Item 1

PRESENT RENEGOTIATION PROCEDURES AND SUGGESTIONS RECEIVED FOR CHANGES IN THE ACT

COMPILED BY THE

STAFF OF THE
JOINT COMMITTEE ON INTERNAL
REVENUE TAXATION

FOR USE OF THE

COMMITTEE ON WAYS AND MEANS

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I. Basis for Determining Excessive Profits

A. OVERALL FISCAL YEAR REVIEW

Excessive profits are determined not with respect to individual contracts, but with respect to the receipts or accruals of the contractor under all renegotiable contracts and subcontracts in an entire fiscal year of the contractor. The advantages of this procedure are substantial: (1) Obviously, it reduces the administrative burden and saves the time of both Government and industry; (2) it holds cost accounting and cost allocations to a minimum; (3) it permits the use of the regular financial and accounting data maintained and prepared by contractors for tax purposes; and (4) most importantly, it enables contractors to offset their losses or low profits on one or more defense contracts against their profits from other defense contracts during the same fiscal year.

B. APPLICATION OF STATUTORY FACTORS

Renegotiable profits are determined by charging against renegotiable receipts or accruals (usually referred to as "renegotiable sales") all costs and expenses incurred by the contractor and allocable to the performance of renegotiable business. Excessive profits are that portion of such renegotiable profits which is determined in accordance with the act to be excessive. In making these determinations, the Board is required by the act to observe certain prescribed factors. These are stated in section 103(e) of the act and are summarized at page 2 of the "History and Brief Outline of Renegotiation" dated April 27, 1959.

II. Coverage of Act

A. DEPARTMENTS NAMED IN ACT

Excepting those contracts which are exempted from renegotiation pursuant to section 106 of the act, as hereinafter described, and except to the extent of receipts or accruals attributable to performance before July 1, 1950, all contracts with the Departments named in the act, and related subcontracts, are subject to renegotiation to the extent of amounts received or accrued on or after January 1, 1951. The Departments now named in the act are listed at page 2 of the "History and Brief Outline."

B. EXEMPTIONS

Exemptions are either mandatory, by force of the statute itself, or permissive, granted by the Board pursuant to authority vested in it by the act. All are summarized in the "History and Brief Outline," at pages 3–4.

III. Structure of Board Organization

A. STATUTORY BOARD

The Renegotiation Board was created by the Renegotiation Act of 1951, approved March 23, 1951, as an independent establishment in the executive branch of the Government. It was organized on October 3, 1951.

The Board is composed of five members. Each is 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, subject to the approval of the Secretary of Defense, and the Administrator of General Services each recommend to the President for his consideration one person from civilian life to serve as a member of the Board. The President designates one member to serve as Chairman.

No member of the Board may actively engage in any business, vocation, or employment other than as a member of the Board.

By express provision in section 107(d) of the act, no function, power or duty of the Board may be delegated by it to any person (other than the Secretary of a department) who is not responsible directly to the Board or who 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.

B. REGIONAL BOARDS

The Board maintains three regional boards with authority to conduct renegotiation proceedings in cases assigned to them. These regional boards are located in Detroit, Mich.; Los Angeles, Calif.; and New York, N.Y. Each regional board is composed of a chairman and additional board members as appointed by the Chairman of the statutory Board.

IV. Description of Process of Determining Excessive Profits

A. OVERALL FISCAL YEAR BASIS

As already explained, statutory renegotiation is conducted on an overall basis for each fiscal year of a contractor. The first step, necessarily, is for the contractor to assemble all of its renegotiable sales for a fiscal year, and all of the allowable costs and expenses allocable thereto.

B. FILING REQUIREMENTS

1. Nature of filing required

The act requires the contractor to file an annual report with respect to its receipts or accruals from renegotiable contracts and subcontracts during its fiscal year. This duty is imposed by the act upon every

person who holds any such contracts or subcontracts (sec. 105(e)(1) and whose receipts or accruals therefrom during the fiscal year exceed the prescribed minimum.

2. Time for filing

Generally, under the act and regulations of the Board, the report of the contractor must be filed on or before the first day of the fifth calendar month following the close of the fiscal year of the contractor. The responsibility for filing the report rests with the contractor, whether or not any specific request for such filing has been made by the Board.

3. Standard form of contractor's report

When the aggregate renegotiable receipts or accruals of the contractor, and all other persons under control of or controlling or under common control with the contractor, exceed the minimum amount prescribed for renegotiation, the contractor is required to file detailed financial and other information. For this purpose, the Board has prescribed a form of report known as the standard form of contractor's report.

4. Statement of nonapplicability

When the aggregate renegotiable receipts or accruals of the contractor, and all other persons under control of or controlling or under common control with the contractor, do not exceed the minimum amount prescribed for renegotiation, the contractor is entitled at its option to so state and need not submit the detailed financial and other information otherwise required. For this purpose, the Board has prescribed a single-page form of report known as the statement of nonapplicability.

C. SCREENING PROCEDURE AT HEADQUARTERS

All contractor filings are examined at the headquarters office of the Board in Washington. Filings which report or are found to involve renegotiable sales below the statutory minimum are set aside; the act provides that such sales may not be renegotiated. Filings which show renegotiable sales in excess of the statutory minimum are given a further preliminary examination or "screening." If, from the information contained in the contractor's filing, it is apparent that the contractor did not realize excessive profits for the fiscal year under review and that no purpose would be served by further renegotiation proceedings, the contractor is "screened out" by a notice. On the other hand, if in the screening examination there appears to be any possibility of excessive profits, an assignment of the case is made to a regional board selected according to its proximity to the contractor, its relative workload, and its experience and special skills.

D. SEGREGATION OF SALES

Sales segregation is the separation of those receipts or accruals of the contractor which are subject to renegotiation, from those which are not subject to renegotiation. The contractor has the primary responsibility to do this. The Board does not disapprove any method employed by the contractor if it is satisfied that such method, under all the circumstances, affords the best basis for reasonably precise determination.

E. ALLOCATION OF COSTS

In determining the costs of renegotiable business, the renegotiation law has always been closely linked to the Internal Revenue Code. By express provision in the act, all items estimated to be allowable as deductions or exclusions under the Code must, to the extent allocable to renegotiable contracts and subcontracts, be allowed as items of cost in renegotiation. Generally, the method of accounting employed by the contractor in determining net income for Federal income tax purposes is followed for renegotiation purposes. It is not followed when, in the opinion of the Board, such method does not clearly reflect the renegotiable profits of the contractor. In such cases, by special accounting agreement with the contractor or, if necessary, by unilateral action, a different method of accounting is employed to determine the costs and expenses of the contractor allocable to the fiscal year under review.

