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TO RENEW THE DEFENSE PRODUCTION ACT OF 1950, AS AMENDED

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HEARINGS BEFORE THE COMMITTEE ON BANKING AND CURRENCY HOUSE OF REPRESENTATIVES

NINETIETH CONGRESS

SECOND SESSION

ON

H.R. 15683

APRIL 10 AND 11, 1968

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TO RENEW THE DEFENSE PRODUCTION ACT OF 1950

WEDNESDAY, APRIL 10, 1968

HOUSE OF REPRESENTATIVES,
COMMITTEE ON BANKING AND CURRENCY,
Washington, D.C.

The committee met, pursuant to notice, at 9:40 a.m., in room 2128, Rayburn House Office Building, Hon. Wright Patman (chairman) presiding.

Present: Representatives Patman, Barrett, Moorhead, St Germain, Gonzalez, Hanna, Gettys, Galifianakis, Bevill, Wolff, Griffin, Widnall, Dwyer, Halpern, Clawson, Blackburn, Brown, and Wylie.

Chairman PATMAN. The committee will please come to order.

This morning the full committee begins hearings on H.R. 15683, a bill to renew the authority under the Defense Production Act of 1950. This act comes up for renewal before this committee every 2 years, at which time we hear testimony from the Director of the Office of Emergency Planning and his associates.

[H.R. 15683, 90th Cong., second sess.]

A BILL To amend the Defense Production Act of 1950, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 717(a) of the Defense Production Act of 1950 is amended by striking out "June 30, 1968" in the first sentence and inserting in lieu thereof "June 30, 1970".

(1)

THE DEFENSE PRODUCTION ACT OF 1950,¹ AS AMENDED²

AN ACT To establish a system of priorities and allocations for materials and facilities, authorize the requisitioning thereof, provide financial assistance for expansion of productive capacity and supply, provide for price and wage stabilization, provide for the settlement of labor disputes, strengthen controls over credit, and by these measures facilitate the production of goods and services necessary for the national security, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act, divided into titles, may be cited as "the Defense Production Act of 1950."

TABLE OF CONTENTS

Title I.	Priorities and allocations.
Title II.	Authority to requisition and condemn. ³
Title III.	Expansion of productive capacity and supply.
Title IV.	Price and wage stabilization. ⁴
Title V.	Settlement of labor disputes. ⁴
Title VI.	Control of consumer and real estate credit. ⁵
Title VII.	General provisions.

DECLARATION OF POLICY

SEC. 2. In view of the present international situation and in order to provide for the national defense and national security, our mobilization effort continues to require some diversion of certain materials and facilities from civilian use to military and related purposes. It also requires the development of preparedness programs and the expansion of productive capacity and supply beyond the levels needed to meet the civilian demand, in order to reduce the time required for full mobilization in the event of an attack on the United States.

In order to insure productive capacity in the event of such an attack on the United States, it is the policy of the Congress to encourage the geographical dispersal of the industrial facilities of the United States in the interest of the national defense, and to discourage the concentration of such productive facilities within limited geographical areas which are vulnerable to attack by an enemy of the United States. In the construction of any Government-owned industrial facilities, in the rendition of any Government financial assistance for the construction, expansion, or improvement of any industrial facilities, and in the procurement of goods and services, under this or any other Act, each department and agency of the Executive Branch shall apply, under the coordination of the Office of Defense Mobilization, when practicable and consistent with existing law and the desirability for maintaining a sound economy, the principle of the geographical dispersal of such facilities in the interest of national defense. Nothing contained in this paragraph shall preclude the use of existing industrial facilities.

¹ Public Law 774, 81st Cong., 64 Stat. 798, Sept. 8, 1950, 50 U.S.C. App. §§ 2061-2166.

² Joint Resolution of June 30, 1951, 65 Stat. 110; Defense Production Act Amendments of 1951, 65 Stat. 131, July 31, 1951; Defense Housing and Communities Facilities and Services Act of 1951, sec. 602, 65 Stat. 313, Sept. 1, 1951; Defense Production Act Amendments of 1952, 66 Stat. 296, June 30, 1952; Defense Production Act Amendments of 1953, 67 Stat. 129, June 30, 1953; Federal Employees Salary Increase Act of 1955, sec. 12(c)(1), 69 Stat. 180, June 28, 1955; Joint Resolution of June 30, 1955, 69 Stat. 225; Defense Production Act Amendments of 1955, 69 Stat. 580, August 9, 1955; Act of June 29, 1956, 70 Stat. 408; Act of June 28, 1958, 72 Stat. 241; Act of June 30, 1960, 74 Stat. 282; Small Business Act Amendments of 1961, sec. 5(b), 75 Stat. 667, Sept. 26, 1961; Act of June 28, 1962, 76 Stat. 112; Act of June 30, 1964, 78 Stat. 235; Act of June 30, 1966, 80 Stat. 235.

³ Authority to condemn added July 31, 1951; title terminated at the close of June 30, 1953.

⁴ Authority terminated at the close of April 30, 1953.

⁵ Control of consumer credit terminated June 30, 1952. Control of real estate credit terminated at the close of June 30, 1953.

TITLE I—PRIORITIES AND ALLOCATIONS

SEC. 101. (a) The President is hereby authorized (1) to require that performance under contracts or orders (other than contracts of employment) which he deems necessary or appropriate to promote the national defense shall take priority over performance under any other contract or order, and for the purpose of assuring such priority, to require acceptance and performance of such contracts or orders in preference to other contracts or orders by any person he finds to be capable of their performance, and (2) to allocate materials and facilities in such manner, upon such conditions, and to such extent as he shall deem necessary or appropriate to promote the national defense.

(b) The powers granted in this section shall not be used to control the general distribution of any material in the civilian market unless the President finds (1) that such material is a scarce and critical material essential to the national defense, and (2) that the requirements of the national defense for such material cannot otherwise be met without creating a significant dislocation of the normal distribution of such material in the civilian market to such a degree as to create appreciable hardship.

SEC. 102. In order to prevent hoarding, no person shall accumulate (1) in excess of the reasonable demands of business, personal, or home consumption, or (2) for the purpose of resale at prices in excess of prevailing market prices, materials which have been designated by the President as scarce materials or materials the supply of which would be threatened by such accumulation. The President shall order published in the Federal Register, and in such other manner as he may deem appropriate, every designation of materials the accumulation of which is unlawful and any withdrawal of such designation. In making such designations the President may prescribe such conditions with respect to the accumulation of materials in excess of the reasonable demands of business, personal, or home consumption as he deems necessary to carry out the objectives of this Act. This section shall not be construed to limit the authority contained in sections 101 and 704 of this Act.

SEC. 103. Any person who willfully performs any act prohibited, or willfully fails to perform any act required, by the provisions of this title or any rule, regulation, or order thereunder, shall, upon conviction, be fined not more than \$10,000 or imprisoned for not more than one year, or both.

SEC. 104. [The authority contained in this section was added by the Defense Production Act Amendments of 1951, 65 Stat. 132, July 31, 1951. The authority was terminated at the close of June 30, 1953, by section 11 of the Defense Production Act Amendments of 1953, 67 Stat. 131, June 30, 1953.]

TITLE II—AUTHORITY TO REQUISITION AND CONDEMN

[The authority to condemn was added by section 102 of the Defense Production Act Amendments of 1951, 65 Stat. 132-133, July 31, 1951. The title was terminated at the close of June 30, 1953, by section 11 of the Defense Production Act Amendments of 1953, 67 Stat. 131, June 30, 1953.]

TITLE III—EXPANSION OF PRODUCTIVE CAPACITY AND SUPPLY

SEC. 301. (a) In order to expedite production and deliveries or services under Government contracts, the President may authorize, subject to such regulations as he may prescribe, the Department of the Army, the Department of the Navy, the Department of the Air Force, the Department of Commerce, and such other agencies of the United States engaged in procurement for the national defense as he may designate (hereinafter referred to as "guaranteeing agencies"), without regard to provisions of law relating to the making, performance, amendment, or modification of contracts, to guarantee in whole or in part any public or private financing institution (including any Federal Reserve bank), by commitment to purchase, agreement to share losses, or otherwise, against loss of principal or interest on any loan, discount, or advance, or on any commitment in connection therewith, which may be made by such financing institution for the purpose of financing any contractor, subcontractor, or other person in connection with the performance of any contract or other operation deemed by the guaranteeing agency to be necessary to expedite production and deliveries or services under Government contracts for the procurement of materials or the performance of services for the national defense, or for the purpose of financing any contractor, subcontractor, or other person in connection with or in contem-

plation of the termination, in the interest of the United States, of any contract made for the national defense; but no small-business concern (as defined in section 714(a)(1) of this Act) shall be held ineligible for the issuance of such a guaranty by reason of alternative sources of supply.

(b) Any Federal agency or any Federal Reserve bank, when designated by the President, is hereby authorized to act, on behalf of any guaranteeing agency, as fiscal agent of the United States in the making of such contracts of guarantee and in otherwise carrying out the purposes of this section. All such funds as may be necessary to enable any such fiscal agent to carry out any guarantee made by it on behalf of any guaranteeing agency shall be supplied and disbursed by or under authority from such guaranteeing agency. No such fiscal agent shall have any responsibility or accountability except as agent in taking any action pursuant to or under authority of the provisions of this section. Each such fiscal agent shall be reimbursed by each guaranteeing agency for all expenses and losses incurred by such fiscal agent in acting as agent on behalf of such guaranteeing agency, including among such expenses, notwithstanding any other provision of law, attorneys' fees and expenses of litigation.

(c) All actions and operations of such fiscal agents under authority of or pursuant to this section shall be subject to the supervision of the President, and to such regulations as he may prescribe; and the President is authorized to prescribe, either specifically or by maximum limits or otherwise, rates of interest, guarantee and commitment fees, and other charges which may be made in connection with loans, discounts, advances, or commitments guaranteed by the guaranteeing agencies through such fiscal agents, and to prescribe regulations governing the forms and procedures (which shall be uniform to the extent practicable) to be utilized in connection with such guarantees.

(d) Each guaranteeing agency is hereby authorized to use for the purposes of this section any funds which have heretofore been appropriated or allocated or which hereafter may be appropriated or allocated to it, or which are or may become available to it, for such purposes or for the purpose of meeting the necessities of the national defense.

SEC. 302. To expedite production and deliveries or services to aid in carrying out Government contracts for the procurement of materials or the performance of services for the national defense, the President may make provisions for loans (including participations, or guarantees of, loans) to private business enterprises (including research corporations not organized for profit) for the expansion of capacity, the development of technological processors, or the production of essential materials, including the exploration, development, and mining of strategic and critical metals and minerals, and manufacture of newsprint. Such loans may be made without regard to the limitations of existing law and on such terms and conditions as the President deems necessary, except that financial assistance may be extended only to the extent that it is not otherwise available on reasonable terms.

SEC. 303. (a) To assist in carrying out the objectives of this Act, the President may make provision (1) for purchases of or commitments to purchase metals, minerals, and other materials, for Government use or resale; and (2) for the encouragement of exploration, development, and mining of critical and strategic minerals and metals: *Provided, however*, That purchases for resale under this subsection shall not include that part of the supply of an agricultural commodity which is domestically produced except insofar as such domestically produced supply may be purchased for resale for industrial use or stockpiling, and no commodity purchased under this subsection shall be sold at less than the established ceiling price for such commodity (except that minerals and metals shall not be sold at less than the established ceiling price, or the current domestic market price, whichever is lower), or, if no ceiling price has been established, the higher of the following: (i) The current domestic market price for such commodity, or (ii) the minimum sale price established for agricultural commodities owned or controlled by the Commodity Credit Corporation as provided in section 407 of Public Law 439, 81st Congress: *Provided further, however*, That no purchase or commitment to purchase any imported agricultural commodity shall be made calling for delivery more than one year after the expiration of this act.

(b) Subject to the limitations in subsection (a), purchases and commitments to purchase and sales under such subsections may be made without regard to the limitations of existing law, for such quantities, and on such terms and conditions, including advance payments, and for such periods, but not extending beyond June 30, 1975, as the President deems necessary, except that purchases or commit-

ments to purchase involving higher than established ceiling prices (or if there be no established ceiling prices, currently prevailing market prices) or anticipated loss on resale shall not be made unless it is determined that supply of the materials could not be effectively increased at lower prices or on terms more favorable to the Government, or that such purchases are necessary to assure the availability to the United States of overseas supplies.

(c) If the President finds—

(1) that under generally fair and equitable ceiling prices for any raw or nonprocessed material, there will result a decrease in supplies from high-cost sources of such material, and that the continuation of such supplies is necessary to carry out the objectives of the act; or

(2) that an increase in cost of transportation is temporary in character and threatens to impair maximum production or supply in any area at stable prices of any materials,

he may make provision for subsidy payments on any such domestically produced material other than an agricultural commodity in such amounts and in such manner (including purchases of such material and its resale at a loss without regard to the limitations of existing law), and on such terms and conditions, as he determines to be necessary to insure that supplies from such high-cost sources are continued, or that maximum production or supply in such area at stable prices of such materials is maintained as the case may be.

(d) The procurement power granted to the President by this section shall include the power to transport and store and have processed and refined any materials procured under this section.

(e) When in his judgment it will aid the national defense the President is authorized to install additional equipment, facilities, processes, or improvements to plants, factories, and other industrial facilities owned by the United States Government, and to install Government owned equipment in plants, factories, and other industrial facilities owned by private persons.

(f) Notwithstanding any other provision of law to the contrary, metals, minerals, and materials acquired pursuant to the provisions of this section which, in the judgment of the President, are excess to the needs of programs under this act, shall be transferred to the national stockpile established pursuant to the act of June 7, 1939, as amended (50 U.S.C. 98-98h), when the President deems such action to be in the public interest.

Transfers made pursuant to this subsection shall be made without charge against or reimbursement from funds available under such act of June 7, 1939, as amended, except that costs incident to such transfer other than acquisition costs shall be paid or reimbursed from such funds, and the acquisition costs of such metals, minerals, and materials transferred shall be deemed to be net losses incurred by the transferring agency and the notes payable issued to the Secretary of the Treasury representing the amounts thereof shall be canceled. Upon the cancellation of any such notes the aggregate amount of borrowing which may be outstanding at any one time under section 304(b) of this act, as amended, shall be reduced in an amount equal to the amount of any notes so canceled.

(g) When in his judgment it will aid the national defense, and upon a certification by the Secretary of Agriculture or the Secretary of the Interior that a particular strategic and critical material is likely to be in short supply in time of war or other national emergency, the President may make provision for the development of substitutes for such strategic and critical materials.

SEC. 304. (a) For the purposes of section 302 and 303, the President is hereby authorized to utilize such existing departments, agencies, officials, or corporations of the Government as he may deem appropriate, or to create new agencies (other than corporations).

(b) Any agency created under this section, and any department, agency, official, or corporation utilized pursuant to this section is authorized, subject to the approval of the President, to borrow from the Treasury of the United States, such sums of money as may be necessary to carry out its functions under sections 302 and 303: *Provided*, That the amount borrowed under the provisions of this section by all such borrowers shall not exceed an aggregate of \$2,100,000,000 outstanding at any one time: *Provided further*, That when any contract, agreement, loan, or other transaction heretofore or hereafter entered into pursuant to section 302 or 303 imposes contingent liability upon the United States, such liability shall be considered for the purposes of sections 3679 and 3732 of the Revised Statutes, as amended, as an obligation only to the extent of the probable ultimate net cost to the United States under such transaction; and the President shall submit a report to the Congress not less often

than one each year^a setting forth the gross amount of each such transaction entered into by any agency of the U.S. Government under this authority and the basis for determining the probable ultimate net cost to the United States hereunder. For the purpose of borrowing as authorized by this subsection, the borrower may issue to the Secretary of the Treasury its notes, debentures, bonds, or other obligations to be redeemable at its option before maturity in such manner as may be stipulated in such obligations. Such obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average rate on outstanding marketable obligations of the United States as of the last day of the month preceding the issuance of the obligations: *Provided*, That no new purchases or commitments to purchase under section 303 shall be made or entered into after June 30, 1964 (except purchases made pursuant to commitments entered into on or before such date), unless the President makes a finding that such new purchases or commitments are essential to the national security: *Provided further*, That the total of such new purchases and commitments, including contingent liabilities, made or incurred under section 303 after June 30, 1964, shall not exceed \$100,000,000. The Secretary of the Treasury is authorized and directed to purchase such obligations and for such purpose the Secretary of the Treasury is authorized to use as a public-debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act, as amended, and the purposes for which securities may be issued under the Second Liberty Bond Act, as amended, are extended to include any purchases of obligations hereunder.

TITLE IV—PRICE AND WAGE STABILIZATION

[Title terminated at the close of April 30, 1953, by section 121 (b) of the Defense Production Act Amendments of 1952, 66 Stat. 306, June 30, 1952.]

TITLE V—SETTLEMENT OF LABOR DISPUTES

[Title terminated at the close of April 30, 1953, by section 121 (b) of the Defense Production Act Amendments of 1952, 66 Stat. 306, June 30, 1952.]

TITLE VI—CONTROL OF CONSUMER AND REAL ESTATE CREDIT

[Authority for the control of consumer credit terminated June 30, 1952, by section 116 (a) of the Defense Production Act Amendments of 1952, 66 Stat. 305, June 30, 1952.]

[Authority for the control of real estate credit terminated at the close of June 30, 1953, by section 11 of the Defense Production Act Amendments of 1953, 67 Stat. 131, June 30, 1953.]

TITLE VII—GENERAL PROVISIONS

SEC. 701. (a) It is the sense of the Congress that small-business enterprises be encouraged to make the greatest possible contribution toward achieving the objectives of this Act.

(b) In order to carry out this policy—

(i) the President shall provide small-business enterprises with full information concerning the provisions of this Act relating to, or of benefit to, such enterprises and concerning the activities of the various departments and agencies under this Act;

(ii) such business advisory committees shall be appointed as shall be appropriate for purposes of consultation in the formulation of rules, regulations, or orders, or amendments thereto issued under authority of this Act, and in their formation there shall be fair representation for independent small, for medium, and for large business enterprises, for different geographical areas, for trade association members and nonmembers, and for different segments of the industry;

(iii) in administering this Act, such exemptions shall be provided for small-business enterprises as may be feasible without impeding the accomplishment of the objectives of this Act; and

(iv) in administering this Act, special provision shall be made for the expeditious handling of all requests, applications, or appeals from small-business enterprises.

^a Public Law 89-348, Nov. 8, 1965, sec. 2(8).

(c) Whenever the President invokes the powers given him in this Act to allocate any material in the civilian market, he shall do so in such a manner as to make available, so far as practicable, for business and various segments thereof in the normal channel of distribution of such material, a fair share of the available civilian supply based, so far as practicable, on the share received by such business under normal conditions during a representative period preceding any future allocation of materials: *Provided*, That the President shall, in the allocation of materials in the civilian market, give due consideration to the needs of new concerns and newly acquired operations, undue hardships of individual businesses, and the needs of smaller concerns in an industry.

(d) In order to further the objectives and purposes of this section, the Office of Defense Mobilization is directed to investigate the distribution of defense contracts with particular reference to the share of such contracts which has gone and is now going to small business, either directly or by subcontract; to review the policies, procedures, and administrative arrangements now being followed in order to increase participation by small business in the mobilization program; to explore all practical ways, whether by amendments to laws, policies, regulations, or administrative arrangements, or otherwise, to increase the share of defense procurement going to small business; to get from the departments and agencies engaged in procurement, and from other appropriate agencies including the Small Business Administration, their views and recommendations on ways to increase the share of procurements going to small business; and to make a report to the President and the Congress, not later than six months after the enactment of the Defense Production Act Amendments of 1955, which report shall contain the following: (i) a full statement of the steps taken by the Office of Defense Mobilization in making investigations required by this subsection; (ii) the findings of the Office of Defense Mobilization with respect to the share of procurement which has gone and is now going to small business; (iii) a full and complete statement of the actions taken by the Office of Defense Mobilization and other agencies to increase such small business share; (iv) a full and complete statement of the recommendations made by the procurement agencies and other agencies consulted by the Office of Defense Mobilization; and (v) specific recommendations by the Office of Defense Mobilization for further action to increase the share of procurement going to small business.

Sec. 702. As used in this Act—

(a) The word "person" includes an individual, corporation, partnership, association, or any other organized group of persons, or legal successor or representative of the foregoing, and includes the United States or any agency thereof, or any other government, or any of its political subdivisions, or any agency of any of the foregoing: *Provided*, That no punishment provided by this Act shall apply to the United States, or to any such government, political subdivision, or government agency.

(b) The word "materials" shall include raw materials, articles, commodities, products, supplies, components, technical information, and processes.

(c) The word "facilities" shall not include farms, churches or other places of worship, or private dwelling houses.

(d) The term "national defense" means programs for military and atomic energy production or construction, military assistance to any foreign nation, stockpiling, and directly related activity.

(e) The words "wages, salaries, and other compensation" shall include all forms of remuneration to employees by their employers for personal services, including, but not limited to, vacation and holiday payments, night shift and other bonuses, incentive payments, year-end bonuses, employer contributions to or payments of insurance or welfare benefits, employer contributions to a pension fund or annuity, payments in kind, and premium overtime payments.

Sec. 703. (a) Except as otherwise specifically provided, the President may delegate any power or authority conferred upon him by this Act to any officer or agency of the Government, including any new agency or agencies (and the President is hereby authorized to create such new agencies, other than corporate agencies, as he deems necessary), and he may authorize such redelegations by that officer or agency as the President may deem appropriate. The President is authorized to appoint heads and assistant heads of any such new agencies, and other officials therein of comparable status, and to fix their compensation, without regard to the Classification Act of 1949, as amended, the head of one such agency to be paid at a rate comparable to the compensation paid to the heads of executive departments of the Government and other such heads, assist-

ant heads, and officials at rates comparable to the compensation paid to the heads and assistant heads of independent agencies of the Government. Any officer or agency may employ civilian personnel for duty in the United States, including the District of Columbia, or elsewhere, without regard to section 14 of the Federal Employees Pay Act of 1946 (60 Stat. 219) as the President deems necessary to carry out the provisions of this Act.

(b) The head and assistant heads of any independent agency created to administer the authority conferred by title IV of this Act shall be appointed by the President, by and with the advice and consent of the Senate. There shall be included among the policymaking officers of each regional office administering the authority conferred by title IV of this Act a resident of each State served by such office whose Governor requests such representation.

SEC. 704. The President may make such rules, regulations, and orders as he deems necessary or appropriate to carry out the provisions of the Act. Any regulation or order under this Act may be established in such form and manner, may contain such classification and differentiations, and may provide for such adjustments and reasonable exceptions as in the judgment of the President are necessary or proper to effectuate the purposes of this Act, or to prevent circumvention or evasion, or to facilitate enforcement of this Act, or any rule, regulation, or order issued under this Act. No rule, regulation, or order issued under this Act which restricts the use of natural gas (either directly or by restricting the use of facilities for the consumption of natural gas, or in any other manner) shall apply in any State in which a public regulatory agency has authority to restrict the use of natural gas and certifies to the President that it is exercising that authority to the extent necessary to accomplish the objectives of this Act.

SEC. 705. (a) The President shall be entitled, while this Act is in effect and for a period of two years thereafter, by regulation, subpoena, or otherwise, to obtain such information from, require such reports and the keeping of such records by, make such inspection of the books, records, and other writings, premises or property of, and take the sworn testimony of, and administer oaths and affirmations to, any person as may be necessary or appropriate, in his discretion, to the enforcement or the administration of this Act and the regulations or orders issued thereunder. The President shall issue regulations insuring that the authority of this subsection will be utilized only after the scope and purpose of the investigation, inspection, or inquiry to be made have been defined by competent authority, and it is assured that no adequate and authoritative data are available from any Federal or other responsible agency. In case of contumacy by, or refusal to obey a subpoena served upon, any person referred to in this subsection, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the President, shall have jurisdiction to issue an order requiring such person to appear and give testimony or to appear and produce documents or both; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(b) No person shall be excused from complying with any requirement under this section or from attending and testifying or from producing books, papers, documents, and other evidence in obedience to a subpoena before any grand jury or in any court or administrative proceeding based upon or growing out of any alleged violation of this Act on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to penalty or forfeiture; but no natural person shall be prosecuted or subjected to any penalty or forfeiture in any court, for or on account of any transaction, matter, or thing concerning which he is so compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that such natural person so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying: *Provided*, That the immunity granted herein from prosecution and punishment and from any penalty or forfeiture, shall not be construed to vest in any individual any right to priorities assistance, to the allocation of materials, or to any other benefit which is within the power of the President to grant under any provision of this Act.

(c) The production of a person's books, records, or other documentary evidence shall not be required at any place other than the place where such person usually keeps them, if prior to the return date specified in the regulations, subpoena, or other document issued with respect thereto, such person furnishes the President with a true copy of such books, records, or other documentary evidence (certified by such person under oath to be a true and correct copy) or

enters into a stipulation with the President as to the information contained in such books, records, or other documentary evidence. Witnesses shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

(d) Any person who willfully performs any act prohibited or willfully fails to perform any act required by the above provisions of this section, or any rule, regulation, or order thereunder, shall upon conviction be fined not more than \$1,000 or imprisoned for not more than one year or both.

(e) Information obtained under this section which the President deems confidential or with reference to which a request for confidential treatment is made by the person furnishing such information shall not be published or disclosed unless the President determines that the withholding thereof is contrary to the interest of the national defense, and any person willfully violating this provision shall, upon conviction, be fined not more than \$10,000, or imprisoned for not more than one year, or both.

All information obtained by the Office of Price Stabilization under this section 705, as amended, and not made public prior to April 30, 1953, shall be deemed confidential and shall not be published or disclosed, either to the public or to another Federal agency except the Congress or any duly authorized committee thereof, and except the Department of Justice for such use as it may deem necessary in the performance of its functions, unless the President determines that the withholding thereof is contrary to the interests of the national defense, and any person willfully violating this provision shall, upon conviction, be fined not more than \$10,000 or imprisoned for not more than one year, or both.

(f) Any person subpoenaed under this section shall have the right to make a record of his testimony and to be represented by counsel.

SEC. 706. (a) Whenever in the judgment of the President any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of this Act, he may make application to the appropriate court for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, and upon a showing by the President that such person has engaged or is about to engage in any such acts or practices a permanent or temporary injunction, restraining order, or other order, with or without such injunction or restraining order, shall be granted without bond.

(b) The district courts of the United States and the United States courts of any Territory or other place subject to the jurisdiction of the United States shall have jurisdiction of violations of this Act or any rule, regulation, order, or subpoena thereunder, and of all civil actions under this Act to enforce any liability or duty created by, or to enjoin any violation of, this Act or any rule, regulation, order, or subpoena thereunder. Any criminal proceeding on account of any such violation may be brought in any district in which any act, failure to act, or transaction constituting the violation occurred. Any such civil action may be brought in any such district or in the district in which the defendant resides or transacts business. Process in such cases, criminal or civil, may be served in any district wherein the defendant resides or transacts business or wherever the defendant may be found; the subpoena for witnesses who are required to attend a court in any district in such case may run into any other district. The termination of the authority granted in any title or section of this Act, or of any rule, regulation, or order issued thereunder, shall not operate to defeat any suit, action, or prosecution, whether theretofore or thereafter commenced, with respect to any right, liability, or offense incurred or committed prior to the termination date of such title or of such rule, regulation, or order. No costs shall be assessed against the United States in any proceeding under this Act. All litigation arising under this Act or the regulations promulgated thereunder shall be under the supervision and control of the Attorney General.

SEC. 707. No person shall be held liable for damages or penalties for any act or failure to act resulting directly or indirectly from compliance with a rule, regulation, or order issued pursuant to this Act notwithstanding that any such rule, regulation, or order shall thereafter be declared by judicial or other competent authority to be invalid. No person shall discriminate against orders or contracts to which priority is assigned or for which materials or facilities are allocated under title I of this Act or under any rule, regulation, or order issued thereunder, by charging higher prices or by imposing different terms and conditions for such orders or contracts than for other generally comparable orders or contracts, or in any other manner.

SEC. 708. (a) The President is authorized to consult with representatives of industry, business, financing, agriculture, labor, and other interests, with a view

to encouraging the making by such person with the approval by the President of voluntary agreements and programs to further the objectives of this Act.

(b) No act or omission to act pursuant to this Act which occurs while this Act is in effect, if requested by the President pursuant to a voluntary agreement or program approved under subsection (a) and found by the President to be in the public interest as contributing to the national defense shall be construed to be within the prohibition of the antitrust laws or the Federal Trade Commission Act of the United States: *Provided, however,* That after the enactment of the Defense Production Act Amendments of 1955, the exemption from the prohibitions of the antitrust laws and the Federal Trade Commission Act of the United States shall apply only (1) to acts and omissions to act requested by the President or his duly authorized delegate pursuant to duly approved voluntary agreements or programs relating solely to the exchange between actual or prospective contractors of technical or other information, production techniques, and patents or patent rights, relating to equipment used primarily by or for the military which is being procured by the Department of Defense or any department thereof, and the exchange of materials, equipment, and personnel to be used in the production of such equipment; and (2) to act and omissions to act requested by the President or his duly authorized delegate pursuant to voluntary agreements or programs which were duly approved under this section before the enactment of the Defense Production Act Amendments of 1955. The Attorney General shall review each of the voluntary agreements and programs covered by this section, and the activities being carried on thereunder, and, if he finds after such review and after consultation with the Director of the Office of Defense Mobilization and other interested agencies, that the adverse effects of any such agreement or program on the competitive free-enterprise system outweigh the benefits of the agreement or program to the national defense, he shall withdraw his approval in accordance with subsection (d) of this section. This review and determination shall be made within ninety days after the enactment of the Defense Production Act Amendments of 1955.

A copy of each such request intended to be within the coverage of this section, and any modification or withdrawal thereof, shall be furnished to the Attorney General and the Chairman of the Federal Trade Commission when made, and it shall be published in the Federal Register unless publication thereof would, in the opinion of the President, endanger the national security.

(c) The authority granted in subsection (b) shall be delegated only (1) to officials who shall for the purpose of such delegation be required to be appointed by the President by and with the advice and consent of the Senate, unless otherwise required to be so appointed, and (2) upon the condition that such officials consult with the Attorney General and with the chairman of the Federal Trade Commission not less than ten days before making any request or finding thereunder, and (3) upon the condition that such officials obtain the approval of the Attorney General to any request thereunder before making the request. For the purpose of carrying out the objectives of title I of this Act, the authority granted in subsection (b) of this section shall not be delegated except to a single official of the Government.

(d) Upon withdrawal of any request or finding made hereunder, or upon withdrawal by the Attorney General of his approval of the voluntary agreement or program on which the request or finding is based, the provisions of this section shall not apply to any subsequent act or omission to act by reason of such finding or request.

(e) The Attorney General is directed to make, or request the Federal Trade Commission to make for him, surveys for the purpose of determining any factors which may tend to eliminate competition, create or strengthen monopolies, injure small business, or otherwise promote undue concentration of economic power in the course of the administration of this Act. Such surveys shall include studies of the voluntary agreements and programs authorized by this section. The Attorney General shall submit to the Congress and the President at least once every year reports setting forth the results of such studies of voluntary agreements and programs authorized by this section.

(f) After the date of enactment of the Defense Production Act Amendments of 1952, no voluntary program or agreement for the control of credits shall be approved or carried out under this section.

¹ Public Law 89-348, Nov. 8, 1965, sec. 2(10).

SEC. 709. The functions exercised under this Act shall be excluded from the operation of the Administrative Procedure Act (60 Stat. 237) except as to the requirements of section 3 thereof. Any rule, regulation, or order, or amendment thereto, issued under authority of this Act shall be accompanied by a statement that in the formulation thereof there has been consultation with industry representatives, including trade association representatives, and that consideration has been given to their recommendations, or that special circumstances have rendered such consultation impracticable or contrary to the interest of the national defense, but no such rule, regulation, or order shall be invalid by reason of any subsequent finding by judicial or other authority that such a statement is inaccurate.

SEC. 710(a). [Subsec. (a) was repealed by section 12(c) (1) of the Federal Employees Salary Increase Act of 1955, 69 Stat. 180, June 28, 1955.]

(b) (1) The President is further authorized, to the extent he deems it necessary and appropriate in order to carry out the provisions of this Act and subject to such regulations as he may issue, to employ persons of outstanding experience and ability without compensation;

(2) The President shall be guided in the exercise of the authority provided in this subsection by the following policies;

(i) So far as possible, operations under the Act shall be carried on by full-time salaried employees of the Government, and appointments under this authority shall be to advisory or consultative positions only.

(ii) Appointments to positions other than advisory or consultative may be made under this authority only when the requirements of the positions are such that the incumbent must personally possess outstanding experience and ability not obtainable on a full-time, salaried basis.

(iii) In the appointment of personnel and in assignment of their duties, the head of the department or agency involved shall take steps to avoid, to as great an extent as possible, any conflict between the governmental duties and the private interests of such personnel.

(3) Appointees under this subsection (b) shall, when policy matters are involved, be limited to advising appropriate full-time salaries Government officials who are responsible for making policy decisions.

(4) Any person employed under this subsection (b) is hereby exempted, with respect to such employment, from the operation of sections 281, 283, 284, 434, and 1914 of title 18, United States Code, and section 190 of the Revised Statutes (5 U.S.C. 99),^a except that—

(i) exemption hereunder shall not extend to the negotiation or execution, by such appointee, of Government contracts with the private employer of such appointee or with any corporation, joint stock company, association, firm, partnership, or other entity in the pecuniary profits or contracts of which the appointee has any direct or indirect interest;

(ii) exemption hereunder shall not extend to making any recommendation or taking any action with respect to individual applications to the Government for relief or assistance, on appeal or otherwise, made by the private employer of the appointee or by any corporation, joint stock company, association, firm, partnership, or other entity in the pecuniary profits or contracts of which the appointee has any direct or indirect interest;

(iii) exemption hereunder shall not extend to the prosecution by the appointee, or participation by the appointee in any fashion in the prosecution, of any claims against the Government involving any matter concerning which the appointee had any responsibility during his employment under this subsection, during the period of such employment and the further period of two years after the termination of such employment; and

(iv) exemption hereunder shall not extend to the receipt or payment of salary in connection with the appointee's Government service hereunder from any source other than the private employer of the appointee at the time of his appointment hereunder.

(5) Appointments under this subsection (b) shall be supported by written certification by the head of the employing department or agency—

(i) that the appointment is necessary and appropriate in order to carry out the provisions of the Act;

^a These sections were repealed and supplanted by sections 203-209 of title 18 of the United States Code; see sections 2 and 3 of Public Law 87-849, October 23, 1962 (76 Stat. 1119, 1126).

- (ii) that the duties of the position to which the appointment is being made require outstanding experience and ability;
- (iii) that the appointee has the outstanding experience and ability required by the position; and
- (iv) that the department or agency head has been unable to obtain a person with the qualifications necessary for the position on a full-time, salaried basis.

(6) The heads of the departments or agencies making appointments under this subsection (b) shall file with the Division of the Federal Register for publication in the Federal Register a statement including the name of the appointee, the employing department or agency, the title of his position, and the names of his private employer, and the appointee shall file with such Division for publication in the Federal Register a statement listing the names of any corporations of which he is an officer or director or within 60 days preceding his appointment has been an officer or director, or in which he owns, or within 60 days preceding his appointment has owned, any stocks, bonds, or other financial interests and the names of any partnerships in which he is, or was within 60 days preceding his appointment, a partner, and the names of any other businesses in which he owns, or within such 60-day period has owned, any similar interest. At the end of each succeeding 6-month period the appointee shall file with such Division for publication in the Federal Register a statement showing any changes in such interests during such period.

(7) At least once every year,⁹ the Chairman of the United States Civil Service Commission shall survey appointments made under this subsection and shall report his findings to the President and the Joint Committee on Defense Production and make such recommendations as he may deem proper.

(8) Persons appointed under the authority of this subsection may be allowed transportation and not to exceed \$15 per diem in lieu of subsistence while away from their homes or regular places of business pursuant to such appointment.

(c) The President is authorized, to the extent he deems it necessary and appropriate in order to carry out the provisions of this Act, to employ experts and consultants or organizations thereof, as authorized by section 55a of title 5 of the United States Code. Individuals so employed may be compensated at rates not in excess of \$50 per diem and while away from their homes or regular places of business they may be allowed transportation and not to exceed \$15 per diem in lieu of subsistence and other expenses while so employed. The President is authorized to provide by regulation for the exemption of such persons from the operation of section 281, 283, 284, 434 and 1914 of title 18 of the United States Code and section 190 of the Revised Statutes (5 U.S.C. 99).¹⁰

(d) The President may utilize the services of Federal, State, and local agencies and may utilize and establish such regional, local, or other agencies and, utilize such voluntary and uncompensated services, as may from time to time be needed; and he is authorized to provide by regulation for the exemption of persons whose services are utilized under this subsection from the operation of sections 281, 283, 284, 434, and 1914 of title 18 of the United States Code and section 190 of the Revised Statutes (5 U.S.C. 99).¹⁰

(e) The President is further authorized to provide for the establishment and training of a nucleus executive reserve for employment in executive positions in Government during periods of emergency. Members of this executive reserve who are not full-time Government employees may be allowed transportation and not to exceed \$15 per diem in lieu of subsistence while away from their homes or regular places of business for the purpose of participating in the executive reserve training program. The President is authorized to provide by regulation for the exemption of such persons who are not full-time Government employees from the operation of sections 281, 283, 284, 434, and 1914 of title 18 of the United States Code and section 190 of the Revised Statutes (5 U.S.C. 99).¹⁰

(f) Whoever, being an officer or employee of the United States or any department or agency thereof (including any Member of the Senate or House of Representatives), receives, by virtue of his office or employment, confidential information, and (1) uses such information in speculating directly or indirectly on any commodity exchange, or (2) discloses such information for the purpose of aiding

⁹ Public Law 89-348, November 8, 1965, section 2(11).

¹⁰ These sections were repealed and supplanted by sections 203-209 of title 18 of the United States Code; see sections 2 and 3 of Public Law 87-849, October 23, 1962 (76 Stat. 1119, 1126).

any other persons so to speculate, shall be fined not more than \$10,000 or imprisoned not more than one year, or both. As used in this section, the term "speculate" shall not include a legitimate hedging transaction, or a purchase or sale which is accompanied by actual delivery of the commodity.

(g) The President, when he deems such action necessary, may make provision for the printing and distribution of reports, in such number and in such manner as he deems appropriate, concerning the actions taken to carry out the objectives of this Act.

SEC. 711. There are hereby authorized to be appropriated such sums as may be necessary and appropriate for the carrying out of the provisions and purposes of this Act by the President and such agencies as he may designate or create. Funds made available for the purposes of this Act may be allocated or transferred for any of the purposes of this Act, with the approval of the Bureau of the Budget, to any agency designated to assist in carrying out this Act. Funds so allocated or transferred shall remain available for such period as may be specified in the Acts making such funds available.

SEC. 712. (a) There is hereby established a joint congressional committee to be known as the Joint Committee on Defense Production (hereinafter referred to as the committee), to be composed of ten members as follows:

(1) Five members who are members of the Committee on Banking and Currency of the Senate, three from the majority and two from the minority party, to be appointed by the chairman of the committee; and

(2) Five members who are members of the Committee on Banking and Currency of the House of Representatives, three from the majority and two from the minority party, to be appointed by the chairman of the committee.

A vacancy in the membership of the committee shall be filled in the same manner as the original selection. The committee shall elect a chairman and a vice chairman from among its members, one of whom shall be a Member of the Senate and the other a Member of the House of Representatives.

(b) It shall be the function of the committee to make a continuous study of the programs and of the fairness to consumers of the prices authorized by this Act and to review the progress achieved in the execution and administration thereof. Upon request, the committee shall aid the standing committees of the Congress having legislative jurisdiction over any part of the programs authorized by this Act; and it shall make a report to the Senate and the House of Representatives, from time to time, concerning the results of its studies, together with such recommendations as it may deem desirable. Any department, official, or agency administering any of such programs shall, at the request of the committee, consult with the committee, from time to time, with respect to their activities under this Act.

