

§ 1110. Insured banks as depositaries of public money; duties; security; discrimination between banks prohibited; repeal of inconsistent laws.

#### CODIFICATION

Section has been transferred to section 265 of Title 12, Banks and Banking.

§ 1111. Construction with other laws and Executive Orders.

#### CODIFICATION

Section, act June 11, 1942, ch. 404, § 11, 56 Stat. 357, was dependent upon former sections 1101—1103 of this Appendix and was omitted as those sections were omitted upon termination of the War Production Board.

§ 1112. Repealed. July 25, 1947, ch. 327, § 1, 61 Stat. 449.

Section, act June 11, 1942, ch. 404, § 12, 56 Stat. 357, related to suspension of the anti-trust laws.

#### OUTSTANDING CERTIFICATES

Joint Res. July 25, 1947, ch. 327, § 1, 61 Stat. 449, repealing this section, provided that outstanding certificates issued under this former section should continue in effect for a period of six months from July 25, 1947, unless sooner revoked.

### WAR AND DEFENSE CONTRACT ACTS

Sec. ACT JUNE 28, 1940

1151. Advance and partial payments on defense contracts; lien on payments.
1152. Contracts for acquisition, construction and repair of naval vessels, aircraft, and equipment therefor.
- (a) (1) Negotiation authorized; priority; of deliveries; open market purchases; bond; limitation of contractor's fee.
  - (2) Material entitled to priority in delivery.
  - (3) Inspection of records and property; investigations.
  - (4) Attendance of witnesses; production of evidence; fees; privilege of witnesses; disclosure of information.
  - (5) Penalties for violations.
  - (6) Jurisdiction of courts; venue of proceedings; service of process; costs.
  - (7) Liability for default on contract or orders.
  - (8) Exercise of powers by President.
  - (9) Injunction proceedings; jurisdiction; venue.
- (b) Expired.
- 1153—1162. Omitted.

ACT JULY 2, 1940

1171, 1172. Repealed.

ACT JULY 17, 1953

1173. Construction authority for the Armed Forces.
1174. Same; activity reports by Secretary of Defense.
1175. Same; application to section 551 of Title 40.

ACT JULY 11, 1941

1181. Repealed.

ACT APR. 28, 1942

1191. Renegotiation of contracts; determination and recovery of excess profits.
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  - (b) Provisions required to be inserted in contracts in excess of \$100,000.
  - (c) Renegotiation of contract price on determination of excess profits; notice of renegotiation; conclusiveness of Board's order; withholding of amounts due contractors; actions by United States; limitations; agreements with contractors; filing of financial statements; powers of Board; Bureau of Internal Revenue services available; contracts included.
  - (d) Abolished.

Sec.

1191. Renegotiation of contracts; determination and recovery of excess profits—Continued
- (e) Petition for redetermination; limitation; jurisdiction of the Tax Court; powers and duties of court; payment of fees and expenses; finality of determination.
  - (f) Repricing of war contracts.
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  - (h) Profits affected; termination date.
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ACT FEB. 25, 1944

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  - (f) Publication of regulations, standards, and procedures.
  - (g) Delegation of powers and duties of Secretary of Defense.
  - (h) Penalties.
  - (i) Short title.

ACT DEC. 17, 1942

1201. Acquisition and operation of buildings and facilities by Secretary of Navy.

ACT MAR. 23, 1951

#### TITLE I.—RENEGOTIATION OF CONTRACTS

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## CROSS REFERENCES

"Defense contractor" defined, see section 50 of Title 41, Public Contracts.

Honorable discharge from land and naval forces as substitute for birth certificate required for defense employment, see section 49 of Title 41, Public Contracts.

National defense contracts as exempt from certain provisions of law, see sections 1431—1435 of Title 50, War and National Defense.

ACT JUNE 28, 1940, CH. 440, 54 STAT. 676

## § 1151. Advance and partial payments on defense contracts; lien on payments.

## CODIFICATION

Section, act June 28, 1940, ch. 440, title I, § 1, 54 Stat. 676, terminated June 30, 1942, under former section 1162 of this Appendix. Notwithstanding such termination, a provision of this section concerning reports to Congress was repealed by act Aug. 7, 1946, ch. 770, § 1 (25), 60 Stat. 868. Advance payments on government contracts are now covered by section 255 of Title 41, Public Contracts and sections 1431—1435 of Title 50, War and National Defense.

## § 1152. Contracts for acquisition, construction and repair of naval vessels, aircraft, and equipment therefor.

- (a) (1) Negotiation authorized; priority of deliveries; open market purchases; bond; limitation of contractor's fee.

Whenever deemed by the President of the United States to be in the best interests of the national defense during the national emergency declared

by the President on September 8, 1939, to exist, the Secretary of the Navy is authorized to negotiate contracts for the acquisition, construction, repair, or alteration of complete naval vessels or aircraft, or any portion thereof, including plans, spare parts, and equipment therefor, that have been or may be authorized, and also for machine tools and other similar equipment, with or without advertising or competitive bidding upon determination that the price is fair and reasonable. Deliveries of material under all orders placed pursuant to the authority of this paragraph and all other naval contracts or orders and deliveries of material under all Army contracts or orders shall, in the discretion of the President, take priority over all deliveries for private account or for export: *Provided*, That contracts negotiated pursuant to the provisions of this paragraph shall not be deemed to be contracts for the purchase of such materials, supplies, articles, or equipment as may usually be bought in the open market within the meaning of section 9 of the Act entitled "An Act to provide conditions for the purchase of supplies and the making of contracts by the United States, and for other purposes", approved June 30, 1936 (49 Stat. 2036; 41 U. S. C. §§ 35—45): *Provided further*, That nothing herein contained shall relieve a bidder or contractor of the obligation to furnish the bonds under the requirements of the Act of August 24, 1935 (49 Stat. 793; 40 U. S. C. § 270 (a)—(d)): *Provided further*, That the cost-plus-a-percentage-of-cost system of contracting shall not be used under the authority granted by this paragraph to negotiate contracts; but this proviso shall not be construed to prohibit the use of the cost-plus-a-fixed-fee form of contract when such use is deemed necessary by the Secretary of the Navy: *And provided further*, That the fixed fee to be paid the contractor as a result of any contract entered into under the authority of this paragraph, or any Department of the Army contract entered into in the form of cost-plus-a-fixed-fee, shall not exceed 7 per centum of the estimated cost of the contract (exclusive of the fee as determined by the Secretary of the Navy or the Secretary of the Army, as the case may be).

## (2) Material entitled to priority in delivery.

Deliveries of material to which priority may be assigned pursuant to paragraph (1) shall include, in addition to deliveries of material under contracts or orders of the Army or Navy, deliveries of material under—

(A) Contracts or orders for the government of any country whose defense the President deems vital to the defense of the United States under the terms of the Act of March 11, 1941, entitled "An Act to promote the defense of the United States" [sections 411—419 of Title 22];

(B) Contracts or orders which the President shall deem necessary or appropriate to promote the defense of the United States;

(C) Subcontracts or suborders which the President shall deem necessary or appropriate to the fulfillment of any contract or order as specified in this subsection.

Deliveries under any contract or order specified in this subsection may be assigned priority over

deliveries under any other contract or order; and the President may require acceptance of and performance under such contracts or orders in preference to other contracts or orders for the purpose of assuring such priority. Whenever the President is satisfied that the fulfillment of requirements for the defense of the United States will result in a shortage in the supply of any material or of any facilities for defense or for private account or for export, the President may allocate such material or facilities in such manner, upon such conditions and to such extent as he shall deem necessary or appropriate in the public interest and to promote the national defense.

**(3) Inspection of records and property; investigations.**

The President shall be entitled to obtain such information from, require such reports and the keeping of such records by, make such inspection of the books, records, and other writings, premises or property of, any person (which, for the purpose of this subsection, shall include any individual, partnership, association, business trust, corporation, or any organized group of persons, whether incorporated or not), and make such investigations, as may be necessary or appropriate, in his discretion, to the enforcement or administration of the provisions of this subsection.

**(4) Attendance of witnesses; production of evidence; fees; privilege of witnesses; disclosure of information.**

For the purpose of obtaining any information, verifying any report required, or making any investigation pursuant to paragraph (3) of this subsection, the President may administer oaths and affirmations, and may require by subpoena or otherwise the attendance and testimony of witnesses and the production of any books or records or any other documentary or physical evidence which may be relevant to the inquiry. Such attendance and testimony of witnesses and the production of such books, records, or other documentary or physical evidence may be required at any designated place from any State, Territory, or other place subject to the jurisdiction of the United States: *Provided*, That the production of a person's books, records, or other documentary evidence shall not be required at any place other than the place where such person resides or transacts business, if, prior to the return date specified in the subpoena issued with respect thereto, such person furnishes the President with a true copy of such books, records, or other documentary evidence (certified by such person under oath to be a true and correct copy) or enters into a stipulation with the President as to the information contained in such books, records, or other documentary evidence. Witnesses shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. No person shall be excused from attending and testifying or from producing any books, records, or other documentary evidence or certified copies thereof or physical evidence in obedience to any such subpoena, or in any action or proceeding which may be instituted under this subsection, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or for-

feiture; but no individual shall be subject to prosecution and punishment or to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled to testify or produce evidence, documentary or otherwise, after having claimed his privilege against self-incrimination, except that any such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying. The President shall not publish or disclose any information obtained under this paragraph which the President deems confidential or with reference to which a request for confidential treatment is made by the person furnishing such information, unless the President determines that the withholding thereof is contrary to the interest of the national defense and security; and anyone violating this provision shall be guilty of a felony and upon conviction thereof shall be fined not exceeding \$1,000, or be imprisoned not exceeding two years, or both.

**(5) Penalties for violation.**

Any person who willfully performs any act prohibited, or willfully fails to perform any act required by, any provision of this subsection or any rule, regulation, or order thereunder, whether heretofore or hereafter issued, shall be guilty of a misdemeanor, and shall, upon conviction, be fined not more than \$10,000 or imprisoned for not more than one year, or both.

**(6) Jurisdiction of courts; venue of proceedings; service of process; costs.**

The district courts of the United States and the United States courts of any Territory or other place subject to the jurisdiction of the United States shall have jurisdiction of violations of this subsection or any rule, regulation, or order or subpoena thereunder, whether heretofore or hereafter issued, and of all civil actions under this subsection to enforce any liability or duty created by, or to enjoin any violation of, this subsection or any rule, regulation, order, or subpoena thereunder whether heretofore or hereafter issued. Any criminal proceeding on account of any such violation may be brought in any district in which any act, failure to act, or transaction constituting the violation occurred. Any such civil action may be brought in any such district or in the district in which the defendant resides or transacts business. Process in such cases, criminal or civil, may be served in any district wherein the defendant resides or transacts business or wherever the defendant may be found; and subpoena for witnesses who are required to attend a court in any district in any such case may run into any other district. No costs shall be assessed against the United States in any proceeding under this subsection.

**(7) Liability for default on contract or orders.**

No person shall be held liable for damages or penalties for any default under any contract or order which shall result directly or indirectly from compliance with this subsection or any rule, regulation, or order issued thereunder, notwithstanding that any such rule, regulation, or order shall thereafter be declared by judicial or other competent authority to be invalid.

**(8) Exercise of powers by President.**

The President may exercise any power, authority, or discretion conferred on him by this subsection (a), through such department, agency, or officer of the Government as he may direct and in conformity with any rules or regulations which he may prescribe.

**(9) Injunction proceedings; jurisdiction; venue.**

The district courts of the United States are given exclusive jurisdiction to enjoin or set aside, in whole or in part, any order suspending any priority or allocation, or denying a stay of any such suspension, that may have been issued by any person, officer, or agency, acting or purporting to act hereunder, or under any other law or authority.

Any action to enjoin or set aside any such order shall be brought within five days after the service thereof.

No suspension order shall take effect within five days after it has been served, or, if an application for a stay is made to the issuing authority within such five-day period, until the expiration of five days after service of an order denying the stay.

The venue of any such suit shall be in the district court of the United States for the district in which the petitioner has his principal place of business; and the respondent shall be subject to the jurisdiction of such court after ten days before the return day of the writ, either when (1) process shall have been served on any district manager or other agent of the respondent of similar or superior status; or (2) notice by registered mail shall have been given to respondent, or to the office of the Attorney General of the United States.

**(b) Expired.**

(June 28, 1940, ch. 440, title I, § 2, 54 Stat. 676; Sept. 9, 1940, 9 a. m., E. S. T., ch. 717, title II, § 201, 54 Stat. 875; May 31, 1941, ch. 157, 55 Stat. 236; Mar. 27, 1942, 3 p. m., ch. 199, title III, § 301, 56 Stat. 177; Dec. 20, 1944, ch. 614, 58 Stat. 827; Proc. No. 2695, July 4, 1946, 11 F.R. 7817, 60 Stat. 1352; Aug. 7, 1946, ch. 770, § 1 (26, 31), 60 Stat. 888.)

**CODIFICATION**

The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by section 205(a) of act July 26, 1947, ch. 343, title II, 61 Stat. 501. Section 205(a) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, ch. 1041, 70A Stat. 641. Section 1 of act Aug. 10, 1956, enacted "Title 10, Armed Forces" which in sections 3011—3013 continued the military Department of the Army under the administrative supervision of a Secretary of the Army.

Words "and the courts of the Philippine Islands", in subsec. (a) (6), were deleted in view of the independence of the Philippines upon authority of Proc. No. 2695, set out as a note under section 1394 of Title 22, Foreign Relations and Intercourse.

**AMENDMENTS**

1946—Subsec. (a) (1) amended by act Aug. 7, 1946, which repealed the proviso requiring the Secretary of the Navy to report every three months to Congress the contracts entered into under authority of par. (1).

1944—Subsec. (a) amended by act Dec. 20, 1944, which added par. (9).

**EXPIRATION OF SECTION**

Subsec. (a) of this section was amended by Title III of the Second War Powers Act, act Mar. 27, 1942, and did not expire on June 30, 1942, with the other provisions

of sections 1151—1162. The expiration of this subsection is governed by section 645 of this Appendix and by act June 30, 1950, ch. 426, 64 Stat. 308, which continued Title III of the Second War Powers Act [this section] until July 1, 1951 for the purpose of exercising, administering, and enforcing import controls with respect to fats and oils (including butter), and rice and rice products.

Subsec. (b) of this section expired June 30, 1942, under former section 1162 of this Appendix. It required contracts for naval vessels under section 496 of former Title 34 to contain limitations on excess profits. Renegotiation of contracts is now covered by section 1211 et seq. of this Appendix.

