[COMMITTEE PRINT]

SUMMARY OF RENEGOTIATION ACT OF 1951 AND RENEGOTIATION BOARD PROPOSAL FOR EXTENSION

PREPARED FOR THE USE OF

THE COMMITTEE ON WAYS AND MEANS

BY

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THE RENEGOTIATION PROCESS

The Renegotiation Act of 1951, in general, provides that the Renegotiation Board is to review the total profit derived by a contractor during a year from all of his renegotiable contracts and subcontracts in order to determine whether or not this profit is excessive. Contractors with renegotiable sales exceeding the $1,000,000 statutory "floor" for a fiscal year must file a report with the Renegotiation Board. "Renegotiable" contracts and subcontracts are those with the following agencies: the Departments of Defense, the Army, the Navy, and the Air Force, the Maritime Administration, the General Services Administration, the National Aeronautics and Space Administration, the Federal Aviation Administration, and the Atomic Energy Commission.

The Board is empowered to eliminate those profits found to be excessive in accordance with certain statutory factors. Thus, renegotiation is determined not with respect to individual contracts but with respect to all receipts or accruals from renegotiable contracts and subcontracts of a contractor during a year. These contracts vary in form from cost-plus-fixed-fee to firm fixed-price contracts. Some may be prime contracts, while others are subcontracts, and they may be concerned with many different services and products. With respect to any given year they may also reflect only partial payments made on the contracts.

For purposes of renegotiation, profits generally are defined and determined in much the same way as for tax purposes. This similarity is also reflected in that provision is made in renegotiation for a 5-year loss carryforward, as well as the offsetting of losses and profits on different contracts within the year.

The Act provides, in general terms, that the Renegotiation Board in determining whether profits are excessive is to give favorable recognition to the efficiency of the contractor with particular regard to attainment of quantity and quality production, reduction of costs, and economy. The Board must also consider the reasonableness of costs and profits, the net worth (with particular regard to the amount and source of public and private capital employed), the extent of the risk assumed, the nature and extent of the contribution to the defense effort, and the character of the business. Thus, in effect, the Board in its judgment must consider all of these factors, and the producer, where these factors are present to the greatest extent (e.g., is most efficient or makes the greatest contribution to the defense effort), is permitted to retain more profit than the producer who satisfies these factors to a lesser extent.

Various types of contracts are excluded from the Act: some on a mandatory and others on a permissive basis. The mandatory exemptions include contracts with a State, local, or foreign government, those dealing with certain agricultural commodities, those dealing with unprocessed minerals or timber and related products, competitively-bid construction contracts, those with certain regulated common

carriers or public utilities, those for standard commercial articles or services, those with tax-exempt organizations, and certain contracts determined not to have a direct and immediate connection with the national defense.

RENEGOTIATION BOARD PROPOSAL FOR EXTENSION OF RENEGOTIATION ACT OF 1951

In the absence of legislation, the Renegotiation Act of 1951 will expire as of June 30, 1973. The Renegotiation Board recommends that the Act be extended for 2 years, or to June 30, 1975.

RECENT LEGISLATIVE HISTORY

The Renegotiation Act of 1951 was extended for two years in 1971 and for three years in 1968.

1971 extension

The 1971 extension (Public Law 92–41) included two amendments. The first provided that the rate of interest to be used with respect to determinations of excessive profits is to be determined by the Secretary of the Treasury for each 6-month period (beginning on July 1, 1971) by taking into account the current rates of interest on new private commercial loans with maturities of approximately 5 years. (The previous 4-percent interest rate continued to apply to determinations of excessive profits made prior to July 1, 1971.) The second amendment transferred the sole jurisdiction over Renegotiation Board determinations of excessive profits from the U.S. Tax Court to the U.S. Court of Claims for cases filed after July 1, 1971 the date of enactment of the 1971 Act.

1968 extension

The 1968 extension was preceded by a staff report by the Joint Committee on Internal Revenue Taxation.[1] This study was requested by the Committee on Ways and Means during the consideration of the 1966 extension of the Renegotiation Act.

The 1968 Act (P.L. 90–634) amended the renegotiation statute with regard to the exemption for standard commercial articles and services in a number of respects to insure that items qualifying for the exemption are, in fact, of a "commercial" nature. For example, the percentage-of-sales standard for an item which must be made commercially for the exemption to apply was raised from having to be at least 35 percent commercial (i.e., not subject to Renegotiation) to 55 percent. Further, the exemption would not apply if the article or service were sold to the Government at a higher price than charged to a civilian commercial purchaser.

[1] *Report on the Renegotiation Act of 1951*, April 2, 1968.