(c) The committee, or any duly authorized subcommittee thereof, is authorized to hold such hearings, to sit and act at such time and places, to require by subpoena (to be issued under the signature of the chairman or vice chairman of the committee) or otherwise the attendance of such witnesses and the production of such books, papers, and documents, to administer such oaths, to take such testimony, to procure such printing and binding, and to make such expenditures as it deems advisable. The cost of stenographic services to report such hearings shall not be in excess of 40 cents per hundred words. The provisions of sections 102 to 104, inclusive, of the Revised Statutes shall apply in case of any failure of any witness to comply with any subpoena or to testify when summoned under authority of this subsection.

(d) The committee is authorized to appoint and, without regard to the Classification Act of 1949, as amended, fix the compensation of such expert, consultants, technicians, and organizations thereof, and clerical and stenographic assistants as it deems necessary and advisable.

(e) The expenses of the committee under this section, which shall not exceed \$85,000 in any fiscal year, shall be paid from the contingent fund of the House of Representatives upon vouchers signed by the chairman or vice chairman.

(f) The Secretary of Commerce shall make a special investigation and study of the production, allocation, distribution, use of nickel, of its resale as scrap and of other aspects of the current situation with respect to supply and marketing of nickel, with particular attention to, among other things, the adequacy of the present system of nickel allocation between defense and civilian users. The Secretary of Commerce shall consult with the Joint Committee on Defense Production during the course of such investigation and study with respect to the progress achieved and the results of the investigation and study, and shall make an interim report on the results of the investigation and study on or before

August 15, 1956, and shall, on or before December 31, 1956, make a final report on the results of such investigation and study, together with such recommendations as the Secretary of Commerce deems advisable. Such reports shall be made to the Senate (or to the Secretary of the Senate if the Senate is not in session) and to the House of Representatives (or to the Clerk of the House of Representatives if the House is not in session).

Sec. 713. The provisions of this Act shall be applicable to the United States, its Territories and possessions, and the District of Columbia.

Sec. 714. [The Small Defense Plants Administration created by this section, added by the Defense Production Act amendments of 1951, was terminated at the close of July 31, 1953, and was succeeded by the Small Business Administration created under the Small Business Act of 1953. For purposes of section 301(a) of this Act, section 714(a) (1) defined a small-business concern thusly: " * * * a small-business concern shall be deemed to be one which is independently owned and operated and which is not dominant in its field of operation," and provided that, "The Administration, in making a detailed definition, may use these criteria, among others: independency of ownership and operation, number of employees, dollar volume of business, and nondominance in its field."]

Sec. 715. If any provision of this Act or the application of such provision to any person or circumstances shall be held invalid, the remainder of the Act, and the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

Sec. 716. That no person may be employed under this Act who engages in a strike against the Government of the United States or who is a member of an organization of Government employees that asserts the right to strike against the Government of the United States, or who advocates, or who is a member of an organization that advocates, the overthrow of the Government of the United States by force or violence: *Provided*, That for the purposes hereof an affidavit shall be considered prima facie evidence that the person making the affidavit has not contrary to the provisions of this section engaged in a strike against the Government of the United States, is not a member of an organization of Government employees that asserts the right to strike against the Government of the United States or that such person does not advocate, and is not a member of an organization that advocates, the overthrow of the Government of the United States by force or violence: *Provided further*, That any person who engages in a strike against the Government of the United States or who is a member of an organization of Government employees that asserts the right to strike against the Government of the United States, or who advocates, or who is a member of an organization that advocates, the overthrow of the Government of the United States by force or violence and accepts employment the salary or wages for which are paid from any appropriation or fund contained in this Act shall be guilty of a felony and, upon conviction shall be fined not more than \$1,000 or imprisoned for not more than one year, or both: *Provided further*, That the above penalty clause shall be in addition to, and not in substitution for, any other provisions of existing law.

Sec. 717. (a) Title I (except section 104), title III, and title VII (except section 714) of this Act, and all authority conferred thereunder shall terminate at the close of June 30, 1968. Section 714 of this Act, and all authority conferred thereunder, shall terminate at the close of July 31, 1953. Section 104, title II, and title VI of this Act, and all authority conferred thereunder shall terminate at the close of June 30, 1953. Title IV and V of this Act, and any authority conferred thereunder, shall terminate at the close of April 30, 1953.

(b) Notwithstanding the foregoing—

(1) The Congress by concurrent resolution or the President by proclamation may terminate this Act prior to the termination otherwise provided therefor.

(2) The Congress may also provide by concurrent resolution that any section of this Act and all authority conferred thereunder shall terminate prior to the termination otherwise provided therefor.

(3) Any agency created under this Act may be continued in existence for purposes of liquidation for not to exceed six months after the termination of the provision authorizing the creation of such agency.

(c) The termination of any section of this Act, or of any agency or corporation utilized under this Act, shall not affect the disbursement of funds under, or the carrying out of, any contract, guarantee, commitment or other obligation entered into pursuant to this Act prior to the date of such termination, or the taking of any action necessary to preserve or protect the interests of the United

States in any amount advanced or paid out in carrying on operations under this Act, or the taking of any action (including the making of new guarantees) deemed by a guaranteeing agency to be necessary to accomplish the orderly liquidation, adjustment, or settlement of any loans guaranteed under this Act, including actions deemed necessary to avoid undue hardship to borrowers in reconverting to normal civilian production; and all of the authority granted to the President, guaranteeing agencies, and fiscal agents, under section 301 of this Act shall be applicable to actions taken pursuant to the authority contained in this subsection.

Notwithstanding any other provision of this Act, the termination of title VI or any section thereof shall not be construed as affecting any obligation, condition, liability, or restriction arising out of any agreement heretofore entered into pursuant to, or under the authority of, section 602 or section 605 of this Act, or any issuance thereunder, by any person or corporation and the Federal Government or any agency thereof relating to the provision of housing for defense workers or military personnel in an area designated as a critical defense housing area pursuant to law.

(d) No action for the recovery of any cooperative payment made to a cooperative association by a Market Administrator under an invalid provision of a milk marketing order issued by the Secretary of Agriculture pursuant to the Agricultural Marketing Agreement Act of 1937 shall be maintained unless such action is brought by producers specifically named as party plaintiffs to recover their respective share of such payments within ninety days after the date of enactment of the Defense Production Act Amendments of 1952 with respect to any cause of action heretofore accrued and not otherwise barred, or within ninety days after accrual with respect to future payments, and unless each claimant shall allege and prove (1) that he objected at the hearing to the provisions of the order under which such payments were made and (2) that he either refused to accept payments computed with such deduction or accepted them under protest to either the Secretary or the Administrator. The district courts of the United States shall have exclusive original jurisdiction of all such actions regardless of the amount involved. This subsection shall not apply to funds held in escrow pursuant to court order. Notwithstanding any other provision of this Act, no termination date shall be applicable to this subsection.

Public Law 632 - 84th Congress
Chapter 474 - 2d Session
H. R. 9852

AN ACT

To extend the Defense Production Act of 1950, as amended, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the first sentence of subsection (a) of section 717 of the Defense Production Act of 1950, as amended, is hereby amended by striking out "June 30, 1956" and inserting in lieu thereof "June 30, 1958". Defense Production Act of 1950, amendments. 65 Stat. 144; 64 Stat. 822.

SEC. 2. Subsection (b) of section 303 of the Defense Production Act of 1950, as amended, is hereby amended by striking out "June 30, 1963" and inserting in lieu thereof "June 30, 1965". 50 USC app. 2166. 50 USC app. 2093.

SEC. 3. Section 712 of the Defense Production Act of 1950 is amended by adding at the end thereof the following new subsection: 50 USC app. 2162.

"(f) The Secretary of Commerce shall make a special investigation and study of the production, allocation, distribution, use of nickel, of its resale as scrap, and of other aspects of the current situation with respect to supply and marketing of nickel, with particular attention to, among other things, the adequacy of the present system of nickel allocation between defense and civilian users. The Secretary of Commerce shall consult with the Joint Committee on Defense Production during the course of such investigation and study with respect to the progress achieved and the results of the investigation and study, and shall make an interim report on the results of the investigation and study on or before August 15, 1956, and shall, on or before December 31, 1956, make a final report on the results of such investigation and study, together with such recommendations as the Secretary of Commerce deems advisable. Such reports shall be made to the Senate (or to the Secretary of the Senate if the Senate is not in session) and to the House of Representatives (or to the Clerk of the House of Representatives if the House is not in session)."

SEC. 4. Section 2 of the Defense Production Act of 1950, as amended, is hereby amended by inserting at the end thereof the following new paragraph: Nickel. Report to Congress. 50 USC app. 2062.

"In order to insure productive capacity in the event of such an attack on the United States, it is the policy of the Congress to encourage the geographical dispersal of the industrial facilities of the United States in the interest of the national defense, and to discourage the concentration of such productive facilities within limited geographical areas which are vulnerable to attack by an enemy of the United States. In the construction of any Government-owned industrial facilities, in the rendition of any Government financial assistance for the construction, expansion, or improvement of any industrial facilities, and in the procurement of goods and services, under this or any other Act, each department and agency of the Executive Branch shall apply, under the coordination of the Office of Defense Mobilization, when practicable and consistent with existing law and the desirability for maintaining a sound economy, the principle of the geographical dispersal of such facilities in the interest of national defense. Nothing contained in this paragraph shall preclude the use of existing industrial facilities." Dispersal of industrial facilities. 70 Stat. 408. 70 Stat. 409.

Pub. Law 632All 70 Stat. 409.50 USC app.
2162.

SEC. 5. Effective July 1, 1956, section 712 (e) of the Defense Production Act of 1950, as amended, is amended to read as follows:

"(e) The expenses of the committee under this section, which shall not exceed \$65,000 in any fiscal year, shall be paid from the contingent fund of the House of Representatives upon vouchers signed by the Chairman or Vice Chairman."

Approved June 29, 1956.

Public Law 85-471
85th Congress, H. R. 10969
June 28, 1958

AN ACT

72 Stat. 241.

To extend the Defense Production Act of 1950, as amended.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the first sentence of subsection (a) of section 717 of the Defense Production Act of 1950, as amended, is hereby amended by striking out "June 30, 1958" and inserting in lieu thereof "June 30, 1960".

70 Stat. 408.
50 USC app.
2166.

Approved June 28, 1958.

Public Law 86-560
86th Congress, H. R. 12052
June 30, 1960

AN ACT

74 STAT. 282.

To extend the Defense Production Act of 1950, as amended, for an additional two years.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the first sentence of subsection (a) of section 717 of the Defense Production Act of 1950, as amended (50 U.S.C. app. 2166), is amended by striking out "June 30, 1960" and inserting in lieu thereof "June 30, 1962".

Defense Production Act of 1950, amendment,
72 Stat. 241.
64 Stat. 802.

SEC. 2. The second proviso to the first sentence of subsection (b) of section 304 is amended by striking out the word "quarter" and inserting in lieu thereof the words "six months".

Approved June 30, 1960.



Public Law 88-343
88th Congress, H. R. 10000
June 30, 1964

An Act

78 STAT. 235.

To extend the Defense Production Act of 1950, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 717(a) of the Defense Production Act of 1950 is amended by striking out "June 30, 1964" in the first sentence and inserting in lieu thereof "June 30, 1966".

SEC. 2. Section 303(b) of the Defense Production Act of 1950 is amended by striking out "June 30, 1965" and inserting in lieu thereof "June 30, 1975".

SEC. 3. Section 304(b) of the Defense Production Act of 1950 is amended by striking out the period at the end of the next to last sentence and inserting in lieu thereof a colon and the following: "*Provided*, That no new purchases or commitments to purchase under section 303 shall be made or entered into after June 30, 1964 (except purchases made pursuant to commitments entered into on or before such date), unless the President makes a finding that such new purchases or commitments are essential to the national security: *Provided further*, That the total of such new purchases and commitments, including contingent liabilities, made or incurred under section 303 after June 30, 1964, shall not exceed \$100,000,000."

Approved June 30, 1964.

Defense Production Act of 1950, extension.
67 Stat. 131;
76 Stat. 112.
50 USC app. 2166.
50 USC app. 2093.

New purchases, restriction.
50 USC app. 2094.

Contingent liabilities, limitation.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 1456 (Comm. on Banking & Currency).
SENATE REPORT No. 1110 (Comm. on Banking & Currency).
CONGRESSIONAL RECORD, Vol. 110 (1964):
June 15: Considered and passed House.
June 26: Considered and passed Senate.



Public Law 89-482
89th Congress, H. R. 14025
June 30, 1966

An Act

80 STAT. 235

To extend the Defense Production Act of 1950, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 717(a) of the Defense Production Act of 1950 is amended by striking out "June 30, 1966" in the first sentence and inserting in lieu thereof "June 30, 1968".

SEC. 2. Section 712(e) of the Defense Production Act of 1950 is amended to read as follows:

"(e) The expenses of the committee under this section, which shall not exceed \$85,000 in any fiscal year, shall be paid from the contingent fund of the House of Representatives upon vouchers signed by the chairman or vice chairman."

Defense Production Act of 1950, amendment.
78 Stat. 235.
50 USC app. 2166.
70 Stat. 409.
50 USC app. 2162.

Approved June 30, 1966.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 1411 (Comm. on Banking & Currency).
SENATE REPORT No. 1303 (Comm. on Banking & Currency).
CONGRESSIONAL RECORD, Vol. 112 (1966):

June 16: Considered and passed House.
June 27: Considered and passed Senate.

Chairman PATMAN. This morning our principal witness is Gov. Price Daniel, who was recently appointed by President Johnson as Director of the Office of Emergency Planning.

I want to take advantage of this opportunity to say a few words about Gov. Price Daniel. He has the most unusual record, I think, of any person in Texas. In fact, few people in the United States of America have the record of his public service, real good public service in the public interest.

He received his journalism degree at Baylor University in Texas, and an LL.B. degree at Baylor. He was a reporter for the Fort Worth Star-Telegram and also a reporter for the Waco News-Tribune.

He was in the private practice of law several years. He was a member of the Texas House of Representatives for 6 years, and the last 2 years he was speaker of the house in Texas.

He was attorney general of Texas for 6 years and U.S. Senator from Texas 4 years.

He was Governor of Texas, I believe, for 6 years—three 2-year terms.

He is a publisher of newspapers in four towns in Texas, and he was in the U.S. Army during World War II, from 1943 to 1946, and released from active duty as a captain. He served in the Pacific and in Japan. He is married to the former Jean Houston Baldwin. They have three sons, all very prominent young men in Texas, and one daughter, Mrs. David Murph of Lexington, Ky.

I know why you and Jean go to Kentucky so much. Your daughter is down there.

Well, Governor, we are glad to have you, sir.

The Office of Emergency Planning is assigned the principal overall responsibility for carrying out the authority contained in the Defense Production Act, as well as other emergency planning activities of the Federal Government.

The basic authorities found in the Defense Production Act are the establishment of a priorities and allocations program to see that essential production and related activities of vital defense materials and services are provided by industry; the operation of a program of financing; where necessary, productive capacity for producing needed defense materials and services; the carrying out of a program for stockpiling vital natural resources for use in a national emergency; and the development of an executive reserve made up of business, professional, labor, and other leaders to provide for the additional executive manpower to operate mobilization programs in an emergency.

I know that Governor Daniel will explain the need for extending the Defense Production Act and the importance of this act to our national security in his statement.

Governor Daniel, will you please proceed, in any way you wish?

STATEMENT OF PRICE DANIEL, DIRECTOR, OFFICE OF EMERGENCY PLANNING; ACCOMPANIED BY ENDICOTT PEABODY, ASSISTANT DIRECTOR; M. M. MERKER, GENERAL COUNSEL; WILLIAM N. LAWRENCE, CHIEF, MATERIALS POLICY DIVISION; W. C. TRUPPNER, DIRECTOR, NATIONAL RESOURCE ANALYSIS CENTER; AND A. A. BERTSCH, ASSISTANT ADMINISTRATOR, INDUSTRIAL MOBILIZATION, BUSINESS AND DEFENSE SERVICES ADMINISTRATION

Mr. DANIEL. Thank you very much, Mr. Chairman, and members of the committee.

Chairman PATMAN. Would you excuse me a moment, please?

This is our first meeting, I think public meeting, after the two new members that we have, Mr. Wolff of New York—hold your hand up, young man, so we know who you are, and Mr. Griffin of Mississippi. We are delighted to have you gentlemen as members of our committee. You are welcome.

You may proceed, Governor.

Mr. DANIEL. Mr. Chairman, first let me thank you for the remarks that you have given. I want to assure the other members of the committee I not only did not submit that biography to you but I had no idea that you would read it into the record today.

I do appreciate what you have said and the privilege of having served with you and some of the other members of this committee during the time that I was in the Senate.

I am pleased to appear in support of H.R. 15683, which would extend the termination date of the Defense Production Act 2 years to June 30, 1970.

I have with me Mr. W. C. Truppner, Director of our National Resource Analysis Center; Mr. M. M. Merker, our General Counsel; Mr. William N. Lawrence, Chief, Materials Policy Division; and Mr. Gordon Gillis, congressional liaison, and also have asked Mr. A. A. Bertsch, Assistant Administrator for Industrial Mobilization, Business and Defense Services Administration of the Department of Commerce, to be present. His agency is responsible for the administration of the priorities and allocations authorities of this act.

Mr. Chairman, no one is more familiar with the Defense Production Act than you and most of the members of this committee.

As you know, it has served to support and facilitate the defense program in many ways. As originally enacted it was the authority for virtually all economic mobilization measures taken during the Korean war.

Provisions for price and wage controls and related credit controls were allowed to lapse in 1953, when inflationary pressures subsided.

The authority requires that production for national defense be given preferences over other business has been vital to defense-rated production since 1953, and especially during the past 2½ years of the Vietnam war. The act has been invaluable in guaranteeing delivery for defense orders of commodities in short supply, such as nickel, copper, platinum, and scarce fabricated components and equipment.

Continuous use also has been made of the authority provided by the act to guarantee loans on Government contracts for the production of weapons and other defense supplies.

These active programs remain essential to our prosecution of the war in Vietnam and our future national security.

During the Korean war, the Government used the act to support the increase in domestic production of metals and minerals and other defense-related materials and products.

During 1967 and 1968, the Office of Emergency Planning authorized a comprehensive research program covering domestic titanium-bearing ores and a sizable expansion of domestic copper production.

Rutile is the principal ore used in making titanium, the high-strength metal being used increasingly in jet aircraft. Almost all rutile used for defense purposes is imported from Australia. In November 1966 the stockpile objective for rutile was increased from 51,000 short tons to 200,000 short tons. Our current inventory is 50,000 short tons. To overcome the deficit in domestic rutile production, OEP established a domestic rutile expansion program on January 24, 1967. On June 13, 1967, the Director, Office of Emergency Planning, my predecessor, authorized the Secretary of the Interior to undertake a comprehensive research program covering domestic titanium-bearing ores. This program, to which \$525,000 has been allocated from the DPA fund, will provide (a) for expanding the current resource investigations on rutile by the Department of the Interior, (b) for evaluating the economic potential of certain U.S. columbium-bearing rutile in strategic applications, and (c) for testing the commercial use of alternate titanium-bearing materials as substitutes for rutile in the production of titanium.

Under authorization of OEP, the General Services Administration signed a contract on November 28, 1967, with Duval Corp. to bring into production a large open-pit copper mine in Pima County, Ariz. The contract was made under authority contained in Defense Production Act of 1950, pursuant to directive issued by the President on March 29, 1966, calling for a program to encourage additional domestic production of copper in the interest of national security.

GSA will advance a total of \$83 million against future deliveries of copper which will be priced, delivered to the Government, at 38 cents per pound. This is lower than prices announced by certain major producers subsequent to the recent strike settlement. In addition, GSA will guarantee a private V loan of \$48,750,000.

GSA advances will bear interest at 6 percent, and interest will be paid in cash.

The GSA contract runs through June 30, 1975, by which time Duval will have repaid the \$83 million advance through the delivery of approximately 109,000 short tons of wirebar copper.

Production will begin late in 1969 and will approximate 57,000 tons of copper in the initial 5 years and 68,000 tons per year over the next 15 years.

Although we are taking steps to increase our domestic supply of rutile and copper, this is but part of the job, for we also have the substantial task of managing the inventory of materials which the Government has acquired under previous commitments.

As of December 31, 1967, the General Services Administration has sold under our authorization approximately \$2.4 billion worth of materials from DPA inventories. As of the same date, there remained in DPA inventories for disposal approximately \$600 million worth of materials.

The priorities and allocations authorities of title I of the act are used to assure that defense orders take priority over all other orders so that materials and equipment are available at the time and place where they are needed to meet military and other essential production requirements. It is used to assure that essential production orders, including the research and development activities of the Department of Defense, the Atomic Energy Commission, and National Aeronautics and Space Administration are filled promptly.

These priorities and allocations authorities are administered with respect to industrial production and construction by the Business and Defense Services Administration (BDSA) of the Department of Commerce. This is accomplished by a body of regulations identified as the defense materials system. Under this system, all defense procurement is assigned delivery priorities which must be observed by defense contractors, their suppliers and subcontractors. In order to assure an adequate supply of basic materials for defense needs and to spread the defense impact among individual suppliers, set-asides are established for steel, copper, aluminum, three of the four "controlled materials" under the system. No set-asides are provided for the fourth controlled material, nickel alloys. Instead, set-asides have been in effect for primary nickel since August 1966, as a result of a shortage situation which developed as a result of a strike at the International Nickel Co. facilities in Canada and a continuing high demand for nickel for both defense and civilian uses.

These set-asides, which are based upon estimated future defense requirements, not only assure that defense requirements are met but also provide an equitable distribution of defense orders among the producers of these materials, thereby avoiding undue impact upon any individual company.

Specific uses of the act in 1967 and 1968 include:

1. Copper set-asides required by BDSA, with approval of OEP, to assure availability of sufficient copper for defense uses.
2. Authorization for the Defense Department to place priority contracts for all domestic production of the herbicide defoliant 2,4,5-T for use in Vietnam.
3. Assurance of accelerated delivery of heavy equipment needed to develop new copper mines in Michigan.
4. Expediting services or actions for BDSA for defense contractors numbered 8,185 in fiscal year 1967 and 2,255 during the first 7 months of fiscal year 1968.
5. Establishment of a general priorities movement list of defense items which must continue to move during the early days of the 1967 rail strike.

Details relating to each of the foregoing activities under the Defense Production Act are attached to my written statement, and I ask that this be inserted in the record at the close of my remarks.

Chairman PATMAN. It may be inserted at this point.

Mr. DANIEL. At the close of my remarks, if I may.

Chairman PATMAN. At the close of your remarks.

Mr. DANIEL. The authorities under title III of the act also serve both current defense needs and preparedness measures.

Section 301 provides for local guarantees to defense contractors who need working capital or equipment for new defense production.

Section 302 and section 303 provide lending and procurement authorities which in the past were highly instrumental in bringing about large-scale expansion of productive capacity required for defense and they continue to be essential to the security of the country to meet unanticipated defense demands that might arise. The authorities provide the President with a flexible tool whereby he can take immediate action if the circumstances so require.

As I have mentioned earlier, we have entered into contracts to expand domestic copper production and to determine the economic feasibility of mining domestic rutile-bearing ores for the production of titanium metal. These two contracts will exhaust approximately \$83.5 million of the existing contract authority of \$100 million, which is the current limitation included in section 304(b) of the act.

The provisions of title VII of the act contain supplemental authorities which are most important to mobilization preparedness.

Under section 708, the President is authorized to consult with representatives of industry and others to encourage them to voluntarily offer advice and recommendations to Government officials concerned and in some cases to work together for national defense purposes. Any act performed consistent with the voluntary agreement and found by the President to be in the public interest as contributing to the national defense will not be construed to be prohibited by the antitrust laws or the Federal Trade Commission Act.

It was this provision that enabled us to deal with the problems of petroleum supply posed by the critical Middle East situation in June 1967. It was through these provisions that we were able to utilize the voluntary participation of the industry to make certain that all petroleum needs of the free world were met.

In 1955, the Congress prohibited any new agreements except DOD integration committees, but provided that agreements existing at that time could continue. Fifteen unclassified agreements still exist: the tanker plan; the foreign petroleum supply agreement; and 13 Army integration committees. Of these, nine integration committees and the tanker plan are in standby status pending an emergency.

Another authority that would be continued by extension of the act is that of the Joint Committee on Defense Production, which is so ably chaired by the chairman of this committee. This committee has served the valuable function of keeping the Congress and the public informed of all activities carried out under the Defense Production Act and other related programs.

Section 710(e) authorizes the creation of the national defense executive reserve, a reserve of persons from private life or government service capable of filling key positions in the Federal Government, in time of mobilization. Pursuant to the procedure established by Executive Order 11179, dated September 22, 1964, eight departments and agencies sponsor 19 units of the NDER with a current enrollment of

about 4,000 by the end of this fiscal year and the short-term goal of 5,000 members will be attained by the close of fiscal year 1969. Approximately 80 percent of the membership of the NDER represents a cross section of industry. The other 20 percent is made up of educators, lawyers, doctors, and labor leaders.

Under this program each Federal department and agency having major mobilization assignments determines the number of executives it will need to fill key positions and it prescribes training and orientation programs for its members. OEP evaluates each unit of the program and coordinates the activities of the units.

The NDER is one of the most important elements in our efforts to develop programs which would make us capable of functioning efficiently in the event of an emergency. It will assure us of a number of trained executives who can immediately go into action and perform the functions that would be required by the Federal Government in either a nuclear-attack type of emergency or a stepped-up conventional war.

Because of the continuing importance of all of these authorities to our current military effort and mobilization preparedness, we strongly urge approval of H.R. 15683 which will extend the term of the Defense Production Act, as amended, to June 30, 1970. Threats to national security require a quick response if they are to be dealt with effectively. The 15-year history since the end of the Korean war demonstrates vividly that the authority contained in the Defense Production Act makes that response possible.

Chairman PATMAN. Thank you very much, Governor; and now the other material, I assume, will go at the close of your testimony. Is that the way you would like to have it?

Mr. DANIEL. Yes, sir.

Chairman PATMAN. All right.

(The material referred to follows:)

SUPPLEMENT TO STATEMENT OF PRICE DANIEL, DIRECTOR, OFFICE OF EMERGENCY PLANNING, EXECUTIVE OFFICE OF THE PRESIDENT

DETAILS OF 1967-68 ACTIONS UNDER DEFENSE PRODUCTION ACT

1. *Copper set-asides*

The strikes in the copper producing industries which started in July 1967 resulted in a substantially increased dependence on supplies of imported copper for both defense and civilian uses. In February 1968, impediments were placed upon the movement of imported copper from dockside. Since these impediments reduced deliveries of copper products to defense contractors, BDSA, with the approval of OEP, established a temporary set-aside of 100-percent of refined copper production for defense uses effective February 23, 1968. Shortly thereafter the major producers of refined copper reached settlements with the striking unions and accordingly BDSA, again with the approval of OEP, reduced the defense set-aside for refined copper at operating refineries to 50 percent for the month of April 1968 and 40 percent for the month of May 1968. These actions were taken under the authority of the Defense Production Act and avoided substantial disruption in the availability of copper for defense uses.

2. *Defense priority on herbicides*

Another benefit to the procurement of defense supplies resulting from the exercise of authority under the Defense Production Act occurred with respect to the fulfillment of the needs of the Department of Defense for herbicides in connection with the defoliant program in South Vietnam. The military requirements for the defoliant 2, 4, 5-T were determined to be in excess of the total production

capabilities of the chemical companies engaged in the manufacture of this material. In cooperation with the Department of Defense, the Department of Agriculture and BDSA, OEP authorized the Department of Defense to place priority contracts for this material up to 100 percent of the capacity of the industry. This action, assuring full availability of domestic production for defense needs, could not have been taken without the authority provided by the Defense Production Act.

3. Heavy equipment for new copper mines

In a statement presented to this Committee by an official of OEP on June 23, 1966, reference was made to the program authorized by the President for encouraging additional domestic copper production to meet increasing requirements. Pursuant to this program and under the authority of the Defense Production Act, BDSA has assisted in the development of new copper mines by the issuance of directive under the Defense Production Act to assure accelerated delivery of heavy equipment needed for this purpose. The directives covered equipment for new copper mines in Arizona and Michigan.

4. BDSA expediting for defense contractors

In the operation of the Defense Materials System, situations frequently develop in which special expediting assistance is needed by defense contractors to meet their defense commitments. These situations result from conflicting demands, limited facilities, production bottlenecks, and other delays which adversely affect defense contract production and delivery schedules. In such cases, BDSA provides on a continuing basis expediting assistance to the defense contractors or defense agency involved, through the use of special directives designed to improve deliveries or through the scheduling of production and deliveries of individual industrial facilities. The number of such actions was 3,756 in fiscal year 1966, 8,185 in fiscal year 1967, and 2,255 during the first seven months of fiscal year 1968. While we have no assurance that the special assistance requests will not increase to a level approximating that of fiscal year 1966, we believe that the DMS conference training program conducted by BDSA from March 30, 1966, through the autumn of 1967 has achieved the purpose of making defense contractors more aware of their responsibilities under the System. This is evidenced by the substantial reduction in the number of special assistance requests indicated above.

These conferences which were held in almost 60 industrial centers throughout the country were attended by approximately 30,000 businessmen. We have asked the Department of Commerce to continue its educational activities as the situation warrants, so that we can be assured of the dissemination of complete information on the priorities system to defense contractors. It is our view that only through a full and complete program of education within the industrial community, coupled with a judicious administration of the current priorities system, authorized by the Defense Production Act, will we be able to avoid an expansion of controls and achieve the movement of defense needs, in the quantity needed and at the time and place required to support our war effort.

5. Priorities movement during railroad strike, 1967

In early July 1967, a nationwide rail strike threatened. On July 13, OEP sponsored and chaired a meeting of Federal agency representatives for the purpose of composing a priority listing of essential items that would have to move by any remaining means of transportation if such a nationwide railroad strike occurred. At the same time, the OEP prepared and coordinated a proposed Executive order, under authority of section 101 of the Defense Production Act of 1950, declaring the existence of a transportation emergency and providing authority under which transportation priorities and allocations list could be put into effect.

The rail strike occurred and the President signed the Executive order and approved the priorities and allocations list on July 16, 1967. This permitted motor, air, and water carriers to be used to the maximum extent to transport priority items.

Mr. DANIEL. Mr. Chairman, since I began my remarks, Assistant Director, former Governor of Massachusetts, Governor Peabody, is here at the table.

Chairman PATMAN. We are glad to have him, too.

Mr. PEABODY. Thank you, Mr. Chairman.

Chairman PATMAN. I would like to ask you, according to the 17th Annual Report of the Activities of the Joint Committee on Defense Production, which contains statements of activities of various Government agencies in connection with the Defense Production Act, there has been a sharp increase over the last few years in the use of the Defense Production Act priorities and allocations authority.

Describe briefly how this system works.

Mr. DANIEL. Well, the material priorities and allocations are handled by BDSA, the Department of Commerce, as I have explained to you. This agency can make set-asides whereby a certain percentage of all the production of that, let's say, copper will be devoted to defense-rated orders for a certain period of time during each quarter, or during a month.

Other departments also have priorities and allocations authorities for those resources assigned to them. During the recent Middle East petroleum crises, the Secretary of the Interior issued a priority regulation in order to assure adequate supplies to the Department of Defense. This regulation is still in effect.

In order to be sure that there will be sufficient material to take care of defense orders, after this set-aside period of time, then the materials can be used for other purposes.

The priorities, an example which I cited, was one in which the Army or the Defense Department was given a priority on all herbicides of a certain type for use in Vietnam.

Chairman PATMAN. You covered that in your statement?

Mr. DANIEL. Yes, sir.

Would you care to add anything to this, Mr. Bertsch?

Mr. BERTSCH. Yes, sir.

I believe it should be pointed out that all defense procurement, except that for its civil functions, and those small procurements involving materials or products under \$500, must utilize a priority in the procurement process. Nothing is purchased by the Department of Defense that is not purchased under a priority.

As the Governor has pointed out, our defense materials system, which is a companion piece to the general priority system, sets aside a certain quantity of the basic materials of production, copper, steel, aluminum, and nickel, in order to make these available monthly or quarterly for the defense effort.

A priority is then used by the users of these materials in order to get them on time and in the quantities needed in order to fulfill their defense production obligations.

Chairman PATMAN. Thank you, sir.

Have there been any serious complications in administering this program since the buildup of military activity because of Vietnam?

Mr. BERTSCH. No, sir; there have been no serious complications, Mr. Chairman, because the system has been in existence since 1950, modified and simplified in 1953. We were prepared because of the judicious action of the Congress in extending this law, to meet the needs of the Defense Department despite the vast increase in their requirements.

Chairman PATMAN. Have there been any serious examples of producers rejecting a rated order?

Mr. DANIEL. Not that I know of.

Mr. BERTSCH. No, Mr. Chairman, and Governor, there have been no serious examples of rejection of a rated order when the rated order is placed properly and the company accepting it or to which the order is directed has the capability of producing the order in the time frame needed by the Department of Defense or the counterpart agencies.

Chairman PATMAN. What happens if an order is rejected?

Mr. BERTSCH. If the order is rejected, the law provides that we can enforce acceptance of the order and severe penalties will accrue to the company that rejects the order without good and sufficient reason, as provided by our regulations.

Chairman PATMAN. How does the Government judge whether a rejection is legitimate? In other words, does it take the company's word or does it make an independent evaluation?

Mr. BERTSCH. We make an independent evaluation at all times when a rejection is brought to our attention.

Chairman PATMAN. Assuming that the company's reasons are not valid or legitimate, under the Defense Production Act what can the Government do about it?

Mr. BERTSCH. We can go into court and compel the company to accept and produce the item needed.

Chairman PATMAN. Has the Government taken any action under the Defense Production Act against a corporation in recent years for refusing to comply with a priority-rated order?

Mr. BERTSCH. We have not taken such legal action against any companies since the Korean war because it has not been necessary.

We have negotiated at length with many companies concerning the acceptance of a rated order when they felt the order could not be fulfilled by them; but either their reason for rejection was good and sufficient or after negotiations with us along with the Department of Defense and with the collaboration of OEP, they have accepted and delivered in accordance with the law.

Chairman PATMAN. Mr. Clawson, would you like to ask a question?

Mr. CLAWSON. Thank you, Mr. Chairman.

Governor, it is good to have you here with us today.

Governor, I noticed on the first page of your statement you make mention of allowing the price and wage controls to lapse.

With the current critical status of our economy, is there any consideration being given to the possibility of invoking the wage and price controls today or in the immediate future?

Mr. DANIEL. No. I do not know of any consideration, serious consideration, being given to that at this time.

As you know, our office has had the assignment for many years of keeping or having prepared at all times a wage and price control proposal and plans for the Congress in case that we should ever need to go to controls again.

Mr. CLAWSON. If and when it was necessary?

Mr. DANIEL. If and when necessary.

But no one has told us to get this file ready for use. We keep it ready and have for many years. Of course, such a program would require congressional action.

Mr. CLAWSON. Supposing the President invoked emergency authority in this area, then would congressional action be required?

Mr. DANIEL. Yes, it would require congressional action before wage and price controls could be put into effect.

Mr. CLAWSON. Thank you.

I also notice that there has been no mention made—at least I didn't find it in your testimony—about platinum.

Has there been any defense stockpiling of platinum?

Mr. DANIEL. Yes, there has been. We have submitted that to you in our regular report. We have several items in the platinum group.

Are you interested in knowing how much we have or whether we are short or—

Mr. CLAWSON. I was curious about the amount of the stockpile. Whether we are short, what current actions are being taken in connection with this particular product?

Mr. DANIEL. Our objectives in the platinum group call for approximately 1,635,000 ounces of platinum and we have on hand total inventory about one-third of that amount.

Just a moment. I gave you the figures for the entire platinum group. We will have to add up what we have on hand. It looks to me, roughly speaking, that we have about half of that amount on hand, or maybe a little more. I will give you the exact figures as soon as we can add them up.

Mr. CLAWSON. Thank you, Governor.

And is the source from several companies or is there a concentration of these sources of supply of this material within one or two companies?

Mr. DANIEL. Mr. Lawrence, the Congressman asked, Is there a concentration of sources of supply on platinum, or exactly what is our situation there? This is Mr. Lawrence, who has been in charge of our stockpile program for many years.

Mr. LAWRENCE. Our principal supply of platinum comes from Russia, Canada, and to a considerable extent, from South Africa.

Mr. CLAWSON. In South Africa. Are you dealing primarily with just one company or more than one company in South Africa?

Mr. LAWRENCE. There is only one platinum mine in the Union of South Africa—Rustenberg. This company sells its output to Johnson-Matthey, Engelhard, and two or three consortiums.

Mr. CLAWSON. American-owned, or South African companies?

Mr. LAWRENCE. Rustenberg mines is owned jointly by South African and British companies. Johnson-Matthey, which has an American subsidiary, Bishop-Matthey, is wholly owned by British interests. Engelhard is American-owned.

Mr. CLAWSON. Thank you.

You talked about copper a little bit in your statement. Are we in good shape as far as copper is concerned in our defense production stockpile?

Mr. DANIEL. Not exactly. Our objective on copper is 775,000 short tons and we have on hand 259,000 short tons.

Mr. CLAWSON. Has the strike really done some damage? Is the strike responsible for this to some extent?

Mr. DANIEL. Not exactly; no it is not.

There have been releases and sales from the stockpiles in recent years, and the strike actually did not cause us to make any releases.

Mr. CLAWSON. Do you have the figures on the amount released from the stockpile during the period of the strike?

Mr. DANIEL. No releases during the period of the strike.

Mr. CLAWSON. I have no further questions.

Chairman PATMAN. Mr. Barrett?

Mr. BARRETT. Thank you, Mr. Chairman.

Governor, I just want to compliment you on the splendid profile the chairman has read here a minute ago, and I wonder why those Texans haven't pinpointed you for Presidential timber.

Mr. DANIEL. Those Texans have more sense than some of you give them credit for.

Mr. BARRETT. I would think, very frankly, Governor, that would be using good sense in depth.

Mr. DANIEL. Thank you very much.

Mr. BARRETT. Governor, as I observed, all you are asking for here is an extension from 1968 to 1970?

Mr. DANIEL. That is correct.

Mr. BARRETT. And certainly I think this committee would go along, and I think expeditiously, because of the experience we have had under this type program.

But I was wondering what is the OEP's responsibility in connection with the use of Government-owned equipment used in the defense production?

Mr. DANIEL. Well, our responsibility is to approve proposed leases involving commercial use; to set standard rental rates for the use of all Government-owned production equipment; and establish general leasing policies. Proposals for commercial leasing are submitted to our office. They are supposed to be. And that is the way that we play a part in the matter concerning the use of this equipment.

Mr. BARRETT. These, of course, are all under competitive bidding? You have no authorizations at any time to let the contracts out without their being properly bid?

Mr. DANIEL. Well, are you speaking about the use of Government-owned equipment in nondefense production?

Mr. BARRETT. Yes.

Mr. DANIEL. These proposals are submitted to us by the Department of Defense and it is required that we approve or disapprove them.

Mr. BARRETT. Is there any inventory control of equipment in use and available?

Mr. DANIEL. Did you ask if there was a list of equipment?

Mr. BARRETT. Is there a inventory control of equipment in use and available?

Mr. DANIEL. Yes, there is; in the Defense Department.

Mr. BARRETT. In other words does the Government have any way of knowing whether its equipment is being used for Government-needed purposes, or is it being used for commercial production?

Mr. DANIEL. Well, I hope that the records kept by the Defense Department would give you a complete picture of whether Government equipment is being used for nondefense purposes and under what circumstances.

In other words, we do have that control in the Defense Department

and this equipment cannot be used for nondefense purposes, without our approval.

Mr. BARRETT. But you do make periodical checks as to whether it is used for governmental purposes?

Mr. DANIEL. The Defense Department polices this and many times such matters come to our attention direct.

Mr. BARRETT. What is the value of Government-owned facilities and equipment obtained for use in the production defense items?

Mr. DANIEL. I am afraid we will have to obtain that for you and submit it for the record.