**OFFICE OF DEFENSE TRANSPORTATION**

Ex. Ord. No. 9729, May 23, 1946, 11 F. R. 5641, related to the functions and duties of the Office of Defense Transportation, which was terminated by Ex. Ord. No. 10065, July 6, 1949, eff. July 1, 1949.

**CROSS REFERENCES**

Extension of certain provisions of this section, see section 645 of this Appendix.

§§ 1153—1162. Omitted.

**CODIFICATION**

Sections 1153, 1154, and 1156—1162 terminated June 30, 1942, and section 1155 terminated Apr. 30, 1943, under the provisions of section 1162.

Section 1153, act June 28, 1940, ch. 440, title I, § 3, 54 Stat. 677, limited the provisions of section 496 of former Title 34 to contracts exceeding \$25,000.

Section 1154, act June 28, 1940, ch. 440, title I, § 4, 54 Stat. 677, provided for certification as to necessity and cost of special additional equipment and facilities acquired to facilitate construction of aircraft or naval vessels under section 496 of former Title 34. Notwithstanding the termination of this section on June 30, 1942, a provision thereof concerning reports to Congress was repealed by act Aug. 7, 1946, ch. 770, § 1 (27), 60 Stat. 888.

Section 1155, act June 28, 1940, ch. 440, title I, § 5, 54 Stat. 678, related to working hours and overtime compensation of Navy, Coast Guard, and Army employees. Res. July 3, 1942, ch. 482, 56 Stat. 645, as amended Oct. 2, 1942, ch. 577, 56 Stat. 765; Dec. 22, 1942, ch. 798, 56 Stat. 1058, extended from June 30, 1942, to and including Apr. 30, 1943, the provisions for the payment of overtime rates of compensation contained in sections 1151—1162. Subject matter is now covered by section 901 et seq. of Title 5, Executive Departments and Government Officers and Employees.

Section 1156, act June 28, 1940, ch. 440, title I, § 6, 54 Stat. 679; Aug. 21, 1941, ch. 395, 55 Stat. 654, related to reemployment of retired employees and to summary removal of civil service employees of the War and Navy Departments and the Coast Guard for national security reasons. Those removals are now covered by sections 22-1 to 22-3 of Title 5, Executive Departments and Government Officers and Employees.

Section 1157, act June 28, 1940, ch. 440, title I, § 7, 54 Stat. 679, added a temporary section 8 to act Mar. 14, 1936, ch. 140, 49 Stat. 611, providing for vacation pay in lieu of vacation for Navy and Coast Guard employees. For accumulation of annual leave, see chapter 23 of Title 5, Executive Departments and Government Officers and Employees.

Section 1158, acts June 28, 1940, ch. 440, title I, § 8, 54 Stat. 680; Sept. 16, 1940, ch. 720, § 9, 54 Stat. 892, increased the limit of cost of vessels under section 498c-1 of former Title 34 and other statutes, suspended limitations on payments to certain Navy Department employees, and authorized the Secretary of the Navy to employ additional personnel and to provide and operate the necessary buildings, facilities, utilities, and appurtenances thereto for the purposes of sections 1151—1162. The latter provision is covered by section 1201 of this Appendix. Act Aug. 21, 1941, ch. 395, 55 Stat. 664, made the provisions of section 1158 applicable to naval public-works projects authorized by that act and all prior acts. Notwithstanding the termination of this section on June 30, 1942, a provision thereof concerning reports to

Congress was repealed by act Aug. 7, 1946, ch. 770, § 1 (28), 60 Stat. 868.

Section 1159, act June 28, 1940, ch. 440, title I, § 9, 54 Stat. 680, authorized modification of existing Navy and Coast Guard contracts to expedite defense.

Section 1160, act June 28, 1940, ch. 440, title I, § 10, 54 Stat. 680, related to approval of certain Naval public-works contracts under act April 25, 1939, ch. 87, § 4, 53 Stat. 590.

Section 1161, act June 28, 1940, ch. 440, title I, § 11, 54 Stat. 680, related to employment of aliens in performance of secret, confidential, or restricted Government contracts.

Section 1162, act June 28, 1940, ch. 440, title I, § 12, 54 Stat. 681, provided that sections 1151—1161 should terminate June 30, 1942, unless Congress otherwise provided. Sections 1152 and 1155 were extended as shown in notes under those sections.

#### ACT JULY 2, 1940, CH. 508, 54 STAT. 712

§§ 1171, 1172. Repealed. Aug. 10, 1956, ch. 1041, § 53, 70A Stat. 641.

Section 1171, acts July 2, 1940, ch. 508, § 1, 54 Stat. 712; Sept. 9, 1940, ch. 717, title I, § 103, 54 Stat. 875; June 5, 1942, ch. 340, § 13, 56 Stat. 317, related to contracts for Army defense facilities, construction of facilities, acquisition of military equipment munitions, and supplies, suspension of limitations on costs, operation and maintenance of facilities, and disposal of land and facilities.

Section 1172, act July 2, 1940, ch. 508, § 5, 54 Stat. 714, related to contracts for emergencies affecting national defense; limitation of amount; report of expenditures; compliance with statutory conditions for contracts.

#### ACT JULY 17, 1953, CH. 221, 67 STAT. 177

§ 1173. Construction authority for the Armed Forces.

The Secretaries of the Army, Navy, and Air Force are respectively authorized, during the national emergency proclaimed by the President on December 16, 1950, and for six months thereafter, or until July 1, 1954, or until such date as may be specified by a concurrent resolution of the Congress, whichever is the earliest, to provide for the acquisition, construction, establishment, expansion, rehabilitation, conversion, and installation, on land or at plants privately or publicly owned, of such industrial-type plants, buildings, facilities, equipment, machine tools, utilities, and appurtenances or interest therein, including the necessary land therefor by purchase, donation, lease, condemnation, or otherwise (without regard to sections 1136 [section 1339 of Title 10], 3648 [section 529 of Title 31], and 3734 [sections 259 and 267 of Title 40] of the Revised Statutes, as amended, and prior to approval of title to the underlying land by the Attorney General), as may be necessary for defense production or mobilization reserve purposes, and to provide for the maintenance, storage and operation thereof and of those established pursuant to the provision of the Act of July 2, 1940 (54 Stat. 712), as amended, the Act of December 17, 1942 (56 Stat. 1053), as amended [section 1201 of this Appendix], or by any other statute, either by means of Government personnel or qualified commercial manufacturers under contract with the Government: *Provided*, That as soon as practicable prior to the submission of a budgetary request to the Congress for the purchase of equipment or machine tools pursuant to this section, the Secretary of Defense shall inform the Committees on Armed Services of the Senate and of the House of Representatives in detail with respect to the proposed program therefor. When the Secretary concerned deems it necessary in the

interest of the national defense, he may lease any such plants, buildings, facilities, equipment, utilities, appurtenances, and land, under any terms as he may deem advisable, and without regard to the provisions of section 321 of the Act of June 30, 1932 (47 Stat. 412) [section 303b of Title 40]. (July 17, 1953, ch. 221, § 1, 67 Stat. 177; July 26, 1954, ch. 570, § 2, 68 Stat. 531.)

#### REFERENCES IN TEXT

Section 1136 of Revised Statutes, as amended (section 1339 of Title 10), referred to in the text, was repealed by act Aug. 10, 1956, ch. 1041, § 53, 70A Stat. 641, and is now covered by sections 4774 and 9774 of Title 10, Armed Forces.

#### AMENDMENTS

1954—Act July 26, 1954, amended section by deleting the word "and" preceding "the Act of December 17, 1942 (56 Stat. 1053)", as amended [section 1201 of this Appendix] and adding "or by any other statute," immediately following such words.

#### CONTINUATION OF PROVISIONS

Act June 21, 1956, ch. 420, 70 Stat. 325, provided: "That the provisions of the Act of July 17, 1953 (67 Stat. 177), as amended [sections 1173—1175 of this Appendix], shall remain in effect until six months after the termination of the national emergency proclaimed by the President on December 16, 1950, or until such date as may be specified by a concurrent resolution of the Congress, or until July 1, 1957, whichever is earlier."

Similar provisions were contained in acts July 3, 1954, ch. 570, § 1, 68 Stat. 531; Aug. 9, 1955, ch. 622, 69 Stat. 544.

§ 1174. Same; activity reports by Secretary of Defense.

The Secretary of Defense shall report semi-annually to the Committees on Armed Services of the Senate and of the House of Representatives with respect to those activities authorized in section 1 [section 1173 of this Appendix] which are not otherwise the subject of reporting under law. (July 17, 1953, ch. 221, § 2, 67 Stat. 178.)

§ 1175. Same; application to section 551 of Title 40.

Nothing in this Act [sections 1173—1175 of this Appendix] shall be construed to repeal or modify section 601 of the Act of September 28, 1951 (65 Stat. 336) [section 551 of Title 40], relative to coming into agreement with the Committees on Armed Services of the Senate and of the House of Representatives with respect to real-estate actions. (July 17, 1953, ch. 221, § 3, 67 Stat. 178.)

#### ACT JULY 11, 1941, CH. 290, § 3, 55 STAT. 585

§ 1181. Repealed. July 25, 1947, ch. 327, § 1, 61 Stat. 449.

Section, act July 11, 1941, ch. 290, § 3, 55 Stat. 585, authorized the Secretary of the Treasury to negotiate contracts for Coast Guard vessels, aircraft and equipment on the basis provided by section 1152 (a) of this Appendix.

#### ACT APR. 28, 1942, CH. 247, TITLE IV, § 403, 56 STAT. 245

§ 1191. Renegotiation of contracts; determination and recovery of excess profits.

(a) Definitions.

For the purposes of this section—

(1) The term "Department" means the Department of the Army, the Navy Department, the Treasury Department, the Maritime Commission, the War Shipping Administration, Defense Plant Corporation, Metals Reserve Company, Defense

Supplies Corporation, and Rubber Reserve Company, respectively.

(2) In the case of the Maritime Commission, the term "Secretary" means the Chairman of such Commission, in the case of the War Shipping Administration, the term "Secretary" means the Administrator of such Administration, and in the case of Defense Plant Corporation, Metals Reserve Company, Defense Supplies Corporation, and Rubber Reserve Company, the term "Secretary" means the board of directors of the appropriate corporation.

(3) The terms "renegotiate" and "renegotiation" include a determination by agreement or order under this section of the amount of any excessive profits.

(4) (A) 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 section to be excessive. In determining excessive profits there shall be taken into consideration the following factors:

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

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

(iii) amount and source of public and private capital employed and net worth;

(iv) extent of risk assumed, including the risk incident to reasonable pricing policies;

(v) nature and extent of contribution to the war effort, including inventive and developmental contribution and cooperation with the Government and other contractors in supplying technical assistance;

(vi) character of business, including complexity of manufacturing technique, character and extent of subcontracting, and rate of turnover;

(vii) 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.

(B) 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. Such costs shall be determined in accordance with the method of cost accounting regularly employed by the contractor in keeping his books, but if no such method of cost 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. Irrespective of the method employed

or prescribed for determining such costs, no item of cost shall be charged to any contract with a Department or subcontract or used in any manner for the purpose of determining such cost, to the extent that in the opinion of the Board or, upon redetermination, in the opinion of The Tax Court of the United States, such item is unreasonable or not properly chargeable to such contract or subcontract. Notwithstanding any other provisions of this section, all items estimated to be allowable as deductions and exclusions under Chapters 1 and 2E of the Internal Revenue Code (former section 1 et seq. and former section 710 et seq. of Title 26) (excluding taxes measured by income) shall, to the extent allocable to such contracts and subcontracts (or, in the case of the recomputation of the amortization deduction, allocable to contracts with the Departments and subcontracts), be allowed as items of cost, but in determining the amount of excessive profits to be eliminated proper adjustment shall be made on account of the taxes so excluded, other than Federal taxes, which are attributable to the portion of the profits which are not excessive.

(C) Notwithstanding any of the provisions of this section to the contrary, no amount shall be allowed as an item of cost (i) by reason of a recomputation of the amortization deduction pursuant to section 124(d) of the Internal Revenue Code [former section 124(d) of Title 26] until after such recomputation has been made in connection with a determination of the taxes imposed by Chapters 1, 2A, 2B, 2D, and 2E of the Internal Revenue Code (former sections 1 et seq., former section 500 et seq., former section 600 et seq., section 700 et seq., and former section 710 et seq. of Title 26) for the fiscal year to which the excessive profits determined by the renegotiation are attributable or (ii) by reason of the application of a carry-over or carry-back under any circumstances. The absence of such a recomputation of the amortization deductions referred to in clause (i) above shall not constitute a cause for postponing the making of an agreement, or the entry of an order, determining the amount of excessive profits, or for staying the elimination thereof.

(D) Notwithstanding any of the provisions of subsection (c) (4) of this section to the contrary, in the case of a renegotiation which is made prior to such recomputation, there shall be repaid by the United States (without interest) to the contractor or subcontractor after such recomputation the amount of a net renegotiation rebate computed in the following described manner. There shall first be ascertained the portion of the excessive profits determined by the renegotiation which is attributable to the fiscal year with respect to which a net renegotiation rebate is claimed by the contractor or subcontractor (hereinafter referred to as "renegotiated year"). There shall then be ascertained the amount of the gross renegotiation rebate for the renegotiated year, which amount shall be an allocable part of the additional amortization deduction which is allowed for the renegotiated year upon the recomputation made pursuant to section 124(d) of the Internal Revenue

Code [former section 124(d) of Title 26] in connection with the determination of the taxes for such year and which is attributable to contracts with the Departments and subcontracts, except that the amount of the gross renegotiation rebate shall not exceed the amount of excessive profits eliminated for the renegotiated year pursuant to the renegotiation. The allocation of the additional amortization deduction attributable to contracts with the Departments and subcontracts, and the allocation of the additional amortization deduction to the renegotiated year shall be determined in accordance with regulations prescribed by the Board. There shall then be ascertained the amount of the contractor's or subcontractor's Federal tax benefit from the renegotiation for the renegotiated year. Such Federal tax benefit shall be the amount by which the taxes for the renegotiated year under Chapters 1, 2A, 2B, 2D, and 2E of the Internal Revenue Code [former sections 1 et seq., former section 500 et seq., former section 600 et seq., section 700 et seq., and former section 710 et seq., of Title 26] were decreased by reason of omitting from gross income (or by reason of the application of the provisions of section 3806(a) of the Internal Revenue Code [former section 3806(a) of Title 26] with respect to) that portion of the excessive profits for the renegotiated year which is equal to the amount of the gross renegotiation rebate. The amount by which the gross renegotiation rebate for the renegotiated year exceeds the amount of the contractor's or subcontractor's Federal tax benefit from the renegotiation for such year shall be the amount of the net renegotiation rebate for such year. A net renegotiation rebate shall not be repaid unless a claim therefor has been filed with the Board on or before the date of its abolition, or unless a claim shall have been filed with the Administrator of General Services (i) on or before December 31, 1952, or (ii) within ninety days after the making of an agreement or the entry of an order under subsection (c) (1) [of this section] determining the amount of excessive profits, whichever is later. A claim shall be deemed to have been filed when received by the Board or the Administrator, whether or not accompanied by a statement of the Commissioner of Internal Revenue showing the amortization deduction allowed for the renegotiated year upon the recomputation made pursuant to section 124(d) of the Internal Revenue Code [former section 124(d) of Title 26].

