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**Regulations**

**TITLE 7—AGRICULTURE**

**Chapter VIII—War Food Administration  
(Sugar Regulations)**

**PART 802—SUGAR DETERMINATIONS**

**1944 WAGE RATES FOR FLORIDA SUGARCANE**

Determination of fair and reasonable wage rates for persons employed in the production and cultivation of sugarcane in Florida during the calendar year 1944.

Pursuant to section 301 (b) of the Sugar Act of 1937, as amended, and Executive Order No. 9322, issued March 26, 1943, as amended by Executive Order No. 9334, issued April 19, 1943, the following determination is hereby issued:

§ 802.24p *Fair and reasonable wage rates for persons employed in the production and cultivation of sugarcane in Florida during the calendar year 1944.* The requirements of section 301 (b) of the Sugar Act of 1937, as amended, shall be deemed to have been met with respect to the production and cultivation of sugarcane in Florida during the period from January 1, 1944, to December 31, 1944, if all persons employed on the farm during that period in the production and cultivation of sugarcane shall have been paid in full for all such work and shall have been paid wages in cash therefor at the rates agreed upon between the producer and the laborer, but not less than the following:

(a) *On a time basis.*

	Cents per hour
All work except as otherwise specified:	
Adult Males.....	30.0
Adult Females.....	25.0
Tractor drivers.....	37.5
Children between 14 and 16 years (Maximum employment per day is 8 hours).....	25.0

(b) *On a piece rate basis.* For all classes of work performed on a piece rate basis the earnings per hour shall be not less than the applicable rate per hour specified under (a) above; *Provided, however,* That minimum earnings per hour shall not apply to prisoners of war but they shall be paid at the same piece rate as other laborers.

(c) *General provisions.* (1) The producer shall furnish to the laborer, without charge, the customary perquisites, such as a habitable house, a suitable garden plot with facilities for its cultivation, pasturage for livestock, medical attention, and similar incidentals.

(2) The producer shall not, through any subterfuge or device whatsoever, reduce the wage rates to laborers below those determined above.

(Sec. 301, 50 Stat. 909; 7 U.S.C. 1131; E.O. 9322, 9334, 8 F.R. 3807, 5423)

Done at Washington, D. C., this 6th day of June 1944.

ASHLEY SELLERS,

Assistant War Food Administrator.

[F. R. Doc. 44-8129; Filed, June 6, 1944; 11:15 a. m.]

**Chapter XI—War Food Administration  
(Distribution Office)**

[WFO 13, Amdt. 2]

**PART 1401—DAIRY PRODUCTS**

**CREAM**

War Food Order No. 13, as amended, 9 F.R. 4319 (formerly designated as Food Distribution Order No. 13, as originally issued by the Secretary of Agriculture on February 2, 1943, 8 F.R. 1479, as amended, 8 F.R. 11835), is further amended to read as follows:

§ 1401.13 *Restrictions with respect to cream—(a) Definitions.* (1) "Person" means any individual, partnership, association, business trust, corporation, or any organized group of persons, whether incorporated or not.

(2) "Handler" means any person who engages in the business of transporting or processing milk or cream, or of manufacturing any dairy product. Such term shall not include persons who merely deliver milk or cream to consumers, institutional or otherwise.

(3) "Milk" means cow's milk.

(4) "Cream" means the class of food which is the sweet, fatty liquid or semi-liquid separated from milk, with or without the addition thereto and the mixing

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- Book 1: Titles 1-3 (Presidential documents) with tables and index.
- Book 2: Titles 4-9, with index.
- Book 3: Titles 10-17, with index.
- Book 4: Titles 18-25, with index.

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therewith of sweet milk or sweet skim milk, irrespective of whether it is pasteurized or homogenized, and which contains not less than 18 percent of milk fat. Such term shall, for the purposes of this order, include, but not be restricted to, (i) light cream, coffee cream, table cream, whipping cream, heavy cream, plastic cream, sour cream, aerated cream, and any other cream by whatever name known; and (ii) reconstituted cream made from butter and one or more of the following ingredients: milk, skim milk, evaporated milk, condensed milk, cream, dried whole milk, dried skim milk, dried cream, or water.

(5) "Cream product" means cream to which there has been added, or which has been blended or compounded with, a culture, stabilizer, or like agent or ingredient; or with sugar, salt, condiments, spices, flavoring, or similar ingredients; whether or not the resultant product is pasteurized, homogenized, or sterilized.

(6) "Filled cream" means any milk, cream, or skim milk, whether or not condensed, evaporated, concentrated, powdered, dried, or desiccated, to which there has been added, or with which there has been blended or compounded, any fat or oil other than milk fat, so that the resulting product is an imitation of cream or in semblance thereof, whether or not such resulting product contains any other ingredient.

(7) "Milk fat," sometimes known as "butterfat," means the fat of milk; the proportionate content of such milk fat in milk or cream to be determined by the method prescribed in "Official and Tentative Methods of Analysis of the Association of Official Agricultural Chemists," Fifth Edition, 1940, page 287, under "Fat, Babcock Method—Official."

(8) "Director" means the Director of Distribution, War Food Administration.

(9) "State" means any of the forty-eight States of the United States, the District of Columbia, or any Territory or Possession of the United States.

(b) *Restrictions.* (1) No person shall sell or deliver, except to a handler, any cream or cream product having a milk fat content in excess of 19 percent: *Provided*, That any person may sell or deliver

cream having a milk fat content not exceeding by more than 1 percent the minimum milk fat content required by State law or administrative regulation in effect on November 25, 1942, in the State where such delivery is made.

(2) No person shall sell or deliver, except to a handler, any cream or cream product which has been fortified with, or to which there has been added, or with which there has been blended or compounded, evaporated milk, condensed milk, dried whole milk, or dried skim milk.

(3) No person shall, after July 31, 1944, sell or deliver filled cream having a total content of all oil and fat, including milk fat, in excess of 19 percent, but this shall not be construed to permit the manufacture, sale, or delivery of filled cream in violation of the Filled Milk Act (21 U. S. C., 1940 ed., 61-64).

(4) Notwithstanding the provisions of (b) (1) and (b) (2) hereof, any person may sell or deliver to any restaurant, hotel, or other public eating place any cream or cream product having a milk fat content in excess of that permitted by (b) (1) hereof or any cream or cream product of the type described in (b) (2) hereof, if the purchaser certifies in writing to the seller that such cream or cream product is to be used in the manufacture of frozen dairy foods in accordance with the provisions of War Food Order No. 8, issued by the War Food Administrator.

(5) No restaurant, hotel, or other public eating place shall use any cream or cream product having a milk fat content in excess of 19 percent, except in the manufacture of frozen dairy foods in accordance with the provisions of said War Food Order No. 8: *Provided*, That any such restaurant, hotel, or other public eating place may use for all purposes cream having a milk fat content not exceeding by more than 1 percent the minimum milk fat content required by State law or administrative regulation in effect on November 25, 1942, in the State where such use takes place.

(c) *Exemptions.* (1) Notwithstanding the provisions of (b) hereof, any person may sell or deliver to or for any patient, or to any establishment engaged in the care and treatment of the sick, cream of such milk fat content, and in such quantities, as may be necessary for supervised medical treatment of such patient or the patients of such establishment: *Provided*, That such person is supplied with a written statement from the patient's physician or, in the case of an establishment engaged in the care and treatment of the sick, from a responsible official thereof who is a practicing physician, and such written statement shall be valid for a period of not to exceed sixty days from the date of issuance and shall specify (i) the milk fat content of cream required for such use, (ii) the daily quantity of such cream, and (iii) with regard to the necessity of such cream for supervised medical treatment: *Provided further*, That such written statement shall not be valid for obtain-

ing such cream after July 31, 1944, unless approved by the public health officer, or the secretary of the county medical society, of the municipality or county wherein such patient resides or such establishment is located.

(2) Upon application by one or more persons in any marketing area and after demonstration to the satisfaction of the Director that compliance with the provisions of (b) (1) hereof will not tend to conserve milk fat for war and essential civilian needs, the Director may grant an exemption from the provisions of (b) (1) hereof to any or all persons in such area.

(d) *Audits and inspections.* The Director shall be entitled to make such audit or inspection of the books, records and other writings, premises or stocks of cream, cream products, or filled cream of any person, and to make such investigations, as may be necessary or appropriate, in the Director's discretion, to the enforcement or administration of the provisions of this order.

(e) *Records and reports.* (1) The Director shall be entitled to obtain such information from, and require such reports and the keeping of such records by, any person, as may be necessary or appropriate, in the Director's discretion, to the enforcement or administration of the provisions of this order.

(2) Every person subject to this order shall, for at least two years (or for such period of time as the Director may designate), maintain an accurate record of his transactions in cream, cream products, and filled cream.

(f) *Petition for relief from hardship.* Any person affected by this order, who considers that compliance herewith would work an exceptional and unreasonable hardship on him, may file a petition for relief with the Regional Director of Distribution, War Food Administration, serving the area (8 F.R. 15764) in which such person resides or does business. Petitions for such relief shall be in writing and shall set forth all pertinent facts and the nature of the relief sought. The Regional Director may take any action with reference to such petition which is consistent with the authority delegated to him by the Director. If the petitioner is dissatisfied with the action taken by the Regional Director on the petition, he shall, by requesting the Regional Director therefor, obtain a review of such action by the Director. The Director may, after said review, take such action as he deems appropriate, and such action shall be final. The provisions of this paragraph (f) shall not be construed to deprive the Director of authority to consider originally any petition for relief from hardship submitted in accordance herewith. The Director may consider any such petition and take such action with reference thereto as he deems appropriate, and such action shall be final.

(g) *Violations.* Any person who violates any provision of this order may, in accordance with the applicable procedure,

be prohibited from receiving, making any deliveries of, or using cream, cream products, and filled cream, or any other material subject to priority or allocation control by any governmental agency. In addition, any person who willfully violates any provision of this order is guilty of a crime and may be prosecuted under any and all applicable laws. Further, civil action may be instituted to enforce any liability or duty created by, or to enjoin any violation of, any provision of this order.

(h) *Delegation of authority.* The administration of this order and the powers vested in the War Food Administrator, insofar as such powers relate to the administration of this order, are hereby delegated to the Director. The Director is authorized to redelegate to any employee of the United States Department of Agriculture any or all of the authority vested in him by this order.

(i) *Communications.* All reports required to be filed hereunder and all communications concerning this order shall be addressed to the Regional Director of Distribution, War Food Administration, serving the area (8 F.R. 15764) in which the person affected by the order resides or does business.

(j) *Territorial extent.* This order shall apply to the forty-eight States of the United States, the District of Columbia, and the Territories and Possessions of the United States.

(k) *Effective date.* This order shall become effective at 12:01 a. m., e. w. t., June 7, 1944. With respect to any violation of War Food Order No. 13, as amended, or rights accrued, liabilities incurred, or appeals taken under said order, as amended, prior to the effective date hereof, said War Food Order No. 13, as amended, shall be deemed to continue in full force and effect for the purpose of sustaining any proper suit, action, or other proceeding with respect to any such violation, right, liability, or appeal.

*Note:* All record-keeping requirements of this order have been approved by, and subsequent reporting and record-keeping requirements will be subject to the approval of, Bureau of the Budget in accordance with the Federal Reports Act of 1942.

(E.O. 9280, 7 F.R. 10179; E.O. 9322, 8 F.R. 3807; E.O. 9334, 8 F.R. 5423; E.O. 9392, 8 F.R. 14783).

Issued this 2d day of June 1944.

ASHLEY SELLERS,  
Assistant War Food Administrator.

[F. R. Doc. 44-8051; Filed, June 3, 1944; 4:12 p. m.]

[WFO 97, Termination]

PART 1414—POULTRY

HEN TURKEYS AND PROCESSED TURKEYS

War Food Order No. 97 (9 F.R. 4375) is hereby terminated.

This order shall become effective at 12:01 a. m., e. w. t., June 3, 1944. With respect to violations, rights accrued, liabilities incurred, or appeals taken under War Food Order No. 97, prior to the effective time hereof, all provisions of such order in effect prior to the effective time hereof shall be deemed to continue in full force and effect for the purpose of sustaining any proper action, suit, or other proceeding with respect to any such violations, right, liability, or appeal.

(E.O. 9280, 7 F.R. 10179; E.O. 9322, 8 F.R. 3807; E.O. 9334, 8 F.R. 5423; E.O. 9392, 8 F.R. 14783)

Issued this 3d day of June 1944.

ASHLEY SELLERS,  
Assistant War Food Administrator.

[F. R. Doc. 44-8052; Filed, June 3, 1944; 4:12 p. m.]

[WFO 67, Amdt. 3]

PART 1460—FATS AND OILS  
INEDIBLE TALLOW OR GREASE

War Food Order 67, as amended (8 F.R. 15810; 9 F.R. 2255, 4319), § 1460.27, is amended as follows:

1. By deleting the provisions of paragraph (b) thereof and inserting in lieu thereof the following:

(b) *Certification of orders for inedible tallow or grease which is not to be used for the production of soap.* Any manufacturer who desires to obtain inedible tallow or grease from a producer or dealer in any calendar month, for the manufacture of any product other than soap, and who desires to avail himself of the provisions of paragraph (d) hereof, may, in the period of twenty days immediately prior to the tenth day of such month, deliver to such producer or dealer a written order for such inedible tallow or grease which has attached thereto, or included therein, a certificate properly filled out and signed by him, in the following form:

The undersigned hereby certifies to the War Food Administration and to \_\_\_\_\_ (producer or dealer)

that this certificate constitutes a part of an order by him to said producer or dealer for \_\_\_\_\_ pounds of inedible tallow or grease, to be delivered on or about \_\_\_\_\_

(date) and that all of the inedible tallow or grease which may be received by the undersigned pursuant to such order will be used by him in the manufacture of a product other than soap, and that such acceptance of delivery by him during any period when inventory restrictions are in effect will not cause his inventory of inedible tallow or grease to exceed the amount permitted under the terms of War Food Order 67, as amended.

\_\_\_\_\_  
(Purchaser)

By \_\_\_\_\_  
(Authorized Official)

\_\_\_\_\_  
(Date)

No person who receives inedible tallow or grease as a result of such a certified

order shall use any of the inedible tallow or grease so received in the production of soap.

2. By deleting the provisions of paragraph (c) thereof.

3. By deleting the provisions of paragraph (d) thereof and inserting in lieu thereof the following:

(d) *Restrictions on delivery in order to give certified orders preference.* No producer or dealer shall deliver inedible tallow or grease during any month to any manufacturer, except pursuant to a specific authorization by the Director or an order certified in accordance with the provisions of paragraph (b) hereof, unless and until he has, before the end of such month, delivered, offered to deliver, or made provision to deliver all inedible tallow or grease for which, in the period of twenty days immediately prior to the tenth day of such month, he has received orders certified in accordance with the provisions of paragraph (b) hereof: *Provided, however,* That no dealer shall be required to deliver, offer to deliver, or make provision to deliver on such certified orders in the aggregate, in any month, more inedible tallow or grease than 30% of the total amount of inedible tallow or grease delivered by him in such month, and no producer shall be required in any month to deliver, offer to deliver, or make provision to deliver on such certified orders from any one plant operated by him more than 30% of the total deliveries of inedible tallow or grease made by him from such plant in such month, and no producer or dealer shall be required to make delivery of any quantity of inedible tallow or grease other than a commercial quantity, or in an amount less than the smallest commercial quantity of inedible tallow or grease delivered by him in the base period.

This amendment shall become effective at 12:01 a. m., e. w. t., July 1, 1944. However, certified orders may be delivered pursuant to paragraph (b) hereof after June 20, 1944, and such orders shall be deemed valid for the purposes of this amendment. With respect to violations of said War Food Order 67, as amended, or rights accrued, or liabilities incurred thereunder, prior to July 1, 1944, said War Food Order 67, as heretofore amended, shall be deemed to be in full force and effect for the purpose of sustaining any proper suit, action, or other proceeding with respect to any such violation, right, or liability.

(E.O. 9280, 7 F.R. 10179; E.O. 9322, 8 F.R. 3807; E.O. 9334, 8 F.R. 5423; E.O. 9392, 8 F.R. 14783)

Issued this 3d day of June 1944.

ASHLEY SELLERS,  
Assistant War Food Administrator.

[F. R. Doc. 44-8053; Filed, June 8, 1944; 4:12 p. m.]

## TITLE 10—ARMY; WAR DEPARTMENT

### Chapter VIII—Procurement and Disposal of Equipment and Supplies

#### RENEGOTIATION REGULATIONS

CROSS REFERENCE: For Renegotiation Regulations issued by the War Contracts Price Adjustment Board, see Title 32, Chapter XIV, *infra*.

## TITLE 13—BUSINESS CREDIT

### Chapter I—Reconstruction Finance Corporation

#### RENEGOTIATION REGULATIONS

CROSS REFERENCE: For Renegotiation Regulations issued by the War Contracts Price Adjustment Board, see Title 32, Chapter XIV, *infra*.

## TITLE 19—CUSTOMS DUTIES

### Chapter I—Bureau of Customs

[T. D. 51068]

#### PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

##### REFUNDS OF INTERNAL-REVENUE TAXES

Section 24.36 (b), Customs Regulations of 1943 (19 CFR Cum. Supp.), is hereby amended by inserting the words "of internal-revenue tax" before the comma following the word "refund" in the first sentence. (R. S. 161, 251, sec. 624, 46 Stat. 759; 5 U. S. C. 22, 19 U. S. C. 66, 1624)

W. R. JOHNSON,  
Commissioner of Customs.

Approved: June 3, 1944.

D. W. BELL,  
Acting Secretary  
of the Treasury.

[F. R. Doc. 44-8119; Filed, June 8, 1944; 4:21 p. m.]

## TITLE 32—NATIONAL DEFENSE

### Chapter IX—War Production Board

#### Subchapter B—Executive Vice-Chairman

AUTHORITY: Regulations in this subchapter issued under sec. 2 (a), 54 Stat. 676, as amended by 55 Stat. 236 and 56 Stat. 176; E.O. 9024, 7 F.R. 329; E.O. 9123, 7 F.R. 2719; W.P.B. Reg. 1 as amended March 24, 1943, 8 F.R. 3666, 3696; Pri. Reg. 1 as amended May 15, 1943, 8 F.R. 6727.

#### PART 1010—SUSPENSION ORDERS

[Suspension Order S-500, Amdt. 1]

##### LOWELL SHOE CO., INC.

Lowell Shoe Company, Inc., 341 Middlesex Street, Lowell, Massachusetts, has appealed from the suspension order upon

the ground that it would put the respondent permanently out of business. The Chief Compliance Commissioner has reviewed the case, and has concluded that the business of the respondent will be permanently affected unless the suspension order is modified. He, therefore, on June 3, 1944, directed that the suspension order be, and hereby is, amended by substituting in paragraph (a) "fifty thousand (50,000) pairs" for "thirty-five thousand (35,000) pairs".

In view of the foregoing:

*It is hereby ordered,* That § 1010.500, Suspension Order No. S-500, issued March 10, 1944, and effective March 17, 1944, be, and hereby is, amended by the substitution of the following paragraph (a) for the present paragraph (a):

(a) Lowell Shoe Company, Inc., its successors or assigns, shall not complete the manufacture of more than fifty thousand (50,000) pairs of civilian footwear during the effective period of this order. Such footwear shall be limited to Lowell Shoe Company's existing price lines, but may be divided among such lines as the company may determine under paragraph (i) (iv) of Conservation Order M-217 as amended January 12, 1944.

Issued this 3d day of June 1944.

WAR PRODUCTION BOARD,  
By J. JOSEPH WHELAN,  
Recording Secretary.

[F. R. Doc. 44-8054; Filed, June 8, 1944; 4:17 p. m.]

#### PART 1010—SUSPENSION ORDERS

[Suspension Order S-527, Reinstatement]

##### BLOOMFIELD MANUFACTURING CO.

The Bloomfield Manufacturing Company, of 3333 South Wells Street, Chicago, Illinois, which is a corporation engaged in the production of various war materials and metal kitchen equipment was suspended on May 2, 1944, by Suspension Order No. S-527. It appealed from the provisions of the suspension order and, pending determination of the appeal, the suspension order was stayed by the Chief Compliance Commissioner on May 2, 1944. The appeal has been considered by the Chief Compliance Commissioner, who has dismissed the appeal and directed that the stay be terminated and the suspension order reinstated.

In view of the foregoing:

*It is hereby ordered,* That: § 1010.527, Suspension Order No. S-527 issued April 25, 1944, and effective May 2, 1944, be and hereby is reinstated; the stay of execution directed by the Chief Compliance Commissioner on May 2, 1944, be and hereby is revoked; and paragraph

(d) be and hereby is amended to read as follows:

(d) This order shall take effect on June 8, 1944, and shall expire on September 5, 1944.

and that the suspension order be and hereby is amended by inserting the following paragraph (c) after paragraph (b) and by relettering the present paragraphs (c) and (d) respectively (d) and (e)

(c) The Bloomfield Manufacturing Company, Chicago, Illinois, its successors and assigns, shall not directly or indirectly transfer to any person or persons or corporation, and no person or persons or corporation shall receive or use the facilities of the Bloomfield Manufacturing Company, Chicago, Illinois, to cut, shape, form, put in process, process or manufacture any metal as set forth in the lists attached to Priorities Regulation 13, to make any metal kitchen equipment in any of the shapes or forms as defined in or governed by any Order of the L-30 series, as each regulation and order may be amended from time to time, unless hereafter specifically authorized in writing by the War Production Board.

Issued this 3d day of June 1944.

WAR PRODUCTION BOARD,  
By J. JOSEPH WHELAN,  
Recording Secretary.

[F. R. Doc. 44-8055; Filed, June 3, 1944; 4:17 p. m.]

PART 3291—CONSUMERS DURABLE GOODS  
[General Limitation Order L-65, as Amended June 3, 1944]

ELECTRICAL APPLIANCES

§ 3291.311 *General Limitation Order L-65—(a) Definitions.* For the purposes of this order:

(1) "Electrical appliances" means only those appliances listed on Schedule A of this order which have as functional parts, electrical heating units (of any wattage) or which are powered by an electrical vibrator or electrical fractional horsepower motor.

(2) "Heating unit" means any electric heating unit designed primarily for use in an electrical appliance or in a domestic type electric range.

(3) "Electrical resistance material" means material in the form of ribbon or wire to be incorporated in heating units, in which either nickel or chromium or both, are used to create electrical resistance for the development of heat.

(4) "Manufacturer" means any person engaged in the business of manufacturing or assembling any heating units, electrical appliances or parts for such appliances, including a person who assembles parts of an electrical appliance for sale in knock-down form.

(5) "Distributor" means any person engaged in the business of transferring heating units, electrical appliances or parts for such appliances to his retail outlets or to other dealers.

(6) "Dealer" means any person engaged in the business of transferring or repairing heating units, electrical appliances or parts for such appliances to or for ultimate consumers.

Any person who acts in more than the single capacity of manufacturer, distributor or dealer as defined in paragraphs (a) (4) (a) (5) and (a) (6) of this order shall for the purposes of this order be deemed a manufacturer, distributor or dealer, depending upon the capacity in which he acts in each specific transaction.

(7) "Preferred order" means any purchase order, contract or subcontract for delivery to or for the account of the Army or Navy of the United States, the United States Maritime Commission or the War Shipping Administration.

(8) "Repair or replacement part" means any heating unit for a domestic electric range or any heating unit or other part for an electrical appliance when such heating unit or part is not produced for use in the manufacture or assembly of any new electrical appliance or new domestic electric range.

(9) "Current-carrying parts" include only the following parts: Heating units, thermostats and temperature controls, relays, lead-in and connection wires, switches, terminals, fuses, receptacles and parts of motors which conduct electric current, but shall not include cord sets.

(b) *General restrictions on production.* (1) On and after June 17, 1943, no manufacturer shall produce any new electrical appliance (or parts therefor) other than repair or replacement parts, except:

(i) The following new electrical appliances (or parts therefor) may be produced in fulfillment of preferred orders: Coffee makers, flat irons, air heaters, water heaters, and commercial or heavy duty equipment of the following types: broilers, food choppers, food mixers, food grinders, food servers, food slicers, fry kettles, griddles, hotplates, juicers, ovens, ranges, toasters, urns and vegetable peelers.

(ii) During the period beginning June 17, 1943, and ending September 30, 1943, inclusive, and during each three months period thereafter, a manufacturer may produce for other than preferred orders as specified in paragraph (b) (1) (i)

above, no more units of any of the following types of new electrical appliance (or parts therefor) than 10% of the number of units of that particular electrical appliance (or parts therefor) produced by him during 1940: Commercial or heavy duty equipment of the following types: broilers, food choppers, food mixers, food grinders, food servers, food slicers, fry kettles, griddles, hotplates, juicers, ovens, ranges, toasters, urns and vegetable peelers; *Provided*, that no manufacturer shall produce any units of any type of new electrical appliance (or parts therefor) listed in this paragraph (ii) if such production will result in an accumulation of inventory of that particular type of new electrical appliance (or parts therefor) greater than 15% of the number of units of that particular electrical appliance (or parts therefor) produced by him during 1940.

(2) On and after June 17, 1943, no manufacturer shall use copper or copper base alloys in the production of any new electrical appliances, or parts therefor (whether or not in fulfillment of preferred orders) specified in paragraph (b) (1) of this order, except for such minimum amounts as are necessary for the conduction of electric current or essential to the proper functioning of parts.

(c) *Restrictions on transfer of new electrical appliances.* On and after June 17, 1943, no manufacturer shall transfer the physical possession of or title to any new electrical appliance manufactured after that date, except

(1) In fulfillment of preferred orders.

(2) Pursuant to specific authorization of the War Production Board on Form WPB-1319 pursuant to an application filed on said Form. Form WPB-1319 should be filed with the nearest field office of the War Production Board for all orders except for export, and with the War Production Board, Washington 25, D. C., Ref: L-65, for export orders.

(d) *Repair or replacement parts.* (1) Except in fulfillment of preferred orders, on and after June 17, 1943, no manufacturer shall use copper or copper base alloys in the production of any repair or replacement parts, other than the specific parts listed on the following table, or any part thereof:

Type of equipment	Repair or replacement parts for which copper or copper base alloys are permitted
Air heaters	Current-carrying parts.
Commercial permanent wave equipment and commercial hair driers.	Current-carrying parts, other than copper or copper base alloy disposable grids for permanent wave equipment.
Flat irons	Cord sets pursuant to paragraph (d) (3) of this order and current-carrying parts.
Commercial or heavy duty equipment of the following types: broilers, food choppers, food mixers, food grinders, food servers, food slicers, fry kettles, griddles, hotplates, juicers, ovens, ranges, toasters, urns and vegetable peelers.	Current-carrying parts and motor bearings where the use of other material is impracticable.
Heating units for domestic electric ranges.	Current-carrying parts.
Hotplates and disc stoves	Current-carrying parts.
Roasters	Current-carrying parts.
Water heaters	Current-carrying parts and immersion units.

(2) On and after June 17, 1943, no manufacturer shall use copper or copper base alloys in the production of repair and replacement parts in fulfillment of preferred orders, except for such minimum amounts necessary for the conduction of electric current or essential to the proper functioning of parts.

(3) On and after June 17, 1943, no manufacturer shall produce any replacement cord sets except for flat irons. Replacement cord sets produced for flat irons shall conform to the following specifications: The cord shall be of a quality which tests 3,000 or more cycles in flexure and shall be not more than 6 feet in length; plugs and caps shall be so constructed that they can be readily dismantled and reassembled for repair purposes. During the period beginning June 17, 1943, and ending December 31, 1943, and during each six month period thereafter, no manufacturer shall produce more replacement cord sets for flat irons than 25% of the number of such replacement cord sets produced by him during the year 1940.

(4) On and after June 17, 1943, no manufacturer shall produce any repair or replacement parts (other than replacement cord sets for flat irons) if he has, or as a result of such production will have, more parts of such type in his inventory than the number of parts of such type which he sold during the preceding six calendar months.

(5) Except in fulfillment of preferred orders, on and after June 17, 1943, no manufacturer or distributor shall transfer any repair or replacement parts unless a similar used part has been delivered to him in exchange therefor, or unless he has been informed that a similar used part is being held or will be secured by the dealer or distributor to whom the new part is being transferred, or has been disposed of in accordance with this paragraph. The used parts shall be held subject to disposition at the direction of the manufacturer or distributor who transferred the new part. If no such direction is given within 60 days, the person holding the used part shall promptly dispose of it through regular scrap channels.

(e) *Restriction on use or transfer of electrical resistance material.* On and after June 17, 1943, no manufacturer shall use in the production of heating units or transfer for any purpose whatsoever, any electrical resistance material reported by him in columns 4 and 8 of Form PD-370 prior to September 30, 1942, except pursuant to specific authorization of the War Production Board on Form WPB-1319. Application on that form should be filed with the War Production Board, Washington 25, D. C., Ref.. L-65.

(1) [Deleted Feb. 19, 1944]

(2) [Deleted Feb. 19, 1944]

(f) *Inventory restrictions.* No manufacturer shall accumulate for use in the

manufacture of electrical appliances, heating units, or repair or replacement parts, any inventories of raw materials, semi-processed materials or finished parts in quantities in excess of the minimum amount necessary to maintain production as permitted by this order.

(g) *Applicability of other orders.* In so far as any other order heretofore or hereafter issued by the Office of Production Management or the War Production Board limits the use of any material in the production of electrical appliances, heating units, or repair or replacement parts to a greater extent than the limits imposed by this order, the provisions of such other order shall govern unless otherwise specified therein.

(h) *Applicability of regulations.* This order and all transactions affected thereby are subject to all applicable provisions of the regulations of the War Production Board, as amended from time to time.

(i) *Reports.* Every manufacturer affected by this order shall execute and file Form WPB-1600 (formerly PD-655) with the War Production Board, Washington 25, D. C., Ref.. L-65, on or before the 10th day following the close of each calendar month.

(j) *Appeals.* Any appeal from the provisions of this order should be made on Form WPB-1477 (formerly PD-500)

(k) *Violations.* Any person who willfully violates any provision of this order, or who, in connection with this order, willfully conceals a material fact or furnishes false information to any department or agency of the United States is guilty of a crime, and upon conviction may be punished by fine or imprisonment. In addition, any such person may be prohibited from making or obtaining further deliveries of, or from processing or using, material under priority control and may be deprived of priorities assistance.

(l) *Communications.* All reports required to be filed hereunder and all communications concerning this order shall, unless otherwise directed, be addressed to the War Production Board, Consumers Durable Goods Division, Washington 25, D. C., Ref.. L-65.

Issued this 3d day of June 1944.

WAR PRODUCTION BOARD,  
By J. JOSEPH WHELAN,  
Recording Secretary.

#### SCHEDULE A

The following is the list of electrical appliances specified in paragraph (a) (1) of this order:

Air Heaters (except as covered by L-107 and L-158)  
Aquarium Heaters  
Baking Ovens  
Barbecue Machines  
Biscuit and Muffin Bakers  
Blankets  
Bottle Warmers

\*Bread Silencers (except as covered by L-83)  
Bread Toasters (except as covered by L-102)  
Broilers  
Casseroles  
Chafing Dishes  
Choppers, food and meat  
Cigar and Cigarette Lighters  
Clothes Driers  
Coffee Makers  
Coffee Mills  
Coffee Roasters  
Commercial Cooking and Food and Plate Warming Equipment  
Corn Poppers  
Curling Irons  
\*Dishwashing Equipment (domestic)  
Double Boilers  
Doughnut Cookers  
Dry Shavers  
Egg Boilers  
Face and Hand Driers  
Fan Type Heaters (except as covered by L-107 and L-158)  
Faucet Heaters  
Flat Irons  
Fly Screens and Traps  
Fireplaces  
Food Choppers and Slicers  
Food Conveyance Equipment  
Food Cooking Equipment  
Food Grinders  
\*Food Mixers  
\*Food Preparation Machinery  
Food Servers  
Fry Kettles  
Griddles  
Grills  
Hair Clippers  
Hair Driers  
Heating Pads  
Hedge Clippers  
Hotplates and Disc Stoves  
Ice Cream Freezers, Domestic  
\*\*Immersion Heaters  
\*Juice Extractors  
Knife Sharpeners and Grinders  
Massage Vibrators  
\*Meat, Fish and Bone Cutters  
Neckwear and Trousers Pressers  
Ovens (except as covered by L-182)  
Peanut Roasters  
Percolators  
Permanent Wave Equipment  
Popcorn Machinery  
Portable Air Heaters  
Pyrographic Pencils  
Radiant Heaters  
Ranges, Commercial (except as covered by L-182)  
Roasters  
Roasting Ovens  
Sandwich Toasters  
Soup Cookers  
Steak and Meat Tenderizing Equipment  
Steam Tables  
\*\*Steamers  
Stock Pots  
\*\*Strip Heaters  
Table Stoves  
Tea Kettles  
\*\*Unit Heaters  
Urns  
Vibrators  
\*\*Vane Heaters  
Waffle Irons  
Water Heaters (except as covered by L-185)

[F. R. Doc. 44-8056; Filed, June 3, 1944; 4:17 p. m.]

\*Only those using a fractional horsepower motor.

\*\*Except for industrial applications.

Chapter XI—Office of Price Administration

PART 1340—FUEL

[RMFR 122, Amdt. 23]

SOLID FUELS SOLD AND DELIVERED BY DEALERS

A statement of the considerations involved in the issuance of this amendment, issued simultaneously herewith, has been filed with the Division of the Federal Register.\*

Revised Maximum Price Regulation No. 122 is amended in the following respect:

Section 1340.256 (c) (3) is amended to read as follows:

(3) In the case of Pennsylvania anthracite, the amount per net ton for the sizes and for the time specified as follows:

Size	To and including June 10, 1944	On and after June 11, 1944 to and including June 30, 1944	On and after July 1, 1944
Egg, stove and nut.....	\$1.25	\$1.10	\$0.55
Pea.....	1.20	1.05	.50
Buckwheat.....	1.05	.90	.45
Rice.....	.95	.85	.45
Barley.....	.70	.60	.35
Smaller than barley.....	.65	.50	.30

This amendment shall become effective June 5, 1944.

Issued this 5th day of June 1944.

JAMES G. ROGERS, Jr.,  
Acting Administrator

[F. R. Doc. 44-8117; Filed, June 5, 1944; 4:28 p. m.]

PART 1351—FOOD AND FOOD PRODUCTS

[RMFR 271, Amdt. 16]

POTATOES AND ONIONS

A statement of the considerations involved in the issuance of this amendment has been issued and filed with the Division of the Federal Register.\*

In section 24, Table V is amended to read as follows:

TABLE V—1944 CROP WHITE FLESH POTATOES

(The following prices apply to all varieties of U. S. No. 1 grade white potatoes of the 1944 crop, harvested and sold during the 1944 marketing season, sacked and loaded on carrier, except those actually sold before May 22, 1944, and except those shipped from the country shipping point, whether sold or unsold, before May 18, 1944. The differentials set forth in section 25 are to be used in de-

\*Copies may be obtained from the Office of Price Administration.

9 F.R. 2128, 2477, 3966, 4438.  
8 F.R. 15587, 15663; 9 F.R. 2298, 3589, 4027, 4647, 5379.

termining maximum prices for other grades, special sizes and special packs or packages. However, for the month of June, 1944, and with respect to all states other than California and Arizona, the terms "U. S. No. 1 grade" and "U. S. Commercial grade" wherever they appear in this table or in section 25, shall mean U. S. No. 1 grade or U. S. Commercial grade, as the case may be, of a minimum diameter of 1½ inches, and the provisions of section 25 with respect to U. S. Size B shall not be applicable.)

Period	Producing area	Maximum price per 100 pounds
May 16-31.....	Florida, area north of counties of Charlotte, Olades and Martin, and east of the Suwanee River.	\$3.40
	California.....	2.60
	All other areas.....	3.25
June 1-15.....	California.....	2.49
	Arizona.....	3.65
	All other areas.....	3.25
June 16-30.....	California.....	2.49
	Arizona.....	2.60
	All other areas.....	3.10

This amendment shall become effective at 12:01 a. m. June 6, 1944.

Issued this 5th day of June 1944.

JAMES G. ROGERS, Jr.,  
Acting Administrator.

Approved: June 3, 1944.

GROVER B. HILL,  
Acting War Food Administrator.

[F. R. Doc. 44-8109; Filed, June 5, 1944; 11:49 a. m.]

PART 1407—RATIONING OF FOOD AND FOOD PRODUCTS

[Rev. RO 13, Amdt. 18 to 2d Rev. Supp. 1]

PROCESSED FOODS

Section 1407.1102 (c) (8) is added to read as follows:

(8) For the reporting period beginning July 2, 1944 and ending July 29, 1944—3.5

This amendment shall become effective June 5, 1944.

(Pub. Law 671, 76th Cong., as amended by Pub. Laws 89, 421, 507 and 729, 77th Cong., E.O. 9125, 7 F.R. 2719; E.O. 9280, 7 F.R. 10179; WPB Directive 1, 7 F.R. 562; War Food Order No. 58, 8 F.R. 2005, 9 F.R. 4320, and War Food Order No. 58, 8 F.R. 2251, 9 F.R. 4320)

Issued this 5th day of June 1944.

JAMES G. ROGERS, Jr.,  
Acting Administrator.

[F. R. Doc. 44-8118; Filed, June 5, 1944; 4:28 p. m.]

\*9 F.R. 173, 908, 1181, 2091, 2280, 2533, 2830, 2947, 3580, 3707, 4542, 4605, 4607, 4883.

PART 1499—COMMODITIES AND SERVICES

[MPR 165, Amdt. 40]

CERTAIN LUMBER SERVICES

A statement of the considerations involved in the issuance of this amendment, issued simultaneously herewith, has been filed with the Division of the Federal Register.\*

Section 1499.101 (c) (37) is amended to read as follows:

(37) Lumber—drying, milling, processing, and non-pressure treating of, on a custom basis, except the custom milling and kiln-drying services covered in Maximum Price Regulation 539; and inspection, grading, reinspection, certification and grademarking of, for manufacturers, distributors, or purchasers.

This amendment shall become effective June 5, 1944.

(56 Stat. 23, 765; Pub. Law 151, 78th Cong., E.O. 9250, 7 F.R. 7871; E.O. 9323, 8 F.R. 4681)

Issued this 5th day of June 1944.

JAMES G. ROGERS, Jr.,  
Acting Administrator.

[F. R. Doc. 44-8114; Filed, June 5, 1944; 4:27 p. m.]

PART 1499—COMMODITIES AND SERVICES

[MPR 165, Supp. Service Reg. 27, Revocation]

CUSTOM MILLING AND KILN DRYING OF WESTERN SOFTWOODS

For the reasons set forth in the statement of considerations which is issued simultaneously herewith and filed with the Division of the Federal Register,\* it is ordered:

Supplementary Service Regulation 27—Custom Milling and Kiln Drying of Western Softwoods (§ 1499.2258) is hereby revoked, Supplementary Order No. 40\* applying to such revocation.

This order shall become effective June 5, 1944.

(56 Stat. 23, 765; Pub. Law 151, 78th Cong., E.O. 9250, 7 F.R. 7871; E.O. 9323, 8 F.R. 4681)

Issued this 5th day of June 1944.

JAMES G. ROGERS, Jr.,  
Acting Administrator.

[F. R. Doc. 44-8116; Filed, June 5, 1944; 4:27 p. m.]

\*17 F.R. 6423, 6368, 8233, 8431, 8798, 8943, 8943, 9167, 9342, 9343, 9765, 9971, 9972, 10330, 10819, 10718, 11010; 8 F.R. 1080, 3324, 4782, 5691, 5765, 5933, 6364, 8596, 8873, 10371, 10939, 11754, 12023, 12710, 13302, 13472, 14930; 9 F.R. 1619, 3335, 3593, 4747, 5174.

\*9 F.R. 4227.  
\*8 F.R. 4325.

PART 1499—COMMODITIES AND SERVICES  
[MPR 539]

CUSTOM MILLING AND KILN DRYING OF  
WESTERN SOFTWOODS

In the judgment of the Price Administrator, the maximum prices established by this regulation are, and will be generally fair and equitable and will effectuate the purposes of the Emergency Price Control Act of 1942, as amended, and Executive Orders 9250 and 9328. A statement of the considerations involved in the issuance of this regulation, issued simultaneously herewith, has been filed with the Division of the Federal Register. Such specifications and standards as are used in this regulation were, prior to such use, in general use in the industry affected.

§ 1499.2260 *Maximum prices for custom milling and kiln drying of Western softwood lumber* Under the authority vested in the Price Administrator by the Emergency Price Control Act of 1942, as amended, and Executive Orders 9250 and 9328, Maximum Price Regulation 539, which is annexed hereto and made a part hereof, is hereby issued:

AUTHORITY: § 1499.2260 Issued under 56 Stat. 23, 765; Pub. Law 151, 78th Cong.; E.O. 9250, 7 F.R. 7871; E.O. 9328, 8 F.R. 4681.

MAXIMUM PRICE REGULATION 539—CUSTOM MILLING AND KILN DRYING OF WESTERN SOFTWOODS

CONTENTS

Sec.

1. Higher than maximum prices prohibited.
2. What is Western softwood lumber.
3. What is "custom milling service"
4. What is a custom mill.
5. Invoicing and records.
6. Services not listed.
7. No quantity limitations.
8. Transportation and demurrage charges.
9. Enforcement.
10. Licensing.
11. Geographical applicability.
12. Maximum prices.

SECTION 1. *Sales of custom milling or custom kiln drying services on Western softwood lumber at higher than maximum prices prohibited.* (a) On and after June 5, 1944, no person shall sell or provide, and no person shall buy or receive in the course of trade or business, custom milling or kiln drying services on Western softwood lumber, at prices higher than the maximum prices set by this regulation; and no person shall

\*Copies may be obtained from the Office of Price Administration.

agree, offer, or attempt to do any of these things.

(b) Prices lower than the maximum prices may of course, be charged and paid.

Sec. 2. *What is Western softwood lumber* "Western softwood lumber" under this regulation means any lumber which on sales by the sawmill is subject to RMPR 26 (Douglas Fir and other West Coast Lumber) MPR 94<sup>2</sup> (Western Pine and Associated Species of Lumber), MPR 253<sup>3</sup> (Redwood Lumber) MPR 290<sup>4</sup> (Sitka Spruce Lumber) or MPR 402<sup>5</sup> (Western Red Cedar Lumber)

Sec. 3. *What is "custom milling service"* Under this regulation "custom milling" means only the operations specifically included under Section 12 performed, as a service for others, upon lumber in which the person performing these services has no financial interest.

Sec. 4. *What is a custom mill.* Even though the services you perform may meet the definition of "custom milling" above, this regulation does not apply to you unless you qualify as a custom mill under this section.

(a) *General.* A custom mill is one which performs custom milling services upon lumber subject at mill level to RMPR 26, MPR 94, MPR 253, MPR 290, or MPR 402, and which:

(1) Does not operate as a "mill" under the definitions contained in RMPR 26, MPR 94, MPR 253, MPR 290, or MPR 402.

(2) Does not own or control, is not owned or controlled by and is not under common control with a "mill" producing the species covered by RMPR 26, MPR 94, MPR 253, MPR 290, or MPR 402, wherever located.

(b) *Operation not qualifying under paragraph (a) may get special permission.* If you do not qualify as a "custom mill" under paragraph (a) above, you may under certain special conditions get authority to operate under this regulation. The rules covering this are as follows:

(1) An application must be filed with the OPA Regional Office nearest the operation. This application must show:

(i) The location of the plant, with a description of the physical lay-out of

<sup>1</sup> 9 F.R. 1016, 3513, 4227.

<sup>2</sup> 7 F.R. 10848; 8 F.R. 859, 1138, 4118, 7352, 8009, 8756, 11040, 12136, 12296, 12878, 16199; 9 F.R. 206, 789, 1162.

<sup>3</sup> 7 F.R. 9230, 10848; 8 F.R. 1139, 4136, 4720, 7197, 11479.

<sup>4</sup> 8 F.R. 19, 2270, 6959.

<sup>5</sup> 8 F.R. 7662.

operations in relation to any other activities relating to forest products carried on by the applicant wherever located.

(ii) The extent of ownership or control of or by any other operations relating to forest products, or of common ownership or control, giving name, location, and nature of the other operations.

(iii) Applicant's milling facilities, and the capacity thereof in MBM per day, together with a statement of total footage in rough boards and dimension and rough or surfaced plank and timbers, and green or partially dry lumber in these sizes, sold during the 30 day period preceding date of application.

(iv) Any other information the applicant may wish to submit.

(2) Special authorization under this paragraph (b) will be granted only where the application enables the Regional Office to make findings that the authorization:

(i) Will result in a greater production of surfaced boards or dimension or kiln dried lumber.