Chairman PATMAN. You may supply it for the record when we look over your transcript.

Will that be satisfactory, Mr. Barrett?

Mr. BARRETT. Yes.

Offhand, do you think it runs over \$15 million? We will wait for your statement and have it submitted.

Mr. DANIEL. My associates say it would run much more.

(The material referred to follows:)

The values of DOD inventories of facilities and equipment obtained for use in the production of defense items are as follows:

	Billion
Industrial buildings, aircraft hangars, etc.-----	\$2
Industrial plant (production) equipment.-----	4
Other plant equipment and special test equipment.-----	4
Total -----	10

(Values are based on acquisition costs)

These inventories have been accumulated over a period of years, largest part during WW II, some during Korea War and some under normal procurement programs.

Mr. BARRETT. Has there been any substantial disposal of excess equipment?

Mr. BERTSCH. I would say there has been a substantial disposal of excess equipment when there is a market for it.

However, if it is needed for defense production in the foreseeable future it is placed in the defense production equipment reserve and retained either at a Government site or at a factory site until appropriate lease arrangements are made.

Mr. BARRETT. Can this excess equipment be put in sort of a reserve pool for later use, or is it necessary because of the demand by the private sector to obtain this material immediately?

Mr. BERTSCH. There is a pool of various types of equipment that is readily available for defense production.

The records, as the Governor has pointed out, are maintained in the Memphis facility of Defense Industrial Production Equipment Center and when needed taken out of that pool and leased, in accordance with the Governor's statement, to a defense producer.

Not all of it is in use at any one time, nor is all of it needed at one particular time. As it is needed or similar equipment is not available in the civilian sector, or the economics of the situation are such that the equipment from the private sector could not be obtained or be obtained readily, then leases can be undertaken.

Mr. BARRETT. Governor, this I want you to state for the record.

When the Defense Production Act was up for renewal in 1966, this committee's report on the bill stated as follows:

The committee wishes to express its concern over the apparent lack of emergency planning activity providing adequate electric power, communications, and transportation systems in emergency situations.

As illustrated in the Northeast power failure in November 1965, our complex economy system is extremely vulnerable to this kind of a breakdown. It is not enough simply to concentrate on providing for adequate stockpiles of materials, we must also have a capacity to produce finished products out of the material on hand and an adequate means of transporting each finished item to wherever they are required.

Now, I just want to ask you this one question.

What has OEP done to correct these situations over the last 2 years?

Mr. DANIEL. Mr. Congressman, I have a list here of about two or three pages in reply to that question, if I might insert it in the record. It sets forth what we have done in connection with the Federal Power Commission and—

Mr. BARRETT. If you have outlined the answer to that question, we will ask the chairman—

Chairman PATMAN. Yes; without objection it will be inserted at this point.

(The material referred to follows:)

INDUSTRIAL SECURITY

1. Has OEP taken any measures to prevent a recurrence of the Northeast blackout?

Statutory responsibility for electric power system reliability rests with the Federal Power Commission under the Federal Power Act. OEP interest in electric power reliability relates to emergency planning. A strong power network will improve our readiness posture and we have worked closely with the agencies responsible for power growth, reliability and planning matters. Note: Opinion of most experts is that it is impossible to achieve foolproof systems against recurrence of NE blackout. Hope is to reduce possibility and minimize effects.

In the areas where OEP can have a direct impact, we have achieved the following:

(1) Collaborated with FPC in developing an information-gathering system from the utilities for reports to the President through OEP in early stages of power failures. Reports cover cause of trouble, extent of disaster, restoration problems, etc. The procedure was formally announced by FPC Order No. 331 issued December 20, 1966, Docket No. R-802.

(2) Conducted survey with selected industrial facilities, food processors, petroleum and mining operations, to determine effects of N.E. failure on productivity and provide basis for any changes in our planning.

(3) OEP has been working with the Army Provost Marshall, Defense Electric Power Administration in Interior, and FPC, on questions of sabotage and the ability of the power industry to withstand such acts. Also, looking into this question with the Canadian planning officials as part of Joint U.S.-Canada planning for emergency exchange of power.

(4) OEP examining possibility of using new techniques and revised data base to improve ability to assess electric utility industry capability to meet demands of nuclear emergency. Use of network analysis will be emphasized.

(5) Participate in industry meetings conducted by DEPA, underscoring importance of increased reliability to emergency preparedness and urge industry action.

(6) Have revised internal procedures, and arrangements with other agencies, to improve OEP ability to respond to this type of incident by installing phones; automatic staff reporting system; and information receipt and dissemination.

FPC was directed by the President on the night of the NE blackout to conduct investigation and make recommendations to prevent future blackouts. Since then the FPC has:

(1) Issued a three volume Final Report and interim reports on the NE power failure. Special technical studies conducted in connection with this investigation and the reports were issued to the industry.

(2) Government and industry technical committees investigated operating procedures, equipment, planning and have issued these reports for industry use.

(3) Prepared legislation known as the Electric Power Reliability Act of 1967, which OEP endorsed in comments to Bureau of the Budget.

(4) Begun updating 1964 National Power Survey with industry which will result in current information on power system growth prospects and problems.

(5) Has been meeting with various utility groups around the country urging formation of closer entities.

(6) Urged formation of Regional Coordinating Groups for integrated system planning. The utilities in the area affected by the NE blackout formed the New England Power Coordinating Council, an East Central Area Reliability Council has been set up covering Ohio, Indiana, Michigan, parts of West Virginia Pennsylvania, and Kentucky; a Western Systems Coordinating Council set up in the far West—purpose to achieve better reliability by coordinating planning, projections of load, transmission interconnections, conduct test on transmission plans, carry out stability studies, and other related activities bearing on reliability.

Mr. DANIEL. I want to say much has been done.

Mr. BARRETT. Thank you.

Chairman PATMAN. Mr. Blackburn.

Mr. BLACKBURN. Governor, I just have several questions I would like to put to you at this time.

As I understand it, your platinum sources are Russia, South Africa, and what was the third?

Mr. DANIEL. Canada.

Mr. BLACKBURN. From which source do you receive the bulk of your supplies?

By bulk, I mean the heaviest percentage—and what would this percentage run?

Mr. LAWRENCE. The Union of South Africa and Canada.

Mr. BLACKBURN. Do they provide 70 percent?

Mr. LAWRENCE. That is right.

Mr. BLACKBURN. What about chrome ore? Is this considered a defense necessity?

Mr. LAWRENCE. Yes. That comes from Rhodesia. We all know we are not obtaining any there now. Turkey and Russia.

Mr. BLACKBURN. Well, how much are we paying for our chrome ore now?

Mr. LAWRENCE. The current price is \$36 for a short dry ton.

Mr. BLACKBURN. I read some newspaper reports, and I don't know if they are true or not, but I would like for you to either confirm it or disaffirm it, that there is an American-owned company which was mining chrome ore in Rhodesia and that company was selling us chrome ore at a lesser rate than we were buying it from Russia. Is that true?

Mr. LAWRENCE. That is right.

Mr. BLACKBURN. What were we paying to the American company?

Mr. LAWRENCE. This I can't tell you. I will have to get that information and supply it for the record.

(The information referred to follows:)

Two chromite mines in Rhodesia are owned by American companies, Union Carbide Co. and Foote Mineral Co. Prior to the embargo, all ore from these mines was shipped directly to the U.S. processing plants of the respective companies. There are no published prices for these ores.

Mr. BLACKBURN. Well, was it less than what we are paying Russia?

Mr. LAWRENCE. I think the Russian ore, the last information I had, it was fairly competitively priced all over the world.

Mr. BLACKBURN. What we have done now is help to aggravate the balance-of-payments problem by not buying from an American company, have we not, in Rhodesia?

Mr. LAWRENCE. Well, this is quite true. It does affect the balance of payments.

Mr. BLACKBURN. All right, now, on the platinum, what are we paying for our platinum?

Mr. LAWRENCE. About, I think, \$79 an ounce is the price we paid for the platinum in the stockpile.

Mr. BLACKBURN. When did you pay \$79 an ounce for it?

Mr. LAWRENCE. Most of the platinum was acquired a number of years ago.

Mr. BLACKBURN. What are we selling it for now?

Mr. LAWRENCE. Well, the dealer price is about \$109 to \$114.

Mr. BLACKBURN. Is that what you call the market price, the open market?

Mr. LAWRENCE. It is available in the United States to the regular customers of Englehard and Bishop-Matthey at that price.

Mr. BLACKBURN. What is the free market price, not just Englehard, the open market?

Mr. LAWRENCE. Around \$223 to \$225.

Mr. BLACKBURN. How do you explain the difference in all these prices?

Mr. LAWRENCE. Well, the platinum is in the same position as a precious metal like gold. People are buying it and hoarding it, and naturally where it is in short supply all over the world, you are going to have a price that will go up.

Mr. BLACKBURN. Are we trying to maintain the price of platinum like we have gold?

Mr. LAWRENCE. We would like to maintain the price of platinum as a hedge against inflation.

Mr. BLACKBURN. Haven't there been antitrust suits against Englehard for manipulating the price of platinum?

Mr. LAWRENCE. They have been very stable in their price as far as American industry is concerned.

Mr. BLACKBURN. I don't believe you answered my question. Was there an antitrust suit?

Mr. LAWRENCE. Not to my knowledge.

Mr. BLACKBURN. If we found that there had been, would that have any influence on your dealings with them?

Mr. LAWRENCE. Well, I would think so. But as far as I know, both companies have been very fair in their dealings with the Government.

Mr. BLACKBURN. Well, now, isn't this act one that permits the establishment of consumer credit control, not just to the Government?

Mr. DANIEL. This act did formerly provide for consumer credit controls. That part of the act has lapsed.

Mr. BLACKBURN. That has lapsed?

Mr. DANIEL. Yes.

Mr. BLACKBURN. Well, now, as we consider the bill today, would that be part of the act?

Mr. DANIEL. That would not be part of the act because we are asking for the extension of the act as it has been amended.

Mr. BLACKBURN. Would you think it would be desirable that you have some consumer credit control as a necessary part of the act, if we did get into a serious economic trouble?

Mr. DANIEL. Well, it is sort of like wage and price control. It is a matter that I imagine that the Congress would like to have control over and it has been the administration's position that although it might be fine to have it as standby authority, we would not ask for it until we felt that this type of control authority is needed.

Mr. BLACKBURN. You do not feel that you need it at this time on standby or otherwise?

Mr. DANIEL. It is not needed at this time, in our opinion.

Mr. BLACKBURN. Thank you very much.

Mr. DANIEL. That is the opinion of the Director of OEP and our people here. As you know, things can change, but we actually do not have any indication whatever that the need for this type of legislation or wage and price controls is imminent.

Mr. BLACKBURN. I would like to address a question to the chairman.

In view of the fact that the Englehard firm seems to be the dominant firm in the platinum market, I wonder if it would be possible to have a representative of that company testify before the committee?

Chairman PATMAN. We would like to have some documentation of the charges. Would you mind writing a letter to the chairman and outlining them?

Mr. BLACKBURN. I would be very happy to.

Chairman PATMAN. Mr. St Germain?

Mr. ST GERMAIN. Thank you, Mr. Chairman.

On page 9 of your statement you refer to a provision under section 708, supplemental authorities, and you say this is the provision that enables us to deal with the problems of petroleum supply posed by the critical Middle East situation in June 1967.

Mr. DANIEL. What was your question?

Mr. ST GERMAIN. I didn't get to the question.

Mr. DANIEL. I see.

Mr. ST GERMAIN. I am just quoting from your statement on page 9 where you refer to the handling of the problems of petroleum supply in June of 1967.

Do these same provisions have any control over the amount of No. 2 oil that is allocated and imported, No. 2 fuel oil?

Mr. TRUPPNER. No, sir; this provision relates specifically to the ability to carry out a voluntary agreement without facing the industry members with antitrust charges or violations of the Federal Trade Commission Act in the event that they conform to a certain requirement, and this reference simply says that the existence of this authority permitted OEP, together with the Department of Interior

and the Department of Justice and the Federal Trade Commission, to convene these committees under the authority of the voluntary agreement.

Mr. ST GERMAIN. I believe that the former Governor from the very great State of Massachusetts, located in the Northeast section of the United States, might have an observation at this point.

Mr. DANIEL. Let me say that, since I happen to be from an oil-producing State, I have assigned my activities in this matter to the former Governor of Massachusetts and he is in full and complete charge, and I appreciate your giving him this opportunity to comment.

Mr. PEABODY. Thank you, Governor.

Mr. Chairman and Congressmen, as the Governor has just stated, this problem of oil as it applies to our agency has been delegated to me by the director for handling, and as I believe your question raises your concern for the supply of this No. 2 fuel oil, particularly in the area of New England. We are concerned, as you are, Congressman, by the price level and also by the supply. We are in continuous communication with the Department of the Interior and other departments of the Government with regard to this at all times.

Mr. ST GERMAIN. Well, I would imagine that you would be concerned because, as I understand, it was necessary to obtain some of this fuel oil from some of our defense installations in the New England area this past year to get through the cold season.

Is that not a fact?

Mr. PEABODY. Insofar as I have been able to ascertain, fuel oil was not obtained from defense installations. But I can say that we are ever alert to increasing the supply, if possible, if this supply is not adequate to serve the needs of New England. And we are concerned about the price level as to why it should have increased to such an extent, if there was an adequate supply available.

Mr. ST GERMAIN. I would commend Governor Daniel for assigning Governor Peabody to this task. I wish that he had more control over the Department of the Interior in this area.

However, I do realize that he is doing his utmost to help us solve the problem.

If I might comment upon platinum for a moment, as I understand it, there is only one firm that handles platinum sold from the stockpile?

Mr. LAWRENCE. Both companies handle it equally, both Bishop-Matthey and Englehard.

Mr. ST GERMAIN. And is there any reason for contracting with these two firms rather than selling directly to those people who have a need?

Mr. LAWRENCE. The principal reason why it is sold to the refiners is that the quality of the platinum in the stockpile is not quite as high as current commercial requirements. Another reason why it was sold to them was that GSA had a meeting of all the principal consumers and producers of platinum before it was disposed of. There was a consensus of the people at the meeting that the best way to handle it would be back to the refiners and then let them sell to their regular customers.

Mr. ST GERMAIN. And actually is there a restriction on the amount of profit that the refiner can make on this?

Mr. LAWRENCE. There is no profit involved as far as the refiners are concerned. They are allowed a small fee for the extra refining. But they have to resell it at the price they pay the Government plus the refining charge.

Mr. ST GERMAIN. We are all aware of the fact that charges have been made, or accusations may have been made, about a sort of monopoly in this area and favoritism that had been shown to a particular one or two firms. Naturally, that is of concern to us.

Mr. LAWRENCE. I don't think that it is a fair charge, because there are only two companies in the business, and in every case that we have disposed of platinum, they have followed the rules of the Government strictly. There has been no profiteering on anything that has been disposed of from the stockpile.

Mr. ST GERMAIN. Thank you, Mr. Chairman.

Mr. DANIEL. I am sure the committee understands that the General Services Administration handles these sales subject to our approval. Since the details of the sales have been handled by the General Services Administration, you may at some time want to ask them concerning this particular matter.

Mr. ST GERMAIN. I am curious. I noticed in the listing of the material stockpile is sperm oil. I was aware of the fact it is used in perfumes, but I am wondering what use it is put to or what reason there is for stockpiling it.

Mr. DANIEL. What is the material—sperm oil?

Mr. ST GERMAIN. Yes, sir.

Mr. DANIEL. We would like to have the opportunity to place this answer in the record?

Chairman PATMAN. Will that be satisfactory?

Mr. ST GERMAIN. Yes. I am just curious.

Mr. DANIEL. Mr. Lawrence has been with this program for a mighty long time, and if he can't give you that right offhand we do need time to submit that.

(The material referred to follows:)

Sperm oil, which is obtained from the sperm whale, is valuable because of its freedom from gumming. It is used principally as an additive to Hydra-Matic transmission fluids for military vehicles. It is also used as a lubricating oil for high speed precision work, in metal treating and rust preventatives.

Chairman PATMAN. Thank you. You may extend your remarks in the record on this and supply the answer.

Mr. Brown?

Mr. BROWN. Thank you, Mr. Chairman.

Governor Daniel, it is nice to have you and your associates here this morning and I certainly appreciate your enlightening us concerning the Defense Production Act.

Pursuing the questions that Mr. Blackburn asked you, I would ask that you supply for the record the name of the American chrome ore company in Rhodesia and the last price that was paid to that company for chrome ore and the date that the last purchase was made.

Mr. DANIEL. We will be glad to do that.

(The material referred to follows:)

The Union Carbide Co. and Foote Mineral Co. There are no published prices for these ores.

Mr. BROWN. Is aluminum a product that is stockpiled under the provision of your authority?

Mr. DANIEL. Yes, it is.

Mr. BROWN. And was it the aluminum stockpiled under this act that was dumped or threatened to be dumped on the market at the time that a price increase was in the offing in the aluminum industry?

Mr. DANIEL. I read something in the newspapers in connection with such charges. It is a material on which sales were made because of excess over and above the objective before I came with the agency.

Mr. BROWN. Well, now, anything that is stockpiled under the provisions of this legislation is stockpiled for a strategic purpose; isn't that correct?

Mr. DANIEL. That is correct.

Mr. BROWN. And under the general definition of a "strategic purpose," is controlling the price of aluminum a strategic purpose?

Mr. DANIEL. Well, no, sir; I do not conceive of the stockpile legislation being intended at all to have anything to do with the control of the price of these materials.

Mr. BROWN. Governor Daniel, we have a rather substantial stockpile of copper, have we not? Not as much as you would like, but we do have some?

Mr. DANIEL. 259,000 short tons, with an objective of 775,000 short tons.

Mr. BROWN. And during the time of the copper strike, even until the present time, the need for copper has been tremendous in this country, has it not?

Mr. DANIEL. It has.

Mr. BROWN. And the absence of available copper has required us to purchase copper overseas at a much higher price and has had as much as \$1 billion impact on our balance-of-payments problem; is that not correct?

Mr. DANIEL. The first part of your question I certainly say yes to. We have had to import a lot of copper.

As to the amount, I am not sure if your figures are correct or not. But it certainly has been a large amount of copper and at a much higher price than the domestic price.

Mr. BROWN. Let us forget the \$1 billion figure I used. Substantial purchases overseas of copper would have a significant adverse effect on our balance-of-payments problem, wouldn't it?

Mr. DANIEL. It would and has had.

Mr. BROWN. Has there been any suggestion or any attempt made to have a substantial amount of our stockpile of copper released for domestic production at this time?

Mr. DANIEL. It was considered.

Mr. BROWN. But not done?

Mr. DANIEL. It was not done because of the fact that our inventory was so low when compared with our objective as to what we felt that our needs were; and furthermore, we do have a policy of not making sales from the stockpiles when it will adversely affect the economy or when it may have some bearing on a labor dispute.

Mr. BROWN. In effect aren't you saying this administration has suf-

ferred the schizophrenia of being willing to dump aluminum on the market to control a price increase but unwilling to dump copper on the market to control the impact of a strike?

Mr. DANIEL. No. I am not intending to say that at all.

As a matter of fact, this administration has made some releases of copper, too; I think about 550,000 short tons of copper. But not during this strike. It was prior to the strike.

Mr. BROWN. But obviously not enough was released to have corrective effect on our balance-of-payments problem insofar as copper is concerned?

Mr. DANIEL. Well, that is right. You cannot use the stockpile for that purpose and at the same time have enough material to take care of your defense needs.

I don't understand that it is the intent of the stockpile program to influence or correct balance of payments.

Mr. BROWN. Governor Daniel, we have decided that copper is a strategic metal and that gold is a strategic metal as such, but having an intrinsic value, yet this administration has decided it is wrong to release copper in order to correct our balance-of-payments problem, but it is all right to lift the cover on gold.

Mr. DANIEL. That is your statement, sir?

Mr. BROWN. I ended it with a question mark. I thought you might wish to comment.

Mr. DANIEL. No, I do not have any comment on that. I would like to get back to copper, which we have something to do with. I believe that we would have been subject to criticism by this committee if we had released our copper stockpile simply to improve our situation as far as balance of payments are concerned.

We would be just about out of copper by now in the stockpile. And I do not think that this committee would have approved the action. If you think we did wrong in holding the copper in the stockpile we would be glad to know about it.

Mr. BROWN. Well, Governor, let's assume that the price problems that developed, as viewed by the administration, in the aluminum industry, made it necessary to dump all of our aluminum on the market in order to control the price. Wouldn't your feeling be the same then that it was wrong to resort to dumping aluminum on the market?

Mr. DANIEL. Well, my understanding of the Stockpile Act is that it is to be sure that we have enough to take care of the difference between our needs and what our supply is in case that we have a stepped-up conventional war or a nuclear attack on this country, and I do not think that the stockpile materials should be used for any other purpose.

Mr. BROWN. I completely concur with you. I am pleased that you make that statement.

Mr. BARRETT. May I interpose?

Would the gentleman yield to me?

Mr. BROWN. Certainly.

Mr. BARRETT. Isn't it true all of our stockpiling is for emergency purposes; and isn't it also true that you haven't had an abundance of copper stockpiled but you have had an abundance over and above your necessary needs of aluminum; therefore, you would let some of that aluminum go on the market, not for the purpose of giving you any

alleviation, but for the purpose of reducing your stockpile up to the necessary needs for emergency purposes?

Mr. DANIEL. That is true. Our objective, for instance, on aluminum, as of June 30, 1967, was 450,000 short tons. We had on hand 1,501,000 short tons, or an excess of 1,051,000 tons, short tons, of aluminum.

The policy that we have is to try to dispose of the excess materials at a time when it will not endanger the economy or will not have an adverse effect. Where we have these excesses, we have in the case of our Strategic Stockpile Act, come to the Congress, which we must do. Except under certain circumstances, we must get your approval.

Chairman PATMAN. I believe what you have done meets with the approval of the committee. I know it meets with my approval and I don't feel you will have any objection from this committee.

Mr. Hanna?

Mr. BROWN. Mr. Chairman?

Chairman PATMAN. I thought your time had expired.

Mr. BROWN. I guess it has.

Mr. HANNA. I have only a few questions having to do with the petroleum supplies for the Vietnam effort.

Does this body have the responsibility of either handling or approving of the contracts for the supply of petroleum we purchase in other countries for use in Vietnam?

Mr. TRUPPNER. No, we do not. Our participation in this area was merely to lend our efforts jointly with the Interior Department, Defense Department, to assure a continued supply of petroleum. But we do not involve ourselves in the contractual relationships.

Mr. HANNA. And when you talked about dealing with the petroleum supply during the Middle East crisis, just exactly what did you do there—divert some petroleum from our domestic supply to the area of need?

Mr. TRUPPNER. Actually no action in accordance with the voluntary agreement was required as industry was able to meet essential needs under its own devices. The duration and severity of the emergency did not require the special type of actions as were needed during the 1956 Suez crisis. However, the voluntary agreement would have allowed the industry to take concerted actions to reroute tankers, shift the distribution of petroleum from various points throughout the world to new directions, and new objectives and revise schedules as needed. The voluntary agreement would have provided the authority which would have enabled the Government and industry working together to reroute petroleum from new supply sources to new objectives or new markets without getting into problems of antitrust or FTC violations.

Mr. HANNA. Are they the ones that would keep the record of all of the flows and tankers, so that you would be able to reroute them?

Mr. TRUPPNER. Yes, sir; and they do.

Mr. HANNA. And you do not keep those records?

Mr. TRUPPNER. No.

Mr. HANNA. Thank you very much.

Chairman PATMAN. Mr. Wylie.

Mr. WYLIE. Thank you, Mr. Chairman, and Governor. Is manganese stockpiled under your authority?

Mr. DANIEL. Yes, sir.

Mr. WYLIE. It is what we would call a critical metal?

Mr. DANIEL. Yes, sir; it is.

Mr. WYLIE. From where do we get most of our manganese?

Mr. LAWRENCE. One of the principal sources of U.S. manganese is Brazil. Russia also supplies large quantities of manganese but not to the United States. In fact, it is the largest producer in the world. We get some from Russia. But in the ordinary course of business the majority of it comes in from Brazil, Mexico, and India. It is a jointly owned company by Brazil and Bethlehem Steel.

Mr. WYLIE. Do we mine any manganese in the United States?

Mr. LAWRENCE. No; there are no manganese mines remaining in the United States. Although we have large quantities of very low-grade ore in the area, but it is not profitable to mine it.

Mr. WYLIE. The reason I asked this question, at this time, is because of discussion during the recent consideration of the extension of the authority of the Export-Import Bank. When an amendment was offered to prohibit construction of a plant in Russia, some Members thought this might jeopardize our position with respect to purchasing manganese from Russia. This is another critical item which is in critical supply, as I understand it.

Would you have any comment on that?

Are we able to get enough from Brazilian ore?

Mr. LAWRENCE. We have extremely large quantities of manganese in the stockpile. We have quite a surplus of manganese. I think we could depend on Brazilian supplies and other supplies in the free world without jeopardizing any of our economy in wartime.

Mr. DANIEL. Our excess is considerable as far as the various manganese ores are concerned.

Mr. WYLIE. Russia apparently produces a lot of these metals which you stockpile under your authority; is that correct?

Mr. LAWRENCE. Yes, sir; quite a number of our principal items are mined in Russia.

Mr. WYLIE. Is there any metal ore for which we must depend on Russia for supply?

Mr. LAWRENCE. Not wholly. In fact we can do without Russia and get along with all the critical materials.

Chairman PATMAN. I would like to ask one question about beneficiating manganese. You know on low-grade ores, iron ore, we developed a way of beneficiating that and it has been very successful.

Has any progress been made in using a beneficiation plant on low-grade manganese?

Mr. LAWRENCE. We have spent a considerable sum of money, Mr. Chairman, during the Korean war, on various types of processing. I don't remember the amount offhand. I will have to furnish it for the record. One of these methods was fairly good but it was not one that would enable you to compete economically in peacetime.

Chairman PATMAN. Will you place a full statement in the record at this point?

Mr. LAWRENCE. Yes, sir.

(The statement referred to follows:)

SUMMARY OF RESEARCH PROJECT CONTRACTS FOR BENEFICIATING LOW-GRADE
MANGANESE ORES AND SLAGS

- (1) *Contract No. DMP-35: Southwestern Engineering Company—Net Cost, \$250,000.*—This was on domestic wad and other low grade manganese ores. Extensive analyses and ore tests were made on each ore. Flotation possibilities were principally studied, gravity and sink-float methods as well as leaching tests were performed. Contractor reported none of the ores tested were amenable to upgrading to metallurgical grade by physical methods alone. More research using chemical methods needed. Possibly preconcentration by physical methods would prepare material for final upgrading by chemical (leaching) methods.
- (2) *Contract No. DMP-24: Mangaslag, Inc.—Net Cost, \$1,266,000.*—Prometal-lurgical process, reduction of ore in a vertical blast furnace. Pilot plant using new process devised by BuMines for producing ferromanganese from open hearth slags, and possible Aroostook ores. The project was unsuccessful.
- (3) *Contract No. DMP-16: Manganese Chemical Corp.—Net Gain, \$64,000.*—Combined roasting and leaching. Contract provided for pilot plant to be built to test new Carbamate (Dean-Leute) Process for extracting manganese from manganiferous iron ores of the Cuyuna Range, Minnesota. Contract originally called for basic product of manganese carbonate which could be readily converted to manganese oxide in nodules for use in the steelmaking industry; also the basic product (manganese carbonate) was to be used in the chemical industry and in the production of electrolytic manganese dioxide. Apparently successful and economically feasible.
- (4) *Contract DMP-86: Nossen Laboratories, Inc.—Net Cost, \$499,000.*—Construct and operate pilot plant for extracting manganese from low grade (Aroostook ores). Contractor's process of roasting, leaching, grinding and washing to give a high grade manganese dioxide concentrate. This process appeared technically feasible but not economic.
- (5) *Contract No. DMP-103: L. W. King—Net Cost, \$29,000.*—Contract for testing process owned and developed by contractor. Process to treat certain low grade ores for recovery of manganese, cobalt and nickel separately. Ore exists in various widely scattered places in United States. Process includes roasting and leaching with hydrochloric acid. This process was not considered technically competent.
- (6) *Contract No. DMP-23: The Minerals and Metals Advisory Board of the National Research Council, National Academy of Sciences.—Net Cost, \$352,000.*—Contract for services covering study, appraisal and monitoring of minerals and metals technical problems.
- (7) *Contract No. DMP-117: U.S. Bureau of Mines—Net Cost, \$4,000.*—Contract for services of testing and assaying.
- (8) *Contract No. DMP-110: Ores Beneficiation, Inc.—Net Cost, \$252,000.*—Research to determine the technical and economic feasibility of a beneficiation process for low-grade manganese ore.
- (9) *Contract No. DMP-111: Singmaster & Breyer—Net Cost, \$31,000.*—Service contract—technical services covering a report on factors pertinent to continuation of manganese recovery project.
- (10) *Contract No. DMP-121: Battelle Memorial Institute—Net Cost, \$18,000.*—Research Contract covering a review of the Nossen process for the recovery of manganese from low grade domestic ores.
- (11) *Contract No. DMP-130: Vitro Corporation of America—Net Cost, \$271,000.*—Research contract to test and evaluate the Hi-arc process for recovering manganese from complex siliceous ores.
- Total cost of research projects, \$2,908,000.

Chairman PATMAN. Mr. Gettys?

Mr. GETTYS. Thank you, Mr. Chairman.

Governor, talking about strategic materials and classifications, I wonder if you classify yourself as a southerner or westerner? You don't have to answer that question.

Mr. DANIEL. Both.

Mr. GETTYS. Governor, I notice that in this proposed legislation you request an extension of the act for 2 years. Is that long enough?

Would it not be better to extend it maybe 5 years?

Is there any particular reason why 2 years has been chosen?

Mr. DANIEL. It seems that 2 years is long enough for the Congress. As far as we are concerned, we would be happy if they were to extend it longer or make it a permanent act.

Mr. GETTYS. You think the reason it is 2 years is because of the congressional limitation?

Mr. DANIEL. I think so. I think you like to take a look at us every 2 years.

Mr. GETTYS. Under the original act I believe that your agency had power to impose wage and price controls; is that correct?

Mr. DANIEL. Yes, sir, under the original law.

Mr. GETTYS. Has the law been amended, or do you have any wage or price control affixing power at all now?

Mr. DANIEL. No, we do not. That part of the act was allowed to expire. It was not renewed. And you would not be renewing it now.

Our only activities in the field of wage and price control now is our overall planning for an emergency such as a war which is much worse than the one we are in or a nuclear attack; and we do in that overall plan have the duty to have stabilization programs already prepared and ready for use in an emergency. We do have plans ready and have had for years.

Mr. GETTYS. You would have to come here for authority?

Mr. DANIEL. We would have to come to Congress for authority in the field of wage and price controls.

Mr. GETTYS. To change the subject again, Governor, we have talked about strategic metals and minerals. In some of the textile fields, do you have control over establishing the priorities in defense production in those areas?

Mr. DANIEL. We do have the authority.

Mr. GETTYS. Do you know whether there has been any actual production priority actions in the last several years?

Mr. DANIEL. I would like for Mr. Bertsch to answer that.

Mr. BERTSCH. In connection with the needs of the Department of Defense, all procurement of textiles by the Department of Defense or its contractors is under a priority system.

Mr. GETTYS. Operated by the Department of Defense?

Mr. BERTSCH. The priority program is administered by the Department of Commerce, under the policy direction of OEP. We, the Department of Commerce, have delegated to the Department of Defense the rights to use priorities under our regulations and they follow our regulations in this connection.

Mr. GETTYS. Thank you.

Chairman PATMAN. Mr. Galifianakis?

Mr. GALIFIANAKIS. Thank you very much, Mr. Chairman.

Thank you, Governor Daniel, and your associates, and let me offer a special welcome to our neighbors in South Carolina.

Do you have a herbicide stockpile now and is that a large stockpile?

Mr. LAWRENCE. We don't have any in the stockpile.

Mr. GALIFIANAKIS. What prompted the interest? Was it the Vietnamese needs that prompted the necessity in the herbicides?

Mr. DANIEL. Yes, the Defense Department needed the herbicides in the defoliant programs that it had in Vietnam and they asked for the priority for all domestic production of this particular herbicide.

Mr. GALIFIANAKIS. Is an adequate supply available now?

Mr. LAWRENCE. No, sir, there is not.

In fact, there is going to be about, I think, only 2 months production made available for civilians this year.

Mr. GALIFIANAKIS. Is most of the use for military purposes there, or for civilian purposes?

Mr. LAWRENCE. All military.

Mr. GALIFIANAKIS. Primarily military?

Mr. LAWRENCE. Yes, sir.

Mr. GALIFIANAKIS. You don't use it for purposes of clearing areas for building roads and other buildings?

Mr. LAWRENCE. No, this was for the purpose of killing the foliage on trees so that the enemy forces would be seen from the air. The defoliant program is the principal use of it.

Mr. GALIFIANAKIS. Do you have any policymaking decision in that respect, or do you just take instructions from the Department of Defense in determining that?

Mr. LAWRENCE. No, we have the requirements of all departments and agencies in the Government that have an interest in this chemical—for example, principally the Department of Agriculture has a very strong interest in our action. And there were interagency meetings prior to making the decision. But the final decision was made by OEP.

Mr. GALIFIANAKIS. What are the principal sources of these defoliates?

Mr. LAWRENCE. In the United States, all of them are U.S. manufacturers. The chemicals are made in this country. The principal problem is that this 2,4,5-T the demands of the military exceeded our whole U.S. supply. This was the problem. We didn't have enough capacity. Our Army has under construction new capacity now in Missouri which will eventually fill all of their needs and the rest of the supply will go back to civilians.

Mr. GALIFIANAKIS. One more question, Mr. Chairman.

You stated earlier, Governor, that you haven't experienced many difficulties in having firms reject priority orders. Do you do anything or do you have any regulations or control over the shipper or the carrier? Is there any synchronization between the priority order and the movement by the carrier of that order?

Mr. DANIEL. Mr. Bertsch handles this program and let me ask his comment and then we may want to add to that.

Mr. BERTSCH. To the best of my knowledge, the Defense Production Act priorities powers are not presently being utilized with respect to transportation except in one limited area—the transportation and discharge abroad of certain commodities by American carriers and the movement of such carriers to certain designated destinations. These restrictions are embraced in Department of Commerce Orders T-1 and T-2.

TITLE 32A—CHAPTER VII

T-1—SHIPPING RESTRICTIONS

Sec.

1. Prohibited transportation and discharge.
2. Application for adjustment or exceptions.
3. Reports.
4. Records.
5. Defense against claims for damages.
6. Violations.

AUTHORITY: Secs. 1 to 6 issued under sec. 704, 64 Stat. 816, as amended; 50 U.S.C. App. 2154, as amended; Interpret or apply secs. 101, 705, 64 Stat. 799, as amended; 50 U.S.C. App. 2071; E.O. 10480, 18 F.R. 4939, 3 CFR, 1953 Supp.

SOURCE: Sections 1 to 6 contained in Transportation Order T-1, 30 F.R. 9092, July 21, 1965, unless otherwise noted.

Section 1. Prohibited transportation and discharge.

No person shall transport in any ship documented under the laws of the United States or in any aircraft registered under the laws of the United States any commodity at the time not identified by the symbol B in the last column of the Commodity Control List (399.1 of the Comprehensive Export Schedule, issued by the Bureau of International Commerce, Department of Commerce (15 CFR Parts 368-399), any article designated as arms, ammunition, and implements of war in the United States Munitions List (22 CFR Parts 121-128), or any commodity, including fissionable materials controlled for export under the Atomic Energy Act of 1954, as amended, to any destination at the time in country groups X, Y, or Z as set forth in the Comprehensive Export Schedule (15 CFR 370.1(g) (2), and no person shall discharge from any such ship or any such aircraft any such commodity or article at any such port or place or at any other port or place in transit to any such destination, unless a validated export license under the Export Control Act of 1949, as amended, under section 414 of the Mutual Security Act of 1954, as amended, or under the Atomic Energy Act of 1954, as amended, has been obtained for the shipment, or unless authorization for the shipment has been obtained from the Under Secretary for Transportation. This prohibition applies to the owner of the ship or aircraft, the master of the ship or aircraft, or any other officer, employee or agent of the owner of the ship or aircraft, who participates in the transportation. The consular officers of the United States are furnished with current copies of the Commodity Control List and will advise which commodities are subject to this restriction.

Sec. 2. Application for adjustment or exceptions.

Any person affected by any provisions of this order may file an application for an adjustment or exception upon the ground that such provision works an exceptional hardship upon him, not suffered by others, or that its enforcement against him would not be in the interest of the national defense program. Such an application may be made by letter or telegram addressed to the Under Secretary for Transportation, Washington, D.C., 20230, reference T-1. If authorization is requested, any such application should specify in detail the material to be shipped, the name and address of the shipper and of the recipient of the shipment, the ports or places from which and to which the shipment is being made and the use to which the material shipped will be put. The application should also specify in detail the facts which support the applicant's claim for an exception.

Sec. 3. Reports.

Persons subject to this order shall submit such reports to the Under Secretary for Transportation as he shall require, subject to the terms of the Federal Reports Act.

Sec. 4. Records.

Each person participating in any transaction covered by this order shall retain in his possession, for at least 2 years, records of shipments in sufficient detail to permit an audit that determines for each transaction that the provisions of this order have been met. This does not specify any particular accounting method and does not require alteration of the system of records customarily maintained, provided such records supply an adequate basis for audit. Records may be retained in the form of microfilm or other photographic copies instead of the originals.

Sec. 5. Defense against claims for damages.

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

Sec. 6. Violations.

Any person who willfully violates any provisions of this order or willfully conceals a material fact or furnishes false information in the course of operation under this order is guilty of a crime and upon conviction may be punished by fine or imprisonment or both. In addition, administrative action may be taken against any such person, denying him the privileges generally accorded under this order.

T-1, INT. 1—SHIPMENTS ON AMERICAN-FLAG SHIPS AND AIRCRAFT

Sec.

1. Shipments from the United States.
2. Restricted commodities.
3. Addition of commodities to the Positive List.
4. Calls at restricted ports en route to an unrestricted port with restricted cargo.
5. Forwarding commodities previously shipped.
6. Relation to Transportation Order T-2.

AUTHORITY: Sections 1 to 6 issued under sec. 704, 64 Stat. 816, as amended; 50 U.S.C. App. 2154. Interpret or apply sec. 101, 64 Stat. 799, as amended; 50 U.S.C. App. 2071, E.O. 10480, 18 F.R. 4939, 3 CFR, 1953 Supp.

SOURCE: Sections 1 to 6 contained in Transportation Order T-1, Interpretation 1, 15 F.R. 9145, Dec. 21, 1950, unless otherwise noted.

Section 1. Shipments from the United States.

Transportation Order T-1 applies to shipments from the United States, as well as to shipments from foreign ports, on American flag ships and aircraft.

Sec. 2. Restricted commodities.

The restrictions of Transportation Order T-1 apply to the transportation or discharge of (a) commodities on the Positive List (15 CFR Part 399) (as amended from time to time) of the Comprehensive Export Schedule of the Office of International Trade, Department of Commerce, (b) articles on the list of arms, ammunition and implements of war coming within the meaning of Proclamation No. 2776 of March 26, 1948, and (c) commodities, including fissionable materials, controlled for export under the Atomic Energy Act of 1946. The restrictions imposed by Transportation Order T-1 do not apply to other commodities, not within these restricted classes at the time of transportation or discharge, even though authorization for the export of the commodity from the United States to the particular destination is required under regulations of the Office of International Trade or under other Federal law or regulation. In this respect, Order T-1 is different from Order T-2 which applies to all commodities destined to Communist China. Order T-1 does not relax or modify any of the requirements of any other regulation or law.

Sec. 3. Addition of commodities to the Positive List.

Order T-1 applies to the transportation or discharge of commodities which are restricted at the time of transportation or discharge. Accordingly, if a commodity is added to the Positive List while the commodity is being transported on an American-flag ship or aircraft, the restrictions of Order T-1 immediately apply and the commodity may not be transported to or discharged at any of the restricted ports or discharged in transit to one of the restricted ports, unless authorization under Order T-1 is obtained.