(5) The term "subcontract" means—

(A) Any purchase order or agreement to perform all or any part of the work, or to make or furnish any article, 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; or

(B) Any contract or arrangement other than a contract or arrangement between two contracting parties, one of which parties is found by the Board to be a bona fide executive officer, partner, or full-time employee of the other contracting party, (i) any amount payable under which is contingent upon the procurement of a

contract or contracts with a Department or of a subcontract or subcontracts, or determined with reference to the amount of such a contract or subcontract or such contracts or subcontracts, or (ii) under which 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 subcontracts; *Provided*, That nothing in this sentence shall be construed (1) 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 (2) to restrict in any way the authority of the Secretary or the Board to determine the nature or amount of selling expenses under subcontracts as defined in this subparagraph, as a proper element of the contract price or as a reimbursable item of cost, under a contract with a Department or a subcontract.

(6) The term "article" includes any material, part, assembly, machinery, equipment, or other personal property.

(7) The term "standard commercial article" means an article—

(A) which is identical in every material respect with an article which was manufactured and sold, and in general civilian, industrial, or commercial use prior to January 1, 1940,

(B) which is identical in every material respect with an article which is manufactured and sold, as a competitive product, by more than one manufacturer, or which is an article of the same kind and having the same use or uses as an article manufactured and sold, as a competitive product, by more than one manufacturer, and

(C) for which a maximum price has been established and is in effect under the Emergency Price Control Act of 1942, as amended, or under the Act of October 2, 1942, entitled "An Act to amend the Emergency Price Control Act of 1942, to aid in preventing inflation, and for other purposes", or which is sold at a price not in excess of the January 1, 1941, selling price.

An article made in whole or in part of substitute materials but otherwise identical in every material respect with the article with which it is compared under subparagraphs (A) and (B) shall be considered as identical in every respect with such article with which it is so compared.

(8) The term "fiscal year" means the taxable year of the contractor or subcontractor under Chapter 1 of the Internal Revenue Code [section 1 et seq. of Title 26, I.R.C. 1939].

(9) 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 books.

(b) Provisions required to be inserted in contracts in excess of \$100,000.

Subject to subsection (1) of this section, the Secretary of each Department is authorized and directed



to insert in each contract made by such Department thirty days or more after the date of the enactment of the Revenue Act of 1943 and involving an estimated amount of more than \$100,000, a provision under which the contractor agrees—

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

(2) that there may be retained 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 subsection (a) (5) (A) [of this section] involving an estimated amount of more than \$100,000, and in each subcontract described in subsection (a) (5) (B) [of this section] involving an estimated amount of more than \$25,000, a provision under which the subcontractor agrees—

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

(B) that there may be retained by the contractor for the United States from amounts otherwise due 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 retained, or so repaid by the subcontractor to the United States;

(D) that he will insert in each subcontract described in subsection (a) (5) (A) [of this section] involving an estimated amount of more than \$100,000, and in each subcontract described in subsection (a) (5) (B) [of this section] involving an estimated amount of more than \$25,000, provisions corresponding to those of subparagraphs (A), (B), and (C) and to those of this subparagraph;

(4) that there may be retained 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 paragraph (3) (B) of this subsection 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) of this subsection, 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 subsection (c) of this section. 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 subsection shall be sufficient compliance with this subsection. Whether or not there is inserted in a contract with a Department or subcontract, to which subsection (c) of this section is applicable, the provisions specified in this subsection, such contract or subcontract, as the case may be, shall be considered as having been made subject to such subsection in the same manner and to the same extent as if such provisions had been inserted.

(c) Renegotiation of contract price on determination of excess profits; notice of renegotiation; conclusiveness of Board's order; withholding of amounts due contractors; actions by United States; limitations; agreements with contractors; filing of financial statements; powers of Board; Bureau of Internal Revenue services available; contracts included.

(1) Whenever, in the opinion of the Board, the amounts received or accrued under contracts with the Departments and subcontracts may reflect excessive profits, the Board shall give to the contractor or subcontractor, as the case may be, reasonable notice of the time and place of a conference to be held with respect thereto. The mailing of such notice by registered mail to the contractor or subcontractor shall constitute the commencement of the renegotiation proceeding. At the conference, which may be adjourned from time to time, the Board shall endeavor to make a final or other 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 subsection (e) (1) of this section, 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. Whenever the Board makes a determination with respect to the amount of excessive profits, whether such determination is made by order or is embodied in an agreement with the contractor or subcontractor, 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.

(2) Upon the making of an agreement, or the entry of an order, under paragraph (1) of this subsection by the Board, or the entry of an order under subsection (e) of this section 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; or (B) by withholding from amounts otherwise due to the contractor any amount of such excessive profits; or (C) by directing a contractor to withhold for the account of the United States, from amounts otherwise due to a subcontractor, any amount of such excessive profits of such subcontractor; or (D) by recovery from the contractor, through repayment, credit, or suit any amount of such excessive profits actually paid to him; or (E) by any combination of these methods, as is deemed desirable. Actions on behalf of the United States may be brought in the appropriate courts of the United States to recover from the contractor any amount of such excessive profits actually paid to him and not withheld or eliminated by some other method under this subsection. The surety under a contract or subcontract shall not be liable for the repayment of any excessive profits thereon. Each contractor and subcontractor is indemnified by the United States against all claims by any subcontractor on account of amounts withheld from such subcontractor pursuant to this paragraph. All money recovered in respect of amounts paid to the contractor from appropriations from the Treasury 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, the Secretary shall certify the amount thereof to the Treasury and the appropriations of his Department shall be reduced 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. 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 [section 3806 of Title 26 I.R.C. 1939]. For the purposes of this paragraph the term "contractor" includes a subcontractor.

(3) No proceeding to determine the amount of excessive profits shall be commenced more than one year after the close of the fiscal year in which such excessive profits were received or accrued, or more than one year after the statement required under paragraph (5) of this subsection is filed with the Board, whichever is the later, and if such proceeding is not so commenced, then upon the expiration of one year following the close of such fiscal year, or one year following the date upon which such statement is so filed, whichever is the later, 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 one year following the commencement of the renegotiation proceeding, then upon the expiration of such one year all liabilities of the

contractor or subcontractor for excessive profits with respect to which such proceeding was commenced shall thereupon be discharged, except that (A) if an order is made within such one year by the Secretary (or an officer or agency designated by the Secretary) pursuant to a delegation of authority under subsection (d) (4) of this section such one-year limitation shall not apply to review of such order by the Board, and (B) such one-year period may be extended by mutual agreement.

(4) For the purposes of this section 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 section. 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, (A) such agreement shall not for the purposes of this section be reopened as to the matters agreed upon, and shall not be modified by any officer, employee, or agent of the United States, and (B) such agreement and any determination made in accordance therewith shall not be annulled, modified, set aside, or disregarded in any suit, action, or proceeding.

(5) (A) Every contractor and subcontractor who holds contracts or subcontracts, to which the provisions of this subsection 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 month following the close of the fiscal year (or if such fiscal year has closed on the date of the enactment of the Revenue Act of 1943, [Feb. 25, 1944], on or before the first day of the fourth month following the month in which such date of enactment falls), a financial statement setting forth such information as the Board may by regulations prescribe as necessary to carry out this section. In addition to the statement required under the preceding sentence, every such contractor or subcontractor 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 is determined by the Board to be necessary to carry out this section. Any person who willfully fails or refuses to furnish any statement, information, records, or data required of them 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 two years, or both.

(B) For the purposes of this section the Board shall have the same powers with respect to any such contractor or subcontractor that any agency designated by the President to exercise the powers conferred by Title XIII of the Second War Powers Act, 1942 [sections 643—643c of this Appendix], has with respect to any contractor to whom such title [sections 643—643c of this Appendix], is applicable. 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 section.

(6) This subsection shall be applicable to all contracts and subcontracts, to the extent of amounts received or accrued thereunder in any fiscal year ending after June 30, 1943, whether such contracts or subcontracts were made on, prior to, or after the date of the enactment of the Revenue Act of 1943, and whether or not such contracts or subcontracts contain the provisions required under subsection (b) [of this section], unless (A) the contract or subcontract provides otherwise pursuant to subsection (i), or is exempted under subsection (i), or (B) the aggregate of the amounts received or accrued in such fiscal year by the contractor or subcontractor and all persons under the control of or controlling or under common control with the contractor or subcontractor, under contracts with the Departments and subcontracts (including those described in clause (A), but excluding subcontracts described in subsection (a) (5) (B)) [of this section] do not exceed \$500,000 and under subcontracts described in subsection (a) (5) (B) [of this section] do not exceed \$25,000 for such fiscal year. If such fiscal year is a fractional part of twelve months, the \$500,000 amount and the \$25,000 amount shall be reduced to the same fractional part thereof for the purposes of this paragraph.

(d) Abolished.

(e) Petition for redetermination; limitation; jurisdiction of the Tax Court; powers and duties of court; payment of fees and expenses; finality of determination.

(1) 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, within ninety days (not counting Sunday or a legal holiday in the District of Columbia as the last day) after the mailing of the notice of such order under subsection (c) (1) of this section, 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 subsection 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 sec-

tions 1110, 1111, 1113, 1114, 1115 (a), 1116, 1117 (a), 1118, 1120, and 1121 of the Internal Revenue Code [Title 26, I.R.C. 1939] in the case of a proceeding to redetermine a deficiency. In the case of any witness for the Board or Secretary, the fees and mileage, and the expenses of taking any deposition shall be paid out of appropriations of the Board or Department 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 subsection shall not operate to stay the execution of the order of the Board under subsection (c) (2) of this section.

(2) Any contractor or subcontractor (excluding a subcontractor described in subsection (a) (5) (B)) of this section aggrieved by a determination of the Secretary made prior to the date of the enactment of the Revenue Act of 1943, with respect to a fiscal year ending before July 1, 1943, as to the existence of excessive profits, which is not embodied in an agreement with the contractor or subcontractor, may, within ninety days (not counting Sunday or a legal holiday in the District of Columbia as the last day) after the date of the enactment of the Revenue Act of 1943 [Feb. 25, 1944], file a petition with The Tax Court of the United States for a redetermination thereof, and any such contractor or subcontractor aggrieved by a determination of the Secretary made on or after the date of the enactment of the Revenue Act of 1943 [Feb. 25, 1944], with respect to any such fiscal year, as to the existence of excessive profits, which is not embodied in an agreement with the contractor or subcontractor, may, within ninety days (not counting Sunday or a legal holiday in the District of Columbia as the last day) after the date of such determination, file a petition with The Tax Court of the United States for a redetermination thereof. Upon such filing such court shall have the same jurisdiction, powers, and duties, and the proceeding shall be subject to the same provisions, as in the case of a petition filed with the court under paragraph (1), except that the amendments made to this section by the Revenue Act of 1943 which are not made applicable as of April 28, 1942, or to fiscal years ending before July 1, 1943, shall not apply.

(f) Repricing of war contracts.

For repricing of war contracts, see Title VIII of the Revenue Act of 1943 [section 1192 and note thereunder of this Appendix].

(g) Separability of section.

If any provision of this section or the application thereof to any person or circumstance is held invalid, the remainder of the section and the application of such provision to other persons or circumstances shall not be affected thereby.

(h) Profits affected; termination date.

This section shall apply only with respect to profits derived from contracts with the Departments and subcontracts which are determined under regulations prescribed by the Board to be reasonably allocable to performance prior to the close of the termination date. Notwithstanding the method of accounting employed by the contractor in keeping his books, profits determined to be so allocable shall be

considered as having been received or accrued not later than the termination date. For the purposes of this subsection, the term "termination date" means whichever of the following dates first occurs—

(1) December 31, 1945; or

(2) the date proclaimed by the President as the date of the termination of hostilities in the present war; or

(3) the date specified in a concurrent resolution of the two Houses of Congress as the date of the termination of hostilities in the present war.

(i) Contracts exempted; Board's interpretation and application of exemptions.

(1) The provisions of this section shall not apply to—

(A) any contract by a Department with any other department, bureau, agency, or governmental corporation of the United States or with any Territory, possession, or State or any agency thereof or with any foreign government or any agency thereof; or

(B) 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

(C) 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—

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

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

(iii) 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

(D) any contract or subcontract with an organization exempt from taxation under section 101(6) of the Internal Revenue Code [section 101(6) of Title 26, I.R.C. 1939]; or

(E) any contract with a Department, awarded as a result of competitive bidding, for the construction of any building, structure, improvement, or facility; or

(F) any subcontract, directly or indirectly under a contract or subcontract to which this section does not apply by reason of this paragraph.

(2) The Board is authorized by regulation to interpret and apply the exemptions provided for in paragraph (1) (A), (B), (C), (E), and (F) of this subsection, and interpret and apply the definition contained in subsection (a) (7) of this section.

(3) 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 agri-

cultural 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 section 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 contracts with the Departments and subcontracts, attributable to the increment in value of the excess inventory. For the purposes of this paragraph the term "excess inventory" means inventory of products, hereinbefore described in this paragraph, 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 section by subsection (1) (B) or (C) 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 contracts with the Departments and subcontracts, 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. In the case of a renegotiation with respect to a fiscal year ending prior to July 1, 1943, the portion of the profits, derived from contracts with the Departments and subcontracts, attributable to the increment in value of the excess inventory shall (to the extent such portion does not exceed the excessive profits determined) be credited or refunded to the contractor or subcontractor, and in case the determination of excessive profits was made prior to the date of the enactment of the Revenue Act of 1943, such credit or refund shall be made notwithstanding such determination is embodied in an agreement with the contractor or subcontractor, but in either case such credit or refund shall be made only if the contractor or subcontractor, within ninety days after the date of the enactment of the Revenue Act of 1943 [Feb. 25, 1944], files a claim therefor with the Secretary concerned.