(ii) Will not encourage producing sawmills having remanufacturing and kiln drying facilities to ship their lumber green, partially dry, rough, or in thicknesses over 2"

(iii) Will provide necessary milling services which cannot reasonably be supplied by producing mills, or by custom mills qualifying under paragraph (a)

(iv) Will not result in unnecessarily increasing the cost of finished lumber to the ultimate consumer.

In granting the authority, the Regional Office may make such limitations and conditions as to duration of the authority, quantity of lumber to be milled, etc., as may be appropriate and consistent with the above findings. The authorization may be granted, or the application denied, by letter or telegram.

(c) Unless the operation qualifies, or is specially authorized, as a "custom mill" under paragraphs (a) or (b) above, its maximum prices for custom milling of Western softwood lumber are the charges set forth as additions for workings in the appropriate lumber price regulation.

(d) Special permissions heretofore granted under section 3 (b) of the former Supplemental Service Regulation 27, shall continue in full force and effect under this regulation according to the terms in which they were originally granted.

Sec. 5. *Invoicing and records.* Invoices must show the species, size, con-

dition, and workings of the lumber before and after milling, with a detailed description of all services performed thereon for which a charge is made. Copies of invoices, or similar records, must be kept at the place where the custom milling is performed, available for examination by the Office of Price Administration. These records must be kept for two years.

Sec. 6. *Services not listed.* If a custom mill is required to perform a service for which prices are not specifically provided, these services are still under Maximum Price Regulation 165.

Sec. 7. *No quantity limitations.* The maximum prices set forth in this regulation apply to all transactions regardless of the quantity of lumber involved.

Sec. 8. *Transportation and demurrage charges.* No charge may be made by a custom mill for demurrage on railroad cars at its plant, nor for the arrangement of transportation of lumber or advancement of freight charges thereon.

Sec. 9. *Enforcement.* Persons violating any provision of this regulation are

subject to the criminal penalties, civil enforcement actions, suits for treble damages, and proceedings for suspension of licenses provided by the Emergency Price Control Act of 1942, as amended.

Sec. 10. *Licensing.* The provisions of Licensing Order No. 1<sup>6</sup> licensing all persons who make sales under price control, are applicable to all sellers subject to this regulation. A seller's license may be suspended for violations of the license or of one or more applicable price schedules or regulations. A person whose license is suspended may not, during the period of suspension, make any sale for which his license has been suspended.

Sec. 11. *Geographical applicability.* This regulation applies in the 48 states and the District of Columbia.

Sec. 12. *Maximum prices.* The maximum prices per one thousand feet board measure for "custom milling" of lumber which on mill sales is subject to RMPR 26, MPR 94, MPR 253, MPR 290, or MPR 402 shall be as follows:

TABLE 1.—CUSTOM MILLING BOARDS AND DIMENSION

	1x2	1x3	1x4	1x6	1x8	1x10	1x12	2x2	2x3	2x4	2x6	2x8	2x10	2x12
Resawing—1 line.....	\$7.50	\$6.50	\$5.00	\$4.00	\$3.00	\$3.00	\$2.50	\$3.00	\$4.00	\$3.00	\$2.00	\$2.00	\$2.00	\$2.00
Add for each additional line.....	2.00	2.00	1.50	1.50	1.50	1.50	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00
Ripping—1 line.....	7.50	6.50	5.00	4.00	3.00	3.00	2.50	3.00	4.00	3.00	2.00	2.00	2.00	2.00
Add for each additional line.....	2.00	2.00	1.50	1.50	1.50	1.50	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00
S1E, S2E, S1S or S2S.....	7.50	6.50	5.00	4.00	3.00	3.00	2.50	3.00	4.00	3.00	2.00	2.00	2.00	2.00
S1S1E, S1S2E, S2S1E, S4S or S/L.....	10.50	9.50	6.50	4.00	3.00	3.00	2.50	3.00	4.00	3.00	2.00	2.00	2.00	2.00
D. and M., rustic and siding (all patterns) add to S4S.....	.50	.50	.50	.50	.50	.50	.50	.50	.50	.50	.50	.50	.50	.50
Grooved for splines add to S4S.....	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00
Bundling, add.....	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00
Grading, marking and tallying after remilling (applicable only when all three services performed) add.....	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00
Unloading, handling and reloading open cars or trucks <sup>1</sup> .....	2.00	2.00	2.00	2.00	2.00	2.00	2.00	2.00	2.00	2.00	2.00	2.00	2.00	2.00
For closed-type cars add to open-car charge <sup>1</sup> .....	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00

<sup>1</sup>May not be added more than once on any order.

TABLE 2.—CUSTOM MILLING—PLANK AND TIMBERS

	3x4	3x6	3x8	3x10	3x12	4x4	4x6	4x8	4x10	4x12	6x6	6x8 and larger
Resawing—1 line.....	\$3.00	\$3.00	\$2.50	\$2.50	\$2.50	\$3.00	\$3.00	\$2.50	\$2.50	\$2.50	\$2.50	\$2.00
Add for each additional line.....	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	.50
Ripping—1 line.....	2.50	2.50	2.50	2.50	2.50	2.50	2.50	2.50	2.50	2.50	2.50	2.00
Add for each additional line.....	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	.50
S1E, S2E, S1S or S2S.....	3.00	3.00	2.50	2.50	2.50	3.00	3.00	2.50	2.50	2.50	2.50	2.00
S1S1E, S1S2E, S2S1E or S4S.....	3.00	3.00	2.50	2.50	2.50	3.00	3.00	2.50	2.50	2.50	2.50	2.00
D & M or S/L add to S4S.....	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	.50
Grooved for splines add to S4S.....	1.00	1.00	1.00	2.00	2.00	1.00	1.00	2.00	2.00	2.00	3.00	3.00
Grading, marking and tallying (applicable only when all three services performed) add.....	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00
Unloading, handling and reloading open cars or trucks <sup>1</sup> .....	2.00	2.00	2.00	2.00	2.00	2.00	2.00	2.00	2.00	2.00	2.00	2.00
For closed-type cars add to open-car charge <sup>1</sup> .....	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00

<sup>1</sup>May not be added more than once on any order.

<sup>6</sup>8 F.R. 13240.

TABLE 3

*Custom kiln drying.* Kiln drying including all handling (unloading from cars, handling through kilns and reloading cars, etc.)

Thinner than 10/4.....	\$10.00
10/4 & 12/4 inc.....	12.00

*General notes.* 1. Charges for additional lines of both resawing and ripping are based on original size of piece ripped or resawn.

2. Where surfacing is done following resawing and/or ripping, surfacing charges shall be based on size or sizes of stock resulting from the resawing and/or ripping operation.

3. Fractional or odd thickness: use price of next thinner even size. Compute footage on actual rough measure.

4. Fractional or odd widths not listed: use price of next even width, either wider or narrower, whichever is lower. Compute footage on actual rough measure.

5. Where only one operation is performed on the lumber, for instance, surfaced only, or ripped or resawn one line only, add \$1.00 per MBM.

6. Prices on combination milling, such as ripping and resawing, must be computed on the cheapest method of producing the end product from the particular sizes remanufactured, regardless of how the custom mill actually produces the end product.

7. For milling quantities of less than 1,000 feet board measure of any size or operation, the charge for 1,000 feet may be made.

8. The custom kiln drying charges cover only standard grades as described in the official grading rules covering the various Western softwood subject to RMPR 26, MPR 94, MPR 253, MPR 290 or MPR 402, when dried to ordinary commercial standards. Prices on drying special grades, or drying to moisture content lower than standard will be given on application to the Office of Price Administration, Washington 25, D. C. The application must state the requested price, and contain a complete description of the item to be priced, including species, size and the maximum moisture content allowed.

9. Customer must furnish inbound piece tally on each shipment; otherwise custom mill may add \$.50 per M for tallying.

*Effective date.* This regulation shall become effective June 5, 1944.

*Note:* All reporting and record-keeping requirements of this regulation have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

Issued this 5th day of June 1944.

JAMES G. ROGERS, Jr.,  
Acting Administrator.

[F. R. Doc. 44-8115; Filed, June 5, 1944; 4:27 p. m.]

Chapter XIV—War Contracts Price  
Adjustment Board

RENEGOTIATION REGULATIONS

JUNE 7, 1944.

On April 19, 1944, Parts 1601, 1602, 1607 and 1608 of the Renegotiation Regulations, as revised by Revision 1, were published in the FEDERAL REGISTER (9 F.R. 4135)

There are herewith published in this issue the additions and amendments to the Renegotiation Regulations through Revision 6, consisting of Parts 1603, 1604, 1605, and 1606 and changes and additions to Parts 1601, 1602, 1607 and 1608.

Subsequent changes and additions to these regulations will also be published in the FEDERAL REGISTER from time to time as directed by the War Contracts Board.

[SEAL] JAMES S. FEIGHT,  
Lt., U S. N. R.,  
Secretary.

PART 1601—AUTHORITY AND ORGANIZATION  
FOR RENEGOTIATION<sup>1</sup>

SUBPART A—SUMMARY OF RENEGOTIATION ACT  
OF 1943 AND RELATED STATUTES

Sections 1601.103 to 1601.112 are amended by the insertion of cross references, so that the text thereof, as amended, will read as follows.

§ 1601.103 *Coverage.* (a) In general the 1943 act applies to amounts received or accrued in fiscal years ending after June 30, 1943 under all contracts with the Departments and subcontracts, with the exceptions stated under § 1601.104 (subsection (c) (6) discussed in § 1603.348)

(b) Subcontracts include purchase orders or agreements 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 do not include any purchase order or agreement to furnish office supplies. A contract or arrangement to procure a contract with a Department is also a subcontract. Subcontracts are not limited to those made by a prime contractor but include those made by a subcontractor or sub-subcontractor down through the various tiers (subsection (a) (5) discussed in § 1603.333)

(c) The coverage of the 1943 act is discussed in detail in Part 1603. [RR 103]

§ 1601.104 *Exclusions and exemptions*—(a) *Mandatory.* The 1943 act does not apply to:

(1) Contracts between the Departments and other Governmental agencies (subsection (i) (1) (A) discussed in § 1603.343)

(2) Contracts or subcontracts for certain raw materials (subsection (i) (1) (B) discussed in § 1603.344)

(3) Contracts or subcontracts for agricultural commodities in a certain form or state, (subsection (i) (1) (C) discussed in § 1603.342 (b))

(4) Contracts or subcontracts with tax exempt charitable, religious or educa-

tional institutions (subsection (i) (1) (D) discussed in § 1603.345)

(5) Construction contracts with a Department let under competitive bidding (subsection (i) (1) (E) discussed in § 1603.346) or

(6) Subcontracts under prime contracts or other subcontracts of the types listed above which are exempted by subsection (i) (1) (subsection (i) (1) (F) discussed in § 1603.347) [RR 104.1]

(b) *Permissive.* The War Contracts Board may, in its discretion, exempt from any or all of the provisions of the 1943 act:

(1) Any contract or subcontract:

(i) To be performed outside of the continental United States or in Alaska (subsection (i) (4) (A) discussed in § 1603.351)

(ii) Under which the profits can be determined with reasonable certainty when the contract price is established (subsection (i) (4) (B) discussed in § 1603.352)

(iii) During a specified period or periods, to the extent that the contract provisions are adequate to prevent excessive profits (subsection (i) (4) (C) discussed in § 1603.353)

(iv) For a standard commercial article if competitive conditions are such as will reasonably protect the Government (subsection (i) (4) (D) discussed in § 1603.354)

(v) If competitive conditions affecting the making of such contract or subcontract are likely to result in effective competition with respect to the contract price (subsection (i) (4) (E) discussed in § 1603.355) or

(2) Any subcontract or group of subcontracts, if it is not administratively feasible to segregate the renegotiable from the non-renegotiable business (subsection (i) (4) (F) discussed in § 1603.356)

The Board may make such exemptions by individual contracts or by general classes or types of contracts (subsection (i) (4) discussed in § 1603.357) [RR 104.2]

(c) *Exemption measured by volume of business.* Subsection (c) (6) provides that renegotiation shall not apply to any contractor or subcontractor unless the aggregate of the amounts received or accrued 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, not including subcontracts for procuring contracts or subcontracts, exceed \$500,000 (discussed in § 1603.348) In the case of subcontracts for the procuring of contracts or subcontracts, this figure is \$25,000 (discussed in § 1603.348) [RR 104.3]

(d) *Profits from increment in value of excess inventories.* The 1943 act excludes from renegotiation that portion of the profits derived from contracts with the Departments and subcontracts attributable to the increment in value of excess inventories of certain raw materials and agricultural commodities (subsection (i) (3) discussed in § 1603.344 (d)) [RR 104.4]

§ 1601.105 *Renegotiation clauses in contracts.* (a) The 1943 act directs each Secretary to insert in each contract made by his Department, involving more than \$100,000, terms under which the contractor agrees (1) to renegotiation, (2) to the withholding or recovery of excessive profits by the United States and (3) that he will insert like terms in all subcontracts made by him involving more than \$100,000, and will require the subcontractor to insert like terms in contracts entered into by him. In the case of subcontracts for procuring contracts with the Departments these terms are to be placed in all such subcontracts for more than \$25,000 (subsection (b), discussed in § 1603.331)

(b) The 1943 act permits these terms to be incorporated in contracts and subcontracts by reference and each contract or subcontract is made subject to such terms whether or not they are incorporated either physically or by reference. [RR 105]

§ 1601.106 *Determination of excessive profits*—(a) *Costs.* In determining the profits from renegotiable business, the 1943 act requires the War Contracts Board to allow costs determined in accordance with the method of cost accounting regularly employed by the contractor or if such method does not properly reflect such costs, the Board is authorized to prescribe the method under which such costs shall be determined. No item of cost shall be allowed which is unreasonable or which is not properly chargeable to the contract or subcontract. Notwithstanding these provisions, all items estimated to be allowable as deductions or exclusions for income tax purposes to the extent they are allocable to renegotiable business, are to be allowed in determining excessive profits. State income taxes, to the extent they are attributable to the portion of the contractor's profits determined to be excessive, however, are not allowable (subsection (a) (4) (B) discussed in § 1603.389) [RR 106.1]

(b) *Unused amortization deduction.* The 1943 act provides for the repayment by the United States to a contractor or subcontractor, without interest, of the amount of the net renegotiation rebate determined in accordance with procedures and principles set forth in the 1943 act in the event of a recomputation of the amortization deduction provided for in section 124 (d) of the Internal Revenue Code (subsections (a) (4) (C) and (D) discussed in § 1603.383 (b)) [RR 106.2]

(c) *Fair cost allowance in the exempted state for raw materials and agricultural commodities in the case of integrated producers.* In order to provide for equitable treatment of the integrated producer, the 1943 act provides for the allowance of a fair amount of cost in the exempted state for certain raw materials and agricultural commodities in the case of integrated producers who produce or acquire such materials or commodities below such state and process them up to and beyond such state (subsection (i) (3) discussed in § 1603.344 (c)) In this connection attention is also directed

<sup>1</sup>9 F.R. 4135.

to § 1604.104 (d) supra, which in effect gives the contractor or subcontractor who acquires the exempted raw materials and agricultural commodities at the exempt stage the benefit of a similar special cost allowance to the extent that such products constitute excess inventory of such a contractor or subcontractor. [RR 106.3]

(d) *Factors in determining excessive profits.* The 1943 act defines excessive profits to be the portion of the profits from the renegotiable business of the contractor or subcontractor which in the light of a list of factors set out in subsection (a) (4) (A) of the act is determined to be excessive. These factors cover such matters as efficiency, costs, capital, risk, contribution to the war effort, character of business, and such other factors as the public interest and fair and equitable dealing may require (discussed fully in § 1604.408 and following) [RR 106.4]

§ 1601.107 *Renegotiation by fiscal years.* The 1943 act applies to fiscal years ending after June 30, 1943, and requires that renegotiation be conducted on an over-all fiscal year basis. Renegotiation may relate to any period other than a full fiscal year only with the consent of the contractor or subcontractor. The 1943 act requires that renegotiation must relate to the aggregate of the contractor's war business for the year unless the contractor consents to the renegotiation of separate contracts (subsection (c) (1) discussed in § 1603.303) [RR 107]

§ 1601.108 *Renegotiation procedure—*  
(a) *Mandatory filing of statement.* The 1943 act requires every contractor or subcontractor not specifically exempted from renegotiation to file with the Board on or before the first day of the fourth month following the close of the fiscal year, or after the date of the enactment of the Revenue Act of 1943, whichever is the later, a statement containing such information as the Board may by regulations prescribe (subsection (c) (5) (A) discussed in § 1602.220 and following). In addition to this statement, which is considered to be the statement for the purposes of the beginning of the statute of limitations, the War Contracts Board may require from the contractor or subcontractor any other data, information or records deemed desirable. [RR 108.1]

(b) *Commencement of renegotiation proceedings.* The contractor or subcontractor will be given reasonable notice of the time and place for a conference with respect to renegotiation. The mailing of such notice by registered mail to the contractor or subcontractor constitutes the commencement of the renegotiation proceedings (subsection (c) (1) discussed in § 1602.241) [RR 108.2]

(c) *Statute of limitations.* Renegotiation proceedings must be commenced within twelve months from the close of the fiscal year or within twelve months of the date of the filing of the statement referred to in paragraph (a) of this section, whichever is the later. If such proceedings are not completed or if an agreement or order determining the amount of excessive profits is not made within

one year from the commencement of the renegotiation proceedings, the liability of the contractor or subcontractor under the 1943 act will be discharged. However, this one year period may be extended by mutual agreement (subsection (c) (3), discussed in §§ 1603.362 and 1603.363). [RR 108.3]

(d) *Agreement or order determining excessive profits.* Upon the mailing of the notice and the commencement of the renegotiation, the Board will endeavor to make a final or other agreement with the contractor or subcontractor with respect to the elimination of excessive profits. If such an agreement is not made, the act authorizes the Board to issue an order determining the amount of the excessive profits (subsection (c) (1) discussed in § 1606.620 and following) [RR 108.4]

(e) *Statement to the contractor or subcontractor.* Whenever a determination is made as to the amount of excessive profits, whether by order or by agreement, the Board or its authorized agency, at the request of the contractor or subcontractor, will furnish a statement setting out the determination of excessive profits made in his case, the facts used as a basis therefor, and the reasons for such determination (subsection (c) (1), discussed in § 1605.520 and following). [RR 108.5]

(f) *Eliminating excessive profits.* When the excessive profits have been determined either by agreement or order, the War Contracts Board shall forthwith direct the Secretaries to eliminate such excessive profits (1) by reductions in price and other contract revisions; (2) by withholding from amounts otherwise due the contractor or subcontractor; (3) by directing a contractor to withhold from amounts otherwise due to a subcontractor; (4) by recovery from the contractor by repayment, credit or suit; or (5) by any combination of these methods. In eliminating such excessive profits there is allowed a credit for Federal income and excess profits taxes in accordance with section 3806 of the Internal Revenue Code (subsection (c) (2) discussed in § 1604.440 and following) [RR 108.6]

§ 1601.109 *Delegation and review—*  
(a) *Delegation.* The War Contracts Board may delegate in whole or in part any of its powers, functions or duties to the Secretary of a Department and such Secretary may, in turn, redelegate such powers, functions or duties to such officers or agencies of the United States as he may designate. He may authorize successive redelegations (subsection (d) (4) discussed in § 1601.131 (c)). [RR 109.1]

(b) *Review by the War Contracts Board.* The determination by any person or agency exercising the delegated powers of the War Contracts Board may be reviewed by the Board either upon its own motion, or, in its discretion, at the request of the contractor or subcontractor. The Board's determination may be less than, equal to, or greater than the determination reviewed. Unless the War Contracts Board upon its own motion initiates a review of the prior determina-

tion within sixty days from the date of such determination, or at the request of the contractor or subcontractor made within sixty days from the date of such determination initiates a review of such determination within sixty days from the date of such request, such determination becomes the determination of the War Contracts Board (subsection (d) (5) discussed in §§ 1606.624 and 1606.625. [RR 109.2]

§ 1601.110 *Redetermination of excessive profits by The Tax Court of the United States.* The Renegotiation Act provides that any contractor or subcontractor aggrieved by a unilateral determination of excessive profits by the War Contracts Board (under the Renegotiation Act of 1943), or by the Secretary of a Department (under the Renegotiation Act of 1942), may petition The Tax Court of the United States for a redetermination of such excessive profits. Proceedings before the Tax Court are de novo. The Court may find an amount of excessive profits less than, equal to, or greater than the amount found by the Board. The petition for a redetermination must be made to the Tax Court within ninety days after the entry of the order or the date of the enactment of the Revenue Act of 1943 (February 25, 1944) whichever is the later (subsection (e), discussed in § 1606.630 and following) [RR 110]

§ 1601.111 *Applicability—* (a) *Applicability of the 1943 act in general.* In general, the provisions of the 1943 act apply to all fiscal years ending after June 30, 1943. Prior fiscal years are covered by the Renegotiation Act of 1942 (section 701 (d) of the Revenue Act of 1943 cited in §§ 1608.801 and 1601.122 (j) and (k)). [RR 111.1]

(b) *Applicability in special cases.* There are several exceptions to the general rule set forth in paragraph (a)

(1) Provisions of the 1943 act made retroactive:

(i) Subsections (a) (4) (C) and (a) (4) (D) relating to the adjustment of excessive profits for any year on account of the recomputation of the amortization deduction (discussed in § 1603.383 (b))

(ii) Subsection (i) (3) which provides for a fair cost allowance in the exempted state for certain raw materials and agricultural commodities in the case of integrated producers and which excludes from renegotiation the profits realized because of the increment in value of excess inventories of raw materials and agricultural products acquired in the exempted state (discussed in § 1603.344 (c) and (d))

(iii) Subsection (i) (1) (C) which exempts from renegotiation contracts or subcontracts for certain agricultural commodities (discussed in § 1603.344 (b))

(iv) Subsection (i) (1) (D) which exempts contracts or subcontracts with tax exempt charitable, religious or educational organizations (discussed in § 1603.345)

(v) Subsection (i) (1) (F) which exempts subcontracts under prime contracts or other subcontracts exempted by subsection (i) (1) (discussed in § 1603.347) and

(vi) Subsection (l) which provides a short title (see § 1601.122 (l))

(2) Provisions of the 1943 act made effective from the date of the enactment of the Revenue Act of 1943, February 25, 1944:

(i) Subsection (d) which creates the War Contracts Price Adjustment Board and sets out its organization, powers, and duties (discussed in § 1601.131)

(ii) Subsection (e) (2) which provides for the redetermination of excessive profits by the Tax Court in the case of unilateral determinations by the Secretaries under the provisions of the Renegotiation Act of 1942. [RR 111.2]

(c) *Termination of renegotiation.* The 1943 act provides that amounts received or accrued after December 31, 1944, will not be subject to renegotiation unless the President finds and proclaims before December 1, 1944, that competitive conditions have not been restored; in which case renegotiation would extend to amounts received or accrued up to any date specified in such proclamation which is not later than June 30, 1945. The 1943 act also provides that in case the President finds and proclaims on or before June 30, 1945, that competitive conditions have been restored as of any date within 6 months prior to such proclamation, renegotiation will not apply to amounts received or accrued after such termination of the statute. A special provision is made in the case of long term contracts which are begun before and completed after the termination date (subsection (h) discussed in § 1603.371) [RR 111.3]

§ 1601.112 *Applicable and related statutes—(a) Renegotiation Act of 1943.* The full text of the Renegotiation Act of 1943 is cited in § 1608.801 of these regulations. [RR 112.1]

(b) *Section 3806 of the Internal Revenue Code.* Section 3806 of the Internal Revenue Code, referred to in subsection (a) (4) (D) and subsection (c) (2) of the Renegotiation Act of 1943, is cited in § 1608.802. Under that section the amount of Federal income and excess profits taxes assessed with respect to any excessive profits for a prior taxable year is credited against the amount of such profits in computing the amount to be refunded by the contractor or otherwise recovered. The effect of section 3806 of the Internal Revenue Code and of the Current Tax Payment Act of 1943 is discussed in § 1604.440 and following. [RR 112.2]

(c) *Title XIII of Second War Powers Act.* Under subsection (c) (5) (B) the War Contracts Board is given the powers of inspection and audit of an agency designated by the President to exercise powers under Title XIII of the Second War Powers Act, 1942. For convenience, Title XIII is cited in § 1608.803 of these regulations. The authority to make such inspections and audits is discussed in § 1606.601 and following. [RR 112.3]

(d) *Repricing of war contracts.* Title VIII of the Revenue Act of 1943 provides that in cases in which the Secretary of a Department considers the price of any article or service required by his Department to be unreasonable or unfair he

may fix by agreement, if possible, a fair and reasonable price therefor. If no agreement can be reached, the Secretary is authorized to fix, by order, a fair and reasonable price for deliveries after the date of such order and to prescribe the period during which such price shall be effective and such other terms and conditions as he deems appropriate. Contractors or subcontractors aggrieved by such an order may sue the United States for fair and just compensation. Repricing under Title VIII applies to both prime and subcontractors and applies without exemption or restriction until the end of the war. The statutory provisions relating to repricing are cited in § 1608.804. [RR 112.4]

#### SUBPART B—PRELIMINARY MATERIAL

1. Section 1601.121 is amended by the addition of paragraph (b) as follows:

§ 1601.121 *Applicability of Renegotiation Regulations.* \* \* \*

(b) *Rescission of prior instructions.* (1) These regulations supersede all outstanding instructions of the War Contracts Board.

(2) Regulations of general application will be issued by the War Contracts Board only through amendments or additions to these Renegotiation Regulations.

(3) The revocation of prior instructions shall not affect the validity of any action taken in conformity with them before their revocation. [RR 121.2]

2. Section 1601.122 (k) is corrected to read as follows:

§ 1601.122 *Definition of terms.* \* \* \*

(k) "Renegotiation Act of 1942" "1942 act" The terms "Renegotiation Act of 1942" and "1942 act" mean section 403 of the Sixth Supplemental National Defense Appropriation Act, 1942 (Public 528, 77th Congress, approved April 28, 1942) as amended by section 801 of the Revenue Act of 1942 (Public 753, 77th Congress, approved October 21, 1942) by section 1 of the Military Appropriations Act, 1944 (Public 108, 78th Congress, approved July 1, 1943) and by Public 149 (78th Congress, approved July 14, 1943) and as further amended by section 701 (b) of the Revenue Act of 1943 (Public 235, 78th Congress, enacted February 25, 1944) to the extent that section 701 (d) of the Revenue Act of 1943 makes the amendments made by section 701 (b) effective as if they had been a part of section 403 of the Sixth Supplemental National Defense Appropriation Act, 1942, on the date of its enactment, April 28, 1942. [RR 122.11]

3. Sections 1601.124, 1601.126, and 1601.127 are amended, and § 1601.128 is added, as set forth below.

§ 1601.124 *Amendments and additions.* (a) When amendments or additions to these regulations are adopted by the War Contracts Board, they will become effective at once unless otherwise specified, but will not affect the validity of any determination theretofore made in accordance with prior regulations.

(b) All changes in these regulations and all additions to them will be issued in the form of additional or revised

pages for this document. These regulations in loose-leaf form will be placed in the hands of interested personnel in the Departments. New and revised pages will be sent from time to time to the Departments for distribution to holders of the Renegotiation Regulations within the Departments. [RR-124]

§ 1601.126 *Federal Register.* These regulations are being published in the FEDERAL REGISTER. Changes and additions will be so published from time to time as directed by the War Contracts Board. [RR 126]

§ 1601.127 *Official copies.* Official copies of the statutes referred to herein may be obtained from the Superintendent of Documents, U. S. Government Printing Office, Washington 25, D. C. Official copies of Executive Orders cited herein are set out in the FEDERAL REGISTER, which may also be procured from the Superintendent of Documents. [RR 127]

§ 1601.128 *Copies of Renegotiation Regulations.* It is anticipated that the original Renegotiation Regulations, along with twelve monthly supplements embodying additions and amendments thereto published during the preceding month in the FEDERAL REGISTER, will be available in loose-leaf form for a subscription price of \$2.00 from the Superintendent of Documents, U. S. Government Printing Office, Washington 25, D. C. [RR 128]

#### SUBPART C—ORGANIZATION AND FUNCTIONS OF THE PRICE ADJUSTMENT BOARDS AND SECTIONS

Section 1601.133 is amended to read as follows:

§ 1601.133 *Navy Department organization—(a) Navy Price Adjustment Board.* The Secretary of the Navy has established the Navy Price Adjustment Board to conduct renegotiation under the supervision of the Chairman of the Board. The Board has four divisions located in Washington, New York, Chicago and San Francisco, respectively. [RR 133.1]

(b) *Services and Sales Renegotiation Section.* In the Procurement Legal Division, Office of the Under Secretary of the Navy, there has been established a Services and Sales Renegotiation Section which specializes in the renegotiation of sales agents and brokers. This section has its headquarters in Washington and divisional offices in Washington, New York, Chicago and Los Angeles. [RR 133.2]

#### SUBPART D—RELATION OF RENEGOTIATION ACT AND ROYALTY ADJUSTMENT ACT CONCERNING PATENTS

Sections 1601.142 and 1601.143 are amended by the insertion of cross references, so that the text thereof, as amended, will read as follows.

§ 1601.142 *Patent licenses subject to renegotiation.* Patent licenses granted to the United States and those granted to Departmental contractors or subcontractors are subject to renegotiation. (See §§ 1603.334 (c) and 1603.388 (a)) [RR 142]

§ 1601.143 Allowance of royalties as costs. The allowance of royalties under patent licenses as costs in renegotiation and the effect given to determinations under the Royalty Adjustment Act are discussed in § 1603.388 (a) [RR 1431]

PART 1602—PROCEDURE FOR RENEGOTIATION<sup>1</sup>

SUBPART B—PRELIMINARY INFORMATION REQUIRED OF CONTRACTORS

Section 1602.222 is amended in the following respects: Subparagraph (4) is added to that portion of the text preceding paragraph (a); paragraph (a) is amended by redesignating the text thereof as paragraph (a) (1) and by adding subparagraph (2), paragraph (f) is added.

§ 1602.222 Filing of mandatory financial statements. \* \* \*

(4) There is hereby prescribed as the form of mandatory financial statement required to be filed by public utilities (including but not limited to those furnishing gas, electric power, rail, air or water transportation, telegraph, telephone, cable or radio communication) and by steamship operating companies, a statement containing the following:

- Name and address of contractor.
- Names of companies, if any, under the control of, or controlling, or under common control with the contractor.
- Nature of principal business.
- Date of expiration of fiscal year.
- Balance Sheet, Profit and Loss Statement and Surplus Statement of the contractor for latest completed fiscal year.
- Declaration by the contractor that it will furnish such further and additional information as may be required by or on behalf of the War Contracts Board.

Such statement shall be executed on behalf of the contractor by his duly authorized representative and shall contain a certificate that the representations thereby submitted are true and correct to the best of his knowledge and belief. [RR 222]

(a) *Sufficiency of contents.* (1) Except as hereinafter stated, the forms of "Standard Form of Contractor's Report" are required to be prepared in duplicate in accordance with the instructions which relate to them respectively and which appear in § 1607.701 (b) (d) and (f). The Reports are required to comprise all the information and exhibits specified by the forms and the instructions. However, if all the information called for by the appropriate "Standard Form of Contractor's Report" has been furnished by the contractor to an Agency authorized to conduct renegotiation proceedings under the 1943 act, the contractor may complete the "Standard Form of Contractor's Report" by incorporating by reference the information so furnished and making a specific statement of the time and place of such filing. In such case, the fact that the information has been received will be certified to by the renegotiating Agency on the copy of the "Standard Form of Contractor's Report" which it will forward to the War

Contracts Board within sixty days after the date of receipt of the Report by such Agency. A "Standard Form of Contractor's Report" so prepared and filed will be deemed to constitute a sufficient compliance with the mandatory filing requirements of this section in the absence of a notice of insufficiency sent to the contractor within 90 days after the Report has been filed.

(2) Where a Department to which a contractor has been assigned for renegotiation or the Assignments and Statistics Branch determines that it is not feasible for a contractor to furnish all of the information provided for in the Standard Form of Contractor's Report on or before the date specified in the 1943 act, such contractor may file such report containing such information as he can feasibly supply, which in all cases shall include at least the contractor's balance sheet, profit and loss statement and surplus statement for his latest completed fiscal year and shall state in such report that the information not contained therein or such other information as the Department or such Branch may require, will be furnished within such period as the Department or such Branch may designate. In any such case the filing of such a statement on or before the date specified in the act and its acceptance by such Department or such Branch shall constitute compliance by the contractor with the provisions of subsection (c) (5) (A). [RR 222.1]

(f) *Filing of mandatory financial statements by parent and subsidiary corporations on a consolidated basis.* Parent and subsidiary corporations which constitute an "affiliated group" as defined in subsection (d) of section 141 of the Internal Revenue Code may satisfy the requirements for filing of mandatory financial statements under the first sentence of subsection (c) (5) (A) of the Renegotiation Act of 1943 by filing a "Standard Form of Contractor's Report" on a consolidated basis. When such a consolidated "Standard Form of Contractor's Report" is filed there shall also be filed a "Standard Form of Contractor's Report" for each subsidiary corporation (except as noted below) but any such subsidiary corporation report may be completed by writing thereon a statement that a consolidated report has been filed by the parent company. Where any such subsidiary corporation has not received or accrued during the applicable period any amount whatever under renegotiable contracts with the Departments and subcontracts (i. e., contracts or subcontracts not exempt from renegotiation by contractual provision pursuant to subsection (i) or contracts or subcontracts which are not exempted under subsection (i) of the Renegotiation Act of 1943) no report need be filed by it. [RR 222.6]

SUBPART D—CONDUCT OF RENEGOTIATION:

Section 1602.243 is added as set forth below.

§ 1602.243 *Process of renegotiation.* The general principles applicable to the

conduct of renegotiation and the process of arriving at a renegotiation determination are discussed in § 1604.402 (c). [RR 2431]

SUBPART E—COMPLETION OF RENEGOTIATION

Subpart E is added, as set forth below.

- Etc.
- 1602.250 Scope of subpart.
- 1602.251 Preparation of agreement.
- 1602.252 Preparation of statement to contractor.
- 1602.253 Administration of agreements.
- 1602.254 Progress reports.
- 1602.255 Control of documents.

SUBPART E—COMPLETION OF RENEGOTIATION

§ 1602.250 *Scope of subpart.* This subpart refers to the steps taken upon the completion of a renegotiation resulting in a voluntary agreement, to the administration of agreements and unilateral determinations, and to progress reports. [RR 250]

§ 1602.251 *Preparation of agreement.* When a tentative settlement has been agreed upon, the Department conducting the renegotiation will promptly prepare a form of agreement (see Subpart A of Part 1605) [RR 251]

§ 1602.252 *Preparation of statement to contractor.* In Subpart B of Part 1605, the furnishing of a statement to the contractor is dealt with. [RR 252]

§ 1602.253 *Administration of agreements.* Administration of voluntary agreements or of unilateral determinations by the Department to whom the contractor was assigned for renegotiation is referred to in § 1605.509. [RR 253]

§ 1602.254 *Progress reports.* (a) The organization designated as the Assignments and Statistics Branch of the War Department Price Adjustment Board will be regarded by the War Contracts Board as the official source of information as to the Government's over-all progress of renegotiation. This Branch will in effect actually serve the War Contracts Board although constituted in the Renegotiation Division, Army Service Forces.

(b) The several Departmental Boards and services will prepare and furnish to the Assignments and Statistics Branch as at the close of business each Friday the appropriate Weekly Progress Report (Form SPRA-O in the case of Departments, see § 1607.751 (a) and (b), and Form SPRA I in the case of Services, § 1607.751 (c) and (d)). On the basis of the information supplied in the Weekly Progress Reports of the several Departments, the Assignments and Statistics Branch will prepare bi-weekly Status of Renegotiation Reports (Form SPRA I-BB) and Operations Reports (Form SPRA I-CC) and will furnish the same to the War Contracts Board and the Departmental Boards (see § 1607.751 (f) and (h)). On the basis of the information supplied in the Weekly Progress Reports of the Services, the Assignments and Statistics Branch will prepare bi-weekly Status of Renegotiation Reports (Form SPRA I-B, set forth in § 1607.751 (e) and Operations Reports (Form SPRA I-C, set forth in § 1607.751 (g)). [RR 254]

§ 1602.255 *Control of documents.* (a) Renegotiation Agreements, Reports of Renegotiation, records, files, correspondence, memoranda and all other documents containing financial and business information pertaining to renegotiation with specific contractors are the property of the Government of the United States.

(b) Such documents are not to be distributed, nor their contents revealed, to any person having no legitimate right thereto.

(c) Upon transfer or separation from employment in renegotiation, or any other employment in which possession or custody of such documents is authorized, all personnel will return such documents to a responsible official. [RR 255]

#### PART 1603—DETERMINATION OF RENEGOTIABLE BUSINESS AND COSTS

Part 1603 governing determination of renegotiable business and costs is added, as set forth below.

##### SUBPART A—OVER-ALL BASIS FOR RENEGOTIATION AND EXCEPTIONS

Sec.

1603.301 Over-all basis for renegotiation.

- (a) Statutory provisions.
- (b) Use of over-all basis.

1603.302 Differing accounting methods.

1603.303 Renegotiation on an individual or group contract basis.

1603.304 Cost-plus-fixed-fee contracts.

- (a) Separate consideration.

1603.305 Joint venture contracts.

1603.306 Treatment of contracts with fixed profit limitations.

- (a) Included in renegotiation.
- (b) Method of renegotiation in such cases.

1603.307 Treatment of contracts with price adjustment provisions.

- (a) Subject to renegotiation.
- (b) Method of renegotiation.

- (c) Certain shipbuilding contracts.

1603.308 Treatment of other contract claims.

1603.309 Renegotiation of parent and subsidiaries on consolidated basis.

- (a) When authorized.
- (b) Definition of "affiliated group"

1603.310 Consolidated basis in cases of common ownership.

- (a) When authorized.

1603.311 Allocation of excessive profits in cases of consolidated renegotiation.

1603.312 Where consolidated basis not used.

##### SUBPART B—METHODS FOR SEGREGATING SALES BETWEEN RENEGOTIABLE AND NON-RENEGOTIABLE BUSINESS

1603.320 Scope of subpart.

1603.321 Responsibility for segregation.

- (a) Making of segregation.
- (b) Suggested methods.

1603.322 Methods of segregating sales.

- (a) General approach.
- (b) Specific segregation.
- (c) Sales not susceptible of specific segregation.
- (d) Types of classification for general segregation.
- (e) Applicable basis for percentages of allocation.
- (f) Use of reports to Government.

1603.323 Segregation with respect to contracts with RFC subsidiaries.

##### SUBPART C—CONTRACTS AND SUBCONTRACTS WITHIN THE SCOPE OF THE 1943 ACT

1603.330 Scope of subpart.

1603.331 General coverage of 1943 act.

- (a) Statutory provision.
- (b) Contracts without renegotiation clauses.
- (c) Exemptions and exclusions.

Sec.

1603.332 Contracts with the Departments.

- (a) General.
- (b) Treasury procurement schedule of supplies.

- (c) Lend-lease contracts.

- (d) Cost-plus-fixed-fee contracts.

- (e) Management fee contracts.

- (f) Army Post Exchange and Army Exchange Service contracts.

- (g) Navy ship's service stores contracts.

- (h) Panama Canal contracts.

- (i) Panama Railroad Company contracts.

1603.333 General interpretation of subcontracts.

- (a) Statutory definitions.

- (b) Interpretation of definition.

- (c) When machinery, equipment or materials "used in processing"

- (d) General effect of interpretation.

- (e) Allocation of sales.

1603.334 Specific interpretations of "subcontract"

- (a) Standard commercial articles.

- (b) OPA price ceilings.

- (c) Patent licenses as subcontracts.

- (d) Subcontracts for office supplies.

1603.335 Contracts and subcontracts involving real property.

- (a) Contracts and subcontracts for existing real property.

- (b) Agreements for fixtures, construction and improvements on real property.

1603.336 Brokers, manufacturers' agents, and dealers; subcontracts.

##### SUBPART D—MANDATORY EXEMPTIONS AND EXCLUSIONS FROM RENEGOTIATION

1603.340 Scope of subpart.

1603.341 The mandatory exemptions.

1603.342 Authority to interpret.

- (a) Statutory provision.

- (b) Scope of authority.

1603.343 Contracts and subcontracts with other Governmental agencies.

- (a) Statutory exemption.

- (b) Interpretation and application of exemption.

1603.344 Contracts and subcontracts for certain raw materials and agricultural commodities.

- (a) Raw materials.

- (b) Agricultural commodities.

- (c) Cost allowance for raw materials and agricultural commodities in the case of integrated producers.

- (d) Profits from increment in value of excess inventories.

1603.345 Contracts or subcontracts with tax-exempt charitable, religious and educational institutions.

- (a) Statutory exemption.

- (b) Internal Revenue Code.

1603.346 Construction contracts awarded as a result of competitive bidding.

- (a) Statutory exemption.

- (b) Interpretation and application of exemption.

1603.347 Subcontracts under exempt contracts and subcontracts.

- (a) Statutory exemption.

- (b) Interpretation and application of exemption.

1603.348 Annual receipts under statutory minimum.

- (a) Statutory provision.

- (b) Computation of aggregate receipts and accruals.

- (c) No reduction by refund below exemption.

- (d) Tests of "control"

- (e) Subcontracts under contracts exempt under the statutory minimum.

##### SUBPART E—PERMISSIVE EXEMPTIONS FROM RENEGOTIATION

1603.350 Scope of subpart.

1603.351 Contracts and subcontracts to be performed outside of the United States.

- (a) Statutory authority.

- (b) Exemption.

Sec.

1603.352 Contracts and subcontracts whose profits determinable when price established.

- (a) Statutory authority.
- (b) Exemption.

1603.353 When contract provisions adequate to prevent excessive profits.

- (a) Statutory authority.

1603.354 Contracts and subcontracts for standard commercial articles.

- (a) Statutory authority.
- (b) Interpretation and application.

1603.355 Contracts and subcontracts when effective competition is likely to exist.

- (a) Statutory authority.
- (b) General interpretation of exemption.

- (c) Application of exemption to construction contracts.

1603.356 Subcontracts as to which it is not administratively feasible to determine and segregate profits.

- (a) Statutory authority.

- (b) Exemption.

1603.357 Delegation of authority to make permissive exemptions.

1603.358 Requests for exemption.

##### SUBPART F—LIMITATIONS ON COMMENCEMENT AND COMPLETION OF RENEGOTIATION

1603.360 Scope of subpart.

1603.361 Statutory provision.

1603.362 Commencement of renegotiation proceedings.

1603.363 Completion of renegotiation proceedings.

##### SUBPART G—TERMINATION OF RENEGOTIATION

1603.370 Scope of subpart.

1603.371 Statutory provision.

##### SUBPART H—COSTS ALLOCABLE AND ALLOWABLE AGAINST RENEGOTIABLE BUSINESS

1603.380 Scope of subpart.

1603.381 Statutory provisions and general regulations.

- (a) Determination of costs.
- (b) "Recomputation" of amortization deduction prior to renegotiation; carry-overs and carry-backs.

- (c) Renegotiation rebate where "recomputation" of amortization deduction follows renegotiation.

- (d) Profit, cost allocation and allowance; general.

1603.382 Salaries, wages and other compensation.

- (a) Allocation.

- (b) Allowances.

- (c) Wage and salary stabilization.

- (d) Application of stabilization orders in renegotiation.

- (e) Brokers' commissions.

- (f) Pension, annuity, stock bonus and profit sharing plans.

1603.383 Amortization and depreciation.

- (a) Allocation.

- (b) Accelerated amortization and renegotiation rebate.

- (c) Depreciation.

1603.384 Conversion to war production.

1603.385 Losses.

- (a) Costs or losses on non-war ventures.

- (b) War losses.

- (c) Losses from prior or subsequent years.

1603.386 Interest.

- (a) Allocation.

- (b) Allowance.

1603.387 Advertising expenses.

- (a) Allocation.

- (b) Allowance.

1603.388 Other costs, expenses and reserves.

- (a) Patent royalties.

- (b) Corporate charitable contributions.

- (c) Cost allowance in connection with raw materials.

1603.389 State income taxes.

- (a) In general.

- (b) Adjustment for State tax imposed at a "flat rate"

Sec.

- (c) Adjustment for graduated State tax.
- (d) Multiple State income taxes.
- (e) State income tax measured by income for preceding year.
- (f) Adjustment for State income tax of contractor operating as a partnership or sole proprietorship.

## SUBPART A—OVER-ALL BASIS FOR RENEGOTIATION AND EXCEPTIONS

§ 1603.301 *Over-all basis for renegotiation*—(a) *Statutory provisions.* Subsection (c) (1) of the Renegotiation Act of 1943 provides in part:

\* 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.

[RR 301.1]

(b) *Use of over-all basis.* (1) This provision requires the War Contracts Board to renegotiate on a fiscal year basis (or such other period as may be fixed by mutual agreement). It also requires that renegotiation be conducted upon an over-all basis unless the contractor or subcontractor requests, and the Board agrees, that such renegotiation be conducted with respect to his contracts and subcontracts separately or as two or more groups.