Specific provision is made in the regulations for the renegotiation treatment of selected items of cost. Costs allocable to nonrenegotiable business, including exempt business, are not allowed as a charge against renegotiable business.

The act provides that the contractor generally shall be allowed as a cost, in the year under review, the amount of any loss sustained by the contractor on renegotiable business in either of the 2 years immediately preceding the fiscal year under review. Except to this extent, losses in other years are not allowed. However, by regulation, in connection with the statutory factor of risk, the Board gives special consideration to evidence showing risks through losses incurred by the contractor in performing similar contracts in other years.

F. COMMON CONTROL PROVISION

When a contractor is not affiliated with or related to any other contractor, it stands entirely on its own feet in renegotiation. On the other hand, when a contractor controls or is under control of or under common control with any other contractor, no member of the group is relieved from renegotiation if the renegotiable sales of the entire group aggregate an amount in excess of the floor. This provision is designed to prevent evasion of the act. Intercompany sales—that is, amounts received or accrued by any jmember of the group from any other member—are eliminated in computing this aggregate.

G. CONSOLIDATED AND CONCURRENT RENEGOTIATION

When it is determined that a group of related contractors has exceeded the floor, and that each member is to be renegotiated, it must next be decided whether each member shall be renegotiated separately or whether all shall be renegotiated on a consolidated basis. The choice rests largely with the contractors. If the group consists of a parent and subsidiary corporations that constitute an "affiliated group" under the provisions of the Internal Revenue Code, the Board is required by the act, upon request, to conduct renegotiation on a consolidated basis. When the related contractors do not constitute an affiliated group, the Board in its discretion, upon request, may grant consolidation. However, when the members of an affiliated group or a related group are renegotiated separately, renegotiations

with the individual members of such group are conducted concurrently, if practicable. This enables the Board to view the related enterprises as a whole and thus to avoid unfair treatment.

H. DESIGNATION OF ASSIGNED CASES

As indicated above, cases are normally assigned in the first instance to one of the regional boards. At the time of assignment, every case is designated by the statutory Board as either a class A case or a class B case.

1. Class A cases

Generally a class A case is one in which the contractor reports, in its renegotiation filing for a fiscal year, that it has derived profits of more than $800,000 from renegotiable contracts and subcontracts during such year. The Board has delegated to the regional boards, in such cases, authority to make recommended determinations of excessive profits to the Board for final determination by the Board.

2. Class B cases

Generally, a class B case is one in which the contractor reports, in its renegotiation filing for a fiscal year, that it has derived profits of $800,000 or less from renegotiable contracts and subcontracts during such year. The Board has delegated to the regional boards, in such cases, authority to make final determinations of excessive profits. Every such determination, when it is not agreed to by the contractor and accordingly is embodied in an order of the regional board, is subject to review by the statutory Board, either upon its own motion or upon timely application of the contractor.

I. REGIONAL BOARD PROCEDURE

After renegotiation has been commenced by the assigned regional board, and after the regional board has determined that sales have been properly segregated and costs properly allocated, it proceeds next to determine whether excessive profits have been realized. Full details of the contractor's performance, as related to the various statutory factors, are obtained through correspondence and meetings with the contractor. In all refund cases, the meetings with the contractor include one or more meetings with the regional renegotiator and accountant assigned to the case, and upon request of the contractor at least one meeting with a panel composed of three members of the regional board. The contractor is given an opportunity to present, both orally and in writing, all the information and argument which he considers pertinent to the case. No final determination is made until this has been done.

J. CLEARANCES, AGREEMENTS AND ORDERS

If it is determined that the contractor did not realize excessive profits in the fiscal year under review, a clearance is granted. Usually this takes the form of a notice; occasionally, when provision for unresolved contingencies is necessary, a clearance agreement is made.

If excessive profits are determined and the contractor accepts the determination, a refund agreement is executed and payment is required to be made by the contractor in accordance therewith.

If the contractor is unwilling to accept the determination of excessive profits, an order is issued directing payment to be made by the contractor.

In any elimination of excessive profits, whether by agreement or order, the contractor is allowed a credit for Federal income and excess-profits taxes as provided in section 3806 of the Internal Revenue Code of 1939 or section 1481 of the Internal Revenue Code of 1954. Only the net amount, after allowance of such credit, is required to be paid.

K. STATEMENTS OF FACTS AND REASONS FOR DETERMINATION

1. Nonstatutory statements

When the Board or a regional board makes a determination of excessive profits, and the contractor is unable to decide whether to enter into an agreement for the refund of such excessive profits, the Board or the regional board, as the case may be, upon request of the contractor, furnishes to the contractor a written summary of the facts and reasons upon which such determination is based, in order to assist the contractor in determining whether or not it will enter into an agreement. This summary is not required by the act; it is offered to contractors by regulation of the Board.

2. Statements furnished pursuant to statutory provision

When the Board makes a determination of excessive profits, and such determination is made by order, the Board is required by the act, upon request of the contractor, to furnish to the contractor a statement of such determination, of the facts used as a basis therefor, and of its reasons for such determination. In class B cases, when the Board does not initiate a review of a regional board order, this statement of facts and reasons is furnished by the regional board.

L. REVIEW PROCEDURE

1. In class A cases, every determination of excessive profits made by a regional board is either approved by the Board after acceptance by the contractor or, if not acceptable to the Board or the contractor, is reassigned to the Board for further processing.

2. In class B cases, all determinations of excessive profits made by regional boards by order are reviewable by the Board. Such review may be inititated by the Board either upon its own motion or, in its discretion, at the timely request of the contractor. If a review of a regional board order is not initiated, the order is deemed to be the determination and order of the statutory Board after 90 days.

3. Whenever the Board assumes jurisdiction of a case of either class from a regional board, the Chairman appoints a division consisting of not less than three members of the Board to meet with the contractor and to develop a recommendation for submission to the full Board. Any outstanding legal or accounting questions are decided prior to such submission, if necessary after consultation with the contractor. Thereafter, the Board makes a final determination of excessive profits, either in the same amount as that determined by the regional board, or in a greater or lesser amount. The determination of the Board, after review, is embodied in an order, a refund agreement, or a clearance agreement or notice.

M. REDETERMINATION PROCEEDING IN TAX COURT

Any contractor aggrieved by an order of the Board determining an amount of excessive profits may file a petition with the Tax Court of the United States for a redetermination thereof. Such a petition must be filed within 90 days after notice of the final action of the Board. The court may determine as the amount of excessive profits an amount less than, equal to, or greater than that determined by the Board. The proceeding in the Tax Court is a proceeding de novo, and the determination made by that court of the amount, if any, of excessive profits is final. The filing of a petition with the court does not stay the execution of the order of the Board unless, within 10 days, the petitioner files a good and sufficient bond.