(4) The Board is authorized, in its discretion, to exempt from some or all of the provisions of this section—

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

(B) 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 agreements for personal services, 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, of leases and license agreements, and of agreements where the

period of performance under such contract or subcontract will not be in excess of thirty days;

(C) 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;

(D) any contract or subcontract for the making or furnishing of a standard commercial article, if, in the opinion of the Board, competitive conditions affecting the sale of such article are such as will reasonably protect the Government against excessive prices;

(E) any contract or subcontract, if, in the opinion of the Board, competitive conditions affecting the making of such contract or subcontract are such as are likely to result in effective competition with respect to the contract or subcontract price; and

(F) 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 individually and by general classes or types.

(j) Persons authorized to prosecute claims against United States.

Nothing in sections 109 and 113 of the Criminal Code 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 May 27, 1940, and ending on June 30, 1950, 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.

(k) Limitation on authority of Secretaries of Departments.

Nothing in this section shall be construed to limit or restrict any authority or discretion of the Secretary of a Department under the provisions of any other law.

(l) Short title.

This section may be cited as the "Renegotiation Act". (Apr. 28, 1942, ch. 247, title IV, § 403, 56 Stat. 245; Oct. 21, 1942, ch. 619, title VIII, § 801 (a—c), 56 Stat. 982; July 1, 1943, ch. 185, § 1, 57 Stat. 347; July 14, 1943, ch. 239, §§ 1—4, 57 Stat. 564; Feb. 25, 1944, 12:49 p. m., E. W. T., ch. 63, title VII, § 701 (b), 58 Stat. 78; June 30, 1945, ch. 210, § 1, 59 Stat. 294; June 14, 1947, ch. 105, 61 Stat. 133; June 28, 1949, ch. 268, § 2 (a), 63 Stat. 280; Mar. 23, 1951, ch. 15, title II, § 201 (a—d), 65 Stat. 23; Oct. 20, 1951, 2:07 p. m., E. S. T., ch. 521, title VI, § 617, 65 Stat. 569; July 17, 1952, ch. 924, § 2, 66 Stat. 753.)

#### REFERENCES IN TEXT

Chapter 2E of the Internal Revenue Code [I.R.C. 1939], referred to in subsec. (a) (4) (B—D), relating to excess profits tax, was repealed as follows: sections 741 and 752 by act Oct. 21, 1942, 4:30 p. m., E.W.T., ch. 619, title II, §§ 224(b), 228(b), 229(a) (1), 56 Stat. 920, 925, 931; sections 710—736, 740, 742—744, 750, 751, 760, 761 and 780—784 by act Nov. 8, 1945, ch. 453, title I, § 122(a), 59 Stat. 568.

Chapter 2B of the Internal Revenue Code [I.R.C. 1939], referred to in subsec. (a) (4) (C, D), relating to declared value excess-profits tax, was repealed by act Nov. 8, 1945, ch. 453, title II, § 202, 59 Stat. 574.

Emergency Price Control Act of 1942, as amended, referred to in subsec. (a) (7) (C) and formerly classified to sections 901—906, 921, 922, 923, 925, 926, and 941—946 of this Appendix terminated June 30, 1947 under the provisions of act July 25, 1946, ch. 671, § 1, 60 Stat. 664.

Act of October 2, 1942, referred to in subsec. (a) (7) (C) and formerly classified to sections 961—964 and 965—971 of this Appendix and as an amendment and note under section 713a—8 of Title 15, has expired. See Termination Date notes preceding sections 961—971 of this Appendix and under section 713a—8 of Title 15, Commerce and Trade.

Amendments made to this section by the Revenue Act of 1943, referred to in subsec. (e) (2), has reference to amendments made by act Feb. 25, 1944.

Sections 109 and 113 of the Criminal Code, referred to in subsec. (j), were repealed by act June 25, 1948, ch. 645, § 21, 62 Stat. 863, eff. Sept. 1, 1948. Similar provisions are now covered by sections 281 and 283 of Title 18, Crimes and Criminal Procedure.

#### CODIFICATION

The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by section 205(a) of act July 26, 1947, ch. 343, title II, 61 Stat. 501. Section 205(a) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, ch. 1041, 70A Stat. 641. Section 1 of act Aug. 10, 1950, enacted "Title 10, Armed Forces" which in sections 3011—3013 continued the military Department of the Army under the administrative supervision of a Secretary of the Army.

#### AMENDMENTS

1952—Subsec. (a) (4) (D) amended by act July 17, 1952 to extend the filing date for claims from Oct. 31, 1952 to Dec. 31, 1952.

1951—Subsec. (a) (4) (D) amended by acts Oct. 20, 1951, and Mar. 23, 1951, § 201 (c). Act Oct. 20, 1951, in clause (1) of eighth sentence, extended the time for filing claims for net renegotiation rebates from June 30, 1951 to October 31, 1951. Act Mar. 23, 1951, § 201 (c) added last two sentences.

1949—Subsec. (j) amended by act June 28, 1949, which substituted "June 30, 1950" for "June 30, 1949".

1947—Subsec. (j) amended by act June 14, 1947, to extend the grace period from "six months after termination of hostilities" to "June 30, 1949."

1945—Subsec. (h) amended by act June 30, 1945, which amended subsec. generally and substituted "December 31, 1945" for "December 31, 1944" as termination date.

1944—Act Feb. 25, 1944, amended section generally.

1943—Subsec. (a) (1), (2) amended by act July 1, 1943, to redefine "Department" and "Maritime Commission".

Subsec. (a) (5), amended by act July 14, 1943, § 1, to redefine "subcontract".

Subsec. (b) (3), amended by act July 14, 1943, § 2, by substituting "in each subcontract described in subsection (a) (5) (1), and in each subcontract for an amount in excess of \$100,000 described in subsection (a) (5) (1)" for "in each subcontract for an amount in excess of \$100,000".

Subsec. (b) (6) amended generally by act July 14, 1943, § 3.

Subsec. (e) amended by act July 14, 1943, § 4, which struck out "in an aggregate amount in excess of \$100,000".

Subsec. (k) added by act July 1, 1943.

1942—Subsecs. (a)—(c), and (f) amended generally by act Oct. 21, 1942, § 801 (a), (b).

Subsecs. (i) and (j) added by act Oct. 21, 1942, § 801 (c).

## CHANGE OF NAME

The official title of the Bureau of Internal Revenue was changed to the Internal Revenue Service by Treas. Dept. Order 150-29, eff. July 9, 1953.

## EFFECTIVE DATE OF 1944 AMENDMENT

Amendment of section by act Feb. 25, 1944, § 701 (b), was made effective by section 701 (d) thereof, which provided as follows: "The amendments made by subsection (b) shall be effective only with respect to the fiscal years ending after June 30, 1943, except that (1) the amendments inserting subsections (a) (4) (C), (a) (4) (D), (1) (1) (C), (1) (1) (D), (1) (1) (F), (1) (3), and (1) in section 403 of the Sixth Supplemental National Defense Appropriation Act, 1942 [this section], shall be effective as if such amendments and subsections had been a part of section 403 of such Act [this section] on the date of its enactment, and (2) the amendments adding subsections (d) and (e) (2) to section 403 of such Act [this section] shall be effective from the date of the enactment of this Act [this section]."

## EFFECTIVE DATE OF 1943 AMENDMENT

Section 5 of act July 14, 1943, provided that the amendments made by that act, affecting subsecs. (a) (5), (b) (3), (c) (6), and (e), should be effective as of Apr. 28, 1942.

## EFFECTIVE DATE OF 1942 AMENDMENT

Act Oct. 21, 1942, affecting subsecs. (a—c), (f), (i) and (j) of this section, was made effective as of Apr. 28, 1942, by section 801 (d) thereof.

## TERMINATION DATE

Proc. No. 2631, Nov. 16, 1944, 9 F. R. 13739, specified June 30, 1945, as the termination date within the meaning of former provisions of subsec. (h) of this section. It was superseded by the amendment of June 30, 1945.

## ABOLISHMENT OF AGENCIES AND TRANSFER OF FUNCTIONS

Section 201 (a) of act Mar. 23, 1951 abolished the War Contracts Price Adjustment Board, which was created by former subsection (d) of this section. Section 201 (b) of act Mar. 23, 1951 provided that all powers, functions and duties conferred on the Board, except those transferred to the Administrator of General Services, were transferred to the Renegotiation Board created by section 1217 of this Appendix. Section 201 (d) of act Mar. 23, 1951 provided that all powers, duties and functions conferred upon the Board by subsection (a) (4) (D) of this section were transferred to the Administrator of General Services. Section 201 (j) of act Mar. 23, 1951 affected subsection (a), pars. (1) and (2) of this section by providing that where a renegotiation function has been transferred by or pursuant to law the terms "Secretary" or "Secretaries" and "Department" or "Departments" shall be understood to refer to the successors in function to those officers or officers specifically named in this section. Section 201 of act Mar. 23, 1951, is set out as section 1231 of this Appendix. It also contains provisions relating to transfer of records, refunds under subsections (a) (4) (D) and (1) (3) of this section and the continuation of this section and existing policies and procedures.

All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of that Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F. R. 4935, 64 Stat. 1280, set out as a note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Bureau of Internal Revenue, referred to in this section, is an agency in the Treasury Department.

The United States Maritime Commission was abolished by 1950 Reorg. Plan No. 21, eff. May 24, 1950, 15 F. R. 3178, 64 Stat. 1273, set out as a note under section 1111 of Title 46, Shipping, which transferred part of its functions and part of the functions of its Chairman to the Federal Maritime Board and the Chairman thereof, that Board having been created by that Plan as an agency within the Department of Commerce with an independent status in some respects, and transferred the remainder of that

Commission's functions and the functions of its Chairman to the Secretary of commerce, with power vested in the Secretary to authorize their performance by the Maritime Administrator, the head of the Maritime Administration, which likewise was established by the Plan in the Department of Commerce with the provision that the chairman of the Federal Maritime Board should, ex officio, be that Administrator.

All executive and administrative functions of the Maritime Commission were transferred to the Chairman of the Maritime Commission by 1949 Reorg. Plan No. 6, eff. Aug. 19, 1949, 14 F. R. 5223, 63 Stat. 1069. See note set out under section 1111 of Title 46, Shipping.

The War Shipping Administration was terminated as of Sept. 1, 1946, and all functions, powers, etc. transferred to the United States Maritime Commission for purpose of liquidation by Dec. 31, 1946, under authority of act July 8, 1946, ch. 543, § 202, 60 Stat. 501, set out as a note under section 1291 of this Appendix.

The Defense Plant Corporation, the Metals Reserve Company, the Defense Supplies Corporation, and the Rubber Reserve Company were dissolved and their functions transferred to the Reconstruction Finance Corporation by Senate Joint Res., June 30, 1945, ch. 215, § 1, 59 Stat. 310, eff. July 1, 1945, set out as a note under section 611 of Title 15, Commerce and Trade. Thereafter the Reconstruction Finance Corporation was abolished by 1957 Reorg. Plan No. 1, set out as a note under section 601 of that title.

The War Production Board was terminated and all functions, powers, etc. transferred to the Civilian Production Administration, eff. Nov. 3, 1945, by Ex. Ord. No. 9638, Oct. 4, 1945, 10 F. R. 12591. Thereafter the Civilian Production Administration was consolidated, with other war agencies, into the Office of Temporary Controls by Ex. Ord. No. 9809, set out as a note under section 601 of this Appendix.

## DEPARTMENT OF THE AIR FORCE

For transfer of certain functions insofar as they pertain to the Air Force, and to the extent that they were not previously transferred to the Secretary of the Air Force and Department of the Air Force from the Secretary of the Army and Department of the Army, see Secretary of Defense Transfer Order No. 40, July 22, 1949.

## TERMINATION OF HOSTILITIES

The cessation of hostilities of World War II was proclaimed at 12 o'clock noon of December 31, 1946, by Proc. No. 2714, set out as note under section 601 of this Appendix.

## TERMS USED

Section 701 (a) of act Feb. 25, 1944, provided as follows: "Terms used in this section [section 701 of Act Feb. 25, 1944] shall have the same meaning as when used in section 403 of the Sixth Supplemental National Defense Appropriation Act, 1942 [this section]."

## WAR DEPARTMENT NOTICE

May 21, 1943, 8 F. R. 7404

## EXEMPTION FROM RENEGOTIATION OF CONTRACTS

Authority for exemption from renegotiation under section 403 of the Sixth Supplemental National Defense Appropriation Act, 1942, as amended by section 801 of the Revenue Act of 1942 (section 1191 of this Appendix).

Pursuant to subsection 403 (i) (2) (iii) of the Sixth Supplemental National Defense Appropriation Act, 1942, as amended (section 1191 of this Appendix), and the delegation to me from the Secretary of War, dated November 4, 1942, the chief of any technical service and the Commanding General, Army Air Forces, are hereby authorized:

(1) To exempt from renegotiation under section 403, as amended (section 1191 of this Appendix), any contract, letter contract, letter purchase order, letter order, or letter of intent, which has been terminated for the convenience of the Government, and any agreement making a negotiated settlement of the whole or any part of the amount due from the Government by reason of the termination of any such instrument, whenever he finds that the provisions of such settlement agreement are adequate to prevent the realization of excessive profits from the performance of any such instrument; and

(2) To delegate to any officer or civilian employee under his direction the authority and discretion to make such exemptions in accordance with paragraph 1 and under such conditions as he may prescribe.

#### CROSS REFERENCES

Excess profits reduction as precluding allowance of claims for war contract losses, see note under section 106 of Title 41, Public Contracts.

Renegotiation Act of 1948, see section 1193 of this Appendix.

Renegotiation Act of 1951, see section 1211 et seq. of this Appendix.

Termination and settlement of war contracts, see sections 101—125 of Title 41, Public Contracts.

ACT FEB. 25, 1944, CH. 63, TITLE VIII, § 801,  
58 STAT. 92

#### § 1192. Repricing of war contracts.

##### CODIFICATION

Section, act Feb. 25, 1944, ch. 63, title VIII, § 801, 58 Stat. 92, relating to repricing of war contracts, terminated on Dec. 31, 1945 under the provisions of section 802 (b) of act Feb. 25, 1944.