(2) Generally, renegotiation will be conducted on the basis of the amounts received or accrued by a contractor from his renegotiable contracts and subcontracts for a past fiscal year. Under this method excessive profits are determined by examining the contractor's financial position and the profits from such contracts and subcontracts taken as a whole for a particular fiscal year rather than by separate analysis of each contract or subcontract. This avoids problems of allocation of costs and profits, as between each contract and subcontract, allows the contractor to offset the results of one contract against another and simplifies administration. [RR 301.2]

§ 1603.302 *Differing accounting methods.* Should there be employed a method of computing profit in a renegotiation under the 1943 act which is different from that employed in renegotiation for a past fiscal year, the Department conducting the renegotiation under the 1943 act must see that the interest of the Government with respect to renegotiation for the past fiscal year is adequately protected against renegotiable business escaping renegotiation because of the change. The interest of the Government in connection with renegotiation for future years must also be protected. These principles apply to renegotiation conducted with respect to a fiscal year, to a period other than a fiscal year or on a single or group contract basis. [RR 302]

§ 1603.303 *Renegotiation on an individual or group contract basis.* (a) At the request of the contractor or subcontractor renegotiation may be conducted "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. \* \* \*" Some contractors in construction, shipbuilding or other industries account for profits on contracts only in the fiscal year in which such contracts are completed rather than currently in proportion to the percentage of work completed, percentage of estimated cost incurred, or otherwise. In view of the difficulties of accurately apportioning the profits on contracts of some types to specific fiscal years, contractors may request that contracts be renegotiated on a completed contract basis, although some other basis may be used for Federal income tax purposes. Such request may be granted by the Department to which the contractor is assigned for renegotiation and will ordinarily be granted, provided (1) the contractor agrees to include in the renegotiation all such contracts and subcontracts completed up to the end of the latest completed fiscal year which is under renegotiation and (2) the contractor's accounting procedures are such as to establish or provide an accurate basis for the determination of costs and profits under such contracts and subcontracts. The contracts and subcontracts renegotiated on this basis may be renegotiated individually or when practicable as a group subject to such separate treatment as may be required because of the different types of contracts involved (such as fixed-price, cost-plus-fixed-fee, price minus contracts, contracts subject to contractual or statutory fixed-profit limitations and contracts providing for redetermination or revision of the contract price during the life of the contract) In this connection, attention is directed to §§ 1603.306 and 1603.307.

(b) In the event that contracts to be renegotiated on a completed contract basis are uncompleted at the termination date of the 1943 act, the Department to which the contractor is assigned for renegotiation will be guided by the provisions of § 1603.302 as well as by the principles of subsection (h) of the 1943 act (see § 1603.370 and following) [RR 303]

§ 1603.304 *Cost-plus-fixed-fee contracts*—(a) *Separate consideration.* The financial and other data upon which the renegotiation is based must clearly reflect the financial results of performance of cost-plus-fixed-fee contracts and subcontracts separately from the financial results of performance of other contracts and subcontracts. Accordingly, the amounts received or accrued and costs paid or incurred on such cost-plus-fixed-fee contracts must be segregated from such amounts relating to other renegotiable contracts and subcontracts, so that an appropriate appraisal of the profits from such cost-plus-fixed-fee contracts and subcontracts can be made. [RR 304.1]

§ 1603.305 *Joint venture contracts.* Where two or more parties enter into an arrangement for the performance jointly of one or more projects, the combination resulting from such arrangement is commonly referred to as a "joint venture." Such a joint venture is regarded as an entity which, with respect to its contracts or subcontracts within the scope of the Renegotiation Act of 1943, is a "contractor" or "subcontractor" within the meaning of the act. Therefore, the joint venture is renegotiated with respect to its renegotiable contracts and subcontracts without regard to other contracts or subcontracts which may be held by the members of the joint venture. [RR 305]

§ 1603.306 *Treatment of contracts with fixed profit limitations*—(a) *Included in renegotiation.* Certain contracts with various Departments, particularly the Navy Department, Maritime Commission, and War Shipping Administration, are subject to provisions limiting the contractor's profit thereunder to a fixed percentage of the total sales or contract prices or costs within the scope of such limitation. Such contracts will be included in renegotiation but the agreement made thereon shall reserve to the Department having this independent duty, the corresponding right to determine and collect profits, if any, in excess of such limitation. [RR 306.1]

(b) *Method of renegotiation in such cases.* The contractor's sales or contract prices and costs under contracts subject to such profit limitation shall be included with the sales or contract prices and costs of his other renegotiable business, unless segregation shall be deemed necessary by a Department. Where the contract has not been finally audited the contractor shall be allowed to set up and shall be required to maintain an actual reserve to cover his liability in connection with such profit limitation in an amount by which the contractor's profit within the scope of such limitation is estimated to exceed the maximum allowable profit thereunder. The provision for the establishment of the reserve will be treated as a reduction in net profits rather than an increase in costs or a reduction of sales. This reserve should be allowed on the condition that the contractor will report to the Department conducting the renegotiation and will pay to the United States as excessive profits in renegotiation so much of such reserve as he is not required to repay under such profit limitation and as shall be required to be so paid by such Department. [RR 306.2]

§ 1603.307 *Treatment of contracts with price adjustment provisions*—(a) *Subject to renegotiation.* Certain contracts provide for escalation, redetermination or revision of the contract price during the life of the contract. These contracts are subject to renegotiation unless otherwise exempted, but their provisions necessitate special treatment. Except for certain shipbuilding contracts referred to in paragraph (c) the method of handling certain situations arising in connection with such contracts on renegotiation is discussed in paragraph (b). [RR 307.1]

(b) *Method of renegotiation.* (1) Upon over-all renegotiation involving such contracts, if the price for the period under review is expected to be retroactively reduced after the completion of the renegotiation proceedings, then in determining excessive profits the contractor should be permitted to set up a reasonable reserve to cover the estimated refund under the contract for the period under review. Similarly if the contract clause is expected to result in a retroactive upward revision of the price for the period under review, an allowance therefor should be made on the basis of reasonable estimates and included in the renegotiable income of the contractor.

(2) In making such estimates the contracting officer should be consulted. Whenever the retroactive adjustment under such clauses will substantially affect the contractor's over-all profits for the period covered by renegotiation, production experience will generally be sufficient to permit a reasonable estimate of the amount of the probable refund or additional payment.

(3) Where the retroactive effect of the price adjustment clause would materially affect the basis of the settlement, but cannot be reasonably estimated, the matter may in certain instances be handled by disregarding the operation of the clause in over-all renegotiation and by amending the contract provision to make any retroactive adjustment inapplicable to the period covered by renegotiation, as is the case under the more recent forms of such price adjustment clauses.

(4) This paragraph does not cover the method of handling certain shipbuilding contracts referred to in paragraph (c) below. [RR 307.2]

(c) *Certain shipbuilding contracts.* Certain shipbuilding contracts with the Navy Department and Maritime Commission provide for escalation, price savings and for redetermination or revision of the contract price during the life of the contract and the Department with which the contract is made is charged with the duty of auditing and determining the amount to be paid the contractor for work performed under such contracts. Furthermore, under regulations of the Maritime Commission when two or more vessels are constructed under separate contracts as a single undertaking the profit or loss resulting from performance of the single undertaking may be allocated equally to each vessel. Such contracts are subject to renegotiation unless otherwise exempt, but their provisions necessitate special treatment with respect to which the Department with which the contracts are made should be consulted. [RR 307.3]

§ 1603.308 *Treatment of other contract claims.* If a contractor has claims other than of the kind discussed in §§ 1603.306 and 1603.307 which may affect his profits from renegotiable business for the period under review, such claims should be revealed in the financial or other data upon which the renegotiation is based. [RR 308]

§ 1603.309 *Renegotiation of parent and subsidiaries on consolidated basis—*  
(a) *When authorized.* Renegotiation of

parent and subsidiary companies may, in the discretion of the Department conducting the renegotiation, be conducted on a consolidated basis whether or not the parent and subsidiaries constitute an "affiliated group" as defined in subsection (d) of section 141 of the Internal Revenue Code. [RR 309.1]

(b) *Definition of "affiliated group"* Section 141 (d) of the Internal Revenue Code is as follows:

(d) *Definition of "affiliated group."* As used in this section, an "affiliated group" means one or more chains of includible corporations connected through stock ownership with a common parent corporation which is an includible corporation if—

(1) Stock possessing at least 95 per centum of the voting power of all classes of stock and at least 95 per centum of each class of the nonvoting stock of each of the includible corporations (except the common parent corporations) is owned directly by one or more of the other includible corporations; and

(2) The common parent corporation owns directly stock possessing at least 95 per centum of the voting power of all classes of stock and at least 95 per centum of each class of the nonvoting stock of at least one of the other includible corporations.

As used in this subsection, the term "stock" does not include nonvoting stock which is limited and preferred as to dividends.

[RR 309.2]

§ 1603.310 *Consolidated basis in cases of common ownership—*(a) *When authorized.* If two or more business enterprises are under common control as a result of common ownership, rather than as a result of parent-subsidiary relationship, renegotiation on a consolidated basis may be appropriate if:

(1) Such consolidation is reasonably necessary for the protection of the interests of the Government. This is especially likely if one or more of such enterprises is a subcontractor of another of the enterprises commonly owned; and

(2) The extent of the common ownership is such that consolidation for renegotiation purposes is not, in the opinion of the Department conducting the renegotiation, inequitable to minority interests in one or more of the enterprises.

It is not essential that the interests of the common owners be identical in extent or nature in each of the enterprises commonly owned. [RR 310.1]

§ 1603.311 *Allocation of excessive profits in cases of consolidated renegotiation.*

(a) In renegotiation on a consolidated basis, careful scrutiny will be given to the methods employed in segregating costs as well as income as between the corporations or enterprises included in the consolidated renegotiation, particularly where the type of business conducted by one is different and distinct from the type of business conducted by the others in the consolidated group.

(b) Excessive profits must be allocated among the corporations or enterprises included in the renegotiation, and the renegotiation agreement must disclose the allocation. If excessive profits have been realized and the renegotiation agreement merely imposes liability generally on the entire consolidated group for the profits found to be excessive, without fixing the

separate liability, then the members of the group may not be allowed a deduction from their income for Federal tax purposes for the amount of excessive profits to be eliminated under the agreement, or a tax credit under section 3800 of the Internal Revenue Code. The excessive profits must be so allocated even though some or all of the members of the consolidated group participate in filing a consolidated Federal tax return.

(c) In case the group consists only of parent and subsidiaries, only the parent need sign the renegotiation agreement, unless the renegotiation agency requires otherwise. (See § 1605.502 (1).) In other cases one agreement will suffice but it must be executed by all members of the group.

(d) To make such allocations of the excessive profits, a review of the unconsolidated financial statements of each member of the group must be made, and the record must show a proper basis for the allocation. [RR 311]

§ 1603.312 *Where consolidated basis not used.* Whenever parent and subsidiary companies are renegotiated not on a consolidated basis but separately, renegotiations with the individual members of the controlled group should be conducted concurrently if possible. [RR 312]

SUBPART B—METHODS FOR SEGREGATING SALES BETWEEN RENEGOTIABLE AND NON-RENEGOTIABLE BUSINESS

§ 1603.320 *Scope of subpart.* The Renegotiation Act prescribes what types of contracts are subject to renegotiation. In practice, the difficulty of tracing and identifying all sales with exactness, especially under lower tier subcontracts, often necessitates the use of general methods of segregating renegotiable and non-renegotiable business and expenses. This subpart deals with such methods of segregation, and Subparts C, D, and E discuss in detail the principles for determining whether particular contracts are subject to the act or exempt. [RR 320]

§ 1603.321 *Responsibility for segregation—*(a) *Making of segregation.* The contractor should in all cases make the segregation of sales and the allocation of costs and expenses between renegotiable business and non-renegotiable business. The contractor should submit a signed statement of this segregation and allocation, explaining and justifying the methods used. The segregation and allocation must be satisfactory to the Department conducting the renegotiation. [RR 321.1]

(b) *Suggested methods.* The following section outlines general principles which may aid in determining an equitable method of segregation. [RR 321.2]

§ 1603.322 *Methods of segregating sales—*(a) *General approach.* (1) Often, there is more than one method available for segregating sales between renegotiable business and non-renegotiable business. In such cases the methods available for equitably allocating the cost of sales should be carefully considered before a final determination is made

as to the method to be used in segregating sales.

(2) In determining whether specific contracts or subcontracts are subject to renegotiation, the principles stated in Subparts C, D, and E will be followed.

(3) Where specific segregation is possible, this should be done in accordance with paragraph (b) of this section. Where this is not feasible, the methods discussed in paragraphs (c) to (f) of this section should be used. [RR 322.1]

(b) *Specific segregation.* (1) Certain sales can be specifically classified as subject to renegotiation, such as sales known to be under:

(i) Prime contracts which are not exempt.

(ii) Non-exempt subcontracts under specific non-exempt prime contracts.

(iii) Non-exempt subcontracts for specific products, the end use of which is known to be within the scope of the Renegotiation Act, such as tank parts, cartridge disks, etc.

(2) Other sales can be specifically classified as not subject to renegotiation, such as sales known to be under:

(i) Prime contracts which by their terms or the application of an exemption provided by or established pursuant to subsection (1) of the Renegotiation Act are exempt or have been exempted.

(ii) Subcontracts known to be under prime contracts or subcontracts to which, in either case, a mandatory exemption provided by subsection (1) of the Renegotiation Act is applicable.

(iii) Subcontracts to which a mandatory exemption or a discretionary exemption provided by or established pursuant to subsection (1) of the Renegotiation Act is applicable.

(iv) Agreements and purchase orders for products, the end use of which is known to be outside the scope of the Renegotiation Act. For example, the sale of safety clothing to a steel mill for the use of its employees (see § 1603.333 (d) (2)) or the sale of building material to a contractor for use in the construction of a privately owned home (see § 1603.335 (b) (4)).

(3) The contractor should indicate the basis of classification used and should state the principles applied thereto. (See paragraph (a) (2) of this section.) [RR 322.2]

(c) *Sales not susceptible of specific segregation.* (1) The contractor may not be able specifically to identify all or part of his sales as subject or not subject to renegotiation. Such sales may include sales to retailers, wholesalers, jobbers, fabricators, assemblers and others selling for both war and commercial use. The identity of the original product may be lost in processing. The contractor's sales and cost of sales records may be in such form that specific segregation cannot be made.

(2) These types of sales should be classified in such a manner as to permit the application to them of certain principles, percentages, etc., calculated to provide a reasonable and equitable division between renegotiable business

and non-renegotiable business. (See § 1603.333 (e).) [RR 322.3]

(d) *Types of classification for general segregation.* For the purpose of making a general segregation of sales, they may commonly be classified by:

(1) Industry, customer or customer group.

(2) Product or group of products.

(3) End use classification as shown on reports to the WPB.

(4) Division, department or plant, where the extent to which each division is devoted to business subject to renegotiation can be determined.

(5) Periods of the year, where the percent of business subject to renegotiation varies with the period. [RR 322.4]

(e) *Applicable basis for percentages of allocation.* When sales have been classified according to paragraph (d) of this section such sales may be segregated by applying ratios or percentages based upon general or specific factors such as:

(1) The recognized or estimated extent to which certain products are being used for war purposes as shown by governmental, trade association or other reports.

(2) The recognized or estimated extent to which certain industries (to whom the contractor sells) may be engaged in war business.

(3) Percentages developed through spot check of the end use of the products for one or more months of the year. The selection of the month or months should be made only after a thorough review of the equity of the choice by the Departments and by the contractor. [RR 322.5]

(f) *Use of reports to Government.*

(1) The great majority of companies to be renegotiated for the year 1943 used one or more of the so-called "controlled materials" (steel, copper, and aluminum in various types and shapes) as primary raw materials, secondary materials, or in the form of component parts.

(2) Because the war demand for these materials greatly exceeded the supply, their distribution was closely regulated and they could be obtained only with proper authorization by the War Production Board:

(i) During the fourth quarter 1942, under the Production Requirements Plan ("PRP")

(ii) During the first quarter 1943, under "PRP"

(iii) During the second quarter 1943, under either "PRP" or the Controlled Materials Plan ("CMP").

(iv) During the third and fourth quarters 1943, under "CMP"

(3) In order to secure the necessary authorization, all companies (except those using customer-furnished materials) were required to file with the War Production Board applications showing, among other things, shipments and orders analyzed by preference ratings and by end use or claimant agencies (Army, Navy, Aircraft, Maritime, Lend-Lease, etc.) Inasmuch as section 35 (A) of the United States Criminal Code, 18 U.S.C. 80, makes it a criminal offense to make a willfully false statement or representa-

tion to any department or agency of the United States as to any matter within its jurisdiction, the data contained in these applications can be considered reliable. Material deviations from representations in WPB reports in sales segregations for renegotiation purposes should be accepted only when extraordinary circumstances exist, and such circumstances must be explained fully in renegotiation reports to the department or agency conducting the renegotiation.

(4) Names of "claimant agencies" and their symbols are set forth in the WPB pamphlet "Controlled Materials Plan Major Identification Symbols" dated January 3, 1944. Copies of this pamphlet can be obtained by writing War Production Board, Controller Division, Washington 25, D. C.

(5) "CMP" applications and reports to the WPB provide a ready basis for segregating 1943 sales for purposes of renegotiation.

(i) For manufacturers of Class A products (military items such as aircraft, ammunition, artillery, tanks, ships, electronic, etc., and their major component parts), section A of WPB Form 732 shows analysis of shipments by claimant agencies.

For— Refer to—

1st Q 1943—WPB732 Budget Bureau No. 12-RO27.2

2nd Q 1943—WPB732 Budget Bureau No. 12-RO27.5

3rd Q 1943—WPB732 Budget Bureau No. 12-RO27.8

4th Q 1943—WPB732 Budget Bureau No. 12-RO27.10

1st Q 1944—WPB732 Budget Bureau No. 12-RO27.11

Note: Separate reports usually were filed for each plant or division. To avoid omission of part of the company's operations, all WPB732 forms should be scrutinized.

Because of the character of products manufactured, Class A producers will in almost every instance be found to be fully renegotiable. In rare cases, however, certain sales by Class A producers will prove to be exempt from renegotiation because ultimate payment was not made by one of the nine "Departments" specified in the Renegotiation Act.

(ii) For manufacturers of Class B products (minor military items such as bulldozers, component parts such as pumps included in a number of military items, and non-military items) forms CMP-4B and WPB732 show analyses of shipments by claimant agencies.

For— Refer to—

4th Q 1942—Sec. E of CMP-4B Budget Bureau No. 12-R780-42

1st Q 1943—Sec. C of CMP-4B Budget Bureau No. 12-R780.1

Sec. A of WPB732 Budget Bureau No. 12-RO27.2

2nd Q 1943—Sec. A of CMP-4B Budget Bureau No. 12-R780.5

Sec. A of WPB732 Budget Bureau No. 12-RO27.5

3d Q 1943—Sec. A of CMP-4B Budget Bureau No. 12-R780.6

Sec. A of WPB732 Budget Bureau No. 12-RO27.8

For— Refer to—  
 4th Q 1943—Sec. A of CMP-4B Budget Bureau No. 12-R780.7  
 Sec. A of WPB732 Budget Bureau No. 12-RO27.10  
 1st Q 1944—Sec. A of CMP-4B Budget Bureau No. 12-R780.8  
 Sec. A of WPB732 Budget Bureau No. 12-RO27.11

NOTE: A separate CMP-4B form was made out for each B product. Separate WPB732 forms also were prepared for each plant or division. The CMP-4B and WPB732 forms contain, for renegotiation purposes, essentially the same information; therefore, use whichever is the later.

With possible rare exceptions, shipments classified as follows should be treated as renegotiable:

Claimant	Symbol
Aircraft.....	C
Army.....	W, O
Navy.....	N
Maritime.....	M
Lend-Lease.....	L

Careful analysis of shipments classified as follows will be necessary to ascertain that ultimate payment was made by one of the nine "Departments" specified in the Renegotiation Act.

	Probable classification	
	Predominantly Renegotiable	Predominantly Exempt
Office of Economic Warfare.....		E
Canadian Division.....		D
War Food Administration.....		A
National Housing Agency.....		H*
Petroleum Administration for War.....		F
Office of Defense Transportation.....		T
Office of War Utilities.....		U
Office of Rubber Director.....	R, F	
WPB Office of Operations Vice Chairman.....	B, G, J, K	
WPB Facilities Bureau.....	F	
WPB Office of Civilian Requirements.....	S	V
Special Purpose.....	AM, FC, PX, X-1 MRO	WH, RO, SO

The most expeditious method of classifying shipments of these types would appear to be through an analysis of purchase orders, either by customers or by typical months, on the basis of "major program identification symbols" (See pages 1 to 4 of WPB pamphlet referred to in subparagraph (4) above.) The same type of analysis is also suggested for companies using customer-furnished materials inasmuch as orders received by them are required to carry the "major program identification symbol"

(6) The segregation of sales for manufacturers of wood products, textiles, chemicals, foods, tobacco products, and printing and publishing items usually can be accomplished most easily through an analysis in terms of end-use orders by customers. PD25A applications to the WPB will provide information useful for this purpose. End-use symbols are still used by companies not operating under "CMP" [RR 322.6]

§ 1603.323 Segregation with respect to contracts with RFC subsidiaries. In connection with prime contracts between a contractor and Defense Plant Corporation, Metals Reserve Company, Defense Supplies Corporation or Rubber Reserve Company, a segregation of sales and allocation of costs is necessary in order that excessive profits, if any, attributable to such contracts may be computed. (See § 1605.502 (e) and note to article 4 of the Standard Form of Agreement, Form I § 1607.741 (a) requiring repayment of such profits to the RFC Price Adjustment Board.) [RR 323]

SUBPART C—CONTRACTS AND SUBCONTRACTS WITHIN THE SCOPE OF THE 1943 ACT

§ 1603.330 Scope of subpart. This and the following Subparts D and E deal with the contracts and subcon-

tracts subject to renegotiation. This subpart discusses the kinds of prime contracts and subcontracts which are within the 1943 act, aside from exemptions, and the following subparts cover the exemptions (mandatory and permissive, respectively) from renegotiation. [RR 330]

§ 1603.331 General coverage of 1943 act—(a) Statutory provision. Subsection (c) of the 1943 act confers the basic authority to renegotiate, and paragraph (6) of subsection (c) which deals with its application, provides that, with certain exceptions, it shall apply "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)" [RR 331.1]

(b) Contracts without renegotiation clauses. Subsection (b) of the 1943 act requires the insertion of renegotiation provisions in certain contracts and subcontracts and provides that these provisions may be incorporated by reference to such subsection. However, both subsections (b) and (c) provide that renegotiation under subsection (c) applies whether or not the contract or subcontract contains such provisions unless such contract or subcontract is specifically excluded or exempted. [RR 331.2]

(c) Exemptions and exclusions. Subsections (c) (6) and (i) of the 1943 act provide for various exclusions and exemptions of contracts and subcontracts from renegotiation. These are discussed in detail in Subparts D and E. [RR 331.3]

§ 1603.332 Contracts with the Departments—(a) General. Subject to the exemptions contained in the 1943 act, all contracts made by the War and Navy Departments, the Maritime Commission, the War Shipping Administration, Defense Plant Corporation, Defense Supplies Corporation, Rubber Reserve Company, and Metals Reserve Company are subject to renegotiation. Contracts of the Treasury Department subject to renegotiation include:

(1) Contracts placed under section 201 of Title II of the First War Powers Act, 1941, 55 Stat. 839. These are principally lend-lease contracts which may be identified by the symbols "DA-TFS" preceding the contract number.

(2) Contracts for strategic and critical materials placed under the authority of the Act of June 7, 1939, 53 Stat. 811. Such contracts made after March 1, 1943 may be identified by the symbols "SCM-TPS" preceding the contract number.

(3) Contracts for supplies for refugee relief under the Red Cross program, placed under the authority contained in Title II of the Third Supplemental National Defense Appropriation Act, 1942, 55 Stat. 817, or in section 40 of the Emergency Relief Appropriation Act, fiscal year 1941, 54 Stat. 627, and Title I of the Second Deficiency Appropriation Act, 1942, approved July 2, 1942. Such contracts may be identified by the symbols "TRR" preceding the contract number. [RR 332.1]

(b) Treasury procurement schedule of supplies. Contracts of the Procurement Division of the Treasury Department of the type regularly made by it in the ordinary course of business prior to the war period, as such, are not subject to renegotiation unless negotiated under authority contained in Title II of the First War Powers Act, 1941. However, purchase orders, issued by other Departments under General Schedule of Supplies Contracts, which are entered into by the Procurement Division of the Treasury Department on behalf of all departments and establishments of the Government, are considered as subject to the provisions of the 1943 act. Purchase orders issued by the Treasury Department itself under such contracts are also considered as subject to the provisions of the 1943 act if such purchases are for lend-lease or for the Red Cross program. [RR 332.2]

(c) Lend-lease contracts. All so-called lend-lease contracts entered into by any of the Departments having renegotiation authority are subject to the provisions of the 1943 act. However, lend-lease contracts entered into by any other department or agency of the Government are not subject to renegotiation under existing law. [RR 332.3]

(d) Cost-plus-fixed-fee contracts. Cost-plus-fixed-fee contracts are subject to renegotiation unless otherwise exempt. The treatment of such contracts in renegotiation is discussed in § 1603.304. [RR 332.4]

(e) Management fee contracts. Contracts providing for a management fee are subject to renegotiation. [RR 332.5]

(f) *Army Post Exchange and Army Exchange Service contracts.* Contracts with Army Exchanges for the sale of items carried by such exchanges for resale are not subject to statutory renegotiation. Contracts entered into by the Army Exchange Service (through the intermediary of the Quartermaster General but without involving the use of appropriated funds) are not subject to statutory renegotiation. These conclusions are based on opinions of the Judge Advocate General of the War Department respectively dated February 20, 1943, and August 13, 1943, relating to the 1942 act. [RR 332.6]

(g) *Navy ship's service stores contracts.* Ship's service activities, including ship's service stores, are conducted by Navy personnel but their operations do not involve Navy Department funds. Their contracts are not Navy Department contracts and are not subject to renegotiation. Ship's stores, as distinguished from ship's service stores, are operated with Navy Department funds. Their contracts are Navy Department contracts and are subject to renegotiation. [RR 332.7]

(h) *Panama Canal contracts.* Contracts with the Panama Canal Zone are subject to statutory renegotiation. Under the Panama Canal Act (48 U.S.C. 1306) the President in time of war may designate an Army officer to assume exclusive authority and jurisdiction over the Panama Canal and the government of the Canal Zone and, by Executive Order 8232 (September 5, 1939) the President has done so. Contracts made by the Canal Zone are therefore treated as contracts with the War Department. Reference to the Panama Canal Zone includes the Panama Canal. [RR 332.8]

(i) *Panama Railroad Company contracts.* Contracts made by the Panama Railroad Company, a New York corporation whose stock is owned by the United States, are not subject to renegotiation. [RR 332.9]

§ 1603.333 *General interpretation of subcontracts—(a) Statutory definitions.* (1) Subsection (a), (5) and (6) of the 1943 act provide:

(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, (1) 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 (2) 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.

[RR 333.1]

(b) *Interpretation of definition.* By this definition of "subcontract" profits on the production and sale of articles required for the performance of another contract or subcontract are subject to renegotiation, as well as profits on the production or sale of all materials incorporated into the end product, down to and including raw materials, except certain specified raw materials and agricultural commodities exempted under subsection (i) of the 1943 act. This definition is interpreted to include contracts not only with prime contractors but also with other subcontractors, if such contracts are:

(1) For the sale or processing of an end product or of an article incorporated therein,

(2) For the sale, furnishing or installation of machinery, equipment or materials used in the processing of an end product or of an article incorporated therein,

(3) For the sale, furnishing or installation of machinery used in the processing of other machinery to be used in the processing of an end product or of an article incorporated therein,

(4) For the sale, furnishing or installation of component parts of or subassemblies for machinery included in (3) above and machinery, equipment and materials included in (2) above, and

(5) For the performance of services directly required for the performance of contracts or subcontracts included in (1) (2) (3) and (4) above.

The term "component part" as used in this paragraph shall be deemed to include materials and ingredients. [RR 333.2]

(c) *When machinery, equipment or materials "used in processing"* Under this interpretation machinery, equipment or materials will be deemed to be used in the processing of an end product or an article incorporated in an end product in all cases where such machinery, equipment or materials are used:

(1) To produce or otherwise operate directly on an end product or an article incorporated in an end product by chemical, physical or mechanical methods; such, for example, as shaping, cutting, constructing, combining, refining, assembling, testing, inspecting or (in the case of end products) packaging. Examples of this category include not only such machinery as rolling mills and machine tools, but also gauges and other measuring instruments, torches and chemicals or other materials consumed in the course of the manufacturing process,

such for example as hydrogen, oxygen, coke and acetylene;

(2) To transport within the contractor's plant an end product or an article incorporated in an end product or other articles used in connection with the production thereof. Examples of this category include tote boxes, tractors, trucks and traveling cranes;

(3) In connection with the repair, maintenance, equipping, or operation in the contractor's plant of machinery or equipment there used in the production of an end product, or an article incorporated in an end product. Examples of this category include spare parts, auxiliary tools, abrasives, wrenches, screwdrivers, other hand tools, lubricating oil, cutting oil and dry ice; also machine tools or equipment located in the tool room of a contractor's plant and special equipment used for the manufacture, preparation or maintenance of tools, dies, jigs, fixtures, equipment or machinery. [RR 333.3]

(d) *General effect of interpretation.*

(1) In general it is intended to include as subject to statutory renegotiation the sale of all machinery, equipment, materials and other articles which contribute directly to the actual production of an end item or an article incorporated therein, in connection with the physical handling of the item from the time of entry of the component materials to departure of the item from the plant in question and to include all machinery which similarly contributed directly to the actual production of other machinery so used.

(2) It is intended to exclude the sale of articles which contribute only indirectly to the actual manufacturing process, such as products used for general plant maintenance, including fuel and equipment to produce light, heat and general power requirements and such as equipment needed for general office maintenance, including all types of office machinery and supplies, and such as safety equipment and clothing.

(3) It is not intended to exclude from renegotiation any articles sold to a contractor when the items are to be ultimately resold to a Department either as end products or as component parts included therein. However, subcontracts to furnish office supplies are specifically excluded from the definition of subcontract. Therefore, subcontracts for office supplies, although such office supplies are ultimately sold to a Department, are not subject to renegotiation. Office supplies are interpreted to include paper, ink, typewriter ribbons, binders, covers, blotters, paper clips, staples and other items of consumable character, as well as related items of relatively short life and minor cost, such as pens, pen holders, pencils, blotter pads and calendars; they do not include office furniture, machinery and equipment, such as desks, chairs, lamps, rugs, waste baskets, filing cases, typewriters and calculating, recording, reproducing and dictating machines. [RR 333.4]

(e) *Allocation of sales.* Sales of such machinery and equipment are allocated on the basis of the use thereof (i.e., for renegotiable or non-renegotiable produc-

tion) and when the extent of the use can not be readily established, such sales are considered renegotiable in substantially the same proportion as the production of the purchasers of such machinery and equipment is subject to renegotiation. (See Subpart B, including § 1603.322 (c).) [RR 333.5]

§ 1603.334 *Specific interpretations of "subcontract"*—(a) *Standard commercial articles.* The term "standard commercial article" is defined by subsection (a) (7) of the 1943 act which provides in subsection (i) that agreements for such articles may be exempted by the War Contracts Board under certain conditions. (See § 1603.354.) Unless agreements for standard commercial articles are exempted pursuant to such subsection, their renegotiability will be determined by the same tests applied to agreements for equipment specially fabricated for war uses or purposes. [RR 334.1]

(b) *OPA price ceilings.* The fact that articles are sold under price ceilings fixed by the Office of Price Administration does not exclude the sale of such articles from renegotiation. Excessive profits have been realized within OPA price ceilings. Such ceilings do not prevent some producers from realizing excessive profits. The increase in volume of sales of such articles may lower costs to such extent that excessive profits are realized. [RR 334.2]

(c) *Patent licenses as subcontracts.* Patent licenses for processes or inventions required in performing contracts with the Departments and subcontracts are subcontracts as defined in subsection (a) (5) (A) of the 1943 act subject to statutory renegotiation (unless exempted) whether or not the licensor furnishes or agrees to furnish any technical or other service to the licensee and without regard to the time that the license agreement was made. Such patent licenses are not subcontracts under subsection (a) (5) (B) of the 1943 act. [RR 334.3]

(d) *Subcontracts for office supplies.* The definition of "subcontract" as contained in subsection (a) (5) (A) of the 1943 act specifically excludes therefrom agreements or purchase orders for office supplies. (Also see § 1603.333 (d).) [RR 334.4]

§ 1603.335 *Contracts and subcontracts involving real property*—(a) *Contracts and subcontracts for existing real property.* (1) Action taken with respect to exempting contracts and subcontracts for certain interests in real property is referred to in § 1603.352 (b)

(2) Moreover, aside from such exemption, the statutory definition of "subcontract" is construed to exclude agreements for the purchase of real property by contractors and subcontractors. Since it refers to the making or furnishing of any "article" which in turn is defined to mean any "material \* \* \* or other personal property" the definition implies that agreements for the acquisition of real property are not subcontracts.

(3) The exemptions and exclusions discussed in this paragraph govern agreements for existing real property, but do not apply to agreements for fix-

tures or for improvements to or construction of real property which are discussed in the following paragraph. [RR 335.1]

(b) *Agreements for fixtures, construction and improvements on real property.* (1) Where an agreement is for work or articles which become real property in the course of its performance, as distinguished from existing real property, the principles stated in this paragraph govern.

(2) Where an agreement to sell, furnish or install machinery, equipment, materials or other personal property would otherwise constitute a renegotiable contract or subcontract, the fact that such property is to be installed in a building or otherwise affixed to real estate and will be treated as real property for some purposes does not exclude the agreement from renegotiation.

(3) Where a contract for the construction of a building or improvements on or to real property is made by a Department, or if not made by a Department the Government acting through a Department is to obtain title to such property either immediately or ultimately (such as contracts for plant and facilities) then such contract is renegotiable unless exempted. Likewise all subcontracts under such a renegotiable contract for furnishing services, or articles, such as building materials and structural steel, which are personal property when furnished, but which became real property during the course of construction, are renegotiable unless exempted, and so are subcontracts for furnishing any machinery and equipment installed in the building.

(4) Where, however, an agreement is for the construction of a building or improvement on or to real property for a contractor or subcontractor for the purpose of performing a renegotiable contract or subcontract and the Government acting through a Department is not to acquire title thereto, either immediately or ultimately, then except as provided in (2) above, such agreement and subcontracts thereunder are not subject to renegotiation even though the improvements may be covered by Certificates of Necessity.

(5) In determining whether a subcontract for an item is renegotiable under subparagraph (2) or not renegotiable under subparagraph (4) it is helpful to consider its character at the time of installation. If the item is one which has a predominantly prefabricated character at the time of installation or assembly, it should be classified as machinery or equipment and the subcontract for its sale is therefore subject to renegotiation. A subcontract for an item is not considered subject to renegotiation if the item has no substantial existence as such until its construction from materials at the time of installation, i. e., where the principal component parts did not have a prior existence as machinery or equipment (in the ordinary sense) off the premises but result from construction on the premises.

(6) Attention is directed to the mandatory and discretionary exemption of contracts or subcontracts for the con-

struction of buildings, structures, improvements or other similar facilities and the regulations relating thereto. (See §§ 1603.346 and 1603.355 (c).) [RR 335.2]

§ 1603.336 *Brokers, manufacturers' agents, and dealers; subcontracts.* (1) The definition of subcontract in subsection (a) (5) of the 1943 act includes any contract or arrangement (i) which makes the compensation thereunder depend on procuring one or more contracts with a Department or subcontracts or on their amount, or (ii) under which any part of the services performed or to be performed consists of the soliciting or attempting to procure or procuring one or more such contracts or subcontracts. This provision subjects such agreements to renegotiation under the 1943 act to the same extent as other subcontracts. It does not, of course, validate any such agreement if otherwise illegal, or affect the allowance or disallowance of amounts paid under such contracts as items of cost.

(2) In addition, even when not within (1) above, contracts between manufacturers and their representatives are subject to renegotiation as subcontracts if the representative is performing, or agrees to make available on request, engineering, mechanical, or other services related to the performance of one or more prime contracts with the Departments or subcontracts, including assistance in obtaining priority certificates and in other matters required in connection with performance of the contract. For example, manufacturers' agents in the machine tool industry customarily hold themselves ready to furnish engineering advice, mechanical service, and advice on training in the use of tools. By contract or custom the manufacturer usually pays the commissions of the agent whether or not these services are used, and charges the amount into the cost of the tool. These activities comprise "part of the work \* \* \* required for the performance of any other contract or subcontract" within the definition of subcontract in subsection (a) (5) (A) of the 1943 act. (See § 1602.203 (d).)

(3) When a manufacturer's representative also acts as dealer, he is in substantially the same position as a jobber and his sales of articles to one of the Departments or to a contractor with a Department or a subcontractor are subject to renegotiation, whether the articles are delivered from his own inventory or shipped direct by the manufacturer. The fact that the prices on articles handled by manufacturers' representatives and jobbers are regulated under Office of Price Administration ceilings does not affect the result. (See § 1603.334 (b).) [RR 336]

#### SUBPART D—MANDATORY EXEMPTIONS AND EXCLUSIONS FROM RENEGOTIATION

§ 1603.340 *Scope of subpart.* The preceding subpart deals with the general interpretation of the coverage of the Renegotiation Act of 1943 and with the meaning of the terms "contract" and "subcontract" as used in the act. The act contains various specific exemptions and exclusions of mandatory character, which are found in subsections (i) and

(c) (6) of the act. These exemptions and exclusions will be outlined in this subpart. Permissive exemptions are covered by the succeeding Subpart E. [RR 340]

§ 1603.341 *The mandatory exemptions.* (1) Contracts and subcontracts with other Governmental agencies are exempted by subsection (i) (1) (A). (See § 1603.343.)

(2) Contracts and subcontracts for certain raw materials are exempted by subsection (i) (1) (B). See § 1603.344.)

(3) Contracts and subcontracts for agricultural commodities are exempted by subsection (i) (1) (C). (See § 1603.-344 (b).)

(4) Contracts or subcontracts with tax-exempt charitable, religious and educational institutions are exempted by subsection (i) (1) (D). (See § 1603.345.)

(5) Construction contracts awarded as a result of competitive bidding are exempted by subsection (i) (1) (E). (See § 1603.346.)

(6) Subcontracts under exempt contracts and subcontracts are exempted by subsection (i) (1) (F). (See § 1603.347.) [RR 341]

§ 1603.342 *Authority to interpret—(a) Statutory provisions.* Subsection (i) (2) of the Renegotiation Act of 1943 provides:

(2) The Board is authorized by regulation to interpret and apply the exemptions provided for in paragraph (1) (A), (B), (C), (E), and (F)

[RR 342.1]

(b) *Scope of authority.* The authority to interpret covers all of the mandatory exemptions except the exemption of tax-exempt charitable, religious and educational institutions. (Subparagraph (i) (1) (D) of the 1943 act; § 1603.345.) [RR 342.2]

§ 1603.343 *Contracts and subcontracts with other governmental agencies—(a) Statutory exemption.* Subsection (i) (1) (A) of the 1943 act provides that it 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;

[RR 343.1]

(b) *Interpretation and application of exemption.* The War Contracts Board has adopted the following interpretation:

(1) Under this provision of the act no contract between one of the Departments and any other federal, local or foreign government agency is subject to renegotiation. A municipal corporation, whether acting in a proprietary or governmental capacity, is considered to be an agency of a State for the purposes of this exemption.

(2) Contracts between such other agencies or governmental corporations and private contractors, and subcontracts thereunder, are likewise not subject to renegotiation, except in those instances where the agency or governmental corporation is acting as a direct

agent for a Department. In these instances, the contract is deemed to be with the Department for which the agency or governmental corporation is acting as direct agent, and not with the agency or governmental corporation, and accordingly, if otherwise subject to renegotiation, is not exempted.

(3) Certain of the agencies and governmental corporations referred to sometimes place orders called "pool" orders. Under this type of order the agency or corporation orders large quantities of a particular item from a manufacturer. Before delivery under this order the manufacturer may sell all or a portion of the items to a Department or to a Departmental contractor or subcontractor and the order of the governmental corporation or agency is reduced to the extent of these purchases by others. In such cases the sales by the manufacturer to a Department or to a Departmental contractor or subcontractor are not exempt from renegotiation. [RR 343.2]

§ 1603.344 *Contracts and subcontracts for certain raw materials and agricultural commodities—(a) Raw materials—(1) Statutory exemption.* Subsection (i) (1) (B) of the 1943 act provides that it shall not apply to:

(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;

(2) *Interpretation and application of exemption.* In determining whether or not a particular product is an "exempted product" under the exemption in subsection (i) (1) (B) of the act, the following principles shall govern:

(i) Exempted products: The phrase "other mineral or natural deposit" shall be interpreted to include only mineral or natural deposits of a wasting or depletable character similar to products "of a mine, oil or gas well" Accordingly, water, sea water and air, and products derived therefrom, are not considered to be other mineral or natural deposits within the meaning of the act, and contracts or subcontracts therefor, or for products derived therefrom, shall be subject to renegotiation.

(ii) State at which exemption terminates: In general a product will be considered to be an exempted product until it has arrived at its dispersal point, i. e., the point at which a substantial proportion of the product is used by the ultimate consumer, or by industries other than the industry of origin. The industry of origin includes not only the primary industry of extraction or severance, but also any processing, refining or treatment directly supplementing its extraction or severance or to produce one or more of the chemical elements or compounds present in it in the state in which it may be found in abundance in nature; but excludes other processing, refining or treatment to produce various end products for the ultimate consumer, or a substantial variety of products which vary materially in size, shape or content from the original product.

(iii) *Combination of several materials:* Where substantial quantities of two or more materials or ingredients are combined to produce a product for industrial use, the product resulting from such combination is considered to be non-exempt, unless the other material or materials are used as a catalyst, carrying agent or in some other subordinate capacity in connection with processing, refining or treatment of the principal product which is in the course of preparation for its first industrial use.

(iv) *Different processes:* Where a product is made in substantial quantities by two or more different processes, one of which would result in the exemption of the product under the above tests and the other would result in its inclusion, such a product will be considered to be renegotiable only where made by a process which would result in its inclusion.

(v) *Byproducts:* Where a process for making a product or material subject to renegotiation under the above tests also produces byproducts, such byproducts shall be treated as subject to renegotiation since any benefits resulting from use or sale of such byproducts operate in substance to reduce the cost of the principal product. The principle of the preceding sentence is inapplicable to byproducts which would otherwise be exempt under this subparagraph (2). In the case of byproducts resulting from processes principally designed to produce an "exempted product" under the above tests, such byproducts shall be treated as "exempted products" if they are not further processed, refined or treated. If further processing, refining or treatment of such byproducts takes place, the status of the ultimate product resulting will be determined in accordance with the general principles set forth above.

(3) A list of products which, subject to the foregoing interpretation are considered exempt, is set forth in § 1603.341. [RR 344.1]

(b) *Agricultural commodities—(1) Statutory exemption.* Subsection (i) (1) (C) of the 1943 act provides that it shall not apply to:

(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;

(2) *Interpretation and application of exemption.* (i) *Applicability.* The provision exempting agricultural commodities under subsection (i) (3) of the 1943 act is retroactive as if it were a part of the Renegotiation Act on the date of its enactment, April 28, 1942.

(c) *Cost allowance for raw materials and agricultural commodities in the case*

of integrated producers—(1) *Statutory provision.* Subsection (i) (3) of the Renegotiation Act of 1943 provides, in part, as follows:

(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 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.

(2) *Interpretation and application.* Where a contractor (i) processes, refines, or treats a product of a mine, oil or gas well, or other mineral or natural deposit, or timber, to the first form or state suitable for industrial use, and further refines, processes or treats such product beyond the first form or state suitable for industrial use in order to perform his contract, or (ii) produces or acquires an agricultural product and processes, refines or treats such agricultural product to and beyond the first form or state in which it is customarily sold or in which it has an established market, then in such cases for the purposes of statutory renegotiation the product will be treated as an item of cost of the performance of such contract in such amount as, in the opinion of the Board, fairly represents a properly applicable allowance. In determining the proper allowance, due consideration shall be given to the established sale or market price where there is a representative market for the product in the exempt state, and to such other factors as may be necessary to reflect the purpose and intent of the statutory exemption. In general it is the purpose and intent of this provision to allow to the contractor engaged in an integrated process of the type described, an item of cost substantially equivalent to that granted by the statute to others who sell an exempt product, namely what he could have realized if he had sold the exempt product at the intermediate stage. [RR 344.3]

(d) *Profits from increment in value of excess inventories—(1) Statutory exclusion.* Subsection (i) (3) of the Renegotiation Act of 1943, insofar as it relates to the exclusion of profits from the increment in value of excess inventories provides:

(3) \* 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, heretofore 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 and on contract would be exempted from

this section by subsection (i) (1) (B) or (C), 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, files a claim therefor with the Secretary concerned.