V. Filings by Contractors; Cases Withheld and Assigned; Completions

The number of filings in the fiscal year ended June 30, 1958, was about 21,200, which compares with filings of about 24,000 in the prior fiscal year. Of the 21,200, about 16,700 were in the form of simple statements of nonapplicability, accompanied by no financial data. This left approximately 4,400 cases to be withheld at headquarters under the screening process or to be assigned to the regional boards for renegotiation.

The two following tables show, respectively, the number of contractors' filings withheld and the number assigned to regional boards during the fiscal year ended June 30, 1958. Most of the withholdings and assignments are classified by the renegotiable sales volume of the contractors involved; and for these, total sales and profits and renegotiable and nonrenegotiable sales and profits are shown. The filings thus classified include all contractors except agents and brokers and other cases not tabulated because comparable data are unavailable; in other words, it includes manufacturers, distributors other than agents and brokers, building and other constructors, and shipping lines and other service organizations.

Filings withheld at headquarters during fiscal year ended June 30, 1958

[In thousands]

Renegotiable sales	Number withheld	Sales			Profits		
		Total	Renegotiable	Nonrenegotiable	Total	Renegotiable	Nonrenegotiable
Under $500,000	650	$4,799,312	$95,429	$4,703,883	$378,979	$1,581	$377,398
$500,000 to $1,000,000	369	1,363,808	261,530	1,102,278	85,419	2,924	82,495
Over $1,000,000	1,948	62,184,011	6,730,122	55,453,889	4,245,766	110,589	4,135,177
Total	2,967	68,347,131	7,087,081	61,260,050	4,710,164	115,094	4,595,070
Others [1]	321						
Total	3,288						

[1] These include agents and brokers and certain companies for which comparable financial data could not be tabulated for technical reasons.

Assignments made to the regional boards during fiscal year ended June 30, 1958

[In thousands]

Renegotiable sales	Number of assignments (net)	Sales			Profits		
		Total	Renegotiable	Nonrenegotiable	Total	Renegotiable	Nonrenegotiable
Under $500,000	211	$967,393	$35,705	$931,688	$55,833	$506	$55,327
$500,000 to $1,000,000	84	567,175	60,634	506,541	35,473	5,877	29,596
Over $1,000,000	750	78,851,829	19,916,719	58,935,110	8,266,897	1,188,936	7,077,961
Total	1,045	80,386,397	20,013,058	60,373,339	8,358,203	1,195,319	7,162,884
Others [1]	91						
Total	1,136						

[1] These include agents and brokers and certain companies for which comparable financial data could not be tabulated for technical reasons.

Total sales for all the cases above the statutory floor, as shown in the two tables amounted to nearly $150 billion. Renegotiable sales were $27.1 billion and renegotiable profits as reported by the contractors, $1.31 billion. As between cases withheld and cases assigned, the relative proportions were as follows:

[Percent]

	Total sales	Renegotiable sales	Renegotiable profits
Withheld	46	26	9
Assigned	54	74	91
Total	100	100	100

Among the assigned cases, those contractors whose renegotiable sales exceeded the present statutory floor of $1 million had 98 percent of total sales, 99½ percent of renegotiable sales, and 99 percent of the renegotiable profits reported by the whole group.

The fiscal 1958 determinations of $112,724,199 of excessive profits compared as follows with total renegotiable sales and profits involved in the determinations:

	Millions
Renegotiable sales	$6,796.0
Renegotiable profits	751.1

Nonrenegotiable sales and profits of the same contractors were as follows:

	Millions
Nonrenegotiable sales	$11,686.0
Nonrenegotiable profits	1,625.9

As the above table shows, 1,136 assignments were made to the regional boards during fiscal 1958. Completions by regional board actions and final Board determinations in the same period totaled 1,577. Thus the backlog of uncompleted cases was reduced by 441 to a total of about 1,600 cases.

Assignments completed as clearances or cancellations during fiscal year ended June 30, 1958

[Thousands omitted]

Renegotiable sales	Number of assignments (net)	Sales			Profits		
		Total	Renegotiable	Nonrenegotiable	Total	Renegotiable	Nonrenegotiable
Under $500,000	231	$748, 902	$40, 025	$703, 877	$61, 462	$2, 708	$58, 754
$500,000 to $1,000,000	124	1, 341, 779	89, 439	1, 252, 340	183, 129	8, 462	174. 667
Over $1,000,000	890	63, 784, 406	15, 750, 059	48, 034, 347	6, 316, 965	1, 204, 529	5, 112, 436
Total	1, 245	65, 875, 087	15, 879, 523	49, 995, 564	5, 561, 556	1, 215, 699	5, 345, 857
Others [1]	78						
Total	1, 323						

[1] These include agents and brokers and certain companies for which comparable financial data could not be tabulated for technical reasons.

Of the 1,577 completions, 1,323, as shown by the immediately preceding table, were concluded by clearances or cancellations—determinations that no excessive profits had been earned by the contractors—and 254 by determinations of excessive profits. Details on the latter are given in the next section of this report. Total completions, in round percentages, were distributed as follows among the contractors' fiscal years involved:

Contractors' fiscal years

	Percent		Percent
1950–52	6	1956	18
1953	14	1957	4
1954	30		
1955	28	Total	100

There are a number of reasons for delays in the completion of cases. Not only is there a statutory provision that filings need not be made until the fifth month following the end of the contractor's fiscal year; frequently there are delinquencies by contractors which cannot be avoided by the Board.

Among other reasons for delay in completion are requests made by contractors for extensions of time in supplying needed information; and particularly, delays often encountered in the conclusion of price redetermination proceedings between contractors and procurement authorities.

As of June 30, 1958, the Board had completed 92.8 percent of the total of more than 22,000 assignments which it had made up to that date. The record of completions, in terms of the contractors' fiscal years involved, follows:

Percentages of completions of assignments, June 30, 1958

Contractors' fiscal years:	Percent of completion
1948–51	100. 0
1952	99. 9
1953	98. 8
1954	93. 6
1955	72. 2
1956	36. 0
1957	12. 7

For contractors' years 1952 to 1954, inclusive, 11,604 assignments had been made through June 30, 1958. All but 174, or 1½ percent, of these had been completed; and of these 174, 67 percent represented late or delinquent filings. These same 174, representing less than 11 percent of the total backlog of uncompleted cases, represent the cases which can be said to be 4 years or more in arrears.