ACT MAY 21, 1948, CH. 333, 62 STAT. 259

#### § 1193. Renegotiation of airplane contracts.

##### (a) Renegotiation article.

All contracts in excess of \$1,000 entered into under the authority of this Act [act May 21, 1948, ch. 333, 62 Stat. 258], obligating funds appropriated hereby, obligating funds consolidated by this Act [act May 21, 1948, ch. 333, 62 Stat. 258] with funds appropriated, or entered into through contract authorizations herein granted, and all subcontracts thereunder in excess of \$1,000 shall contain the following article:

"RENEGOTIATION ARTICLE.—This contract is subject to the Renegotiation Act of 1948 [this section] and the contractor hereby agrees to insert a like article in all contracts or purchase orders to make or furnish any article or to perform all or any part of the work required for the performance of this contract."

##### (b) Powers and duties of Secretary of Defense; elimination of excess profits; agreements; tax credits.

Whenever in the opinion of the Secretary of Defense excessive profits are reflected under any contract or contracts or subcontract or subcontracts required to contain the Renegotiation Article prescribed in subsection (a) of this section, the Secretary is authorized and directed to renegotiate such contracts and subcontracts for the purpose of eliminating excessive profits. He shall endeavor to make an agreement with the contractor or subcontractor with respect to the amount, if any, of such excessive profits and to their elimination. If no such agreement is reached, the Secretary shall issue an order determining the amount, if any, of such excessive profits and shall eliminate them by any of the methods set forth in subsection (c) (2) of the Renegotiation Act of February 25, 1944, as amended [section 1191 (c) (2) of this Appendix]. 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 [section 3806 of Title 26, I.R.C. 1939]. The powers conferred upon the Secretary shall be exercised with respect to the aggregate of the amounts received or accrued under

all such contracts and subcontracts by the contractor or subcontractor during his fiscal year or upon such other basis as may be mutually agreed upon; except that this section shall not be applicable in the event that the aggregate of the amounts so received or accrued is less than \$100,000 during any fiscal year.

##### (c) Audit of books and records of contractors or subcontractors; use of services of Bureau of Internal Revenue.

For the purpose of administering this section the Secretary of Defense shall have the right to audit the books and records of any contractor or subcontractor subject to this section. 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 Secretary of Defense and with 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 section.

##### (d) Contracts excepted.

The provisions of this section shall not apply to any of the contracts or subcontracts specified in subsection (i) (1) of the Renegotiation Act of February 25, 1944, as amended [section 1191 (i) (1) of this Appendix], and the Secretary of Defense in his discretion may exempt from the provisions of this section any other contract or subcontract both individually and by general classes or types.

##### (e) Conclusiveness of agreements or orders; fraud or malfeasance; redetermination by Tax Court.

Agreements or orders determining excessive profits shall be final and conclusive in accordance with their terms and except upon a showing of fraud or malfeasance or willful misrepresentation of a material fact shall not be annulled, modified, reopened, or disregarded, except that in the case of orders determining excessive profits the amount of the excessive profits, if any, may be redetermined by the Tax Court of the United States in the manner prescribed in subsection (e) (1) of the Renegotiation Act of February 25, 1944, as amended [section 1191 (a) (1) of this Appendix], except that such redetermination shall be subject to review to the extent and in the manner provided by subchapter B of chapter 5 of the Internal Revenue Code [sections 1140—1146 of Title 26, I.R.C. 1939].

##### (f) Publication of regulations, standards and procedures.

The Secretary of Defense shall promulgate and publish in the Federal Register regulations interpreting and applying this section and prescribing standards and procedures for determining and eliminating excessive profits hereunder using so far as he deems practicable the principles and procedures of the Renegotiation Act of February 25, 1944, as amended [section 1191 of this Appendix], having regard for the different economic conditions existing on or after the effective date of this Act [May 21, 1948] from those prevailing during the period 1942 to 1945. In any case in which the contract price of any such contract or subcontract was based upon estimated costs, then the Secretary of Defense shall determine the difference between such estimated costs and actual costs and shall, in eliminating excessive profits,

take into consideration as an element the extent to which such difference is the result of the efficiency of the contractor or subcontractor.

(g) Delegation of powers and duties of Secretary of Defense.

The powers and duties conferred upon the Secretary of Defense may be delegated by him to any officer (military or civilian) or agency of the Department of Defense.

(h) Penalties.

Any person who willfully fails or refuses to furnish any information, records, or data required of him under this section, or who knowingly furnishes any such 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 two years, or both.

(i) Short title.

This section may be cited as the "Renegotiation Act of 1948." (May 21, 1948, ch. 333, § 3, 62 Stat. 259; Aug. 10, 1949, ch. 412, § 12 (a), 63 Stat. 591.)

CHANGE OF NAME

The National Military Establishment was changed to the Department of Defense by act Aug. 10, 1949.

The official title of the Bureau of Internal Revenue was changed to the Internal Revenue Service by Treas. Dept. Order 150-29, eff. July 9, 1953.

TRANSFER OF FUNCTIONS

All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of that Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power veated in him to authorize their performance or the performance of any of his functions, by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out as a note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Bureau of Internal Revenue, referred to in this section, is an agency in the Treasury Department.

DEPARTMENT OF DEFENSE PROCUREMENT CONTRACTS FOR FISCAL YEAR 1950 SUBJECT TO THIS SECTION

Section 622 (a) of act Oct. 29, 1949, ch. 787, 63 Stat. 1021, provided that: "All negotiated contracts for procurement in excess of \$1,000 entered into during the fiscal year 1950 by or on behalf of the Department of Defense (including the Department of the Army, Department of the Navy, and Department of the Air Force), and all subcontracts thereunder in excess of \$1,000, are hereby made subject to the Renegotiation Act of 1948 [this section] in the same manner and to the same extent as if such contracts and subcontracts were required by such Act [this section] to contain the renegotiation article prescribed in subsection (a) of such Act [this section]. Each contract and subcontract made subject to the Renegotiation Act of 1948 [this section] by this section shall contain an article stating that it is subject to the Renegotiation Act of 1948 [this section]. In determining whether the amounts received or accrued to a contractor or subcontractor during his fiscal year from contracts and subcontracts subject to the Renegotiation Act of 1948 [this section] amount in the aggregate to \$100,000, receipts or accruals from contracts and subcontracts made subject to such Act [this section] by this section shall be added to receipts or accruals from all other contracts and subcontracts subject to such Act [this section]."

PROCUREMENT CONTRACTS OF DEPARTMENTS OF THE ARMY, NAVY, AND AIR FORCE DURING FISCAL YEAR 1949

Section 401 of act June 25, 1948, ch. 658, title IV, 62 Stat. 1049, provided that: "The Secretary of Defense is authorized and directed, whenever in his judgment the best interests of the United States so require, to direct the insertion of a clause incorporating the Renegotiation

Act of 1948 [this section] in any contracts for the procurement of ships, aircraft, aircraft parts, and the construction of facilities or installations outside continental United States entered into by or in behalf of the Department of the Army, the Department of the Navy or the Department of the Air Force which obligates any funds made available for obligation in the fiscal year 1949."

ACT DEC. 17, 1942, CH. 739, 56 STAT. 1053

§ 1201. Acquisition and operation of buildings and facilities by Secretary of Navy.

Whenever the Secretary of the Navy finds it impossible to make contracts or obtain facilities in the procurement or construction of items authorized in connection with the prosecution of war or the maintenance of the national defense he is authorized to provide, out of appropriations available to the Navy Department for such purposes, the necessary buildings, facilities, utilities, and appurtenances thereto on Government-owned land or elsewhere, and to provide for their operation, either by means of Government personnel or otherwise. (Dec. 17, 1942, ch. 739, § 1, 56 Stat. 1053, Aug. 7, 1946, ch. 770, § 1 (32), 60 Stat. 868; July 3, 1952, ch. 570, § 1 (a) (1), 66 Stat. 330.)

AMENDMENTS

1952—Joint Res. July 3, 1952, amended section by inserting "or the maintenance of the national defense" after "the prosecution of war".

1946—Act Aug. 7, 1946, amended section by repealing the proviso requiring reports to Congress, every three months, as to contracts entered into under this section.

EFFECTIVE DATE OF 1952 AMENDMENT

Section 7 of Joint Res. July 3, 1952, provided that the amendment of this section should take effect as of June 16, 1952.

EFFECTIVE DATE

Section 4 of act Dec. 17, 1942, provided as follows: "This Act shall be effective from June 30, 1942, and shall remain in force until the termination of the present war or until such earlier time as the Congress by concurrent resolution or the President by proclamation may designate."

SHORT TITLE OF 1952 AMENDMENT

Congress in enacting Joint Res. July 3, 1952, provided by section 8 thereof that it should be popularly known as the "Emergency Powers Continuation Act". For classification of Joint Res. July 3, 1952, see Tables Volume.

CONTINUATION OF PROVISIONS UNTIL AUGUST 1, 1953

Joint Res. June 30, 1953, ch. 172, 67 Stat. 132 and Joint Res. Mar. 31, 1953, ch. 13, § 1, 67 Stat. 18, amended Joint Res. July 3, 1952, ch. 570, 66 Stat. 332, formerly referred to in a note under this section, by extending the time limitation on the effectiveness of the provisions of this section from April 1, 1953 to August 1, 1953.

REPEAL OF PRIOR ACTS CONTINUING SECTION

Act Apr. 4, 1953, ch. 21, § 2, 67 Stat. 23, repealed Joint Res. July 3, 1952, ch. 570, § 1(a) (18) which continued the effectiveness of this section until Apr. 1, 1953. Section 6 of Joint Res. July 3, 1952, repealed Joint Res. Apr. 14, 1952, ch. 204, 66 Stat. 54 as amended by Joint Res. May 28, 1952, ch. 339, 66 Stat. 96; Joint Res. June 14, 1952, ch. 437, 66 Stat. 137; Joint Res. June 30, 1952, ch. 526, 66 Stat. 296, which continued provisions until July 3, 1952. This repeal took effect as of June 16, 1952, by section 7 of Joint Res. July 3, 1952.

SEPARABILITY PROVISIONS

Section 5 of Joint Res. July 3, 1952, provided that: "If any provision of this joint resolution, or the application thereof to any person or circumstances, is held invalid, the remaining provisions of this joint resolution, or the application of such provision to other persons or circumstances, shall not be affected thereby."

For classification of Joint Res. July 3, 1952, see Tables Volume.



ACT MAR. 23, 1951, CH. 15, 65 STAT. 7

TITLE I—RENEGOTIATION OF CONTRACTS

§ 1211. Congressional declaration of policy.

It is 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 property, 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 [sections 1211—1224 of this Appendix]. (Mar. 23, 1951, ch. 15, title I, § 101, 65 Stat. 7.)

SHORT TITLE

Congress in enacting sections 1211—1233 of this Appendix, and amendments of section 1191 of this Appendix and section 3806(a)(1) of Title 26, I.R.C. 1939 provided by section 1 of act Mar. 23, 1951, that they should be popularly known as the "Renegotiation Act of 1951."

SEPARABILITY PROVISIONS

Section 204 of act Mar. 23, 1951, provided that: "If any provision of this Act [sections 1211—1233 of this Appendix] or the application of any provision to any person or circumstance is held invalid, the validity of the remainder of the Act [said sections] and of the application of its provisions to other persons and circumstances shall not be affected thereby."

§ 1212. Contracts subject to renegotiation.

(a) Generally.

The provisions of this title [sections 1211—1224 of this Appendix] shall be applicable (1) to all contracts with the Departments specifically named in section 103 (a) [section 1213 (a) of this Appendix], 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) [section 1213 (a) of this Appendix], 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.

(b) Performance prior to July 1, 1950.

Notwithstanding the provisions of subsection (a) of this section, the provisions of this title [sections 1211—1224 of this Appendix] 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)

of this section, would be subject to the Renegotiation Act of 1948 [section 1193 of this Appendix].

(c) Termination.

(1) In general.

The provisions of this title [sections 1211—1224 of this Appendix] 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 [sections 1211—1224 of this Appendix], the term "termination date" means June 30, 1959.

(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) [section 1213 (a) of this Appendix] is terminated, the provisions of this title [sections 1211—1224 of this Appendix] 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 determined 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) [section 1213 (a) of this Appendix] is terminated.

(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 [sections 1211—1224 of this Appendix] are applicable, the provisions of this title [sections 1211—1224 of this Appendix] 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 [sections 1211—1224 of this Appendix]; 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.

(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 [section 1155 (b) of Title 46], 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 [sections 1211—1224 of this Appendix] or would be subject to this title except for the provisions of section 106 (e) [section 1216 (e) of this Appendix], 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 [sections 1211—1224 of this Appendix] or would be subject to this title except for the provisions of section 106 (e) [section 1216 (e) of this Appendix]. (Mar. 23, 1951, ch. 15, title I, § 102, 65 Stat. 8; Sept. 1, 1954, ch. 1209, § 1, 68 Stat. 1116; Aug. 3, 1955, ch. 499, §§ 1, 2(a), 69 Stat. 447; Aug. 1, 1956, ch. 821, §§ 2, 9(b), 70 Stat. 786, 791; Sept. 6, 1958, Pub. L. 85-930, § 1, 72 Stat. 1789.)

REFERENCES IN TEXT

Act of Mar. 27, 1934, referred to in subsec. (e), which was classified to sections 494, 495, 496 and 497 of former Title 34, Navy, was repealed by act Aug. 10, 1956, ch. 1041, § 53, 70A Stat. 641 and is now covered by sections 2332, 7300, 7342, and 7343 of Title 10, Armed Forces. Section 494 of former Title 34, Navy, was omitted.

Merchant Marine Act, 1936, as amended, referred to in subsec. (e), is classified to chapter 27 of Title 46, Shipping.

AMENDMENTS

1958—Subsec. (c) amended by Pub. L. 85-930 to extend termination date from Dec. 31, 1958, to June 30, 1959.

1956—Subsec. (a) amended by act Aug. 1, 1956, § 2, to eliminate provisions which set Dec. 31, 1956, as the expiration date, which provisions are now covered by subsec. (c) of this section.

Subsec. (c) added by act Aug. 1, 1956, § 2. Former subsec. (c) redesignated (d).

Subsec. (d), formerly (c) so redesignated by act Aug. 1, 1956, § 2. Former subsec. (d) redesignated (e).

Subsec. (e), formerly (d), so redesignated by act Aug. 1, 1956, § 2, and amended by act Aug. 1, 1956, § 9 (b), which substituted "section 106 (e)" for "section 106 (a) (8)".

1955—Subsec. (a) amended by act Aug. 3, 1955, § 1, to extend expiration date from Dec. 31, 1954 to Dec. 31, 1956.