(2) *Interpretation and application—(i) Statement of general principles by the Committee of Conference.* The basic principles of this exclusion are set forth in the following excerpt from the Statement of the Managers of the Committee of Conference on the Revenue Act of 1943.

The profits realized by a contractor or subcontractor by reason of the increment in value of his excess inventory of the materials described in subsection (i) (1) (B) or (1) (1) (C), in the form or state in which contracts therefor are exempted under such subsections, to the extent that such profits are applicable to contracts with the departments or subcontracts, shall be excluded from consideration in determining excessive profits. The test as to whether or not any contractor or subcontractor has an excess inventory of such materials turns upon whether or not the contractor or subcontractor has in inventory quantities of such materials in excess of the amount reasonably necessary to fulfill existing contracts or orders. The method of determining the portion of the profits applicable to contracts with the departments or subcontracts realized by reason of the increment in value of an excess inventory and the method of excluding such portion of such profits from renegotiation will be set out in 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 excess inventory (to the extent it does not exceed the excessive profits determined) shall be credited or refunded to the contractor or subcontractor. Where the determination of the excessive profits was made prior to the date of the Revenue Act of 1943, such credit or refund shall be made whether or not the determination is embodied in an agreement with the contractor or subcontractor. In all such cases the credit or refund will be made only if the contractor or subcontractor within 90 days after the date of the enactment of the Revenue Act of 1943, files claim therefor with the secretary concerned.

The following example will show how the amendment operates. A has, through the purchase of long cotton, 600,000 pounds of cotton on hand on a particular date, which has a book cost of ten cents a pound. On this date, A has future orders which will consume only 100,000 pounds of such cotton.

A thus has a long position of 500,000 pounds of cotton. The next contract that A takes is for Government goods and requires the use of 500,000 pounds of such cotton. On the day A takes the Government contract, the current market price of such cotton is 15 cents a pound. In such a situation A has placed himself in a position to realize an inventory profit of \$25,000. This inventory profit, if realized, is not a manufacturing profit, but is in the nature of an investment or speculative profit which could be realized. It has no relationship to the profits to be derived from the Government contract, and, therefore, represents a profit from an excess inventory, which is excluded from renegotiation under the amendment.

The same situation might also apply in the case of a tobacco and cigarette manufacturer. Suppose for example, when the tobacco markets opened in the fall of 1942 A had on hand 20,000,000 pounds of tobacco of the 1940 crop, 20,000,000 pounds of the 1941 crop, and A then went into the market and bought some 20,000,000 pounds of 1942 grown tobacco, although his existing orders would not cause him to expect to manufacture more than 20,000,000 pounds into cigarettes. He thus has an excess inventory of 40,000,000 pounds of tobacco, and his case would fall within the amendment.

(ii) *Definitions.* For the purposes of this paragraph the following definitions shall apply:

(a) *Materials:* Materials are products described in paragraphs (a) and (b) of this section (of the grade, class and type to be used by the contractor or subcontractor in fulfilling contracts with a Department or subcontracts for processed or finished goods under which the amounts received or accrued are subject to renegotiation) acquired by the contractor or subcontractor in the last form or state in which contracts therefor are exempt under the provisions set forth in those paragraphs.

(b) *Inventory:* Inventory is the quantity of materials on hand or under contract for purchase (including the quantity of such materials, adjusted for waste, contained in the work in process inventory and the inventory of uninvoiced finished goods) reduced by the quantity of materials under contract for sale. It should be noted that profits or losses from the sale of materials are excluded from renegotiation under the raw material and agricultural commodity exemptions and that such transactions must be considered separately in the application of these regulations. A contract for purchase or a contract for sale is a contract under the terms of which (1) the quantity, the delivery of which the buyer is committed to accept, is certain, (2) the time limits in which such fixed quantity is to be delivered are certain, and (3) the price is certain or is to be made certain solely by factors existing at a time specified in the contract. Special or unusual contractual arrangements with respect to the acquisition or disposition of materials or finished or processed goods will be given special consideration in accordance with the facts in the individual case.

(c) *Existing contracts or orders:* Existing contracts or orders, at any time, are the uninvoiced portions of those contracts or orders for processed or finished goods, the fulfillment of which requires the use of the materials in inventory.

(d) *Excess inventory.* Excess inventory is the inventory of materials which is in excess of the quantity reasonably necessary to fulfill existing contracts or orders.

(e) *Replacement value.* Replacement value of excess inventory is the value of such excess inventory calculated by determining as of the date on which the contractor or subcontractor enters into a contract with a Department or subcontractor, under which the amounts received or accrued are subject to renegotiation, the market value of the materials of the grade, of the quality, and in the quantities to be used by the contractor or subcontractor in fulfilling the contract or subcontract. Where no quotations for the particular grade or quality of material are available as of the date the contract or subcontract is entered into, any factors tending to establish a fair market value may be taken into consideration.

(f) *Increment in value.* Increment in value is the amount by which the replacement value of the portion of the excess inventory, allocated to the fulfillment of any contract or subcontract, exceeds the cost of such portion of the excess inventory as determined by the method of inventory accounting regularly employed by the contractor or subcontractor.

(iii) *Time for determining excess inventory.* Accounting for the purposes of determining excess inventory will commence as of the beginning of the month, four weeks period, or other similar period of inventory accounting employed by the contractor or subcontractor, in which the contractor or subcontractor entered into the first contract with a Department or subcontractor under which any part of the amounts received or accrued were subject to renegotiation. Subsequently, excess inventory will be determined as of the beginning of each month, four weeks period, or other similar accounting period in which the contractor or subcontractor enters into contracts with a Department or subcontracts under which the amounts received or accrued are subject to renegotiation. If any excess inventory is found to exist at the beginning of any month, it shall be deemed to exist throughout that month; if no excess inventory is found to exist at the beginning of a month, it shall be deemed that none existed throughout that month. In the absence of adequate records, the amount of materials contained in any inventory category at the beginning of each month shall be deemed to be one-half of the quantity contained in the combined opening and closing inventories of materials in such category for the shortest inventory accounting period for which such information is available, and during which the determination of excess inventory is applicable.

(iv) *Treatment of excess inventory.* Upon the establishment of the existence of the excess inventory, such inventory is deemed to be the inventory first used by the contractor or subcontractor thereafter and shall be allocated pro-rata to the processing under contracts with De-

partments and subcontracts, under which the amounts received or accrued are subject to renegotiation, in chronological order, and other processing carried on by the contractor or subcontractor up to the end of the month in which such excess inventory is exhausted.

(v) *Exclusion of profits attributable to increment in value of excess inventory.* In any case in which it appears that profits attributable to the increment in value of the excess inventory may exist, a tentative determination of excessive profits, will be made without regard to this provision. The tentative excessive profits, so determined, will then be reduced by the portion of the profits attributable to the increment in value of the excess inventory. For the purposes of determining the portion of the profits attributable to the increment in value of the excess inventory which is to be so excluded, replacement value shall be allowed only to that portion of the excess inventory allocated to each such contract or subcontract and the profits to be so excluded attributable to such contracts shall be limited to the portion of such profits received or accrued under such contract or subcontract during the fiscal year. If, for the fiscal year, profits derived from contracts with the Departments or subcontracts under which the amounts received or accrued are subject to renegotiation, attributable to increment in value of the excess inventory, exceed losses derived from such contracts or subcontracts attributable to decreases in value of the excess inventory, such excess of profits over losses will be excluded in determining excessive profits. [RR 344.4]

§ 1603.345 *Contracts or subcontracts with tax-exempt charitable, religious and educational institutions—(a) Statutory exemption.* Subsection (1) (1) (D) of the 1943 act provides that it shall not apply to:

(D) any contract or subcontract with an organization exempt from taxation under section 101 (6) of the Internal Revenue Code.

[RR 345.1]

(b) *Internal Revenue Code.* Section 101 (6) of the Internal Revenue Code exempts from taxation:

(6) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation.

[RR 345.2]

§ 1603.346 *Construction contracts awarded as a result of competitive bidding—(a) Statutory exemption.* Subsection (1) (1) (E) of the 1943 act provides that it shall not apply to:

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

[RR 346.1]

(b) *Interpretation and application of exemption.* (1) The exclusion from renegotiation of construction contracts with a Department awarded as a result of competitive bidding applies only to contracts for the construction of buildings, structures, improvements and other similar facilities let to the lowest qualified bidder and which were entered into after advertisement and for which bids have been received from two or more independent, responsible and qualified contractors in actual competition with each other. (See § 1603.355 (c).)

(1) As used herein "advertisement" shall be interpreted as meaning published advertising or such other solicitation for bids as will open the bidding to all probable bidders under the circumstances of the particular case.

(1) In any case in which it is claimed that a contract is excluded from renegotiation by reason of the application of this subparagraph (1) and such contract was not entered into after published advertising, the Department conducting the renegotiation may deny such claim but shall not approve the same without submitting the matter, together with all relevant information in the possession of such Department, to the War Contracts Board for a final determination.

(2) This section of the act is applicable only to amounts received or accrued under such contracts for fiscal years ending after June 30, 1943, and applies regardless of the date when the contracts were made.

(3) Contracts for the furnishing of materials or supplies or for the lease, sale or manufacture of machinery or equipment are not within the scope of this exemption. In determining whether a particular contract or subcontract constitutes a contract for the construction of a building, structure, improvement or other similar facility or constitutes a contract for the lease, sale or manufacture of machinery or equipment, the essential character of the performance under the contract will control. In those cases where the items to be furnished under the contract have a predominantly prefabricated character at the time of installation or assembly, the contract will ordinarily be regarded as one of sale or manufacture rather than of "construction" This question arises most frequently in connection with contracts for the sale and installation of machinery or equipment where both the furnishing of the machinery or equipment and its installation are embraced within a single contract. In cases of this character an undertaking to furnish the article may be severed from an agreement to install and an appropriate finding made as to that portion of the contract undertaking which might properly be exempted. On the other hand, where an item to be furnished under a contract has no substantial existence as such until its construction from materials at the site and time of installation so that the contract in its essence is one of construction as distinguished from manufacture or sale, the exemption will be applicable. The essential distinction does not depend upon whether the item involved does or does not become part

of the real estate, but depends rather on whether the contract is essentially one for "construction" as distinguished from a contract for manufacture or sale. (See § 1603.335 (b)) [RR 346.2]

§ 1603.347 *Subcontracts under exempt contracts and subcontracts*—(a) *Statutory exemption.* Subsection (i) (1) (F) of the 1943 act provides that it shall not apply to:

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

[RR 347.1]

(b) *Interpretation and application of exemption.* It should be noted that the exemption applies only where the subcontract is under a contract or subcontract exempted by paragraph (1) of subsection (i) of the 1943 act. Thus, subcontracts under prime contracts or subcontracts exempted under the discretionary exemptions authorized by subsection (i) (4) of the 1943 act, the exemption measured by renegotiable volume under subsection (c) (6) or any other exemption or exclusion contained in the 1943 act, are not exempted by this provision. (See § 1603.348 (e).) [RR 347.2]

§ 1603.348 *Annual receipts under statutory minimum*—(a) *Statutory provision.* Subsection (c) (6) of the 1943 act provides

(6) This subsection shall be applicable to all contracts and subcontracts 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)) do not exceed \$500,000 and under subcontracts described in subsection (a) (5) (B) 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.

[RR 348.1]

(b) *Computation of aggregate receipts and accruals.* (1) In order to qualify for this exemption a contractor must meet two conditions:

(i) The gross receipts or accruals of the contractor and his affiliates for his fiscal year from subcontracts within the scope of subsection (a) (5) (B) of the 1943 act (that is, for services in procuring contracts or subcontracts) must not exceed \$25,000; and

(ii) The gross receipts or accruals of the contractor and his affiliates for his fiscal year from all contracts with the Departments and from all subcontracts within the scope of subsection (a) (5) (A) of the 1943 act, including contracts and subcontracts exempt from renegotiation under subsection (i) of the 1943 act but excluding subcontracts covered in (1) above, must not exceed \$500,000.

(2) Affiliate is used in this section to refer to a person who controls or is controlled by or under common control with the contractor. Total receipts or total billings under cost-plus-fixed-fee contracts are included in gross receipts or accruals in computing the limits referred to in this section.

(3) When the fiscal years of the respective members of the affiliated group differ, the test will be whether, during the twelve months period (or fraction thereof) which is the fiscal year of the member of the group being considered for renegotiation, the group had gross receipts or accruals in excess of the statutory minimum.

(4) If the contractor meets one of the conditions referred to in subdivision (1) hereof but not the other, renegotiation will be conducted only with respect to his contracts and subcontracts as defined in subsection (a) (5) (A) of the 1943 act or with respect to his subcontracts as defined in subsection (a) (5) (B) of the 1943 act, as the case may be, as to which the condition is not met. [RR 348.2]

(c) *No reduction by refund below exemption.* (1) In connection with the renegotiation of contracts and subcontracts (other than subcontracts referred to in subsection (a) (5) (B) of the 1943 act) no determination of excessive profits shall be made in an amount greater than that which, when deducted from the aggregate amount of gross receipts or accruals referred to in paragraph (b) (1) (ii) of this section will reduce them below \$500,000.

(2) In connection with the renegotiation of subcontracts referred to in subsection (a) (5) (B) of the 1943 act, no determination of excessive profits shall be made in an amount greater than that which, when deducted from the aggregate amount of gross receipts or accruals referred to in paragraph (b) (1) (i) of this section will reduce them below \$25,000.

(3) In the case of a fiscal year of less than twelve months, ending after June 30, 1943, these rules are applied on a prorated basis.

(4) In the renegotiation of contractors who are subject to renegotiation by reason of the common control provisions of the 1943 act (see paragraph (a) of this section) the aggregate of the recoveries from such contractors must not reduce the combined adjusted sales of the contractors below the minimum referred to in this paragraph. [RR 348.3]

(d) *Tests of "control"* In determining whether the contractor controls or is controlled by or under common control with another person, the following principles should be followed:

(1) *Corporate control:* A parent corporation which owns more than 50% of the voting stock of another corporation controls such other corporation and also controls all corporations controlled by such other corporation.

(2) *Individual control:* An individual who owns more than 50% of the voting stock of a corporation controls the corporation and also controls all corporations controlled by the corporation.

(3) *Partnership control:* A general partner who is entitled to more than 50% of the profits of a partnership controls the partnership.

(4) *Joint Venture control:* A joint venturer who is entitled to more than 50% of the profits of a joint venture controls the joint venture.

(5) *Other cases:* Actual control is a question of fact. Whenever it is believed that actual control exists even though the foregoing conditions are not fulfilled, the matter may be determined by the Department or Service conducting the renegotiation. [RR 348.4]

(e) *Subcontracts under contracts exempt under the statutory minimum.* Sales under subcontracts are not exempt solely because the purchaser is a contractor who is exempt because his annual receipts and accruals are under the statutory minimum, since the exemption of subsection (i) (1) (F) of the 1943 act is limited to subcontracts under contracts and subcontracts exempt by reason of subparagraph (1) of paragraph (i) of the 1943 act. (See § 1603.347 (b).) [RR 348.5]

#### SUBPART E—PERMISSIVE EXEMPTIONS FROM RENEGOTIATION

§ 1603.350 *Scope of subpart.* The preceding subpart deals with mandatory exemptions and exclusions from the operation of the Renegotiation Act of 1943. The act contains certain provisions authorizing the War Contracts Board, or persons to whom its authority shall be delegated, to exempt other contracts and subcontracts from the operation of the act. This subpart will deal with these permissive exemptions. [RR 350]

§ 1603.351 *Contracts and subcontracts to be performed outside of the United States*—(a) *Statutory authority.* Subsection (i) (4) of the 1943 act authorizes the War Contracts Price Adjustment Board, in its discretion, to exempt from some or all of the provisions of the act

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

[RR 351.1]

(b) *Exemption.* (1) Each contract or subcontract to be performed outside the territorial limits of the continental United States, outside the territories of Alaska and Hawaii, outside the Panama Canal Zone, and outside the other territories and island possessions of the United States shall be exempt from the provisions of the Renegotiation Act of 1943 unless it shall be determined by the War Contracts Board or by any authority to whom power to exempt individual contracts under subsection (i) (4) (A) of the 1943 act has been or may be delegated or redelegated;

(i) That administrative difficulties do not make impracticable the renegotiation of such contract or subcontract,

(ii) That the procurement program of the United States in foreign countries will not be adversely affected by such renegotiation, and

(iii) That such renegotiation will not otherwise be contrary to the interests of the United States.

(2) In determining whether the procurement program of the United States in foreign countries or the interests of the United States generally will be adversely affected by such renegotiations, it is considered desirable that representatives of the Department of State of the United States be consulted, if practicable; such consultation shall not, however, be essential to the valid renegotiation of any contractor or subcontractor.

(3) Such determination may be made at any time whether before or after the execution of the contract or subcontract and whether or not it contains a renegotiation clause. [RR 351.2]

§ 1603.352 *Contracts and subcontracts where profits determinable when price established*—(a) *Statutory authority.* Subsection (i) (4) of the 1943 act authorizes the War Contracts Price Adjustment Board, in its discretion, to exempt from some or all of the provisions of the act

(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;

[RR 352.1]

(b) *Exemption.* In the opinion of the War Contracts Board the profits from contracts and subcontracts for the purchase or lease of any interest in real estate can be determined with reasonable certainty when the contract price is established, and such contracts and subcontracts are accordingly exempted from the provisions of the Renegotiation Act of 1943. (See § 1603.335 (a).) For an exemption relating to certain contracts and subcontracts involving electric power, gas, transportation by railroad, motor vehicle, or air, and communications and subcontracts thereunder, see § 1608.842. [RR 352.2]

§ 1603.353 *When contract provisions adequate to prevent excessive profits*—(a) *Statutory authority.* Subsection (i) (4) of the 1943 act authorizes the War Contracts Price Adjustment Board, in its discretion, to exempt from some or all of the provisions of the act

(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.

[RR 353.1]

§ 1603.354 *Contracts and subcontracts for standard commercial articles*—(a) *Statutory authority.* (1) Subsection (i) (4) of the 1943 act authorizes the War Contracts Price Adjustment Board, in its discretion, to exempt from some or all of the provisions of the act

(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;

(2) Subsection (a) (7) of the 1943 act provides

(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 material respect with such article with which it is so compared.

(3) Subsection (i) (2) of the 1943 act provides

(2) The Board is authorized by regulation to interpret and apply the definition contained in subsection (a) (7).

[RR 354.1]

(b) *Interpretation and application.* (1) Exemption of standard commercial articles will be made on the basis of "articles" by types or classes and not on the basis of individual contracts or individual contractors. Exemptions will be effective with respect to such date as may be specified in the exemption and will apply to amounts received or accrued or to contracts entered into after the specified date.

(2) Studies made with respect to the existence of excessive profits in the standard commercial article field in connection with the Congressional hearings on the amendments to the Renegotiation Act indicated that the production of standard commercial articles purchased in substantial volume for war purposes had generally resulted in excessive profits on renegotiable business both in 1942 and in 1943. The Congress rejected the suggestion that a basis for exemption existed by reason of the fact a particular article constituted a standard commercial article or was sold under OPA ceiling prices. Furthermore, it is to be noted that the fact that an individual contractor may not be making excessive profits on such an article is of little significance. The status of the individual contractor is more readily dealt with through renegotiation where he can be given a clearance if after examination it is found that no excessive profits exist in the particular case. Accordingly, in order that useless requests for exemption may be avoided, it should be noted that exemptions under section 403 (i) (4) (D) can only be made

where competitive conditions have been such as reasonably to protect the Government against excessive prices and on the basis of broad national conditions and considerations and after complete research and development of the factual and legal questions involved. [RR 354.2]

§ 1603.355 *Contracts and subcontracts when effective competition is likely to exist*—(a) *Statutory authority.* Subsection (i) (4) of the 1943 act authorizes the War Contracts Price Adjustment Board, in its discretion, to exempt from some or all of the provisions of the act

(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.

[RR 355.1]

(b) *General interpretation of exemption.* The War Contracts Board will make exemptions under this provision only as to classes or types of contracts on the basis of the subject matter with which the contract or subcontract is concerned. Exemptions by the Board will be based upon broad national conditions and considerations and will be limited to those fields where, in the opinion of the Board, not only do competitive conditions exist, but the competition is such that it may be presumed to be effective in the sense of producing fair and reasonable prices for the Government and in generally eliminating excessive profits. [RR 355.2]

(c) *Application of exemption to construction contracts.* The Board has found that competitive conditions affecting the making of construction contracts and subcontracts entered into subsequent to June 30, 1943, were such as to result in effective competition with respect to the contract or subcontract price where all of the following conditions exist:

(1) The contract or subcontract is one for the construction of buildings, structures, improvements or other similar facilities. Contracts or subcontracts for the furnishing of materials or supplies or for the lease or sale of machinery or equipment are not within the scope of this exemption. Also see § 1603.346 (b) for interpretation of mandatory exemption relating to such construction and see § 1603.335 (b)

(2) The contract was entered into subsequent to June 30, 1943, and did not constitute a substitute for or a revision or extension of an existing contract entered into on or before June 30, 1943.

(3) The work covered by the contract was substantially the same as the work for which the bids were requested.

(4) Bids were received from two or more responsible and qualified contractors, who were independent of each other and were in actual competition with each other for the work for which bids were requested.

(5) The contract price was not in excess of the low bid received. [RR 355.3]

§ 1603.356 *Subcontracts as to which it is not administratively feasible to determine and segregate profits*—(a) *Stat-*

utory authority. Subsection (i) (4) of the 1943 act authorizes the War Contracts Price Adjustment Board, in its discretion, to exempt from some or all of the provisions of the Act

(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.

[RR 356.1]

(b) *Exemption.* For an exemption relating to subcontracts under certain contracts and subcontracts involving electric power, gas, transportation by railroad, motor vehicle, or air, and communications, see § 1608.842. [RR 356.2]

§ 1603.357 *Delegation of authority to make permissive exemptions.* The authority to make exemptions of contracts or subcontracts under subsection (i) (4) of the 1943 act by general classes or types has not been delegated by the War Contracts Board. The War Contracts Board has, however, delegated to each Secretary authority to make exemptions under this subsection of individual contracts or subcontracts under such contracts entered into pursuant to the authority of such Secretary. Such delegation of authority, however, must be exercised in accordance with interpretations of the act and regulations relating thereto issued by the War Contracts Board. Also, subject to interpretations and regulations of the War Contracts Board, the Secretary to whom an assignment for renegotiation is made has authority to interpret and apply exemptions under subsection (i) (4) of the 1943 act. The Secretaries have been given full power to redelegate this authority and to authorize further redelegation within their respective Departments. (See § 1608.821 (a).) [RR 357]

§ 1603.358 *Requests for exemption.* All requests or petitions for the exemption by general classes or types of contracts and subcontracts for a standard commercial article or of contracts or subcontracts where it is claimed there is "effective competition" or of other general classes or types of contracts under subsection (i) (4) of the 1943 act should be made in writing in triplicate and addressed to the War Contracts Price Adjustment Board at the address specified in § 1607.791 (e) and should be supported by a full statement of facts setting forth the basis for the requested exemption. [RR 358]

#### SUBPART F—LIMITATIONS ON COMMENCEMENT AND COMPLETION OF RENEGOTIATION

§ 1603.360 *Scope of subpart.* The Renegotiation Act of 1943 contains certain limitations on the commencement of renegotiation proceedings and their completion, which will be outlined in this subpart. The related subject of termination of all renegotiation under the act

is covered by the succeeding subpart. [RR 360]

§ 1603.361 *Statutory provision.* Subsection (c) (3) of the Renegotiation Act of 1943 provides:

(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) 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), 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.

[RR 361]

§ 1603.362 *Commencement of renegotiation proceedings.* Unless renegotiation proceedings are commenced either (1) within one year after the close of the fiscal year in which the excessive profits were received or accrued, or (2) within one year after the statement required under subsection (c) (5) of the 1943 act is filed with the War Contracts Board, whichever is later, the liability of the contractor or subcontractor for the fiscal year involved will be discharged. Under subsection (c) (1) of the Renegotiation Act of 1943 the mailing of notice by registered mail of the time and place of a conference to be held with respect to the determination of excessive profits constitutes the commencement of the renegotiation proceeding. [RR 362]

§ 1603.363 *Completion of renegotiation proceedings.* Renegotiation must be completed by the making of an agreement or the entry of an order within one year following the commencement of the renegotiation proceeding, or the liability of the contractor or subcontractor for the fiscal year involved will be discharged. The one year period of limitation on completion of renegotiation proceedings does not apply, however, to the review by the War Contracts Board of an order made by a Secretary of a Department or any officer or agency to whom his authority in this respect has been redelegated. Also, the one year period may be extended by mutual agreement. [RR 363]

#### SUBPART G—TERMINATION OF RENEGOTIATION

§ 1603.370 *Scope of subpart.* This subpart deals with termination of rene-

gotiation in general under the provisions of subsection (h) of the Renegotiation Act of 1943. [RR 370]

§ 1603.371 *Statutory provision.* (a) Subsection (h) of the 1943 act provides that the act shall apply only with respect to profits which are attributable to performance prior to the termination date, and for the determination of such profits, as follows:

(A) in the case of any contract or subcontract the performance of which requires more than twelve months, or in the case of any contract, or subcontract with respect to which the powers of the Board are exercised separately pursuant to subsection (e) (1) rather than on a fiscal-year basis, the portion of the profits so derived which is determined by the Board to be equal to the same percentage of the total profits so derived as the percentage of completion of the contract prior to the termination date; and

(B) in all other cases, the profits so derived which are received or accrued prior to the termination date;

(b) Subsection (h) (2) of the 1943 act defines the "termination date" as follows:

(A) December 31, 1944; or

(B) If the President not later than December 1, 1944, finds and by proclamation declares that competitive conditions have not been restored, such date not later than June 30, 1945, as may be specified by the President in such proclamation as the termination date; or

(C) If the President, not later than June 30, 1945, finds and by proclamation declares that competitive conditions have been restored as of any date within six months prior to the issuance of such proclamation, the date as of which the President in such proclamation declares that competitive conditions have been restored;

except that in no event shall the termination date extend beyond the date proclaimed by the President as the date of the termination of hostilities in the present war, or the date specified in a concurrent resolution of the two Houses of Congress as the date of such termination, whichever is the earlier.

[RR 371]

#### SUBPART H—COSTS ALLOCABLE AND ALLOWABLE AGAINST RENEGOTIABLE BUSINESS

§ 1603.380 *Scope of subpart.* When the amount of the contractor's business subject to renegotiation has been determined, it is necessary to determine the costs properly chargeable against the business in order to find the amount of profits derived therefrom. This subpart discusses the principles for determining the allocation and allowance of such costs. [RR 380]

§ 1603.381 *Statutory provisions and general regulations—(a) Determination of costs.* Subsection (a) (4) (B) of the 1943 act provides:

(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 2 E of the Internal Revenue Code (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.

[RR 381.1]

(b) "Recomputation" of amortization deduction prior to renegotiation; carry-overs and carry-backs. Subsection (a) (4) (C) of the 1943 act provides:

(C) Notwithstanding any of the provisions of this section to the contrary, no amount shall be allowed as an item of cost (1) by reason of a recomputation of the amortization deduction pursuant to section 124 (d) of the Internal Revenue Code 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 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.

[RR 381.2]

(c) Renegotiation rebate where "recomputation" of amortization deduction follows renegotiation. Subsection (a) (4) (D) of the 1943 act provides:

(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 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 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 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.

[RR 381.3]

(d) Profit, cost allocation and allowance; general—(1) Profit. The term "profits derived from contracts with the departments and subcontracts" is defined by the act as the excess of the amount received or accrued under contracts and subcontracts over the costs paid or incurred with respect thereto. The term "costs" includes selling, general and administrative expenses. Such profits will be determined with respect to the aggregate of the amounts received or accrued under all contracts and subcontracts for the taxable year of the contractor on either the cash or the accrual basis, according to the method by which the contractor keeps his books, and will not be determined on a contract-by-contract basis unless the contractor so requests and the Department conducting the renegotiation consents.

(2) Allocation of cost. In general the costs paid or incurred with respect to renegotiable contracts will be those costs allocated thereto by the contractor's established cost accounting method if that method reflects recognized accounting principles and practices. If, in the opinion of the War Contracts Board there is no adequate or effective cost accounting method in use, or if the method employed does not properly reflect such costs because there are unjustified or improper allocations of items of cost in the accounting records or in the reports or statements filed for the purpose of renegotiation, costs shall be determined in accordance with such method as in the opinion of the Board properly reflects such costs. No item of cost shall be charged to any contract or subcontract or used in any manner in determining costs to the extent that such item is not properly chargeable to such contracts or subcontracts.

(3) Tax deductions. Costs allocable to renegotiable business shall be determined in accordance with the principles set forth above. Where the full amount of an item of cost is allocable to renegotiable business, it shall be allowed in the amount estimated by the War Contracts Board, or any agency to which its functions are delegated, to be allowable as a deduction or exclusion under Chapters 1 and 2E of the Internal Revenue Code. No such item of cost shall be allowed in an amount less than or in excess of that which is estimated to be deductible or excludible from income under the Internal Revenue Code. Where only a portion of an item of cost is allocable to renegotiable business, the War Contracts Board, or any agency to which its functions have been delegated, shall estimate the total amount allowable to the contractor, as a deduction or exclusion under Chapters 1 and 2E of the Internal Revenue Code and the portion of this estimated amount which is allocable to renegotiable business in accordance with the principles set forth above shall be allowed as a cost of renegotiable business. Where it is clear that a contractor's deductions and exclusions under the Internal Revenue Code result in allowable costs of renegotiable business which are either high or low on a comparative basis, this circumstance shall be considered in connection with the factor of the "reasonableness of costs" of the contractor and the determination of the amount of the profit adjustment to be required of the contractor. [RR 381.4]

§ 1603.382 Salaries, wages and other compensation.—(a) Allocation. Salaries, wages and other compensation should be allocated between renegotiable and non-renegotiable business according to principles established in § 1603.381 (d). [RR 382.1]

(b) Allowances. (1) Under section 23 (a) of the Internal Revenue Code, salaries or other compensation for personal services are allowed to the extent found "reasonable" in determining whether any salaries or other compensation paid by a contractor to its officers or employees are unreasonable, consideration shall be given to the nature of the work, extent of responsibility, experience and effectiveness of the officer or employee, and increases in compensation since January 1, 1941. Comparison shall be made where possible with the compensation of officers or employees in similar positions in other companies within the particular industry. Reasonableness of compensation may be determined only within broad limits, and weight shall be given to the determination by the contractor of the worth to it of the services of an officer or employee.

(2) Whether or not the profit and loss statement of a partnership includes salaries or drawing accounts for partners as an expense, a so-called "salary allowance" may be made for reasonable salaries for such partners as are active in the business in determining the amount of excessive profits to be eliminated.

(3) Reasonable salaries paid to employees who are absent on military or

naval service or who are serving the Government in other ways at a nominal compensation but who intend to return at the conclusion of the emergency will be allowed as a cost if such salaries are paid under some standard arrangement adopted by the contractor for general application, and are properly allocated between renegotiable and non-renegotiable business. [RR 382.2]

(c) *Wage and salary stabilization.* (1) The renegotiating agency, in considering wages and salaries as costs, will observe the provisions of the Stabilization Act of 1942, approved October 2, 1942, as amended, and all Executive Orders and regulations issued pursuant to said act.

(2) The Director of Economic Stabilization has issued regulations effective October 27, 1942 and amended regulations effective August 27, 1943.

(3) The Commissioner of Internal Revenue has issued regulations covering that portion of salary stabilization which is administered by the Commissioner.

(4) The National War Labor Board has issued directives setting forth its policies with respect to that portion of the wage and salary stabilization which is administered by such Board.

(5) In any case in which the renegotiating agency determines that there may have been a violation of any applicable stabilization law, executive order or regulation, the renegotiating agency will promptly submit all of the pertinent facts to the War Contracts Price Adjustment Board for a decision as to the proper procedure to be followed.

(6) Full compliance with the Stabilization Act does not preclude the disallowance as a deduction under the Internal Revenue Code of wage and salary payments in excess of "a reasonable allowance" No part of any amount estimated to be not allowable under the Internal Revenue Code will be allowed as a cost against renegotiable business. [RR 382.3]

(d) *Application of stabilization orders in renegotiation.* For fiscal years ending after October 27, 1942, the only limitation on salaries other than the usual test of reasonableness, is the prohibition (with exceptions) of increases in salary rate of over \$5,000 annually, existing on October 3, 1942, and in salary rate of \$5,000 or less annually, existing on October 27, 1942, without prior approval of governmental authorities. The exceptions referred to are cited in § 1608.851. They first appeared in § 4001.6 of the stabilization regulations and later in substantially similar form in § 4001.10 of the amended stabilization regulations referred to in paragraph (b) (2). As cited in § 1608.851, they appear in the form contained in the amended stabilization regulations. [RR 382.4]

(e) *Brokers' commissions.* Commissions paid or payable to brokers or agents in connection with the procurement or performance of war contracts pursuant to a legally binding arrangement made in good faith prior to the fiscal year covered by the renegotiation will be allowed as a cost in the absence of special circumstances. Such special circumstances

might exist where the broker or agent was a partner, officer or director of the contractor; or where any partner, officer or director of the contractor participated in the commissions paid to the broker or agent; or where the original arrangement between the contractor and the broker or agent was not made at arm's length. If it appears that the payment of the commissions might violate the provision in the contracts of any Department against contingent fees other than those paid to "bona fide established commission or selling agencies maintained by the contractor for the purpose of securing business" the question ordinarily will be taken up with the Purchases Division, Army Service Forces, the Procurement Legal Division of the Navy Department, or the appropriate division of the other Departments, and, subject to the provisions of § 1603.381 (d) (2) the commissions may be disallowed. Whenever the payment of commissions is allowed to the contractor, consideration will be given to the prompt renegotiation of the broker or agent if the services he performed bring him within the definition of "subcontractor" (See §§ 1602.203 (d) and 1603.336.) [RR 382.5]

(f) *Pension, annuity, stock bonus and profit sharing plans.* The policy set out below will be followed in connection with the allowance as an item of cost against renegotiable business of payments made by a contractor on account of any employee pension, annuity, stock bonus, or profit sharing plan (hereinafter referred to as "the plan")

(1) The deductibility for Federal income tax purposes of payments pursuant to the plan is governed by sections 23 (a) 23 (p) and 165 of the Internal Revenue Code. If the Bureau of Internal Revenue has determined that payments (including payments to bring annuities up to date) on account of the plan of the particular contractor concerned are deductible, such payments shall be allowed as an item of cost in renegotiation to the extent allocable to renegotiable business.

(2) If the Bureau of Internal Revenue has not finally determined the deductibility of such payments, the renegotiating Department must estimate the amount of such payments which is allowable as a deduction under sections 23 (a) 23 (p) and 165 of the Internal Revenue Code. The Department will be guided by the following general principles:

(i) The employer's payment into the plan, when added to other compensation paid the employee, cannot exceed reasonable compensation for services rendered by the employee beneficiary of the plan.

(ii) The employees' rights under the plan must be nonforfeitable at the time the employer's payment is made or the plan must qualify under the provisions of section 165 of the Internal Revenue Code. In determining whether it does so qualify, the renegotiating agency should consult section 165 and the appropriate Treasury Regulations for the exact requirements for qualification. In general, the following requirements must be met: (a) the plan must imply a per-

manent as distinguished from a temporary program; (b) it must not be a subterfuge for distribution of profits; (c) it must be for the exclusive benefit of employees; (d) it must be impossible, under the trust, to divert the trust property or income to purposes other than the employees' benefit; (e) it must cover a sufficient number of employees so as to be non-discriminatory; and (f) in operation, the plan must not discriminate in favor of employees who are officers, stockholders or highly compensated employees. A plan which qualifies under the foregoing is not disqualified by the fact that the employer may be entitled to receive back amounts which result from erroneous actuarial computations.

(iii) In any event, the payments on account of the plan, to be allowed as deductions for Federal income tax purposes, must actually have been paid within the taxable year or, if the taxpayer is on an accrual basis, within 60 days after the close of such taxable year.

(3) Payments made pursuant to any plan, like any other expense, should be allowed only to the extent allocable to renegotiable business, such amount to be determined in accordance with the principles applicable to the allocation of expenses generally. [RR 382.6]

§ 1603.383 *Amortization and depreciation—(a) Allocation.* (1) General depreciation, maintenance and other such charges should be allocated between renegotiable and non-renegotiable business according to the principles established in § 1603.381 (d)

(2) Where stand-by facilities are customary or necessary to a particular type of business, the cost of depreciation, maintenance, etc. should be allocated between renegotiable and non-renegotiable business according to the principles established in § 1603.381 (d)

(3) Statutory amortization on facilities covered by certificates of necessity should be allocated between renegotiable and non-renegotiable business according to the principles established in § 1603.381 (d) giving consideration, however, to the basis of original issuance of such certificates where the facilities are not in active use.

(4) Depreciation and maintenance charges on properties which are not in use but which are being maintained in an idle status pursuant to written request of an authorized official of a Department may be allocated as a charge against renegotiable business. [RR 383.1]

(b) *Accelerated amortization and renegotiation rebate.* (1) Under section 124 of the Internal Revenue Code, a contractor who has acquired or constructed with his own funds facilities especially adapted for use in war production may, upon securing a Certificate of Necessity, amortize their cost over a five-year period, at the rate of 20 per cent per year. Prior to December 17, 1943, the Secretary of War and the Secretary of the Navy were by such statute authorized to act upon applications for Certificates of Necessity. Under Executive Order No. 9406, dated December 17, 1943, as amend-

ed by Executive Order No. 9429, dated March 2, 1944, this authority (except with reference to certain pending applications) was transferred to the War Production Board. The Facilities Bureau of the War Production Board will pass upon requests for such certificates made after December 17, 1943.

(2) Amortization so allowed at the rate of 20 percent per year under section 124 of the Internal Revenue Code shall be allowed as an item of cost for purposes of renegotiation, to the extent it is properly allocable to renegotiable business.

(3) If the emergency is terminated during the five-year period; or if the Secretary of War or the Secretary of the Navy certifies pursuant to regulations issued by the President, that an emergency facility ceases to be necessary for national defense, the amortization period may for Federal tax purposes be shortened accordingly, and the contractor will be entitled to adjust his taxes for prior years, on the conditions stated in the Internal Revenue Code, to give effect to the corresponding increase in the deduction taken in each such year.

(4) Under subsection (a) (4) (C) of the 1943 act, no allowance as an item of cost in renegotiation shall be made on account of the increased amortization deduction referred to in the preceding subparagraph (3) unless the computation thereof is made by the Bureau of Internal Revenue, in connection with an adjustment of taxes pursuant to section 124 (d) of the Internal Revenue Code, before the renegotiation is concluded. The Department shall not, however, permit the absence of such a recomputation of the amortization deduction to be a cause for postponing closing a renegotiation agreement.

(5) Subsection (a) (4) (D) of the 1943 act provides for payment of a renegotiation rebate to the contractor in those cases where the increased amortization deduction for a prior tax year is so computed by the Bureau of Internal Revenue after the determination of excessive profits has been made by agreement or order. However, no computation of the increased amortization deduction incident to the tax adjustment above referred to can be made until regulations have been prescribed for the issuance by the Secretary of War or the Secretary of the Navy of a certificate that an emergency facility has ceased to be necessary for national defense. It is contemplated that upon the issuance of such regulations, instructions will be issued hereunder for the computation and granting of the renegotiation rebate. [RR 383.2]

(c) *Depreciation.* (1) War facilities not covered by Certificates of Necessity, representing permanent capital additions for the manufacture of war products or materials, are depreciated in accordance with the provisions of the Internal Revenue Code and will be depreciated in renegotiation, at the ordinary rates of depreciation for corresponding property.

(2) A Department conducting a renegotiation may allow depreciation on machinery and equipment at higher than ordinary rates when, because of its use for extraordinary consecutive periods of

day and night shifts, or other circumstances, it is concluded that such higher rates would be allowable under the Internal Revenue Code. [RR 383.3]

§ 1603.384 *Conversion to war production.* The full amount of costs of converting facilities to war production which do not represent permanent additions, such as rearrangement of machinery, is allowed by the Bureau, and will be allowed in renegotiation, for the year in which it is incurred to the extent allocable to renegotiable business. This does not include losses on commercial inventory which has become unsalable as a result of wartime regulations or loss of market, for such losses are not properly allocable to renegotiable business. [RR 384]

§ 1603.385 *Losses—(a) Costs or losses on non-war ventures.* Losses and costs incurred in connection with business activities or ventures not connected with renegotiable business will be charged against such business activities or ventures and not to renegotiable business. [RR 385.1]

(b) *War losses.* Section 127 of the Internal Revenue Code provides that the amount of the loss on account of property destroyed or seized on or after December 7, 1941, in the course of military or naval operations by the United States or any other country engaged in the present war may be allowed as a deduction from income in the year in which such destruction or seizure occurs. The fact that the property has been destroyed or seized in the course of the war does not of itself, however, establish that the loss is properly allocable to renegotiable business. Such a loss may be recognized in renegotiation only to the extent that on appropriate cost accounting principles such loss is chargeable against the performance of renegotiable contracts or subcontracts. [RR 385.2]

(c) *Losses from prior or subsequent years.* Subsection (a) (4) (C) of the 1943 act prohibits the allowance of any amount as an item of cost by reason of the application of a carry-over or carry-back. Therefore, notwithstanding that section 122 of the Internal Revenue Code authorizes a taxpayer, under certain prescribed rules, to take a deduction for a taxable-year by a "carry-over" or "carry-back" of net operating losses for certain preceding or subsequent taxable years, no such deduction shall be allowable in renegotiation as an item of cost or as a deduction or exclusion from excessive profits. [RR 385.3]

§ 1603.386 *Interest—(a) Allocation.* (1) All interest on borrowed funds should be allocated between renegotiable and non-renegotiable business according to the principles established in § 1603.381 (d).

(2) Where a contractor has incurred obligations obviously disproportionate to the current volume of business, careful study should be made to ascertain the total amount of interest to be distributed in accordance with the above procedure. [RR 386.1]

(b) *Allowance.* Interest on borrowed capital is deductible under the Internal

Revenue Code and will, therefore, be allowed in renegotiation to the extent allocable to renegotiable business. [RR 386.2]

§ 1603.387 *Advertising expenses—(a) Allocation.* Advertising costs should be allocated between renegotiable and non-renegotiable business according to the principles established in § 1603.381 (d) [RR 387.1]

(b) *Allowance.* (1) In estimating the amount allowable under the Internal Revenue Code as a deduction for advertising expenses, consideration will be given to the following statement issued by the Commissioner of Internal Revenue on September 29, 1942:

To be deductible, advertising expenditures must be ordinary and necessary and bear a reasonable relation to the business activities in which the enterprise is engaged. The Bureau recognizes that advertising is a necessary and legitimate business expense so long as it is not carried to an unreasonable extent or does not become an attempt to avoid proper tax payments.

The Bureau realizes that it may be necessary for taxpayers now engaged in war production to maintain through advertising, their trade names and the knowledge of the quality of their products and good will built up over past years, so that when they return to peacetime production their names and the quality of their products will be known to the public.

In determining whether such expenditures are allowable, cognizance will be taken of (1) the size of the business, (2) the amount of prior advertising budgets, (3) the public patronage reasonably to be expected in the future, (4) the increased cost of the elements entering into the total of advertising expenditures, (5) the introduction of new products and added lines, and (6) buying habits necessitated by war restrictions by priorities, and by the unavailability of many of the raw materials formerly fabricated into the advertised products.

Reasonable expenses incurred by companies in advertising and advertising technique to speed the war effort among their own employees, and to cut down accidents and unnecessary absences and inefficiency, will be allowed as deductions. Also reasonable expenditures for advertisements, including the promotion of Government objectives in wartime, such as conservation, salvage, or the sale of War Bonds, which are signed by the advertiser, will be deductible provided they are reasonable and are not made in an attempt to avoid proper taxation.