VI. Refund Determinations

During the fiscal year ended June 30, 1958, the Board made 254 determinations of excessive profits. This brought to 3,202 the total number of such determinations made by the Board since its inception. Of the 254 determinations made during fiscal 1958, 202 resulted in bilateral agreements between the Board and the contractors involved; the other 52 resulted in the issuance of unilateral orders for refund payments. The excessive profits represented by all 254 determinations were $112,724,199; those covered by the agreements were $61,042,216. The following table shows that the cumulative total of all Board determinations of excessive profits through June 30, 1958, was $723,055,054. This amount, and the figure for fiscal 1958, are broken down in the table according to the renegotiable sales volumes represented in the determinations:

Analysis of refund determinations with respect to renegotiable sales volume to June 30, 1958

Renegotiable sales volume	Refunds determined [1]	Portion of total (percent)
Fiscal year ended June 30, 1958:		
Under $500,000	$684,164	0.6
$500,000 to $1,000,000	2,871,277	2.5
Over $1,000,000	109,168,758	96.9
Total for the year	112,724,199	100.0
Cumulative to June 30, 1958:		
Under $500,000	24,652,379	3.4
$500,000 to $1,000,000	42,351,593	5.9
Over $1,000,000	656,051,082	90.7
Total to June 30, 1958	723,055,054	100.0

[1] By agreements or orders.

In the next table, the above cumulative total of determinations of excessive profits is broken down by the Government fiscal years in which they were made, and by the acts under which they were made:

Determinations of refunds by years of determinations

During—	1943 act	1948 act	1951 act	Total
Government fiscal year 1953		$15,888,343	$4,082,428	$19,970,771
Government fiscal year 1954		6,084,507	113,378,662	119,463,169
Government fiscal year 1955	$2,290,000	6,961,638	158,004,650	167,256,288
Government fiscal year 1956	150,000	1,390,982	151,108,345	152,649,327
Government fiscal year 1957		250,000	150,741,300	150,991,300
Government fiscal year 1958			112,724,199	112,724,199
Total	2,440,000	30,575,470	690,039,584	723,055,054

The first two tables in this section show that through June 30, 1958 the Board made aggregate determinations of excessive profits of $723,055,054. In addition, voluntary refunds and price reductions in the amount of $818,252,689 were made by contractors, according to renegotiation data submitted by them. The total of these items is $1,541,307,743. In fiscal 1958 alone, it was ascertained from contractors' renegotiation data that voluntary refunds and price reductions amounted to $176,140,192.

These are all gross figures, before the deduction of credits for Federal income and excess profits taxes. Calculations made to determine the probable net recoveries by the Government give the following estimated results (in millions):

	Through June 1957	July 1, 1957, to June 30, 1958	Total to June 30, 1958
Determinations of excessive profits	$610.3	$112.7	$723.1
Voluntary refunds and price reductions	642.1	176.1	818.2
Total	1,252.4	288.8	1,541.3
Less tax credit	821.0	180.8	1,001.9
Net recoveries	431.4	108.0	539.4

Of the probable net recoveries by the Government of $539 million during the period covered by the operations of the Renegotiation Board, $108 million is ascribable to fiscal 1958. The expenses of the Board, shown in section VIII, below, have been $26.6 million since 1951 and were just over $3 million during fiscal 1958.

Additional refund determinations of $40,965,924 as of June 30, 1958, had not yet been made final.

Net recoveries by the Government arising from determinations of excessive profits are covered into the miscellaneous receipts of the U.S. Treasury. They do not revert to departmental funds.

VII. Orders and Appeals to the Tax Court

The 254 determinations of excessive profits made by the Board during the fiscal year ended June 30, 1958, included 52 unilateral orders by the Board, directing the contractors to refund to the Government the excessive profits that had been determined. The 52 represented 20.5 percent of the 254 determinations. The significant figures for fiscal 1958, and the corresponding data on orders for all periods through June 30, 1957, follow:

	Determinations		Renegotiable sales		Excessive profits	
	Number	Percent of total	Millions	Percent of total	Millions	Percent of total
Fiscal year 1958:						
Agreements	202	79.5	$3,851	56.7	$61.0	54.2
Orders	52	20.5	2,945	43.3	51.7	45.8
Through June 30, 1957: Orders	198	6.7	5,686	23.7	83.9	13.7

The fiscal 1958 orders included three airframe manufacturers, two of which had appealed these orders to the Tax Court by June 30, 1958, and one subsequently thereto. The renegotiable sales and excessive profits of the three, as determined by the Board, were as follows and represented the indicated percentages of such sales and excessive profits as were involved in all the 52 unilateral orders of fiscal 1958.

	Renegotiable sales		Excessive profits	
	Millions	*Percent of total*	*Millions*	*Percent of total*
3 airframe manufacturers	$2,509	85.2	$26.8	51.8
49 other orders	435	14.8	24.9	48.2
Total	2,944	100.0	51.7	100.0

Of the 198 unilateral orders shown above as having been issued by the Board through June 30, 1957, 53 had been made the subject of petitions to the Tax Court. Of the 52 orders issued in fiscal 1958, 17 were so appealed. During that year, 4 cases were disposed of, leaving a net increase for the year of 13. The record of activity in this field, separated between the 1948 and 1951 Renegotiation Acts, is set forth below:

	1948 act	1951 act	Total
Total to June 30, 1957:			
Total petitions filed	5	48	53
Less:			
Dismissed	(3)	(9)	(12)
Closed by stipulation		(2)	(2)
Closed by determination		(1)	(1)
Balance at June 30, 1957	2	36	38
Fiscal year ended June 30, 1958:			
Total petitions filed		17	17
Less:			
Dismissed		(2)	(2)
Closed by stipulation		(2)	(2)
Net additions for this period	0	13	13
Balance at June 30, 1958	2	49	51

At the end of fiscal 1958 there were therefore 51 cases pending in the Tax Court.

VIII. Expenses and Personnel

In fiscal 1958, as in each of the preceding fiscal years from 1955 on, the Board further reduced its expenditures, although in fiscal 1958 the Board for the first time had to assume the Government's contribution to the civil service retirement fund for the Board's officers and employees, and also had to provide retroactive pay increases to personnel, enacted by the Congress toward the close of the fiscal year. The latter increased Board expenses for that year by $119,875.

The first table below shows the expenses of the Board by fiscal years from its organization through June 30, 1958. The increase of nearly $120,000 in "All other" expenses in fiscal 1958 reflects the incurring of retirement costs referred to in the preceding paragraph.

The 1958 total figure includes an increase in the appropriation by the Congress to the Board of $56,000, to cover somewhat less than half of the above-mentioned cost, $119,875, of the retroactive pay raise.

Renegotiation Board expenses

Fiscal year	Total	Salaries	All other
1952	$1,606,259	$1,176,003	$430,256
1953	5,093,308	4,443,662	649,646
1954	5,116,806	4,823,730	293,076
1955	4,388,924	4,159,975	228,949
1956 [1]	3,860,987	3,632,357	228,630
1957 [1]	3,514,032	3,320,272	193,760
1958	3,054,845	2,741,737	313,108
Total	26,635,161	24,297,736	2,337,425

[1] Minor changes for fiscal years 1956 and 1957 from the figures shown in the 2d annual report reflect the cancellation of certain obligations for those years. The fiscal 1958 figure indicates the net obligations for expenditures for that year.