Subsec. (d) amended by act Aug. 3, 1955, § 2 (a), to exempt from the profit-limitation provisions contracts or subcontracts if any of the receipts or accruals therefrom are subject to sections 1211—1233 of this Appendix except for the provisions of section 1216 (a) (8) of this title.

1954—Subsec. (a) amended by act Sept. 1, 1954, to extend expiration date from Dec. 31, 1953 to Dec. 31, 1954.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment of subsec. (e) of this section by act Aug. 1, 1956, as applicable only with respect to fiscal years (as defined in section 1213 (h) of this Appendix) ending after June 30, 1956, see section 9 (c) of act Aug. 1, 1956, set out as a note under section 1216 of this Appendix.

EFFECTIVE DATE OF 1955 AMENDMENT

Section 2 (b) of act Aug. 3, 1955, provided that the amendment of subsec. (d) should apply to contracts with the Departments and subcontracts only to the extent of the amounts received or accrued by a contractor or subcontractor after Dec. 31, 1953.

SHORT TITLE

Congress, in enacting sections 1218a and 1224 of this Appendix, and amending sections 1213 (a), (c—e) 1213 (a) (b), (f), (m), 1215 (c), (e) (1), (f) (1, 3), 1216 (a) (7, 8), (e), 1217 (c), 1218, and 1223 of this Appendix, provided by section 1 of act Aug. 1, 1956, that those enactments and amendments should be popularly known as the "Renegotiation Amendments Act of 1956".

STUDY BY JOINT COMMITTEE ON INTERNAL REVENUE TAXATION FOR DETERMINATION OF EXTENSION OF RENEGOTIATION ACT OF 1951

Section 6 of act Aug. 3, 1955, provided that:

"(a) The Joint Committee on Internal Revenue Taxation, or any duly authorized subcommittee thereof, is hereby authorized and directed to make a complete study in order to determine—

"(1) whether there is any necessity of extending the Renegotiation Act of 1951 [sections 1211—1233 of this Appendix] beyond December 31, 1956; and

"(2) if any such further extension is found necessary, the extent to which renegotiation of Government contracts should apply after such date.

"(b) The Joint Committee shall, not later than May 31, 1956, report to the Senate and the House of Representatives the results of the study conducted pursuant to this section, together with such recommendations as it deems necessary or desirable.

"(c) For the purpose of making the study and report required by this section, the Joint Committee, and the Chief of Staff of the Joint Committee, may exercise any of the powers conferred upon the Joint Committee and the Chief of Staff of the Joint Committee by sections 8021 and 8023 of the Internal Revenue Code of 1954 [sections 8021 and 8023 of Title 26, Internal Revenue Code]. The provisions of section 8023 (b) of such Code [section 8023 (b) of Title 26, Internal Revenue Code] shall apply to requests made under the authority of this subsection to the same extent as in the case of other requests made under the authority of section 8023 (a) of such Code [section 8023 (a) of Title 26, Internal Revenue Code]."

§ 1213. Definitions.

For the purposes of this title [sections 1211—1224 of this Appendix]—

(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, the National Aeronautics and Space 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 [August 1, 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 Administrator of the National Aeronautics and Space Administration, the Atomic Energy Commission, 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 [section 1217 (a) of this Appendix].

**(d) Renegotiate and renegotiation.**

The terms "renegotiate" and "renegotiation" include a determination by agreement or order under this title [sections 1211—1224 of this Appendix] 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 [sections 1211—1224 of this Appendix] 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 [chapter 1 of Title 26, I.R.C. 1939] (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 [sections 1211—1224 of this Appendix] over the amount of receipts or accruals subject to the provisions of this title [sections 1211—1224 of this Appendix] 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 subcontracts.

Nothing in this subsection shall be construed (1) 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 [chapter 1 of Title 26, I.R.C. 1939], except that where any readjustment of interests occurs in a partnership as defined in section 3797(a)(2) of such code [section 3797(a)(2) of Title 26, I.R.C. 1939] 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 [sections 1211—1224 of this Appendix] over the amount of receipts or accruals subject to the provisions of this title [sections 1211—1224 of this Appendix] 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. (Mar. 23, 1951, ch. 15, title I, § 103, 65 Stat. 8; Aug. 1, 1956, ch. 821, §§ 3(a), 4, 70 Stat. 786; Sept. 6, 1958, Pub. L. 85-930, § 2(a), 72 Stat. 1789.)

AMENDMENTS

✓ 1958—Subsec. (a) amended by Pub. L. 85-930 to include the National Aeronautics and Space Administration. Subsec. (b) amended by Pub. L. 85-930 to include the Administrator of the National Aeronautics and Space Administration.

1956—Subsec. (a) amended by act Aug. 1, 1956, § 3 (a), to include the Maritime Administration and the Federal Maritime Board, to exclude the Department of Commerce, the Reconstruction Finance Corporation, the Canal Zone Government, the Panama Canal Company, and the Housing and Home Finance Agency, and to limit definition to include other agencies only during a national emergency.

Subsec. (b) amended by act Aug. 1, 1956, § 3 (a), to restrict the definition to include the Secretary of Commerce only with respect to the Maritime Administration, to include the Federal Maritime Board, and to exclude the Board of Directors of the Reconstruction Finance Corporation, the Governor of the Canal Zone, the pres-

ident of the Panama Canal Company, and the Housing and Home Finance Administrator.

Subsec. (f) amended by act Aug. 1, 1956, § 4 (b), which substituted "any fiscal year ending before December 31, 1956," for "any fiscal year".

Subsec. (m) added by act Aug. 1, 1956, § 4 (a).

#### EFFECTIVE DATE OF 1958 AMENDMENT

Section 2(b) of Pub. L. 85-930 provided that: "The amendments made by subsection (a) [to subsecs. (a) and (b) of this section] shall apply only with respect to contracts entered into by the National Aeronautics and Space Administration and to contracts transferred to such Administration from a Department (as defined in section 103(a) of such Act [subsec. (a) of this section]) under section 301 [section 22-1 of Title 5, sections 2302 and 2303(a) (5) of Title 10 and sections 511-513 of Title 50] or section 302 [section 2453 of Title 42] of the National Aeronautics and Space Act of 1958, and to related subcontracts."

#### EFFECTIVE DATE OF 1956 AMENDMENT

Section 3 (b) of act Aug. 1, 1956, provided that: "The amendment made by subsection (a) [to subsecs. (a) and (b)] shall take effect on December 31, 1956."

#### EX. ORD. NO. 10260. DESIGNATION OF CERTAIN AGENCIES

Ex. Ord. No. 10260, June 27, 1951, 16 F.R. 6271, as amended by Ex. Ord. No. 10773, July 1, 1958, 23 F.R. 5081; Ex. Ord. No. 10782, Sept. 8, 1958, 23 F.R. 6971, provided:

By virtue of the authority vested in me by the Renegotiation Act of 1951 (Public Law 9, 82nd Congress) [sections 1211-1233 of this Appendix], hereinafter referred to as the Act, and as President of the United States, it is ordered as follows:

1. The Office of Civil and Defense Mobilization, the National Advisory Committee for Aeronautics, the Tennessee Valley Authority, and the United States Coast Guard, each of which exercises functions having a direct and immediate connection with the national defense, are hereby designated, pursuant to section 103(a) of the Act [sub-section (a) of this section], as agencies of the Government included within the definition of the term "Department" for the purposes of Title I of the Act [sections 1211-1224 of this Appendix].

2. In accordance with section 102 of the Act [section 1212 of this Appendix], the provisions of Title I of the Act [sections 1211-1224 of this Appendix] shall be applicable to all contracts with each agency designated in paragraph 1 of this order, and related subcontracts, to the extent of the amounts received or accrued by a contractor or subcontractor on or after the first day of July 1951, whether such contracts or subcontracts were made on, before, or after that date.

#### EX. ORD. NO. 10294. ADDITIONAL AGENCIES WITHIN THE TERM "DEPARTMENT"

Ex. Ord. No. 10294, Sept. 28, 1951, 16 F.R. 9927, provided:

1. The Defense Materials Procurement Agency, the Bureau of Mines, and the (United States) Geological Survey, each of which exercises functions having a direct and immediate connection with the national defense, are hereby designated, pursuant to section 103 (a) of the Act, [this section] as agencies of the Government included within the definition of the term "Department" for the purposes of Title I of the Act [sections 1211-1224 of this Appendix].

2. In accordance with section 102 of the Act [section 1212 of this Appendix], the provisions of Title I of the Act [sections 1211-1224 of this Appendix] shall be applicable to all contracts with the Defense Materials Procurement Agency, the Bureau of Mines, and the (United States) Geological Survey, respectively, and related subcontracts, to the extent of the amounts received or accrued by a contractor or subcontractor on or after the first day of October 1951, whether such contracts or subcontracts were made on, before, or after that date.

#### EX. ORD. NO. 10299. BONNEVILLE POWER ADMINISTRATION WITHIN THE TERM "DEPARTMENT"

Ex. Ord. No. 10299, Nov. I, 1951, 16 F.R. 11135, provided:

1. The Bonneville Power Administration, which exercises functions having a direct and immediate connection

with the national defense, is hereby designated, pursuant to subsection (a) of section 103 of the Act [this section], as an agency coming within the definition of the term "Department" for the purposes of Title I of the Act [sections 1211-1224 of this Appendix].

2. In accordance with section 102 of the Act [section 1212 of this Appendix], the provisions of title I of the Act [sections 1211-1224 of this Appendix] shall be applicable to all contracts with the Bonneville Power Administration, and related subcontracts, to the extent of the amounts received or accrued on or after the first day of November, 1951, whether such contracts or subcontracts were made on, before, or after that date.

#### EX. ORD. NO. 10369. BUREAU OF RECLAMATION WITHIN THE TERM "DEPARTMENT"

Ex. Ord. No. 10369, July 1, 1952, 17 F.R. 5932, provided:

By virtue of the authority vested in me by the Renegotiation Act of 1951, 65 Stat. 7 [sections 1211-1233 of this Appendix], hereinafter referred to as the Act, and as President of the United States, it is ordered as follows:

SECTION 1. The Bureau of Reclamation, which exercises functions having a direct and immediate connection with the national defense, is hereby designated, pursuant to section 103 (a) of the Act [subsection (a) of this section], as an agency of the Government included within the definition of the term "Department" for the purposes of Title I of the Act [sections 1211-1224 of this Appendix].

SEC. 2. In accordance with section 102 of the Act [section 1212 of this Appendix], the provisions of Title I [sections 1211-1224 of this Appendix] of the Act shall be applicable to all contracts with the Bureau of Reclamation, and related subcontracts, to the extent of the amounts received or accrued on or after the first day of July, 1952, whether such contracts or subcontracts were made on, before, or after that date.

#### EX. ORD. NO. 10567. FEDERAL FACILITIES CORPORATION WITHIN THE TERM "DEPARTMENT"

Ex. Ord. No. 10567, Sept. 30, 1954, 19 F.R. 6361, provided:

By virtue of the authority vested in me by the Renegotiation Act of 1951, 65 Stat. 7, as amended [sections 1211-1233 of this Appendix], hereinafter referred to as the Act, and as President of the United States, it is ordered as follows:

SECTION 1. The Federal Facilities Corporation, which exercises functions having a direct and immediate connection with the national defense, is hereby designated, pursuant to subsection (a) of section 103 of the Act [subsection (a) of this section], as an agency included within the definition of the term "Department" for the purposes of Title I of the Act [sections 1211-1224 of this Appendix].

SEC. 2. In accordance with section 102 of the Act, [section 1212 of this Appendix], the provisions of Title I of the Act [sections 1211-1224 of this Appendix] shall be applicable to all contracts with the Federal Facilities Corporation and related subcontracts, to the extent of the amounts received or accrued on or after the first day of October, 1954, whether such contracts or subcontracts were made on, before, or after that date.

SEC. 3. This order shall not be construed as affecting any renegotiation rights which the Government may have with respect to contracts with the Federal Facilities Corporation and related subcontracts to the extent of the amounts received or accrued between July 1, 1954 and September 30, 1954, inclusive, whether such contracts or subcontracts were made on, before, or after July 1, 1954.

#### § 1214. Renegotiation clause in contracts.

Subject to section 106 (a) [section 1216 (a) of this Appendix] the Secretary of each Department specifically named in section 103 (a) [section 1213 (a) of this Appendix] shall insert in each contract made by such Department thirty days or more after the date of the enactment of this Act [March 23, 1951], and the Secretary of each Department designated by the President under section 103 (a) [section

1213 (a) of this Appendix] 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) [section 1213(g) of this Appendix] 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) [section 1213(g) of this Appendix] provisions corresponding to those of subparagraphs (A), (B), and (C) of this paragraph, 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) [section 1215(b) (1) (C) of this Appendix] 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) of this section, 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 [sections 1211—1224 of this Appendix]. 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 [sections 1211—1224 of this Appendix] is applicable, such contract or subcontract, as the case may be, shall be considered as having been made subject to this title [sections 1211—1224 of this Appendix] in the same manner and to the same extent as if such provisions had been inserted. (Mar. 23, 1951, ch. 15, title I, § 104, 65 Stat. 11.)

#### § 1215. Renegotiation proceedings.

##### (a) Proceedings before 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 [section 1216 of this Appendix], 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 properly 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 corporations which constitute an affiliated group under section 141 (d) of the Internal Revenue Code [section 141(d) of Title 26, I.R.C. 1939] 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 [section 3806 of Title 26, I.R.C. 1939], 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 excess profits.****(1) General procedures.**

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 [section 1218 of this Appendix] 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) of this subsection 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) [of this subsection] 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) of this subsection, 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 [section 1218 of this Appendix], 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 [section 1218 of this Appendix] 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) Liability of sureties.**

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

**(5) Liability of 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 [section 203 of Title 31 and section 15 of Title 41], to withhold from any assignee referred to in said Act [section 203 of Title 31 and section 15 of Title 41], 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 [section 203 of Title 31 and section 15 of Title 41], or (B) to authorize any Department or agency of the Government to direct the withholding pursuant to this Act [sections 1211—1233 of this Appendix], or to recover pursuant to this Act [sections 1211—1233 of this Appendix], 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 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 reduced 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 [section 3806 of Title 26, I.R.C. 1939].