(2) Expenditures for advertising which does not identify the particular company or product but which is solely for the purpose of aiding the war effort may, subject to certain limitations, be deductible as contributions for public purposes under section 23 (o) or 23 (q) of the Internal Revenue Code (see special ruling by the Commissioner of Internal Revenue on this question, dated November 10, 1942)

(3) Advertising of specific products of a character different from those furnished under renegotiable contracts or subcontracts should not ordinarily be allocated as a cost against renegotiable business. However, where a normal volume of peacetime products have been wholly or partly replaced by war products, an amount of product advertising not inconsistent with the past practice of the business may be considered as es-

sententially institutional advertising designed to keep an advertiser's name or the identity of his peacetime products before the public and so subject to allocation against renegotiable as well as non-renegotiable business. In considering advertising expenditures in connection with the determination of the "reasonableness of costs" of the contractor's business, the relationship between advertising costs and sales in present and past periods should be considered and a determination made as to whether or not the total advertising costs are reasonable and proper under the circumstances. [RR 387.2]

§ 1603.388 *Other costs, expenses and reserves—(a) Patent royalties.* (1) When in renegotiation, a contractor has included substantial amounts in costs for royalties, paid or payable under patent licenses, the Departments will determine whether any action has been taken, or is pending or contemplated under the Royalty Adjustment Act (see § 1601.141) and will be guided by the principles set out below.

(2) An order under the Royalty Adjustment Act fixing the rates and amounts of royalties to be paid under a license agreement has no legal effect retroactively. The order applies only to royalties payable to the licensor after the effective date of the notice under the statute, whether or not accruing before or after the date, and does not and cannot require the refund of any royalties which have been paid prior thereto.

(3) In determining excessive profits of a licensee upon renegotiation for a period in which royalty accruals are subject to an order under the Royalty Adjustment Act, the Departments will give full effect to the rates or amounts of royalties fixed in the Royalty Adjustment Act order as fair and just under the conditions of wartime production. No allowance will be made in renegotiation for royalties paid or accruing during that period in excess of the rates or amounts fixed in the order.

(4) In renegotiation with a license for a period prior to that in which royalty accruals are subject to an order under the Royalty Adjustment Act, no weight will normally be given to the determination made in a later order as to what rates and amounts of royalties are fair and just. In such a case as well as in one where no action under the Royalty Adjustment Act is involved, the renegotiating Department will estimate the amount of the royalties allowable as a deduction for Federal income tax purposes. Ordinarily the licensee will be allowed to include in his costs royalties properly allocable to renegotiable business provided they are actually paid to the licensor prior to the service of a notice in any royalty adjustment proceedings. However, an amount paid pursuant to an arrangement not entered into at arm's length or without a full disclosure of interest, or in bad faith, should be disallowed as an item of cost if it is not an "ordinary and necessary" business expense within the meaning of section 23 (a) of the Internal Revenue Code. Particular attention should be

given to any relationship or affiliation to the licensor; for example where the licensor was a partner, officer or director of the licensee; or where any partner, officer or director of the licensee participated in the royalties paid to the licensor.

(5) In determining excessive profits of a licensor under the renegotiation statute, where the licensor sells the patented article in competition with like articles sold by others under license from the licensor, the licensor will not include in his costs any development charges except such amortization and development expenses as, it is estimated, are allowable as deductions under the Internal Revenue Code, even though the obligation to pay the royalties requires his licensees to charge a higher price for the competing product.

(6) No royalties paid or incurred by a licensee and no amortization or development expense charged by a licensor will be allocated as a cost in determining excessive profits under the renegotiation statute, whether or not allowable as a deduction under the Internal Revenue Code, unless such payments or charges are allocable to the sales made under contracts subject to renegotiation. In deciding this question as to any particular patent, the Departments should consider the extent to which the products sold involve the use of the invention or inventions covered by the patent, and as a general rule it should appear that the patent has not expired, that no final adjudication has been made by a court of competent jurisdiction holding the patent invalid, and that it is not in fact the property of the licensee. [RR 388.1]

(b) *Corporate charitable contributions.* Contributions of the character described in section 23 (q) of the Internal Revenue Code by a corporation will, to the extent allocable, be allowed as an expense against renegotiable business if such contributions are allowable as deductions in the fiscal year concerned for Federal income tax purposes under section 23 (q) [RR 388.2]

(c) *Cost allowance in connection with raw materials.* Reference is made to § 1603.344 (c) and (d) for a discussion of the non-renegotiable nature of certain excess raw material inventory and the allowance to be made for the value of exempt raw materials. [RR 388.3]

§ 1603.389 *State income taxes—(a) In general.* Under subsection (a) (4) (B) of the 1943 act, taxes measured by income cannot be allowed as items of cost for purposes of renegotiation. However, this subsection provides specifically that 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) so excluded, which are attributable to non-excessive renegotiable profits. The amount of any such adjustment will in no case exceed that part of such taxes actually payable which is payable because of the inclusion in income of the non-excessive renegotiable profits. Such taxes are herein referred to generally as "State income taxes" although actually they may not

be called "income taxes" and although they may be imposed by a political subdivision other than a State. [RR 389.1]

(b) *Adjustment for State tax imposed at a "flat rate"* (1) The amount of unadjusted excessive profits, without consideration of any State income tax, is first determined. This amount is then deducted from renegotiable profits to obtain the amount of non-excessive renegotiable profits. The State income tax attributable to such non-excessive renegotiable profits is computed and this amount is deducted from the unadjusted excessive profits. The remainder constitutes the excessive profits to be eliminated, subject of course to any Federal tax credit to which the contractor may be entitled under section 3806 of the Internal Revenue Code. (See § 1604.440 and following.) If the contractor has a loss on non-renegotiable business, the unadjusted excessive profits will be deducted from the total profits (including renegotiable and non-renegotiable business) to obtain the tentative retained profits. The tax attributable to the non-excessive renegotiable profits will then be the amount of tax computed on such tentative retained profits.

(2) The general method of calculation is illustrated by the example set forth in the reports of the House Committee on Ways and Means and the Senate Committee on Finance in dealing with subsection (a) (4) (B) of the 1943 act;

For example, if the amount due on a contract is \$1,000 and the cost is \$800, the profit before adjustment for such tax is \$200. Suppose that of the \$200 profit, \$90 is considered excessive before adjustment for the State tax. If in such case the State income tax on the remaining \$110 is \$11, then the \$11 is to be applied against the \$90, reducing to \$79 the amount of excessive profits to be eliminated.

(3) The amount of unadjusted excessive profits (i. e. before the adjustment for State income tax) will be a "rounded" figure, but after the tax attributable to the non-excessive renegotiable profits has been ascertained, there will be no "rounding-off" in deducting such amount from the unadjusted excessive profits to obtain the final amount of excessive profits to be eliminated. [RR 389.2]

(c) *Adjustment for graduated State tax.* If the State income tax is imposed at graduated rates as distinguished from a "flat rate" the adjustment is to be made as follows:

(1) The contractor's total profits subject to the State tax, including non-renegotiable and renegotiable profits, is determined. The unadjusted excessive profits are deducted from such total profits to obtain the contractor's tentative retained profits. The unadjusted excessive profits are also deducted from the renegotiable profits to obtain the non-excessive renegotiable profits.

(2) The State tax on the tentative retained profits is computed as though such profits were the only profits of the contractor.

(3) The tax attributable to the non-excessive renegotiable profits will then be the amount which bears the same ratio to the tax computed in subparagraph (2)

above as the amount of non-excessive negotiable profits bears to the tentative retained profits.

(4) The tax attributable to the non-excessive renegotiable profits computed in subparagraph (3) is deducted from the unadjusted excessive profits to obtain the amount of excessive profits to be eliminated.

(5) If the contractor has a loss on non-renegotiable business, the tax attributable to the non-excessive renegotiable profits will be the amount of tax computed on the tentative retained profits determined as provided in subparagraph (1) above. [RR 389.3]

(d) *Multiple State income taxes.* If the contractor is doing business in more than one State, he may be subject to more than one income tax. In such event, the adjustment should be made by an accurate determination of the tax attributable to the non-excessive renegotiable profits imposed by each State, if such a computation is feasible. If an exact computation is not feasible, the adjustment should be made upon the best estimate of the renegotiating agency and the contractor, made in good faith and with reasonable care. This estimate may take the form of a pro-rata application to each State of the non-excessive renegotiable profits based upon the profits before renegotiation attributable to each State, if no more accurate method is available. If all such taxes are imposed at flat rates, a composite rate may be obtained by dividing total State income taxes by total profits, and this composite rate may be applied to the non-excessive renegotiable profits. [RR 389.4]

(e) *State income tax measured by income for preceding year.* In some States, the tax is measured by the income for the year subject to renegotiation but is a liability of the contractor not for such year but for the next succeeding year. In this event, the adjustment for such tax will be made as though such tax measured by the income subject to renegotiation were in fact a liability for the year subject to renegotiation. [RR 389.5]

(f) *Adjustment for State income tax of contractor operating as a partnership or sole proprietorship.* (1) A contractor doing business as a partnership or sole proprietorship is entitled to an adjustment for State income tax based upon the tax liability of the individual partners or of the proprietor. In general, the same procedure will be followed as stated above. Thus, in the case of a partnership, adjustment will be made for the aggregate of the state taxes attributable to each partner's share of non-excessive renegotiable profits.

(2) Normally the State income tax is imposed upon individuals on a graduated basis. Reference is therefore made to paragraph (c) of this section.

(3) If a contractor is a partnership or sole proprietorship and is subjected to an unincorporated business tax measured by income, adjustment must be made therefor as well as for the State income taxes of the partners or the proprietor.

(4) If a so-called "salary allowance" is made in renegotiation for the services of partners or proprietors, the amount of such "salary" allowed to each partner or to the proprietor will be deducted from

the partner's or proprietor's share of the non-excessive renegotiable profits before calculation of the State income tax attributable to such non-excessive renegotiable profits. Such "salary allowance" will also be deducted before calculating any such unincorporated business tax adjustment. [RR 389.6]

#### PART 1604—DETERMINATION AND ELIMINATION OF EXCESSIVE PROFITS

Part 1604 governing determination and elimination of excessive profits is added, as set forth below.

##### SUBPART A—PRINCIPLES AND FACTORS IN DETERMINING EXCESSIVE PROFITS

- Sec.
- 1604.401 Scope of subpart.
- 1604.402 General considerations.
- (a) General approach.
- (b) General objectives.
- (c) Process of renegotiation.
- 1604.403 Specific considerations.
- (a) Profits before taxes.
- (b) Separation of fixed-price and other special fee contracts.
- (c) Comparisons.
- (d) Factors considered.
- (e) Significance of settlements for prior years.
- (f) Reserves against possible renegotiation refunds.
- 1604.404 Computing margins of profit.
- 1604.405 Overextended contractors.
- 1604.406 Minimum refund.
- 1604.407 Cost-plus-fixed-fee contracts.
- (a) Policy.
- (b) Procedure.
- (c) Treatment of disallowed costs and adjustment of fees.
- (d) Profit margins.
- 1604.408 Factors requiring consideration.
- 1604.409 General policy.
- 1604.410 Efficiency of contractor.
- (a) Statutory provision.
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- 1604.411 Reasonableness of costs and profits.
- (a) Statutory provision.
- (b) Comment.
- 1604.412 Capital employed.
- (a) Statutory provision.
- (b) Comment.
- 1604.413 Extent of risk assumed.
- (a) Statutory provision.
- (b) Comment.
- 1604.414 Contribution to the war effort.
- (a) Statutory provision.
- (b) Comment.
- 1604.415 Character of business.
- (a) Statutory provision.
- (b) Comment.
- 1604.416 Additional factors.
- (a) Statutory provision.
- (b) Factors provided by regulations.

##### SUBPART B—RECOVERY OF EXCESSIVE PROFITS ALREADY REALIZED

- 1604.420 Scope of subpart.
- 1604.421 Statutory provision.
- 1604.422 Recovery by voluntary repayment.
- (a) In general.
- (b) Time of repayment, general rule.
- (c) Relation to income tax payments.
- (d) Interest.
- (e) Repayment by credit memoranda.
- (f) Tax anticipation notes not acceptable.
- (g) Authority to enforce payment.
- 1604.423 Withholding as a method of recovery.
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##### SUBPART C—PRICE REDUCTIONS FOR FUTURE DELIVERIES

- 1604.430 Scope of subpart.
- 1604.431 Statutory references.
- 1604.432 Necessity for future pricing in renegotiation.

##### Sec.

- 1604.433 General policy on price reductions for future deliveries.
- 1604.434 Determination of amounts of price reductions.
- 1604.435 Reductions not final.
- 1604.436 Performance of agreement to reduce prices.

##### SUBPART D—RENEGOTIATION AND TAXES

- 1604.440 Scope of subpart.
- 1604.441 Statutory provisions.
- (a) Subsection (c) (2) of the 1943 act.
- (b) Section 3208 of the Internal Revenue Code.
- 1604.442 Renegotiation after filing of Federal tax returns.
- (a) Allowance of credit for Federal taxes.
- (b) Computation of credit for Federal taxes.
- (c) Federal tax credit of individuals under Current Tax Payment Act.
- (d) Determination of Federal tax credit for partnerships.
- 1604.443 Renegotiation prior to filing of Federal tax returns.
- (a) Exclusion of excessive profits from returns.
- (b) Effect of tentative tax return.
- 1604.444 Special allocations of excessive profits elimination required for Federal tax purposes.

##### SUBPART A—PRINCIPLES AND FACTORS IN DETERMINING EXCESSIVE PROFIT

§ 1604.401 *Scope of subpart.* This subpart deals with general principles to be applied and certain factors which are specified in the act to be considered in the determination of excessive profits under the terms of the act. [RR 4011]

§ 1604.402 *General considerations—*  
 (a) *General approach.* (1) Under war conditions the Government is the nation's principal buyer. Its purchases are paid for by taxation and borrowing. The lower the costs of production and the prices paid directly or indirectly by the Government, the less will be the financial burden on the people of the country. War materials are essential to the life of a nation at war. The Government as buyer must acquire these products and the producers of them, as a group, are the only sources of supply. Renegotiation protects the Government and the public on the cost of war goods purchased and against excessive profits arising from the prices paid for them. Control of price and profit through renegotiation is a general substitute for the pressure of competition on prices and profits in peacetime, which is largely eliminated in a war economy when the demand for war goods greatly exceeds the available supply.

(2) Sound pricing in many instances was difficult or impossible under the complications of such a vast and diversified volume of purchasing in terms of individual contracts. Renegotiation is intended to insure that prices charged for war products include only a reasonable profit after full consideration of all the pertinent facts and factors of a contractor's business over a full fiscal year's operations and after the actual costs and profits for the period have been established.

(3) Renegotiation is in effect an overall repricing, in which the contractor has the advantage of combining, in the fiscal year, prices, costs and profits on all ele-

ments of his production after actual production experience. Prices are composed of costs and profits. Where the prices have been so high as to produce excessive profits, the adjustment of prices is accomplished primarily through an adjustment of the profits included in the prices.

(4) An important goal of renegotiation is to bring sufficient pressure on excessive prices to induce constructive action toward reductions in unit costs and subsequent reductions in prices.

(5) The Renegotiation Act contemplates the elimination of excessive profits from war production primarily through voluntary agreements between the contractor and the Government. It is intended that a just and reasonable wartime profit be allowed. It is not intended to reduce profits to the narrowest possible margin but to eliminate profits considered excessive and allow the contractor to retain a profit, computed before Federal taxes on income, in an amount that will represent reasonable compensation for war production in the light of the contractor's peacetime experience, expanded volume of production, efficiency, invested capital, risks assumed and other contributions to the prosecution of the war. However, it should be recognized that the weapons and war goods which the nation needs should be produced at a modest profit. [RR 402.1]

(b) *General objectives.* The general objectives in renegotiation are briefly as follows:

(1) To eliminate profits which may be considered excessive after careful review of the circumstances of a contractor's business.

(2) To maintain or provide a substitute for competitive pressures on prices and costs.

(3) To induce reductions in prices and costs.

(4) To reward efficiency and stimulate production.

(5) To encourage prompt adjustment to a reasonable price basis when production experience indicates the original price basis was unreasonably high. [RR 402.2]

(c) *Process of renegotiation.* In making renegotiation determinations, the Departments and their representatives shall apply the following general principles:

(1) All of the information necessary to a sound and supportable determination shall be obtained.

(2) The contractor shall be given an opportunity to develop and present whatever information is available to him which he may consider pertinent to the determination.

(3) Requests for additional information and the number of meetings held with the contractor or his representatives shall be held to a minimum.

(4) Financial and factual information is to be reviewed with the contractor and his agreement to its accuracy obtained whenever possible.

(5) The contractor is to be given every possible assistance and all necessary information with respect to the technical requirements of renegotiation,

the Renegotiation Act and the Renegotiation Regulations.

(6) The facts and conclusions with respect to the contractor's business are to be fully developed before a determination of excessive profits.

(7) Determinations, either proposed or final, are to be carefully considered and are to weigh all the facts and factors of the contractor's business as presented and established. [RR 402.3]

§ 1604.403 *Specific considerations—*

(a) *Profits before taxes.* In renegotiation the amount of excessive profits is to be determined before provision for Federal taxes on income. Profit margins on war contracts should not be increased or maintained at a high level in order to offset higher taxes. To permit such a practice would nullify the intent of Congress as expressed in the Revenue Act. [RR 403.1]

(b) *Separation of fixed-price and other special fee contracts.* Cost-plus-fixed-fee and other special fee contracts of a contractor are to be treated separately from fixed-price contracts. It is necessary to set forth separately the amount of renegotiable business done on cost-plus-fixed-fee or other special fee contracts. (See § 1604.407.) [RR 403.2]

(c) *Comparisons.* In evaluating a contractor's performance, comparisons should be made with the prices, costs and profits of other contractors engaged in the production of the same or similar products or using the same or similar processes. [RR 403.3]

(d) *Factors considered.* The factors required to be given consideration are stated in §§ 1604.408 through 1604.416. [RR 403.4]

(e) *Significance of settlements for prior years.* (1) Notwithstanding the existence of a renegotiation settlement for a previous fiscal year, all the facts applicable to a contractor's business for the year being renegotiated are to be examined and considered. The previous basis of determination is not a controlling precedent and the renegotiation of a succeeding fiscal year shall be predicated solely on the facts and circumstances of that period.

(2) Loss of 1942 exempt volume of sales should not be compensated for by an increase in the profit margin on renegotiable sales. [RR 403.5]

(f) *Reserves against possible renegotiation refunds.* It is recognized that sound accounting principles may make it desirable for contractors to establish reserves against possible renegotiation refunds, but that the amount of reserves established in individual situations will vary widely depending upon the policy of the particular contractor concerned. Neither the existence nor the amount of such reserves is to be considered directly or indirectly in connection with the determination of excessive profits to be eliminated in renegotiation. The renegotiating agencies will recognize that conservative practice may result in setting up such reserves in excess of the anticipated liability and will not directly or indirectly penalize a contractor for such action. [RR 403.6]

§ 1604.404 *Computing margins of profit.* In computing the margin of profit a contractor receives on his renegotiable business or sales after making a refund, the amount of the refund is always deducted from the renegotiable business or sales as well as from the profit thereon. [RR 404]

§ 1604.405 *Overextended contractors.*

It is not the function of renegotiation to provide contractors with capital funds from excessive profits created by the prices of war goods. The contractor's right to a reasonable profit and his need for working capital should be distinguished. A contractor should not be allowed to retain excessive profits on war contracts because he lacks adequate working capital in relation to a greatly increased volume of business. Other measures may be availed of to provide adequate financing. In certain cases the payment of the refund may be deferred but only for a reasonable period and under circumstances which justify such deferment. This policy is explained in § 1604.422. [RR 405]

§ 1604.406 *Minimum refund.* No refund of excessive profits should, in the absence of unusual circumstances, be required in an amount less than \$10,000 after credit for the adjustment for State income taxes (see § 1603.389) [RR 406]

§ 1604.407 *Cost-plus-fixed-fee contracts—(a) Policy.* Cost-plus-fixed-fee contracts are to be considered separately from fixed-price contracts. Paragraphs (b) (c) and (d) of this section refer to supply contracts. [RR 407.1]

(b) *Procedure.* In renegotiating cost-plus-fixed-fee contracts, the contractor should set forth the actual and prospective costs as well as the fees, stated separately, for each individual contract. The following information should be obtained:

(1) Comparison of the actual and prospective costs of each contract should be made with the estimated cost upon which the fee was based.

(2) The dates, amounts and fees of each contract should be assembled in chronological order. Note whether the fixed fee decreased as the volume of the same product to be produced on successive contracts increased.

(3) The proportion of the sales, costs and profits attributable to the fiscal year under renegotiation should be set forth.

(4) The factors referred to in § 1604.408 and following should be considered. [RR 407.2]

(c) *Treatment of disallowed costs and adjustment of fees.* (1) Disallowances of costs under cost-plus-fixed-fee contracts made in accordance with the terms of the contracts will, except as noted below, be deducted from the fee. If, however, any part of the amounts so disallowed are determinable business expenses which would otherwise necessarily have been incurred for the continued operation of the business as an enterprise and, if such amounts are deductions of the character permitted under the applicable provision of the Internal Revenue Code and the contractor has fixed-price business, the amount of such

disallowances may be allocated to fixed-price renegotiable and non-renegotiable business in proper proportions.

(2) The resultant net fee in terms of percent of costs will be related to the percent fee provided for under the contract or contracts.

(3) Actual product costs will be related to the prices specified in the contract or contracts on which the fee is based.

(4) The resultant dollar fee will be related to the work done under the contract or contracts, the performance results, and the volume of business resulting from the contract or contracts.

(5) The elements stated in subparagraphs (1) (2) (3) and (4) above should be reviewed, when appropriate, with the procurement officers responsible for the placing and supervision of the cost-plus-fixed-fee contracts for the purpose of determining whether or not the fee result is consistent with that intended when the contract or contracts were entered into. [RR 407.3]

(d) *Profit margins.* (1) The margin of profit on cost-plus-fixed-fee contracts should be less than that on fixed-price contracts for the same volume of the same product under similar circumstances.

(2) If there has been a reduction of costs below the estimated costs on which the fee was based and it is clearly demonstrated that such reduction of costs is attributable to the contractor's own efforts, the fee should not be reduced merely because of this reduction in costs. The fees received under a cost-plus-fixed-fee contract should have a reasonable relationship to the services performed by the contractor. [RR 407.4]

§ 1604.408 *Factors requiring consideration.* The Renegotiation Act of 1943 specifies factors which must be taken into consideration in determining excessive profits and requires the consideration of additional factors when published in the regulations of the War Contracts Board. [RR 408]

§ 1604.409 *General policy.* Reasonable profits in every case should be determined with reference to the particular factors present without limitation or restriction by any fixed formula with respect to rate of profit, or otherwise. Renegotiation should not result in a margin of profit based on the principle of a percentage cost as profit. Contractors who sell at lower prices and produce at lower costs through good management, improved methods of production, close control of expenditures and careful purchasing should receive a relatively more favorable determination than those who do not. Mere claims of the contractor, in the above terms, for favorable consideration cannot be recognized. They must be supported by established facts, analyses and appropriate comparisons which clearly demonstrate their validity. [RR 409]

§ 1604.410 *Efficiency of contractor—(a) Statutory provision.* Subsection (a) (4) (A) of the Renegotiation Act of 1943 provides that in determining excessive profits there shall be taken into consideration the following factor:

(1) 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.

[RR 410.1]

(b) *Comment.* Consideration is to be given to the contractor's record for efficiency or lack of efficiency in operations with particular attention to the following:

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

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

(3) The reduction of costs; for example, the 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 where the operations are reasonably comparable; the decrease in administrative, selling or other general and controllable expenses; the decrease in prices paid vendors on purchased materials and subcontracted items or units. (See § 1604.411 (b) (1) to (b) (3) inclusive.)

(4) The economy in the use of materials, facilities and manpower; for example, the decrease in quantity of materials used in relation to production and the number of employees; in relation to production; the substitution of non-critical materials for critical materials; the reduction of waste. [RR 410.2]

§ 1604.411 *Reasonableness of costs and profits—(a) Statutory provision.* Subsection (a) (4) (A) of the Renegotiation Act of 1943 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 pre-war earnings, and comparison of war and peacetime products.

[RR 411.1]

(b) *Comment.* (1) Consideration is to be given to the reasonableness or the excessiveness of costs and profits of the contractor. Comparisons should be made with the contractor's own costs and profits in previous years and with current costs and profits of other contractors, if the information is available. In comparisons, uncontrollable variations in labor, material or other costs should be taken into account. Particular attention should be given to relative changes in controllable costs such as selling, advertising and general administrative expenses. Low costs with relation to other contractors and lowered costs with relation to the prior fiscal year, where clearly established and shown to be the result of efficiency in management, are especially significant and should receive favorable consideration.

(2) Consideration should be given to the corresponding profits in pre-war base years of the contractor and for the industry, especially in cases where the war products are substantially like pre-war products. In the absence of exceptional circumstances, the years 1936-39 will be used as a base period. In making comparisons with the base period, consideration should be given to any fundamental changes in the contractor's business, including the difference in character between war and peacetime products. The contractor's peacetime profits will be of greater significance where there is little change in the product or manufacturing process since the base years. The rate of profit made on peacetime business is not of itself a basis for profits to be made on war contracts. It should not be assumed that under war conditions a contractor is entitled to as great a margin of profit as that obtained under competitive conditions in normal times.

(3) Consideration is to be given to the effect of volume on costs and profits. Increased volume usually serves to reduce average unit costs and increase profits accordingly. Where the volume has been created by Government purchasing, the Government should receive the principal benefit from the decreased costs and increased profits resulting therefrom. In general, the margin of profit on expanded war sales should be reduced in reasonable relationship to the expanded volume.

(4) Where a contractor is engaged in more than one class or type of business, the varying characteristics of the several classes of business should be taken into consideration. [RR 411.2]

§ 1604.412 *Capital employed—(a) Statutory provision.* Subsection (a) (4) (A) of the Renegotiation Act of 1943 provides that in determining excessive profits there shall be taken into consideration the following factor:

(1) amount and source of public and private capital employed and net worth.

[RR 412.1]

(b) *Comment.* Consideration is to be given to the amount and source of capital employed: This should include establishing and considering the proportion of plant or equipment or materials supplied by Government agencies or other contractors; the amount of production from plant and equipment furnished by the Government or others; the amount and proportion of investment covered by Certificates of Necessity; the amount of private capital at the beginning of the year; the extent and source of additional investment during the year in fixed assets; and loans, advances or Government guarantees. The relationship of the profit realized before and after renegotiation from the use of capital to the value thereof at the beginning of the year should be used as a check to determine the return being realized on such investment. A contractor using his own capital is generally entitled to more favorable consideration than a contractor largely dependent upon Govern-

ment financing or Government furnished facilities. Where a large part of the capital or facilities is supplied by the Government, the contractor's contribution tends to become one of management only and the profit margin should be considered accordingly. [RR 412.2]

§ 1604.413 *Extent of risk assumed—(a) Statutory provision.* Subsection (a) (4) (A) of the Renegotiation Act of 1943 provides that in determining excessive profits there shall be taken into consideration the following factor:

(iv) extent of risk assumed, including the risk incident to reasonable pricing policies. [RR 413.1]

(b) *Comment.* (1) Consideration is to be given to the extent of risk assumed by the contractor; for example, possible increase in the cost of materials and wages; delays from inability to obtain materials; "cutbacks" in quantities; guarantees of quality and performance of the product; and such other risks as may be clearly determined.

(2) Particular consideration should be given to the risks assumed incident to reasonable pricing policies. The pricing policy of the contractor is more clearly indicated by the reasonableness of his billing prices and the reasonableness of the profit margin included in billing prices than by his final profit position. Voluntary refunds establishing a lower profit margin for the fiscal year are significant only when having the effect of consistently adjusting prices and profits throughout the period. The contractor whose pricing policy results in comparatively reasonable original profit margins on renegotiable business from original billing prices should receive more favorable consideration than a contractor whose pricing policy results in substantially excessive profits. The contractor who maintains low cost and only a reasonable margin of profit is subjected to the risks normally incident to the performance of a fixed-price contract secured under competitive conditions, while the contractor who overprices usually has taken few, if any, of such risks. In the latter case, the profit margin of the contractor should be adjusted in the direction of the fee that might have been allowed under a cost-plus-a-fixed-fee contract for the production of similar articles. Since many contractors have now had sufficient experience in production of contracted materials to eliminate or reduce the risks that may have justified liberal prices earlier, renegotiation agencies are to emphasize pricing policy by giving less favorable consideration to contractors who have not followed a reasonably close pricing policy. (See subparagraph (5) of this paragraph.)

(3) The record of the contractor, during the fiscal year being renegotiated, in reducing prices to reflect reductions in costs and to avoid the accumulation of excessive profits should be taken into account. The record in fulfilling or not fulfilling, in the year under consideration, price reduction commitments in a renegotiation agreement made in the

previous year should be given substantial weight.

(4) Price comparisons should be made with other contractors making the same or essentially similar products.

(5) While prices which are actually lower than those of competitors are a favorable fact, it should be recognized that a low profit margin may be the result of comparatively low prices being coupled with comparatively high costs in which event neither the low prices nor the low profit margin should receive full consideration as favorable facts.

(6) Where the entry of a contractor into war business involved physical and other adjustments which will create substantial problems in a reconversion to pre-war business such as possible loss on capital investments made for war production purposes, loss or saturation of markets or other similar problems, the increased risk incident to such contractor's entry into war business as compared with other contractors who do not have similar risks is to be given consideration. [RR 413.2]

§ 1604.414 *Contribution to the war effort—(a) Statutory provision.* Subsection (a) (4) (A) of the Renegotiation Act of 1943 provides that in determining excess profits there shall be taken into consideration the following factor:

(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.

[RR 414.1]

(b) *Comment.* Consideration is to be given to the nature and extent of the contractor's contribution to the war effort. Favorable consideration for unusual contributions should begin at a high level of performance. Experimental and developmental work of high value to the war 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 fact which should be given favorable consideration and the effect of such sharing of knowledge on the contractor's future peacetime business should also be taken into account. [RR 414.2]

§ 1604.415 *Character of business—(a) Statutory provision.* Subsection (a) (4) (A) of the Renegotiation Act of 1943 provides that in determining excessive profits there shall be taken into consideration the following factor:

(vi) character of business, including complexity of manufacturing technique, character and extent of subcontracting, and rate of turn-over.

[RR 415.1]

(b) *Comment.* (1) Consideration is to 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. A con-

tractor who performs a large proportion of the work under his contract directly contributes a greater part of the ultimate value of his product and generally has a lower turnover than companies acting primarily in an assembly capacity. The work done by a contractor who subcontracts a substantial portion of the manufacturing process differs from the work done by a contractor who makes the end product through all or most of its production stages. The ratio of labor and burden (overhead) to materials included in costs is usually significant. The relative complexity of the manufacturing technique and the relative integration of the manufacturing process are the basic considerations in evaluating this factor.

(2) Maximum war production and the policy of Congress require that subcontracting be used to the maximum extent practicable. A contractor who, through subcontracting, materially increased the volume of war production in addition to making full use of his own plant and facilities, has shown ingenuity and resourcefulness in making use of the facilities of small plants, has assisted with engineering and production advice and has devoted time and managerial ability to such subcontractors should be considered as having made a greater contribution than one who has merely subcontracted certain parts of his production requirements. The contribution made by a contractor with respect to organizing the volume of his business produced by subcontractors varies substantially and must be evaluated in each instance.

(3) Rate of turnover will indicate the use of plant, materials and net worth. Low rate of turnover may indicate more complete integration in production or be related to the type of product and nature of the manufacturing process. High rate of turnover may indicate relatively smaller manufacturing contribution or by comparison with other manufacturers of similar products a relatively greater efficiency. [RR 415.2]

§ 1604.416 *Additional factors—(a) Statutory provision.* Subsection (a) (4) (A) of the Renegotiation Act of 1943 provides that in determining excessive profits there shall be taken into consideration the following factor:

(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.

[RR 416.1]

(b) *Factors provided by regulations.* No additional factors have been adopted by the War Contracts Board as, in its opinion, the statutory factors are broad enough to provide a basis for consideration of any element of a contractor's business necessary to be considered in renegotiation. [RR 416.2]

SUBPART B—RECOVERY OF EXCESSIVE PROFITS  
ALREADY REALIZED

§ 1604.420 *Scope of subpart.* This subpart deals with the repayment of excessive profits already realized. Sub-

part C deals with the elimination of excessive profits through voluntary agreement to reduce prices on deliveries to be made in the future. Subpart D deals with the allowance of the tax credit to which the contractor is entitled under section 3806 of the Internal Revenue Code. [RR 4201]

§ 1604.421 *Statutory provision.* Subsection (c) (2) of the 1943 act provides:

Upon the making of an agreement, or the entry of an order, under paragraph (1) by the Board, or the entry of an order under subsection (e) 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 hereby 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. For the purposes of this paragraph the term "contractor" includes a subcontractor.

[RR 421]

§ 1604.422 *Recovery by voluntary repayment—(a) In general.* In renegotiation with respect to a completed fiscal period, the elimination of excessive profits will ordinarily be effected pursuant to an agreement providing for a refund. This refund may be made by the contractor in a single payment or in installments as the agreement may provide. [RR 422.1]

(b) *Time of repayment; general rule.* (1) Generally, when excessive profits are eliminated by installment payments, the final installment must be paid not later than the end of the fiscal year following that to which the renegotiation relates,

or within 30 days after the execution and delivery of the agreement, whichever is later.

(2) If, in the opinion of the Department conducting the renegotiation, the application of the policy stated in subparagraph (1) of this paragraph will result in undue hardship to a contractor, then the renegotiation agreement may provide for further extensions of the time of payment for such period or periods, not extending beyond two years after the close of the fiscal year to which renegotiation relates, as may be approved by such Department.

(3) Installments must be arranged so that there is no contravention of principle stated in paragraph (c) with respect to income tax payments. [RR 422.2]

(c) *Relation to income tax payments.* In any case where the excessive profits have been or may be excluded from income for Federal income and excess profits tax purposes for the year to which renegotiation relates, the installments in which the renegotiation refund is to be paid must be so arranged that the total cash payments required on or before each payment date for Federal income and excess profits taxes upon income for such year are at least equal to the Federal income and excess profits taxes the contractor would have had to pay by each such date upon the excessive profits eliminated. [RR 422.3]

(d) *Interest.* No renegotiation agreement when originally made shall require the payment of interest on installments of the refund which are not in default thereunder and which are provided to be payable within the time prescribed in paragraph (b). [RR 422.4]

(e) *Repayment by credit memoranda.* The elimination of excessive profits may, but only if the renegotiation agreement so provides, be effected by reductions in the amounts otherwise payable to the contractor under contracts with the Departments or by other revision of their terms. This may be accomplished in whole or in part by the issuance by the contractor of credit memoranda to a Department or Departments applicable against specified existing prime contracts in a sum not in excess of the amounts then unpaid thereon. [RR 422.5]

(f) *Tax anticipation notes not acceptable.* Tax anticipation notes cannot be accepted in discharge of an obligation to eliminate excessive profits. However, the Treasury Department has informed all Federal Reserve Banks that they are authorized to redeem currently Series B or Series C tax notes if the proceeds of the notes are to be used in payment of sums due as a result of renegotiation. [RR 422.6]

(g) *Authority to enforce payment.* The authority to enforce payment is dealt with in §§ 1604.421, 1606.626 (a) and 1608.821 (a). See also § 1604.423 below. [RR 422.7]

§ 1604.423 *Withholding as a method of recovery.* (a) In a proper case, excessive profits may be eliminated by the withholding of the amount of excessive profits from amounts otherwise due to a contractor or by directing a contractor

to withhold for the account of the United States amounts otherwise due to a subcontractor.

(b) Withholding on subcontracts will be effected by a contractor or subcontractor upon a direction issued by a Secretary of a Department or pursuant to his authority. The contractor should make payment to his subcontractor in accordance with the terms of the subcontract until otherwise so directed. The 1943 act indemnifies any contractor or subcontractor against all claims under any subcontractor for an amount withheld pursuant to such a direction. Any amount so withheld by a contractor or subcontractor shall be held by him for the account of the United States and shall be paid over to a Department upon a direction issued by or pursuant to the authority of a Secretary of a Department.

(c) Action to withhold under contracts and subcontracts may be taken upon default in the elimination of excessive profits determined by agreement, as well as in cases of determinations of excessive profits made by unilateral order. [RR 423]

§ 1604.424 *Repayment of excessive profits determined by order.* The elimination of excessive profits determined by order is dealt with in § 1606.626. [RR 424]

#### SUBPART C—PRICE REDUCTIONS FOR FUTURE DELIVERIES

§ 1604.430 *Scope of subpart.* This subpart deals with future repricing and its relationship to renegotiation. [RR 430]

§ 1604.431 *Statutory references.* (a) The Renegotiation Act of 1943 gives the War Contracts Price Adjustment Board no authority to compel price reductions for future deliveries, section 403 (c) (1) of the 1943 act conferring the power to renegotiate only with respect to "amounts received or accrued." This section in the 1942 act dealt with "profits realized or likely to be realized."

(b) The 1943 act does contain, however, permissive language with respect to forward pricing, section 403 (c) (1) providing that any renegotiation agreement 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."

(c) The authority to compel repricing of war contracts is now contained in Title VIII, section 801 of the Revenue Act of 1943. Thereunder, when the Secretary of a Department deems prices unreasonable or unfair, whether under existing agreements or with respect to prospective procurement, he may by order fix the price to be paid and other terms. Any person aggrieved may, within six months after the date of the order, sue in an appropriate court for the difference between the price fixed by the order and what he claims to be fair and just compensation. Should any person willfully refuse or fail to furnish any articles or services at the price so fixed, the President has power to take over and operate

any plant of such person under section 9 of the Selective Training and Service Act of 1940, as amended. (For citation of the repricing statute see § 1608.804.) [RR 431]

§ 1604.432 *Necessity for future pricing in renegotiation.* (a) Compulsory repricing of contracts with respect to future deliveries will be separately administered by the Secretaries of the several Departments, and is not by statute an obligatory part of renegotiation.

(b) In every case where there has been a determination of excessive profits and it appears excessive profits may be realized in the future from current prices, an attempt should be made to include in the renegotiation agreement a provision for reduction of prices on future deliveries. If the contractor is unwilling to adjust future prices, his failure so to do will be taken into consideration in the next renegotiation. In such case, a report shall be made to the procurement officials having authority to reprice under Title VIII. [RR 432]

§ 1604.433 *General policy on price reductions for future deliveries.* (a) The reduction of excessive prices for future deliveries is especially vital to the cost of the war production program. A contractor maintaining a high margin of profit, but refunding part of these profits at the time of renegotiation will not have the same need to control or curtail costs as a contractor who is operating with a reasonable current margin of profit.

(b) The contractor who maintains an excessive profit margin on current sales has eliminated risks to almost the same extent as a cost-plus-fixed-fee contractor. On subsequent over-all renegotiation such a contractor will receive less favorable consideration than a contractor who has operated throughout the year on prices which include only a reasonable profit. (See § 1604.411.) [RR 433]

§ 1604.434 *Determination of amounts of price reduction.* In general an attempt should be made to reduce the prices for future deliveries sufficiently to avoid the future realization by a contractor of excessive profits under his contracts and subcontracts. The actual reductions indicated as necessary should be determined from the financial and other information obtained on renegotiation for the preceding period and from available current cost and price data. [RR 434]

§ 1604.435 *Reductions not final.* The provision for reduction should clearly state that any reduced prices or price reductions for the succeeding period, provided in the agreement, are not a final determination under the act and do not operate as a clearance for those prices or for the succeeding period. [RR 435]

§ 1604.436 *Performance of agreement to reduce prices.* The contractor's record in fulfillment of his agreement to reduce prices made in renegotiation for a previous year will be given substantial weight in the renegotiation determination of the current year. [RR 436]

#### SUBPART D—RENEGOTIATION AND TAXES

§ 1604.440 *Scope of subpart.* This subpart deals with the effect of renegotiation upon a contractor's Federal income and excess profits taxes. [RR 440]

§ 1604.441 *Statutory provisions—(a) Subsection (c) (2) of the 1943 act.* Subsection (c) (2) of the 1943 act provides in part as follows:

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.

[RR 441.1]

(b) *Section 3806 of the Internal Revenue Code.* Section 3806 of the Internal Revenue Code is set forth in § 1608.802. This section requires, as a general rule, that the amount of a contractor's Federal income and excess profits taxes, which have been assessed for a prior taxable year in respect of excessive profits realized in such year, be allowed as a credit against the total excessive profits to be eliminated. By reason of the amendments to section 3806 made by section 701 (c) of the Revenue Act of 1943, it also provides special rules covering the allowance of tax credits against excessive profits to be eliminated for taxable years beginning in 1942 in cases involving individuals who are subject to the Current Tax Payment Act of 1943. [RR 441.2]

§ 1604.442 *Renegotiation after filing of Federal tax returns—(a) Allowance of credit for Federal taxes.* (1) The allowance of a credit for Federal taxes is provided by section 3806 of the Internal Revenue Code for the purpose of relieving contractors from double payments of excessive profits to the Treasury, once in the form of taxes and again as excessive profits, and to avoid the necessity for tax refunds by the Treasury.

(2) Where excessive profits are determined for a taxable year for which complete Federal income and excess profits tax returns, as distinguished from tentative returns, have been filed, the difference between the amount of Federal income and excess profits taxes assessed in respect of the contractor's income for the period (including the excessive profits) and the amount of Federal income and excess profits taxes which would have been assessed if the excessive profits had been excluded from the returns, is allowed as a credit against the excessive profits determined.

(3) The amount of the credit is based upon the amount of taxes assessed prior to the credit computation. If the assessment based upon the return filed has not been revised by the Bureau of Internal Revenue then the credit is computed upon the basis of such assessment. If such assessment has been revised, then the credit is computed upon the basis of the revised assessment.

(4) Adjustments of a contractor's returns to reflect the reduction of taxable gross and net income and the amounts of tax and postwar credit are made by the Bureau of Internal Revenue after tax credits have been allowed. Any sub-

sequent changes in the contractor's net income or tax liabilities are based upon these adjusted figures. Amended returns are not to be filed. When the tax credit is computed and applied it will not be revised thereafter.

(5) The effect of this credit provision is to require precisely the same aggregate amount of payments to the Government (as taxes and excessive profits) where renegotiation occurs after the filing of Federal tax returns, as would have been required if the gross amount of the excessive profits had been repaid to the Government prior to the filing of the Federal tax returns and no Federal taxes had been assessed thereon. [RR 442.1]

(b) *Computation of credit for Federal taxes.* (1) The Bureau of Internal Revenue computes the credit allowable under section 3806 of the Internal Revenue Code for Federal income and excess profits taxes assessed for a prior taxable year. The contractor should submit written requests for such determinations directly to the Internal Revenue Agent in Charge of the Division of the Bureau of Internal Revenue where the contractor filed its tax return for the fiscal year involved. Forms for requesting computation of the credit appear at §§ 1607.731, 1607.732 and 1607.733. The requests should not be sent to the Collector of Internal Revenue.

(2) Where the original returns have been filed so recently that they are not available to the office of the Internal Revenue Agent in Charge, he will compute the amount of the tax credit from the contractor's retained copies of the returns. It usually requires at least six months after filing, for a return to reach the office of the Internal Revenue Agent in Charge. In such cases, photostat or certified copies of the returns should accompany the request to the Internal Revenue Agent in Charge. In the case of corporations, copies of pages one and two of the corporation forms 1120 and 1121 will ordinarily suffice.

(3) A copy of the contractor's request to the Internal Revenue Agent in Charge should be mailed to the Department handling the renegotiation. [RR 442.2]

(c) *Federal tax credit of individuals under Current Tax Payment Act.* (1) Under the Current Tax Payment Act of 1943; there is only one tax liability with respect to the income of individuals for 1942 and 1943, and this tax liability is determined on the basis of the return for 1943. Accordingly, the tax credit allowable to individuals in such cases will not be the decrease in the tax for the particular year which is renegotiated, but the decrease in the total tax for 1943 which results from the elimination of excessive profits realized in 1942 or in 1943.

(2) The amount of an individual's total tax for 1943 which is to be decreased by the elimination of excessive profits is either his tax liability for 1943, as shown on his return for 1943, or his total payments on account of his tax for 1942 and 1943, whichever amount is the larger.

(3) Where excessive profits determined for 1942 or 1943 were included by the contractor in the computation of his tax liability as shown on his 1943

return, the tax credit computation should be requested in accordance with the form appearing at § 1607.732.

(4) Where excessive profits determined for 1942 or 1943 were included by the individual in computing his estimated tax for 1943 but such excessive profits were omitted in computing his tax liability as shown on his return for 1943, the tax credit computation should be requested in accordance with the form appearing at § 1607.733.

(5) Where, before renegotiation, the excessive profits were included in the tax computation as described in subparagraph (3) or (4) the amount of the credit is the excess of (i) the amount of the tax which is to be decreased, described under subparagraph (2) over (ii) the tax as computed after the excessive profits have been eliminated from income.

(6) Under the Current Tax Payment Act, a 1942 taxable year of an individual is any taxable year which began in 1942. Such a 1942 taxable year may, therefore, be a fiscal year ended at any time in 1943 prior to December 31, 1943.