Sec. 4. Calls at restricted ports en route to an unrestricted port with restricted cargo.

Order T-1 does not prohibit an American-flag ship or aircraft from going to or calling at one of the restricted ports, even though it has on board a commodity which could not be discharged at that port. (Note, however, that Order T-2 prohibits American-flag ships and aircraft from calling at any port or other place in Communist China). For example, an American-flag ship may call at one of the restricted ports (except one in Communist China), even though it has on

board the following classes of commodities: (a) a Positive List commodity manifested to a destination outside the restricted area, with an export license and an export declaration showing the unrestricted destination at the ultimate destination, (b) a Positive List commodity destined for the restricted port of call which cannot be discharged there because there is no export license or authorization from the Under Secretary for Transportation permitting discharge at the restricted port of call, (c) a commodity of any kind destined for Communist China (the transportation and discharge of which is covered by Order T-2). None of these commodities may be discharged at the restricted port of call. Discharge of any of these commodities at the port covered by the restrictions of Order T-1 is prohibited and subject to penalty, regardless of the circumstances under which the discharge of the cargo at the restricted port occurs, unless appropriate authorization is obtained.

Sec. 5. Forwarding commodities previously shipped.

Order T-1 applies to transportation on or discharge from ships documented under the laws of the United States and aircraft registered under the laws of the United States. These restrictions apply either in the case of a discharge at one of the restricted ports or to discharge at any other port in transit to a restricted destination. The restrictions of Order T-1 do not apply to transportation by foreign carriers, as long as there is no prohibited transportation or discharge by or from a United States-flag ship or aircraft after the issuance of Order T-1. Accordingly, if an American-flag ship or aircraft, before the issuance of Order T-1, had transported restricted commodities manifested to restricted destinations, and had completed the transportation to a foreign intermediate point and had completed the discharge from the American-flag ship or aircraft before the issuance of Order T-1, no violation of that order would have occurred, but Order T-1 would prohibit further shipment on an American-flag ship or aircraft unless authorization under Order T-1 is obtained.

Sec. 6. Relation to Transportation Order T-2.

Transportation Order T-1 applies to the transportation of commodities to, or in transit to, destinations in Sub-Group A, Hong Kong or Macao. It applies, however, only to commodities on the Positive List of the Office of International Trade, arms and ammunition, and commodities controlled under the Atomic Energy Act (see section 2 of this interpretation). Transportation Order T-2 applies to the transportation of commodities of any kind which are destined to Communist China (Order T-2 also prohibits American ships and aircraft from calling at any port or place in Communist China). Since Communist China is in Sub-Group A, the restrictions of both orders apply to the transportation of commodities to Communist China or to any other point in transit to Communist China.

T-2—SHIPPING RESTRICTIONS; COMMUNIST CHINA, NORTH KOREA AND THE COMMUNIST-CONTROLLED AREA OF VIET NAM

Sec.

1. Prohibition of movement of American carriers to Communist China, north Korea, or to the Communist-controlled area of Viet Nam.
2. Prohibition on transportation of goods destined for Communist China, north Korea, or the Communist-controlled area of Viet Nam.
3. Persons affected.
4. Reports.
5. Records.
6. Defense against claims for damages.
7. Violations.

AUTHORITY: Sections 1 to 7 issued under sec. 704, 64 Stat. 816, as amended; 50 U.S.C. App. 2154. Interpret or apply sec. 101, 64 Stat. 799, as amended; 50 U.S.C. App. 2071; E.O. 10480, 18 F.R. 4939, 3 CFR, 1953 Supp.

SOURCE: Sections 1 to 7 contained in Transportation Order T-2 (Amended), 23 F.R. 8396, Oct. 30, 1958, unless otherwise noted.

Section 1. Prohibition of movement of American carriers to Communist China, north Korea, or to the Communist-controlled area of Viet Nam.

No person shall sail, fly, navigate, or otherwise take any ship documented under the laws of the United States or any aircraft registered under the laws of the United States to any Chinese Communist port, north Korea, any other place under the control of the Chinese Communists, or to the Communist-controlled area of Viet Nam.

Sec. 2. Prohibition on transportation of goods destined for Communist China, north Korea, or the Communist-controlled area of Viet Nam.

No person shall transport, in any ship documented under the laws of the United States or in any aircraft registered under the laws of the United States, to Chinese Communist ports, north Korea, any other place under the control of the Chinese Communists, or to the Communist-controlled area of Viet Nam, any material, commodity, or cargo of any kind. No person shall take on board any ship documented under the laws of the United States or any aircraft registered under the laws of the United States any material, commodity, or cargo of any kind if he knows or has reason to believe that the material, commodity, or cargo is destined, directly or indirectly, for Communist China, north Korea, or for the Communist-controlled area of Viet Nam. No person shall discharge from any ship documented under the laws of the United States or from any aircraft registered under the laws of the United States, at any place other than the port where the cargo was loaded, or within territory under the jurisdiction of the United States, any material, commodity, or cargo of any kind which he knows or has reason to believe is destined for Communist China, north Korea, or for the Communist-controlled area of Viet Nam.

Sec. 3. Persons affected.

The prohibitions of this order apply to the owner of the ship or aircraft, to the master of the ship or aircraft, and to any other officer, employee, or agent of the owner of the ship or to any other person who participates in the prohibited activities.

Sec. 4. Reports.

The owner of any ship documented under the laws of the United States or any aircraft registered under the laws of the United States which is making a voyage to the Communist-controlled area of Viet Nam at the time this order as amended is issued shall report this fact promptly to the Under Secretary for Transportation, Department of Commerce, Washington 25, D.C., and advise what steps he has taken to comply with the requirements of section 1 of this order. The owner of any ship documented under the laws of the United States or any aircraft registered under the laws of the United States which, at the time this order as amended is issued, is carrying any material, commodity, or cargo which the owner, the master of the ship or aircraft, or any other officer, employee or agent of the owner, knew or had reason to believe was destined for the Communist-controlled area of Viet Nam shall report this fact promptly to the Under Secretary for Transportation, Department of Commerce, Washington 25, D.C., and advise what disposition has been or will be made of such cargo. Persons subject to this order shall submit such reports to the Under Secretary for Transportation, Department of Commerce, as he shall require, subject to the terms of the Federal Reports Act.

Sec. 5. Records.

Each person participating in any transaction covered by this order shall retain in his possession, for at least two years, records of voyages and shipments in sufficient detail to permit an audit that will determine for each transaction that the provisions of this order have been met. This provision does not require any particular accounting method and does not require alteration of the system customarily maintained, provided such records supply an adequate basis for audit. Records may be retained in the form of microfilms or other photographic copies instead of the originals.

Sec. 6. Defense against claims for damages.

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

Sec. 7. Violations.

Any person who willfully violates any provisions of this order, or willfully conceals a material fact, or furnishes false information in the course of operation under this order, shall, upon conviction, be punished by fine or imprisonment, or both. In addition, administrative action may be taken against any such person, denying him the privileges generally accorded under this order.

Mr. LAWRENCE. However, the synchronization of movement of the defense goods is undertaken by a system of internal priorities in the Department of Defense. They are not necessarily mandatory over the shipper. But they are followed by the shipper. They have certain code names for important shipments of materials, and so forth, but priorities per se are not utilized in the transportation service area.

Mr. GALIFIANAKIS. Do you feel any need for regulation in this respect?

Mr. BERTSCH. Not at the present time. We have not had any difficulties except during the various strikes that have occurred in the transportation industry, and even then the difficulties were overcome by voluntary action on the part of the operating shippers and the persuasion of the Government.

Mr. GALIFIANAKIS. Then the matter of transportation of the priority commodities is really not in your jurisdiction?

Mr. DANIEL. We do have—the President does have authority to control such matters as you have mentioned. And you will recall that during my opening statement I pointed out during the rail strike we did make a list of priority items that must continue to move. So we do have the authority under this act, the President does, to handle the situations you are speaking about.

Mr. GALIFIANAKIS. That is an Executive prerogative?

Mr. DANIEL. Yes, sir.

Chairman PATMAN. Mr. Wolff?

Mr. WOLFF. Thank you, Mr. Chairman.

First, I want to say as a new member of this committee, and having been considered somewhat a lone wolf in many of my endeavors, I am very happy to see so distinguished a member of the Lone Star State before me as the first witness.

Mr. DANIEL. Thank you, sir.

Mr. WOLFF. Governor, I wonder if you could tell us if the new policy on gold has had any affect upon any stockpiling that we might be considering of gold?

Mr. LAWRENCE. We don't have any gold in the stockpile. We have made studies as to whether we would need it. The study indicates that at the present time we don't need any gold in the stockpile.

Mr. DANIEL. This is a continuing study, however, and I want to underline those words "at the present time" that Mr. Lawrence used in his answer.

Mr. WOLFF. Having just come off the Space Committee, and having some knowledge of the utilization of gold in space production, I understand there will be an increasing need for gold in defense production and I believe that this is an area that demands further study.

Mr. LAWRENCE. This is quite true. The spray plating that they are doing, particularly on space and aircraft parts and instruments is increasing in use and that is why we say currently we don't need gold but we may need it eventually if the trend continues.

Mr. DANIEL. He is talking about the need for it in the stockpile. There are many strategic materials that we do not have stockpiled, and that is because of the fact that the difference between our estimated requirements and what we are able to have supplied to us does not leave a deficit.

Mr. WOLFF. With the demands being made by Mr. de Gaulle upon our gold perhaps it might be wise to reconsider.

Mr. DANIEL. We are continuing to study that matter on gold.

Mr. WOLFF. There is one other area I think is quite important. The fact that viability of our defense is dependent on the economic health and well-being of defense plants as continuing sources of supply in an emergency.

Has any provision been made for conversion of some of those plants at the end of the Vietnam emergency? Would you have any response in that area?

Mr. LAWRENCE. This is principally the Department of Defense's responsibility. Specifically, the Office of Economic Adjustment in the Office of the Assistant Secretary of Defense (I. & L).

Mr. WOLFF. Well, I cannot agree, since part of your responsibility is providing constant sources for our defense needs and the act provides for your making loans to defense plants to enable the defense establishment to meet those needs, do you not feel there is an area of responsibility as well to see it that these plants remain in good health during a period where we do not need them?

Mr. DANIEL. I would think so. An overall responsibility of encouragement as we have in the same manner worked with industry on other important items of this nature.

Mr. WOLFF. Would you say then that the idea of planning for conversion of these plants to peacetime activity would be an important element for their future as a future source of supply for you?

Mr. DANIEL. I would think so.

Mr. WOLFF. Well, then, why is it that the agency has not gone into the question of conversion?

Mr. DANIEL. Well, it is a matter under which we do not have any direct responsibility. I would like to give that a little more study and give you a better answer after we have consulted on the matter with other members of our staff.

The problem of converting facilities now engaged in defense production has been under study for more than a year in the executive branch.

These analyses have been made by the Department of Defense, the Arms Control and Disarmament Agency and other offices. The Chairman of the Council of Economic Advisers has been given by the President the responsibility of coordinating and reviewing these activities.

Analyses have been made of the impact of defense programs on specific regions, individual industries, and labor.

The Joint Economic Committee has had hearings on the problems and plans for the conversion from military to civilian production ("Economic Effect of Vietnam Spending," vols. 1 and 2, hearings Apr. 24, 25, 26, and 27, 1967).

Mr. WOLFF. I would hope so. Thank you very much, Governor.

Chairman PATMAN. Mr. Griffin?

Mr. GRIFFIN. No questions, Mr. Chairman.

Chairman PATMAN. Mr. Halpern?

Mr. HALPERN. Thank you, Mr. Chairman.

Governor, it is a pleasure to have you here as well as your distinguished panel this morning.

Could you explain, Governor, how the stockpiles of any materials

such as aluminum could be allowed to accumulated so far beyond our defense needs, particularly in view of the unsettling economic effect of releasing these stockpiles?

Mr. DANIEL. Yes, I can give you some explanation of what I have learned since I have been in this office and then Mr. Lawrence here, who has been with the program for many years, can give you more information.

The stockpile program has been used for purposes other than the intended purpose in years gone by. Several years ago there were large purchases of zinc and lead because of the fact that the administration at that time thought that the economy of the country justified the extra stockpiling of these materials, and, therefore, we have a great excess of zinc and lead because more was purchased than actually was needed for the stockpile.

Also, the stockpile objectives change from time to time due to the fact that we find more of a certain strategic material is available to us domestically, or that we can depend on receiving it from an adjacent country and, therefore, our deficit is not so great and our objective is therefore lowered. These circumstances cause us from time to time to be able to have lower objectives than what we have already purchased and stockpiled in the past when things did not look so bright as far as the possibility of being able to obtain that particular strategic material.

Does that answer your question?

Mr. HALPERN. Yes, sir. I also wonder, Governor, if you would explain that aspect of the stockpiling procedure which is responsible for our falling so far short of some of our goals.

For instance, is it a reluctance to increase shortages in the market that has caused the short fall of our copper goals?

Mr. LAWRENCE. We at one time had more copper than was necessary to meet the objectives. The surplus was sold under authorization from Congress. The further releases by the President have caused the shortage in the copper inventory at the present time.

We certainly have not gone into any copper market at the present time because there is such a continuing shortage. We don't buy materials for the stockpile in periods of shortage, particularly if the purchases would have an inflationary effect on the price.

We will, of course, under the Duval contract, recoup about 109,000 tons of copper which will be placed in the stockpile against the objective.

Mr. HALPERN. Governor, can you tell us what, if any, preparations could be made under this act for the transition of our economy from a partial wartime economy to a peacetime economy?

This is in line with the question offered by Congressman Wolff. From a wartime economy to a peacetime economy, optimistically assuming a rapid end to the Vietnam war.

Mr. DANIEL. I believe what we prepare in answer to Congressman Wolff's question would probably answer yours, if we may handle it in that manner.

Actually, I have not looked at this act from the standpoint that you are asking about. I have looked at this act strictly as an act that would help us get the right materials in the right place at the right time for the national security and defense of our country.

I had not studied the act from the standpoint of its being used for other purposes, and you may be thinking of some provision of this act that could be used for that purpose.

I would like to think about it a little. But as of this moment, I do not see that this act is intended for that purpose.

Mr. HALPERN. Well, in submitting your answer to the question asked by Congressman Wolff, I would like you to consider would there, as a result of diminishing our military participation in Vietnam, be a tendency to reduce stockpiles of shortness of strategic metals and, if so, how would this be handled to minimize the depressing effect on our domestic economy?

Mr. DANIEL. Not under the criteria we use in setting our stockpile objectives. The end of the war in Vietnam would not have any bearing there. As far as our objectives are concerned, they are based on other criteria and considerations.

Mr. HALPERN. Could you describe briefly the extent to which the authorities granted under the Defense Production Act were increasingly utilized as a result of the Vietnam war?

Mr. DANIEL. Yes, sir. Were you here when I listed—

Mr. HALPERN. Unfortunately I wasn't.

Mr. DANIEL. I have listed five specific instances, such as copper set-asides by the BDSA to make copper available for defense purposes and the priority which was given on the herbicides for all domestic production of the particular type needed by the Defense Department in Vietnam.

Chairman PATMAN. That is in your testimony, Governor?

Mr. DANIEL. Yes, sir.

Mr. HALPERN. It won't be necessary to repeat it. I do want to thank the gentlemen and the distinguished Governor and yield back. I understand my time is up.

Chairman PATMAN. Mr. Moorhead.

Mr. MOORHEAD. I have one question, Mr. Chairman.

Governor, do you now have under your control a strategic stockpile of silver?

Mr. DANIEL. Yes, sir, we do.

Mr. MOORHEAD. I remember we had that problem when we considered the legislation, but I wasn't sure of the exact amount.

Mr. LAWRENCE. 165 million ounces.

Chairman PATMAN. Mr. Widnall.

Mr. WIDNALL. Thank you, Mr. Chairman.

Thank you, Governor Daniel and Governor Peabody and your associates, for coming here this morning and giving us this well-stated report on your activities.

At the time of the copper strike a number of weeks ago, I sent a telegram to the President and Secretary Wirtz saying it was absolutely incredible to me, the lack of real firm activity toward the settlement of that strike, when in every other area the Government had quickly stepped in because it was something that was important to our economy and important to the Nation's war effort as far as Vietnam was concerned.

And yet, obviously, this was played down.

Now, did you in your own consultation with others in the admin-

istration say that copper was an urgent problem, there should be a settlement as quickly as possible, or what was your own advice in connection with this?

Mr. DANIEL. That was my advice and I did sit in on many meetings which were held for the purpose of trying to get the copper strike settled.

You will never know how much work was done on trying to settle the copper strike before the work was surfaced and written about. And always we did urge, all of our departments concerned with this act, urged that this strike be settled.

Mr. WIDNALL. Wasn't the disposal of the stockpile ever considered?

Mr. DANIEL. It was discussed, but we felt that it would not be proper to dispose of the stockpile since the copper stockpile was down as low as it was and since the set-asides which the BDSA had put on copper would take care of our defense needs for a certain period of time.

That would not have continued forever, of course, but it was not necessary to make any of the copper stockpile available to meet our defense contracts.

Mr. WIDNALL. To what extent, if any, was American ownership of other overseas facilities involved in the copper that was imported during the strike?

Mr. DANIEL. I do not have the answer to that.

Mr. BERTSCH. I don't believe we know to what extent American ownership was involved in this. The copper came from all over the world into the United States during the strike. The importation of copper reached 15,000 tons a week during the strike. But who owns the various facilities from which the copper came, I really don't know.

I would think they were owned primarily by corporations outside the United States.

Mr. WIDNALL. Well, I think that is undoubtedly understood, but there can be American ownership interest in the corporations outside the United States, and I am just wondering how many of our mineral people here in the United States had investments in these foreign facilities.

Mr. BERTSCH. Well, of course, we are aware of investments in foreign facilities, in South America, for example, and other areas of the world which are copper-producing areas; but what the extent of those investments are in the areas that began shipping to the United States in large quantities during the course of the strike, I really don't know.

Mr. DANIEL. Would you like to have that?

Mr. WIDNALL. The price went up to around 83 cents a pound.

Mr. BERTSCH. Yes, it was very substantial, and even above that.

Mr. WIDNALL. So that I would say that American companies who had an investment both here in the United States and overseas would have been very happy with 83 cents a pound. If you have information on that, I would like very much to have that.

Mr. BERTSCH. I am not too sure we can supply it. We will make an attempt to supply it.

Chairman PATMAN. Will you supply what you can for the record?

Mr. DANIEL. Together, we will do our best to supply the information which you wish.

(The information requested follows:)

REFINED COPPER IMPORTED DURING COPPER STRIKE

Data on individual import declarations as supplied by the Bureau of Customs to BDSA show that during October 1967-March 1968, domestic primary copper producers imported approximately 84,000 tons. This quantity represents 21 percent of *all refined copper imports during the six-month period*. Similar data for prior periods are not readily available to this agency.

Data are not available showing the names of foreign companies and their respective shares of copper sales to the United States during the strike. However, it is known that American companies have sizeable interests in many foreign copper companies. For example, the following reflects United States interests in Chile, Peru, and Zambia, the three major countries in which the United States has substantial financial interests.

Two American copper companies have financial interests in many Chilean copper properties ranging from 49 percent ownership to complete ownership. These properties account for approximately 80 percent of Chilean mine production. During the recent copper strike United States firms imported from Chilean sources 32,000 tons of refined copper (value \$34.2 million).

In Peru, one United States company has financial interest in several copper properties ranging from 22 percent ownership to complete ownership. These properties account for approximately 83 percent of Peru's total mine production. During the strike, Peru exported to the United States 23,000 tons of refined copper (value \$24.5 million).

In Zambia, one American company owns 44 percent of a Zambia corporation which accounts for 45 percent of Zambian mine production. During the strike, United States firms imported 16,000 tons of refined copper from Zambia (value \$17.1 million).

Mr. WIDNALL. I don't quite understand how materials are stockpiled. I believe that at one point in your testimony you said that the price that was received in selling from the stockpile was lower than you might think it should be because the quality of the material was not as high as in the stockpile.

Was this because inferior quality was bought initially or because of deterioration of the stockpile?

Mr. LAWRENCE. At the time the materials were acquired for the stockpile the standard commercial requirements for materials were lower than they are today. There is also some inferior material in the stockpile which was purchased under the domestic mining provisions of the law, not of this law, but other laws, but the majority of all material in the stockpile meets very rigid specifications of highest quality.

The only problem that we have is that stuff in the stockpile is now 10, 15, and 20 years old and the quality of the material, for example, nickel is much higher today than when we procured nickel back in Korea. This is one of the real problems of the stockpile.

Of course, it would cost us a considerable sum of money to keep continually upgrading the stockpile. We haven't taken that route.

Mr. WIDNALL. I am a little bit confused because in your testimony you said that for broad economic purposes you sometimes have to go beyond the purposes of the act in the purchase of materials.

Mr. DANIEL. No, sir; I did not say that we did that. I was speaking about a former administration, years ago. We do not do that and we think it is a mistake. I said very clearly, I believe before you entered the room—

Mr. WIDNALL. I get confused because I think you also said that you refused to go beyond selling during the copper strike, for instance.

Mr. DANIEL. Yes, sir.

In the statement that you are referring to, I was trying to say why it was that we had so much excess of some materials. And when I said

that in years gone by that more of some of our materials had been purchased than needed, I was describing what had happened or relating the history of it. That is not the policy that we are following at this time and has not been followed during this administration.

Mr. WIDNALL. Do you believe that balance-of-payments considerations should be a part of the act?

Mr. DANIEL. Well, I think that if we have some purchases to make that we should take this into consideration. But as far as using our sales or using the act otherwise to settle balance of payments or any other economic situation, I do not think we should do it.

Mr. WIDNALL. That certainly is one of the most important problems that we face today.

Mr. DANIEL. Yes, sir.

Mr. WIDNALL. It is a very critical one and it would seem to me it is directly related to the defense policy as far as the United States is concerned.

Mr. DANIEL. I would think so. And we would certainly not want to make any purchases that would worsen our balance-of-payments situation.

Mr. WIDNALL. Don't you feel that we on this committee should change the language to make up for the lack of language that is in the act at the present time relating to balance of payments?

Mr. DANIEL. With respect to balance of payments?

Mr. WIDNALL. That is right.

Mr. DANIEL. Well, that would be something that should be left up to the committee. Certainly we do not feel that a change should be made along that line. This bill that is before you now would simply extend the life of the act and we would not recommend a change of that nature.

Mr. WIDNALL. I understand that the negative impact on balance of payments of copper imports was about \$400 million; is that so? That is certainly a pretty big hole in the dike.

Mr. DANIEL. A much larger figure was given a moment ago. I am not sure of the total amount that was imported but it was certainly a tremendous amount of copper and that is why we did everything in our power to bring the copper strike to an end.

Mr. WIDNALL. Well, I am pleased to hear you say that you made your effort to bring it to an end. But there wasn't much visible for many months, but there was an awful lot visible in many other areas where strikes were in existence. I never could understand why this one was placed down so much as compared to the other strikes. Something must have been understood by the administration that we didn't understand.

Mr. DANIEL. Well, sir, I think it depends on what papers you were reading. In our office it was not played down. And in the administration and over at the White House I assure you it was a busy matter for many, many months trying to bring this strike to an end.

Mr. WIDNALL. My time has expired. Thank you.

Chairman PATMAN. We have two more who have not interrogated the witness.

Mr. Gonzalez, you are recognized, sir.

Mr. GONZALEZ. Mr. Chairman, I have no questions.

I merely wish to add my words to what you said concerning the distinguished Price Daniel. I think that you have said it more elo-

quently and better than I could what we think of Governor Daniel. We are delighted he is here with us on the Washington scene. I have no specific questions at this time.

Chairman PATMAN. His record speaks rather eloquently. About all I did was read his record and, of course, he has a great record in Texas and in the United States.

Mr. GONZALEZ. If I ever want a record read, I want the distinguished chairman of this committee to read it.

Mr. DANIEL. I agree.

Chairman PATMAN. Mrs. Dwyer?

Mrs. DWYER. No questions.

Chairman PATMAN. All right. May we have an executive session just briefly, just the committee please, and thank you, Governor Daniel, and those who accompanied you. You have been very helpful to us and if we were to need you again I am sure you would make yourself available at some mutually convenient time.

Mr. DANIEL. I certainly will. Thank you, Mr. Chairman, and the members of the committee.

Chairman PATMAN. I have an important matter that I would like to take up with the members of the committee in executive session. It will only take 2 or 3 minutes. Therefore, I would like to recess this open hearing at this time and ask all members to remain to discuss this matter.

(Whereupon, at 11:45 a.m., the hearing in the above-entitled matter was recessed, to reconvene tomorrow, Thursday, April 11, 1968, at 10 a.m.)

TO RENEW THE DEFENSE PRODUCTION ACT OF 1950

THURSDAY, APRIL 11, 1968

HOUSE OF REPRESENTATIVES,
COMMITTEE ON BANKING AND CURRENCY,
Washington, D.C.

The committee met in executive session, pursuant to notice, at 10 a.m., in room 2128, Rayburn House Office Building, Hon. William A. Barrett presiding.

Present: Representatives Barrett, Sullivan, Reuss, Moorhead, Stephens, St Germain, Galifianakis, Bevil, Wolff, Griffin, Widnall, Halpern, Clawson, Mize, Blackburn, Brown, and Wylie.

Mr. BARRETT. The meeting will come to order, please.

Our witness this morning is Admiral Rickover. It is a pleasure for us to have you here today, Admiral Rickover.

Although this is the first opportunity this committee has had to take testimony from you, many of the committee members have followed your testimony before other congressional committees with much interest, particularly your testimony regarding contracting procedures in the Government and the increasing cost of items Congress is called upon to finance from the public Treasury.

We are particularly interested in your recent testimony before the Joint Committee on Atomic Energy concerning unnecessary delays in development of a new design submarine because the Department of Commerce was unwilling to use the authority granted to it under the Defense Production Act of 1950 to require industry acceptance and performance of contracts for defense work. We will want to explore this matter with you in depth.

As you know, we are presently considering the extension of the Defense Production Act through June 1970. We are interested in having your observations concerning its effectiveness and any recommendations you may have for strengthening it.

We will also be most interested in hearing your views on the methods used by the Government to award contracts, particularly with regard to providing greater protection to the Government so that undue profits are not made from so basic a national necessity as military preparedness. I was particularly impressed with a statement you made before the joint committee:

I only wish it were possible for older people such as myself to go to Vietnam. I would be very, very happy to do so. I have lived my life. The young men we are sending to Vietnam have not yet lived their lives. Also, we older people are the ones who made this war.

But, as long as the young men have to fight the war for us, I firmly believe we must give them the best weapons we can. It is not proper to draft young

boys, send them out to fight and take the chance of losing their lives, when a large company making profits in the hundreds of millions of dollars can't see its way clear to devote a very small percentage of its effort to help build a ship which is important to the defense of the United States.

In short, Admiral, I want you to give us your frank observations and recommendations on what you think the Government needs to do to insure it is receiving a dollar's value for a dollar spent. Please feel free to discuss whatever you think should be brought to our attention.

In the past, you have always responded to questions from Members of Congress in a frank and forthright manner, expressing your views without fear or favor. It is most refreshing to have a witness who does not reply with cryptic statements or nonresponsive oversimplifications.

We realize, of course, that witnesses from the executive branch are required to support the programs approved by higher authority in the Government, but when requested by the committee for their own personal views it is permissible for witnesses and officials to give us their personal views. I am therefore asking you for your personal views on the matters we will discuss today. We hope you will feel completely free to express your views regardless of what they may be and regardless of how they may fit into the views of others.

I know your presence here today takes you away from your primary responsibility of directing the naval nuclear propulsion program and we appreciate the time you are devoting to these matters.

In this general context I welcome you before this committee. I understand you have no prepared statement so I suggest we might begin by you responding to my opening remarks, and then I have some questions I would like to ask you, and other members of the committee will also want to interrogate you.

Now, Admiral Rickover, if you are prepared to start, any way you desire, I am quite sure the committee will be glad to go along with your desire.

STATEMENT OF VICE ADM. H. G. RICKOVER, U.S. NAVY, ACCOMPANIED BY M. C. GREER

BASIS FOR TESTIMONY

Admiral RICKOVER. Mr. Chairman, first I must say how deeply I appreciate appearing before your committee.

I am sure you know the deep respect I feel for Congress because Congress is the representative of the people. You are the ones who express the people's will. The officials in the executive branch have all been appointed; they have no constituency. They do not have to run for office periodically. So when I talk to you, I feel that through you I am talking to the people of the United States.

The views I express today are my own. I have no personal aspirations. I can get no higher in the Navy or anywhere else in Government. In some of my remarks, I may express views contrary to those of my superiors in the Navy and in the Department of Defense. You are aware there are basic differences in our opinions. I must make it clear that I claim no superior wisdom. Furthermore, my superiors have responsibilities and problems different and more onerous than mine. These responsibilities and problems may require different solutions than I propose. I make no claim that my views are right and theirs are wrong.

I can only say what I think and what I believe.

My superiors have no obligation to justify their position to me. Therefore, I wish to make it clear that I do not represent myself as knowing or understanding the full basis for their decisions. But because I have held a responsible position for many years, I have a public obligation to speak and to give my own detached assessments. I cannot permit political or personal considerations to prevent me from discharging this obligation, nor can I permit what has been called the decencies of human relations to control my statements to committees of Congress. Silence is also an act, an act of cowardice.

In all human affairs there are purposes we wish to accomplish. Ultimately and invariably the manner in which we accomplish these purposes tends to become the purpose itself; the purpose then becomes secondary. We must periodically reassess whether under changing circumstances the solutions we once adopted are still valid. Reconciliation of permanence and change is the essence of administration.

Today, power can effectively pass from the legislative and executive branches to sources quite outside the political control altogether. Everything in human affairs is in constant flux. This is so because men, being endowed with free will, continually alter the conditions of life. Countless decisions made in pursuit of private objectives may so transform society that institutional safeguards once adequate become ineffective. It is then necessary to return to first principles and to adapt them to altered circumstances. This has nothing to do with one's political views: liberalism, capitalism, communism, free enterprise, conservatism. Actually to reassess old established rules is a conservative action, otherwise we get something different than we desire.

Our purpose today is to see to it that the Government gets value for the money it spends. This is a practical problem agreed to by all men of good will. Everyone who comes here to testify is for economy, but some who testify for economy do so for the same reason that a fox hunter joins the SPCA, the Society for the Prevention of Cruelty to Animals.

In a society which increasingly desires more and inhibits less, new forms of controls are needed to teach responsibility and to limit the indiscriminate exercise by individuals of their new powers. And the Congress is the ever-present and omnipotent teacher.

Over the years I have had ample opportunity to see the beneficial effect when Congress takes the initiative and does its own thinking.

You stated you are interested in my views about contracting procedures in Government, the increasing difficulty in getting contractors to take defense orders, and the increasing cost of the items Congress is called upon to finance from the Treasury.

REASON FOR INTEREST IN CONTRACTING

As you know, my training is in engineering. I have never raised contracting issues out of simple academic interest. I have had to get into the details of Government contracting in connection with my work, and I have run into some basic problems which I would like to discuss with you.

I have been made painfully aware of these issues in the course of my technical duties, because they affect my ability to do my job and they require that I spend far more time than I should on contractual rather

than on technical matters. Technical difficulties are far overshadowed by legal and procedural blockages.

In this connection I have testified in the past only on issues I consider important because they represent a fundamental weakness in Government procurement policies and procedures. I could easily have kept silent.

I believe my duty is to combat what I condemn and not to assume in advance the privilege of a pure spectator as if our immediate future was already our distant past. President Kennedy once said: "We must not enjoy the comfort of opinion without the discomfort of thought." To this I would add "and the pain of action."

To invoke a future detachment is really to seek an excuse for cowardice or abstention.

I have spent thousands of hours attempting to protect the Government from claims by contractors and to obtain responsible performance by contractors, but I have been hampered rather than helped by Government procurement regulations.

CONGRESS MUST TAKE THE LEAD IN CORRECTING CONTRACTING DEFICIENCIES

The Department of Defense has done little to correct the fundamental deficiencies in the contracting issues which I have raised in testimony before the Congress over the past several years. In this area they show flashes of interest but appear incapable of sustained enthusiasm. Although I am disillusioned, I am not discouraged.

Many in Government and in industry do not welcome criticism. Yet it is not rational for an institution to resent or to prevent criticism. It is the essence of wisdom for every organization to establish its own locus of discontent if it does not already have one; this is essential for its continued survival. An uncriticized society cannot endure.

I know that Congress has attempted to help the executive branch do its job by providing the legal authority to protect the Government's interests through legislation—through the Defense Production Act, the Renegotiation Act, the Truth-in-Negotiations Act—all of which are designed to help the military get its job done in an economical fashion.

Unfortunately, it has been my experience that those in positions of power do not appear willing to use the authority Congress has provided them. This attitude has been wrong for so long that the Department of Defense, by admitting its error, would demonstrate a superb quality. I am convinced that if anything is to be done about this matter, Congress will have to do it. But before Congress can do anything it will have to understand what is actually going on in Department of Defense procurement and why more effort is needed to improve Government procurement procedures. I will try to explain this.

I can do this, sir, in any manner you desire. You may wish to ask me questions on any of the issues you mentioned, and I will address myself to your specific questions.

Mr. BARRETT. Admiral, we are very pleased with what you are doing now and it is very interesting, I am sure, to the committee. I suggest you go on and we will ask you questions when you are finished.

SUMMARY OF NAVAL NUCLEAR PROGRAM

Admiral RICKOVER. Do you wish to hear briefly what we are doing in the nuclear program to get an idea of the extent of work I am re-

sponsible for? I could talk briefly about the program. However, it is probably more important to get down to the issues that interest your committee.

Mr. BARRETT. We would like to have a summary of your program. To conserve time, please submit it for the record.

I am sure the members are interested in learning some of the basic reasons why we can't get more out of the dollars we spend.

Admiral RICKOVER. I will submit a summary of the naval nuclear program for the record, and I will now take up the issues of direct interest to this committee.

(The information provided is included as appendix 1.)

DIFFICULTY IN OBTAINING DEFENSE EQUIPMENT

Admiral RICKOVER. In recent years, it has become increasingly difficult to obtain defense equipment in reasonable time and at reasonable prices.

Defense equipment has become increasingly complex, requiring significant engineering and scientific capability for its design and manufacture. It is not like buying bread, flour, or clothing. Military procurement amounted to about \$45 billion in fiscal year 1967; this means the award of about \$180 million in contracts each working day. Most of these are multimillion-dollar contracts, involving sophisticated design, engineering, and manufacturing over a period of several years. It is a new and radically different type of procurement than we faced even a few years ago.

As this type of procurement gets larger and more complex, the Government depends more heavily on industry for technical work. The present approach is that if you want to get a technical job done, you ask industry to do it. As a result there has been a loss of in-house technical capability in Government. Too often Government people abrogate their technical responsibilities under the theory that their job is to manage—not to do technical work. This has significantly reduced Government in-house technical capability.

I know this is true in the Navy. Industry now makes most technical decisions on many programs because the Government no longer has the capability to manage its own technical work. As a result, the Government now relies on industry, not only for production, but for considerably more design and technical work as well.

The military must compete for available industrial capacity, under pressure of the Vietnam war and because of the high level of civilian business, it has become increasingly difficult to get industry to accept and perform orders for military equipment in a timely and economical manner. Leadtimes have increased by as much as 18 to 24 months to leadtimes of 42 to 48 months for many of the items I require. Prices are increasing too. Actually, production problems cannot be separated from pricing problems because, from budgetary considerations, the more an item costs and the longer it takes to make it, the fewer we can obtain.

INDUSTRY PREFERENCE FOR COMMERCIAL WORK

Work for the military is usually far more difficult than civilian work. Industry would much prefer to do civilian work because they do not have to expend as much design and engineering effort on commercial work. They are usually not watched as carefully in the manu-

facture of commercial equipment as for military equipment and may make more profit on it.

In the nuclear area, the military also faces competition from the rapidly expanding market for nuclear plants for the civilian electric utility industry. It may interest you to know that more than half the civilian electric utility central station plants presently being ordered in the United States are nuclear instead of conventional plants. In the past 2 years, civilian electrical utility orders for nuclear reactors have far surpassed orders for military reactors. The number of reactors ordered for the Navy was 15 in 1961 and three in 1967. The number of reactors ordered for civilian electric utilities in 1961 was zero and was 30 in 1967.

I have a table showing the number of power reactors ordered for each year 1961 through 1967:

NUMBER OF POWER REACTORS ORDERED

Year	1961	1962	1963	1964	1965	1966	1967
Naval.....	15	14	12	7	6	9	3
Civilian.....	0	2	4	0	7	21	30

And a civilian central station reactor is many times the size of an average naval reactor.

LACK OF COMPETITION IN PROCURING COMPLEX MILITARY EQUIPMENT

There is no real price competition for most military equipment. There is sometimes competition "to get in"; that is, to get the initial award of a particular item. However, there is usually little or no competition in the pricing of individual contracts, and the Government must negotiate with a supplier to establish prices. Further, the Government usually has insufficient funds to maintain more than one or two suppliers for a particular component. Therefore, the Government is dependent upon the one or two sources it has established; it cannot simply go elsewhere if a supplier decides to commit his facilities to other work.

In 1967, over 85 percent of military procurement was awarded under negotiated contracts; advertised contracts amounted to less than 15 percent. These negotiated contracts require that the Government obtain considerable cost information from the supplier, since he is the only one who can provide details concerning his costs to design and manufacture the equipment.

Thus, the Government has become very much dependent upon industry for its defense needs: for the design of the equipment; for production; for data needed in pricing its contracts. Yet the Government has not taken adequate steps to protect itself in this type of procurement, nor to accomplish its work efficiently. The Government is trying to handle 1968 procurement with 1950 rules.

The preamble to the Defense Production Act reads as follows:

An Act to establish a system of priorities and allocations for materials and facilities, authorize the requisitioning thereof, provide financial assistance for expansion of productive capacity and supply, provide for price and wage stabilization, provide for the settlement of labor disputes, strengthen controls over credit, and by these measures facilitate the production of goods and services necessary for the national security, and for other purposes.

However, implementation of the act has been directed mainly toward production alone; it pays little attention to pricing. In my mind you cannot separate pricing and production in today's procurement of complex equipment.

Let me first take up pricing of contracts.

HIGHER PRICES ON MILITARY EQUIPMENT

Because of the intense competition for available industry capacity, the military is experiencing large increases in prices. This increase shows up as:

Higher profits on defense contracts; on the average 25 percent higher in 1964-67 than in 1959-63.

Higher costs on defense work, due in part to escalation in labor and material costs; in part to suppliers' ability to charge "costs" to defense work. Take an example of propulsion turbines and gears for an aircraft carrier. About 6 years ago the price of this equipment was about \$5.5 million. Today the price for essentially the same equipment is about \$10 million.

Mr. BARRETT. First, in the event time runs out on us, would you be kind enough later on to discuss with individual members any questions they may wish to ask?

Admiral RICKOVER. Yes, sir. I will be glad to.

LIMITED COMPETITION IN TURBINE INDUSTRY

Mr. BARRETT. Admiral, one of the first questions I would like to ask is whether General Electric and Westinghouse are the only two large companies that negotiate contracts for designing and building these turbines?

Is there any other company you know of capable to qualify in bidding or negotiating bids comparable to these two firms?

Admiral RICKOVER. I assume, sir, you are referring to large equipment such as central station equipment, large propulsion units?

Mr. BARRETT. I am referring to the turbines and generators, and so forth, of the type you require.

Admiral RICKOVER. No, sir; there are none for large units. Until a few years ago there was a third company, Allis-Chalmers, but it went out of this type of heavy equipment business. General Electric and Westinghouse between them, I believe, took about 95 percent or so of the business at that time. There are some other companies that do minor amounts of work in this field, but essentially the United States is dependent, domestically, on General Electric and Westinghouse for such large equipments.

Mr. MIZE. Would the gentleman yield for a question?

Mr. BARRETT. Yes.

Mr. MIZE. Isn't it true that North American-Rockwell is considering getting into this field?