**(c) Periods of limitations.**

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 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 [section 1217 (d) of this Appendix], 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 purpose of this title [sections 1211—1224 of this Appendix] 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 [said sections]. 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 [said sections] 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 [said sections], 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) [subsection (f) of this section] 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 [sections 1211—1224 of this Appendix] 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 fifth calendar month following the close of his fiscal year, a financial statement setting forth such information as the Board may by regulations prescribe as necessary to carry out this title [sections 1211—1224 of this Appendix]. 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 [sections 1211—1224 of this Appendix]. The Board may require any person who holds contracts or subcontracts to which the provisions of this title [sections 1211—1224 of this Appendix] 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 [sections 1211—1224 of this Appendix] 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 [sections 1211—1224 of this Appendix], the Board shall have the right to audit the books and records of any contractor or subcontractor subject to this title [said sections]. In the interest of economy and the avoidance of duplication of inspection and audit, the services of the Bureau of Internal Revenue shall, upon the 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 [said sections].

(f) Minimum amounts subject to renegotiation.

(1) Aggregate amounts received or accrued during fiscal year.

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) [section 1212(a) of this Appendix]) 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) [section 1213 (g) (1), (2) of this Appendix], 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 [sections 1211—1224 of this Appendix]. 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 1213(g)(3) of this Appendix.

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) [section 1212(a) of this Appendix]) by a subcontractor, and all persons under control of or control-

ling or under common control with the subcontractor, under subcontracts described in section 103(g) (3) [section 1213(g)(3) of this Appendix] is not more than \$25,000, the receipts or accruals from such subcontracts shall not, for such fiscal year, be renegotiated under this title [sections 1211—1224 of this Appendix]. 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 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 for the purposes of paragraphs (1) and (2) of this subsection. 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) [section 1212(c) of this Appendix] for the application of the provisions of this title [sections 1211—1224 of this Appendix] 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. (Mar. 23, 1951, ch. 15, title I, § 105, 65 Stat. 12; Sept. 1, 1954, ch. 1209, §§ 2, 7(a), 68 Stat. 1116, 1118; Aug. 1, 1956, ch. 821, §§ 5 (a)—(c), 6, 7(a), 70 Stat. 787.)

AMENDMENTS

1956—Subsec. (c) amended by act Aug. 1, 1956, § 5 (b), (c), to provide that the one year period for commencement of proceedings shall not apply in the case of fraud or malfeasance or willful misrepresentation of a material fact.

Subsec. (e) (1) amended by act Aug. 1, 1956, § 5 (a), to eliminate the mandatory filing of a financial statement by any person with respect to a fiscal year if the aggregate of the amounts received or accrued during the fiscal year by that person, and all persons under control of or controlling or under common control with him, is not more than the applicable amount prescribed in subsec. (f) (1) or (2), to grant that person the right to elect to file a financial statement, to grant the Board power to request information, records or data from any person whether or not that person filed a financial

statement, and to prohibit the request for information, records or data with respect to any fiscal year after the date on which all liabilities of the person for excessive profits received or accrued during that fiscal year are discharged.

Subsec. (f) (1) amended by act Aug. 1, 1956, § 6 (a), to increase the minimum amount subject to renegotiation from \$500,000 to \$1,000,000 for fiscal years ending after June 30, 1956.

Subsec. (f) (3) amended by act Aug. 1, 1956, §§ 6 (b), 7 (a). Section 6 (b) of act Aug. 1, 1956, provided for the reduction of the \$1,000,000 amount where the fiscal year is a fractional part of twelve months, and for prorating the \$1,000,000 amount and the \$25,000 amount where the fiscal year begins on or before the termination date and ends after the termination date. Section 7 (a) of act Aug. 1, 1956, omitted provisions which, for the purposes of subsec. (f) (2), permitted exclusion of 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 that contractor or subcontractor and from each other such person.

1954—Subsec. (d) amended by act Sept. 1, 1954, § 7 (a), to give Board power to declare agreements void.

Subsecs. (f) (1), (3), amended by act Sept. 1, 1954, § 2, to increase the minimum amount subject to renegotiation from \$250,000 to \$500,000 for fiscal years ending on or after June 30, 1953.

#### EFFECTIVE DATE OF 1956 AMENDMENT

Section 5 (d) of act Aug. 1, 1956, provided that: "The amendments made by subsections (a), (b), and (c) [to subsecs. (c) and (e) (1)] shall apply only with respect to fiscal years (as defined in section 103 (h) of such Act [section 1213 (h) of this Appendix]) ending after June 30, 1956."

Section 7 (b) of act Aug. 1, 1956, provided that: "The amendment made by subsection (a) [to subsec. (f) (3)] shall apply only with respect to fiscal years (as defined in section 103 (h) of such Act [section 1213 (h) of this Appendix]) ending on or after June 30, 1956."

#### EFFECTIVE DATE OF 1954 AMENDMENT

Section 7 (b) of act Sept. 1, 1954, provided that the amendment of subsec. (d) should take effect as if it had been a part of this section when enacted on Mar. 23, 1951.

#### CHANGE OF NAME

The official title of the Bureau of Internal Revenue was changed to the Internal Revenue Service by Treas. Dept. Order 159-29, eff. July 9, 1953.

### § 1216. Exemptions.

#### (a) Mandatory exemptions.

The provisions of this title [sections 1211—1224 of this Appendix] 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 [chapter 12 of Title 49] or subject to the jurisdiction of the Federal Maritime Board under the Intercoastal Shipping Act, 1933 [chapter 23A of Title 46] 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 [section 101 (6) of Title 26, I.R.C. 1939], but only if the income from such contract or subcontract is not includible under section 422 of such code [section 422 of Title 26, I.R.C. 1939] 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 [section 1218 of this Appendix], 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 [sections 1211—1224 of this Appendix] does not apply by reason of any paragraph, other than paragraph (1), (5), or (8), of this subsection; or

(8) Repealed. Aug. 1, 1946, ch. 821, § 9(a), 70 Stat. 789.

(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 [sections 1748—1748h of Title 12].

(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 [sections 1211—1224 of this Appendix], 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 [said sections], 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 [said sections] 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 [said sections], attributable to the increment in value of the excess inventory, and the method of excluding such portions 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) Receipts and accruals.

The provisions of this title [sections 1211—1224 of this Appendix] 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) Definitions.

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 [sections 1211—1224 of this Appendix]—

(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 individually and by general classes or types.

(e) **Mandatory exemption for standard commercial articles and services.**

(1) **Articles and services.**

The provisions of this title [sections 1211—1224 of this Appendix] 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 [sections 1211—1224 of this Appendix] 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.**

Paragraph (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 regulations 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 [sections 1211—1224 of this Appendix];

(C) an article is, with respect to any fiscal year, "identical 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 [sections 1211—1224 of this Appendix];

(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, 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 [sections 1211—1224 of this Appendix];

(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 [sections 1211—1224 of this Appendix]; 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 [sections 1211—1224 of this Appendix].

(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) [section 1215 (e) (1) of this Appendix], 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 [August 1, 1956]. (Mar. 23, 1951, ch. 15, title I, § 106, 65 Stat. 17; Sept. 1, 1954, ch. 1209, §§ 3 (a), 4 (a)—(c), 5(a), 6(a), 68 Stat. 1116, 1118; Aug. 3, 1955, ch. 499, §§ 3(a), 4(a), 5(a), 69 Stat. 447, 448; Aug. 1, 1956, ch. 821, §§ 8(a), 9(a), 70 Stat. 789.)

AMENDMENTS

1956—Subsec. (a) (7) amended by act Aug. 1, 1956, § 8 (a), which substituted "other than paragraph (1), (5), or (8)" for "other than paragraph (3)".

Subsec. (a) (3), which provided for a mandatory exemption for standard commercial articles and services, was repealed by act Aug. 1, 1956, § 9 (a), and is now covered by subsec. (e) of this section.

✓ Subsec. (e) added by act Aug. 1, 1956, § 9 (a).

1955—Subsec. (a) (8) amended by act Aug. 3, 1955, § 3 (a), which added the term "standard commercial service" and the definitions of "service", "standard commercial service"; and "reasonably comparable" to exempt contracts and subcontracts for the making or furnishing of a standard commercial service.

Subsec. (a) (9) added by act Aug. 3, 1955, § 4 (a).

Subsec. (c) (2) amended by act Aug. 3, 1955, § 5 (a), to grant exemptions to manufacturers who sell items of durable productive equipment to other manufacturers who incorporate it in equipment sold to the Government.

1954—Subsec. (a) (4) amended by act Sept. 1, 1954, § 6 (a), by adding to last sentence "and to such furnishing . . . profits are improbable; or".

Subsec. (a) (6) amended by act Sept. 1, 1954, § 3 (a), to include synthetic rubber within exemptions.

Subsec. (a) (7) amended by act Sept. 1, 1954, § 5 (a) (1), to substitute "by reason of any paragraph, other than paragraph (8), of this subsection; or".

Subsec. (a) (8) added by act Sept. 1, 1954, § 5 (a) (2).

Subsec. (c) amended by act Sept. 1, 1954, § 4 (a)—(c), to make it applicable to prime contracts as well as subcontracts, and to redefine "durable productive equipment".

EFFECTIVE DATE OF 1956 AMENDMENT

Section 8 (b) of act Aug. 1, 1956, provided that: "The amendment made by subsection (a) [to subsec. (a) (7)]

shall apply only with respect to subcontracts made after June 30, 1956."

Section 9 (c) of act Aug. 1, 1956, provided that: "The amendments made by this section [to sections 1212 (e) and 1216 (e) of this Appendix] shall apply only with respect to fiscal years (as defined in section 103 (h) of such Act [section 1213 (h) of this Appendix]) ending after June 30, 1956."

EFFECTIVE DATE OF 1955 AMENDMENT

Section 3 (b) of act Aug. 3, 1955, provided that the amendment to subsec. (a) (8) should apply to contracts with the Departments and subcontracts only to the extent of the amounts received or accrued by a contractor or subcontractor after Dec. 31, 1953.

Section 4 (b) of act Aug. 3, 1955, provided that the amendment to subsec. (a) (9) should apply only to contracts with the Departments made after Dec. 31, 1954.

Section 5 (b) of act Aug. 3, 1955, provided that the amendment to subsec. (c) (2) should apply only with respect to fiscal years (as defined in section 1213 (h) of this Appendix) ending on or after June 30, 1953.

EFFECTIVE DATE OF 1954 AMENDMENT

Section 3 (b) of act Sept. 1, 1954, provided that the amendment of subsec. (a) (6) should take effect as if it had been a part of the section where enacted on Mar. 23, 1951.

Section 4 (d) of act Sept. 1, 1954, provided that the amendment of subsec. (c) should be effective for fiscal years ending on and after June 30, 1953.

Section 5 (b) of act Sept. 1, 1954, provided that the amendment of subsecs. (a) (7), (8) should apply to contracts and subcontracts only to the extent of the amounts received or accrued by a contractor or subcontractor after Dec. 31, 1953.

Section 6 (b) of act Sept. 1, 1954, provided that the amendment of subsec. (a) (4) should apply only with respect to fiscal years (as defined in section 1213 (h) of this Appendix) ending on or after Dec. 31, 1953.

CHANGE OF NAME

The official title of the Bureau of Internal Revenue was changed to the Internal Revenue Service by Trcas. Dept. Order 150-29, eff. July 9, 1953.

TRANSFER OF FUNCTIONS

All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of that Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F. R. 4935, 64 Stat. 1280, set out as a note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Bureau of Internal Revenue, referred to in this section, is an agency in the Treasury Department.

§ 1217. Renegotiation Board.

(a) Creation.

There is 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 [chapter 21 of Title 5] 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 [sections 1211—1224 of this Appendix]. 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) [section 1216 (d) of this Appendix]) 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) [of this section] 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) of this section 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) [section 1215 (a) of this Appendix], 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) [section 1215 (a) of this Appendix] 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 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 authorized to delegate to the Board, in whole or in part, the powers, functions, and duties conferred upon him by any other renegotiation law. (Mar. 23, 1951, ch. 15, title I, § 107, 65 Stat. 19; Aug. 1, 1956, ch. 821, § 10, 70 Stat. 791.)

**REFERENCES IN TEXT**

The civil-service laws, referred to in subsec. (c), are classified generally to Title 5, Executive Departments and Government Officers and Employees.



## AMENDMENTS

1956—Subsec. (c) amended by act Aug. 1, 1956, to make employees of the Board subject to the civil-service laws and regulations.

## COMPENSATION OF MEMBERS OF RENEGOTIATION BOARD

Annual basic compensation of Chairman as \$20,500, and as \$20,000 for members, see sections 2204 and 2205 (a) of Title 5, Executive Departments and Government Officers and Employees. See also section 2207 of Title 5.

§ 1217a. Repealed. June 28, 1955, ch. 189, § 12 (c) (5), 69 Stat. 181.

Section, act Nov. 11, 1951, ch. 665, ch. V, § 501, 65 Stat. 763, authorized the Board to place not more than five positions in grades 16, 17, or 18 of the General Schedule established by the Classification Act of 1949.

§ 1218. 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) [section 1215(a) of this Appendix] 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(e) [section 1217(e) of this Appendix] 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 [Title 26, I.R.C. 1939] 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 [section 1215(b) of this Appendix] 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. (Mar. 23, 1951, ch. 15, title I, § 108, 65 Stat. 21; Aug. 1, 1956, ch. 821, § 11(a), 70 Stat. 791.)

## AMENDMENTS

1956—Act Aug. 1, 1956, amended section by inserting the word "only" preceding "If within ten days after the filing of the petition".

## EFFECTIVE DATE OF 1956 AMENDMENT

Section 11 (b) of act Aug. 1, 1956, provided that: "The amendment made by subsection (a) [to this section] shall be effective as of the date of the enactment of the Renegotiation Act of 1951 [March 23, 1951]."

§ 1218a. Venue of appeals from Tax Court decisions.

A decision of the Tax Court of the United States under section 108 of this Act [section 1218 of this Appendix] 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. (Mar. 23, 1951, ch. 15, title I, § 108A, as added Aug. 1, 1956, ch. 821, § 12, 70 Stat. 791.)

§ 1219. 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 [sections 1211—1224 of this Appendix]. (Mar. 23, 1951, ch. 15, title I, § 109, 65 Stat. 22.)

§ 1220. 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 [sections 1211—1224 of this Appendix], notwithstanding that any such rule, regulation, or order shall thereafter be declared by judicial or other competent authority to be invalid. (Mar. 23, 1951, ch. 15, title I, § 110, 65 Stat. 22.)