(7) In no case will a tax credit be computed by the Internal Revenue Agent in Charge, or allowed in renegotiation, prior to the filing of the return for 1943. [RR 442.3]

(d) *Determination of Federal tax credit for partnerships.* (1) Since a partnership files only an information return and the Federal tax is imposed on the individual incomes of the partners, the tax credit to which a partnership is entitled under section 3806 for a prior taxable year is the aggregate amount of the separate credits to which the individual partners are entitled because their shares of the partnership's income are reduced by the elimination of the excessive partnership profit. A request for a credit computation should be made for each partner on the form set forth at §§ 1607.732 or 1607.733, whichever is appropriate under the circumstances.

(2) For example, if A and B are partners with 60% and 40% interests respectively, and the partnership has realized excessive profits of \$1,000,000 for a prior taxable year, then the elimination of \$1,000,000 excessive profits of the partnership will reduce A's taxable income for the year by \$600,000 and B's by \$400,000. Upon request for a determination of the credit under section 3806, the Internal Revenue Agent in Charge will determine the amount by which the elimination of these excessive profits would reduce A's and B's individual income tax for the year. The aggregate amount of such reductions in A's and B's individual Federal income tax will represent the credit to be allowed under section 3806 against the partnership's obligation to refund excessive profits of \$1,000,000. [RR 442.4]

§ 1604.443 *Renegotiation prior to filing of Federal tax returns—(a) Exclusion of excessive profits from returns.* (1) When, as a result of renegotiation, the amount of excessive profits is determined for a period for which Federal

income and excess profits tax returns have not been filed, such amount of excessive profits may be excluded from the contractor's returns for the period.

(2) The amount of excessive profits eliminated for a particular taxable year may not be deducted or excluded from taxable income for any other taxable year.

(3) The tax effect of renegotiation for periods for which Federal income and excess profits tax returns have not been filed is more fully set forth in IT 3577 and IT 3611 at §§ 1608.852 (b) and (c). [RR 443.1]

(b) *Effect of tentative tax return.* When a contractor has filed a tentative return for the year involved and has been granted an extension of time for filing his completed return, the provisions of IT 3577 and IT 3611 as outlined above will apply if the renegotiation takes place before the filing of the complete return. [RR 443.2]

§ 1604.444 *Special allocations of excessive profits elimination required for Federal tax purposes.* (a) Where a renegotiation is conducted on a consolidated basis, excessive profits to be eliminated must be allocated between the entities so consolidated (see (§ 1603.311)).

(b) Where a renegotiation is conducted on a contract by contract basis and the profits from such contracts are taxed on a percentage of completion basis, excessive profits to be eliminated must be allocated among the taxable years in which such profits were subject to Federal income and excess profits taxes.

(c) Special allocations of excessive profits to be eliminated under (a) and (b) above should appear in the renegotiation agreement or in the order determining excessive profits and also in any request to an Internal Revenue Agent in Charge for tax credit computations. [RR 444]

#### PART 1605—AGREEMENTS AND STATEMENTS

Part 1605 governing agreements and clearances is added, as set forth below.

##### SUBPART A—AGREEMENTS AND CLEARANCES

###### Sec.

1605.501 General.

(a) Statutory authority.

(b) Uses of agreements and clearances.

1605.502 Standard form of agreement.

(a) In general.

(b) Article 1: Profits to be eliminated.

(c) Article 2: Warranty: Exhibit A. Exhibit B.

(d) Article 3: Tax Credit under section 3806 of the Internal Revenue Code.

(e) Article 4: Terms of payment.

(f) Article 5: Article requiring elimination of additional excessive profits.

(g) Article 6: Covenant against contingent fees.

(h) Article 7: Officials not to benefit.

(i) Article 8: Discharge of liability.

(j) Article 9: Renegotiation, rebate.

(k) Article 10: Execution of the agreement.

(l) Formalities of execution.

1605.503 Exhibit A.

1605.504 Exhibit B.

1605.505 Exhibit C.

1605.506 Additional provisions; variations.

(a) In general.

(b) Forward pricing clause.

(c) Anti-discrimination clause.

(d) Other special provisions.

###### Sec.

1605.507 Prohibited provisions.

(a) Reservations impairing finality of agreement.

(b) Provision for refund by the Government.

(c) Periodic refunds of future excessive profits.

1605.508 Clearances.

(a) When given.

(b) Use and form of clearance notice.

(c) Use and form of clearance agreement.

1605.509 Administration of determinations by agreement or order.

1605.510 Agreements for periods involving different acts.

##### SUBPART B—STATEMENTS TO CONTRACTORS

1605.520 Scope of subpart.

1605.521 Statutory provision.

1605.522 Request for statement.

1605.523 Contents of statement.

1605.524 Statement prior to final determination.

(a) Where statutory determination has not yet been made.

(b) Where determination is by order which may not be final.

##### SUBPART A—AGREEMENTS AND CLEARANCES

§ 1605.501 *General—(a) Statutory authority.* (1) Subsection (c) (4) of the 1943 act provides as follows:

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.

(2) Subsection (c) (1) of the 1943 act provides, in part, as follows:

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.

[RR 501.1]

(b) *Uses of agreements and clearances.* The following types of instruments are used in connection with renegotiation:

(1) *Renegotiation agreements.* These are to be used when, upon conclusion of the renegotiation proceedings, a final agreement is reached between the contractor and the renegotiation officials of the Government that a certain amount of excessive profits is to be eliminated. A form of such agreement is set forth in § 1607.741 (a)

(2) *Clearances.* These are to be used where, upon a review of the financial and other data submitted by the contractor, it is formally determined that there are no excessive profits for the fiscal year under review. (See § 1607.742.) [RR 501.2]

§ 1605.502 *Standard form of agreement—(a) In general.* When, as a re-

sult of renegotiation, an agreement has been reached with a contractor for the elimination of excessive profits, such agreement will ordinarily be evidenced by the execution of the standard form of renegotiation agreement, which is set forth in § 1607.741 (a) of these regulations. The provisions of the standard form of agreement are discussed in the succeeding paragraphs. [RR 502.1]

(b) *Article 1. Profits to be eliminated.* The agreed dollar amount of excessive profits to be eliminated, after giving effect, in accordance with subsection (a) (4) (B) of the 1943 act, to any adjustment for taxes, other than Federal taxes, measured by income, will be set forth in Article 1. Ordinarily such amount will be the excessive profits determined to have been received or accrued during a particular fiscal year under all of the contractor's contracts and subcontracts subject to renegotiation. When the renegotiation covers only contracts and subcontracts completed during a fiscal year or has been conducted only with respect to certain contracts and subcontracts, the language used in Article 1 should be modified accordingly. [RR 502.2]

(c) *Article 2: Warranty: Exhibit A. Exhibit B.* Renegotiation is, in large measure, conducted upon the basis of information and data submitted by the contractor, particularly financial data. Since such material is accepted in good faith by the Government as the basis for conducting the renegotiation, it is appropriate that the contractor warrant its correctness. Article 2 contains such a warranty, which extends to and includes the summarized data set forth in Exhibit A (see § 1605.503) which is to be annexed to the agreement. If the renegotiation includes subsidiaries of the contractor and has been conducted on a consolidated basis, a list of the subsidiaries will be set forth on an Exhibit B to be annexed to the agreement, the correctness of which the contractor will also warrant (see § 1605.504). An appropriate modification will be made in Article 2 when Exhibit B is used. (See § 1607.741 (b) (2).) [RR 502.3]

(d) *Article 3. Tax credit under section 3806 of the Internal Revenue Code.* (1) In most instances the contractor will have been assessed Federal income or income and excess profits taxes on the profits to be eliminated. A credit equal to the amount of such taxes is required by the Renegotiation Act to be allowed against the refund to be made in accordance with section 3806 of the Internal Revenue Code. The provisions of Article 3 cover the contractor's representation that the profits to be eliminated were included in income in his tax return for the fiscal period involved and his agreement to procure a computation by the Bureau of Internal Revenue of the amount by which his taxes for that fiscal period are decreased by reason of the elimination of such profits from income. The procedure for procuring such computation is set forth in § 1604.442 of these regulations. [RR 502.4]

(2) If the renegotiation is concluded before the contractor has filed his Fed-

eral income or income and excess profits tax returns for the fiscal period involved, the contractor will ordinarily exclude from income as reported in such returns the amount of profits to be eliminated. In such case no tax credit will be allowable and the agreement should, in lieu of the provisions of Article 3 of the standard form, contain the provisions set forth in § 1607.741 (b) (3) (i) of these regulations.

(3) In some instances less than all of the profits to be eliminated may have been included in the income for the fiscal period upon which Federal income or income and excess profits taxes have been assessed. In such circumstance, a tax credit under section 3806 of the Internal Revenue Code will be allowable only as against the part of the profits to be eliminated upon which such Federal taxes have been assessed. A clause covering this type of situation is set out in § 1607.741 (b) (3) of these regulations. [RR 502.4]

(e) *Article 4. Terms of payment.* (1) The schedule of the payments to be made will be set forth in Article 4. A suggested form of such schedule is set forth in § 1607.741 (b) (5) of these regulations. [The Department or Service which has conducted the renegotiation will also provide, in this article, for the place of payment. In the event that the profits agreed in Article 1 to be eliminated are derived in part from prime contracts with Defense Plant Corporation, Metals Reserve Company, Defense Supplies Corporation and Rubber Reserve Company or any of such corporations, the payment provision, in accordance with the footnote to Article 4 on the standard form will require payment of the amount thereof to the RFC Price Adjustment Board.]

(2) If a portion of the refund is to be made to the RFC Price Adjustment Board, any such tax credit should be apportioned ratably between the portion of the refund payable to the RFC Price Adjustment Board and the portion payable to the Treasurer of the United States.

(3) Specially detailed terms for elimination of excessive profits may be set forth on an Exhibit C and incorporated by reference in Article 4 (see § 1605.505). If no subsidiaries are involved and there is, therefore, no Exhibit B referring to such subsidiaries, this exhibit setting forth the terms of payment should, of course, be designated "Exhibit B," instead of "Exhibit C."

(4) Limitations upon the period of time beyond which the schedule of payments must not extend are set forth in § 1604.422 of these regulations. [RR 502.5]

(f) *Article 5. Article requiring elimination of additional excessive profits.* The provision set forth in § 1607.741 (a) of these regulations is designed to protect the interest of the Government if by reason of reduction of certain costs shown as paid or incurred, in the financial data submitted by the contractor, the profits of the contractor for the period covered by the renegotiation from contracts or subcontracts subject to the

Renegotiation Act of 1943 are increased. [RR 502.6]

(g) *Article 6: Covenant against contingent fees.* This article contains the provisions required by Executive Order 9001 to be included in certain types of Government contracts. [RR 502.7]

(h) *Article 7 Officials not to benefit.* This article is also a standard provision in most Government contracts, required by Revised Statutes, section 3741, as amended (41 U.S.C. sec. 22) [RR 502.8]

(i) *Article 8: Discharge of liability.* In consideration of performance by the contractor of the terms of the agreement he is granted a discharge of liability in accordance with subsection (c) (4) of the Renegotiation Act. When the renegotiation covers only contracts and subcontracts completed during the fiscal year or has been conducted only with respect to certain contracts or subcontracts, care should be taken that Article 8, when read in connection with Article 1 (see paragraph (b)) discharges the liability of the contractor only with respect to the contracts and subcontracts actually renegotiated. [RR 502.9]

(j) *Article 9: Renegotiation rebate.* This article specifically reserves to the contractor his rights under subsection (a) (4) (D) of the Renegotiation Act in the event that a recomputation of his amortization deduction under section 124 (d) of the Internal Revenue Code should entitle him to a rebate. [RR 502.10]

(k) *Article 10: Execution of the agreement.* The persons executing the agreement on behalf of the contractor and on behalf of the Government state that they do so upon proper authority. [RR 502.11]

(1) *Formalities of execution.* (1) If the contractor is a corporation, the agreement must be accompanied by a certified resolution of the Board of Directors of the contractor (or the equivalent committee or other body) The form of the resolution, the adoption of the resolution, and the execution of the certificate must all be in accordance with the formalities required by the particular state laws involved. The resolution itself should state:

(i) That the agreement is being entered into pursuant to the Renegotiation Act;

(ii) The amount of profits to be eliminated—and the fiscal year for which they are to be eliminated;

(iii) The title of the corporate officer who is being authorized to execute the agreement on behalf of the corporation; and

(iv) The title of the corporate officer authorized to affix and attest the corporate seal thereon.

The certificate, certifying the adoption of the resolution should state:

(i) The name and capacity of the officer signing the certificate;

(ii) The body adopting the resolution (normally this will be the Board of Directors, but may, in a particular case, be an Executive Committee or similar body)

(iii) The date of the meeting;

(iv) The fact that a quorum of the Board (or other body) was present throughout the meeting;

(v) That the resolution was duly adopted;

(vi) If the particular agreement is specifically referred to in the resolution, that the agreement to which the certified resolution is attached is the same as that referred to in the resolution; and

(vii) That the resolution has not been modified or rescinded and that it is in full force and effect.

If the resolution is adopted by an Executive Committee or similar body (other than the Board of Directors) the certificate must also include satisfactory evidence of the body's authority to act.

(2) If subsidiaries of the contractor are included with the contractor in a consolidated renegotiation, execution by the contractor alone will be sufficient unless the renegotiating agency requires otherwise. (See § 1603.311.)

(3) If the contractor is a partnership, all general partners therein should execute the agreement.

(4) If the contractor is a joint venture, each participant should execute the agreement.

(5) The Department conducting the renegotiation has authority to depart from the requirements of this paragraph in its discretion. [RR 502.12]

§ 1605.503 *Exhibit A.* There shall be attached to every renegotiation agreement providing for the elimination of excessive profits an exhibit designated "Exhibit A," which shall contain as a minimum, the financial data and information referred to in § 1607.741 (c). In the discretion of the Department conducting the renegotiation, any additional financial data or information may be included in Exhibit A. [RR 503]

§ 1605.504 *Exhibit B.* When the contractor has subsidiaries, there shall be attached to the renegotiation agreement a list of such subsidiaries in detail. Such list shall be designated as "Exhibit B." Ordinarily, all of such subsidiaries will have been consolidated with the parent company for purposes of the renegotiation agreement, and if any has not been so consolidated, that fact should be specially noted on Exhibit B. The amount of excessive profits, if any, allocated to each subsidiary must be shown on such exhibit. A form of clause referring to Exhibit B for insertion in the renegotiation agreement and a form of Exhibit B are set out in § 1607.741 (b) (2) (See also § 1607.741 (d).) [RR 504]

§ 1605.505 *Exhibit C.* If the provisions for payment of the cash refund or for other method of elimination of excessive profits are such as cannot be readily set out in Article 4 of the standard form of agreement, such provisions may be set out in an additional exhibit to the agreement, designated "Exhibit C" which should be attached to the agreement and incorporated therein by a reference thereto in Article 4 of the agreement. [RR 505]

§ 1605.506 *Additional provisions Variations—(a) In general.* The basic provisions of the standard form of agree-

ment set forth in § 1607.741 (a) of these regulations are to be used in all cases except as otherwise noted in this section. Additional provisions may be added when required to fit particular situations. Section 1607.741 (b) of these regulations contains forms of clauses which, when appropriate, should be used to meet certain of these special situations. Variations in language are permissible where necessary, but unless otherwise noted in this section in no event may any such change be made, or any provision be added to the agreement, when the effect would be to alter or modify the substance or intent of the basic provisions. The conclusion of the official signing the agreement on behalf of the Government pursuant to duly delegated authority that the agreement meets the requirements of this regulation shall be evidenced by the fact of execution and shall be conclusive. (See § 1608.821 (a).) [RR 506.1]

(b) *Forward pricing clause.* The Renegotiation Act of 1943 specifically authorizes provision in the renegotiation agreement, by agreement with the contractor, for the elimination of excessive profits likely to be received or accrued in the future. When agreement cannot be reached upon specific price reductions, use may be made in the renegotiation contract of the article set forth at § 1607.741 (b) (1). In this connection reference is made to § 1604.430 and following. [RR 506.2]

(c) *Anti-discrimination clause.* (1) Executive Order No. 9346 dated May 27, 1943 requires "all contracts hereafter negotiated or renegotiated" to contain an article of the type set forth in § 1607.741 (b) (4) of these regulations.

(2) Whenever a renegotiation agreement, executed under the act, expressly purports to modify the terms of specified existing prime contracts with any of the Departments with respect to future deliveries, and the contract or contracts to be modified do not contain an anti-discrimination clause, then the renegotiation agreement shall include the provision set forth in § 1607.741 (b) (4) of these regulations. Except in such cases the requirements stated in (1) above do not apply to renegotiation agreements.

(3) If the renegotiation agreement is to be followed by a supplemental agreement or agreements modifying the terms of existing contracts with respect to future deliveries, each such supplemental agreement will provide for the inclusion in the contracts so modified, of the anti-discrimination clause. [RR 506.3]

(d) *Other special provisions.* Examples of additional special clauses are set out in the supplement to the standard form of agreement (§ 1607.741 (b)). It is recognized that these provisions are not exclusive and that many circumstances will be encountered requiring other clauses and provisions. The form and substance of such provisions will be within the discretion of the Department conducting the renegotiation, subject to the limitation indicated in paragraph (a) of this section. [RR 506.4]

§ 1605.507 *Prohibited provisions—(a) Reservations impairing finality of agreement.* No renegotiation agreement is

acceptable if it or any authorizing resolution or letter of transmittal contains any reservation which might be interpreted as permitting the contractor to reopen the agreement if the Renegotiation Act is amended or declared unconstitutional, or interpretations of the act are changed, or new exemptions are established or for any similar reason. [RR 507.1]

(b) *Provision for refund by the Government.* Other than recognition of the right to a renegotiation rebate in accordance with subsection (a) (4) (D) of the 1943 act by reason of a future recomputation of the amortization deduction pursuant to section 124 (d) of the Internal Revenue Code (see § 1605.502 (j)) no provision shall be made in any renegotiation agreement which would have the effect of requiring the Government under any circumstances to repay all or any part of any payment made to it thereunder. [RR 507.2]

(c) *Periodic refunds of future excessive profits.* Final agreements in renegotiation should not contain provisions for the current or periodic elimination through refunds of excessive profits to be subsequently realized. [RR 507.3]

§ 1605.508 *Clearances—(a) When given.* If, as a result of renegotiation, it is found that no excessive profits have been received by or accrued to the contractor during the fiscal year under consideration, the contractor should be given a clearance for such year. [RR 508.1]

(b) *Use and form of clearance notice.* (1) The form of clearance notice set forth in paragraph § 1607.742 should be used in all cases unless the contractor requests a formal clearance agreement.

(2) If any subsidiaries of the contractor are to be included in the clearance notice, appropriate modification may be made in the form. [RR 508.2]

(c) *Use and form of clearance agreement.* Upon request of the contractor, a clearance agreement executed by the contractor and the Government may be used in place of the clearance notice. Such agreement should follow the general structure of the standard form of renegotiation agreement (see § 1605.506 and § 1607.741 (a)) except that Articles 3, 4, 5 and 9 of the standard agreement should be omitted. The articles used shall be renumbered consecutively. The first article should be substantially the same as that contained in the standard form, except that the finding and agreement should be that no profits should be refunded pursuant to the act. [RR 508.3]

§ 1605.509 *Administration of determinations of agreement or order.* It is the practice of the War Contracts Price Adjustment Board to have the Department to which the contractor was assigned for renegotiation also administer the resulting renegotiation agreement or unilateral determination. This practice results in such Department being responsible for the collection of any amounts due, the supervision of any forward pricing provisions in an agreement, and other matters involved in such administration. [RR 509]

§ 1605.510 *Agreements for periods involving different acts.* Should a contractor conclude renegotiation at the same time relating to a fiscal year ended on or prior to June 30, 1943 and a fiscal year ended subsequent to June 30, 1943, it will ordinarily be desirable to prepare separate agreements for each fiscal period. The first period is governed by the 1942 act and the second period is governed by the 1943 act. In the discretion of the Department conducting the renegotiation, one agreement may be used provided that in its form and execution the requirements of the Renegotiation Act of 1942 to the extent applicable and the requirements of the Renegotiation Act of 1943 to the extent applicable are observed. Such discretion may be exercised in the case of renegotiation on a contract basis of a long term contract or in such other cases as the Department conducting the renegotiation may deem suitable. [RR 510]

#### SUBPART B—STATEMENTS TO CONTRACTORS

§ 1605.520 *Scope of subpart.* This subpart describes, in general, the statement to be furnished the contractor pursuant to subsection (c) (1) of the 1943 act, the manner in which the contractor may request the statement and the time at which the statement is furnished. It also generally describes the statement furnished where statutory determination has not yet been made. The form of the statements, the material to be included and the instructions for their preparation are set forth in § 1607.752 and following of these regulations. [RR 520]

§ 1605.521 *Statutory provision.* Subsection (c) (1) of the Renegotiation Act provides, in part, as follows:

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.

[RR 521]

§ 1605.522 *Request for statement.* A request for the statutory statement shall be made in writing by the contractor and addressed to the agency conducting the renegotiation not later than thirty (30) days after receipt by the contractor of an executed copy of the agreement, if the determination of excessive profits is embodied in an agreement, or within thirty (30) days after receipt of a determination made by order. The request for a statement need not be a formal document. [RR 522]

§ 1605.523 *Contents of statement.* (a) The statement will contain:

- (1) The determination of excessive profits.
- (2) A summary of the facts upon which the determination is based.

(3) The reasons for the determination.  
(b) The following data or material will not be included in the statement:

- (1) Information, the furnishing of which would be contrary to regulations for military security.
- (2) Information with respect to the operations of other contractors which is of confidential character or the disclosure of which would not be in the interest of the war effort. [RR 523]

§ 1605.524 *Statement prior to final determination—(a) Where statutory determination has not yet been made.* When all of the facts relating to the renegotiation have been assembled and considered and the contractor has been advised by the renegotiating agency as to the amount which, in the opinion of such agency, represents the excessive profits which should be eliminated, there shall be submitted to the contractor, upon the latter's request, a written summary of the facts and reasons upon which such opinion is based. Such statement shall be prepared and furnished only upon the request in writing of the contractor including a statement that he has submitted all the evidence which he believes to be relevant to the renegotiation. The purpose of such statement will be to assist the contractor in determining whether or not he will enter into an agreement providing for the elimination of such excessive profits. The contents of such statement shall be prepared in accordance with the instructions set forth in § 1607.752 (b) with respect to the statutory statement, but in lieu of the paragraphs set forth in § 1607.752 (b) (1) and (2) it shall conform to the paragraphs in § 1607.752 (c) (1) and (2). By agreement with the contractor, detailed information submitted by the contractor which is not necessary to the contractor's understanding of the opinion reached, may be omitted. [RR 524.1]

(b) *Where determination is by order which may not be final.* Whenever the determination is made by the entry of an order, the statutory statement will be furnished to the contractor if requested within the time prescribed in § 1605.522 of these regulations. Such statement accompanying and determination by order which, pursuant to subsection (d) (5) of the Renegotiation Act, is subject to review by and approval of the War Contracts Board, will contain the following clause:

This statement is final only in the event that the determination to which it relates is final.

[524.2]

#### PART 1606—IMPASSE PROCEDURE

Part 1606 governing impasse procedure is added, as set forth below.

##### SUBPART A—PROCEDURE UPON REFUSAL OF INFORMATION

- Sec.  
1606.601 Scope of subpart.  
1606.602 Authority to obtain data.  
(a) Renegotiation Act of 1943.  
(b) Title XIII of the Second War Powers Act, 1942.  
(c) Title 10, U. S. Code.

Sec.  
1606.603 Procedure under Title XIII of the Second War Powers Act, 1942.  
(a) Departmental authority under Title XIII of the Second War Powers Act, 1942.

(b) Preliminary steps.  
1606.604 Reports of criminal conduct in connection with war contracts.

##### SUBPART B—FAILURE TO AGREE

- 1606.620 Scope of subpart.  
1606.621 Statutory provisions.  
1606.622 Departmental procedures with respect to impasse cases.  
1606.623 Authority of Departments to make unilateral determinations.  
1606.624 Procedure for review by the War Contracts Board.  
(a) Review on request by the contractor.  
(b) Review by the War Contracts Board on its own motion.  
(c) Discretion of the War Contracts Board.  
(d) Nature of review by the War Contracts Board.  
1606.625 Finality of orders determining excessive profits.  
(a) Orders made by delegated authority.  
(b) Orders entered by the War Contracts Board.  
(c) Notice of final order to be given to the contractor.  
(d) Time to appeal to Tax Court.  
1606.626 Elimination of excessive profits determined by order.  
(a) Authorization to Secretaries to eliminate excessive profits.  
(b) No delay in elimination of excessive profits determined by order.  
(c) Elimination of excessive profits determined by the Tax Court.

##### SUBPART C—PROCEEDINGS IN THE TAX COURT

- 1606.630 Scope of subpart.  
1606.631 Statutory provisions.  
1606.632 Right to institute proceedings in the Tax Court.  
(a) Forum for redetermination.  
(b) Statutory authority.  
(c) Determinations embodied in agreements.  
1606.633 Nature of the proceeding in the Tax Court.  
1606.634 Power of the Tax Court.  
(a) As to the determination of excessive profits.  
(b) Finality of determination.  
1606.635 Proceedings before the Tax Court.  
(a) Institution of proceeding.  
(b) Rules of the Tax Court.  
(c) Time for filing petition.  
(d) Effect of petition.  
(e) Conduct of proceedings before the Tax Court.  
1606.636 Determination of excessive profits by the Tax Court.  
(a) Statement of the War Contracts Board.  
(b) Determination of costs.  
(c) Factors to be considered by the Tax Court.  
1606.637 Enforcement of redetermination made by the Tax Court.

##### SUBPART A—PROCEDURE UPON REFUSAL OF INFORMATION

§ 1606.601 *Scope of subpart.* In some cases the contractor may refuse to submit information required in the conduct of renegotiation. This subpart describes the authority to obtain information and the procedure to be followed in such cases. [RR 601]

§ 1606.602 *Authority to obtain data—(a) Renegotiation Act of 1943.* Subsection (c) (5) of the 1943 act provides as follows:

(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, 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, has with respect to any contractor to whom such title 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.

The similar provisions of subsection (e) of the 1942 act relating to false information were invoked in *United States v. Joseph Decker and Gustav Kann*, 51 Fed. Supp. 20 (D. C., Dist. of Md., July 24, 1943). The court ruled that the defendant, an officer of the corporate contractor, violated the provisions of subsection (e) of the 1942 act by referring the representative of the Navy Department, who had made written demand for statements of actual costs of production, to the contractor's books which the defendant knew contained false and misleading information. [RR 602.1]

(b) *Title XIII of the Second War Powers Act, 1942.* (1) This statute gives the Government the right to inspect and audit the books of any contractor holding a contract, subcontract, or order placed in furtherance of the war effort. (See § 1608.803) The inspection and audit may be made by the War Contracts Board. (See paragraph (a) of this section.)

(2) *Title XIII of the Second War Powers Act* further provides that such inspection and audit may be made by any Governmental agency or official designated by the President or by the Chairman of the War Production Board. By Executive Order No. 9127 issued April 10, 1942 (see § 1608.803 (c)) the President designated the War Production Board, the War Department, the Navy Department, the Treasury Department, the United States Maritime Commission

and the Reconstruction Finance Corporation, to exercise the authority contained in the statute. As to the power of the War Shipping Administration to act under Executive Order No. 9127, reference is made to paragraph 2.i. of Executive Order 9054 as amended by Executive Order 9244 (see § 1608.805) [RR 602.2]

(c) *Title 10, U. S. Code. Section 310 (1) of Title 10, Chapter 18, U. S. Code* authorizes the War and Navy Departments to obtain information by audit and inspection from any aircraft contractor. (See § 1608.803 (b).) [RR 602.3]

§ 1606.603 *Procedure under Title XIII of the Second War Powers Act, 1942—*

(a) *Departmental authority under Title XIII of the Second War Powers Act, 1942.* The Departments referred to in § 1606.602 (b) have authority to act under Title XIII of the Second War Powers Act, 1942, and Executive Order No. 9127, quite independently of any authority given the War Contracts Board by the 1943 act. [RR 603.1]

(b) *Preliminary steps.* (1) No audit is to be made by any of the Departments pursuant to Executive Order No. 9127 (see § 1608.803 (c)) without first advising the War Production Board. Communications on this subject should be addressed to Chief, Contract Review Branch, Procurement Policy Division, War Production Board, 4th & Independence Avenue SW., Washington 25, D. C. It is the intent of this notification to prevent conflict and duplication of audit with other Departments. Approval from the War Production Board should therefore be obtained before proceeding with an audit. This preliminary step is directed in the interest of orderly administration, but no failure to take such step will invalidate action under such act. [RR 603.2]

§ 1606.604 *Reports of criminal conduct in connection with war contracts.*

(1) There has been set up in the Criminal Division of the Department of Justice a special unit whose duty it is to take appropriate action as expeditiously as possible in all cases in which criminal conduct is shown to exist in connection with contracts entered into by the Government with business concerns in connection with the war program.

(2) Reports of any instances of criminal conduct in such cases should contain a full statement of the facts indicating criminal conduct. Such reports should be transmitted through appropriate channels to the Department of Justice. [RR 604]

#### SUBPART B—FAILURE TO AGREE

§ 1606.620 *Scope of subpart.* This subpart deals with procedure on impasses in renegotiation up to the stage of court review. Court review is dealt with in Subpart C. [RR 620]

§ 1606.621 *Statutory provisions.* The Renegotiation Act of 1943 provides as follows:

#### Sec. 403 (a)

(3) The terms "renegotiate" and "renegotiation" include a determination by agree-

ment or order under this section of the amount of any excessive profits.

#### Sec. 403 (c)

(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), 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 statements shall not be used in The Tax Court of the United States as proof of the facts or conclusions stated therein.

#### Sec. 403 (d) (4) and (5)

(4) The Board may delegate in whole or in part any power, function, or duty to the Secretary of a Department, and any power, function, or duty so delegated may be delegated in whole or in part by the Secretary to such officers or agencies of the United States as he may designate, and he may authorize successive redelegations of such powers, functions, and duties.

(5) 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 officers and agencies authorized to exercise powers of the Board pursuant to paragraph (4), 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 by any such officer, agency, or division 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 60 days from the date of such determination, or at the request of the contractor or subcontractor made within 60 days from the date of such determination initiates a review of such determination within 60 days from the date of such request, such determination shall be deemed the determination of the Board. Upon any review by the Board the Board may determine as the amount of excessive profits an amount either less than, equal to, or greater than that determined by the officer, agency, or division whose action is so reviewed.

[RR 621]

§ 1606.622 *Departmental procedures with respect to impasse cases.* The organization of the renegotiating agencies in the various Departments and the extent to which authority within each such Department has been delegated, differ materially. Accordingly, the procedures applicable to an impasse case up to and including the entry of an order determining excessive profits will differ in each Department. [RR 622]

§ 1606.623 *Authority of Departments to make unilateral determinations.* The War Contracts Board has delegated to each Secretary the authority to issue and enter an order determining the amount of the excessive profits of a contractor who has not entered into an agreement to eliminate the same. (See § 1608.821 (a).) Successive redelegations of such authority are authorized and have been made. Any such order entered pursuant to such delegated authority is, however, subject to review by the War Contracts Board. Upon the entry of such an order notice will be given forthwith by registered mail to the contractor and a copy of such order and notice shall be sent to the Secretary of the War Contracts Board at the address specified in § 1607.791 (e). Such order will become final (that is, be deemed the determination of the War Contracts Board) when and as prescribed in subsection d (5) of the 1943 act. (See §§ 1606.621 and 1606.625.) [RR 623]

§ 1606.624 *Procedure for review by the War Contracts Board—(a) Review on request by the contractor.* A contractor who desires review by the War Contracts Board of a unilateral determination made under delegated authority should, promptly after notice of the order, and in any event within sixty days from the date of such determination, file a request for review. Such request should be addressed to the Secretary of War Contracts Price Adjustment Board at the address specified in § 1607.791 (e). Such request need not be in any particular form but should set forth:

- (1) The name of the contractor.

- (2) The fiscal period with respect to which the renegotiation has been conducted (or in the case of a renegotiation on a contract by contract basis, a description of such contracts and subcontracts)

- (3) A brief summary of the issues involved. [RR 624.1]

- (b) *Review by the War Contracts Board on its own motion.* Any order determining excessive profits made by delegated authority may be reviewed by the War Contracts Board on its own motion within sixty days from the date of such order. [RR 624.2]

- (c) *Discretion of the War Contracts Board.* Review by the War Contracts Board is not a matter of right but may be granted by the War Contracts Board in its discretion on timely request of the contractor or on its own motion. [RR 624.3]

- (d) *Nature of review by the War Contracts Board.* The War Contracts Board may review an order determining excessive profits made pursuant to its delegated authority on the basis of the record theretofore made. In the event that the Board determines that a further conference is desirable, notice thereof will be given to the contractor. [RR 624.4]

§ 1606.625 *Finality of orders determining excessive profits—(a) Orders made by delegated authority.* The War Contracts Board has reserved the right to review any order entered pursuant to any delegated authority determining excessive profits. Accordingly, no such order becomes final (that is, is deemed the determination of the War Contracts Board) until the earliest of the following:

- (1) Sixty days after the order has been entered, if review is neither requested by the contractor concerned nor initiated by the War Contracts Board within that period; or

- (2) Denial of review and adoption of the order by the War Contracts Board after timely request for review by the contractor (see paragraph (b)) or

- (3) Sixty days after the date of a timely request for review if such review is not granted by the War Contracts Board within that period. [RR 625.1]

- (b) *Orders entered by the War Contracts Board.* Upon any review by the War Contracts Board whether pursuant to request by the contractor or initiated by the Board on its own motion, the Board will enter an order determining as the amount of excessive profits an amount either less than, equal to, or greater than that determined by the order which has been reviewed. Such order of the War Contracts Board is final immediately upon its entry. [RR 625.2]

- (c) *Notice of final order to be given to the contractor.* When an order determining excessive profits made by delegated authority has become final or an order is entered by the War Contracts Board determining excessive profits (which, as stated in paragraph (b) is final upon entry) notice thereof will be given forthwith by registered mail to the contractor. [RR 625.3]

- (d) *Time to appeal to Tax Court.* The ninety day period for filing a peti-

tion for redetermination in The Tax Court will run from the date of the mailing of the notice referred to in paragraph (c) in either of the cases referred to therein. [RR 625.4]

§ 1606.626 *Elimination of excessive profits determined by order—(a) Authorization to Secretaries to eliminate excessive profits.* (1) All of the powers, functions and duties conferred upon the War Contracts Board by subsection (c) (2) of the 1943 act have been delegated by the Board under the date of February 26, 1944 to each Secretary with right of successive redelegation (see §§ 1608.801 and 1608.821 (a)). Among the methods available to each Secretary to eliminate excessive profits are reductions in amounts otherwise payable to the contractor under contracts with the Departments, withholding of amounts otherwise due the contractor, directing a contractor to withhold amounts otherwise due to a subcontractor, recovering through repayment, credit or suit, or any combination of the methods specified in such subsection as is deemed desirable.

(2) The power of each of the Secretaries to eliminate excessive profits by any of the methods or any combination of the methods referred to in subsection (c) (2) of the 1943 act, including clauses (A) (B) (C) (D) and (E) thereof, may be exercised by each Secretary in his discretion (or by such person or persons as may have authorization to act by delegation, subdelegation or otherwise) immediately upon the making of an agreement by or on behalf of the War Contracts Board, or the entry of an order which is, or which is deemed to be the determination of the War Contracts Board, or the entry of an order under subsection (e) by The Tax Court of the United States. Such power may be so exercised without further action by the War Contracts Board.

(3) The delegation dated February 26, 1944 by the War Contracts Board delegated all the authority referred to in this paragraph. (See § 1608.821 (a).) [RR 626.1]

(b) *No delay in elimination of excessive profits determined by order.* (1) Under a renegotiation agreement, provision is frequently made for the elimination of the excessive profits over a period of time by refunds in installments or by other provisions. But if excessive profits are determined by order, no provision will be contained in such order for deferment of the obligation thereby created or any part thereof. The collection of the amount called for by such an order will be effected in accordance with the general principles governing the enforcement and collection of obligations owing to the United States as supplemented by the special powers and procedures contained in the Renegotiation Act.

(2) The filing of a petition in The Tax Court of the United States for a redetermination does not operate to stay the execution of the order determining excessive profits (see subsection (e) (1) of the 1943 act) [RR 626.2]

(c) *Elimination of excessive profits determined by the Tax Court.* Any ex-

cessive profits determined by order of the Tax Court in proceedings for redetermination and which have not theretofore been eliminated will also be eliminated by appropriate action. (See § 1606.637.) [RR 626.3]

SUBPART C—PROCEEDINGS IN THE TAX COURT

§ 1606.630 *Scope of subpart.* The 1943 act provides that certain contractors and subcontractors may institute proceedings in The Tax Court of the United States for a redetermination of the amount of excessive profits received or accrued by them. This subpart is devoted to a consideration of the provisions of the act applicable to such proceedings with respect to fiscal years ending after June 30, 1943. [RR 630]

§ 1606.631 *Statutory provisions.* Portions of section (c) (1) and the whole of section (e) (1) of the 1943 act are set out below:

(c) (1) \* \* \* 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), such order shall be final and conclusive and shall not be subject to review or redetermination by any court or other agency. 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.

(e) (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), 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,

steno-graphic reporting, and reports of proceedings, as such court has under sections 1110, 1111, 1113, 1114, 1115 (a), 1116, 1117 (a), 1118, 1120, and 1121 of the Internal Revenue Code in the case of a proceeding to redetermine a deficiency. In the case of any witness for the Board 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 (e) (2).

[RR 631]

§ 1606.632 *Right to institute proceedings in the Tax Court—(a) Forum for redetermination.* Subsection (e) (1) of the 1943 act confers exclusive jurisdiction upon The Tax Court of the United States to entertain proceedings "to finally determine the amount" of excessive profits received or accrued by contractors or subcontractors who are authorized to institute proceedings for a redetermination. [RR 632.1]

(b) *Statutory authority.* Subsection (e) (1) of the 1943 act grants the right to institute proceedings before the Tax Court only to contractors or subcontractors (including subcontractors described in subsection (a) (5) (B)—i.e., war contracts brokers) aggrieved by an order of the War Contracts Board determining the amount of excessive profits. (Note: As to the rights of a contractor or subcontractor aggrieved by a determination of a Secretary with respect to a fiscal year ending before July 1, 1943, see subsection (e) (2).) [RR 632.2]

(c) *Determinations embodied in agreements.* A contractor or subcontractor who has entered into an agreement with respect to the elimination of excessive profits is granted no right to institute proceedings for a redetermination. [RR 632.3]

§ 1606.633 *Nature of the proceeding in the Tax Court.* Subsection (e) (1) of the 1943 act expressly provides that the proceeding before the Tax Court "shall not be treated as a proceeding to review the determination of the Board, but shall be treated as a proceeding de novo." Thus, the 1943 act contemplates that the redetermination to be made by the Tax Court shall not be made upon the basis of the record of the prior determination made by the War Contracts Board, but shall be arrived at by the Tax Court on the basis of the record made before it. The redetermination proceeding in the Tax Court is apparently intended to be de novo in the same sense as the redetermination of a tax deficiency in the same court. In such proceeding neither the aggrieved party nor the Government is restricted by or limited to the issues, facts or legal theories presented in the renegotiation proceeding. [RR 633]

§ 1606.634 *Power of the Tax Court—(a) As to the determination of excessive profits.* The Tax Court has statutory power to determine as the amount of excessive profits an amount either less than, equal to, or greater than, that de-

termined by the War Contracts Board. [RR 634.1]

(b) *Finality of determination.* The 1943 act, in conferring jurisdiction upon the Tax Court, provides that upon the filing of a petition within the prescribed time the 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." (See also subsection (c) (1) of the 1943 act in § 1606.631.) [RR 634.2]

§ 1606.635 *Proceedings before the Tax Court—(a) Institution of proceeding.* A proceeding for a redetermination in the Tax Court is instituted by the filing of a petition by the contractor or subcontractor. [RR 635.1]

(b) *Rules of the Tax Court.* The rules of the Tax Court with respect to proceedings before it under the 1943 act are cited in § 1608.806. [RR 635.2]

(c) *Time for filing petition.* The contractor or subcontractor who desires to institute proceedings in the Tax Court must file his petition within 90 days (not counting Sunday or a legal holiday, in the District of Columbia, as the last day) after the mailing of the notice of the order of the War Contracts Board determining the amount of excessive profits. (See § 1606.625 (c) and (d).) [RR 635.3]

(d) *Effect of petition.* The filing of a petition does not operate to stay the execution of the order of the War Contracts Board. (See § 1606.626 (b) (2).) [RR 635.4]

(e) *Conduct of proceedings before the Tax Court.* Subsection (e) (1) of the 1943 act provides that the Tax Court shall have the same powers and duties insofar as applicable in respect of the contractor, the subcontractor, and the War Contracts Board, 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 the Tax Court has under sections 1110, 1111, 1113, 1114, 1115 (a), 1116, 1117 (a), 1118, 1120 and 1121 of the Internal Revenue Code in the case of a proceeding to redetermine a deficiency. [RR 635.5]

§ 1606.636 *Determination of excessive profits by the Tax Court—(a) Statement of the War Contracts Board.* Under the provisions of subsection (c) (1) of the 1943 act, the War Contracts Board is required, at the request of the contractor or subcontractor, to prepare and furnish a statement of its determination, of the facts used as the basis therefor, and of its reasons for such determination. It is expressly provided that "such statement shall not be used in The Tax Court of the United States as proof of the facts or conclusions stated therein." Under the rules of the Tax Court, however, a copy of such statement is to be appended to the contractor's petition. (See § 1608.806.) [RR 636.1]

(b) *Determination of costs.* (1) Subsection (a) (4) (B) of the 1943 act provides that the costs of the contractor

shall be determined in accordance with the method of cost accounting regularly employed by him in keeping his books, but further provides that if no such method of cost accounting has been employed, or if, in the opinion of the Tax Court, such method does not properly reflect such costs, such costs shall be determined in accordance with such method as in the opinion of the Tax Court does properly reflect such costs.

(2) The Tax Court under this subsection is also required to disallow as a cost any item of cost which is unreasonable or not properly chargeable to the contracts or subcontracts involved in the proceeding before it. The Tax Court must allow as items of cost, to the extent allocable to such contracts and subcontracts, all items estimated to be allowable as deductions and exclusions under Chapters 1 and 2E of the Internal Revenue Code (excluding taxes measured by income) and to adjust the amount of excessive profits to be eliminated to the extent of taxes measured by income (other than Federal taxes) which are attributable to the portion of the profits which are not excessive.

(3) Unless there has been an agreement or stipulation with respect to the proper segregation of renegotiable and non-renegotiable business, the proceeding in the Tax Court necessarily will involve a determination by the Tax Court with respect to such segregation. [RR 636.2]

(c) Factors to be considered by the Tax Court. Subsection (a) (4) (A) provides that the factors set forth therein shall be taken into consideration in determining "excessive profits." Inasmuch as the Tax Court is charged with the duty of determining the amount of excessive profits, it, as well as the War Contracts Board, must take into consideration such factors. [RR 636.3]

§ 1606.637 Enforcement of redetermination made by the Tax Court. As subsection (e) (1) of the 1943 act provides that the filing of a petition thereunder shall not operate to stay the execution of the order of the Board under subsection (c) (2) it is likely that excessive profits will have been partially or wholly eliminated prior to a redetermination of excessive profits by the Tax Court. To the extent that such profits are not so eliminated prior to the decision of the Tax Court, action will be taken to eliminate them thereafter. In this connection reference is made to § 1606.626 (c) [RR 637]

PART 1607—FORMS FOR RENEGOTIATION<sup>2</sup>  
SUBPART A—FORMS RELATING TO IDENTIFICATION, ASSIGNMENT AND CANCELLATION OF CASES

1. In § 1607.705, paragraph (a) is corrected and paragraph (h) is amended to read as set forth below.

§ 1607.705 Transmittal forms to and from Departments—(a) Form No. SPRA

<sup>1</sup> 9 FR. 4143.

<sup>2</sup> The reporting requirements in this part have been approved by the Bureau of the Budget in accordance with the provisions of the Federal Reports Act of 1942.