Admiral RICKOVER. I do not know, sir. But I can assure you that anyone who is considering entering this field will require a number of years to establish the necessary technical competence. One must have highly trained people—engineers and scientists. So I believe that, say for the next decade—one cannot in this age prophesy for more than 10 years—there will be no domestic companies other than General Electric and Westinghouse to serve this need. Two of our large electric

utilities, I believe Tennessee Valley Authority and American Gas & Electric have recently ordered central station turbine-generator units from Brown-Boveri of Switzerland. Even with the 25-percent differential allowed domestic over foreign equipment, foreign companies can undersell General Electric and Westinghouse.

ADVANTAGES ENJOYED BY LARGE FIRMS OVER SMALL FIRMS

Mr. WIDNALL. Isn't it true that some of these companies have stock-piled engineers so that they have taken away the ability of the smaller manufacturers to compete, because they cannot get the engineers, and they have many on their payrolls who are being charged against the entire job and not being fully utilized?

Admiral RICKOVER. I think this may be true in the space industry and in those divisions of large corporations engaged entirely or almost entirely on military, National Aeronautics and Space Administration, and other Government work. I do not believe it is true in those parts of a company that build commercial equipment, because in this case the company itself, not the Government, would have to pay the cost of the idle manpower.

This situation is true in companies that do specialized work for National Aeronautics and Space Administration and the military; they get cost-plus-fixed-fee contracts and, in many cases, their facilities have been given to them or built for them by the Government. I do not believe this is generally true of all industry.

There is no question but that the cards are stacked against small companies. I will touch on this later in discussion of the Renegotiation Act. A large company can lose money in one of its divisions and make money in another division. Yet, in renegotiation, the company is allowed a profit which is based on the average of its total Government business. This confers a considerable financial advantage on the large company over the small one, and certainly tends to reduce competition.

Another factor is that the large companies acquire many patents from the development work they do at Government expense; these patents are not available to small companies except for a fee.

The small company is the underdog in the procurement game. With the rapid increase in mergers, it appears we will soon have a small number of giant corporations. These corporations often build up large staffs so that when they bid on development work they can prove they are ready to go. The Government ends up paying the cost for these staffs. This hoarding of scientists and engineers has created artificial shortages in trained manpower, it has hurt small business, it has delayed essential programs, and has added to Government expenditures.

Further, the antitrust law appears to have become a "motherhood" slogan. It is like the "pious" Christian who doffs his hat respectfully every time he passes a church, but enters only once a year.

LARGE CORPORATIONS THREATEN TO BRING ABOUT A NEW ECONOMIC ORDER

The reality is that a new economic order is emerging, characterized by large industrial organizations that maintain a partnership between themselves and government.

It may be that in this rapidly spiraling scientific and technological age this is the best way to marshal our resources, both for our national security and for optimum economic use of manpower and resources. If this is so, a great responsibility rests on the Congress and on the executive branch to see to it that these giant organizations do not become, in effect, a fourth branch of government—a fourth branch, but without corresponding legal responsibilities.

For this reason the Congress must constantly bear in mind the growing autonomy of the Federal bureaucracy, the increasing lack of control by the Congress, and of the bureaucracy's tendency to make accommodations with industrial corporations. If this is not checked or controlled, we will, in effect have a fourth branch of government, with men exerting power without political responsibility.

Mr. BARRETT. Admiral, I just want to digress here. I started to give you the title of general in my admiration for you.

Admiral RICKOVER. I am indeed honored to be joined to my "brother service." Perhaps I should say "sister service" in honor of my shipmate, the charming and beautiful member of this committee at your right, Congresswoman Leonor Sullivan.

Shortly after the *Nautilus* was commissioned, I had the pleasure of accompanying Congresswoman Sullivan on a cruise of that ship. I believe she was the first member of the gentler sex to ride a submerged atomic submarine. If she handles herself as well on your committee as she did in the *Nautilus* you are fortunate and you should indeed be proud.

Mr. BARRETT. I have been making those statements for a long time. You have proved that I am not wrong.

Admiral, we are hopeful we can give all the members a chance to ask questions. We are going on the 5-minute rule and we will adhere to it in order to give everybody an opportunity.

INDUSTRY OBLIGATIONS IN NATIONAL DEFENSE

I have a few questions I want to ask first. I will steal the other time that I asked you a question and start now on the 5-minute rule.

Admiral, don't these large companies, namely General Electric and Westinghouse, who have the capabilities to do the things that are necessary for national defense, and who are at the same time interested in commercial work because they apparently feel there is a greater profit in designing and manufacturing commercial equipment—doesn't this leave us in a very precarious position in respect to the defense of the United States?

Now, isn't it true, Admiral, you made this statement "We older men should go to war and not the young men"?

Isn't it true that if the young men are going to war the big companies ought to contribute their part in defense of those young men going to war by accepting Government contracts forthwith in order to give us the national defense posture we must have?

Admiral RICKOVER. Do you want me to answer that, sir?

Mr. BARRETT. Yes. I would like you to.

Admiral RICKOVER. Yes; I think the big companies should accept forthwith the defense contracts for which they are qualified, as required by law. But Mr. Chairman, we are dealing with human beings, and human nature hasn't changed much since Adam's time.

I am sure all of us will agree that it is not man's acquisitive nature that makes him great; unfortunately there are not many great men.

Business exists to make profit. That is its primary purpose regardless of the large number of speeches being made by business leaders—where they say that their constituency consists of the Government, the public, the local community, their employees and their stockholders, and that their loyalties encompass all these constituencies.

That all sounds good. Actually they are in business to make money, and I am all for their making an adequate profit. I think that is fine. In fact, I believe the Government should engage in as little business as possible. Industry can do it better, because the Government business soon becomes a bureaucracy with all the faults of both a Government and a business bureaucracy. Between a business bureaucracy and a Government bureaucracy, I believe there is little choice. Any bureaucracy eventually views the public not as a community whose needs and interests it is their function to serve, but as administrative material to be worked on by the administrators as they see fit or profitable.

We must bear in mind that the purpose of Government is to serve the people, not to further bureaucratic or business aims. And there are some things Government should do and is required to do which are not "profitable" from a business standpoint. The aim of our Government is not profit; it is the welfare of our people.

EXECUTIVE BRANCH MUST ENFORCE LAWS

It is not likely that all men in power in industry or in Government see matters in this light; it is much more probable that they view themselves as servants of the people expending themselves without stint in service to the public. The problem is that they have now attained large power without receiving the grace of absolute wisdom. If you do want industry to live within the law, then the executive branch must enforce the law.

There is adequate legislation on the books right now to require industry to do what the Government wants. Industry will not police itself. You do not put a skulk of foxes to guard the chickens in the barnyard. The many examples of overcharging, violations of the Anti-Trust Act, collusion—all show that industry will not police itself. This is true not only of industry. No other groups, including tax-exempt foundations, as you well know, can be expected to police themselves. The reason part of industry can continue to violate rules is because of lax enforcement. The Department of Defense and the Department of Commerce have an industry-oriented philosophy. Many of their officials come from industry. They think like industry. And that is the problem.

When someone needs the law enforced, it is almost impossible to get the Government agency responsible to take the necessary action. This is what ails the Department of Commerce, in particular.

In this connection, in my dealings with that Department, as I will explain later, they have been about as useful as a lighthouse without a light.

FORMER INDUSTRY PEOPLE RETAIN INDUSTRY VIEWPOINT

It has become customary for a man appointed to a Government office where he will deal with industry to sell, or to be required to sell

or place in trust, the securities he holds. The implication is that he might be tempted to favor the company he left or his particular branch of business or industry. In my opinion this is a futile and needless requirement and deprives the Government of many able men. I know of no man so appointed who would deliberately favor his previous company.

The real problem is that during a lifetime of working in a given field he will have acquired a viewpoint that is in consonance with the philosophy and practices of his previous organization.

How could he have become an official of the company otherwise? If he hadn't believed in its philosophy, how could he have been successful in his work? How then can you expect that when he enters Government service he will ipso facto change his faith?

What I have said is equally true of military men, doctors, lawyers, men of the cloth.

I am reminded of Henry IV of Navarre. He was next in line to be King of France, but was debarred because he was a Protestant. "Paris is worth a mass" he said, and so became Catholic and King. But did he become a true Catholic, or one in name and in form? You will remember that later he was responsible for the Edict of Nantes which gave additional rights to French Protestants.

What I have just said applies generally to senior officials from business and industry who enter Government, but who will not return to their company.

But this is not the case with those who are younger and who plan to stay in Government for 1 or 2 years or so and then return to the parent company.

It is too much to expect that they will break all connection with their company; that they will, for the short time they are in Government, adopt a Government viewpoint.

Career military officers and permanent civil service employees observe these situations; it affects their morale and their desire to stay in Government service. People from industry come into policymaking positions for short periods of time, often to find out how the Government does its business.

These career men do not have full confidence in some of these industry appointees because they feel they must spend time to educate them so they can return to industry and be more effective in dealing with the Government. A man experienced in private industry can contribute a great deal to the Government. But I would require that, as a minimum, he stay 5 years. How do you expect the career civil servant or career military man to do his job properly when he faces this situation?

Consider that a candidate for the Naval Academy may be denied admission for a minor reason, because he must wear glasses. This minor physical disability is deemed sufficient to prevent his becoming a naval officer. On the other hand, it is not considered a disability for an industry official to be assigned, in Government, responsibilities for matters affecting his own industry.

Have I answered your question, sir?

Mr. BARRETT. I think you answered it very clearly and very pointedly, because if we are to help these people in what they are now calling the ghettos, using the sophisticated word, instead of these

seeds of slime, we have to, I think, in some way take part of the exorbitant profits from these big industries and corporations and distribute it among the people who need it most.

INDUSTRY SHOULD MAKE A PROPER PROFIT

Admiral RICKOVER. I am not advocating that industry should not make a proper profit, sir.

Mr. BARRETT. Well, Admiral, in testimony before the House Appropriations Committee last year, you also pointed out that the negotiated profits on Department of Defense contracts have increased substantially. You pointed out that the average profit on Army contracts increased from 8.5 percent in 1959-63 to 10.3 percent in 1966; in this same period the Navy went up from 9 to 12 percent; the Air Force from 9.9 to 10 percent; the Department of Defense average increased from 9 to about 10.6 percent.

I always thought that Government was adhering to a reasonable profit, not beyond 6 percent. You say some of these are up as high as 25 percent?

Admiral RICKOVER. Yes, sir; on the average they are 25-percent higher than they were a few years ago.

Mr. BARRETT. The point I make, Admiral, is this: Here are those who have everything, getting the most of everything. We are arguing "truth in lending" now to get a fair minimum rate, a fair minimum charge. Yet they are holding fast to getting the most out of it, and those who pay are the people I just mentioned a minute ago, the people who have low and moderate incomes. Those who have are getting everything. I think we ought to take these things into consideration and say the Government ought to give a reasonable profit but not an exorbitant profit.

Admiral RICKOVER. I agree with you, sir. The thrust of my testimony is to explain to you what is going on. I have specific recommendations to make which, if adopted, would in my opinion help to rectify this situation.

Mr. BROWN. I would like to make an inquiry. You have been reading from some material, apparently, and we have not heard the full statement from the admiral. I don't think I am in any position to ask any intelligent questions unless we get the substance of his testimony before us. I obviously don't have the figures and facts that you have. Should we have those or not?

Mr. BARRETT. I am quite sure you will be supplied with everything. The information I quoted is from Admiral Rickover's testimony before the House Appropriations Committee for 1968.

Mr. BROWN. The matters he will testify to?

Mr. BARRETT. Yes, sir.

GOVERNMENT SPECIFICATION REQUIREMENTS

Mr. WIDNALL. Mr. Chairman, I just want to ask one preliminary question and then I would like to give my 5 minutes back to the admiral to testify specifically on what has occurred with the Commerce Department to occasion his doubts about the present procedure and also to back up the statements he is making about their failure to do the job properly. I think we are very much interested in that one question. I was going to ask: Doesn't the military overspecify on

many things? Take such items as the crating, the boxing, the finishing, the things where the use of a weapon, or the use of a particular facility isn't affected by whether it has spit-and-polish finish at the end, or a crate that is built out of the finest lumber you can get?

I have had people at Bendix Aviation tell me it is absolutely wicked what the Government inspectors do when they come in there in connection with the boxing of finished merchandise. They throw away, they repack, absolutely for no real purpose.

Admiral RICKOVER. I can only answer in a general way, sir.

You must realize that when you buy a floorlamp for your home you are intending it for a specific use and no fancy packing is needed. The military in its specifications must frequently figure that the item will be used under adverse conditions, as in combat. It may have to be shipped thousands of miles, perhaps to a humid tropical climate where it can rust quickly. It may have to be dropped by parachute. So what to an ordinary person would seem to be extravagant packing may not actually be so for the intended use.

It would be difficult to segregate some items and say this item shall be used in Vietnam and this one in the United States. It is not practicable to do that. I can only talk from personal experience, as for example, specifications where radiation is involved.

I am responsible for operating a large number of nuclear reactors. We have never had any serious radiation incident in some 15 years of operation of naval reactors. Much of this is due to extreme care in specifications. Anyone can say these specifications are unnecessary when he isn't fully aware of the issues and consequences, and does not bear the responsibility. Since my ability to get ships and equipment is limited by the amount of money I get, I am therefore definitely interested in not adding specifications that are unnecessary, and I can assure you I am personally familiar with the technical details of what goes into my specifications and what the reason is.

You can get individual Members of Congress to point out this or that fault. You are bound to find errors in procurement in a \$70 billion defense appropriation. But why should you expect military people to do better in handling their jobs than civilians do in handling theirs? Do the civilians do a better job in running the civil affairs of the country than the military in running military matters? I doubt it.

Mr. WIDNALL. There is a plant of Bendix Aviation right next to my district. I was saying that the inspectors in connection with the delivery of material have thrown out and caused the company to recrate and rebox many, many things that were just as sturdy as they could be but didn't look good; they weren't beautifully polished or they weren't this, that, or the other thing, or there was a scratch on it.

Admiral RICKOVER. You are probably correct, sir. But you should remember that one of the major difficulties we have in the military today is the lack of adequate in-house capability. For the past several years the Defense Department has been in the process of turning nearly everything over to industry—design and everything else. I maintain this will not work. One of the reasons we may have undue specification requirements is because we do not have an adequate number of qualified people in the military branches to review the specifications.

You must not blame the military for everything. Nearly all specifications used by the military are prepared by the supplier. The number

of Government people available in-house has now been so reduced that little or no checking is possible. I believe it is wrong to operate this way. For this reason I have maintained qualified scientists and engineers right in my headquarters organization. They check plans, specifications, procurement, manufacturing, testing, inspection, and operation. In this respect my organization is a small island in a sea of entropy; I have in-house capability.

The Government, when buying an item, particularly a new one, goes to industry and says "Please prepare the specification." Then if qualified Government people are available they reword the specification and modify it, as necessary, on the basis of the experience the Government has had with that type of item. But today it is hardly possible to do this adequately, particularly with the new policy of the Defense Department.

Mr. WIDNALL. I wasn't addressing my remarks to design.

Admiral RICKOVER. The specification includes design, manufacturing, packaging—everything that is pertinent.

I appreciate what you are saying, but take that specific instance you mention, Bendix—the company near where you live. You might try to find out who is actually responsible for what you consider to be the excessive packaging and whether that degree of packaging is really unnecessary.

Mr. WIDNALL. Can we get back to what your recommendations are with respect to the Department of Commerce?

Admiral RICKOVER. I would have to go on with my testimony, sir.

Mr. WIDNALL. Would you do that?

Admiral RICKOVER. If I may, Mr. Chairman.

Mr. BARRETT. Yes, sir.

HIGH PROFITS ON DEFENSE CONTRACTS

Admiral RICKOVER. I gave you an example of propulsion turbines going up almost 100 percent in price, from \$5.5 to about \$10 million. One major item in this increase was a \$1.5 million increase in profit. The profit totaled 25 percent on cost; that is, \$2 million profit on a \$10 million contract. This supplier increased his rate of profit from 10 percent to 25 percent for this equipment, a 250-percent increase in profit.

Profits on negotiated defense contracts have increased substantially in recent years. In 1963, I told the House Appropriations Committee I was concerned that equipment prices were continually rising and that I was not convinced the Government was receiving corresponding additional value for the higher prices. I stated that because of their varied and frequently changing accounting systems, contractors were able to charge more than they should for complex equipment; that the Government needed additional protection to prevent industry from making excessive profits on complicated equipment and from hiding these profits as "costs."

DEFENSE DEPARTMENT CLAIMS LOW PROFITS ON DEFENSE CONTRACTS

In response to my testimony, the Department of Defense issued a press release stating that, in complaining about the profits of large defense contractors, I was "sailing on the wrong tack." They stated that, based on data from the Renegotiation Board, average profits on

defense contracts had dropped from "6 percent in 1956 to 3 percent in 1962." Please note these figures carefully, Mr. Chairman; they are official quotes.

The Pentagon press release said that the way to save money on contracts was not to attack profits but to drive costs down. They pointed out that the Secretary of Defense's cost reduction program would yield nearly \$4 billion a year in savings by 1967 and would continue thereafter. From the fanfare used by the Department of Defense to acclaim its cost-reduction program over the past several years, it would appear that their "savings" have been limited only by their verbal facility.

In 1964 and 1965, I again testified before the House Appropriations Committee and pointed out that profit on defense contracts for complex equipment were still increasing and that unless the Government instituted uniform standards for accounting, profits would continue to be hidden in contractors "costs."

I recommended that defense contractors be required to keep their books in a way which would provide meaningful information on their costs, and that they be required to base their proposals for contracts on a Government-approved accounting system.

I stated that the Government audit groups were understaffed and poorly equipped to cope with industry's variety of complex accounting systems as well as their highly trained and well-paid accounting and legal staffs. The only way the Government could protect itself in this area, under the circumstances, was to require by law or regulation that specific accounting standards be developed and contractors be required to meet these standards when they perform negotiated contract work for the Government.

In 1966, I pointed out that profits had increased substantially as a result of the weighted guidelines method of profit analysis instituted by the Department of Defense and that this was resulting, in some cases, of profits 30 percent higher than for preceding years. Like rain, this increase falls equally on the good and the bad.

The Department of Defense response has been to ignore what I have said; to continue to maintain that the way to reduce costs is through their own cost-reduction program. Sometimes we are motivated not to solve problems because solving them would endanger familiar ways of doing things.

They appear to believe that I have no business criticizing contracting or other practices of the Defense Department—that if any criticism is warranted it will come from their own officials whose job it is to take care of such matters. In other words: "Mother knows best." These people have ceased to be capable of self-criticism. In this area, their great power, as contrasted with their small actions, is as if Prometheus had become manager of a match factory. It is for this reason that Congress itself must undertake the task.

GENERAL ACCOUNTING OFFICE CONFIRMS 25 PERCENT INCREASE IN PROFIT

I testified on this subject again in 1967. The House Appropriations Committee then asked the General Accounting Office to look into the matter of profits on negotiated defense contracts. The GAO reported that profits being paid by the Department of Defense on negotiated contracts had in 1966 on the average increased by 25 percent—which is what I had said—over profits paid during 1959 to 1963.

Here is what the GAO figures showed:

NEGOTIATED PROFIT RATES ON DOD CONTRACTS

[In percent]

Type of contract	Profit on cost		Increase
	1959-63	1966	
Firm fixed price.....	9.0	10.6	18
Fixed price incentive.....	8.9	9.8	10
Cost plus incentive fee.....	6.0	8.2	37
Cost plus fixed fee.....	6.2	7.6	23
Average for all types.....	7.7	9.7	26

Mr. BLACKBURN. I would like to ask a question at this point, because these figures are going to be confusing to me if I don't ask about them, and they may be to the rest of the committee.

When you say, "10-percent profit," are you referring to the gross sale price of an item—10 percent of the gross?

Admiral RICKOVER. I am referring to a percentage of costs, sir.

Mr. BLACKBURN. The word "cost" as defined by the Defense Department?

Admiral RICKOVER. By the industry itself. If it cost a company \$100 to make an item, and their price was \$110, they make \$10 profit.

Mr. BLACKBURN. Say it costs a company \$100 to deliver the item.

Admiral RICKOVER. I am referring to the profit they make on the \$100 cost. Ten percent profit would be \$10 in this case.

Mr. BLACKBURN. Over and above the \$100.

Admiral RICKOVER. Yes, sir. I am telling this committee that there has been, in a short period of time, an increase in profits by the percentages I stated. For example, I mentioned the 37-percent increase in fee for cost-plus-incentive-fee contracts. On cost-plus-fixed-fee contracts there was an increase of 23 percent. All in all, it averaged out to a 26-percent increase in profit.

Mr. WOLFF. Just one moment. I think that what is being asked here is whether we are talking about markup or margin. Is it based upon cost, or based upon the selling price?

Admiral RICKOVER. On cost, sir, the actual cost as reported by the manufacturer.

I am pointing out that despite what the Department of Defense says about 3-percent profit—defense contractors get much more than that—as verified by the General Accounting Office.

It may be possible that the Department of Defense cost reduction program is now actually saving \$4 billion a year. If this is really so, it surely can't be attributed to lower profits. There is no question, based on the GAO data, that profits on defense contracts have increased by about 25 percent. When you apply this to the \$35 billion of negotiated procurement in fiscal year 1967, you can get some idea of how much more is being given to industry.

DOD PROFIT STUDY

The Department of Defense and industry would like us to believe that while negotiated profits may have increased, these are only "going in" profits and that actual profits realized on defense contracts, "coming out profits," are much less. The Department of Defense recently released a profit study made for them by the Logistics Manage-

ment Institute which states that profits on defense contracts have declined since 1958 and are now much lower than industry profits on commercial work. This Department of Defense profit study indicates that defense contractors are earning only 2.4 percent profit on Government work.

There are several things wrong with this claim to low profits. For example, I have here a certified cost breakdown for a \$2.2 million procurement. The breakdown is a typical one from a supplier who does several million dollars' worth of defense business each year.

This breakdown shows a profit of 2.5 percent. If the supplier manufactured the item at exactly his estimate, he would report a 2.5-percent profit to the Renegotiation Board, to the Department of Defense, or to any one else who asked.

But in actuality, according to the Government auditor—and the supplier generally agrees—this procurement reflects profit of 12 to 13 percent. The supplier includes in his estimate costs which are not allocable or applicable to Government business. His breakdown thus, in fact, includes a subsidy for his commercial work. Yet he has fully certified it as being accurate, complete, and current in accordance with the Truth-in-Negotiations Act.

Further, the data included in the Department of Defense profit study is based on figures volunteered by the 65 defense contractors who agreed to furnish profit information out of 111 who were asked to do so. According to the study, many of the companies were unable to participate "because of lack of data in the form required or inability to meet the time requirements."

It is difficult for me to believe that 46 of 111 defense contractors do not know what profits they are making on defense contracts. It may be that firms that could actually "show" a low-profit figure on defense contracts would be eager to participate in such a study because their figures would then support a case for higher profits on defense work, while firms with high profits would be reluctant to furnish such information. I do not believe any useful purpose is served by a study such as this which is based on information volunteered by contractors.

Statistics can be used to confuse and oversimplify. When the reader does not know what they mean, the results can be semantic nonsense. Conclusion from this sort of sampling, casually read, makes the figures appear to have scientific precision.

DIFFERENCES BETWEEN REPORTED AND ACTUAL PROFIT

It is my experience that the data reported by contractors are generally quite different than the actual data found on Government audit. Let me give you a comparison which shows the difference between profits reported by five contractors and the actual profits determined by Government audit:

(In percent)		
Contractor	Profit reported	Actual profit by government audit
A.....	4.5	10.0
B.....	12.5	19.5
C.....	11.1	16.9
D.....	12.0	15.0
E.....	21.6	23.7

¹ Loss.

The Department of Defense's own data from its profit review system also indicates that contractors generally do realize the profit included in negotiated contracts.

Mr. BARRETT. I think the committee will certainly want to ask you a number of questions on this.

Admiral RICKOVER. I believe that developing these facts is most important at the present time.

Now, here is a comparison of the average negotiated profit and average earned profits on DOD contracts totaling \$11 billion awarded between July 1, 1958, and December 31, 1963.

(In percent on cost)

Type of contract	Average negotiated profit	Average earned profit
Firm fixed price.....	(1)	(1)
Fixed price redeterminable.....	9.3	8.6
Fixed price incentive.....	9.3	9.2
Cost plus incentive fee.....	6.4	7.2
Cost plus fixed fee.....	6.4	6.1

¹ Data not available.

DEFENSE WORK MORE PROFITABLE THAN COMMERCIAL

The March 11, 1968, issue of the Federal Contracts Report gives results of a study by Dr. Weidenbaum of the University of Washington at St. Louis, comparing the profitability of Defense and non-Defense work. He concludes that "the gap between Defense and non-Defense profit has indeed widened over the past decade—in favor of Defense business."

His study compared six firms whose Department of Defense and National Aeronautics and Space Administration contracts were estimated to make up over three-fourths of their total sales, with six non-Defense firms having a similar sales volume.

Here are the results:

COMPARISON OF DEFENSE AND NONDEFENSE ORIENTED CORPORATIONS

	Average of sample of defense firms		Average of sample of industrial firms	
	1952-55	1962-65	1952-55	1962-65
Profit margin on sales (percent).....	3.0	2.6	4.5	4.6
Capital turnover per year.....	×6.1	×6.8	×2.9	×2.3
Return on net worth (percent).....	18.6	17.5	13.0	10.6

PROFITS OF FIVE MAJOR DEFENSE CONTRACTORS

I found it difficult to swallow the line that defense contractors' profits have declined in the past several years and that they are too low. I did some further checking and found that the profit information defense contractors give Wall Street differs substantially from the profit information they give DOD. Let me give you some statistics taken from "Moody's Industrials," volume 39 (through Apr. 5, 1968).

NET INCOME, 5 MAJOR DOD CONTRACTORS

	Average		Difference	Percent Increase
	1963-65	1966-67		
General Dynamics.....	\$47.2	\$57.7	\$10.5	+22.2
Lockheed Aircraft.....	46.6	56.7	10.1	+21.6
General Electric.....	287.7	350.1	62.4	+21.7
United Aircraft.....	33.2	51.9	18.7	+56.3
Boeing Co.....	48.4	80.0	31.6	+65.3

EARNINGS PER COMMON SHARE				
General Dynamics.....	\$4.41	\$5.53	\$1.12	+25.3
Lockheed Aircraft.....	4.28	5.07	.79	+18.5
General Electric.....	3.18	3.88	.70	+22.0
United Aircraft.....	3.08	4.37	1.29	+41.9
Boeing Co.....	2.99	4.00	1.01	+33.8

As I said, the primary object of industry is to make profits, and with this I agree. I am not against industry making a reasonable profit on Government business, nor am I interested in having the Government dictate how industry should run its business. But recognizing that industry's main purpose is to make profit we should make certain it does not influence the Government's ability to obtain a reasonable price for what it buys.

But that is only half the story.

PROFITS HIDDEN AS COST

Profit is only a part of the real income to a company. In many cases the company benefits through overhead as well as from profit—sometimes better, since profits are taxed and overhead is not. Overhead charges usually constitute a great part of the cost on Government contracts. It is here that companies use much ingenuity in making expenditures for plant repairs and rearrangements, tools, manufacturing control techniques, computer programs and other items—items which can be charged to overhead but which actually serve to improve the company's commercial capability.

A company's profits are taxed about 50 cents on the dollar. But an overhead dollar is not taxed, and is therefore worth twice as much as a profit dollar when it is used to improve a company's business. By charging these improvements to overhead the company reduces the amount of income tax it must pay. The American public is the loser.

NEED FOR UNIFORM STANDARDS OF ACCOUNTING

It should be clearly understood that under existing procurement rules it is not possible to tell just how much it costs to manufacture equipment or just how much profit a company actually makes—without spending months reconstructing the supplier's books. Large additional profits can easily be hidden just by the way overhead is charged, how component parts are priced, or how intracompany profits are handled. The company may report as cost what actually is profit.

In one case Navy and General Accounting Office auditors conducted an extensive number of audits to determine one supplier's actual cost in making equipment for the Government. These audits and evalua-

tions lasted nearly a year. Altogether there were seven reports containing 11 differing estimates or evaluations of the supplier's costs, in addition to the estimates made by the supplier himself.

These various reports showed estimates of the supplier's costs differing by as much as 50 percent. Thus, profit statistics are meaningless unless measured in accordance with a uniform standard. However, there are no uniform standards of accounting for costs under defense contracts. There are some criteria for cost-type contracts in the Armed Services Procurement Regulation and in the Federal Procurement Regulation. However, these regulations provide that these standards are merely a guide for negotiated fixed-price-type contracts, which constitute the major portion of defense contracts. Even the criteria for cost-type contracts permit widely varying accounting systems and treatment of costs by contractors.

Under fixed price contracts, a contractor has virtually unlimited flexibility in deciding how he will keep his books and how he will assign costs among a number of individual contracts. Generally he is required only to maintain an accounting system conforming to the vague standard of generally accepted accounting principles for tax purposes or for reporting to stockholders. Not even the accountants agree on what constitutes generally accepted accounting procedures.

May I read an editorial? It is from the *Forbes* magazine of October 15, 1966, on this very subject.

Mr. BARRETT. You may, without objection.

(The editorial referred to follows:)

UNACCOUNTABLE C.P.A.'s

[From *Forbes* Magazine, Oct. 15, 1966]

Unaccountable C.P.A.'s—It's past time certified public accountants were called to account for practices that are so loose that they can be used to conceal rather than reveal a company's true financial picture. The owners of public companies and the analysts who recommend purchase or sale of their securities used to think they could rely on the honesty of financial statements certified by reputable outside auditing firms. But in some very spectacular situations, it has turned out that such certification was not of the value or meaning or importance that the public thought. All these certifications usually bear the phrase: "According to generally accepted accounting principles," a phrase which is now coming to be generally accepted as damned meaningless. "When the Westec situation hit the fan, it developed that the Ernst & Ernst certification was so "liberal" as to warrant a less flattering description. Then, not long ago, there was the *Yale Express* case. In *Forbes'* last issue, Leonard Spacek, chairman of Chicago's C.P.A. firm of Arthur Andersen & Co., urged the establishment of an official Government "court," appointed by the President, with jurisdiction over not only C.P.A.'s but also Federal agencies like the Securities and Exchange Commission, Federal Power Commission, and Interstate Commerce Commission, to rule on accounting principles.

With firm rulings from a Government group, Spacek reasons, C.P.A.'s will not be subject, as they presently are, to client pressure. Does he think the uproar over Westec's accounting practices will help bring about sweeping reform? Spacek shakes his head. "No, not unless the public demands it, as they did of the auto companies over the safety issue."

We do.

Before Government action is taken, the stock exchanges, industry groups and C.P.A.'s themselves ought to get together to establish accounting standards that will be standard, and a method of enforcement that will be enforceable.

Admiral RICKOVER. More recently, on April 20, 1967, the *Wall Street Journal* carried an announcement that the American Institute of Certified Public Accountants has taken steps to improve its internal organization. The *Journal* noted that "this move comes at a time when

the accounting profession is being criticized on several fronts for not insisting on uniform accounting standards and in some extreme cases, failing to protect the public from misleading and distorted corporate financial reports."

Lack of uniform accounting standards delays important technical work and results in much wasted effort on the part of auditors and of contracting and technical personnel who must spend months reconstructing a supplier's books in order to negotiate reasonable prices. The Government encounters endless varieties of accounting systems for allocating overhead to Government work, and has neither the time nor the personnel fully to investigate these costs. Costs questioned by audit often become the subject of interminable argument.

ILLUSTRATION OF NEED FOR UNIFORM ACCOUNTING STANDARDS

A problem I ran into several years ago and which took 7 years to settle illustrates this issue well. We were dealing with a large ship-building company that was very successful in competing for merchant ships.

This shipbuilder was often the low bidder for merchant ships. Yet when bidding on Naval ships, he was usually higher than other commercial shipyards for the very same type Naval ship—as much as 10- to 20-percent higher. Despite his higher prices, he was able to obtain contracts to build Naval ships. At that time, factors such as geographical dispersal, distressed labor areas, and labor differential between shipyards were sometimes used to rationalize where a Navy ship would be built, rather than competitive bids.

This anomalous situation frequently came to my mind and kept bothering me. So one day I sent two of my people to the shipyard to look into the matter. After a cursory review they reported that the Navy was being charged more for its design and other work than was being charged for the same type work on commercial contracts.

The Navy was being charged \$8 per hour while for commercial work the charge was only \$6 per hour for the same type work. They reported that the shipyard accounting system, as approved by the Navy, was allowing the shipbuilder to make charges to overhead and to Navy work in such a manner as to result in lower costs for its commercial work.

Costs such as supervisors' salaries, overtime, and premium time were being charged as direct costs on Government contracts while similar costs on commercial contracts were being charged to overhead and allocated to all work, Government and commercial. They found that this system of accounting had been in existence for many years and that the Government auditors had accepted these costing methods because the system conformed to "generally accepted accounting principles".

As a result, I wrote to the Comptroller of the Navy asking him to look into this matter. His reply informed me, in essence, that I didn't know what I was talking about, that I should mind my own business and I could rest assured that his auditors were seeing to it that the Government was being treated fairly. That was tantamount to telling you, when your mother is in danger of falling off a cliff, not to warn her until she has fallen over it.

His bland assurance did not persuade me, and I persisted. The Comptroller finally agreed to have his auditors look into my findings.

These auditors concluded that everything was fine; nothing was wrong; everything conformed to "generally accepted accounting principles."

Realizing it was hopeless to try penetrating such stupidity, I managed to get the General Accounting Office to look into the matter. In 1962, that office verified my charges and issued two reports. These stated that this shipyard's accounting practices had resulted in unjustified payments of over \$5 million by the Government. Only then did the Navy begin to question these shipbuilding costs. By September, 1962, the Navy took action to recover about \$6.5 million in costs previously paid the shipyard under Navy contracts, primarily in areas I had questioned.

Four years later the Government finally recovered about \$3 million of the \$6.5 million originally disallowed, and the case is now closed. It is unlikely any money would have been recovered if I had not been able to get the General Accounting Office to take an interest in the case. Undoubtedly, the Navy could have saved far more than \$3 million had it faced the problem objectively, rather than defensively, when I first pointed it out.

I doubt I am the only one who runs into these problems or that these issues are peculiar to Naval nuclear propulsion. They are probably endemic in Government. But no one else appears to be willing to raise these issues. Because industry does not want uniform accounting standards and no one in Government wants the job of tackling powerful organizations with influence and with lobbies, accounting standards are not set up. Industry, naturally, does not favor uniform accounting standards. Without them, they have much greater ability to exploit "generally accepted accounting principles" and thus increase profits on Government contracts.

In my opinion, the lack of uniform accounting standards is the most serious deficiency in Government procurement today. There is no reason why the Government should have to spend years arguing whether certain costs at each contractor location conform to "generally accepted accounting principles"; there is more important work to be done.

Industry will not establish such standards because it is not to their advantage to do so. The accounting profession has had ample time and opportunity to establish effective standards; it is clear that they pay only lip service to the concept. The executive branch cannot even get its own agencies to adopt accounting systems to meet minimum standards established by the General Accounting Office. The Bureau of the Budget has not been able to get Government agencies to adopt consistent standards for cost-reimbursement type contracts.

It is all well to argue that everything will work out in the long run, but we all live in the short run, and in the long run we are all dead.

CONGRESS SHOULD REQUIRE UNIFORM STANDARD OF ACCOUNTING IN THE DEFENSE PRODUCTION ACT

Thus, if uniform accounting standards are ever to be established the initiative will have to come from Congress. A river cannot rise above its source.

I recommend that your committee require, by law, the establishment and use of such standards. Without uniform standards of accounting for defense contracts, neither Congress, the executive agencies, pro-

gram managers, nor the taxpayer will ever know what complex military equipment costs and what profit the Government is actually paying.

Congress has enacted other legislation in an effort to protect the public against overcharging and profiteering on Government contracts, such as the Renegotiation Act and the Truth in Negotiations Act. All are based on the presumption that the Government can readily determine supplier costs. The Government can't. The introduction of uniform standards for accounting would help make these laws effective.

I reiterate we must have standard accounting practices so that the Government can learn what it actually costs to make an article and what the actual profit is. The way it is today, industry can change their accounting practices at will and in any manner they wish. And, under the present rules the Government can't object and doesn't have the people to check. Here is the surest way you can save money in Government procurement—by really delving into this miasma, providing the necessary tools, and requiring enforcement. There is a clear contrast between the expertise and rationality used by industry when they do their own purchasing, with the obfuscation that often surrounds their actions relative to those who buy from them.

I would now like to talk about the assistance I have gotten from the Department of Commerce under the Defense Production Act.

Mrs. SULLIVAN. Before the admiral goes into that, may I just ask one question?

I wanted to ask how you would cure this problem that you have been discussing, but you answered that question.

Admiral RICKOVER. I have a remedy, Mrs. Sullivan.

Mrs. SULLIVAN. But can you tell me, how can we force this, do we need legislation to do it?

Admiral RICKOVER. Mrs. Sullivan, you will not get a remedy without legislation, because if you write a nonletter to the Department of Commerce or to the Department of Defense you will get a nonreply. My definition of a nonletter is one you write, well knowing you are not going to get a responsive answer. The human mind has a strange capacity for adjustment and self-deception when confronted with an unpleasant truth, and bureaucracy has devised many and marvelous ways of casting psuedolight on issues in their nonreplies to Congress.

Language may be perverted and its real meaning eventually destroyed when it is used for the purpose of protecting an institution or an organization.

I believe you would be foolish to tackle it via the letterwriting route. You will get studies and more studies. You will probably be Senator or Governor of your State, or President of the United States before you get more than a nonanswer.

Mrs. SULLIVAN. The reason I ask this question is that we had some very questionable things brought to my attention and I had the committee charged with this responsibility check into it. First, they sent it immediately to the Department of Defense and I got one of these type answers that you describe. I was told, in the problem I brought to their attention, that the matter was perfectly all right.

Admiral RICKOVER. A nonanswer.

Mrs. SULLIVAN. Yes, sir. Then I demanded that the GAO go into it, and it took them almost 8 months to investigate and come back with an

answer. From this investigation they came back with an answer of overbuying and overpricing but nothing has been done about this type of careless procurement.

Admiral RICKOVER. And nothing will be done about it.

Mrs. SULLIVAN. Under section 707 of the Defense Production Act, I shall quote a part of the Act: It says—

No person shall discriminate against orders or contracts to which priority is assigned or for which material or facilities are allocated under Title I of this Act or under any rule, regulation, or order issued thereunder, by charging higher prices or by imposing different terms and conditions for such orders or contracts than for other generally comparable orders or contracts, or in any other manner.

Admiral RICKOVER. The answer to that is: You have set up a fine religion, but the people will not live by it. They give it mouth-honor. They create complacent fictions and uphold empty slogans.

Mrs. SULLIVAN. And they won't live by it?

Admiral RICKOVER. They won't until the religion is enforced by rules. Real protection in this world comes not from people's good intentions, but from laws.

Mr. BARRETT. In connection with your previous statement, Admiral, where do you recommend this unified accounting system or standard should be set up?

Admiral RICKOVER. By Congress, sir. Every other place you turn, they will prove to you it can't be done. And in their nonanswers they will document their reasons with irrefutable logic.

It should be required by the Defense Production Act. How else can you know whether a contractor is discriminating against defense orders by charging higher prices than he should?

As a first step, I would recommend that you include a provision in the Defense Production Act requiring defense contractors to report all costs and profit on each defense contract over \$100,000, using the criteria for determining costs as set forth in part 2, section XV of the Federal Procurement Regulation. The report should exclude costs not appropriate to Government contracts, such as bad debts, advertising, interest, etc. This report should be submitted to the cognizant contracting agency on all negotiated contracts subject to the act and to the Renegotiation Board. The act should require each agency annually to summarize the reports it receives and submit the summary to the Congress and to the public.