The following table shows the number of personnel on duty at headquarters and at the regional boards, on each June 30 from 1952 through 1958, and on May 1, 1959.

On duty count (personnel) as of June 30 of each year

	1952	1953	1954	1955	1956	1957	1958	May 1, 1959
Headquarters	169	178	174	193	181	155	142	138
Regional boards	389	564	465	347	285	204	184	176
Total	558	742	639	540	466	359	326	314

IX. Renegotiation Regulations on Application of Statutory Factors

(A) 1460.8 Application of statutory factors; general policy

Reasonable profits will be determined in every case by overall evaluation of the particular factors present and not by the application of any fixed formula with respect to rate of profit, or otherwise. Renegotiation proceedings will not result in a profit based on the principle of a percentage of cost. Contractors who sell at lower prices and produce at lower costs through good management, including conservation of manpower, facilities and materials, improved methods of production, close control of expenditures, and care purchasing will receive a more favorable determination than those who do not. Such favorable or unfavorable determination will be reflected in the profits allowed to be retained by the contractor or subcontractor as nonexcessive. Claims of a contractor for favorable consideration must be supported by established facts, analyses, and appropriate comparisons. This section and the following sections of this part apply to all contractors except those whose renegotiable contracts consist only of subcontracts described in section 103(g)(3) of the act. For the application of the statutory factors to such subcontractors, see part 1490 of this subchapter.

(B) 1460.9 EFFICIENCY OF CONTRACTOR

(*a*) *Statutory provision.*—Section 103(e) of the act provides that 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;

(*b*) *Comment.*—Favorable recognition must be given to the contractor's efficiency in operations, with particular attention to the following:

(1) Quantity of production; for example, in relation to available physical facilities; meeting of production schedules; expansion of facilities; maximum use of available production facilities.

(2) Quality of production; for example, maintenance of standards of quality; rejection record; reported mechanical or other difficulties in the use or installation of the product.

(3) Reduction of costs; for example, a decrease in costs per unit of production or per unit of sales as between fiscal years and as compared with other contractors producing the same or similar products when the operations are reasonably comparable; a decrease in administrative, selling, or other general and controllable expenses; a decrease in prices paid vendors for purchased materials and subcontracted items or units. (See sec. 1460.10(b).)

(4) Economy in the use of materials, facilities, and manpower; for example, a decrease in quantity of materials used in relation to production and the number of employees in relation to production; reduction of waste.

(5) Nature and objectives of incentive and price redeterminable contracts and subcontracts: With respect to such contracts or subcontracts, in which the contract prices are based upon estimated costs, the Board will take into consideration the extent to which any differences between such estimated costs and actual costs are the result of the efficiency of the contractor. To enable the Board to give such consideration, the contractor may, and if requested by the Board, shall furnish on an aggregate or unit basis (i) a breakdown of the estimated costs upon which the prices of such contracts or subcontracts were based, together with the amounts thereof applicable to the fiscal year under review, and (ii) a corresponding breakdown of the costs actually incurred on such contracts or subcontracts or which the contractor estimates will actually be incurred thereon, together with the amounts thereof applicable to the fiscal year under review as reported in the standard form of contractor's report or other financial data filed by the contractor with the Board with respect to the fiscal year under review; and the contractor shall also furnish an explanation, in such form and detail as may be appropriate, of the reasons for any variances between such breakdowns or between particular cost elements itemized therein, with particular reference to the extent to which such variances are attributable to the performance of the contractor in the fiscal year under review or to other events occurring in such year. The Board will consider and give due regard to the views of the contracting agencies in connection with the foregoing. Insofar as the efficiency of the contractor may be appraised by analysis

of the cost elements set forth in such breakdowns, the Board will observe the following principles:

(*a*) The Board will consider separately those elements of cost which are wholly outside the control of the contractor and those which the contractor wholly or partly controls.

(*b*) The fact that the realized costs are less than the original estimates will not necessarily be construed to mean that the contractor has demonstrated efficiency, nor will realization of actual costs in excess of the original estimates necessarily be construed to mean that the contractor has been inefficient.

(*c*) If the original cost estimates included provision for any contingency which has not materialized and is no longer expected to occur, the contractor will be expected to submit information indicating whether the elimination of such contingency resulted from the efficiency of the contractor or whether the circumstances were such as substantially to eliminate the risk provided against in the original cost estimates.

(C) 1460.10 REASONABLENESS OF COSTS AND PROFITS

(*a*) *Statutory provision.* Section 103(e) of the act provides that in determining excessive profits there shall be taken into consideration the following factor:

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

(*b*) *Comment.*—(1) Consideration will be given to the reasonableness or the excessiveness of costs and profits of the contractor. Comparisons will be made with the contractor's own costs and profits in previous years and with current costs and profits of other contractors, if such information is available. In comparisons, uncontrollable variations in labor, material, or other costs will be taken into account. Particular attention will be given to relative changes in controllable costs such as selling and general administrative expense. Low costs with relation to other contractors, when clearly established and shown to be the result of efficiency in management, are especially significant and must receive favorable consideration. Under no circumstances, except as provided in section 1457.8 or section 1457.9 of this subchapter, will the contractor's profits or losses on renegotiable business in years other than the year under review be used as an accounting offset or adjustment in the determination of excessive profits for the year under review.

(2) Consideration for comparative purposes will be given to profits of the contractor, and of the industry, on products and services not subject to renegotiation, especially in cases in which the renegotiable business involves products or services substantially similar to those not subject to renegotiation. In making comparisons for fiscal periods before those subject to the act, profits during World War II years will not be regarded as determinative. If the renegotiable business is not fundamentally different from the nonrenegotiable business and if the product is sold and distributed by the contractor's normal channels and methods, the profit margin on nonrenegotiable business is significant in renegotiation.

(3) Favorable consideration will be given to an increase in volume of production for defense purposes. On the other hand, when the Government's demand has enabled the contractor to increase his sales without exceptional effort and without corresponding increases in costs, decreased unit costs result, and the Government should normally get the principal benefit in more favorable prices, or in renegotiation. In many cases, the contractor may establish that factors related to the increased volume, such as developmental contribution added risk assumed, or added investment of capital, entitle the contractor to claim a larger share of the benefit resulting from increased volume, but to the extent that this is not shown, the margin of profit on expanded renegotiable sales should be adjusted in reasonable relationship to the expanded volume. Increase in volume made possible by increased subcontracting may often not involve any cost savings, and will involve problems discussed under other factors. (See secs. 1460.12 and 1460.14.)