I-1 (Assignment Transmittal to Departments)

SPRA I-1 Assignment Transmittal WDPAB Transmittal Report No. \_\_\_\_\_  
From: Assignments and Statistics Branch WDPAB—Statistics and Progress Section  
To \_\_\_\_\_ (Department or Service) \_\_\_\_\_ (Date)

The following 1943 Assignments are transmitted to you as indicated below:

1943 Assignment Number Name  
Previous total delivered by WDPAB \_\_\_\_\_

Cumulative total gross assignments delivered to date:

(Submit in duplicate)

IRR 705.11

(h) Form No. SPRAE-3 (Identification, Tabulation Form)

TABULATION FORM

Identification (All Cards)

- 1. Assignment Number— ( ) ( ) ( ) ( ) ( )
- 2. Corporation, Partnership or Owner (C, F, or O) \_\_\_\_\_ ( )
- 3. Assignment & Location \_\_\_\_\_ ( ) ( ) ( )
- 4. Based on Approved or Final Figures (A or F) \_\_\_\_\_ ( )
- 5. Fiscal Year ends, Month \_\_\_\_\_ ( ) ( )
- 6. Fiscal Year ends, Year \_\_\_\_\_ ( )

Card No. 1

- 7. Fixed Price Net Sales (After Adjustment) \_\_\_\_\_
- 8. Fixed Price Basic Profit Before Taxes (After Adjustment) \_\_\_\_\_
- 9. Amount Recovered \_\_\_\_\_
- 10. CFFF Net Sales (After Adjustment) \_\_\_\_\_
- 11. CFFF Basic Profit Before Taxes (After Adjustment) \_\_\_\_\_
- 12. CFFF Amount Recovered \_\_\_\_\_
- 13. % Basic Profit on Fixed Price Sales (After Adjustment) \_\_\_\_\_
- 14. % CFFF Basic Profit Before Taxes (After Adjustment) \_\_\_\_\_

Card No. 2

- 15. Non-Renegotiable Net Sales \_\_\_\_\_
- 16. Non-Renegotiable Basic Profit (Before Taxes) \_\_\_\_\_
- 17. Total Business (Except CFFF) Net Sales After Adjustment \_\_\_\_\_
- 18. Total Business (Except CFFF) Basic Profit Before Taxes, After Adj. \_\_\_\_\_
- 19. Net Profit After Federal Income Taxes (Including EPT Credit) \_\_\_\_\_
- 20. \_\_\_\_\_
- 21. % Basic Profit (Before Taxes) on Non-Renegotiable Sales \_\_\_\_\_
- 22. % Basic Profit Before Taxes on Total Business After Adj. (Exc. CFFF) \_\_\_\_\_
- 23. % Profit on Net Worth \_\_\_\_\_

Card No. 3

- 24. 1st Prior Year Total Net Sales \_\_\_\_\_
- 25. 1st Prior Year Basic Profits Before Taxes \_\_\_\_\_
- 26. 2nd Prior Year Total Net Sales \_\_\_\_\_
- 27. 2nd Prior Year Basic Profit Before Taxes \_\_\_\_\_
- 28. Total Business 1936-39 Average Net Sales \_\_\_\_\_
- 29. Total Business 1936-39 Average Basic Basic Profit Before Taxes \_\_\_\_\_
- 30. 1st Prior Year % Basic Profit Before Taxes \_\_\_\_\_
- 31. 2nd Prior Year % Basic Profit Before Taxes \_\_\_\_\_
- 32. % Basic Profit on Sales 1936-39 Average (Before Taxes) \_\_\_\_\_

Card No. 4

- 33. Govt. Fac. fix price \_\_\_\_\_
- 34. Govt. Fac. CFFF \_\_\_\_\_
- 35. Govt. Fac. Advances \_\_\_\_\_
- 36. Cert. of Necessity \_\_\_\_\_
- 37. V Loans \_\_\_\_\_
- 38. Net Plant \_\_\_\_\_

Card No. 5

- 39. 2nd Prior Year No. Persons \_\_\_\_\_
- 40. Compensation 2nd Prior Year \_\_\_\_\_
- 41. 1st Prior Year No. Persons \_\_\_\_\_
- 42. Compensation 1st Prior Year \_\_\_\_\_
- 43. Current Year No. Persons \_\_\_\_\_
- 44. Compensation Current Year \_\_\_\_\_

Card No. 6

Product State City  
-----  
-----  
-----  
Do Not Write In This Space

Card No. 7

Company Name  
-----

Card No. 8

City and State  
-----  
Principal Function of Contractor  
-----

Products (In order of importance)

- 1. \_\_\_\_\_
- 2. \_\_\_\_\_
- 3. \_\_\_\_\_

Assignment No. and names of all subsidiaries included in agreement:

(Use reverse side for additional subsidiaries)  
SPRAE-3 24-70111-2M  
4-4-44

[RR 705.8]

SUBPART B—FORMS RELATING TO OPERATION OF RENEGOTIATION

The page number in the last paragraph of section D of the Contractor's Information and Work Sheet for Renegotiation (§ 1607.722) is corrected to read "4154"

SUBPART C—FORMS RELATING TO TAX CREDIT

Subpart C is added, as set forth below.

Sec.

1607.731 Letter from corporation to Internal Revenue Agent in Charge.

1607.732 Letter from individual to Internal Revenue Agent in Charge relating to a taxable year not beginning in 1941 (no overpayment of 1943 tax liability).

1607.733 Letter from individual to Internal Revenue Agent in Charge relating to a taxable year not beginning in 1941 (overpayment of 1943 tax liability).

§ 1607.731 Letter from corporation to Internal Revenue Agent in Charge.

Internal Revenue Agent in Charge,

Dear Sir:

The Price Adjustment Board of the \_\_\_\_\_ requests your advice as to the amount of the credit as defined by Section 3506, of the Internal Revenue Code with respect to a proposed elimination of excessive profits by \_\_\_\_\_ (taxpayer's name and address)

in the amount of \$ \_\_\_\_\_, included in its income and excess profits tax returns for the taxable year ended \_\_\_\_\_, 194\_\_\_\_, as filed with the Collector of Internal Revenue

at ----- [Certified (photostat) copies of the returns (pages 1 and 2 of Forms 1120 and 1121) as filed for such taxable year are enclosed for your assistance in computing the amount of the credit. If you require copies of schedules or other papers attached to the returns, they will be furnished promptly upon request.]

Please forward your reply directly to ----- with (name and address of Board or Section) a copy to the undersigned.

Very truly yours,

NOTE: In the case of an individual, with respect to a taxable year beginning in 1941, this form should be revised with proper adjustment to give effect to the individual return rather than the corporate returns.

[RR 731]

§ 1607.732 Letter from individual to Internal Revenue Agent in Charge relating to a taxable year not beginning in 1941 (no overpayment of 1943 tax liability)

Internal Revenue Agent in Charge,

Dear Sir:

The Price Adjustment Board of the ----- requests your advice as to the amount of the credit as defined by Section 3806 of the Internal Revenue Code with respect to a proposed elimination of excessive profits by ----- (taxpayers's name and address) of \$ ----- for the taxable year ended -----, 194 ----- \$ -----

of these excessive profits were included in income for said taxable year in computing the total income and Victory tax in the taxpayer's return for the year ended -----, 194 ----- as filed with the Collector of Internal Revenue at ----- A certified (photostat) copy of this return is enclosed for your assistance in computing the amount of this credit.

Please forward your reply directly to ----- with a (name and address of Board or Section) copy to the undersigned.

Very truly yours,

[RR 732]

§ 1607.733 Letter from individual to Internal Revenue Agent in Charge relating to a taxable year not beginning in 1941 (overpayment of 1943 tax liability)

Internal Revenue Agent in Charge,

Dear Sir:

The Price Adjustment Board of the ----- requests your advice as to the amount of the credit as defined by Section 3806 of the Internal Revenue Code with respect to a proposed elimination of excessive profits by ----- (taxpayer's name and address) in the amount of \$ ----- for the taxable year ended -----, 194 ----- These excessive profits were included in the taxpayer's income for said taxable year in computing his estimated tax for 1943, and \$ ----- thereof were included in his income for said taxable year in computing his total income and Victory tax in his return for the year ended -----, 194 ----- as filed with the Collector of Internal Revenue at ----- A certified (photostat) copy of this return

is enclosed for your assistance in computing the amount of this credit.

Please forward your reply directly to ----- (name and address of Board or Section) with a copy to the undersigned.

Very truly yours,

[RR 733]

SUBPART D—FORMS RELATING TO AGREEMENTS

Sections 1607.741 and 1607.742 are added as set forth below.

§ 1607.741 Agreement forms—(a) Standard Form of Agreement.

WAR CONTRACTS PRICE ADJUSTMENT BOARD

(Department)

RENEGOTIATION AGREEMENT

This agreement is entered into as of the ----- day of -----, 194 -----, by and between the United States of America (hereinafter referred to as "the Government") and -----

-----, "a corporation organized and existing under the laws of the state of -----, "co-partners, doing business under the firm name of -----, "a sole proprietor, doing business under the name of -----, having its principal office at ----- (hereinafter referred to as "the Contractor")

1. Profits to be eliminated. As a result of renegotiation pursuant to the Renegotiation Act, the Government and the Contractor hereby determine and agree that ----- Dollars (\$ -----) of the profits derived by the Contractor from contracts and subcontracts of the Contractor which are subject to renegotiation under the Renegotiation Act (hereinafter referred to as "said contracts and subcontracts") represent the amount of profits received or accrued under said contracts and subcontracts during the Contractor's fiscal year ended -----, 194 ----- (hereinafter referred to as "said fiscal year") which pursuant to the Renegotiation Act should be eliminated.

2. Warranty. This agreement has been entered into in reliance, among other things, upon the representations of the Contractor, including the financial and other data submitted by the Contractor upon the basis of which the statement set forth in Exhibit A annexed hereto and made a part hereof was prepared.

The Contractor warrants that the representations made by it to the Government in connection with this renegotiation are true and correct to the best knowledge, information and belief of the Contractor and that to its best knowledge, information and belief, the Contractor has disclosed all material facts required to make the Contractor's representations complete and not misleading.

3. Tax credit under section 3806 of the Internal Revenue Code. The Contractor represents that the profits, the amount of which is agreed in Article I hereof to be eliminated, were included in income in the Contractor's Federal income and excess profits tax returns for said fiscal year and that the Contractor has applied or will promptly apply for a computation by the Bureau of Internal Revenue, based upon the agreements made to the date of such computation, of the amount by which the taxes of the Contractor for said fiscal year payable under Chapters 1,

\*Delete inapplicable language.

2A, 2B, 2D, and 2E of the Internal Revenue Code and decreased by reason of the application of Section 3803 of the Internal Revenue Code. The amount, if any, so computed will be allowed as a credit against the amount of profits agreed in Article 1 to be eliminated.

4. Terms of payment. The Contractor agrees to pay to the Government the sum of ----- Dollars (\$ -----), being the amount determined in Article 1 hereof to be eliminated, as follows:

Payment shall be made by check to the order of the Treasurer of the United States and forwarded -----

----- \*All unpaid installments hereunder may at the option of the Government be declared, and thereupon shall become, immediately due and payable, in the event of a default in the payment of any installment continuing for twenty days.

5. Additional profits to be eliminated. If, as a result of the elimination of the amount of profits determined pursuant to Article 1 hereof, the Contractor shall either receive a refund (whether by repayment or credit) or shall recognize a reduction in its liability (by giving effect thereto on its books) in respect of any item which was allowed as an item of cost in the determination of such profits, then promptly thereafter, the Contractor shall pay to the Government, as additional profits which should be eliminated a sum equal to the amount of such refund or reduction in liability, by the delivery to ----- of a check payable to the order of the Treasurer of the United States in such amount.

In the elimination of said additional profits the Contractor shall be allowed the tax credit, if any, provided by Section 3806 of the Internal Revenue Code.

6. Covenant against contingent fees. The Contractor warrants that it has not employed any person to solicit or secure this agreement upon any agreement for a commission, percentage, brokerage, or contingent fee. Breach of this warranty shall give the Government the right to annul this agreement.

7. Officials not to benefit. No member of or delegate to Congress or resident commissioner or any other person in the employ or service of the United States shall be admitted to any share or part of this agreement or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this agreement if made with a corporation for its general benefit.

8. Discharge of liability. This agreement shall be final and conclusive according to its terms, and performance by the Contractor in accordance herewith shall be in full discharge of all liability of the Contractor under the Renegotiation Act for excessive profits received or accrued under said contracts and subcontracts for the fiscal year covered hereby and, except upon a showing of fraud or malfeasance or a willful misrepresentation of a material fact, this agreement shall not for the purposes of the Renegotiation Act be reopened as to the matters agreed upon, and shall not be modified by any officer, employee, or agent of the United States, and this agreement and any determination made in accordance herewith shall not be annulled, modified, set aside, or disregarded in any suit, action or proceeding.

----- \*If any part of the profits to be eliminated were derived from prime contracts with Defense-Plant Corporation, Metals Reserve Company, Defense Supplies Corporation or Rubber Reserve Company, insert here: "to the extent of \$ ----- and by check to the order of and delivered to the RFC Price Adjustment Board, 811 Vermont Avenue, Washington 25, D. C., to the extent of \$ -----"

9. *Renegotiation rebate.* Nothing contained in this agreement shall prejudice any right which the Contractor may have to recover a renegotiation rebate pursuant to subsection (a) (4) (D) of the Renegotiation Act.

10. *Execution of agreement.* This agreement has been duly executed by or on behalf of the Contractor pursuant to proper authority and by or on behalf of the Government by the War Contracts Price Adjustment Board by its duly authorized representative to whom authority to execute this agreement has been delegated by the War Contracts Price Adjustment Board pursuant to subsection (d) (4) of the Renegotiation Act.

In witness whereof, the parties hereto have executed this agreement in \_\_\_\_\_ counterparts as of the day and year above written.

(Corporate Seal if a Corporation)  
By \_\_\_\_\_  
(Title of Officer)

Attest:  
\_\_\_\_\_  
Secretary  
(To be used if executed by a corporation)  
UNITED STATES OF AMERICA.

By \_\_\_\_\_  
(Title)  
Acting on behalf of the War Contracts Price Adjustment Board created by the Renegotiation Act, under due delegations of authority made pursuant to subsection (d) (4) of the Renegotiation Act.

Each exhibit attached hereto is to be initialed for identification by the persons signing on behalf of the Contractor.

A duly certified copy of the resolution of the Board of Directors of the Contractor, if a corporation, authorizing the execution and delivery of this agreement is to be attached hereto.

[RR 741.1]

(b) *Variations in the standard form—*  
(1) *Forward pricing.* When agreement cannot be reached upon specific price reductions, use may be made of the following clause:

The Contractor agrees that so long as it shall have contracts and subcontracts which are by law subject to renegotiation, it will from time to time adjust its prices under such contracts and subcontracts to eliminate the accumulation of profits thereunder regarded by the Contractor as excessive. Within twenty days after the close of that quarter of the Contractor's current fiscal year in which the Contractor has received a fully executed counterpart of this agreement, the Contractor agrees to file with \_\_\_\_\_

\_\_\_\_\_ a report setting forth the price reductions, if any, made during all then expired quarters of such current fiscal year applicable to its contracts and subcontracts subject to renegotiation. The Contractor further agrees to file a similar report within twenty days following each subsequent quarter of its current fiscal year setting forth its price reductions, if any, made during such quarter. Each such report may be in such general terms or in such detail as the Contractor deems necessary to an intelligent appraisal thereof, but shall set forth, if feasible, the unit prices before and after each such reduction, and shall set forth an estimate of the aggregate reduction effected thereby during such fiscal year under contracts and subcontracts subject to renegotiation; and shall include, if available, a summary profit and loss statement for the period covered by the report. It is understood and agreed that price reductions will be taken into consideration in any renegotiation which may hereafter be conducted with the Contractor with respect to its current fiscal year, but that, with respect to periods subsequent

to the date of this agreement, the obligations of the Contractor under this article will not be deemed to be satisfied by refunds or retro-active price reductions.

Failure on the part of the Contractor to comply fully with this article shall not constitute grounds for reopening this agreement or for setting aside the discharge provided for in Article 8 hereof.

(2) *Variations in Article 2 of the standard form.* When the renegotiation covers a parent and subsidiaries the following clause should be added to Article 2 of the standard form of agreement by insertion after the first paragraph of Article 2:

Exhibit B annexed hereto and made a part hereof contains a complete list, as represented by the Contractor, of its subsidiaries, all of which are consolidated with the Contractor for the purposes hereof, except such, if any, as may be expressly excluded from such consolidation, as indicated by proper notation on said Exhibit B. Also noted on Exhibit B is the part, if any, of the profits to be eliminated which is allocated to each subsidiary so consolidated with the Contractor. The part unallocated to subsidiaries is allocated to the Contractor.

Such exhibit may take the following form:

EXHIBIT B—LIST OF, AND ALLOCATION OF, PROFITS TO BE ELIMINATED AMONG SUBSIDIARIES OF CONTRACTOR INCLUDED IN THE RENEGOTIATION

Subsidiaries (1)	Allocation of Profits to be Eliminated (2)
_____	_____
_____	_____
_____	_____

NOTES

- (1) Give State of incorporation of each subsidiary.
- (2) Allocation of profits should be in dollar amounts.

(3) *Variations in Article 3 of the standard form.* (i) If the contractor has not filed his Federal income or income and excess profits tax returns, or has filed the return but has not included in income as reported therein the profits to be eliminated, the following provisions should be used in lieu of the provisions of Article 3 as contained in the standard form of agreement:

3. Tax Credit Under Section 3806 of the Internal Revenue Code: The amount of profit agreed in Article 1 hereof to be eliminated has not been included in income in the Contractor's Federal income tax return (or income and excess profits tax returns) for said fiscal year and, accordingly no tax credit under Section 3806 of the Internal Revenue Code is allowed against the amount of such profits to be eliminated. In the event, however, that Federal income or excess profits taxes shall be assessed upon the amount of profits agreed in Article 1 hereof to be eliminated, or any part thereof, there will be allowed to the Contractor the credit, if any, to which it is entitled under Section 3806 of the Internal Revenue Code with respect to such profits.

(ii) In some instances, a contractor will have included in income as reported in his tax returns less than all of the profits to be eliminated. In such a case Article 3 should be modified to read as follows:

3. Tax Credit Under Section 3806 of the Internal Revenue Code. The Contractor

represents that of the profits agreed in Article 1 hereof to be eliminated \_\_\_\_\_ were included in income in the Contractor's Federal income tax return (or income and excess profits tax returns) for said fiscal year and that the Contractor has applied or will promptly apply for a computation by the Bureau of Internal Revenue, based upon the assessments made to the date of such computation, of the amount by which the taxes of the Contractor for said fiscal year payable under Chapters 1, 2A, 2B, 2D, and 2E of the Internal Revenue Code are decreased by reason of the application of Section 3806 of the Internal Revenue Code. The amount, if any, so computed will be allowed as a credit against the amount of profits agreed in Article 1 to be eliminated. In the event, however, that Federal income or excess profits taxes shall be assessed upon the amount of the profits agreed in Article 1 hereof to be eliminated and which were excluded from income in the Contractor's income tax return (or income and excess profits tax returns) for said fiscal year, there will be allowed to the Contractor the credit, if any, to which it is entitled under Section 3806 of the Internal Revenue Code with respect to such profits.

(iii) In the case of a partnership, the tax credit applicable against the amount of the profits to be eliminated is the aggregate of the credits to which each of the partners is entitled. Accordingly, in such a case Article 3 may be modified to read as follows:

3. Tax Credit Under Section 3806 of the Internal Revenue Code. Each of the partners comprising the Contractor represents that his proportionate share of the profits, the amount of which is agreed in Article 1 hereof to be eliminated, was included in his income for his taxable year in which said fiscal year ended in computing his total tax in his Federal income tax return for said taxable year. Each of such partners has applied or will promptly apply for a computation by the Bureau of Internal Revenue, based upon the assessments made to the date of such computation, of the amount by which his taxes for such taxable year under Chapter 1 of the Internal Revenue Code are decreased by reason of the application of Section 3806 of the Internal Revenue Code. The aggregate of the amounts, if any, so computed will be allowed as a credit against the amount of profits agreed in Article 1 to be eliminated.

(4) *Anti-discrimination clause.* Whenever a renegotiation agreement executed under the Act expressly purports to modify the terms of specified existing prime contracts with any of the Departments with respect to future deliveries, and the contract or contracts to be modified do not contain an anti-discrimination clause then the agreement shall include the following provision:

*Anti-discrimination.* (a) The Contractor, in performing the work required by this contract, shall not discriminate against any employee or applicant for employment because of race, creed, color, or national origin.

(b) The Contractor agrees that the provision of paragraph (a) above will also be inserted in all of its subcontracts. For the purpose of this article, a subcontract is defined as any contract entered into by the Contractor with any individual partnership, association, corporation, estate, or trust, or other business enterprise or other legal entity, for a specific part of the work, to be performed in connection with the supplies or services furnished under this contract: *Provided, however,* That a contract for the

furnishing of standard or commercial articles or raw material shall not be considered as a subcontract.

(5) *Variations in Article 4 of the standard form*—(i) If the profits to be eliminated are to be paid in installments, and the amount of the tax credit has not been ascertained, Article 4 may be drafted to read as follows:

4. Terms of Payments. The Contractor agrees to pay to the Government the amount agreed in Article 1 hereof to be eliminated, less the tax credit, if any, applicable thereto pursuant to Article 3, as follows:

(a) \$-----, less the pro rata proportion of the tax credit applicable thereto, within ten days after the Contractor shall have received a fully executed counterpart of this agreement or written notice of the amount of the tax credit, whichever is later; and

(b) \$-----, less the pro rata proportion of the tax credit applicable thereto, on or before ----- or the due date of the first schedule payment, whichever shall be later.

Payment shall be made by check to the order of the Treasurer of the United States and forwarded -----

All unpaid installments hereunder may at the option of the Government be declared, and thereupon shall become, immediately due and payable, in the event of a default in the payment of any installment continuing for twenty days.

(ii) If the amount of the tax credit has been ascertained before the agreement is drawn, Article 4 may be drafted to read as follows:

4. Terms of Payment. The Contractor agrees to pay to the Government the sum of ----- (\$-----), being the difference between the amount agreed in Article 1 hereof to be eliminated and the amount of the tax credit referred to in Article 3 which has been determined to be applicable thereto, as follows:

\$----- within ten days after the Contractor shall have received a fully executed counterpart of this agreement, and \$----- on or before -----, and \$----- on or before -----

Payment shall be made by check to the order of the Treasurer of the United States and forwarded -----

All unpaid installments hereunder may at the option of the Government be declared, and thereupon shall become, immediately due and payable, in the event of a default in the payment of any installment continuing for twenty days.

[RR 741.2]

(c) *Contents of Exhibit A to the Standard Form of Agreement.* Exhibit A referred to in the Standard Form of Agreement shall contain, as a minimum, the following financial data and information:

(1) The amount of net sales under fixed price contracts in the aggregate and segregated as between renegotiable and non-renegotiable business.

\*If any part of the profits to be eliminated were derived from prime contracts with Defense Plant Corporation, Metals Reserve Company, Defense Supplies Corporation or Rubber Reserve Company, appropriate provision should be made so that the portion of the profits eliminated allocable to such prime contracts is paid by check payable and delivered to the RFC Price Adjustment Board, 811 Vermont Avenue, Washington 25, D. C.

(2) The net profit on each such amount of fixed price business before Federal taxes on income.

(3) The aggregate amount of billings under cost-plus-fixed-fee contracts subject to renegotiation (i. e., costs plus gross fees)

(4) The net fees earned under renegotiable cost-plus-fixed-fee contracts before Federal taxes on income.

(5) The amount of adjustment in the profits to be eliminated on account of taxes other than Federal taxes measured by income.

(6) The amount of profits to be eliminated shown separately as to fixed price and cost-plus-fixed-fee business. If any part of the profits to be eliminated were derived from prime contracts with RFC subsidiaries, such part of such profits shall be indicated.

The form of the exhibit and the manner in which such financial data and information shall be shown shall be within the discretion of the Department which has conducted the renegotiation. In the discretion of such Department, any additional financial data or information may be included in Exhibit A. [RR 741.3]

(d) *Contents of Exhibit B to the Standard Form of Agreement.* See § 1607.741 (b) (2) [RR 741.4]

(e) *Contents of Exhibit C to the Standard Form of Agreement.* See § 1605.505. [RR 741.5]

§ 1607.742 Clearance Notice.

Form -----

WAR CONTRACTS PRICE ADJUSTMENT BOARD

(Department)

CLEARANCE

-----, 194--

To:

As a result of renegotiation pursuant to the Renegotiation Act, between the United States of America (hereinafter referred to as "the Government") and -----

(If not a corporation, insert proper description)

corporation having its principal office at ----- in the City of ----- State of ----- (hereinafter referred to as "the Contractor"). It has been determined that no excessive profits have been received by or accrued to the Contractor during the contractor's fiscal year ended ----- (hereinafter referred to as "said fiscal year"), from contracts and subcontracts of the Contractor which are subject to renegotiation pursuant to the Renegotiation Act and which were included as renegotiable business in the financial and other data upon which this determination is based (hereinafter referred to as "said contracts and subcontracts").

The determination and discharge herein are based upon data submitted by the Contractor including a statement of income and other financial data for said fiscal year.

This instrument shall constitute a final determination that no excessive profits have been received by or accrued to the Contractor during said fiscal year from said contracts and subcontracts and shall finally discharge the Contractor of any liability under the Renegotiation Act for excessive profits derived during said fiscal year from said contracts and subcontracts, subject, however, to the right of the Government, or it duly au-

thorized representative, to reopen this renegotiation and modify or annul the determination and discharge herein upon a showing of fraud or malfeasance or a willful misrepresentation of a material fact, including a willful omission by the Contractor to state a material fact required to make any representation of the Contractor not misleading.

This determination and discharge shall not be effective with respect to any amounts heretofore or hereafter received by the Contractor under any of the contracts or subcontracts of the Contractor which are subject to renegotiation unless such amounts were reflected in income for said fiscal year in the financial data submitted by the Contractor and upon which the determination and discharge herein are based.

This determination and discharge are made upon the conditions that (a) no member of or delegate to Congress or resident commissioner, or any other person in the employ or service of the United States, shall be admitted to any share or part of this instrument or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this instrument if made with a corporation for its general benefit, and (b) the Contractor has not employed any person to solicit or secure this instrument upon any agreement for a commission, percentage, brokerage or contingent fee; and (c) the Contractor will notify the War Contracts Price Adjustment Board promptly of the receipt of any amounts paid to the Contractor under any of the contracts or subcontracts referred to above, which amounts are applicable to said fiscal year and which were not reflected in income for said fiscal year in the financial data submitted by the Contractor. Breach of any of the foregoing conditions will give the Government the right to annul this determination.

UNITED STATES OF AMERICA.

By -----

(Title)

Acting on behalf of the War Contracts Price Adjustment Board created by the Renegotiation Act, under due delegations of authority made pursuant to subsection (d) (4) of the Renegotiation Act.

[RR 742]

SUBPART E—FORMS OF REPORTS

Subpart E is added, as set forth below.

Sec.

1607.751 Progress and operations reports.

(a) Form No. SPRA-O (Weekly Progress Report of Departments).

(b) Instructions for Preparation of Departmental Board Weekly Progress Report (Form SPRA-O).

(c) Form No. SPRA I (Weekly Progress Report of War Department Services).

(d) Instructions for Preparation of War Department Weekly Progress Report (Form SPRA I).

(e) Form No. SPRA I-B (War Department Price Adjustment Board "Status of Renegotiation Report").

(f) Form No. SPRA I-BB (1943 Fiscal Year Assignments "Status of Renegotiation Report").

(g) Form No. SPRA I-C (War Department Price Adjustment Board "Operations Report").

(h) Form No. SPRA I-CC (1943 Fiscal Year Assignments "Operations Report").

1607.752 Statement to be furnished contractor.

(a) General instructions.

(b) Form of statement and specific instructions as to its preparation (statutory).

(c) Substitute paragraphs for the statement where statutory determination has not yet been made.

§ 1607.751 *Progress and operations reports.* (Note: Of the forms referred to in this section, only SPRA I (see § 1607.751 (c) and (d)) is prepared by Services of the War Department.)

(a) *Form No. SPRA-O (Weekly Progress Report of Departments)*

SPRA-O

DEPARTMENTAL BOARD WEEKLY PROGRESS REPORT  
(Fiscal Year 1943 Assignments)

From: \_\_\_\_\_ Close of Friday \_\_\_\_\_  
(Department)

To: Assignments & Statistics Branch WDPAB—Statistics & Progress Section

\*NOTE: Before transmitting Weekly Progress Report indicate in appropriate box the number of the last Transmittal Report to or from WDPAB—for reconciliation purposes.

(\*)

- 1. Gross assignments received to date \_\_\_\_\_
- 2a. Less—Reassignments requested, pending at WDPAB \_\_\_\_\_
- 2b. Less—Reassignments approved, confirmed by WDPAB \_\_\_\_\_
- 3. Net—Assignments charged to this Department \_\_\_\_\_
- 4. Report of progress on net assignments in process:
  - a. Renegotiation not initiated \_\_\_\_\_
  - b. Statutory renegotiation begun \_\_\_\_\_
  - c. Bona fide oral agreements reached \_\_\_\_\_
  - d. Signed agreements in process \_\_\_\_\_
  - e. Sub-total (4a through 4d) \_\_\_\_\_
- 5. Report on completed assignments:
  - 5a. Completed settlements \_\_\_\_\_
  - 5b. Impasse cases—Unilateral determinations (final) \_\_\_\_\_
  - 5c. Completed clearances \_\_\_\_\_
- Cancellations:*
  - 5d-1. Requested—Pending at WDPAB \_\_\_\_\_
  - 5d-2. Approved—Confirmed by WDPAB \_\_\_\_\_
  - 5e. Sub-total (5a through 5d-2) \_\_\_\_\_
- 6. Grand Total (4e plus 5e should agree with line 3) \_\_\_\_\_

Number  
of Tabu-  
lation  
Forms  
SPRAE-8  
Attached

Rev. 26 May 1944

[RR 751.1]

(b) *Instructions for Preparation of Departmental Board Weekly Progress Report (Form SPRA-O)*

INSTRUCTIONS FOR THE PREPARATION OF DEPARTMENTAL BOARD WEEKLY PROGRESS REPORT (SPRA-O)

(Fiscal Year 1943 Assignments)

The Weekly Progress Report SPRA-O to be submitted by the

- 1. Navy Department—Price Adjustment Board
- 2. Navy Department—Procurement Legal Division
- 3. Maritime Commission
- 4. Reconstruction Finance Corporation
- 5. Treasury Department
- 6. War Shipping Administration

to the Assignments and Statistics Branch of the War Department Price Adjustment Board for the information of the War Contracts Price Adjustment Board and the Joint Price Adjustment Board is designed to show (a) the progress of renegotiation (items 4a to 4d)

and (b) the degree of accomplishment on assignments completed (items 5a to 5d-2) and (c) as a reconciliation on net Assignments for which the Department is responsible as well as the end result on Completed Settlements and Clearances and Impasse Cases which have finally resulted in unilateral determinations.

Items Reported: (In order of lines on Form SPRA-O).

Line 1. *Total gross assignments received to date* (It will be noted this figure is never adjusted downward). Information source: Cumulative total on last Assignment Trans. Report SPRA I-1 received by you from WDPAB;

Line 2a. *Less reassignments requested—Pending at WDPAB.* Information source: Plus—Cumulative total on last Reassignment Request Trans. Report SPRA I-2a5d1. Minus—Cumulative total on last Disapproved Reassignment Trans. Report SPRA I-2ax5d1x. Minus—Cumulative total on last Approved Reassignment Trans. Report SPRA I-2b5d2. Net—Reassignments re-

quested—pending. Total to be reported on line 2a.

Line 2b. *Less reassignments approved—Confirmed by WDPAB.* Information source: Cumulative total on last Approved Reassignment Trans. Report SPRA I-2b5d2 delivered to you by WDPAB.

Line 3. *Net assignments charged to this Department.* Information source: Line 1 minus lines 2a and 2b.

Line 4. *Report of progress on net assignments in process.*

Line 4a. *Renegotiation not initiated.* Information source: Report to you from your Field Offices covering 1943 assignments on which renegotiation has not begun.

Line 4b. *Statutory renegotiation begun.* Information source: Report to you from your Field Offices covering 1943 assignments on which renegotiation has begun but on which a bona fide oral agreement has not been reached with contractor.

Line 4c. *Bona fide oral agreements reached.* Information source: Report to you from your Field Offices covering 1943 assignments on which a bona fide oral agreement has been reached with contractor.

Line 4d. *Signed agreements in process.* Information source: Report to you from your Field Offices plus completed cases under review in Office of Chief prior to delivery to WDPAB of Tabulation Report SPRAE-8 attached to Completed Settlement Transmittal Report SPRA I-5a.

Line 4e. *Sub-total of lines 4a through 4d.*

Line 5. *Report on completed assignments.*

Line 5a. *Completed settlements.* Information source: Cumulative total on your last numbered Completed Settlement Transmittal Report SPRA I-5a already delivered to WDPAB with Tabulation Form SPRAE-8 for each Settlement attached.

Line 5b. *Impasse cases—Unilateral determinations.* Information source: Cumulative total on your last numbered Impasse Unilateral Determination Transmittal Report SPRA I-5b already delivered to WDPAB with Tabulation Form SPRAE-8 for each Unilateral Determination attached.

Line 5c. *Completed clearances.* Information source: Cumulative total on your last numbered Completed Clearance Transmittal Report SPRA I-5c already delivered to WDPAB with Tabulation Form SPRAE-8 for each Completed Clearance attached.

Line 5d-1. *Cancellations requested—Pending at WDPAB.* Information source: Plus—Cumulative total on last Cancellation Request Trans. Report SPRA I-2a5d1. Minus—Cumulative total on last Disapproved Cancellation Trans. Report SPRA I-2ax5d1x. Minus—Cumulative total on last Approved Cancellation Trans. Report SPRA I-2b5d2. Net—Cancellations requested—pending. Total to be reported on line 5d-1.

Line 5d-2. *Cancellations approved—Confirmed by WDPAB.* Information source: Cumulative total on last Approved Cancellation Trans. Report SPRA I-2b5d2 delivered to you by WDPAB.

Line 5e. *Sub-total of lines 5a through 5d-2.*

Line 6. *Grand total* (Line 4e plus line 5e should agree with line 3).

Rev. 26 May 1944.

[RR 751.2]

(c) Form No. SPRA I (Weekly Progress Report of War Department Services).

SPRA I

WAR DEPARTMENT  
WEEKLY PROGRESS REPORT  
(Fiscal Year 1943 Assignments)

From: \_\_\_\_\_ Close of Friday \_\_\_\_\_  
To: Assignments & Statistics Branch WDPAB—Statistics & Progress Section 6

\*NOTE: Before transmitting Weekly Progress Report to WDPAB indicate in approximate box the number of the last Transmittal Report to or from WDPAB—for reconciliation purposes.

- (\*)
- 1. Gross assignments received to date \_\_\_\_\_
  - 2a. Less—Reassignments requested, pending at WDPAB \_\_\_\_\_
  - 2b. Less—Reassignment approved, confirmed by WDPAB \_\_\_\_\_
  - 3. Net—Assignments charged to this Service \_\_\_\_\_
  - 4. Report of progress on net assignments with service:
    - a. Renegotiation not initiated \_\_\_\_\_
    - b. Statutory renegotiation begun \_\_\_\_\_
    - c. Bona fide oral agreements reached \_\_\_\_\_
    - d. Signed agreements in process \_\_\_\_\_
    - e. Sub-total (4a through 4d) \_\_\_\_\_
  - 5. Reconciliation report on assignments delivered to WDPAB:
    - Completed Settlements:*
      - 5a-1. For WDPAB Review \_\_\_\_\_
      - 5a-2. For WDPAB Approval \_\_\_\_\_
      - 5b. Impasse Cases \_\_\_\_\_
      - Completed Clearances:*
        - 5c-1. For WDPAB Review \_\_\_\_\_
        - 5c-2. For WDPAB Approval \_\_\_\_\_
        - Cancellations:*
          - 5d-1. Requested—Pending at WDPAB \_\_\_\_\_
          - 5d-2. Approved—Confirmed by WDPAB \_\_\_\_\_
          - 5e. Sub-total (5a through 5d) \_\_\_\_\_
          - 6. Grand total (4e plus 5e should agree with line 3) \_\_\_\_\_

Rev. 26 May 1944

[RR 751.3]

(d) Instructions for preparation of War Department Weekly Progress Report (Form SPRA I)

INSTRUCTIONS FOR THE PREPARATION OF WAR DEPARTMENT WEEKLY PROGRESS REPORT (SPRA I)

(Fiscal Year 1943 Assignments)

Submitted by the Services at the Close of Each Friday to the War Department Price Adjustment Board

The Weekly Progress Report SPRA I to be submitted by the Chiefs of Price Adjustment Sections to the War Department Price Adjustment Board is designed to show (a) the progress of renegotiation in each Service (Items 4a to 4d), (b) the degree of accomplishment on assignments delivered to the War Department Price Adjustment Board for appropriate action (Items 5a to d), and (c) as a reconciliation of the records of the Chief of Price Adjustment Section with the Assignments and Statistics Branch, War Department Price Adjustment Board. Those items contained in the report which require weekly reconciliation with the records of the Assignments and Statistics Branch have been provided boxes for the posting of the number of the last Transmittal Report on items delivered to or received from the War Department Price Adjustment Board.

Items Reported: (In order of lines on form SPRA I)

Line 1. Total gross assignments received to date. (It will be noted that this figure is

No. 113—7

never adjusted downward). Information source: Cumulative total on last Assignment Trans. Report SPRA I-1 received by you from WDPAB.

Line 2a. Less—Reassignments requested—Pending at WDPAB. Information source: Plus—Cumulative total on last Reassignment Request Trans. Report SPRA I-2a5d1. Minus—Cumulative total on last Disapproved Reassignment Trans. Report SPRA I-2a5d1x. Minus—Cumulative total on last Approved Reassignment Trans. Report SPRA I-2d5d2. Net—Reassignments requested—Pending. Total to be reported on line 2a.

Line 2b. Less—Reassignments approved—Confirmed by WDPAB. Information source: Cumulative total on last Approved Reassignment Trans. Report SPRA I-2b5d2 delivered to you by WDPAB.

Line 3. Net assignments charged to this Service. Information source: Line 1 Minus lines 2a and 2b.

Line 4. Report of progress on net assignments with Service.

Line 4a. Renegotiation not initiated. Information source: Report to you from your Field Offices covering 1943 Assignments on which renegotiation has not begun.

Line 4b. Statutory renegotiation begun. Information source: Report to you from your Field Offices covering 1943 Assignments on which renegotiation has begun but on which a bona fide oral agreement has not been reached with Contractor.

Line 4c. Bona fide oral agreements reached. Information source: Report to you

from your Field Offices covering 1943 Assignments on which a bona fide oral agreement has been reached with Contractor.

Line 4d. Signed agreements in process. Information source: Report to you from your Field Offices plus completed cases under review in Office of Chief of Service prior to delivery to WDPAB attached to Completed Settlement Trans. Report SPRA I-5abc.

Line 4e. Sub-total of lines 4a through 4d. Line 5. Reconciliation report on assignments delivered to WDPAB.

Line 5a-1. Completed settlements for WDPAB review. Information source: Plus—Cumulative total on your last numbered Completed Settlements Trans. Report SPRA I-5abc covering completed settlements delivered to WDPAB for review. Minus—Cumulative total on last Returned Settlements Trans. Report SPRA I-5abcx. Net—Completed settlements in hands of WDPAB for review. Total to be reported on line 5a-1.

Line 5a-2. Completed settlements for WDPAB approval. Information source: Plus—Cumulative total on your last numbered Completed Settlements Trans. Report SPRA I-5abc covering Completed Settlements delivered to WDPAB for approval. Minus—Cumulative total on last Returned Settlements Trans. Report SPRA I-5abcx. Net—Completed settlements in hands of WDPAB for approval. Total to be reported on line 5a-2.

Line 5b. Impasse cases. Information source: Plus—Cumulative total on your last numbered Impasse Trans. Report SPRA I-5abc delivered to WDPAB. Minus—Cumulative total on last Returned Impasse Trans. Report SPRA I-5abcx. Net—Impasse cases in hands of WDPAB—Total to be reported on line 5b.

Line 5c-1. Completed clearances for WDPAB review. Information source: Plus—Cumulative total on your last numbered Completed Clearance Trans. Report SPRA I-5abc delivered to WDPAB for review. Minus—Cumulative total on last Returned Clearance Trans. Report SPRA I-5abcx. Net—Completed clearances in hands of WDPAB for review. Total to be reported on line 5c-1.

Line 5c-2. Completed clearances for WDPAB approval. Information source: Plus—Cumulative total on your last numbered Completed Clearance Trans. Report SPRA I-5abc delivered to WDPAB for approval. Minus—Cumulative total on last Returned Clearance Trans. Report SPRA I-5abcx. Net—Completed clearance in hands of WDPAB for approval—Total to be reported on line 5c-2.

Line 5d-1. Cancellations requested—Pending at WDPAB. Information source: Plus—Cumulative total on last Cancellation Request Trans. Report SPRA I-2a5d1. Minus—Cumulative total on last Disapproved Cancellation Trans. Report SPRA I 2ax5d1x. Minus—Cumulative total on last Approved Cancellation Trans. Report SPRA I-2b5d2. Net—Cancellations requested—Pending. Total to be reported on line 5d-1.

Line 5d-2. Cancellations approved—Confirmed by WDPAB. Information source: Cumulative total on last Approved Cancellation Trans. Report SPRA I-2b5d2 delivered to you by WDPAB.

Line 5e. Sub-total of lines 5a-1 through 5d-2.

Line 6. Grand total (Line 4e plus line 5e should agree with line 3).

Rev. 26-May 1944.

[RR 751.4]

(g) Form No. SPRA I C (War Department Price Adjustment Board Operations Report)  
 SPRA I-C

1943 FISCAL YEAR ASSIGNMENTS  
 WAR DEPARTMENT PRICE ADJUSTMENT BOARD  
 OPERATIONS REPORT

Close of Friday  
 [Details of column (E) SPRA I-B covering 1943 fiscal year assignments delivered by services to WDPAB]

	Army Air Forces	Chemical Warfare	Engineers	Ordnance	Quartermaster	Signal Corps	Surgeon General	Transportation	War Dept. PAB	Total (Column (F) of Status Report)	In Process at WDPAB	Completed by WDPAB
5a Completed settlements: For WDPAB Review; For WDPAB Approval										100%		
5b Impasse cases: In Process at WDPAB; Completed—Agreement												
5c Completed clearances: For WDPAB Review; For WDPAB Approval												
5d Cancellations: Requested—Funding; Approved by WDPAB												
Total (Lines 5a to 5d)										100%		

Prepared by: Assignments and Statistics Branch WDPAB Statistics and Progress Section.  
 Rev 26 May 1944

[RR 751 7]

(h) Form No. SPRA I CC (1943 Fiscal Year Assignments Operations Report)

SPRA I CC  
 1943 FISCAL YEAR ASSIGNMENTS  
 OPERATIONS REPORT

Close of Friday  
 [Details of column (F) SPRA I-BB covering 1943 fiscal year assignments delivered by Services and reported by departments to WDPAB]

	War Department	Navy PAB	Navy PAB	Maritime	Treasury	War Shipping	Total (Column (F) of Status Report)	Completed by WDPAB
5a Completed Settlements								
5b Impasse Cases: In Process at WDPAB; Completed—Agreement								
5c Completed clearances: Requested—Funding; Approved by WDPAB								
Total (Lines 5a to 5d)							100%	

Prepared by: Assignments and Statistics Branch Statistics and Progress Section.  
 Rev 26 May 1944

[RR 751-8]

(e) Form No. SPRA I B (War Department Price Adjustment Board Status of Renegotiation Report)

SPRA I-B  
 1943 FISCAL YEAR ASSIGNMENTS  
 WAR DEPARTMENT PRICE ADJUSTMENT BOARD  
 STATUS OF RENEGOTIATION REPORT

Close of Friday

Service	Not assignments	(A) Renegotiation initiated %	(B) Status renegotiation begun %	(C) Bona fide oral agreements reached %	(D) Signed oral agreements in process %	(E) Total assignments with the services %	(F) Total assignments delivered to WDPAB %	Memorandum: Total assignments in Column (F) evidenced by following number of agreements
Army Air Forces	100%							
Chemical Warfare	100%							
Engineers	100%							
Ordnance	100%							
Quartermaster	100%							
Signal Corps	100%							
Surgeon General	100%							
Transportation	100%							
War Dept. PAB	100%							
Total	100%							
Percent of total								

Note: Details of Column (F) are shown on attached Operations Report SPRA I C  
 Prepared by: Assignments and Statistics Branch WDPAB  
 Rev 26 May 1944

[RR 751 5]

(f) Report No. SPRA I BB (1943 Fiscal Year Assignments Status of Renegotiation Report)

SPRA I-BB  
 1943 FISCAL YEAR ASSIGNMENTS  
 STATUS OF RENEGOTIATION REPORT

Close of Friday

Service	Net assignments	(A) Renegotiation initiated %	(B) Status renegotiation begun %	(C) Bona fide oral agreements reached %	(D) Written agreements in process %	(E) Total assignments with the Depts. and services %	(F) Total assignments delivered to WDPAB %	Memorandum: Total assignments in column (F) evidenced by following number of agreements
War Dept.	100%							
Navy PAB	100%							
Navy PAB	100%							
Maritime	100%							
R. F. C.	100%							
Treasury	100%							
War Shipping	100%							
Total	100%							
Percent of total								

Note: Details of Column (F) are shown on attached Operations Report SPRA I-C  
 Prepared by: Assignments and Statistics Branch WDPAB  
 Rev 26 May 1944

[RR 751 6]

§ 1607.752 *Statement to be furnished contractor*—(a) *General instructions.* (1) Subsection (c) (1) of the Renegotiation Act of 1943 requires that whenever the War Contracts Price Adjustment Board makes a determination by agreement or order, there must be furnished to the contractor, at his request, a statement showing the determination of excessive profits, the facts used as a basis therefor and the reasons for such determination.