Further, I recommend the act require industry to have an accounting system approved by the Government as adequate for determining costs in accordance with the Federal Procurement Regulation, section XV, part 2 prior to the award of any defense contract over \$100,000, and that industry be required to base its proposals on such a Government-approved accounting system. Such a requirement would go far to eliminate the guessing games now going on and save much time and effort in the procurement process.

Mrs. SULLIVAN. All the while you have been giving us the benefit of your thinking, I have been wondering—how can we cure it, and must we do it by force, by laws, because, as you say, there is no competition, with just a few companies supplying most of these items.

Admiral RICKOVER. As a longtime Member of Congress, I am sure you have learned that some Government agencies do much of their business without real competition.

Mrs. SULLIVAN. I think we have learned, Admiral, but we can't get the answers that we are trying to get.

Admiral RICKOVER. And you will not get the answers from the agencies themselves.

Mr. BARRETT. I just want to say in connection with what you have just said, that I don't think there is anyone who has come to the Congress of the United States who has absorbed more and learned more about the fiscal situation and the legislative activities in the House of Representatives than the gentlewoman from Missouri.

Admiral RICKOVER. Sir, I am sure you are right about the gentlewoman, and I agree with you.

"TRUTH IN NEGOTIATIONS ACT" DOES NOT PREVENT OVER-PRICING

People say to me, "Why do you worry about supplier costs and profit—the Government is protected by the Truth in Negotiations Act and by the Renegotiation Act." They also ask me why I don't get into the mind of these people, so I can understand them. My reply is that if I ever got into their mind, I am afraid I could never escape.

The 'Truth in Negotiations Act does not and cannot adequately protect the Government against overcharges. Without uniform standards for accounting, suppliers can inflate the costs they certify to be in accordance with the Truth in Negotiations Act, such that it is almost impossible to tell what costs are included in the price, and what profit a contractor can expect to realize on the order. For this reason, cost breakdowns under the Truth in Negotiations Act do not preclude overpricing.

Contractors are not required to submit cost data if a contracting officer determines that there is adequate competition. This is a difficult determination. If the contracting officer determines that competition is adequate, he is able to place the order quickly, without analyzing cost estimates or negotiating. If he judges that competition is inadequate, he must obtain cost breakdowns, have the cost estimates audited, and then negotiate with the supplier, documenting the results.

Since this normally takes 60 to 90 days or longer, Government agencies obviously tend to conclude that competition is adequate, whenever possible, in order to avoid the extra work and delay involved in noncompetitive procurements.

Right now a contract covering many million dollars is pending. Two companies bid. The low price was about 25 percent more than the Government estimate based on past experience for similar work. Nevertheless, the contracting officer initially wanted to declare the bids to be competitive. Had he done so, the Government could never thereafter challenge the cost figures in the bids. I took issue with this. It would be the wrong thing to do from the Government's standpoint. The contracting officer reluctantly agreed to negotiate the procurement, rather than blindly giving the contractor his requested price. Of course, this is the more difficult approach, since it requires a lot of work by the Government to analyze and negotiate the costs.

We are now going to investigate the figures, the figures which constitute the basis for the bid. This case is typical of the dilemma you get into. You are never going to get around this problem by merely telling a Government agency to do it.

A decision that competition is adequate protects the contractor from the provisions of the Truth-in-Negotiations Act. He does not then have to reveal the basis for his cost estimates; he does not have to provide a cost breakdown to support his price; he does not have to certify that his price was based on current, complete, or accurate cost information. Once a procurement is dubbed competitive, the Government then assumes full responsibility for high profits and overcharges. It is definitely to a contractor's advantage for the contracting officer to judge the procurement competitive.

The decision that competition is adequate protects the Government contracting officer as well as the contractor. The determination of competition is one of judgment by the contracting officer and, once the contract is awarded, that judgment is final. The Government does not then review the suppliers' books or records so it never knows if the judgment was wrong.

There are pitfalls in obtaining and evaluating suppliers' costs. Because there are no uniform accounting standards, it is a very difficult job. Should the contracting officer attempt to analyze the volumes of detailed information involved and overlook some critical point, he may be accused of negligence. He also faces a difficult problem if his review of suppliers' costs indicates the price should be lower but the contractor will not agree to lower his price.

In a large, complex procurement it is therefore very tempting for a contracting officer to take the easy route and determine that there is adequate competition. Such a determination enables him to place a contract quickly, and without the months of effort and delay required to delve into a contractor's accounting system to analyze and evaluate his cost estimates.

I feel certain that in these circumstances many procurements are improperly judged competitive, to the mutual advantage of both the contracting officer and the contractor, but at the great disadvantage to the Government.

REQUIREMENTS FOR COST DATA ARE WAIVED

Requirements for cost data under the Truth-in-Negotiations Act can be waived. Surprisingly, these waivers are granted to many large defense contractors.

For example, the requirement for cost data was waived for the procurement of propulsion turbines, which I cited earlier today, even though the price was substantially higher than for similar equipment on a prior order and included an admitted profit of 25 percent. The company argued that, in its opinion, the price quoted was based on competition, therefore, they would not provide cost data even though the contracting officer had decided a cost breakdown was required under the Truth-in-Negotiations Act.

Manufacturers or large computers needed by Government for its research and development programs also have refused to provide cost data on Government orders because they consider their prices to be based on competition or standard catalog prices. Waivers of the Truth-in-Negotiations Act have been granted on orders with these firms. Each of these large computers costs the Government \$6 or \$7 million or more, so we are not talking about chickenfeed.

Few basic material suppliers such as steel mills, nickel producers, or forging suppliers provide cost data. Rather than suffer the delays

inherent in obtaining a waiver of the Truth-in-Negotiations Act—in the Department of Defense, waivers can only be granted at the Assistant Secretary level—contracting officers may determine that competition is adequate or that the price is based on a standard catalog price.

Again, the established of uniform standards of accounting would go far to make the Truth-in-Negotiations Act more effective. I also recommend that the Truth-in-Negotiations Act be strengthened to prohibit its being waived for procurements with companies who do large amounts of negotiated defense work, say over \$1 million annually.

RENEGOTIATION ACT DOES NOT PREVENT OVER-PRICING

The Renegotiation Act does not adequately protect the Government against excessive profits because contractors have considerable flexibility in how or in what year they report profits to the Renegotiation Board. They can change their methods of accounting at will so that Government work absorbs a higher or lower proportion of total expenses in relation to commercial work. By shifting costs from commercial to Government work, a contractor can show low profits to the Renegotiation Board. The Board cannot stop this because Internal Revenue Service rules do not prescribe how costs should be assigned to specific contracts or type of work. No matter what method the contractor may use to assign costs, it will probably be found to be "in accordance with generally accepted accounting principles."

Further, profits reported to the Renegotiation Board are lower than actual profits because they are computed on a basis different than is used in establishing contract prices. In renegotiation, Internal Revenue Service rules determine what costs are allowable. These rules relate only to total expenses and total income, not with the method of assigning costs to Government or civilian contracts. Therefore, costs that are inappropriate or not applicable to Government work can be included for purposes of renegotiation, thus enabling firms to understate their real profits.

Costs and profits on all of a contractor's defense work are averaged in renegotiation. The Renegotiation Board never sees what profit contractors realize on individual contracts, regardless of the amounts involved. By averaging high- and low-profit defense work, a company can overcharge the Government on orders where competition is limited, so that he is able to reduce his prices on more competitive product lines. In this way he has a better chance to receive orders that provides engineering or production experience that might have commercial application. This puts the large, multidivisional company in a favored competitive position compared with smaller companies.

Many large Government contracts involving standard commercial articles are exempt from renegotiation. Under this exemption, contractors do not have to report profits on such articles if 35 percent or more of the articles are sold in civilian markets. This could exclude from renegotiation computer sales and perhaps even large equipment items such as propulsion turbine work.

NEED TO STRENGTHEN THE RENEGOTIATION ACT

Representative Gonzalez has introduced a bill before Congress to strengthen the Renegotiation Act in the following manner:

- (a) Make the Renegotiation Act permanent.

(b) Reduce the level of reporting from \$1 million at present to \$250,000.

(c) Eliminate the so-called 35-percent rule for exemption of commercial articles.

(d) Include all construction contracts.

(e) Include machine tools and other durable production equipment.

(f) Include the Tennessee Valley Authority.

I agree with Representative Gonzalez' recommendation to strengthen the Renegotiation Act. The act has had to run a gauntlet from industry and its lobbies each time it was extended by Congress and has steadily been emasculated over the years.

Originally, in 1951, the Renegotiation Act required every contractor having renegotiable business to file a report with the Board regardless of the amount of business involved. Contractors whose sales totaled over \$250,000 were subject to renegotiation. At present, only contractors having renegotiable business of \$1 million are required to file reports with the Board and be subject to renegotiation.

Funds for the Board and its staff have been severely restricted. At the same time, the need for the Renegotiation Act as well as a strong Renegotiation Board is, in my judgment, greater today than ever before. At the end of the Korean war in 1953, Department of Defense procurement was about \$32 billion and the Renegotiation Board employed about 750 people. Today, Department of Defense procurement runs to \$45 billion but the Renegotiation Board has been reduced to about 180 people.

Those who oppose the Renegotiation Act argue that industry profits are so low that the act is no longer needed to protect the Government from undue profits. They claim that average profits on Defense contracts are very low—2 to 3 percent—therefore renegotiation is unnecessary. However, I have pointed out that average profits on Defense contracts are up substantially. Further, averages are misleading. If you average a 2-percent profit which is reasonable on a cost-plus contract with a 20-percent profit which is unreasonable on an equipment contract of the same dollar value, the average resulting profit of 11 percent is very misleading.

With regard to the 35-percent rule for exemption of standard commercial articles, I would like to quote Mr. Lawrence E. Hartwig, present Chairman of the Renegotiation Board, in a statement before the House Ways and Means Committee, March 11, 1968:

The exemption of standard commercial articles may be self-applied by a contractor if he maintains an article in stock or offers it for sale in accordance with a price schedule and his sales of the article in the fiscal year, or in such fiscal year and the preceding fiscal year, are at least 35 per cent nonrenegotiable.

Under the class exemption, only one article in the class need be stocked by the contractor or offered for sale from a price list. He may include in the class other articles which are of the same kind and content and are sold at reasonably comparable prices. If 35 per cent of the aggregate sales of the articles in the class are nonrenegotiable, all are exempt. For this exemption the contractor must make application to the Board.

The theory underlying this exemption provision is that when articles are sold commercially to the extent of at least 35 per cent, the prices of such articles have been tested by competitive forces in the marketplace, and this circumstance furnished adequate assurance against excessive profits.

The statute fails to take into account the impact and other effects that volume buying by the Government can have on the commercial market and the operations of particular contractors. A fair price for commercial sales of an article may be an excessive price for large sales of the same article to the Government because

unit costs may be less. Also, heavy Government purchasing in certain sectors of the market may affect price levels to such an extent that excessive profits result. Moreover, many of the items which fall within the class exemption are sold exclusively or predominantly to the Government and are therefore not subject to the competitive pressures of the commercial market. Finally, since defense and space authorities consume millions of procurements transactions each year, mistakes are an ever present possibility.

The commercial exemption applies to a wide variety of commodities, parts and component materials. For the information of the Committee, we have prepared and distributed a list of representative articles which have been exempted. I ask that it be made a part of the record. As you will note, the list includes items such as aircraft, drugs and many types of electronic equipment, including complex computers.

I recommend the Renegotiation Act be made a permanent law. I don't know how the Renegotiation Board can be expected to do its job effectively, to recruit and retain skilled personnel and to provide for continuing examination of profits on Defense contracts when it has the sword of Damocles hanging over its head every 2 years. Also, the Renegotiation Act should be changed to include all items needed for our national defense except commercial items such as bread, flour, clothing, and so forth, and for which there is an open competitive market. I concur fully in the proposal to include construction contracts and purchases of machine tools and other durable production equipment.

RECOMMENDATION FOR ADDITIONAL CHANGES TO THE RENEGOTIATION ACT

Admiral RICKOVER. I would go even further than Representative Gonzalez' proposal to strengthen the Renegotiation Act. I would recommend that the act be amended to—

1. Require that industry report cost and profits on each Defense contract over \$100,000, on a contract-by-contract basis.
2. Provide for renegotiation of contracts within individual commodity groupings, such as the groupings prescribed by the Federal Supply Catalog, rather than by total company sales.
3. Require that costs and profits be reported in accordance with a uniform standard of accounting. The accounting standard should exclude costs not appropriate to Government contracts of the type set forth in part 2, section XV of the Federal Procurement Regulation, such as advertising, interest, bad debts, and so forth.
4. Require that industry's reports be certified by an authorized senior company official, and provide criminal penalties for filing of false or misleading data.
5. Not allow the plea "nolo contendere" in these cases.

ADMINISTRATION OF DEFENSE PRODUCTION ACT

Mr. BARRETT. Would you give us your comments on the administration of the Defense Production Act by the Department of Commerce?

Admiral RICKOVER. Yes, sir.

Congress passed the Defense Production Act in 1950 to help the military departments obtain the equipment they needed for the Korean war. At that time the economy was at a high level of activity. A close parallel to that situation exists today.

Since the Korean war, Defense expenditures have risen from \$35 billion in 1954 to about \$70 billion in 1967. In the same period, consumer expenditures have risen from \$236 billion to almost \$500 billion. Nevertheless, I have found both the Department of Defense and the Department of Commerce unwilling to use the authority that Congress has granted them under the Defense Production Act.

In fact, I find myself in a worse position than if there were no act at all; because, if the latter were the case, steps would be taken to build up the industry capacity needed for military procurement.

I would like to summarize my experience and then go into some detail.

DEPARTMENT OF COMMERCE UNWILLING TO USE AUTHORITY OF DEFENSE
PRODUCTION ACT

The Department of Commerce and the Department of Defense appear unwilling or unable to use the authority provided them in the Defense Production Act.

The assistance being provided by the Department of Commerce is superficial and of no real help.

Actually, Department of Commerce assistance often makes matters worse. For example: They sometimes agree to delivery dates later than the supplier was willing to provide before their assistance was requested.

They do not follow up to insure that their directives are carried out.

Supplier deliveries are often later than directed, but with no action by the Department of Commerce.

In my opinion and based on my experience, with the way the Department of Commerce is administering the act, we are no better off than if there were no act. It is not clear to me whether the Department of Commerce represents industry to the Government or the Government to industry in these matters.

Dealing with the Department of Commerce is like having a cold. Treatment will cure it in 7 days but left to itself it will hold on for a week.

DEPARTMENT OF COMMERCE OFFICIAL TESTIFIES "NO PROBLEMS"

Mr. BARRETT. Admiral, I would like to ask you some questions. Probably you can answer them briefly.

Yesterday, a representative of the Business and Defense Services Administration from the Department of Commerce was asked, and I quote:

Have there been any serious complications in administering this program; namely, the priorities program, since the buildup of Military activity because of Vietnam?

The answer given was no, there have been none.

What is your opinion of his reply?

Admiral RICKOVER. I think his reply was correct from his viewpoint. As far as I know he hasn't done much so he doesn't have any complications.

Mr. BARRETT. Yesterday, a representative of the Business and Defense Services Administration was asked, and I quote:

Have there been any serious examples of producers rejecting a rated order?

The answer given was no, there have been none.

Admiral Rickover, do you agree with his answer?

Admiral RICKOVER. Yes, sir; that again was a proper answer for him. I doubt he is fully familiar with what is going on, so he has not had any problems.

COMPANY REFUSED TO ACCEPT ORDER

Mr. BARRETT. Well, I have just been asked by the staff to ask you whether you ever had an order rejected?

Admiral RICKOVER. Yes, sir. One firm rejected an order for the main propulsion equipment for a new submarine and the Department of Commerce rejected our request for a directive. But maybe the person who testified just didn't know that; it is possible he hadn't been briefed properly.

Mr. BARRETT. I am informed he was the Assistant Administrator for Industrial Mobilization from the Business and Defense Services Administration.

Admiral RICKOVER. I believe he is the gentleman who would not issue the directive we requested. I would think he would know better.

Mr. BARRETT. The gentleman from the Business and Defense Services Administration further stated that his agency made an independent determination as to whether a rejection of a rated order by a corporation for production of Defense material was legitimate. His answer was, in effect, that the Government made an independent evaluation.

In your experience, is this correct?

Admiral RICKOVER. It is not, sir—not from my experience with the Department of Commerce.

Mr. BARRETT. It is not? I am going to ask you, Admiral, if you would be kind enough to amplify your answers.

Admiral RICKOVER. I will be glad to do that, sir.

My experience has been that the Vietnam buildup and the high demand for civilian goods has complicated the defense procurement picture. Lead times have increased substantially. Prices are getting higher and higher. Many suppliers no longer bid on defense work. Our shipbuilders report that they often request bids from as many as 10 suppliers but get bids from only one or two firms.

In the nuclear power industry the competition for technical talent and production capacity has become keen because of the remarkable growth in demand for civilian electric utility reactors in the last few years. I recently prepared a paper on the effects of the expanding market for civilian electric utility nuclear central stations the industrial base for naval nuclear propulsion plant components. The Chairman of the Atomic Energy Commission submitted this study to the House Armed Services Committee on January 15, 1968. It illustrates some of the complications encountered in procuring this type of equipment for defense needs. From what I hear, the nuclear industry is not the only place where it has become more difficult and expensive to get defense work accomplished.

Mr. BARRETT. Can we have a copy of your paper, Admiral?

Admiral RICKOVER. I will be happy to provide it for the record. (The information provided is included as appendix 2).

DEPARTMENT OF COMMERCE REFUSAL TO ISSUE DIRECTIVE UNDER DEFENSE
PRODUCTION ACT

Mr. BARRETT. I am particularly interested in the case where the Business and Defense Services Administration refused to issue a directive to a supplier, one of the Nation's largest defense contractors, to accept a rated order for defense production. I believe you testified on

this case last year in testimony before the House Appropriations Committee and the Joint Committee on Atomic Energy. Would you please explain this case to this committee, Admiral?

Admiral RICKOVER. I will be glad to, Mr. Barrett. It involves the procurement of propulsion plant equipment needed for a new design submarine being developed by the Navy. This submarine offers potential for an important improvement in military capability and is thus an urgent military requirement.

The Navy determined that only one firm had the necessary experience to provide the equipment desired. This firm had extensive past experience in building equipment of a similar design for the Navy, however they refused to bid on the work.

The Navy initially requested assistance from the Department of Commerce on March 30, 1967. At that time we were told by the Executive Secretary of the Business and Defense Services Administration that the Department of Commerce would be unable to provide us the needed directive because the work involved design and engineering. The Executive Secretary explained that the Defense Production Act did not give the Department of Commerce authority to direct people to think.

I refused to let the matter rest with this decision and requested consideration at a higher level in the Department of Commerce. The matter was then discussed with the Assistant Administrator for Industrial Mobilization of the Business and Defense Services Administration who stated, initially, that he would assist in the matter. He indicated that, if necessary, the Department of Commerce would issue a directive under the Defense Production Act requiring that the firm accept the order. However, he stated that he believed the Business and Defense Services Administration would be able to convince the firm to accept the order, and so there would be no need for a directive.

On April 3, 1967, the Department of Commerce met with representatives of the Navy and the firm involved. The firm was asked to reconsider its position and respond to the Navy by April 5, 1967. On April 6, 1967, although no reply had been received from the firm, the Navy was advised orally that the Department of Commerce would not issue a directive because the Navy had not formally issued a rated order to this firm. The Department of Commerce insisted that we issue a rated order even though the supplier had on several occasions told us that he would not do this job.

On April 20, 1967, the firm formally rejected a rated order issued by the Navy's prime contractor.

The Navy, in a letter to the Department of Commerce dated April 28, 1967, again requested that a directive be issued.

On May 5, 1967, the Department of Commerce held another meeting with the firm.

On May 10, 1967, the firm advised the Department of Commerce that their workload for the Navy, coupled with a very limited resource of experienced engineers prevented them from considering such a project at that time. The firm stated it would not be in a position to review the design specifications until about April 1968, a year later.

Mr. BARRETT. Admiral, the Assistant Administrator for Industrial Mobilization, Business and Defense Services Administration in the

Department of Commerce, has commented recently on this case. I would like your comments on these statements.

The Department of Commerce letter stated that on March 30, 1967, the Department of the Navy requested the Business and Defense Services Administration (BDSA) to issue a directive to the firm involved to "accept, produce and deliver a propulsion system on an order which at the time of the request for a directive had not yet been placed" by the Navy.

Can I have your comment on that?

Admiral RICKOVER. The Navy's request for Department of Commerce assistance was on March 30, 1967. During March 1967, the firm involved had on four separate occasions—on March 3, 8, 14, and 23—officially refused to bid on an order to provide the equipment needed by the Navy. I do not know why the Department of Commerce insisted on obtaining another official refusal from this firm. In my opinion this was unnecessary and a waste of time. However, the Department of Commerce was adamant that they would not issue a directive and that we should again request the firm involved to do this job. All this did was further to delay the matter.

Mr. BARRETT. The Department of Commerce also has indicated that its representatives met with the firm involved on May 5, 1967. From that meeting the Department of Commerce concluded in a memorandum to file that the issue of compliance with the Business and Defense Services Administration priority regulation was not involved and that the real problem was a technical one which had to be worked out between the firm, the Navy's prime contractor, and the Navy Department. What technical problem was being referred to?

Admiral RICKOVER. The firm initially alleged that the project was difficult technically and that two technical breakthroughs were needed on the project. The Navy quickly settled that issue during a meeting on May 23, 1967 attended by representatives of the firm, the Navy, the Department of Commerce, and the staff of the Joint Committee on Atomic Energy. At this meeting, the firm stated that they did not question and never had intended to question the basic technical feasibility of the job. This statement is in the minutes of that meeting. There was no other technical problem I am aware of unless the Department of Commerce considered the firm's assertion that they did not have enough engineers to do the job a technical problem.

Mr. BARRETT. Did the Department of Commerce consult with the Navy concerning the firm's assertion that they did not have available sufficient qualified engineering personnel to start work on the design of this equipment until 1968?

Admiral RICKOVER. No, sir. The Chief of Naval Material in a letter dated April 28, 1967 to the Department of Commerce stated that the Navy did not agree that the firm did not have the small number of engineers required for this work. Nevertheless, the Department of Commerce did not consult further with the Navy on this matter. The Navy estimated that this job would require 10 to 15 engineers. The firm involved has thousands of engineers.

At the very same time the firm was telling the Department of Commerce that they did not have the necessary engineers, I had one of my people check the firm's telephone directory. We quickly found that engineers experienced on this type of Navy work were listed as being assigned to commercial work.

Mr. BARRETT. How could one of the Nation's largest defense contractors argue that they do not have 10 to 15 engineers available to work on an urgent defense project?

Admiral RICKOVER. It was inconceivable to me that they did not have enough engineers to do this job. The work involved about one-thirtieth of 1 percent of this firm's total business. The firm has many contracts that would dwarf this order. They simply wanted to use their engineers for commercial work.

In fairness to the firm, however, after they finally did agree to do the job for the Navy in August 1967, they quickly assigned the necessary engineering personnel.

Mr. BARRETT. If this firm did not have available sufficient qualified personnel as they told the Commerce Department in May 1967, how is it they were able to start work on this equipment in August 1967?

Admiral RICKOVER. I am convinced this firm had sufficient qualified personnel to start this job all along. But the Department of Commerce accepted their excuse. I was not at all surprised that they were able to assign engineers quickly to the work once they agreed to accept the contract; in fact, I had maintained all along that they could do so.

Mr. BARRETT. Do you believe, this firm would have started work on this equipment as early as April 1967 if the Department of Commerce had issued the directive requested by the Navy?

Admiral RICKOVER. Yes, sir. If the Department of Commerce had issued a directive in April 1967 as the Navy requested, I am sure work would have started promptly. Companies generally want to get equipment produced and delivered quickly so that the tools and personnel involved can be available for other work as soon as possible.

Mr. BARRETT. Do you know why the Department of Commerce concluded that the firm's reasons for not taking this order were acceptable when the Navy concluded these reasons were not acceptable?

Admiral RICKOVER. No, sir; I do not. No one in the Department of Commerce involved in this case had sufficient background or experience to evaluate the technical matters involved, including the number of engineers required or the difficulty for the firm to assign engineers to such a project. I believe the Department of Commerce simply chose to accept the easy position.

Mr. BARRETT. Did the Department of Commerce ever advise the Navy that they considered the firm's reasons for not accepting this contract valid and therefore a directive would not be issued?

Admiral RICKOVER. No, sir. The Chief of Naval Material letter dated April 28, 1967, to the Department of Commerce reiterated the Navy's request for assistance. This letter was never answered.

This is the kind of service the Department of Commerce gave the Navy in this case. I do not know at what point the Department of Commerce decided they were definitely not going to issue a directive. I know that on May 19, 1967, the Acting Secretary of Commerce advised the chairman of the Joint Committee on Atomic Energy as follows:

If, as a result of that meeting, which is to be held we understand on May 22, 1967, a directive from this Department is required, it shall be issued.

Yet, I notice that one of the earlier statements you quoted indicated that the Department of Commerce may have made the decision not to issue a directive 2 weeks earlier, on May 5, 1967. If I remember the

statement correctly, it indicated that the Department of Commerce decided on May 5, 1967, that the issue was technical and that no directive was warranted. I don't know why the Department of Commerce did not tell this to the Joint Committee on Atomic Energy.

Mr. BARRETT. What did the Department of Commerce do after May 1967 to assist the Navy in getting a contract for this equipment?

Admiral RICKOVER. The Department of Commerce did nothing, either before or after May 1967, that helped the Navy get a contract for this equipment.

Mr. BARRETT. Could the Department of Commerce have determined in March or April that this firm was perfectly capable of accepting this defense contract?

Admiral RICKOVER. In my opinion it was obvious that the firm could easily perform this contract. It should have been obvious to the Department of Commerce in March, 1967 when the Navy first asked for their assistance. It simply did not make sense that one of the Nation's largest defense contractors could not come up with a handful of engineers for a job like this. If the Department of Commerce is not able to make such a determination, then they have no business administering the Defense Production Act.

Mr. BARRETT. Then in August 1967, this firm did, in fact, accept the same contract they refused in March?

Admiral RICKOVER. No, sir; not the same contract. The firm agreed in August 1967 to do the job for the Navy but they insisted on special contract arrangements that limit the normal rights of the Government with regard to inspection, quality control and rejection of equipment variations.

Mr. BARRETT. Was there any change between March and August that could explain why this firm decided to accept the order?

Admiral RICKOVER. No real change that I know of, sir. The firm was beginning to get some unfavorable publicity, and I suspect that may have had something to do with its decision to negotiate with the Navy for this work.

Mr. BARRETT. Do you think the act is broad enough to cover the contract you wanted this firm to accept.

Admiral RICKOVER. I am no lawyer, but it is my opinion that the Department of Commerce had all the authority it needed to issue a directive in this case. It appears to me Congress must have anticipated situations like this when they wrote the law.

Mr. BARRETT. Was the Government adversely affected by the Department of Commerce's failure to order this firm to perform the work in March of 1967?

Admiral RICKOVER. Yes, sir; in two ways. The Navy's new submarine project was delayed by more than 5 months and the Navy was forced to accept less than normal contractual rights regarding inspection, quality control, and rejection of equipment variations. Other firms have tried unsuccessfully to limit the Government's rights in these areas. Now this firm has won important concessions—important precedents—that are already being pursued by other contractors. In addition to all this, much time and effort were wasted by key people throughout the Department of Defense and in Congress in trying to help the Navy get equipment it needed without being able to use the authority provided in the Defense Production Act.

DEPARTMENT OF COMMERCE OFFICIAL TESTIFIES DEFENSE PRODUCTION IS
"ON SCHEDULE"

Mr. BARRETT. On June 23, 1967, Chairman Patman, in his capacity as chairman of the Joint Committee on Defense Production, asked Mr. Rodney Borum, the Administrator of the Business and Defense Services Administration, the following question at the hearing of that committee:

Has the operation of the Defense Materials System enabled current defense and atomic energy production to remain on schedule?

Mr. Borum answered, "Yes; it has."

Given the date of the question and answer, June 23, 1967, would you say this was an accurate statement?

Admiral RICKOVER. I do not believe the statement is accurate, but I hasten to point out to you that Mr. Borum probably has been told that everything was working well. To the best of my knowledge, the Department of Commerce has no system for determining whether industry production is actually supporting defense requirements. Neither, for that matter, does the Department of Defense. I believe the Department of Commerce bases its judgment on how well it's doing on the number of complaints received from industry or from Government agencies. Although the Department of Commerce reported they received many requests for assistance in 1967, I don't see how they could say "no" to your question. If they had answered in the negative, you would have asked what was being done to improve the defense materials system.

Mr. BARRETT. Should Mr. Borum have known of the Department of Commerce refusal in May 1967 to order the firm to accept this priority defense order?

Admiral RICKOVER. I assume he did not know much about this matter. Mr. Borum disqualified himself from the case because he had worked for the firm involved before he became the Administrator of the Business and Defense Services Administration.

Mr. BARRETT. Did Mr. Borum have any direct connection with any aspect of this firm's problem at any time? If so, what was it?

Admiral RICKOVER. None that I know of, sir. Admiral Arnold from the Office of Naval Material telephone him on May 12, 1967, to request his assistance in getting a directive issued; Mr. Borum, however, told Admiral Arnold that he would have a subordinate return Admiral Arnold's call, explaining that he had to disqualify himself because of his former affiliation with the firm.

Mr. BARRETT. I note that you provided a complete listing of the events concerning this matter to the Joint Committee on Atomic Energy. Would you provide this listing to us for the record?

Admiral RICKOVER. I will be glad to give you the chronology I provided the Joint Committee on Atomic Energy.

(The information provided is included as appendix 3.)

Admiral RICKOVER. Let me briefly summarize the situation.

NAVY FORCED TO ACCEPT REDUCED RIGHTS IN CONTRACT

After several months' effort in attempting to obtain a directive from the Department of Commerce, the Navy was finally told by the Secretary of Defense to meet with the firm and negotiate an agreement in the matter.

Meetings were then held between the Assistant Secretary of the Navy and a vice president of the firm during June, July, and August of 1967.

As a result of these negotiations, the firm finally agreed to proceed with the work and to use their best efforts to provide the equipment in time to meet the Navy requirements. However, the firm then insisted on special contract arrangements which would limit the normal rights of the Government in areas of inspection, quality control, and equipment variation.

I advised the Assistant Secretary of the Navy that he should not agree to these limitations, and again requested that he obtain a directive in accordance with the provisions of the Defense Production Act. I was told there would be no directive and that the Navy would have to negotiate whatever agreement could be reached with the firm.

Because the Department of Commerce refused to issue the necessary directive, the Navy was forced to accept less than its normal rights in the production of equipment needed for national defense. This is contrary to the provision of the Defense Production Act that Mrs. Sullivan read a few minutes ago.

Mrs. SULLIVAN. Admiral, where does this matter stand at the present time? Are you getting the equipment you need?

Admiral RICKOVER. Preliminary design and development work finally started in August 1967. However, this work is proceeding at the Government's risk without a negotiated price and delivery schedule. The firm involved has agreed to design and manufacture this equipment but they have special contract provisions I previously mentioned that limit the normal rights of the Government with regard to inspection, quality control, and rejection of equipment variations. In order to get on with this urgent defense program, the Navy was forced to accept these special provisions.

Mrs. SULLIVAN. You said that you wrote the Assistant Secretary of the Navy recommending against accepting less than its normal rights?

Admiral RICKOVER. Yes, ma'am. I will quote the pertinent paragraphs from my memorandum.

The supplier states that the basis of his insistence that the Government's standard requirements for interpretation of specifications, inspection, quality control and equipment variations are not acceptable for turbine procurements is that the contractor's obligation is "open-ended" under these standard requirements. The supplier insists that the Government's standard rights be restricted, so that it is assured it will be adequately compensated for its efforts. However, acceptance by the Navy in the contract of the supplier's proposed limitations on the standard rights of the Government would permit the supplier to establish an undesirable precedent in procurement of Navy equipment.

I, therefore, recommend that the contract include the Navy's existing standard requirements for interpretation of specifications, inspection, quality control and equipment variations which the supplier has accepted in the past. It should be recognized that the Navy has always been willing to pay for the protection afforded by these provisions; this is one of the major reasons that Naval equipment costs more than commercial equipment.

I realize the difficulty in obtaining agreement with the supplier on this matter and appreciate your earnest efforts. However, I cannot look with equanimity on having a contract for naval equipment for which I have technical responsibility be used as a medium for derogating Navy equipment. The equipment under consideration is for a military submarine where the importance of maximum reliability and safety is obvious. A submarine by its very nature requires maximum reliability and safety. The consequences of failure of propulsion equipment in a combatant ship in time of crisis cannot be compared with the consequences of failure of commercial equipment. It would be, therefore, unconscionable for me to acquiesce in the proposed agreement; and would also constitute a shirking of my responsibility to the United States and to the officers and men who will serve in this submarine.

Mrs. SULLIVAN. In view of your recommendation, why did the Navy agree to accept less than its normal right?

As I read section 707 of the Defense Production Act, which I mentioned earlier, the Navy shouldn't have to accept less than they normally get. Let me read this section again:

No person shall discriminate against orders or contracts to which priority is assigned or for which materials or facilities are allocated under Title I of this Act or under any rule, regulation, or order issued thereunder, by charging higher prices or by imposing different terms and conditions for such orders or contracts than for other generally comparable orders or contracts, or in any other manner.

Admiral RICKOVER. Mrs. Sullivan, I believe the section of the Defense Production Act you just read would only apply if the Department of Commerce had issued the directive as the Navy requested. Since the Navy could not get a directive, it was left to reach agreement on the best terms it could get. Development of this submarine is an urgent military project so the Navy had no alternative but to concede on these points.

The Navy was thus denied the protection the law provided.

DEPARTMENT OF COMMERCE EXPEDITING ASSISTANCE IS OF NO HELP

Let me give you another example.

In most instances the Business and Defense Services Administration provides priority assistance by issuing a directive to a supplier, the directive requiring delivery by a given date. The description in the Business and Defense Services Administration regulations of a directive and its effect is clear:

Section 16. Mandatory orders and directives.

Every person shall comply with each mandatory order and directive issued to him by NPA (now BDSA). Mandatory orders and directives issued by NPA (now BDSA) take precedence over rated orders previously or subsequently received, unless a contrary instruction appears in the mandatory order or directive.

The results I have obtained from use of these clear directives are unimpressive.

In obtaining nuclear cores for the aircraft carrier *Enterprise*, the Atomic Energy Commission requested Business and Defense Services Administration assistance to improve material deliveries to its prime contractor in order that the cores would be available in time to refuel the ship. Eleven orders were involved. There was not a single order in which the Department of Commerce was able to assist in improving the delivery from the dates the supplier was quoting without Department of Commerce help.

In one case, the Department of Commerce took it upon itself to issue a directive for dates later than the supplier had already agreed to give the Atomic Energy Commission's prime contractor.

In every case, actual deliveries were later by an average of 5 months than required by the Atomic Energy Commission and than the dates included in the Business and Defense Services Administration directives.

In fact, we have found we do better if we avoid the Department of Commerce, because we are then free to work on the problem directly and are not counting on illusory hopes of outside help.

DEPARTMENT OF COMMERCE DIRECTED DELIVERY LATER THAN SUPPLIER
PROMISED

Here is another example of Department of Commerce "help."

In August 1967 an Atomic Energy Commission prime contractor requested priority assistance to obtain delivery of a major reactor core component from a subvendor by April 14, 1968. The contract delivery date for the item was October 1967 but the supplier's then current delivery promise was June 14, 1968. After reviewing the request, the Atomic Energy Commission requested the Business and Defense Services Administration to issue a directive requiring delivery by April 14, 1968.

The Business and Defense Services Administration responded by issuing a directive requiring delivery by the supplier on or before June 21, 1968, which was 2 months later than the date requested by the Atomic Energy Commission, and 1 week later than the date which had been promised to the prime contractor by the supplier himself.

In February 1968 the prime contractor again advised our Atomic Energy Commission office that the component supplier had now slipped his delivery by another 6 weeks to August 3, 1968, and requested assistance to hold the June 21 delivery date—as required by the Department of Commerce directive.

After the Atomic Energy Commission forwarded the request, the Business and Defense Services Administration contacted the supplier and, having discussed the situation with him, revised the directive delivery date to coincide with the supplier's August 3 delivery. Although we were subsequently able to obtain Department of Commerce action to rescind its revised directive and reinstate the June 21, 1968, date, the supplier remained adamant that he would not make delivery prior to August 3, 1968.

Again the Department of Commerce was of no help. "In their work there are many leaves and little fruit."

DEPARTMENT OF COMMERCE ADMINISTRATION OF THE DEFENSE PRODUCTION ACT
IS INEFFECTUAL

I am not familiar with the manner the Department of Commerce operates for other segments of Government. I hope their experience has been better than mine. I can only talk of my own dealings with the Department. There is no question in my mind that in a war larger than the present one there would have to be a drastic change in the enforcement methods used. The law must be effectively administered or you might as well not have it. My experience is that the administration of the Defense Production Act must be improved.

The Defense Production Act grants the President authority to establish priorities in the acceptance and performance of contracts and orders necessary to promote the national defense and to allocate materials and facilities for this purpose.

The authority of the President under this act has been delegated by him to the Director of the Office of Emergency Planning—OEP—who in turn has delegated his authority to exercise and administer priorities and allocations to the Secretary of Commerce. The latter, in turn redelegate his authority to the Business and Defense Services Administration—BDSA. The Office of Emergency Planning has supposedly retained for itself general policy guidance and program coordination.

From my experience, the Department of Commerce has demonstrated it is incapable of effectively administering the act. The assignment of this responsibility to another agency would be one means of improving the situation. This responsibility could be taken back by the Office of Emergency Planning, or else assigned to a new agency similar to the National Production Authority which was abolished after the Korean war.

RECOMMENDED CHANGES TO STRENGTHEN THE DEFENSE PRODUCTION ACT

In addition, I recommend that the Defense Production Act be modified to require—

(1) Department of Defense contractors to certify that rated defense orders receive priority over nonrated orders.

(2) Periodic inspection of defense contractors' plants to insure that proper priority is being given to rated defense orders.

(3) An annual report to Congress identifying instances in which priority assistance requested by military departments was not provided. This report should include all cases in which contractors failed to comply with the provisions of the act and outline the specific enforcement action taken in each case.

As I said earlier, the act should also be amended to require that defense contractors provide a report of all costs and profit, in a manner similar to the income tax return. The report should also identify the supplier's actual delivery performance as compared to the delivery required by the contract. A summary of this information should be provided annually to Congress and to the public. This would be one means to assist you in finding out what is actually going on.

Each report on costs and profits should be certified by a senior responsible and authorized official of the company, and the act should provide criminal penalties for false or misleading data. The act should prohibit the plea of "nolo contendere."

However, this information can be meaningful only if the act also requires that contractors account for costs under Government contracts in accordance with a uniform accounting standard. I recommend that you start with the existing cost principles contained in the armed services or Federal Procurement Regulation but that you require an improved standard to be developed by the Bureau of the Budget and approved by the General Accounting Office within a short time, say 6 months after the date of enactment of the amendment.

Mr. BARRETT. Admiral, we are going on the 5-minute rule because I know some of the members here are very anxious to ask you questions. Mr. Halpern.

Mr. HALPERN. Thank you, Mr. Chairman.

First, I wish to commend our distinguished witness this morning. I have long admired and respected him, as I am sure each member of this committee and millions of Americans do.

It is a privilege for me as a member of this committee, and I am sure we all feel enriched to have the benefit of his forthright views. It is healthy to hear such frank and refreshing opinions. The admiral's presentation this morning is extremely enlightening and informative, and I feel his observations and recommendations will prove of utmost value to this committee.

I would yield back the balance of my time to our acting chairman.
Mr. BARRETT. Mr. Moorhead.

UNIFORM STANDARD OF ACCOUNTING AND TYPES OF CONTRACT

Mr. MOORHEAD. Thank you, Mr. Chairman.

Admiral, I think your suggestion about the uniform accounting system is an excellent one.

Admiral RICKOVER. It is the key to the problem, sir.

Mr. MOORHEAD. I think you have something there. We can then compare one company with another.