(4) When the contractor is engaged in more than one class or type of business, the varied characteristics of the several classes of business will be taken into consideration.

(D) 1460.11 CAPITAL EMPLOYED

(*a*) *Statutory provision.*—Section 103(e) of the act provides that in determining excessive profits there shall be taken into consideration the following factor:

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

(*b*) *Comment.*—(1) The amount of net worth employed, as well as the amount and source of capital employed, will, as a general rule, be that existing at the beginning of the fiscal year. However, if significant changes, in either capital or net worth, occur during the year, they will be reflected in the determination of the amount employed during such year.

(2) The amount of net worth employed in renegotiable business will be estimated and considered whenever a reasonable estimate of that amount is possible.

(3) Capital employed is the total of net worth, debt, and any assets furnished by the Government or customers not contained in the contractor's records. The source of capital will be established in order that a determination may be made of the extent to which capital employed in renegotiable business came from public sources or from customers, or was furnished by the contractor.

(4) The relationship of profit realized on renegotiable business to the capital and net worth employed in renegotiable business will be used as one of the considerations in the final determination of what constitutes excessive profits. A contractor who is not dependent upon Government or customer financing of any type is entitled to more favorable consideration than a contractor who is largely dependent upon these sources of capital. When a large part of the capital employed is supplied by the Government or by customers, the contractor's contribution tends to become one of management only and the profit will be considered accordingly.

(E) 1460.12 EXTENT OF RISK ASSUMED

(*a*) *Statutory provision.*—Section 103(e) of the act provides that in determining excessive profits there shall be taken into consideration the following factor:

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

(*b*) *Comment.*—(1) The risks to be considered include but are not limited to risks incident to close pricing policies. For example, contractors in certain industries may attain maximum production only at the risk of saturating postemergency markets. Contractors may assume risks by guaranteeing delivery schedules notwithstanding possible inability to obtain needed materials or labor. Contractors may guarantee quality and performance of the product notwithstanding uncertainties as to the quality obtainable from their plants, particularly with respect to products which may be more or less abnormal to them. In some cases a substantial degree of risk will be found in the temporary sacrifice of civilian markets to competitors, in order to accept more defense orders, or in the certainty of heavy reconversion expenses at the end of the emergency. Acceptance of contracts without escalation or similar protection may involve a risk that the cost of labor or materials may increase. Contractors who subcontract work, the performance of which they guarantee, in general assume a greater risk than contractors who retain performance entirely within their own control. In general, the Board will consider whether the contractor's performance of renegotiable business is free from risk, or subject to it, on the basis of actual experience and not mere speculative or unlikely possibilities. The Board will give special consideration to evidence showing risks through actual realization of losses incurred by the contractor in performing contracts in other years similar to the contracts undergoing renegotiation, and losses incurred in the same or other years by concerns other than the contractor, especially when connected with the contractor in any way, and in performing similar contracts.

(2) The risk assumed by the contractor as a result of its pricing policy will be given particular consideration. A contractor, having initial prices calculated to yield a reasonable profit, who revises such initial prices downward periodically when circumstances warrant, will be given more favorable treatment under this factor than a contractor who does not follow such policy. In order that proper consideration may be given, it is suggested that contractors, when making such periodic price revisions, notify the Board of the action taken in this respect.

(3) Consideration of the pricing policy of the contractor frequently involves the question of refunds made before renegotiation under the act. As stated in part 1462, such refunds may be made as an integral part of the repricing policy of the contractor or as prepayments of excessive profits. In either event, the effect upon the risk assumed by the particular contractor depends entirely upon the facts of each case, including the manner in which the refund is made. For example, a contractor who executes a legally binding agreement to pay the Government a rebate on articles delivered during a particular period of time, has incurred a greater risk than a contractor who gives the

Government a nonbinding "statement of intention" or "statement of policy" indicating that it will make refunds, even though the final profit position of the two contractors at the end of the fiscal year is the same. On the other hand, a contractor who makes a refund pursuant to such a "statement of intention" or "statement of policy" may have incurred a greater risk than one who simply makes a refund. Similarly, a contractor who makes a refund near the beginning of its current fiscal year has incurred a greater risk than one who makes a refund near the end of its fiscal year. The effect of the refund must, therefore, be weighed in the light of all pertinent facts.

(F) 1460.13 CONTRIBUTION TO THE DEFENSE EFFORT

(*a*) *Statutory provision.*—Section 103 (e) of the act provides that in determining excessive profits there shall be taken into consideration the following factor:

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

(*b*) *Comment.*—This factor applies with continued force to contributions to the defense effort by prime contractors and subcontractors through their business subject to the act. Consideration will be given to the nature and extent of the contractor's contribution. Favorable consideration for unusual contributions will be possible only when the contribution is exceptional. Experimental and developmental work of high value to the defense effort and new inventions, techniques, and processes of unusual merit are examples of special contributions. The extent to which a contractor cooperates with the Government and with other contractors in developing and supplying technical assistance to alternative or competitive sources of supply is a factor which will be given favorable consideration and the effect of such sharing of knowledge on such contractor's future business will also be taken into account.

(G) 1460.14 CHARACTER OF BUSINESS

(*a*) *Statutory provision.*—Section 103 (e) of the act provides that in determining excessive profits there shall be taken into consideration the following factor:

(5) Character of business, including source and nature of materials, complexity of manufacturing technique, character and extent of subcontracting, and rate of turnover.

(*b*) *Comment.*—(1) Consideration will be given to the character of the business of the contractor. The manufacturing contribution will vary with the nature of the product and the degree of skill and precision required in the work performed by the contractor. The relative complexity of the manufacturing technique and the relative integration of the manufacturing process are the basic considerations in evaluating this factor.

(2) A contractor who uses customer-furnished materials generally is not entitled to as large a dollar profit as the dollar profit to which such contractor would have been entitled had it furnished the materials itself. In the latter case, the contractor would have expended effort in finding or acquiring materials, would have invested capital in the

materials and would have assumed the risks of obsolescence, spoilage, or other loss inherent in owning such materials. Although the aggregate dollar profit allowed the contractor in the former case should not be as great as it would be if such contractor furnished its own materials, nevertheless the dollar profit allowed will usually result in a larger percentage of sales than the dollar profit which would have been allowed if the materials had been purchased by the contractor and, therefore, included in its sales and costs.

(3) (i) Defense production needs and the policy of Congress require that subcontracting, particularly to small business concerns, be used to the maximum extent practicable. Although a contractor who subcontracts work may not reasonably expect to be allowed as large a profit thereon as if it had done the work itself, subcontracting of the kind described in this subparagraph, especially the extent to which subcontracts are placed with small business concerns, will be given favorable consideration in the renegotiation of the contractor.