### § 1221. Application of Administrative Procedure Act.

The functions exercised under this title [sections 1211—1224 of this Appendix] shall be excluded from the operation of the Administrative Procedure Act (60 Stat. 237) [sections 1001—1010 of Title 5] except as to the requirements of section 3 thereof [section 1002 of Title 5]. (Mar. 23, 1951, ch. 15, title I, § 111, 65 Stat. 22.)

### § 1222. Appropriations.

There are authorized to be appropriated such sums as may be necessary and appropriate for the carrying out of the provisions and purposes of this title [sections 1211—1224 of this Appendix]. Funds made available for the purposes of this title [said sections] may be allocated or transferred for any of the purposes of this title [said sections] with the approval of the Bureau of the Budget to any agency of the Government designated to assist in carrying out this title [said sections]. Funds so allocated or transferred shall remain available for such period as may be specified in the Acts making such funds available. (Mar. 23, 1951, ch. 15, title I, § 112, 65 Stat. 22.)

### § 1223. Prosecution of claims against United States by former personnel.

Nothing in sections 281 and 283 of Title 18, or in section 99 of Title 5 shall be deemed to prevent any person by reason of service in a Department or the Board 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. (Mar. 23, 1951, ch. 15, title I, § 113, 65 Stat. 22; Aug. 1, 1956, ch. 821, § 13, 70 Stat. 792.)

#### AMENDMENTS

1956—Act Aug. 1, 1956, amended section to eliminate provisions which limited application of the section to persons who served in a Department or on the Renegotiation Board during the period (or a part thereof) beginning July 1, 1950, and ending Dec. 31, 1953.

### § 1224. 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.

(Mar. 23, 1951, ch. 15, title I, § 114, as added Aug. 1, 1956, ch. 821, § 14, 70 Stat. 792.)

#### TITLE II.—GENERAL PROVISIONS

### § 1231. Functions under World War II Renegotiation Act.

#### (a) Abolition of War Contracts Price Adjustment Board.

The War Contracts Price Adjustment Board, created by the Renegotiation Act [section 1191 of this Appendix], is abolished.

#### (b) Transfer of functions generally.

All powers, functions, and duties conferred upon the War Contracts Price Adjustment Board by the Renegotiation Act [section 1191 of this Appendix] and not otherwise specifically dealt with in this section are transferred to the Renegotiation Board.

#### (c) Amendment of the Renegotiation Act.

Subsection (a) (4) (D) of the Renegotiation Act [section 1191 (a) (4) (D) of this Appendix] is amended by inserting at the end thereof the following: "A net renegotiation rebate shall not be repaid unless a claim therefor has been filed with the Board on or before the date of its abolition, or unless a claim shall have been filed with the Administrator of General Services (i) on or before June 30, 1951, or (ii) within ninety days after the making of an agreement or the entry of an order under subsection (c) (1) [of this section] determining the amount of excessive profits, whichever is later. A claim shall be deemed to have been filed when received by the Board or the Administrator, whether or not accompanied by a statement of the Commissioner of Internal Revenue showing the amortization deduction allowed for the renegotiated year upon the recomputation made pursuant to section 124 (d) of the Internal Revenue Code [section 124(d) of Title 26, I.R.C. 1939]."

#### (d) Transfer of certain functions.

All powers, functions, and duties conferred upon the War Contracts Price Adjustment Board by subsection (a) (4) (D) of the Renegotiation Act, subject to the amendment thereof by subsection (c) of this section [section 1191 (a) (4) (D) of this Appendix], are transferred to the Administrator of General Services.

#### (e) Elimination of excessive profits by Departments; transfer of records.

Each Secretary of a Department is authorized and directed to eliminate the excessive profits determined under all existing renegotiation agreements or orders by the methods enumerated in subsection (c) (2) of the Renegotiation Act [section 1191 (c) (2) of this Appendix] in respect of all renegotiations conducted by his Department pursuant to delegations from the War Contracts Price Adjustment Board. The several Departments shall retain custody of the renegotiation case files covering renegotiations thus conducted for such time as the Secretary deems necessary for the purposes of this section, and thereafter they shall be made available

to the Renegotiation Board for appropriate disposition. The renegotiation records of the War Contracts Price Adjustment Board shall become records of the Renegotiation Board on the effective date of this section.

(f) Refunds.

All refunds under subsection (a) (4) (D) of the Renegotiation Act [section 1191 (a) (4) (D) of this Appendix] (relating to the recomputation of the amortization deduction), all refunds under the last sentence of subsection (i) (3) of such Act [section 1191 (i) (3) of this Appendix] (relating to excess inventories), and all amounts finally adjudged or determined to have been erroneously collected by the United States pursuant to a determination of excess profits, with interest thereon in the last mentioned case at a rate not to exceed 4 per centum per annum as may be determined by the Administrator of General Services or his duly authorized representative computed to the date of certification to the Treasury Department for payment, shall be certified by the Administrator of General Services or his duly authorized representative to the Treasury Department for payment from such appropriations as may be available therefor: *Provided*, That such refunds shall be based solely on the certificate of the Administrator of General Services or his duly authorized representative.

(g) Existing policies, procedures, etc., to remain in effect.

All policies, procedures, directives, and delegations of authority prescribed or issued (1) by the War Contracts Price Adjustment Board, or (2) by any Secretary or other duly authorized officer of the Government, under the authority of the Renegotiation Act [section 1191 of this Appendix], in effect upon the effective date of this section and not inconsistent herewith, shall remain in full force and effect unless and until superseded, or except as they may be amended, under the authority of this section or any other appropriate authority. All functions, powers, and responsibilities transferred by this section shall be accompanied by the authority to issue appropriate regulations and procedures, or to modify existing procedures, in respect of such powers, functions, and responsibilities.

(h) Savings provision.

This section shall not be construed (1) to prohibit disbursements authorized by the War Contracts Price Adjustment Board and certified pursuant to its authority prior to the effective date of this section, (2) to affect the validity or finality of any agreement or order made or issued pursuant to law by the War Contracts Price Adjustment Board or pursuant to delegations of authority from it, or (3) to prejudice or to abate any action taken or any right accruing or accrued or any suit or proceeding had or commenced in any civil cause; but any court having on its docket a case to which the War Contracts Price Adjustment Board is a party, on motion or supplemental petition filed at any time within four years after the effective date of this section, showing a necessity for the survival of such suit, action, or other proceeding to obtain a determination of the questions involved, may allow the same to

be maintained by or against the United States. If any such case has been dismissed by any court for failure to substitute for the War Contracts Price Adjustment Board prior to the effective date of this sentence, such case is revived and reinstated in such court as if it had not been dismissed.

(l) Renegotiation Act not repealed.

Except as by this Act [sections 1211—1233 of this Appendix] specifically amended or modified, all provisions of the Renegotiation Act [section 1191 of this Appendix] shall remain in full force and effect.

(j) Definitions.

The terms which are defined in the Renegotiation Act shall, when used in this section, have the same meaning as when used in the Renegotiation Act [section 1191 of this Appendix], except that where a renegotiation function has been transferred by or pursuant to law the terms "Secretary" or "Secretaries" and "Department" or "Departments" shall be understood to refer to the successors in function to those officers or offices specifically named in the Renegotiation Act [section 1191 of this Appendix].

(k) Effective date.

This section shall take effect sixty days after the date of the enactment of this Act [March 23, 1951]. (Mar. 23, 1951, ch. 15, title II, § 201, 65 Stat. 23; July 17, 1952, ch. 924, § 3, 66 Stat. 753; Sept. 1, 1954, ch. 1209, § 8, 68 Stat. 1118.)

REFERENCES IN TEXT

Effective date of this section, referred to in subsecs. (e), (g), (h) and (k), occurred sixty days after Mar. 23, 1951, as provided by subsec. (k).

AMENDMENTS

1954—Subsec. (h) amended by act Sept. 1, 1954, to extend provisions for two years and to reinstate cases dismissed on the technicality that the United States had not been substituted for "The" War Contracts Price Adjustment Board.

1952—Subsec. (h) amended by act July 17, 1952, to extend for an additional year the term during which a litigant may substitute a new defendant for the War Contracts Price Adjustment Board.

§ 1232. Period of limitations for Renegotiation Act of 1948.

No proceeding under the Renegotiation Act of 1948 [section 1193 of this Appendix] to determine the amount of excessive profits for any fiscal year shall be commenced more than one year after the mandatory statement required by the regulations issued pursuant to such Act [section 1193 of this Appendix] is filed with respect to such year, or more than six months after the date of the enactment of this title [March 23, 1951], whichever is the later, and if such proceeding is not so commenced (in the manner provided by the regulations prescribed pursuant to such Act [section 1193 of this Appendix]), all liabilities of the contractor or subcontractor under such Act [section 1193 of this Appendix] 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 under such Act [section 1193 of this Appendix] is not made within two years following the commencement of the renegotiation proceeding, then 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) such two-year period may be extended by mutual agreement, and (2) if within such two years such an order is duly issued pursuant to such Act [section 1193 of this Appendix], such two-year limitation shall not apply to the review of such order by any renegotiation board duly authorized to undertake such review. (Mar. 23, 1951, ch. 15, title II, § 202, 65 Stat. 24.)

#### § 1233. Amendment of section 3806 of Title 26.

Section 3806 (a) (1) of the Internal Revenue Code [section 3806(a)(1) of Title 26, I.R.C. 1939] is amended by striking out subparagraphs (A), (B), and (C) and inserting in lieu thereof the following:

"(A) The term 'renegotiation' includes any transaction which is a renegotiation within the meaning of the Federal renegotiation act applicable to such transaction, any modification of one or more contracts with the United States or any agency thereof, and any agreement with the United States or any agency thereof in respect of one or more such contracts or subcontracts thereunder.

"(B) The term 'excessive profits' includes any amount which constitutes excessive profits within the meaning assigned to such term by the applicable Federal renegotiation act, any part of the contract price of a contract with the United States or any agency thereof, any part of the subcontract price of a subcontract under such a contract, and any profits derived from one or more such contracts or subcontracts.

"(C) The term 'subcontract' includes any purchase order or agreement which is a subcontract within the meaning assigned to such term by the applicable Federal renegotiation act.

"(D) The term 'Federal renegotiation act' includes section 403 of the Sixth Supplemental National Defense Appropriation Act (Public 528, 77th Cong., 2d Sess.), as amended or supplemented [section 1191 of this Appendix], the Renegotiation Act of 1948, as amended or supplemented [section 1193 of this Appendix], and the Renegotiation Act of 1951, as amended or supplemented [sections 1211—1233 of this Appendix]." (Mar. 23, 1951, ch. 15, title II, § 203, 65 Stat. 25.)

#### NATIONAL EMERGENCY AND WAR SHIPPING ACTS

Sec. ACT JUNE 11, 1940  
1251. Repealed.

ACT MAY 2, 1941

1261—1263. Repealed.

ACT JUNE 6, 1941

1271—1275. Omitted.

ACT JULY 14, 1941

1281—1286. Repealed.

ACT MAR. 24, 1943

1291. Rights of American seamen on privately owned and operated American vessels extended to seamen employed through the War Shipping Administration; exceptions; definitions.

Sec.

1292. Insurance awards by War Shipping Administrator; fundings and actions as conclusive.

1293. Payment of compensation; insurance.

1294. United States as entitled to all benefits of exemption and limitation of liability accorded to owners of vessels.

1295. Termination of section 1291 (a); authority of United States Maritime Commission vested in Administrator of War Shipping Administration.

ACT APR. 29, 1943

1301—1305. Repealed.

ACT AUG. 10, 1946

1306—1308. Repealed.

ACT JULY 9, 1943

1311, 1312. Omitted.

#### CROSS REFERENCES

Jurisdiction of prizes taken during war, see sections 7651—7653, 7655, 7663, 7676, and 7631 of Title 10, Armed Forces.

Medals, insignia and decorations for merchant seamen, see sections 249—249c of Title 46, Shipping.

ACT JUNE 11, 1940, CH. 327, 54 STAT. 306

§ 1251. Repealed. July 25, 1947, ch. 327, § 1, 61 Stat. 449.

Section, acts June 11, 1940, ch. 327, 54 Stat. 306; May 2, 1941, ch. 84, § 1, 55 Stat. 148; June 16, 1942, ch. 416, 56 Stat. 370, related to determination of foreign construction costs of vessels.

ACT MAY 2, 1941, CH. 84, 55 STAT. 148

§§ 1261, 1262. Repealed. July 25, 1947, ch. 327, § 1, 61 Stat. 449.

Sections, acts May 2, 1941, ch. 84, §§ 2, 3, 55 Stat. 148, 149; June 16, 1942, ch. 416, 56 Stat. 370, authorized Maritime Commission to negotiate contracts without advertisement or bids and to charter Commission's vessels to private operators for foreign trade until six months after end of World War II.

§ 1263. Repealed. May 7, 1943, ch. 93, § 5, 57 Stat. 77.

Section, acts May 2, 1941, ch. 84, § 4, 55 Stat. 150; June 16, 1942, ch. 416, 56 Stat. 370, related to working hours and overtime pay of Maritime Commission ship construction and other employees.

ACT JUNE 6, 1941, CH. 174, 55 STAT. 242

§§ 1271—1275. Omitted.

#### CODIFICATION

Section 1271, acts June 6, 1941, ch. 174, § 1, 55 Stat. 242; June 16, 1942, ch. 416, 56 Stat. 370; Mar. 24, 1943, ch. 26, § 3(a), 57 Stat. 48, related to purchase, requisition, etc., of foreign vessels authorized during national emergency and compensation, expired on July 1, 1953, and is now covered on a permanent basis by section 196 of Title 50, War and National Defense.

Section 1272, acts June 6, 1941, ch. 174, § 2, 55 Stat. 243; June 16, 1942, ch. 416, 56 Stat. 370, related to availability of appropriations for carrying out provisions of section 1271—1275 of this Appendix, expired on July 1, 1953.

Section 1273, acts June 6, 1941, ch. 174, § 3, 55 Stat. 243; June 16, 1942, ch. 416, 56 Stat. 370; Mar. 24, 1943, ch. 26, § 3(j), 57 Stat. 51, related to charter of domestic and foreign vessels, expired on July 1, 1953, and is now covered on a permanent basis by sections 197 and 198 of Title 50, War and National Defense.

Section 1274, acts June 6, 1942, ch. 174, § 4, 55 Stat. 244; June 16, 1942, ch. 416, 56 Stat. 370; Mar. 24, 1943, ch. 26, § 3(k), 57 Stat. 51, related to purchase of domestic or foreign vessels, expired on July 1, 1953, and is now covered on a permanent basis by sections 197 and 198 of Title 50, War and National Defense.