Admiral RICKOVER. You should be aware, sir, that you are going to meet terrific resistance both in the Government and from industry.

Mr. MOORHEAD. I can hear the speeches now, the Government interfering and trying to tell you how to run the business.

Admiral RICKOVER. Yes, sir. Ultimately you will probably have to get your own staff to draft the law. An analogy is the income tax form. People have always complained about income tax forms; that they are unreasonable; they have been prepared by ignorant bureaucrats; that it is impossible to fill them out properly; they violate the right of citizens; they are an invasion of privacy, and so on.

No doubt the first income tax forms left much to be desired. But the people did pay their income taxes, regardless of the forms. As time went on the forms were improved and the complaints became few and minor.

If an ordinary citizen with no legal or accounting experience is able to comply with the income tax law, isn't it reasonable to believe a corporation with legal and accounting staffs will also be able to comply with a standard accounting procedure for Government contracts?

I believe the analogy with the income tax report is a fair one. The report illuminates whence the income is derived. It protects the Government, and gives the Government its due—as provided by law.

In effect, the present administration of the law encourages lax accounting. If we had a standard accounting system, it would be possible to find out where the discrepancy lies between the 2-percent loss reported by a company to the Government and the 15-percent profit figure found by the Government auditor.

Mr. MOORHEAD. What I would like to do, Admiral, is make comparisons between the various types of awards we make whether under the present system or under your proposed system, with a uniform accounting system, under which form of bidding and awarding contracts does the Government get the most for its money. One contract might be more applicable in one situation than in another. Could you compare the types?

Admiral RICKOVER. Competitive contracts are best, sir. I can only give you examples. If you buy shoes, flour, cement—which are more or less commercial items—there is generally an ample number of suppliers, and so the forces of the market can operate. But the minute you get into complex military hardware, competition is generally absent. You can even have two companies, each capable of supplying the equipment; but one company may bid very high because it doesn't want the business. Such a bid is called a "courtesy bid." The other one then takes the business.

Mr. MOORHEAD. Do you suspect it is by arrangement between the two; or not?

Admiral RICKOVER. I do not know, sir. I can't say this is so, because one never knows. The high bidder may not want the business at that time, so the other one gets it. However, the present system of contracting makes such arrangements possible. So if such a temptation does exist it is easier to give in to it.

You must surely be aware of the frequent cases mentioned in the press where there has been collusive bidding. And there is no real penalty for such acts. The companies concerned invariably deny the charge; they plead "nolo contendere"; they are fined a small percentage of what they gained illegally; and I believe they are even allowed to charge any damages off as a tax deduction. Where there is true competition the problem does not exist. But you will have to define by law what "true competition" is.

Once the contracting officer rules that a contract is competitive, the Government is then foreclosed from examining the company's books. It is not generally known to Congress or to the public that when a contracting officer certifies that a contract was made on a competitive basis, this completely stops him from ever looking into the contractor's books.

This is why there must be a legal definition of what "competition" really is. Otherwise, the record will show competition where there actually was none. You must not leave it to predilection of individuals in the bureaucracy to decide such matters, particularly where such large sums of Government funds are involved.

I do not think you are ever going to get around this problem just by telling a Government agency to do it. They will not do it; and your experience has shown they will not do it.

If you want to do this job properly, you are going to have to take the action yourself. You are going to have to define by law what competition is. You are going to have to set up penalties.

Mr. MOORHEAD. Admiral, there seems to be two philosophies in the Defense Department: one, where you can't get true competitive buying. You have a choice of either a cost-plus contract; the other is a negotiated fixed-price contract. Under which contract do you think the Government gets the most for the dollar?

Admiral RICKOVER. I cannot give a categorical answer. Fixed-price contracts are generally better. But even with fixed-price contracts there are many ways for the contractor to make changes which increase the cost of the contract and, in effect, make the contract a cost-plus job. Then you have a worse situation, you have a cost-plus situation but without the protection of a cost-plus contract. Frequently the Government itself makes changes to the contract. The minute you start changes, all bets are off. One desirable feature of the cost-plus type of contract is that you can check on costs. However, the cost-plus type of contract is generally inefficient because there is no real incentive to perform economically.

I would say that for machinery and equipment, probably 85 percent of the Defense Department business is noncompetitive. My 85-percent estimate is probably conservative. I am not talking about items of food or clothing, items of the sort that you can buy on the open market.

But items of complex equipment are nearly all noncompetitive, no matter what name you give to the contract. If it walks like a duck, quacks like a duck, and looks like a duck, it is still a duck, no matter what you call it. Therefore, with the many billions of dollars being

spent by the Defense Department and by the National Aeronautics and Space Administration, the only route Congress can take to save large sums of money is to require the use of a standard accounting system so that you can know what you are doing. That is my considered opinion gained from many years experience.

I am not a contracting officer. I am a naval officer who is supposed to be doing technical work. But, as I said before, I find much of my time taken up with contracts because those who are supposed to take care of these matters often don't.

The Department of Defense has been too greatly influenced by those having an industry viewpoint. The attitude of some contracting and other Government officials appears to be centered on looking out for industry's interests. Industry lobbies and public relations men have been quite successful in this regard. I am concerned that not enough people are looking out for the Government's own interests.

Mr. BARRETT. Admiral, you have answered the gentleman's question. I am now recognizing Mr. Mize.

EFFICIENCY OF GOVERNMENT-OWNED VERSUS PRIVATE SHIPYARDS

Mr. MIZE. Based on your experience, would you say that a ship could be built or repaired more cheaply in a Government-owned Navy yard than in a private yard?

Admiral RICKOVER. I think the cost would generally be about the same, taking into account that the Government yard is not required to make a profit. However, the Government yards are handicapped by transient management, civil service rules, and assignment of unplanned or emergency work. These factors and others imposed on Government yards inherently leads to inefficiency as compared with a private yard. For these reasons a Government yard cannot compete with a private yard.

The Government yards must accept all the work assigned by the Navy; private yards, based on potential for profit, can choose the contracts on which they wish to bid.

The Government yards must comply with many laws and rules from which private yards are exempt. Personnel ceilings and overtime limitations imposed on the Government yards provide less flexibility to handle workload fluctuations. Procurement regulations require the Government yard to purchase much material through various Government procurement activities outside the yard. All of these limitations increase cost and production time.

During World War II we found it fortunate that we did have Government yards; the private yards would only do what they wanted to. There were occasions when a private yards refused to do work for us because this interfered with the orderly scheduling of the work they already had. The Government yards were always willing to do what we needed.

I mentioned the problem of transient management in Government yards. About 5 years ago I developed some statistics on key personnel changes in the six naval shipyards in which nuclear power work is done. Going back to 1946, I checked three positions: first, the shipyard commander, who is the equivalent of the president of a private shipbuilding concern; second, the planning officer, who would in most shipbuilding companies be a vice president in charge of the design and

financial aspects of the business; and third, the production officer who would be the man directly in charge of production in a civilian establishment.

I found that in the 17 years from 1946 to 1963 there had been, on the average, in each of the six shipyards: 10 different shipyard commanders; 15 different planning officers; and 12 different production officers.

This means that over the 17-year period, in any one of the six shipyards the average tour of duty in these key position was only 18 months. The longest I found any one person in any one of these jobs was 3 years and 8 months.

The Navy has taken some steps to improve this situation as a result of the tragic loss of the *Thresher* and the wide publicity given this subject during the investigative hearings that followed. Today there is less of a turnover. However, as compared with private yards the rate of turnover is still much higher.

Another problem which seriously affects the efficiency of Government yards is the extreme difficulty, in fact, almost the impossibility of firing an unsatisfactory worker. What with all the civil service rules for appeals, it takes an inordinate amount of time of the leading people to defend their position against all the appeals allowed.

The yard officials then have the choice of getting their job done or fighting employee appeals. Naturally they are extremely reluctant to devote the time necessary to such matters.

You must not take what I have just said as an endorsement of Government yards over private yards. There is need for both. In the poorer Government yards there is probably more loafing, more inefficiency, and more cost than in the poorer private yards.

Admittedly it is difficult, due to different functions and different systems of overhead accounting, to make an exact comparison between Government and private yards. However, if you put them on the same basis, I don't believe there would be too much difference, provided the Government yard had permanent, instead of the present semitransient management, where the senior officers are rotated frequently.

Does that answer your question, sir?

Mr. MIZE. Yes, it does. That is all.

Mr. BARRETT. Mr. Galifianakis.

Mr. GALIFIANAKIS. Thank you, very much. And thank you, Admiral Rickover, for the very splendid testimony.

What is usually the response that you get directly from the supplier when you confront them with forthright facts that they charge more for Government contracts than they do for commercial?

Admiral RICKOVER. May I, Mr. Chairman, talk off the record?

Mr. BARRETT. You may. Off the record.

(Whereupon, there was a short discussion off the record.)

CONSIDERATION SHOULD BE GIVEN TO TREATMENT OF LARGE DEFENSE CONTRACTORS AS PUBLIC UTILITIES

Mr. GALIFIANAKIS. I have some other questions I would like to propound. Do you think that the present setup, with just these few companies having the capability of meeting the demand of the Government for national defense purposes is monopolistic?

Admiral RICKOVER. Yes, sir, I would consider it monopolistic to a degree.

Mr. GALIFIANAKIS. What recommendation would you make to create the necessary competition?

Admiral RICKOVER. That is a matter which goes much deeper than Defense Department business. For this particular type of equipment, the Defense Department is reatively a small purchaser, but it is nevertheless essential for defense.

This is a case of how we want industry in the United States to conduct itself. It is a deep issue.

For example, frequently the Government must furnish facilities and tools. Some of these companies obtain as much as 90 percent of their business from the Government.

With the changing nature of industry consideration should perhaps be given to treating some defense contractors, or their divisions engaged exclusively or nearly exclusively in defense work, as public utilities. Because utilities have a monopoly or near-monopoly they are guaranteed a reasonable rate of return on their investment. Their books are audited and their performance weighed by a public body.

In effect, many of the companies doing defense business have become public utilities, but without the requirements for performance or limitations on profit imposed on utilities. They have now acquired a monopoly or near-monopoly character. Should they not then be subject to the same safeguards on performance and limitations of profit as public utilities?

I suggest this for your consideration.

Mr. GALIFIANAKIS. I appreciate the testimony very much. There is an awful lot of clamor these days about cutting on Government spending, and I think maybe you have pointed out something that is not too novel, but you have stressed a very good point that really what we need in these matters is effective Government spending.

Admiral RICKOVER. Yes, sir. The gist of what I have been saying is that the Government is not as effective as it should or could be in running its business. And this should be of considerable concern to the Congress.

You will not get efficiency through the efforts of the bureaucracy itself; that I can assure you. The bureaucracy to some extent has been imbued with too much business philosophy and is motivated in this direction. It will have to come from people such as yourselves. When the myth of free enterprise becomes an evasion, the society that clings to it gets into trouble.

Mr. GALIFIANAKIS. Is it possible for us to have the testimony of the admiral?

Mr. BARRETT. It will all be in the record. I am sure the admiral will supply you with anything you want other than what you have asked.

Mr. GALIFIANAKIS. I wanted it as a matter of convenience so as not to have to pluck it out piecemeal. I wanted it in the continuity as the admiral gave it.

Mr. BARRETT. Mr. St Germain.

Mr. ST GERMAIN. No questions, Mr. Chairman. I thank the witness for appearing, and actually I, too, will look forward to reading his testimony and going over the points he has made in the printed record.

Mr. BARRETT. Mr. Bevil.

Mr. BEVILL. I would just like to thank the admiral for the wonderful way he has presented this testimony.

Mr. BARRETT. Mr. Wolff.

Mr. WOLFF. Mr. Chairman, I have long been an admirer of the admiral. He may not remember but he appeared on one of my television programs before I came into Congress, and he impressed me at that time as not only a great expert in the nuclear field and defense field, but also in education. And it is in this area that I should like to ask a question, relative to its connection with our Defense Establishment. Particularly, in the area of our scientific and technical reserve with reference to the present directives that have been issued by Selective Service relative to graduate school deferment.

I wonder if you would care to comment on that, Admiral?

COMMENT ON SELECTIVE SERVICE

Admiral RICKOVER. Mr. Wolff, this is not within my area of competence. So far, I have been talking about things I know something about. When I start talking about other matters I can talk with only the same degree of knowledge possessed by any other interested citizen.

Mr. WOLFF. I thought you might want to comment on the issue.

Admiral RICKOVER. I believe I know what the issue is, sir. I think that what chiefly bothers the graduate schools is: they have large numbers of students and they can only get along by using their graduate students as instructors. If these graduate students are drafted there will not be enough instructors to take care of the students. That is the real issue as I understand it.

My personal feeling, and I am now talking as a citizen and not as an official of the Defense Department, is that every young man, brilliant or stupid, rich or poor, should be required to serve. I believe it is wrong to defer anyone. When one young man is required to risk his life, all other young men should likewise be so required. It is easy to rationalize that one young man will be of greater future benefit than another young man. But a man's life is the most valuable thing he has. I just don't see how you can compare one man's actual life with another man's potential contribution. After all, our country and our form of government, despite all their faults, are still the most marvelous in all history. They have afforded more freedom, more benefits, more human dignity, than any other country or government ever has.

Therefore, isn't it both a duty and a privilege to serve so fine a land? Isn't the main benefit of all serving together in a common endeavor worth more than the material benefit which might accrue by exempting some?

Isn't patriotism and love of country essential to a man's spirit? I believe the added unity our Nation would gain from universal service would far outweigh any possible benefit gained by exempting some.

I believe a practical way to solve the problem would be to draft all young men at about 18. After their service they would be free to go, without interruption, to college and then to graduate school. There is no doubt in my mind that the maturity they would acquire during service, their fraternal association with their fellow young men would give them a deeper insight into the human problems facing us. And they would become better citizens.

NON-COMPETITIVE CONTRACTS UNDER \$500—MOST FAVORED CUSTOMER CLAUSE

Mr. WOLFF. Getting to another area you spoke about before, procurement. There is a great amount of noncompetitive procurement that

takes place on contracts under \$500. I believe the Defense Department had some \$4 billion worth of equipment that was purchased in this fashion.

I have just recently come to this committee. I have been on the Space Committee prior to this time and uncovered some instances whereby NASA was paying four and five times, in some cases 20 times, the catalog price for a particular item that had been sold to the private sector.

I wonder if you have any comment on this?

Admiral RICKOVER. Mr. Wolff, I think if you start getting into these small items, you will always be able to find many to make issues of, but the time and energy you spend on any one of those small items, if devoted instead to taking care of the large contracts by setting up rules, would be of far greater help as far as money saved is concerned. It would also help create the climate to take care of the small ones.

Otherwise you would require formal contracts for small items. It wouldn't be worth it with the amount of time you would have to devote to it.

Mr. WOLFF. We are planning to put into NASA procurement a "most-favored" customer clause which actually will be protective.

Admiral RICKOVER. That is an excellent idea, but you must not make the method too onerous or difficult, nor require too much paperwork for the small items, because the cost of paperwork mounts rapidly, too.

There is the well-known story of the several thousand excess oyster forks found in stock during World War II. That story is told perennially; it is quoted, and properly so, as an example of Government waste. You can always point to dramatic stories like that, but they are not very meaningful in the context of the very large sums of money it is possible to save today.

In 1947 when Gen. George Marshall was Secretary of State he ordered George F. Kennan to organize the Department's policy staff. Its first job was to address itself to the economic plight of Western Europe. The study prepared by the policy staff was of importance in the subsequent Marshall plan. The only advice Marshall gave Kennan was "Avoid trivia."

We will not have the time or the energy to solve large problems if we waste our energy on trivia. This is exactly what proponents of the status quo want us to do. The public understands oyster forks; it doesn't understand renegotiation, truth in negotiations, standard accounting systems, and so on. For this reason the oyster fork story always gets publicity; the important items don't. It is up to us to educate the public. It isn't that the public doesn't have the intelligence to understand; it is because they haven't been given the information. When a man steals several thousand dollars from a jewelry store, this makes the front page. When a number of large companies defraud the Government or municipalities of millions of dollars, there is generally a small item in the back part of the paper or in the financial section, which few people read.

Mr. WOLFF. \$4 billion is not trivia.

Admiral RICKOVER. You are quite right, sir. I did not mean to imply that it is not worth while saving on small sums, and I believe the most-favored-customer clause will be of help. I was merely trying to urge that in executing purchase of small items we not require excessive

paperwork. I believe that the important thing is to take care of the large items and to make certain that the purchasing principles we use and the rules we establish are up to date and exemplary—that these rules limit the ability of contractors, in today's climate, to make excessive profits on Government business.

NUCLEAR-POWERED MERCHANT SHIPS NOT COMPETITIVE

Mr. WOLFF. One other element, and then I will yield to my colleague here. I got very involved in the question of the saving of the *Savannah* as a nuclear ship.

I was wondering, because of the fact that the merchant marine is a very important part of our Defense Establishment, how do you feel about the future of the nuclear-powered merchant ship?

Admiral RICKOVER. My personal opinion is, and again I am talking for myself, that nuclear-powered merchant ships will not be competitive for at least the next decade.

Mr. WOLFF. Is there any basic reason for that?

Admiral RICKOVER. It's simply the fact that it costs more to build and operate a nuclear ship than a conventional ship.

Mr. WOLFF. Even in the long haul?

Admiral RICKOVER. Yes, sir. I believe you can easily obtain the cost of operating the *Savannah* and you will see that it is greater than for a conventional ship.

I am aware that an improved type of reactor plant could now be installed in a nuclear-powered merchant ship. Nevertheless, I believe such a ship would still be more expensive to operate and maintain than a sister conventional ship.

However, I am not saying we shouldn't build another nuclear merchant ship. This is not my responsibility, and there may be reasons for doing so of which I am not aware. Nevertheless, I would not look to nuclear merchant ships as the panacea for solving our merchant marine problems.

Mr. BARRETT. Mr. Griffin.

UNIFORM ACCOUNTING STANDARDS MIGHT SAVE \$2 BILLION

Mr. GRIFFIN. I wish to join my colleagues in expressing appreciation for your candid testimony.

If Congress accepts your recommendations, your recommended amendments to the Defense Production Act, do you have a dollar figure on the savings that you think could be accomplished? That is out of the \$45 billion military procurement.

Admiral RICKOVER. I could only guess. We have no way of knowing whether the cost is proper or whether it covers excess profit, subsidy for his commercial work, or both. You have first got to find out what the manufacturing cost actually is. Knowing this you will be able to learn what the actual profit is. Today you don't know the cost or the profit. We only know the total amount we pay. We simply don't know what we are doing. When we can have seven or eight, sometimes 11 audits by Government auditors, each showing a different rate of profit, there is something wrong.

In 1967 the dollar value of the Department of Defense's negotiated contracts was about \$35 billion. The average profit on these contracts was 9.7 percent; thus the Department of Defense allowed profit of

about \$3.4 billion. However, the average profit on negotiated contracts in 1959 to 1963 was 7.7 percent. Thus the profits on Department of Defense contracts awarded in 1967 was about \$700 million higher than it would have been without the Department of Defense increases. These figures do not include the Department of Defense's contracts awarded on the basis of competition, nor contracts let by the National Aeronautics and Space Administration, the Atomic Energy Commission, or other Government departments.

Further, these profits are the ones admitted to by industry. I have pointed out that substantial profits can be hidden as "costs" on defense contracts. The true profit on negotiated contracts is, I believe, much higher than the average of 9.7 percent admitted by the Department of Defense and industry. Just how much I can't tell; no one can. But I believe it is realistic to assume that uniform accounting standards could save a minimum of 5 to 10 percent on costs. I believe the saving could easily be \$2 billion a year; this one item could save half the \$4 billion per year the Department of Defense has claimed for its entire cost-reduction program.

The term "average profits" reminds me of the story about the man who saw the sign, "chicken and horse burgers sold here." When he asked how much chicken and how much horse was used in the burgers, the answer was, one horse and one chicken. The same is true here. The profit on small, high-volume parts is averaged with profit on large complex equipment in such a manner that the result can be misleading.

I have pointed out to you that one of the Nation's largest defense contractors is insisting on a 25-percent profit on a \$10 million contract. That was for a fixed-price contract. The same contractor is also insisting on a 15-percent profit for an \$8 to \$10 million cost-plus-fixed-fee contract in which he has no risk. The Government has no recourse but to deal with him; it cannot go to another source for the item. This is the sort of situation that is being obscured by the Department of Defense profit statistics which say that the average profit is only 2.4 percent.

The weighted guideline itself has increased profit about \$1 billion per year, yet that has been acclaimed as a fine scheme to save money—by rewarding greater efficiency. Actually it has increased profit by about \$1 billion with no noticeable increase in productive efficiency.

Mr. GRIFFIN. That is all, Mr. Chairman.

Mr. BARRETT. Admiral, you may continue now, if you desire.

Admiral RICKOVER. Yes, sir. I will discuss several issues relating to Government contracting.

DEFENSE DEPARTMENT TOO GREATLY INFLUENCED BY INDUSTRY VIEWPOINT

I stated earlier that I believe the Department of Defense and the Department of Commerce are too much influenced by an industry viewpoint. I do not think that this is limited to the Department of Defense or the Department of Commerce. I think it pervades other parts of the executive branch as well. I also think this viewpoint is most pronounced in the area of Government contracting. Here, the exact opposite should be the case. In the area of Government contracting, the viewpoint should not be an industry one. Rather it should be strongly pro-Government in order to protect the interest of the public at large. Industry has a plethora of employees to protect its interests.

There is an extensive interchange of personnel between Government and industry. In some cases, this has resulted in situations where Gov-

ernment officials now represent the contractors with whom they formerly did business and the contractor officials now represent the Government in dealing with their former companies. I do not think you can expect these people to have the Government's viewpoint uppermost in their minds or that we can consider that the Government's interest will be adequately protected.

ILLUSTRATION OF ARMED SERVICES PROCUREMENT REGULATION BEING USED TO PROTECT INDUSTRY

The Armed Services Procurement Regulation (ASPR) was intended originally to help Government contracting officers obtain supplies and equipment at a reasonable price. It was intended to protect the public. However, it has become a device to protect industry. Let me give you an example:

In conjunction with development of a new design submarine a little more than a year ago, a shipbuilder agreed to accept a preliminary design contract at a 5-percent profit because he would benefit from the experience gained in the performance of the contract, and because there was almost no risk and negligible investment on his part.

The contracting officer's position was that the profit guidelines in the Armed Services Procurement Regulation indicated the contractor was entitled to a fee of about 8 percent and that is what the Government was required to pay. After a heated argument with me, he finally agreed to the 5 percent fee provided the contractor would revise his proposal so the record would show that the contractor had requested the lower fee. In this way he could not be criticized for establishing a profit lower than the regulations "prescribed" under the circumstances.

In the discussion with this man, he told me that by giving the company less than the 8 percent allowed I was going against the law. I said, "Fine, I wish you would write a letter to Congress telling them I am violating the law by saving Government funds. Also I would be pleased if you wrote a letter to the newspaper telling them what an unfair action I am taking."

You may think this seems fantastic. And, of course, it is fantastic.

Let me give you another case.

This one involves the payment of general and administrative expenses at Government-owned, contractor-operated plants.

Several years ago, in 1964, it came to my attention that the Navy was paying about \$400,000 more each year in general and administrative expenses (G. & A.) for work at two laboratories owned by the Atomic Energy Commission than the Atomic Commission would pay for equivalent work.

I promptly pointed out this problem to appropriate Navy officials and recommended that the Navy reduce amounts paid for general and administrative expenses on Navy work at these laboratories to be consistent with amounts paid by the Atomic Energy Commission.

They replied that the Navy paid more for G. & A. expense because the Department of Defense followed different cost principles than the Atomic Energy Commission, and that Department of Defense cost principles required more to be paid. I was told that the Armed Services Procurement Regulation would have to be changed in order to permit the Navy to negotiate lower amounts for G. & A. in line with what the Atomic Energy Commission paid.

The proposed Armed Services Procurement Regulation change was sent to industry for comment. Industry, as one could expect, strongly objected to the change because it could reduce the amount of G. & A. they could charge to Government contracts. After the matter was studied for 2 years, the ASPR was changed to require that the armed services use "special care," whatever that means, in reviewing general and administrative expenses at Government-owned, contractor-operated plants.

Last Summer, in August 1967, I discovered that the Navy officials had reviewed, with "special care," the situation at the Atomic Energy Commission laboratories and had concluded that the higher Navy allowance for G. & A. was more appropriate than the lower allowances determined appropriate by the Atomic Energy Commission, despite the fact that the Atomic Energy is the Government agency which owns these laboratories. To conclude otherwise would require extensive negotiations with the contractors involved. So, the Navy continues to pay more than the Atomic Energy Commission.

But the point is, after 2 years of review and deliberation, the Navy actually managed to change the Armed Services Procurement Regulation, over industry objections, so they could take care of the problem I raised. However, industry lost nothing. The new Armed Services Procurement Regulation language was sufficiently vague that the Government officials involved feel no compulsion to reduce the amount being paid, despite the change to ASPR. I doubt any other Government directive could fail the test of worth so completely.

Mrs. SULLIVAN. The Navy is paying about \$400,000 more each year than the Atomic Energy Commission pays for similar work at these locations? Why would the Navy continue to pay more than it should for these expenses?

Admiral RICKOVER. I don't know. I can only assume it is because the officials involved feel that it is their responsibility to look out for industry interests rather than the Government interests. Despite what you are told about the desire for economy and efficiency in the Department of Defense operations, here is an example of what really happens.

You know how it is in the State Department. They have what they call country desks. Pretty soon the official in charge of the Lilliputian desk or the Brobdingnagian desk begins to feel that he is responsible for the welfare of "his" country. I do not doubt that some of our give-away programs have had their inception in this feeling by "desk" officers. One then becomes a judge and judges answer only to God.

Instead of constantly bearing in mind that his sole function is to take care of the interests of the United States, he becomes a judge, seeing to it that justice is being maintained between the United States and the foreign country.

It is easy to fall into this trap, because he is then answerable to no earthly power; he is responsible only to an inscrutable God.

This is analogous to what can happen in the Department of Defense's relationship with industry. This feeling of responsibility for the welfare of industry on the part of Department of Defense officials shows up in many ways.

DEFENSE DEPARTMENT TRADED ITS RIGHTS AWAY

The Department of Defense tends to trade away something for each new procurement policy it inaugurates when this policy happens to be

contrary to the industry position. For example, recently the Department of Defense announced it would obtain contractual rights to examine suppliers' books during or after completion of contract performance to determine whether cost and pricing data submitted by the supplier were accurate. The Department of Defense was under considerable pressure from the General Accounting Office to do this. Industry, however, objected strongly to Department of Defense auditors checking their cost estimates after contract award. To make the change palatable to industry, the Department of Defense issued a letter in conjunction with the new policy, assuring contractors that it would not use its audit authority to evaluate how much profit the contractor would make or how much the equipment was costing to build.

A letter from the Department of Defense to the Army, Navy, and Air Force states:

I wish to make it clear that the purpose of any post-award cost performance audit, as provided herein, is limited to the single purpose of determining whether or not defective cost or pricing data were submitted. Access to a contractor's records shall not for the purpose of evaluating profit-cost relationships, nor shall any repricing of such contracts be made because the realized profit was greater than was forecast, or because some contingency cited by the contractor in his submission failed to materialize—unless the audit reveals that the cost and pricing data certified by the contractor were, in fact, defective.

I simply don't understand why going through a man's books to find out if he is charging his costs to the Government legally is wrong. That is like vaccinating somebody but not being allowed to find out if the vaccination took.

Copies of this letter were distributed to contractors. In my opinion, this action essentially negated the intent of the policy and gave away a fundamental right the Government should have retained.

This brings me to another matter that has greatly concerned me for many years—the fact that in most cases the Government's patent policies result in a "giveaway" to industry of valuable rights to inventions and discoveries developed at Government expense.

GOVERNMENT AGENCIES HAVE A "GIVEAWAY" PATENT POLICY

Most Federal agencies, including the Department of Defense, have adopted "giveaway" patent policies under which the Government normally retains only a nonexclusive royalty-free license for itself, granting title and principal rights to contractors even when the research that led to the patent was financed from the Public Treasury.

Industry itself seldom grants its own employees rights to patents they develop. Yet somehow industry has convinced many in the Government that it is unfair to deny Government contractors rights to inventions developed at Government expense. This is a classic refutation of Jonathan Swift's proverb, "What's sauce for a goose is sauce for a gander."

It amazes me that the industry viewpoint is so widely accepted in policymaking circles of the Government. Only two agencies—the Atomic Energy Commission and the National Aeronautics and Space Administration—are today required by law to follow a "title" policy in which the Government may retain title and principal rights to the patents. Largely because of cries of anguish from the defenders of the "giveaway" patent policy, there is no overall policy regarding rights to inventions resulting from the expenditure of public funds. Instead,

at the present time, there is a virtual hodgepodge in which the patent policy of some Federal agencies is controlled by various statutes while other agencies operate under no statutory policy at all, but under a statement of Government patent policy issued by the President.

I testified at length on the subject of the Government's "giveaway" patent policy before the Senate Committee on the Judiciary in June 1961.

Mr. BARRETT. May we have that testimony for the record?

Admiral RICKOVER. I will provide it for the record.

(The information provided is included as appendix 4.)

The basic concept involved in my patent testimony is that the Government is entitled to get its money's worth for every procurement it makes, including research and development procurements. This is not happening under our present policies. Perhaps I oversimplify the issue. Yet, when I consider the valuable patent rights being given away to industry, I cannot help wondering if the executive branch's cost-reduction program ever became meaningful what considerable savings could be made.

A matter of broad national policy is involved in the patent issue. There is a compelling need for definitive legislation that will protect the public's interest. Perhaps this committee could lend its weight to bringing about corrective measures. I urge the Congress to enact definitive legislation which will establish uniform patent rules for all Federal agencies—guidelines requiring retention for the American people the rights and title to inventions financed by public funds.

GOVERNMENT SHOULD NOT PAY FOR ADVERTISEMENTS OF DEFENSE CONTRACTORS

Mr. BARRETT. Admiral, will you please discuss your experience with advertising insofar as this increases the cost of Government contracts.

Admiral RICKOVER. For several years I have been concerned over Government reimbursement of Defense contractors for advertising costs.

In 1961, I testified on this subject before the House Appropriations Committee whose chairman at the time was Clarence Cannon, a dear friend of mine. Senator Howard Cannon at about the same time testified before the Senate Appropriation Committee on the same subject.

As a result of this testimony, Congress included a provision in the fiscal year 1962 Department of Defense Appropriations Act prohibiting reimbursement of advertising costs except for (1) the recruitment of personnel required for performance of the contract; (2) the procurement of scarce items; or (3) the disposal of scrap or surplus materials. In other words, contractors were to pay for advertising out of corporate profits, except for the three items I just enumerated.

These provisions were incorporated into the Armed Services Procurement Regulation, and they remain in effect today. However, the Armed Services Procurement Regulation provisions apply mainly to cost-type contracts. They are only guides in pricing fixed-price contracts.

I am convinced that many fixed-price contracts include indirect payments for advertising costs, which in all likelihood would be disallowed under the Armed Service Procurement Regulation rules for cost-plus-fixed-fee (CPFF) contracts. I, therefore, testified again in May 1967 on

this subject before the House of Representatives Appropriations Committee.

As a result of that testimony, Congress reiterated its position by writing into the fiscal year 1968 Department of Defense Appropriations Act a prohibition against paying the costs of advertising by any Defense contractors except for the three cases I mentioned.

The record is clear that Congress' intent in writing this provision into law was to extend the present Armed Services Procurement Regulation provisions, which apply to reimbursement of advertising costs under CPFF contracts, so as to prohibit reimbursement of advertising costs as an element of cost on any negotiated contract, except advertising paid from profits.

I know of no effort underway within the Department of Defense to reappraise its policies with regard to the reimbursement of advertising costs to Defense contractors in spite of their being aware of Congress' concern and mandate in this matter.

It is not only the matter of the taxpayer picking up the tab for advancing the interests of private corporations and individuals that concerns me. Many of these advertisements do damage to the security of the United States.

VALUABLE TECHNICAL INFORMATION GIVEN TO POTENTIAL ENEMIES THROUGH ADVERTISING OF MILITARY EQUIPMENT BY DEFENSE CONTRACTORS

A substantial amount of technical information regarding this country's military capabilities is being given away through this medium. I am not talking about classified information now. A great deal of unclassified information pertaining to techniques used in manufacturing military hardware is very valuable to our potential enemies. A recent statement attributed to a former Communist spy says in effect that the Soviet Military Attaché's Office in this country is able to acquire openly and without subterfuge 95 percent of the material it needs to meet its intelligence objectives.

He stated that in most other countries Soviet-bloc agents must devote 90 percent of their time in clandestine efforts to obtain information readily found in American publications.

Let me give you an example of what I am talking about. The March 1968 issue of Armed Forces Management magazine devotes 51 out of 88 pages to advertising by Defense contractors. Information is given on the following:

- A new breed of tactical radar altimeter;
- A new helicopter being used in Vietnam;
- The Nation's first variable stability training system used in the F-106B jet interceptor to simulate a wide variety of aircraft;
- An aircraft integrated data system, which monitors, measures, and records vital aircraft flight performance parameters;
- A new crane helicopter;
- A multipurpose airmobile combat-support vehicle;
- The F-111 tactical fighter hydraulic systems;
- Electronic reconnaissance, surveillance and active countermeasures systems; and

The F-4 Phantom jet.

Many magazines are issued each month similar to this one. Please note that the Government is the sole customer for nearly all the items being advertised.

For instance, are you in the market to buy a Polaris submarine or a nuclear aircraft carrier, Mr. Chairman?

Mr. BARRETT. No.

Admiral RICKOVER. The items being advertised are Government property. The Government, consequently, derives no benefit from such advertising. The people who benefit from it are foreigners, not the people of the United States.

These advertisements also create a good image for the company, and help its stock.

I know this is not an easy problem to solve. I would normally be quite honored to have someone copy what I am doing technically. However, I am afraid we are giving away information which is going to hurt the people of this country.

It is difficult to try to control security through cost principles because of changes in accounting systems, overhead allocations, and so on. However, I believe certain actions can be taken at least to reduce the volume of advertisements, and place the burden of the cost of the remaining ones on the shoulders of those who derive the benefit from them.

First: A mandatory clause should be inserted in all contracts for procurement of military hardware requiring prior Government security clearance for all advertising. There is a clause in each of my contracts which requires that the company obtain Government approval prior to release of any information relating to work under the contract. Were you to read any of these magazines you would find no advertisements or technical data about naval nuclear powerplants.

Second: The Department of Defense should be required to extend the present Armed Services Procurement Regulation provisions which apply to reimbursement of advertising costs as an element of cost on any negotiated contract, except advertising paid from profits.

Third: Congress should require the General Accounting Office to undertake an investigation to determine just how much the Department of Defense is subsidizing contractor advertising costs and how effective the administration of the Armed Services Procurement Regulation provisions pertaining to reimbursement of advertising costs has been.

GOVERNMENT NOT ORGANIZED TO PROTECT ITSELF AGAINST CONTRACTOR CLAIMS

Mr. BARRETT. What about these large, after the fact, claims against the Government? Are these a problem in your area?

Admiral RICKOVER. Yes, sir. I am currently involved in a case that illustrates this problem very well.

The case involves several multimillion dollar contracts dating back to 1958. At that time, there was no Truth in Negotiations Act. However, on certain procurements for nuclear propulsion components, cost breakdowns were requested so that the Navy could test the reasonableness of price levels established through negotiations.

In response to these requests for cost breakdowns, a contractor submitted figures that indicated his prices included a 10 percent profit.

About 4 years later, in 1962, the General Accounting Office found that the contractor made actual profits of about 45 to 65 percent on these orders, and that he knew, or should have known at the time he submitted his cost breakdowns, that he would realize profits substan-

tially higher than the 10 percent he represented to the Government.

The General Accounting Office considered that the contractor was not entitled to these excessive profits under the circumstances. The Navy and the Department of Defense agreed with the General Accounting Office. In July 1962 the Navy withheld payment to the contractor of about \$4 million, to recover the excess profit. In November 1964 the Navy Auditor, after an extensive and thorough review, made a formal determination that the \$4 million was not reimbursable under the Government's contracts. In January 1965 the contractor appealed the Navy Auditor's decision. This appeal was ultimately turned over to the Defense Contract Audit Agency and, in February 1966 the Defense Auditor responsible for auditing this contract, issued a preliminary decision substantiating the Navy's prior action in disallowing the \$4 million. In June 1967 the contractor made a further appeal of the case to Defense Contract Audit Agency Headquarters.

Now, in April 1968, the Defense Contract Audit Agency has completed a new audit of these 10-year-old orders. This new audit concluded that the contractor is entitled to be paid the excess profit he obtained, despite his submittal of these breakdowns.

I cannot understand what caused this reversal. Apparently, the contractor's lawyers came up with a line of reasoning that the Defense Auditor has been able to accept as adequate to support the contractor's claim to these excess profits.

The contractor's lawyer and the Defense Auditor now argue that the Navy closely supervised the contractor's operations and was fully cognizant of the facts concerning these contracts at the time the contracts were let. They argue that because the Navy agreed to the contractor's use of a fixed-price contract instead of a cost-type contract, the Navy, rather than the contractor, was at fault for the higher profits. With respect to the contractor's breakdowns showing a 10-percent profit, they state that the Navy's purpose in requesting these breakdowns "was not clear" and the breakdowns "served no real purpose."

Apparently, the contractor and the Defense Auditor have concluded that a contractor's breakdown doesn't mean anything. Apparently, it is proper to tell the Government 10 percent when you expect to make 45 to 60 percent.

When a corporation submits a price or cost breakdown to the Government, I believe the corporation and the officials involved should be held responsible for its accuracy. Since the corporation has won the rights as a citizen under law, why, then, shouldn't it and its officials have the corresponding obligations and responsibilities of a citizen? It is one of the glories of Anglo-Saxon jurisprudence that every official is responsible for his acts. It was not the corporation but its officials that gave the Government this information. However, it appears that they will now be excused for their actions.

If an ordinary citizen were treated the way the Government was treated in this case, I don't think he would consider he had received a "square deal"; I think he would consider he had been subjected to sharp practices.

What is even more disturbing is the manner in which the matter is being handled. It was only indirectly from one of my field representatives that I learned a new audit had been made. I had to request an opportunity for the Navy to review the Defense Auditor's recommen-

dations. Apparently, the matter was to be settled without any further reference to the Navy, even though the Navy was the Government agency most knowledgeable of the circumstances.

The Defense Contract Audit Agency finally agreed to provide a copy of the Defense Auditor's recommendation to both the contractor and the Navy, but insisted that any comments be submitted within 10 days. Although the Defense Auditor, after a 9-month study, was reversing the Government's position arrived at 6 years earlier and reaffirmed 2 years ago, the Navy was given but 10 days to review the case and provide its comments.

This case is a good example that, no matter what the circumstances, if a contractor persists long enough, he usually wins his case. The Government is simply not organized and staffed adequately to take care of the Government's interests. I cannot stop my work for 10 days to give this complex matter the attention it needs; neither can I spare the time of people on my staff. So, we will do the best we can.

There is no question in my mind that the Government will ultimately have to pay the \$4 million. All of the efforts by the Navy and the GAO will have gone for naught. Can you blame civil servants for having an apathetic attitude?

Mr. BARRETT. Admiral, the case you have just mentioned is very disturbing. I am amazed that the Department of Defense is not forcefully acting to protect the Government. Have you any more such experiences?

CONTRACTOR CLAIMS UNDER SHIPBUILDING CONTRACTS

Admiral RICKOVER. Yes, sir. I will give you another example.

Because Navy ships are complex and require a long time to build, the Government often has to make a large number of changes during the life of the contract. Although most Government people try hard to keep these changes to a minimum, many times changes are required to take advantage of operating experience or new developments. Some changes are of an urgent nature and have to be authorized before the work can be priced to prevent a contractor from proceeding with unnecessary work in areas affected by the change.