(2) The manner in which and the time at which the statement will be given to the contractor are described in § 1605.520 and following, of these regulations.

(3) The statement cannot be used in the Tax Court of the United States as proof of the facts or conclusions stated therein.

(4) The statement is divided into four principal parts:

(i) Designation of the contractor and the fiscal year under review.

(ii) Determination of excessive profits.

(iii) Summary of the relevant facts upon which the determination is based.

(iv) Reasons for the determination.

[RR 752] (b) *Form of statement and specific instructions as to its preparation (statutory)*—(1) *Designation of the contractor and fiscal period.*

To: \_\_\_\_\_  
(Contractor's name and address)

Fiscal Year \_\_\_\_\_  
In accordance with the provisions of subsection (c) (1) of the Renegotiation Act, you are hereby furnished a statement showing, for your fiscal year above set forth, the determination of excessive profits for said fiscal year and the facts and reasons upon which the determination is based.

If the determination is by order other than an order of the War Contracts Price Adjustment Board, the following clause will be inserted at this point:

This statement is final only in the event that the determination by order to which it relates is final.

(2) *Determination of excessive profits.*

Pursuant to the provisions of the Renegotiation Act, it has been determined by \_\_\_\_\_ (order)

\_\_\_\_\_, dated \_\_\_\_\_ (agreement)

that, of the profits received by or accrued to you during said fiscal year under contracts or subcontracts subject to renegotiation, the amount of \$\_\_\_\_\_ constitutes profits which should be eliminated.

(3) *Summary of the relevant facts*—

(i) *Financial comparisons.* There shall be made part of this statement comparative financial statements of the contractor which may be in the form of exhibits attached to the statement. If exhibits are used, they should be described and referred to in this part of the statement.

Comparative balance sheets prepared from those furnished by the contractor, as of the end of the fiscal year 1936 and of each fiscal year thereafter, including the fiscal year under review, shall be included.

Comparative income statements for the same fiscal periods shall be included.

In the case of a statement furnished after a determination by agreement, documentary information furnished by the contractor and properly identified, relating to the financial comparisons above referred to in this subparagraph (3) (i), may be incorporated by reference. In the case of a statement furnished after a determination by agreement or order, such financial comparisons may be omitted to the extent information therefor is not made available by the contractor.

The statements shall be supplemented by such statistical data related to the fiscal periods as may be deemed pertinent to the renegotiation.

Any disallowance (or additional allowance) as compared with costs shown on the contractor's books shall be indicated.

(ii) *Other facts related to the determination.* The statutory factors required to be taken into consideration by subsection (a) (4) (A) of the Renegotiation Act of 1943 must receive consideration and the basic facts related thereto set forth, whether favorable or unfavorable to the contractor. The basic facts will be those resulting from consideration of the data submitted or assembled for the purpose of the renegotiation. Any other facts considered and pertinent to the consideration of the determination shall also be set forth.

(4) *Reasons for the determination.* A statement shall be made of the reasons for the determination in the light of all of the facts and factors referred to in the foregoing portions of the statement, indicating generally the relative significance and importance of such facts and factors. [RR 752.2]

(c) *Substitute paragraphs for the statement where statutory determination has not yet been made.* (1) *Designation of the contractor and purpose of statement.*

To \_\_\_\_\_  
(Contractor's name and address)

Fiscal Year \_\_\_\_\_

You are hereby furnished with a statement of the facts and reasons upon which the opinion of (name of Board or Section) as to the amount of excessive profits for your fiscal year above set forth was based. Such statement is furnished for the purpose of assisting you in determining whether or not you wish to enter into an agreement providing for the elimination of such excessive profits. It is not a statutory statement as provided in subsection (c) (1) of the Renegotiation Act.

(2) *Statement of opinion of excessive profits.*

In the opinion of (name of Board or Section) the amount of excessive profits received or accrued by you during such fiscal year under contracts or subcontracts subject to renegotiation is \$\_\_\_\_\_.

[RR 752.3]

SUBPART I—ADDRESSES

Subpart I is amended to read as follows:

§ 1607.791 *War Contracts Price Adjustment Board.*

(a) *Principal Office.* 718 18th Street NW., Washington 6, D. C. Tel. Republic 7400, Ext. 4786.

[RR 791.1]

(b) *Chairman.* War Contracts Price Adjustment Board, Attention: Mr. Joseph M. Dodge, Chairman, Room 3D 634, The Pentagon, Washington 25, D. C. Tel. Republic 6700, Ext. 73173.

[RR 791.2]

(c) *Office of General Counsel.* War Contracts Price Adjustment Board, Attention: Mr. W. James MacIntosh, General Counsel, Room 3D 630, The Pentagon, Washington 25, D. C. Tel. Republic 6700, Ext. 72191.

[RR 791.3]

(d) *Assignment Office.* Assignments and Statistics Branch, Renegotiation Division, Room 3D 573, The Pentagon, Washington 25, D. C. Tel. Republic 6700, Ext. 73678; or Clearance and Assignment Officer, Post Office Box 2767, Washington 25, D. C. Tel. Republic 6700, Ext. 73678.

[RR 791.4]

(e) *Pentagon Office.* Room 3E 532, The Pentagon, Washington 25, D. C. Tel. Republic 6700, Ext. 73636.

[RR 791.5]

§ 1607.792 *Departmental Price Adjustment Boards.*

War Department Price Adjustment Board, Attention: Lt. Col. W. H. Coulson, Executive Officer, Room 3D 573, The Pentagon, Washington 25, D. C. Tel. Republic 6700, Ext. 5672.

Navy Price Adjustment Board, Attention: Mr. Laird Bell, Chairman, 718 18th Street, NW., Washington 6, D. C. Tel. Republic 7400, Ext. 5169 or 62729.

Treasury Department Price Adjustment Board, Attention: Captain H. C. Maull, Jr., Chairman, 5304 Procurement Building, 7th and D Streets SW., Washington 25, D. C. Tel. District 5700, Ext. 2105.

Maritime Commission Price Adjustment Board, Attention: Commander A. G. Rydstrom, Room 512, Electrical Workers Building, 1200 15th Street NW., Washington 25, D. C. Tel. Executive 3340, Ext. 608 or 607.

War Shipping Administration Price Adjustment Board, Attention: Mr. James L. Murphy, Chairman, 39 Broadway, New York 6, New York. Tel. Whitehall 3-8000.

Reconstruction Finance Corporation Price Adjustment Board, Attention: Mr. Charles T. Fisher, Jr., Chairman, Lafayette Building, 811 Vermont Avenue NW., Washington 25, D. C. Tel. Executive 3111, Ext. 8 or 48.

§ 1607.793 *War Department Price Adjustment Sections.*

(a) *Headquarters.* Price Adjustment Branch, Control Office, AC/AS M. M. & D. Army Air Forces, Room 5C 984, The Pentagon, Washington 25, D. C. Tel. Republic 6700, Exts. 72263, 4420, 4577.

Price Adjustment Office, Material Command, Army Air Forces, Wright Field, Dayton, Ohio. Tel. Kenmore 7111, Exts. 22135, 23232, 25225.

The Chief of Chemical Warfare, Attention: Major Robert M. Estes, Purchase Policies Branch, Baltimore Sub-Office, OC CWS, 200 West Baltimore Street, Baltimore 1, Maryland. Tel. Lexington 0710.

The Chief of Engineers, Attention: Mr. H. W. Loving, Price Adjustment Section, Room 5169, New War Department Building, Washington 25, D. C. Tel. Republic 6700, Ext. 76225.

The Chief of Ordnance, Attention: Major John M. Marble, Purchase Policy Section, Room 5D 400, The Pentagon, Washington 25, D. C. Tel. Republic 6700, Ext. 2283.

The Quartermaster General, Attention: Lt. Col. H. F. Colt, Price Adjustment Section, Room 2327, Temp. B, 2nd and Q Streets SW.,

Washington 25, D. C. Tel. Republic 6700, Ext. 3744 or 6485.

The Chief Signal Officer, Attention: Mr. Wilfred Goodwyn, Price Adjustment Section, Room 2C 285, The Pentagon, Washington 25, D. C. Tel. Republic 6700, Ext. 73278.

The Surgeon General, Attention: Lt. Col. Lee I. Park, Renegotiation Division, Room 518, Maritime Building, 1818 H Street NW, Washington 25, D. C. Tel. Republic 6700, Ext. 78455.

The Chief of Transportation, Attention: Col. James F. Mitchell, Jr., Price Adjustment Section, Room 3A 670, The Pentagon, Washington 25, D. C. Tel. Republic 6700, Ext. 4505.

[RR 793.1]

(b) *Field Offices of Price Adjustment Sections*—(1) *Army Air Forces*. 39 South La Salle Street, Chicago 3, Illinois, Tel. Randolph 9720.

Enquirer Building, 617 Vine Street, Cincinnati, Ohio, Tel. Cherry 8320.

4614 Prospect Avenue, Cleveland 3, Ohio, Tel. Endicott 7200.

8505 West Warren Avenue, Detroit 32, Michigan, Tel. Hogarth 8730.

3636 Beverly Boulevard, Los Angeles 54, California, Tel. Drexel 7081.

67 Broad Street, New York 4, New York, Tel. Whitehall 4-1600.

420 West Douglas Avenue, Wichita 1, Kansas, Tel. Wichita 5-4621.

(2) *Corps of Engineers*. 50 Whitehall Street, Atlanta 2, Georgia, Tel. Jackson 6180.

101 East Fayette Street, Baltimore 2, Maryland, Tel. Plaza 8060.

75 Federal Street, Boston 10, Massachusetts, Tel. Hubbard 8100.

20 North Wacker Drive, Chicago 6, Illinois, Tel. Randolph 1311.

1120 Huntington Bank Building, Columbus 16, Ohio, Tel. Main 6481.

Santa Fe Building, 1114 Commerce Street, Dallas 2, Texas, Tel. LD 930.

270 Broadway, New York 7, New York, Tel. Barclay 7-1616.

Farm Credit Building, 19th and Douglas, Omaha 1, Nebraska, Tel. Webster 5966.

351 California Street, San Francisco, California, Tel. Garfield 6900.

(3) *Ordnance Department*. 700 Frank Nelson Building, Birmingham 1, Alabama, Tel. Birmingham 4-7511.

140 Federal Street, Boston 10, Massachusetts, Tel. Hubbard 9800.

38 South Dearborn Street, Chicago 3, Illinois, Tel. Franklin 4900.

Big Four Building, Cincinnati 1, Ohio, Tel. Cherry 3800.

1006 Terminal Tower Building, Cleveland 13, Ohio, Tel. Main 0670.

1832 National Bank Building, Detroit 32, Michigan, Tel. Randolph 9360.

Room 1815-80 Broadway, New York 5, New York, Tel. Hanover 2-7300.

150 South Broad Street, Philadelphia 2, Pennsylvania, Tel. Locust 4020.

1202 Chamber of Commerce Building, Pittsburgh 9, Pennsylvania, Tel. Grant 5966.

1238 Mercantile Building, Rochester 4, New York, Tel. Stone 3203.

3663 Lindell Boulevard, St. Louis 8, Missouri, Tel. Jefferson 7380.

402 Hotel Empire, San Francisco 1, California, Tel. Underhill 3306.

95 State Street, Springfield 3, Massachusetts, Tel. 7-0211.

(4) *The Quartermaster General*. 1 State Street, Boston 9, Massachusetts, Tel. Lafayette 3712.

333 North Michigan Avenue, Chicago 1, Illinois, Tel. Franklin 5910.

521 Fifth Avenue, New York 17, New York, Tel. Murray Hill 2-2622.

520 Kohl Building, Montgomery and California Streets, San Francisco 4, California, Tel. Exbrook 7467.

16th Floor Woodside Building, Greenville, South Carolina, Tel. 7140.

(5) *Signal Corps*. 1 North La Salle Street, Chicago 2, Illinois, Tel. State 9150.

17th and Sansom Streets, Architects Building, Philadelphia 3, Pennsylvania, Tel. Rittenhouse 5950.

(6) *Surgeon General*. 52 Broadway, New York 4, New York, Tel. Hanover 2-5200.

Room 1425, Civic Opera Building, 20 North Wacker Drive, Chicago 6, Illinois, Tel. Randolph 1311.

[RR 793.2]

§ 1607.794 *Navy Department*

(a) *Navy Price Adjustment Board*. (1) Washington Division, 718 18th Street, N. W., Washington 6, D. C. Tel. Republic 7400, Ext. 62729.

(2) New York Division, Room 310, 630 Fifth Avenue, New York 20, New York. Tel. Columbus 5-3851.

(3) Chicago Division, 21st Floor, 100 West Monroe Street, Chicago 3, Illinois. Tel. Andover 5740.

(4) San Francisco Division, 727 Financial Center Building, 405 Montgomery Street, San Francisco 4, California. Tel. Exbrook 1161.

[RR 794.1]

(b) *Services and Sales Renegotiation Section*. (1) Office of the Under Secretary of the Navy, Services and Sales Renegotiation Section, Washington 25, D. C. Tel. Republic 7400, Ext. 61468.

(2) Office of the Under Secretary of the Navy, Services and Sales Renegotiation Section, Washington Divisional Office, Washington 25, D. C. Tel. Republic 7400, Ext. 61263.

(3) Office of the Under Secretary of the Navy, Services and Sales Renegotiation Section, New York Divisional Office, Room 310, 630 Fifth Avenue, New York 20, New York. Tel. Columbus 5-3851.

(4) Office of the Under Secretary of the Navy, Services and Sales Renegotiation Section, Chicago Divisional Office, Room 916, 610 South Canal Street, Chicago 7, Illinois. Tel. Wabash 2900, Ext. 372-3.

(5) Office of the Under Secretary of the Navy, Services and Sales Renegotiation Section, Los Angeles Divisional Office, Room 907, Van Nuys Building, Seventh and Spring Streets, Los Angeles 14, California. Tel. Trinity 1432

[RR 794.2]

(c) *Price Revision Division*. Price Revision Division, PM320; Office of Procurement and Material, Main Navy Building, Room 2234, Washington 25, D. C. Tel. Republic 7400, Ext. 63009.

[RR 794.3]

§ 1607.795 *Related Offices*.

General Accounting Office, Washington 25, D. C. Tel. Executive 4621.

Chief, Contract Review Branch, Procurement Policy Division, War Production Board, 4th & Independence Avenue SW., Washington 25, D. C. Tel. Republic 7500, Ext. 6261.

[RR 795]

PART 1608—STATUTES, ORDERS, JOINT REGULATIONS AND DIRECTIVES

SUBPART A—STATUTES, EXECUTIVE ORDERS AND TAX COURT RULES

Section 1608.806 is added, as follows:

§ 1608.806 *Tax Court rule governing renegotiation of war contracts cases.* (See 9 F.R. 3286) [RR 806]

1 9 F.R. 4166.

SUBPART D—EXEMPTIONS

Subpart D is added, as set forth below:

Sec.

1608.841 Raw material exemption.

1608.842 Public utility exemptions.

(a) Electric power.

(b) Gas.

(c) Transportation.

(d) Communications.

(e) Subcontracts.

(f) Scope of exemptions.

1608.843 List of exempted foods.

§ 1608.841 *Raw material exemption.*

Pursuant to subsection (1) (2) of the 1943 act the War Contracts Board has issued the following regulation concerning the exemption of contracts and subcontracts for certain products of the kind described in subsection (1) (1) (B) of the 1943 act.

(a) The term "exempted products" as used in this regulation, shall mean any of the following products:

Aggregates including such items as washed or screened sand, gravel or crushed stone.

Alumina; aluminum sulfate; aluminum ingots and pigs.

Asphalt, natural.

Antimony ore, crude; antimony ore, concentrated; antimony metal; antimony oxide; antimony sulfide.

Arsenic, crude; arsenic powder; arsenious oxide (white arsenic).

Asbestos rock; asbestos fibre.

Bauxite, crude; calcined or dried bauxite; bauxite abrasive grains.

Beryllium ore and concentrates; beryllium oxide; beryllium metal; beryllium master alloys.

Bismuth metal.

Borax.

Cadmium flue dust; cadmium oxide; cadmium balls and slabs.

China clay; kaolin; fire clay; brick and tile made from clays other than kaolin, china and fire clay.

Chromium ore and ferrochrome; chromite not processed beyond the form or state suitable for use as a refractory; bichromates.

Coal, prepared; run-of-mine coal.

Cobalt oxide; cobalt anodes, shot and rondelles.

Columbium ore and concentrates; columbium oxide; ferrocolumbium.

Copper ore, crude; copper ore, concentrated; copper matte; blister copper; copper billets, cathodes, cakes, ingots, ingot bars, powder, slabs and wirebars.

Corundum ore and concentrates; corundum grain.

Cryolite ore and concentrates.

Diaspore; diaspore brick.

Diatomaceous silica, lump, block, brick and powder.

Feldspar, crude and ground.

Ferrosilicon.

Fluorspar ore; fluorspar fluxing gravel; lump ceramic ground fluorspar; acid grades of fluorspar.

Gas, natural, hot processed or treated further than the processing or treating customarily occurring at or near the well.

Graphite ore and concentrates; flake graphite; graphite fines, lump and chip; graphite powder.

Gypsum, crude; calcined gypsum.

Indium metal.

Industrial diamonds.

Iridium metal, including ingot and powder.

Iron ore, crude; pig iron.

Kyanite ore and concentrates; kyanite brick.

Lead ore; refined lead bars, ingots and pigs; antimonial lead bars, ingots and pigs.

Limestone; crushed limestone.

Magnesite; dead burned magnesite.

Magnesium-bearing minerals, including brucite; magnesium oxide; magnesium chloride; metallic magnesium, pigs and ingots.

Mercury ore; mercury metal.

Manganese ore; ferromanganese, including spiegeleisen; silicomanganese.

Mica, crude, hand-cobbed; block mica; sheet mica, including splittings; wet or dry ground mica.

Molybdenum ore and concentrates; molybdenum oxide; calcium molybdate; ferromolybdenum.

Nickel ore and concentrates; nickel matte; nickel oxide; nickel ingots, cathodes and shot.

Oil, crude, not processed or treated further than the processing or treating customarily occurring at or near the well.

Osmium metal, including ingot and powder.

Palladium metal, including ingot and powder.

Phosphate rock; elemental phosphorus; ferrophosphorus; phosphorus pentoxide and phosphoric acid derived directly by treatment of phosphate rock; superphosphate.

Platinum ore and concentrates; platinum metal, including ingot and powder.

Pumice, lump.

Radium bromide; radium sulfate; radium gas.

Radium metal, including ingot and powder.

Ruthenium metal, including ingot and powder.

Salt, rock; evaporated salt; soda ash, ammonia and electrolytic caustic soda and bicarbonate of soda when derived directly by treatment of brine.

Sea shells; oyster shells; clam and reef shells.

Selenium metal.

Silver, refined, including bars, shot, powder and grains.

Stone, rough dimension.

Sulfur, crude.

Sulfuric acid; oleum (other than sulfuric acid or oleum produced from crude sulfur or any other product having an industrial use).

Standing timber, logs, logs sawed into length, and logs with or without bark.

Talc, crude, ground and sawed.

Tantalum ore and concentrates; tantalum double fluoride.

Tellurium metal.

Tin ore and concentrates; refined pig tin.

Titanium-bearing ores and concentrates, including ilmenite and rutile; titanium oxide; ferrotitanium.

Tungsten ore and concentrates; sodium tungstate; ferrotungsten; tungsten metal, including powder; tungstic oxide.

Uranium ores and concentrates; uranium oxide.

Vanadium ores and concentrates; sodium vanadate; vanadium pentoxide; ferrovandium.

Whiting; chalk lump.

Zinc ores and concentrates; zinc anodes, bars, oxide, powder and slabs.

Zirconium ores and concentrates.

(b) Subject to the provisions of paragraph (c) hereof, it is determined that each of the exempted products is "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" within subsection (i) (1) (B) of the Renegotiation Act. The provisions of such act shall not apply to contracts and subcontracts for any of the exempted products.

(c) This determination is made under the principles set forth in § 1603.344 (a)

of this chapter, including subdivision (2) (iv) thereof. The products listed under paragraph (a) of this section are exempt only when they represent products of a mine, oil or gas well, or other mineral or natural deposit, which have not been processed, refined or treated beyond the first form or state suitable for industrial use and are not exempt if manufactured from raw materials which do not fall within the above description or which have at some prior stage been processed, refined or treated beyond such first form or state suitable for industrial use. For example, magnesium products derived from sea water, products manufactured from the atmosphere, secondary aluminum pigs and ingots, and other similar products are not considered exempted products.

(d) This determination applies to fiscal years ending after June 30, 1943.

(e) This section may be amended from time to time, revising, amending or supplementing the list of exempted products contained in paragraph (a) hereof. [RR 841]

#### § 1608.842 Public utility exemptions—

(a) *Electric power* (1) Pursuant to subsection (i) (4) of the Renegotiation Act of 1943 (including subsection (i) (4) (B) and (i) (4) (F)) the following classes and types of contracts and subcontracts are exempt to the extent provided in this paragraph from all of the provisions of the Renegotiation Act of 1943:

(i) Any contract or subcontract with a public utility for the delivery of electric power of less than 1,000 kilowatts of contractual demand, except that if the actual demand was 1,000 kilowatts or more at any time during any particular fiscal year, amounts received or accrued under such contract or subcontract for such fiscal year shall not be exempt from renegotiation by reason of this subdivision (i)

(ii) Any subcontract with a public utility for the delivery of electric power without regard to the contractual or actual demand, except that:

(a) If such subcontract for electric power is with a contractor having a contract with a Department providing for the reimbursement by a Department of costs of the contractor incurred under such subcontract for electric power, or

(b) If a Department has contracted to pay or guarantee the payment of amounts payable under such subcontract for electric power,

then in either such case such subcontract for electric power shall not be exempt from renegotiation by reason of this subdivision (ii)

(2) Amounts received or accrued under any contract or subcontract with a public utility with respect to the construction or installation of facilities for the generation, transmission or distribution of electric power shall not be exempt from renegotiation by reason of this paragraph (a) even though such contract or subcontract also calls for the delivery of electric power. [RR 842.1]

(b) *Gas*. (1) Pursuant to subsection (i) (4) of the Renegotiation Act of 1943 (including subsection (i) (4) (B) and

(i) (4) (F)) the following classes and types of contracts and subcontracts are exempt to the extent provided in this paragraph from all of the provisions of the Renegotiation Act of 1943:

(i) Any contract or subcontract with a public utility for the delivery of gas, except that if the amounts received or accrued under any such contract or subcontract during any particular fiscal year were \$50,000. or more, amounts received or accrued under such contract or subcontract for such fiscal year shall not be exempt from renegotiation by reason of this subdivision (i) (If such fiscal year is a fractional part of twelve months, the \$50,000. amount shall be reduced to the same fractional part thereof for the purposes of this subdivision.)

(ii) Any subcontract with a public utility for the delivery of gas without regard to the amounts received or accrued thereunder during any fiscal year, except that:

(a) If such subcontract for gas is with a contractor having a contract with a Department providing for the reimbursement by a Department of costs of the contractor incurred under such subcontract for gas, or

(b) If a Department has contracted to pay or guarantee the payment of amounts payable under such subcontract for gas, then in either such case such subcontract for gas shall not be exempt from renegotiation by reason of this subdivision (ii)

(2) Amounts received or accrued under any contract or subcontract with a public utility with respect to the construction or installation of facilities for the generation, transmission or distribution of gas shall not be exempt from renegotiation by reason of this paragraph (b) even though such contract or subcontract also calls for the delivery of gas. [RR 842.2]

(c) *Transportation*. Pursuant to subsection (i) (4) of the Renegotiation Act of 1943 (including subsection (i) (4) (B) and (i) (4) (F)) the following classes and types of contracts and subcontracts are exempt from all of the provisions of the Renegotiation Act of 1943:

(1) Contracts and subcontracts with common carriers to furnish transportation by railroad, motor vehicle or air, when made at published rates or charges, fixed, approved or subject to regulation as to the reasonableness thereof by a public regulatory body, or when made at rates or charges which the Department conducting the renegotiation in its discretion shall determine to be no higher than such published rates or charges for transportation of a comparable character. [RR 842.3]

(d) *Communications*. Pursuant to subsection (i) (4) of the Renegotiation Act of 1943 (including subsection (i) (4) (B) and (i) (4) (F)) the following classes and types of contracts and subcontracts are exempt from all of the provisions of the Renegotiation Act of 1943:

(1) Contracts and subcontracts with telephone, telegraph, cable and radio companies to furnish the service of transmitting messages, when made at published rates or charges, fixed, ap-

proved or subject to regulation as to the reasonableness thereof by a public regulatory body, or when made at rates or charges which the Department conducting the renegotiation in its discretion shall determine to be no higher than such published rates or charges for service of a comparable character. [RR 842.4]

(e) *Subcontracts.* Pursuant to subsection (i) (4) of the Renegotiation Act of 1943 (including subsection (i) (4) (B) and (i) (4) (F)) the following classes and types of contracts and subcontracts are exempt from all of the provisions of the Renegotiation Act of 1943.

(1) Subcontracts under any contracts or subcontracts exempted pursuant to paragraphs (a) through (d) inclusive, of this section. [RR 842.5]

(f) *Scope of exemptions.* All of the exemptions made under paragraphs (a) through (e) inclusive, apply to contracts and subcontracts of the specified classes and types, whether heretofore or hereafter made or performed, and whether or not they contain renegotiation provisions. [RR 842.6]

§ 1608.843 *List of exempted foods.* Determination of the War Contracts Price Adjustment Board of the exemption from renegotiation of contracts and subcontracts for perishable foods under section 403 (i) (4) (B) of the Renegotiation Act of 1943.

Pursuant to the authority conferred upon the War Contracts Price Adjustment Board by section 403 (i) (4) (B) of the Renegotiation Act of 1943, concerning the exemption of contracts and subcontracts for certain perishable goods from renegotiation under the Renegotiation Act of 1943, the War Contracts Price Adjustment Board hereby determines that the foods set forth in the list attached hereto and designated as Exhibit 1 are perishable; and that, in the opinion of the Board, the profits under contracts and subcontracts for the purchase of such foods can be determined with reasonable certainty when the contract price is established; and that contracts and subcontracts, heretofore or hereafter made, for the purchase of such foods are hereby declared to be exempt from all of the provisions of the Renegotiation Act of 1943.

#### EXHIBIT 1

##### Fresh Fruits:

Apples.  
Apricots.  
Bananas.  
Berries (blue and black).  
Cantaloupes.  
Cherries.  
Cranberries.  
Grapes.  
Grapefruit.  
Honeydew Melons.  
Lemons.  
Limes.  
Oranges.  
Pears.  
Peaches.  
Plums.  
Strawberries.  
Tangerines.  
Watermelons.  
Other Miscellaneous Fresh Fruits.  
Fresh Vegetables:  
Asparagus.

##### Fresh Vegetables—Continued.

Beans, Lima.  
Beans, String.  
Beets.  
Broccoli.  
Cauliflower.  
Corn.  
Cucumbers.  
Egg Plant.  
Endive (chicory).  
Greens (collards, etc.).  
Kale.  
Lettuce.  
Onions, Green.  
Onions, Dry.  
Parsley.  
Parsnips.  
Peas.  
Peppers, Green.  
Potatoes, Irish.  
Potatoes, Sweet.  
Radishes.  
Spinach.  
Squash.  
Tomatoes.  
Turnips and Rutabagas.  
Mushrooms.  
Rhubarb.  
Other Miscellaneous Fresh Vegetables.  
Dairy Products:  
Butter (except canned).  
Cheese (except processed canned).  
Ice Cream; ice cream mix in unsealed containers.  
Fresh Fluid Milk.  
Fresh Fluid Cream.  
Poultry:  
Chicken (except canned).  
Turkey (except canned).  
Other Poultry (except canned).  
Meats:  
Beef (except canned and dehydrated).  
Pork (except canned and dehydrated).  
Lamb and Mutton (except canned and dehydrated).  
Veal (except canned and dehydrated).  
Smoked or Processed Meats (except canned and dehydrated).  
Other Meats (except canned and dehydrated).  
Lard and Lard Substitutes.  
Offals (except canned and dehydrated).  
Fish and Sea Foods:  
Fresh or Frozen.  
Salted or Smoked (except canned).  
Frozen Vegetables.  
Frozen Fruits.  
Bread and other Bakery Products (except biscuits, crackers, cracker meal, breakfast cereals, hard bread and zwieback).  
Potato Chips.  
Compressed Yeast.  
Shell Eggs.  
Margarine.

Any other perishable food of a similar nature which may be determined from time to time by any of the Departments to be of the same general character as the items specifically set forth on the above list: *Provided, however,* That any items so added shall be reported to the Secretary of the War Contracts Price Adjustment Board.

[RR 843]

[F. R. Doc. 44-8121; Filed, June 6, 1944; 9:22 a. m.]

## TITLE 34—NAVY

### Chapter I—Department of the Navy

#### — RENEGOTIATION REGULATIONS

CROSS REFERENCE: For Renegotiation Regulations issued by the War Contracts Price Adjustment Board, see Title 32, Chapter XIV supra.

## TITLE 41—PUBLIC CONTRACTS

### Chapter I—Procurement Division, Department of the Treasury

#### RENEGOTIATION REGULATIONS

CROSS REFERENCE: For Renegotiation Regulations issued by the War Contracts Price Adjustment Board, see Title 32, Chapter XIV supra.

## TITLE 43—PUBLIC LANDS: INTERIOR

### Chapter I—General Land Office

[Public Land Order 231]

#### COLORADO

##### REVOCATION OF PUBLIC LAND WITHDRAWAL

Revoking Public Land Order No. 86 of February 3, 1943, withdrawing public lands for use in connection with the prosecution of the war. Colorado.

By virtue of the authority vested in the President, and pursuant to Executive Order No. 9337 of April 24, 1943, it is ordered as follows:

Public Land Order No. 86 of February 3, 1943, withdrawing certain public lands in the Montezuma and San Juan National Forests and lands withdrawn for reclamation purposes in the State of Colorado, from sale, location, selection and entry under the public land laws of the United States, including the mining laws, and from leasing under the mineral leasing laws, and reserving the minerals in such lands under the jurisdiction of the Secretary of the Interior for use in connection with the prosecution of the war is hereby revoked.

This order shall not otherwise become effective to change the status of the lands until 10:00 o'clock a. m. of the sixty-third day from the date on which it is signed, whereupon the lands shall, subject to valid existing rights, become subject to such application, petition, location, or selection as may be authorized by the public land laws in accordance with the provisions of 43 CFR 295.8 (Circ. 324, May 22, 1914, 43 L.D. 254) and 43 CFR, Part 296, to the extent that these regulations are applicable.

ABE FORTAS,

Acting Secretary of the Interior

MAY 24, 1944.

[F. R. Doc. 44-8123; Filed, June 6, 1944; 9:55 a. m.]

[Public Land Order 232]

#### WYOMING

##### WITHDRAWAL OF PUBLIC LANDS FOR USE IN PROSECUTION OF WAR

By virtue of the authority vested in the President, and pursuant to Executive Order No. 9337 of April 24, 1943, it is ordered as follows:

Subject to valid existing rights, the following described public lands are hereby withdrawn from all forms of appropriation under the public land laws, including the mining and mineral leasing

laws, and reserved under the jurisdiction of the Secretary of the Interior for use in connection with the prosecution of the war:

SIXTH PRINCIPAL MERIDIAN

T. 16 N., R. 72 W.,  
Sec. 4.

The area described contains 769.92 acres.

ABE FORTAS,

Acting Secretary of the Interior

MAY 29, 1944.

[F. R. Doc. 44-8124; Filed, June 6, 1944;  
9:55 a. m.]

TITLE 46—SHIPPING

Chapter II—United States Maritime Commission

Chapter III—War Shipping Administration

RENEGOTIATION REGULATIONS

CROSS REFERENCE: For Renegotiation Regulations issued by the War Contracts Price Adjustment Board, see Title 32, Chapter XIV supra.

Chapter III—War Shipping Administration

[G. O. 24, Supp. 5]

PART 310—MERCHANT MARINE TRAINING  
APPOINTMENT AND TRAINING OF CADETS IN  
U. S. MERCHANT MARINE CADET CORPS

War Shipping Administration emergency regulations governing the appointment and training of cadets in the United States Merchant Marine Cadet Corps.

Effective May 1, 1944, General Order 24 is amended as follows:

1. Section 310.47 *General requirements*, as amended (Supp. 2), is amended by striking out paragraphs (b) (c) and (d) and inserting in lieu thereof the following:

(b) A candidate must be not less than seventeen years of age nor more than twenty-three years of age on the date the application is approved.

(c) A candidate may be admitted to a basic school or the Academy for preliminary training at an age of not less than seventeen years and after satisfactory completion of such training may be assigned to a merchant vessel or a training ship for sea training. In event a candidate fails to report to a basic school or the Academy and execute oath as cadet-midshipman within six months of date of approval of application his name shall be removed from the eligible list.

(d) No waivers for under age or over age shall be granted.

2. Section 310.56 *Course of training* is amended by revoking paragraph (f) (3) and by striking out paragraph (a) and inserting in lieu thereof the following:

(a) For the duration of the emergency the courses for cadet-midshipmen shall be, in general, four months at Basic Schools or the Academy for preliminary training followed by not less than six

months aboard merchant or training vessels and nine or twelve months, as determined by the Supervisor with the approval of the Assistant Deputy Administrator for Training, at the Academy for advanced study.

(E.O. 9054, 7 F.R. 837; E.O. 9198, 7 F.R. 5383)

[SEAL]

E. S. LAND,  
Administrator.

JUNE 5, 1944.

[F. R. Doc. 44-8125; Filed, June 6, 1944;  
10:39 a. m.]

Notices

DEPARTMENT OF THE TREASURY.

Bureau of Customs.

[T. D. 51069]

SILVER AND BLACK FOX QUOTA  
DETERMINATION OF IMPORT QUOTA

Declaration of the Secretary of the Treasury determining the import quota of silver or black foxes, furs and skins for the period May 1 to November 30, 1944, inclusive.

MAY 15, 1944.

Acting pursuant to paragraph (5) of article II of the new supplementary trade agreement with Canada signed on December 13, 1940 (T. D. 50295) I have determined and hereby declare and make public that the number of silver or black foxes valued at less than \$250 each and whole silver or black fox furs and skins (with or without paws, tails, or heads) which may be entered, or withdrawn from warehouse, for consumption without reference to the country of exportation during the period May 1 to November 30, 1944, inclusive, is 59,174.

[SEAL] HERBERT E. GASTON,  
Acting Secretary of the Treasury.

[F. R. Doc. 44-8120; Filed, June 5, 1944;  
4:20 p. m.]

DEPARTMENT OF THE INTERIOR.

General Land Office.

[ANS Withdrawal 135, Revocation]

OREGON

AIR NAVIGATION SITE WITHDRAWAL

The order of the Secretary of the Interior of February 26, 1940, withdrawing the following-described land in Oregon for the use of the Civil Aeronautics Authority in the maintenance of air-navigation facilities, and modifying the first form reclamation withdrawal of August 16, 1906, for the Umatilla Reclamation Project, is hereby revoked:

WILLAMETTE MERIDIAN

T. 3 N., R. 24 E.,  
Sec. 26, NE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ .  
The area described contains 10 acres.

OSCAR L. CHAPMAN,  
Assistant Secretary of the Interior.

MAY 29, 1944.

[F. R. Doc. 44-8122; Filed, June 6, 1944;  
9:55 a. m.]

DEPARTMENT OF AGRICULTURE.

Farm Security Administration.

PENNSYLVANIA AND ALABAMA

DESIGNATION OF LOCALITIES FOR LOANS

Designation of localities in counties in which loans, pursuant to Title I of the Bankhead-Jones Farm Tenant Act, may be made.

In accordance with the rules and regulations promulgated by the Secretary of Agriculture on July 1, 1941, as extended by the War Food Administrator's delegation of authority issued November 3, 1943, loans made in the counties mentioned herein, under Title I of the Bankhead-Jones Farm Tenant Act, may be made within the localities herein described and designated. The value of the average farm unit of thirty acres and more in each of these localities has been determined in accordance with the provisions of the said rules and regulations. A description of the localities and the determination of value for each follow:

REGION I

PENNSYLVANIA

County, Blair

Locality I—Consisting of the townships of Catharine, Frankstown, Huston, North Woodbury, Taylor, Tyrone, and Woodbury; boroughs of Hollidaysburg, Martinsburg, Rearing Spring, and Williamsburg..... \$6,033

Locality II—Consisting of the townships of Allegheny, Antis, Blair, Freedom, Greenfield, Juniata, Logan, and Snyder; boroughs of Duncansville, and Tyrone; city of Altoona..... 3,831

County, Huntingdon

Locality I—Consisting of the townships of Barree, Brady, Franklin, Henderson, Jackson, Lincoln, Logan, Miller, Morris, Onelda, Penn, Porter, Shirley, Smithfield, Spruce Creek, Walker, Warriorsmark, and West; boroughs of Marklesburg, and Shirleysburg..... 5,059

Locality II—Consisting of the townships of Carbon, Cass, Clay, Cromwell, Dublin, Hopewell, Juniata, Springfield, Tell, Tod, Union, and Wood; boroughs of Dudley, Cassville, Mapleton, Slatillo, and Three Springs; city of Broad Top..... 2,355

County, Mifflin

Locality I—Consisting of the townships of Armagh, Brown, Decatur, Derry, Granville, Menno, Oliver, and Union..... 6,082

Locality II—Consisting of the townships of Bratton and Wayne..... 2,829

REGION V

ALABAMA

County, Butler

Locality I—Consisting of the precincts of Dalsey, Dead Fall, Manningham, Monterey, and Springhill..... 1,713

Locality II—Consisting of the precincts of Butler Springs, Dock, Forest Home, Garland, Greenville, McKenzie, Midway, Oakley Streak, Pigeon Creek, and Snell..... 2,237

Locality III—Consisting of the precincts of Bolling, Georgiana, Mount Olive, Rocky Creek, and Starlington.. 1,435

The purchase price limits previously established for the counties above-mentioned are hereby cancelled.

Approved: June 5, 1944.

FRANK HANCOCK,  
Administrator.

[F. R. Doc. 44-8128; Filed, June 6, 1944;  
11:16 a. m.]

#### CIVIL AERONAUTICS BOARD.

[Docket Nos. 303, 460, 427, 429, 591, 1119,  
988, 1080, 1052]

TRANSCONTINENTAL & WESTERN AIR, INC.,  
ET AL.

#### NOTICE OF ORAL ARGUMENT

In the matter of the applications of Transcontinental & Western Air, Inc., Chicago and Southern Air Lines, Inc., Eastern Air Lines, Inc., American Airlines, Inc., Mid-Continent Airlines, Inc., and United Air Lines, Inc., for certificates and amendments of existing certificates of public convenience and necessity, under section 401 of the Civil Aeronautics Act of 1938, as amended, Detroit-St. Louis-Memphis Service.

Notice is hereby given pursuant to the Civil Aeronautics Act of 1938, as amended, particularly sections 401 and 1001 of the Act, in the above-entitled proceeding, that oral argument is assigned for June 19, 1944, at 10:00 a. m. (eastern war time) in Room 5042, Commerce Building, 14th Street and Constitution Avenue, N. W., Washington, D. C.

Dated: Washington, D. C., June 5, 1944.

By the Civil Aeronautics Board.

[SEAL] FRED A. TOOMBS,  
Secretary.

[F. R. Doc. 44-8128; Filed, June 6, 1944;  
10:42 a. m.]

#### OFFICE OF DEFENSE TRANSPORTATION.

[Supplementary Order ODT 3, Revised-242]

#### COMMON CARRIERS

COORDINATED OPERATIONS BETWEEN POINTS  
IN KANSAS

Upon consideration of a plan for joint action filed with the Office of Defense Transportation by the persons named in Appendix 1 hereof to facilitate compliance with the requirements and purposes of General Order ODT 3, Revised, as amended (7 F.R. 5445, 6689, 7694; 8 F.R. 4660, 14582; 9 F.R. 2793, 3264, 3357) a

copy of which plan is attached hereto as Appendix 2,<sup>1</sup> and

It appearing that the proposed coordination of operations is necessary in order to assure maximum utilization of the facilities, services, and equipment, and to conserve and providently utilize vital equipment, materials, and supplies, of the carriers, and to provide for the prompt and continuous movement of necessary traffic, the attainment of which purposes is essential to the successful prosecution of the war, *It is hereby ordered*, That:

1. The plan for joint action above referred to is hereby approved and the carriers are directed to put the plan in operation forthwith, subject to the following provisions, which shall supersede any provisions of such plan that are in conflict therewith.

2. Each of the carriers forthwith shall file a copy of this order with the appropriate regulatory body or bodies having jurisdiction over any operations affected by this order, and likewise shall file, and publish in accordance with law, and continue in effect until further order, tariffs or supplements to filed tariffs, setting forth any changes in rates, charges, operations, rules, regulations, and practices of the carrier which may be necessary to accord with the provisions of this order and of such plan; and forthwith shall apply to such regulatory body or bodies for special permission for such tariffs or supplements to become effective on the shortest notice lawfully permissible, but not prior to the effective date of this order.

3. Whenever transportation service is performed by one carrier in lieu of service by another carrier, by reason of a diversion, exchange, pooling, or similar act made or performed pursuant to the plan for joint action hereby approved, the rates, charges, rules, and regulations governing such service shall be those that would have applied except for such diversion, exchange, pooling, or other act.

4. The provisions of this order shall not be so construed or applied as to require any carrier subject hereto to perform any service beyond its transportation capacity, or to authorize or require any act or omission which is in violation of any law or regulation, or to permit any carrier to alter its legal liability to any shipper. In the event that compliance with any term of this order, or effectuation of any provision of such plan, would conflict with, or would not be authorized under, the existing interstate or intrastate operating authority of any carrier subject hereto, such carrier forthwith shall apply to the appropriate regulatory body or

bodies for the granting of such operating authority as may be requisite to compliance with the terms of this order, and shall prosecute such application with all possible diligence. The coordination of operations directed by this order shall be subject to the carriers' possessing or obtaining the requisite operating authority.

5. All records of the carriers pertaining to any transportation performed pursuant to this order and to the provisions of such plan shall be kept available for examination and inspection at all reasonable times by accredited representatives of the Office of Defense Transportation.

6. Withdrawal of a carrier from participation in the plan for joint action hereby approved shall not be made without prior approval of the Office of Defense Transportation.

7. The provisions of this order shall be binding upon any successor in interest to any carrier named in this order. Upon a transfer of any operation involved in this order, the successor in interest and the other carriers named in this order forthwith shall notify, in writing, the Office of Defense Transportation of the transfer and, unless and until otherwise ordered, the successor in interest shall perform the functions of his predecessor in accordance with the provisions of this order.

8. The plan for joint action hereby approved and all contractual arrangements made by the carriers to effectuate the plan shall not continue in operation beyond the effective period of this order.

9. Communications concerning this order should refer to it by the supplementary order number which appears in the caption hereof, and, unless otherwise directed, should be addressed to the Highway Transport Department, Office of Defense Transportation, Washington 25, D. C.

This order shall become effective June 10, 1944, and shall remain in full force and effect until the termination of the present war shall have been duly proclaimed, or until such earlier time as the Office of Defense Transportation by further order may designate.

Issued at Washington, D. C., this 6th day of June 1944.

J. M. JOHNSON,  
Director

Office of Defense Transportation.

#### APPENDIX 1

Watson Bros. Transportation Co., Inc.,  
Omaha, Nebr.

E. J. Dille, doing business as E. J. Dille  
Truck Line, Topeka, Kans.

The Santa Fe Trail Transportation Com-  
pany, Wichita, Kans.

Ash Truck Lines, Inc., Holton, Kans.

[F. R. Doc. 44-8140; Filed, June 6, 1944;  
11:44 a. m.]

<sup>1</sup> Filed as part of the original document.