. If such determination was made by an order with respect to which notice thereof was given by registered mail pursuant to section 105 (a), the Board shall give notice by registered mail to the contractor or subcontractor of its decision not to review the case. If the Board reviews any determination in any case not initially conducted by it and does not make an agreement with the contractor or subcontractor with respect to the elimination of excessive profits, it shall issue and enter an order under section 105 (a) determining the amount, if any, of excessive profits, and forthwith give notice thereof by registered mail to the contractor or subcontractor. The amount of excessive profits so determined upon review may be less than, equal to, or greater than, that determined by the agency of the Government whose action is so reviewed.

(f) DELEGATION OF RENEGOTIATION FUNCTIONS TO BOARD.—The Board is hereby authorized and directed to accept and perform such renegotiation powers, duties, and functions as may be delegated to it under any other law requiring or permitting renegotiation, and the Board is further authorized to redelegate any such power, duty, or function to any agency of the Government and to authorize successive redelegations thereof, within limits specified by the Board. Notwithstanding any other provision of law, the Secretary of Defense is hereby authorized to delegate to the Board, in whole or in part, the powers, functions, and duties conferred upon him by any other renegotiation law.

SEC. 108. REVIEW BY THE TAX COURT.

Any contractor or subcontractor aggrieved by an order of the Board determining the amount of excessive profits received or accrued by such contractor or subcontractor may—

(a) if the case was conducted initially by the Board itself—within ninety days (not counting Sunday or a legal holiday in the District of Columbia as the last day) after the mailing under section 105 (a) of the notice of such order, or

(b) if the case was not conducted initially by the Board itself—within ninety days (not counting Sunday or a legal holiday in the District of Columbia as the last day) after the mailing under section 107 (c) of the notice of the decision of the Board not to review the case or the notice of the order of the Board determining the amount of excessive profits,

file a petition with The Tax Court of the United States for a redetermination thereof. Upon such filing such court shall have exclusive jurisdiction, by order, to finally determine the amount, if any, of such excessive profits received or accrued by the contractor or subcontractor, and such determination shall not be reviewed or redetermined by any court or agency. The court may determine as the amount of excessive profits an amount either less than, equal to, or greater than that determined by the Board. A proceeding before the Tax Court to finally determine the amount, if any, of excessive profits shall not be treated as a proceeding to review the determination of the Board, but shall be treated as a proceeding de novo. For the purposes of this section the court shall have the same powers and duties, insofar as applicable in respect of the contractor, the subcontractor, the Board, and the Secretary, and in respect of the attendance of witnesses and the production of papers, notice of hearings, hearings before divisions, review by the Tax Court of decisions of divisions, stenographic reporting, and reports of proceedings, as such court has under sections 1110, 1111, 1113, 1114, 1115 (a), 1116, 1117 (a), 1118, 1120, and 1121 of the Internal Revenue Code in the case of a proceeding to redetermine a deficiency. In the case of any witness for the Board, the fees and mileage, and the expenses of taking any deposition shall be paid out of appropriations of the Board available for that purpose, and in the case of any other witnesses shall be paid, subject to rules prescribed by the court, by the party at whose instance the witness appears or the deposition is taken. The filing of a petition under this section shall operate to stay the execution of the order of the Board under subsection (b) of section 105 *only* if within ten days after the filing of the petition the petitioner files with the Tax Court a good and sufficient bond, approved by such court, in such amount as may be fixed by the court. Any amount collected by the United States under an order of the Board in excess of the amount found to be due under a determination of excessive profits by the Tax Court shall be refunded to the contractor or subcontractor with interest thereon at the rate of 4 per centum per annum from the date of collection by the United States to the date of refund.

SEC. 108A. VENUE OF APPEALS FROM TAX COURT DECISIONS IN RENEGOTIATION CASES.

A decision of the Tax Court of the United States under section 108 of this Act may, to the extent subject to review, be reviewed by—

(1) the United States Court of Appeals for the circuit in which is located the office to which the contractor or subcontractor made his Federal income-tax return for the taxable year which corresponds to the fiscal year with respect to which such decision of the Tax Court was made, or if no such return was made for such taxable year, then by the United States Court of Appeals for the District of Columbia, or

(2) any United States Court of Appeals designated by the Attorney General and the contractor or subcontractor by stipulation in writing.

SEC. 109. RULES AND REGULATIONS.

The Board may make such rules, regulations, and orders as it deems necessary or appropriate to carry out the provisions of this title.

SEC. 110. COMPLIANCE WITH REGULATIONS, ETC.

No person shall be held liable for damages or penalties for any act or failure to act resulting directly or indirectly from his compliance with a rule, regulation, or order issued pursuant to this title, notwithstanding that any such rule, regulation, or order shall thereafter be declared by judicial or other competent authority to be invalid.

SEC. 111. APPLICATION OF ADMINISTRATIVE PROCEDURE ACT.

The functions exercised under this title shall be excluded from the operation of the Administrative Procedure Act (60 Stat. 237) except as to the requirements of section 3 thereof.

SEC. 112. APPROPRIATIONS.

There are hereby authorized to be appropriated such sums as may be necessary and appropriate for the carrying out of the provisions and purposes of this title. Funds made available for the purposes of this title may be allocated or transferred for any of the purposes of this title, with the approval of the Bureau of the Budget to any agency of the Government designated to assist in carrying out this title. Funds so allocated or transferred shall remain available for such period as may be specified in the Acts making such funds available.

SEC. 113. PROSECUTION OF CLAIMS AGAINST UNITED STATES BY FORMER PERSONNEL.

Nothing in title 18, United States Code, sections 281 and 283, or in section 190 of the Revised Statutes (U. S. C., title 5, sec. 99) shall be deemed to prevent any person by reason of service in a Department or the Board [during the period (or a part thereof) beginning July 1, 1950, and ending December 31, 1953,] from acting as counsel, agent, or attorney for prosecuting any claim against the United States: *Provided*, That such person shall not prosecute any claim against the United States (1) involving any subject matter directly connected with which such person was so employed, or (2) during the period such person is engaged in employment in a Department or the Board.

SEC. 114. REPORTS TO CONGRESS.

The Board shall on or before January 1, 1957, and on or before January 1 of each year thereafter, submit to the Congress a complete report of its activities for the preceding year ending on June 30. Such report shall include—

(1) the number of persons in the employment of the Board during such year, and the places of their employment;

(2) the administrative expenses incurred by the Board during such year;

(3) statistical data relating to filings during such year by contractors and subcontractors, and to the conduct and disposition during such year of proceedings with respect to such filings and filings made during previous years;

(4) an explanation of the principal changes made by the Board during such year in its regulations and operating procedures;

(5) the number of renegotiation cases disposed of by the Tax Court, each United States Court of Appeals, and the Supreme Court during such year, and the number of cases pending in each such court at the close of such year; and

(6) such other information as the Board deems appropriate.

TITLE II—MISCELLANEOUS PROVISIONS

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