(ii) A contractor will be given favorable treatment when, by subcontracting, it utilizes in the defense effort facilities and services, particularly of small business concerns, which might otherwise have been overlooked or passed by; when it has demonstrated its efficiency and ingenuity in finding appropriate opportunities for subcontracting; when the amount of subcontracting so accomplished is substantial; when the amount or complexity of technical, engineering and other assistance rendered by the contractor to the subcontractor is substantial; and when the price negotiated with the subcontractor is reasonable in view of the character of the components produced.

(iii) The portion of the renegotiable business of the contractor which is subcontracted will be a part of its total sales, and separate consideration must be given in applying to this portion the factors of risks assumed, capital employed, and reasonableness of costs and profits.

(iv) The subcontractor, of course, will receive favorable consideration in renegotiation for the successful employment of its own facilities and production skill.

(4) The rate of turnover will indicate the use of plant, materials, and net worth. A low rate of turnover may indicate more complete integration in production or may be related to the type of the product and the nature of the manufacturing process. A high rate of turnover may indicate a relatively smaller manufacturing contribution or, by comparison with other manufacturers of similar products, a relatively greater efficiency.

(H) 1460.15 ADDITIONAL FACTORS

(*a*) *Statutory provision.*—Section 103(e) of the act provides that in determining excessive profits there shall be taken into consideration the following:

(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.

(*b*) *Factors adopted by the Board.*—No additional factors have been adopted by the Board to the date of the publication of the regulations in this part.

X. Summary of Comments and Proposals Received With Regard to Extension of the Renegotiation Act of 1951

A. EXTENSION OF THE ACT

1. Should the act be extended?

Nearly all the industry groups appearing have opposed extension of the Renegotiation Act and have proposed that it be permitted to expire on June 30, 1959—its presently scheduled expiration date. (Machinery and Allied Products Institute (MAPI), Shipbuilders Council of America (SCA), American Institute of Accountants (AICPA), National Association of Manufacturers (NAM), Chamber of Commerce of the United States, (CC) National Security Industrial Association (NSIA), Strategic Industries Association (SIA).) Two industry groups (Aircraft Industries Association (AIA) and Electronics Industry Association (EIA)) support extension of the act, but with major amendments. All the interested Government agencies support extension of the act. In addition, the Honorable Carl Vinson and Martha Griffiths urge extension of the act.

2. Period of extension

The Administration requests extension of the act for 2 years and 3 months, that is, until September 30, 1961. H.R. 5123, supported by the AIA and other groups, provides for extension of the act for 2 years or until June 30, 1961. Other groups, consisting primarily of those opposed to extension of the act, favor limiting extension of the act to a period of 1 year or to as short a period as possible. The Honorable Carl Vinson urges that renegotiation be made a permanent part of the law.

B. SUSPENSION OF VINSON-TRAMMEL ACT, MERCHANT MARINE ACT, AND OTHER PROFIT LIMITATION PROVISIONS

The profit limitation provisions of the Vinson-Trammel Act and of the Merchant Marine Act are suspended by section 102(e) of the Renegotiation Act so long as the latter act is in effect.

1. Repeal of Vinson-Trammel Act, etc.

Several industry groups recommend repeal of the Vinson-Trammel Act and the Merchant Marine Act. (SCA, C.C., NAM, AICPA.) The Administration has expressed no opinion with respect to this proposal.

2. Other profit limitation provisions

Although the Vinson-Trammel and Merchant Marine Act profit limitation provisions are now suspended as discussed above, it has been pointed out that there are three different instances where profit limitation provisions have been imposed by regulatory action of certain Departments. In the case of ship-repair contracts, the Federal Maritime Administration has by regulation imposed a 10 percent-on-sales profit limitation similar to that of the Vinson-Trammel Act. In the case of Navy contracts for the construction of ships which include escalation clauses providing for increase or decrease in the contract price on account of changes in labor and material costs, a clause has been inserted in such contracts empowering the contracting officer to

deny escalation payments in whole or in part if he finds that the payment is not required "to enable the contractor to earn a fair and reasonable profit" under the contract. Similar limitations have been included by the Federal Maritime Board and Federal Maritime Administration on escalation payments in the case of ship construction contracts, but in these instances, it is provided that escalation payments will not be made if the payments would result in a profit to the contractor of more than 10 percent of the contract price. One group in particular (The Shipbuilder's Council of America) has urged legislation suspending these profit limitations on the grounds that a contractor should not be subject to these limitations while also subject to the Renegotiation Act.

C. AGENCIES SUBJECT TO THE ACT

Several industry groups have proposed that contracts with certain "fringe agencies" be excluded from coverage by the act. In particular, it has been proposed that contracts with the General Services Administration and contracts with the Army Corps of Engineers and the AEC for procurement of nonmilitary items be excluded from coverage.

D. FISCAL YEAR BASIS

Renegtoiation is now conducted on a fiscal year basis—that is, a contractor's renegotiable receipts and accruals during a fiscal year from all contracts with all departments subject to the act are reviewed to determine excessive profits. Certain exceptions to this rule are permitted under regulations of the Board, such as in the case of long-term contracts and "special accounting agreements." In addition, present law permits a 2-year carryforward of losses on renegotiable business.

Numerous industry groups have stated that conduct of renegotiation on an annual basis produces severe hardships, that present provisions designed to alleviate this hardship are too restrictive, and that remedial legislation is required.

1. Losses—Carryforwards and carrybacks

Although present law (sec. 103(m)) permits a 2-year carryforward of losses on renegotiable business, carrybacks are not permitted. Several different industry groups have urged that loss carrybacks be permitted and that the period for carryforwards be extended (AICPA, NSIA, MAPI).

2. Deficiencies in profits

Numerous industry groups and commentators have strongly urged that legislation be enacted to require the Board, in determining excessive profits for any given year, to take into account not only losses but also deficiencies in reasonable profits arising out of operations for years other than the year under review (MAPI, SCA, AICPA, John Holbrook, et al.). The groups differ on the period of years which should be considered in determining excessive profits for any given year and on the method by which the results of other years should be taken into account.

E. EXEMPTIONS

Several different exemptions from renegotiation are provided for by section 106 of the act. In addition, section 105(f) provides for a "floor" whereby a contractor is not subject to renegotiation for any year in which renegotiable sales do not exceed $1 million (or $25,000 in the case of certain contracts specified in sec. 105(f)(2)).

A large number of proposals and comments relate to these portions of the act and will be summarized to the extent possible under the different exemptions to which they relate.

1. Proposed new exemptions

(*a*) *Product exemption.*—One group (MAPI) has proposed that since the principal justification asserted by the Administration for extension of the act is the absence of past production and cost experience with respect to certain procurement items, there should be enacted a product exemption or exclusion which would provide in effect that no contract shall be subject to renegotiation unless the Secretary of the Department concerned certifies that the contract is for a product with respect to which renegotiation is required. Several other groups, although not embodying their comments in a specific proposal such as that made by MAPI, point out that the present exemptions do not limit renegotiation to the areas asserted as requiring its presence and urge that steps be taken to limit the coverage of the act to those areas where it is felt that it is needed.

(*b*) *Exemption by type of contract.*—Several different proposals would provide exemptions on the basis of the type of contract involved. For example, section 3(a) of H.R. 6374 would have the effect of exempting subcontracts awarded as a result of competitive bidding to the lowest bidder among three or more bidders. H.R. 6382 to H.R. 6387 would have the effect of exempting (*a*) any fixed-price or incentive-type contract or subcontract which was subject to price redetermination or price revision, and (*b*) any fixed price contract awarded to the lowest acceptable bidder as a result of competitive bidding in which three or more responsive and competitive bidders took part. Section 9(a) of S. 500 (introduced by Senator Saltonstall) would exempt any fixed-price contract, any contract made by formal advertising, and any incentive-type contract. Several industry groups generally favor such proposals (MAPI, CC, et al.). The Renegotiation Board and the Department of Defense, however, are generally opposed to such exemptions and have expressly opposed H.R. 6374 and H.R. 6382 to H.R. 6387.

(*c*) *Small contract exemption.*—One group (NSIA) has recommended that the act be amended to exempt small contracts and subcontracts for less than $25,000, provided the contractor qualifies as a "small business concern" under the Small Business Act of 1958. Under the proposal the exemption would be elective, with the contractor electing or waiving the exemption in a statement filed with his annual renegotiation report.

2. Waiver of exemptions

One group (SCA) has pointed out that exemptions from the act may sometimes operate to the disadvantage of the contractor and has proposed that regardless of whether an exemption is described in the statute as "mandatory" or "permissive," a contractor be per-

mitted, at the time he files his annual renegotiation report, to waive any exemption for that year.

3. "Stock item" exemption

One group (NSIA) has proposed that the so-called "stock item" exemption now provided for by section 1455.6(b) of the Renegotiation Regulations be codified in the statute. This group states that it recognizes that the provision of regulations granting this exemption has been reissued yearly since 1951, but would prefer the terms of the exemption to be codified into the statute since "many contractors have now established time-saving administrative procedures" on the basis of the exemption and "hardships would be caused" if the contractors were compelled to change their procedures.

Standard commercial article exemption

Several different groups have complained that the present standard commercial article exemption is too restrictive in its terms and that, as a result, many contractors are either unable to maintain the detailed accounting records required to show entitlement to the exemption or are unable to meet its requirements, particularly the 35-percent-of-sales-requirement. The AICPA, for example, proposes that the Board, in its discretion, be permitted to grant the exemption where a contractor meets all the requirements except the 35-percent-of-sales-test. MAPI, too, suggests that efforts be made to remove some of the restrictions on this exemption. H.R. 5123, H.R. 6374 and H.R. 6382 to H.R. 6387 all would liberalize the standard commercial article exemption in various respects, but are opposed by the Department of Defense and the Renegotiation Board.

5. Minimum amounts subject to renegotiation, the "floor"

In addition to the change proposed by the "special rule" contained in section 2 of H.R. 5123, several proposals have been made to increase the present statutory floor of $1 million. H.R. 6374 and H.R. 6382 to H.R. 6387, for example, would increase the floor to $5 million. Other proposals would also increase the $25,000 floor now applicable to certain brokers contracts to $100,000. (Electrical Equipment Representatives Association; Electronic Representatives Association.)

F. PROCEDURE

The American Bar Association, several commentators, and virtually all industry groups commenting have complained that contractors are not now accorded a "fair hearing" in one respect or another, either at the Board or the Tax Court level and, as a result, there are numerous recommendations for changes in procedure before the Board and the Tax Court and for allowing review of Tax Court decisions by the circuit courts of appeal.

Board procedures

Most of the groups commenting state that a contractor is not now accorded a fair hearing at the Board level, particularly insofar as he is denied an opportunity to inspect and rebut any performance report or other data and reports used by the Board in arriving at its determination. In addition, several groups have complained that the Board, upon making its determination, fails to state with sufficient specificity the facts and reasons relied on by it in arriving at its determination. The ABA proposes that the Administrative Procedure Act

be made applicable to proceedings before the Board and that appeals from Board decisions be taken directly to the Courts of Appeal (as is done in the case of appeals from some other administrative agencies, such as the FTC) rather than to the Tax Court. Several other groups, without recommending any changes in the procedure for appeals to the Tax Court, recommend that the Board be required to permit contractors to inspect and rebut data relied on by the Board (NSIA; MAPI), Section 3 of H.R. 5123 would require the Board, before making its determination, to "make available for inspection by the contractor * * * all data relating to the renegotiation proceeding * * *." In addition, H.R. 5123 would require the Board, prior to making its determination, to furnish the contractor a statement of its reasons and the facts relied on in reaching the determination. Section 2(b) of the Administration's legislative proposal is designed to codify present regulations and practice insofar as the contents of the statement furnished by the Board to the contractor is concerned.

In addition to these recommended changes in Board proceedings, the Honorable Carl Vinson has recommended that consideration be given to shortening the 2-year period now permitted for completion of renegotiation proceedings before the Board.

2. Tax Court procedure

The ABA and others have stated that although the proceeding before the Tax Court is required by law to be a proceeding de novo, present conduct of renegotiation cases by the Tax Court does not constitute a proceeding de novo, particularly insofar as the Tax Court has held that the contractor has the burden of proof with respect to amounts determined by the Board to be excessive profits. Section 5(b) of H.R. 5123 would provide in effect that no "presumption of correctness be raised by the Board's determination" and that no burden of proving the determination incorrect be placed on the contractor.

3. Review of Tax Court decisions

Section 108 of present law provides that the determination of the Tax Court as to the amount of excessive profits "shall not be reviewed or redetermined by any court or agency." Both the Administration's proposal and H.R. 5123 would permit determinations of the Tax Court in renegotiation cases to be reviewed by the circuit courts of appeal to the extent that tax cases may now be reviewed under subsections (a) and (c) of section 7482 of the Internal Revenue Code of 1954. All groups commenting on the proposal to allow such review of Tax Court decisions in renegotiation cases have uniformly supported or "not objected" to this proposal.

G. MISCELLANEOUS

1. Board reports

Section 6 of H.R. 5123 would require the Board to include in its annual report to Congress additional statistical data with regard to certain contractors whose receipts under contracts with the departments exceed $20 million for the year involved. In addition, section 6(b) of H.R. 5123 would permit annual reports of the Board to be received "as evidence of the facts contained therein in all proceedings before the Board" and in "all judicial proceedings" involving the act.

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