Once a large unpriced change is issued, the door is open. These changes are often very complex, requiring a lengthy period to prepare the necessary estimates and negotiate the price. Frequently, a large backlog of these unpriced changes develops, and is usually still pending at the time the contract is completed. At that time, the shipbuilder can combine these changes with whatever other claims he can develop, valid or not, and submit a large claim against the Government.

In these circumstances it is usually not possible to determine the cost of individual changes for which the Government is responsible. The Government is forced to negotiate a lump settlement. It is here that the contractor has the Government at a great disadvantage. The contractors have large staffs which can be devoted to the preparation and pricing of these claims. The Government has but a few people to look after its contracts and these people normally have other responsibilities which occupy their time. The contractors can take advantage of this situation to screen specifications, delivery of Government-furnished material, and so forth—as necessary to support whatever price they feel they can obtain. Under these conditions, a shipbuilder can completely reprice his contracts. The Government often

winds up with what has, in effect, become a cost-plus operation, but without the protection of a cost-plus contract.

In one case a contractor submitted a \$70 million claim on a \$70 million fixed-price contract. The contractor's supporting documentation required dozens of file cabinets. It was obvious to me that the contractor had devoted a great deal of effort over the life of the contract in preparing this claim against the Government. Part of the claim related to work the Government had requested and to delays caused by late delivery of Government equipment. The Government simply does not have enough people to analyze in detail the supplier's claim to arrive at a proper basis of settlement on individual items. Accordingly, the claim was settled on a lump-sum basis, at about 90 percent of what the contractor requested.

Again the point is that the Government is not organized or staffed to properly protect itself in these situations.

Mr. BARRETT. Admiral, in reading your testimony before the House Appropriations Committee, I note you went into the matter of construction contracts. Will you be so good as to discuss this for our benefit?

CONTRACTOR CLAIMS UNDER CONSTRUCTION CONTRACTS

Admiral RICKOVER. I will, sir.

In past testimony I presented two recommendations concerning construction contracts for buildings and facilities. This area is important because the Government spends billions of dollars on construction work. Contracts for buildings and facilities are usually formally advertised fixed-price contracts and are awarded to the lowest responsible bidder, based on competition. In this area I recommended that Congress or the General Accounting Office establish procedures requiring the executive branch to maintain centralized contractor-experience records which would reveal, as a minimum, original and final contract prices and the amount of unfounded and exorbitant claims submitted by construction contractors. These experience records would help contracting officers in all branches of Government to exercise sound business judgment in awarding contracts to low, responsible bidders by aiding them in identifying contractors who harass the Government with unfounded claims, and otherwise perform poorly.

I am always anxious to avoid awarding contracts to contractors who submit unfounded claims because these contractors seem to bid with the knowledge that they will eventually obtain large sums of money from the Government by exploiting opportunities for contract changes and claims. They exploit changes and alleged changes in the work, changes in the job conditions, and even changes in the weather to escalate the price of Government contracts. They employ legal personnel for the purpose of searching plans and specifications for points susceptible to being labeled "ambiguous" or "not clear." If they cannot afford a legal staff of their own, they hire law firms who specialize in presenting claims against the Government on construction contracts either by pressing for unreasonable contract changes or by dragging unfounded claims before various review boards and courts.

Frequently, the fees these law firms receive are based on what they can extract from the Government. In any event, contractors' clerks and lawyers continually bombard the Government with demands for contract changes to clear up so-called ambiguous, unclear problems.

And if they persist long enough, the Government eventually settles in their favor because the Government simply does not have the time, staffing, talent, or the memory to protect itself from unfounded change claims.

In past testimony I cited the case of an unfounded claim made by a construction contractor on a contract awarded him in 1961. We devoted considerable effort in writing this contract to protect the Government against unfounded claims. For example, we provided that no change would be authorized by other than a specifically designated Government representative, in writing; also that change orders had to be priced out before the contractor could proceed with the work. We carefully prepared the specifications in order to leave no uncertain areas and we warned the contractor in writing as to how we proposed to administer the contract so as to avoid unwarranted claims. Further, the contractor was given the opportunity to withdraw before the contract was awarded if he did not wish to perform on the basis we proposed. He did not withdraw.

After the job was completed, the contractor presented a claim for twice the contract price—a \$2 million claim above the approximately \$1 million contract price—despite our precautions in writing the contract. Seven years later, the claim is still not settled. It was denied by the contracting officer, but the contractor then appealed and the claim was accepted by a Government contract review board. The contracting officer, doubting the legality of payment, requested an advance decision of the General Accounting Office prior to paying the claim. The lawyers representing the contractor thereupon presented arguments pertaining to the question of whether or not the General Accounting Office had a right to review the claim. Nevertheless, the General Accounting Office ruled in the Government's favor. The contractor's lawyers promptly brought suit in the U.S. Court of Claims. The matter is still pending, 7 years after the original contract, and I certainly hope that the time spent in defending the Government's interest will not be in vain.

Now, I doubt that the Atomic Energy Commission would consider awarding future contracts to this particular construction contractor or to any contractor who has submitted unfounded and exorbitant claims against prior contracts with the Commission. But without a system for determining Government-wide experience with contractors, there is no way for another Government agency to determine if a fixed-price construction proposal from this same contractor is responsible. Thus many contractors are allowed to continue doing business with the Government regardless of how much time and effort the Government must expend on unfounded claims or in haggling over contract interpretations to resolve contractor claims.

The problem of claims against the Government is aggravated because Government contracts are not promptly closed out after work is completed. This allows contractors ample time to prepare and submit claims. In one case, I received a claim from a construction contractor a year after the work was done. I try to insure that contracts under my responsibility are closed out promptly after completion of the work in order to protect the Government from unfounded claims. However, it is my experience that the Government, as a whole, does not place enough emphasis on this aspect of procurement.

Again, in this area of claims, Congress will have to take the lead if anything is to be done. Congress should require the executive branch to maintain contract experience records which reveal such things as original and final prices of contracts and amounts of unfounded and exorbitant claims submitted by contractors, and the amounts of excessive profit. I also recommend that Government procurement procedures be strengthened to insure prompt closeout of contracts following completion of work. I believe Congress should require an annual report from each agency, listing contracts still in force more than a reasonable period of, say 1 to 3 months, after the contract work has been completed, and the reason therefor.

Mr. WIDNALL. You are speaking about your frustrations about change-orders, the cost involved, and the delay involved. Don't go outside of this building without seeing what happened here, where it started out around \$65 million and is currently up around \$118 million because of change-orders.

Is part of this the awarding of an original contract to a low bidder, and then there is something on the outside—you bid low, and then we will give you all these change-orders, where you make your profit, and where you pyramid your profit?

This has happened in private business, with municipalities, in the building of schools.

Admiral RICKOVER. May I answer your questions, sir?

Mr. BARRETT. Admiral, before you answer it, may I just interpose here for a second.

You know we had a great shipyard known as the New York Shipbuilding Corp. in Camden, N.J. It built the aircraft carrier *Kitty Hawk*. They had so many changes of plans that the cost of the changes ultimately reached the cost of the original contract. The Navy then took the *Kitty Hawk* over to the Philadelphia Naval Base and they had to correct the changes which were made by the New York Shipbuilding Corp. to meet the specifications of the Navy.

Now, these are things that do happen, and in this building, too. When I first came across town from the airport and I would say "the Rayburn Building," the operator of the cab, would say, "Are you going to that monstrosity?"

But today cab operators and others who come here say, "Isn't this a most palatial building?" It is worth every dollar put into it.

Admiral RICKOVER. Your comment on the Rayburn Building reminds me of the story about Pope Pius II in the 15th century in connection with the construction of a church and a palace.

The Pope had received many insinuations against his architect, a Florentine named Bernardo—that he had cheated, that he had blundered in the construction of the church and the palace, that he had spent more than 50,000 ducats when his estimate had been 18,000. The law would have obliged the architect to make up the difference.

Pius, when he had inspected the work and examined everything, sent for the man.

When the architect arrived in some apprehension, since he knew that many charges had been brought against him, Pius said, "You did well, Bernardo, in lying to us about the expense involved in the work. If you had told the truth, you could never have induced us to spend so much money and neither this splendid palace nor this church, the

finest in all Italy, would now be standing. Your deceit has built these glorious structures which are praised by all except the few who are consumed with envy. We thank you and think you deserve especial honor among all the architects of our time"—and he ordered full pay to be given him and in addition a present of 100 ducats and a scarlet robe. He assigned him new commissions and bestowed on his son the grace he asked. When he heard the Pope's words, Bernardo burst into tears of joy.

SUMMARY OF MAIN POINTS FROM TESTIMONY

Mr. BARRETT. What you have said is of importance and interest to this committee. Will you please summarize the recommendations you have made in your testimony?

Admiral RICKOVER. Yes, sir. I will summarize the main points I have made.

First, I have testified regarding the difficulties I am experiencing in obtaining defense equipment. I pointed out that under the pressure of the Vietnam war and the high level of civilian business, it has become increasingly difficult to get industry to accept and perform orders for military equipment in a timely and economical manner. Lead times have increased by as much as 18-24 months to 42-48 months for many of the items I require. I pointed out, too, that in the nuclear area, the military also faces competition from the rapidly expanding market for nuclear plants from the civilian electric utility industry.

I pointed out that as a result of the Department of Commerce's unwillingness to issue a directive under the Defense Production Act, a new submarine project for the Navy was delayed by more than 5 months and the Navy was forced to accept less than its normal rights with respect to inspection, quality control and equipment variations on a contract for the main propulsion equipment for this new submarine.

I have been unable to obtain proper assistance from the Department of Commerce under the Defense Production Act. I believe the Defense Production Act and its administration must be improved if it is to be effective in assisting the military in obtaining the equipment it needs.

I pointed out that profits on defense contracts have increased by about 25 percent over the last several years, and that far from being too low as claimed by the Department of Defense, and industry, they may be too high. I have given you specific figures to support my statements regarding profits on defense contracts.

I emphasized that without uniform standards of accounting, the Truth in Negotiations and the Renegotiation Acts cannot protect the American public against excessive profit on defense work. To show how suppliers can report lower than actual profits, I gave an example of a supplier's cost breakdown, certified in accordance with the Truth in Negotiations Act, listing a 2.5-percent profit when the profit was in fact 12 to 13 percent. In my judgment, the lack of a uniform standard of accounting is the most serious deficiency in Government procurement today.

I pointed out that without uniform standards of accounting, large additional profits on defense work can be hidden as costs just by the way overhead is charged or how parts or materials are priced. I pointed out that the Government encounters such a wide variety of

complex accounting system that it is virtually impossible to know just how much defense equipment costs and how much profit a supplier makes in producing it—without spending months reconstructing a supplier's books.

I discussed some of the problems we face in procuring military equipment. I pointed out that, in my opinion, the Department of Defense is too much influenced by the industry viewpoint, particularly in the area of Government contracting.

The Armed Services Procurement Regulation, originally intended to help Government contracting officers and to protect the Government in procuring military supplies and equipment, has become a device to protect industry. I cited, as examples, two cases where this regulation was used to justify payment of higher prices than the Government should pay. In one of these cases, the Navy continues to pay about \$400,000 more each year in general and administrative expenses for work at two laboratories owned by the Atomic Energy Commission than the Atomic Energy Commission would pay for equivalent work at these laboratories. In the other case I was told that I could not agree to a profit lower than prescribed by the regulation.

I believe the Armed Services Procurement Regulation should be revised to point out that its provisions are intended to be an upper limit for Government contracts, beyond which contracting officers may not go. The regulation ought to clearly encourage contracting officers to obtain terms more favorable to the Government whenever it is possible to do so.

I pointed out the need for legislation to establish uniform patent rules for all Federal agencies. This legislation should require that Government agencies retain, for the American people, the rights and title to inventions financed by public funds.

I testified that a substantial amount of technical information regarding this country's military capabilities is being given away through advertisements by defense contractors. I believe that, in large measure, the Government pays for these advertisements in the price of its contracts.

I recommend that a mandatory clause be inserted in all defense contracts requiring prior Government security clearance of all advertising. The Armed Services Procurement Regulation should be modified to clearly prohibit reimbursements of advertising costs on any negotiated contract, except advertising paid from profit.

I discussed the problems of large, after the fact, supplier claims and pointed out to you that Government was simply not organized or staffed adequately to protect itself in these situations. I pointed out examples to demonstrate this point. In this area of construction contracts, I recommended that Congress require the executive branch to maintain contract experience records which reveal such things as the original and final prices of contracts, the amount of exorbitant and unfounded claims submitted by contractors, and the amount of excessive profit on Government contracts.

I also recommended that present procurement procedures be strengthened to insure prompt closeout of contract following completion of work. Congress should require an annual report from each agency, listing the contracts still in force more than a reasonable period, say 1 to 3 months, after the contract work has been completed, and the reasons therefore.

With regard to the Renegotiation Act, I believe it should be strengthened and made permanent in order to prevent excess profits. I believe that Representative Gonzalez' bill to strengthen the act is a good one and is feasible. Namely:

- (a) Make the Renegotiation Act permanent.
- (b) Reduce the level of reporting from \$1 million at present to \$250,000.
- (c) Eliminate the so-called 35-percent rule for exemption of commercial articles.

- (d) Include all construction contracts.
- (e) Include machine tools and other durable production equipment.
- (f) Include the Tennessee Valley Authority.

In addition, I recommend that the act be amended to—

- (1) Require that contractors report cost and profits on each Defense contract over \$100,000, on a contract-by-contract basis.

- (2) Provide for renegotiation of contracts within individual commodity groupings, such as the groupings prescribed by the Federal Supply Catalog, rather than by total company sales.

- (3) Require that costs and profits be reported in accordance with a uniform standard of accounting. The accounting standard should exclude costs not appropriate to Government contracts, as set forth in part 2, section XV of the Armed Services and Federal Procurement Regulations, such as advertising, interest, bad debts, and so forth.

- (4) Require that contractor reports be certified by a responsible and authorized company official; and provide criminal penalties for filing of false or misleading data. The plea nolo contendere should not be allowed in these cases.

With regard to the Defense Production Act, I believe the Department of Commerce has demonstrated it is incapable of effectively administering that act. The assignment of this responsibility to another agency should be considered. This responsibility could be taken back by the Office of Emergency Planning or assigned to a new agency similar to the National Production Authority which was abolished after the Korean war.

The act should also be amended to require that Defense contractors provide a report of costs and profit for each contract over \$100,000, in a manner similar to the income tax return. The report should also identify the supplier's actual delivery performance as compared to the delivery required by the contract. A summary of this information should be provided annually to Congress and to the public. This would be one means to assist you in finding out what is actually going on.

Each report on costs and profits should be certified by a responsible and authorized official of the company, and the act should provide criminal penalties for false or misleading data. The act should prohibit the plea of nolo contendere as a defense.

The act should also require contractors to account for costs under Government contracts in accordance with a uniform accounting standard. I recommend that you start with the existing cost principles contained in the Armed Services or Federal Procurement Regulation but that you require an improved standard to be developed by the Bureau of the Budget and approved by the General Accounting Office within 6 months after the date of enactment of the amendment.

In addition, I recommend that the Defense Production Act be modified to require—

- (1) Department of Defense contractors to certify that rated Defense orders receive priority over nonrated orders.
- (2) Periodic inspection of Defense contractors' plants to insure that the proper priority is being given to rated Defense orders.
- (3) An annual report to Congress identifying instances in which priority assistance requested by military departments was not provided. This report should include all cases in which contractors failed to comply with the provisions of the act and outline the specific enforcement action taken in each case.

I believe the measures I have recommended would do a great deal to improve the Government's ability to obtain military equipment in a timely manner and at reasonable prices.

Mr. BARRETT. Thank you, Admiral Rickover. You may be sure that this committee will give your views serious consideration.

Admiral RICKOVER. I deeply appreciate talking with this committee. You know the esteem I hold for Congress and my deep respect for it. In a very heartfelt manner, I believe it is the Congress more than any other body that stands for us in preserving our democracy.

All of us love our country. We want to preserve our freedom and our wonderful land for our children and their children.

I am deeply grateful for the privilege of appearing before you, and for permitting me to talk freely. There is an obligation on those who know segments of Government to see that their knowledge is not lost. I am merely trying to do the best I can, to discharge my remit and I know you will at least given consideration to what I have said. So I want to thank you, sir.

Mr. BARRETT. Thank you, Admiral, and I just want to say for the committee, and I think if the chairman were here he would say it, we have a very fine committee, satiated with love and understanding on both sides.

The gentleman from New Jersey, Bill Widnall, is very capable and I think deeply interested in the poorest of the poor. He, sitting on the left, is trying as much as I, sitting on the right, am trying to make our country strong from within.

Admiral RICKOVER. I believe there is the potential to save enough money, by taking corrective action in Government contracting to help pay for part of these programs.

Mr. BARRETT. This is a very revealing thing. We have a splendid minority here, from the lowest man on the totem pole, all the way up. It is, I think, the finest that represents the people of the United States in Congress.

We are going to hold it that way, and I am sure they will all be grateful for your most edifying information. This is very helpful and very revealing, and I want you to know we are grateful for your coming here.

Mr. WIDNALL. Mr. Chairman, I would just like to add on the part of the minority, our thanks for your coming here today and for the very helpful information you have given us. Your constructive criticism bears looking into and requires real insight on the part of the Congress.

Admiral RICKOVER. Thank you, sir.

Mr. BARRETT. The committee stands in recess, pending the call of the Chair of the full committee.

APPENDIX 1

NAVAL NUCLEAR PROPULSION PROGRAM

The Naval Nuclear Propulsion Program is a joint program of the Atomic Energy Commission and the Department of the Navy which has as its objective the design and development of improved naval nuclear propulsion plants having high reliability, maximum simplicity, and optimum fuel life for installation in ships ranging in size from small submarines to large combatant surface ships. The program is directed by VADM Hyman G. Rickover, USN, Director, Division of Naval Reactors, U.S. Atomic Energy Commission and Deputy Commander for Nuclear Propulsion, Naval Ship Systems Command.

Design, development, testing and evaluation of these improved nuclear propulsion plants is carried out by the Atomic Energy Commission's Bettis Atomic Power Laboratory, Pittsburgh, Pennsylvania, and Knolls Atomic Power Laboratory, Schenectady, New York. These two government-owned research and development laboratories are operated for the Atomic Energy Commission by the Westinghouse Electric Corporation and the General Electric Company respectively. The program also operates and maintains six land prototype nuclear propulsion plants—The Submarine Advanced Reactor and the Destroyer Type Dual Reactor at West Milton, New York, the Small Submarine Reactor at Windsor, Connecticut; and the Large Ship Reactor, the S1W Reactor Facility, and the Natural Circulation Reactor at the Atomic Energy Commission's National Reactor Testing Station, Idaho.

In addition to being used to test power plant designs, the land prototypes are used to train the officers and men who operate the shipboard nuclear propulsion plants. Approximately 2,800 officers and 15,300 enlisted men have been trained at these prototypes to date. The nuclear power training program is divided into two phases—the first consisting of a 24-week course of instruction in science and technology at the Nuclear Power School located at either Bainbridge, Maryland or Mare Island, California. Upon successful completion of this phase, the trainee is ordered to one of the prototypes for six months to undertake a rigorous training program that emphasizes principles and understanding of fundamentals instead of memorization. Courses are, therefore, on a college level for enlisted personnel and on a graduate level for officers.

Congress has authorized 107 nuclear-powered submarines including 41 Polaris missile-launching type and 1 Deep Submergence Research Vehicle, and 8 nuclear-powered surface ships. Of these, 75 nuclear-powered submarines, including 41 Polaris missile-launching type, and 4 nuclear-powered surface ships—the aircraft carrier *Enterprise*, the guided missile cruiser *Long Beach*, and the guided missile frigates *Bainbridge* and *Truxtun*—have been placed in operation and have steamed over 11,000,000 miles. Never once has a mission had to be aborted because of a failure in the reactor plant.

Through fiscal year 1968 the Atomic Energy Commission and the Navy will have invested approximately \$13.5 billion in the design, development and construction of naval nuclear-powered ships. Of the \$13.5 billion, the Atomic Energy Commission has provided \$1.2 billion in research and development funds from the inception of the program and an additional \$0.4 billion for capital investment and facilities; the Navy has invested \$11.5 billion in the construction of nuclear-powered submarines and surface ships and an additional \$0.4 billion for research and development.

Naval nuclear propulsion plant components, including the nuclear reactor and its special instruments and controls, are procured from private industry using mostly fixed-price contracts. Over 450 industrial contractors—150 large and 300 small businesses—are engaged in the fabrication and supply of these components and equipment. There are four private shipyards engaged in the construction or overhaul of naval nuclear-powered ships—Electric Boat, Groton, Connecticut; the Quincy Yard, Quincy, Massachusetts; Newport News Shipbuilding and Dry Dock Company, Newport News, Virginia; and Ingalls Shipbuilding Corporation, Pascagoula, Mississippi. There are also six naval shipyards—Portsmouth Naval Shipyard, Portsmouth, New Hampshire; San Francisco Bay Naval Shipyard, Vallejo, California; Charleston Naval Shipyard, Charleston, South Carolina; Norfolk Naval Shipyard, Portsmouth, Virginia; Puget Sound Naval Shipyard, Bremerton, Washington and Pearl Harbor Naval Shipyard, Pearl Harbor, Hawaii.

APPENDIX 2

U.S. ATOMIC ENERGY COMMISSION,
Washington, D.C., January 15, 1968.

Hon. L. MENDEL RIVERS,
Chairman, Committee on Armed Services,
House of Representatives.

DEAR MR. RIVERS: Your letter of November 28, 1967 requested the AEC's assessment of the industrial capability in the United States for manufacturing sufficient naval nuclear propulsion plant equipment to provide nuclear propulsion for the major surface warships and submarines currently being considered by the Navy for shipbuilding programs over the next several years.

In May 1967, the Office of the Chief of Naval Operations requested the Naval Ship Systems Command to advise regarding feasibility of a postulated future nuclear shipbuilding program in light of industrial and shipyard capacity. The nuclear warship building program postulated by the Office of the Chief of Naval Operations for the feasibility assessment was [deleted] nuclear powered major fleet escorts (DLGNs/DXGNs) to be authorized in the period FY 67-75, in addition to authorization of [deleted] nuclear aircraft carrier (CVAN) [deleted] and [deleted] nuclear attack submarines each year. If [deleted] nuclear escorts were built, this would provide nuclear propulsion for all [deleted] DXGs well as the [deleted] nuclear escorts for nuclear carriers recommended by the Navy as a result of their Major Fleet Escort Study. The Naval Reactors Division of the AEC under Admiral Rickover participated with the Naval Ship Systems Command in preparation of the feasibility assessment, and concurred in the results.

The conclusions of the Naval Ship Systems Command and the Naval Reactors Division were that with adequate long lead time procurement authorization, authority to make long range commitments to vendors, and necessary priorities, the nuclear powered surface escort, aircraft carrier, and submarine building program postulated by the Office of the Chief of Naval Operations is feasible. These conclusions were forwarded to the Secretary of the Navy and the Deputy Secretary of Defense by the Chief of Naval Operations on September 15, 1967.

Therefore, as long as program decisions are made in time to provide for orderly planning, the Atomic Energy Commission concludes that United States industry has the capability to manufacture sufficient naval nuclear propulsion plant equipment to provide nuclear propulsion for the major surface warships and submarines currently being considered by the Navy for shipbuilding programs over the next several years.

In this regard, it should be noted that the naval nuclear propulsion program pioneered the development of nuclear power in the United States. During the period 1955 through 1963 when the Navy was ordering as many as 15 naval reactors in a single year, and there was reason to expect a continuing naval nuclear shipbuilding program, a competitive market was established with at least three vendors—in most cases more than three—for each component used in naval nuclear reactor plants. It took an extremely arduous effort and many years to build up this industrial capability for naval nuclear propulsion plant components.

However, because of the rapidly increasing market for central station nuclear plants; because of the decline in naval reactor plant orders since 1963; because the Department of Defense has made public statements that it plans to build no more nuclear submarines after fiscal year 1969, no new nuclear powered major fleet escorts after DLGN36, and only two additional nuclear aircraft carriers after the *Nimitz*; the naval nuclear industry capability has been rapidly disappearing.

Many of the industrial concerns which in the past manufactured components for the naval nuclear propulsion programs have turned from naval work to supply the civilian electric utility industry. In the past two years civilian electric utility orders for nuclear reactors have far surpassed orders for naval reactors. It should be noted that more than half the central station electric plants currently being procured in the United States are nuclear powered and this trend

is accelerating. Industry currently has a backlog of over \$3 billion in unfilled orders for nuclear components for civilian electric utility reactors, and the number of orders is increasing rapidly.

With the relatively small volume of business available for naval nuclear plants, it is difficult to get competent suppliers to assign the necessary talent to naval nuclear propulsion work. Naval nuclear work is very demanding on a supplier's engineering and quality control capabilities. The work must be performed under close scrutiny to ensure that the reactor plant will operate reliably and safely under combat conditions. Naval reactors must be designed to withstand combat shock, to continue operations following a partial casualty, to be compact to fit into a warship hull, and must be capable of being maintained by the ship's force while underway.

Therefore, if the United States is to *retain* sufficient naval nuclear industrial capacity to build reactor plants for the submarines and major surface warships contemplated by the Navy, it is important that a firm long range nuclear shipbuilding program be decided upon as soon as possible, so that long term commitments can be obtained from suppliers.

I am enclosing herewith a paper prepared by Admiral Rickover which comments on the rapidly expanding market for civilian electric utility nuclear reactors and its effect on the nuclear power industrial base for naval nuclear propulsion components.

Cordially,

GLENN T. SEABORG, *Chairman.*

EFFECT OF EXPANDING MARKET FOR ELECTRIC UTILITY NUCLEAR CENTRAL STATIONS ON INDUSTRIAL BASE FOR NAVAL NUCLEAR PROPULSION PLANTS

January 5, 1968

Prepared by: Vice Admiral H. G. Rickover, U.S. Navy; Director, Division of Naval Reactors, U.S. Atomic Energy Commission; and Deputy Commander for Nuclear Propulsion, Naval Ship Systems Command, U.S. Navy

Development of nuclear reactor plant industrial capability

The naval nuclear propulsion program pioneered the development of an industrial capability to design and manufacture reactor plant components and equipment for both naval and civilian use. This development was extremely arduous, time consuming and expensive. Because of the potential hazards relating to the use of atomic energy, it required development and implementation of standards for design, manufacture and quality control far higher than previously used by industry for fossil fueled power plants. By 1960, the naval program had established a viable, competitive nuclear component industry with 3 to 5 vendors for each component used in a naval nuclear plant. This industry had more than sufficient capacity to meet the Navy's shipbuilding program which required ordering as many as 15 naval reactor plants in any one year.

Growth in demand for electric utility nuclear central station reactors

Until about three years ago, naval nuclear business constituted the major portion of the nuclear component business. Since then, the demand for civilian electric utility reactors has greatly exceeded the volume of naval reactor orders in terms of numbers of reactors, total reactor thermal capacity, size of individual reactors, and total dollar value ordered. This growth in demand for electric utility reactors as compared to naval program requirements is shown in Figures 1, 2, and 3.

These graphs show the dramatic increase in electric utility reactors on order and likely to be ordered in the future—from zero in 1964 to more than half the central station electrical generating plants ordered in 1967 for the entire United States electric utility industry.

Industry currently has a backlog of over \$3 billion in unfilled orders for nuclear components for civilian electric utility reactors, and the number of orders is increasing rapidly. The trend to nuclear power for electric utility central station plants is accelerating.

COMPARISON OF CUMULATIVE RATING OF NAVAL REACTORS AND CIVILIAN ELECTRIC UTILITY REACTORS BY YEAR ORDERED

AS OF
1 JAN 1968

RATING

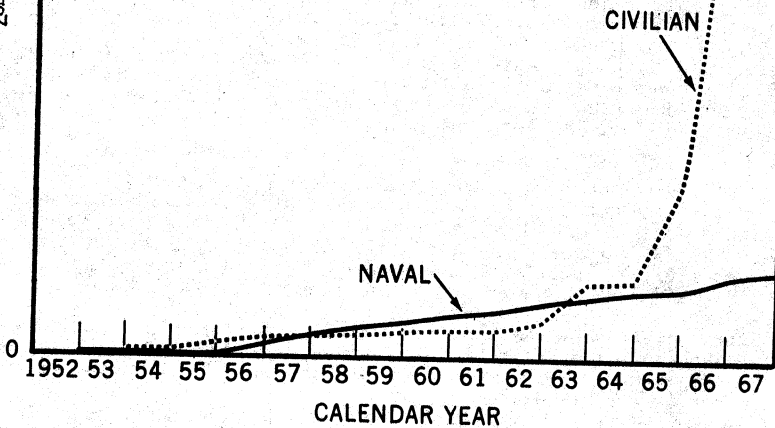
NUMBER OF REACTORS ORDERED

YEAR	1961	1962	1963	1964	1965	1966	1967
NAVAL	15	14	12	7	6	9	3 **
CIVILIAN	0	2	4	0	7	21	30 *

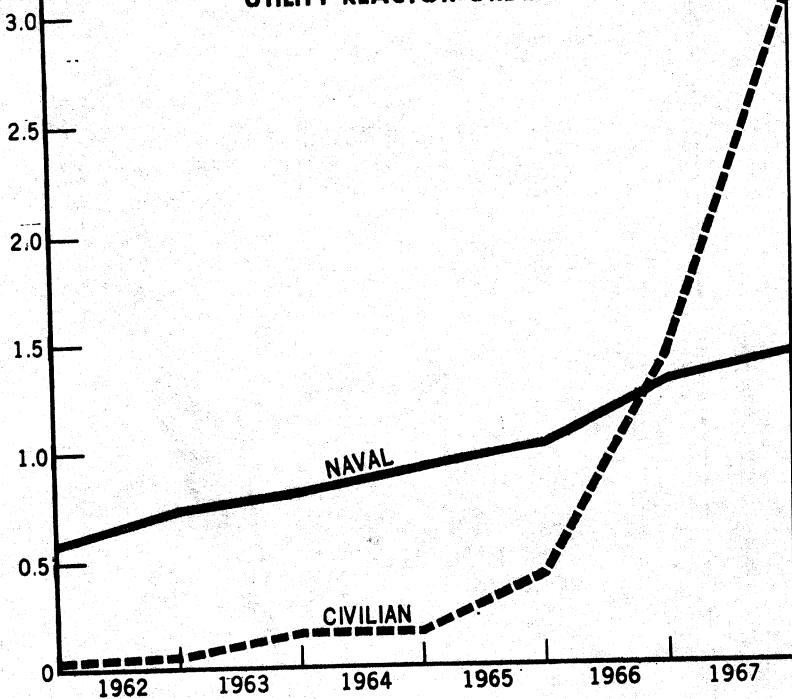
* AS OF 1 JANUARY 1968

** 7 IF FUNDS FOR DLGN-37, 38
ARE RELEASED

SECURITY INFORMATION DELETED



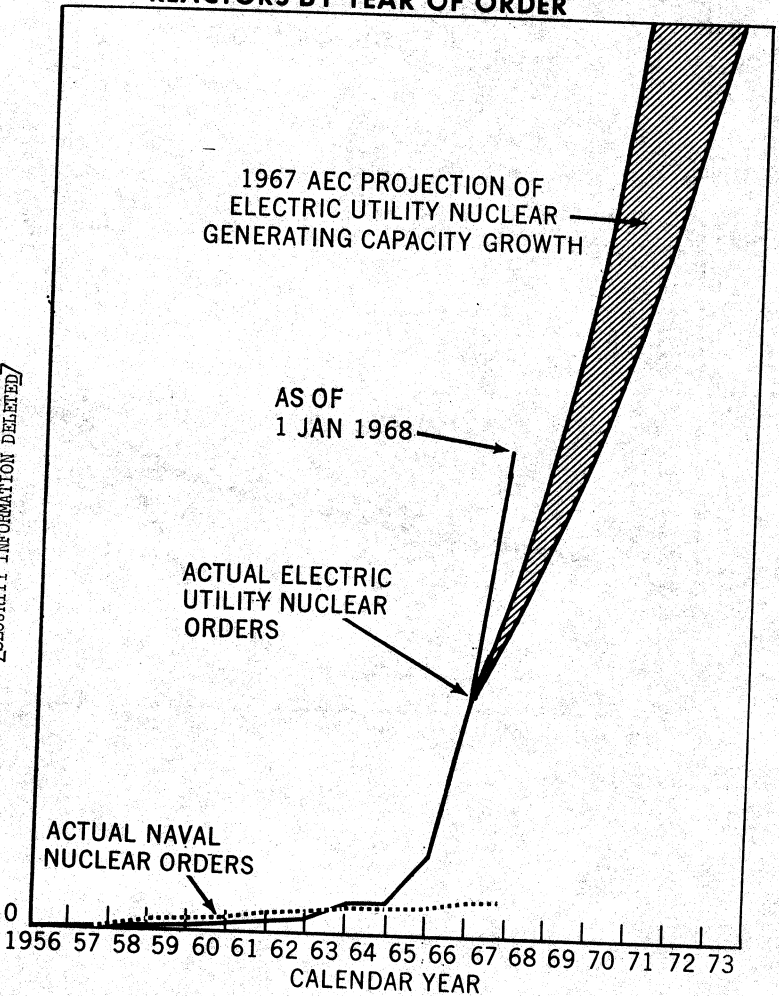
In Billions

**COMPARISON OF DOLLAR VALUE OF CUMULATIVE
NAVAL AND CIVILIAN ELECTRIC
UTILITY REACTOR ORDERS**

COMPARISON OF CUMULATIVE RATING OF NAVAL AND ELECTRIC UTILITY REACTORS BY YEAR OF ORDER

RATING OF REACTORS ORDERED

[SECURITY INFORMATION DELETED]



Loss of industrial suppliers from the naval nuclear program

As a result of the growth in demand for civilian electric utility reactors and the decline in and uncertain future requirements for naval reactors, many suppliers have turned exclusively to commercial work. Figure 4 shows the loss of naval nuclear suppliers to civilian work. Figure 5 shows the decline in requirements for naval nuclear reactor plants.

Naval nuclear work is very demanding on a supplier's engineering and quality control capabilities. It must be performed under close scrutiny to ensure the reactor will operate reliably and safely under combat conditions. Naval reactors must be designed to withstand combat shock, to continue operations following a partial casualty, to be compact to fit in a warship hull and must be capable of being maintained by ship's force while underway. Obviously, losing propulsion power of a warship in combat could cause loss of the ship.

Once a supplier has left the naval reactor plant business, the task of rebuilding the specialized production skills, quality control, and engineering groups to meet naval warship requirements is similar in scope to starting over again.

SHIFT OF VENDORS FROM NAVAL NUCLEAR REACTOR WORK TO CIVILIAN REACTOR WORK

Typical components	Number of suppliers for naval nuclear plant components		Naval suppliers and former naval suppliers engaged in civilian nuclear plant component work
	1963	1967	
	5	2	4
	5	2	4
	5	2	4
	5	1	4
	5	1	3
	5	1	1
	2	1	2
	4	3	3
	5	3	3
	3	2	3
	5	3	3
	5	2	2
	5	1	2
	4	2	2
	3		

[Security information deleted]

NUMBER OF SUBMARINES AND SURFACE WARSHIPS AUTHORIZED BY FISCAL YEAR

NUMBER OF SUBMARINES AND SURFACE WARSHIP TYPES														
	Fiscal year													
	Prior to 1957	1957	1958	1959	1960	1961	1962	1963	1964	1965	1966	1967	1968	
Submarines.....	9	6	7	11	4	11	13	14	12	7	6	5	3	
CVAN.....	0	0	1	0	0	0	0	0	0	0	0	1	0	
CGN/DLGN.....	0	1	0	1	0	0	1	0	0	0	0	1	1	
Number of reactors.....	10	8	15	13	4	11	15	14	12	7	6	9	7	

¹ Authorized by Congress, not released by DOD.

Although it takes years to develop a company's capability to perform to the standards required for naval nuclear application this capability can be dissipated in a short time if key groups of qualified, experienced technical and production personnel are disbanded. Because of the exacting nature of naval nuclear work and the different technology, most suppliers perform naval nuclear work apart from their commercial work and assign only specially qualified personnel to the naval work. Thus when naval nuclear orders decline, the production, quality control, and engineering personnel are quickly absorbed by other departments or companies. It is virtually impossible to reassemble the same people once they have disbanded.

Conclusion

To retain sufficient naval nuclear industrial capacity to build the reactor plants for the nuclear submarines and surface warships needed by the Navy, it is important that a firm shipbuilding program be decided upon as soon as possible so that long term commitments can be obtained from suppliers. Special

arrangements may have to be made with selected suppliers of especially critical components to provide and maintain sufficient capability and capacity to meet defense needs.

APPENDIX 3

[Enclosure]

CHRONOLOGY

PROCUREMENT OF MAIN PROPULSION EQUIPMENT FOR THE [CLASSIFIED MATTER DELETED] SUBMARINE

July 17, 1964.—The Chief of Naval Operations (CNO), in a letter signed by Rear Adm. F. V. H. Hilles, Chairman, Ship Characteristics Board, requests the Chief of the Bureau of Ships (BUSHIPS) to undertake a study of SSN similar to [classified matter deleted] except that [classified matter deleted]. The letter notes the excellent experience the Navy has had with [classified matter deleted] is of interest to CNO.

October 20, 1964.—BUSHIPS contracts with the Electric Boat Division of the General Dynamics Corporation (Electric Boat) for preliminary studies of a nuclear propulsion plant suitable for use in [classified matter deleted] submarine.

November 4, 1965.—Electric Boat requests proposals from General Electric and Westinghouse to conduct feasibility studies of the main propulsion equipment for [classified matter deleted] SSN.

December 1, 1965.—General Electric, in a letter from Mr. R. J. Walsh, area sales manager, General Electric Marine and Defense Facilities, advises Electric Boat that General Electric is unable to quote on the November 4, 1965 request to conduct feasibility studies of the main propulsion equipment for [classified matter deleted] SSN. The letter states that General Electric could not start preliminary design work on such equipment until after December 1, 1966 because of prior technical commitments. With regard to the ships' service turbine generators, General Electric, in another letter from Mr. Walsh dated December 10, 1965, advises Electric Boat that General Electric would not have available engineering manpower to start work on the necessary redesign until 1967. Further, this letter states that General Electric would be willing to undertake this work *only* if they were the only logical manufacturer and *only* if there were some material urgency for this equipment. The letter states that if an early decision were made along these lines, General Electric would schedule engineering effort to start in 1967.

June 6, 1966.—Electric Boat awards a subcontract to Westinghouse for feasibility studies of the main propulsion equipment for [classified matter deleted] SSN.

November 17, 1966.—DOD approves \$20 million from fiscal year 1967 funds to procure design and long leadtime material for [classified matter deleted] SSN now planned for the fiscal year 1968 shipbuilding program.

February 4, 1967.—Westinghouse completes and submits the final results of all major portions of the feasibility studies for the [classified material deleted] SSN main propulsion equipment.

February 9, 1967.—Electric Boat requests bids from General Electric and Westinghouse for the design and manufacture of the main propulsion equipment for [classified material deleted] SSN.

March 1, 1967.—The Navy, in a letter from Vice Adm. I. J. Galantin, Chief of Naval Material, to Mr. D. C. Burnham, president, Westinghouse Electric Corp., advises Westinghouse that the Defense Contract Administration Office, Sunnyvale, Calif., had recommended that due to continuing contract delinquency Westinghouse's Sunnyvale complex be placed on the Navy contract experience list (NCEL); however, this action had been deferred pending a further and continuing evaluation of action by Westinghouse to correct the unsatisfactory situation.

March 3, 1967.—Mr. Walsh (GE sales manager) calls Mr. J. D. Pierce, vice president, Electric Boat, nuclear engineering, and states that General Electric would not be submitting a proposal in answer to the February 9, 1967 Electric Boat request for bid because of a lack of technical manpower.

March 6, 1967.—Mr. A. L. Bethel, general manager, Westinghouse Marine Division, calls Mr. Pierce (EB vice president) and states that due to lack of

sufficient technical information Westinghouse could not respond to the Electric Boat request to redesign the ships service turbine generators proposed for [classified material deleted] SSN and originally supplied by General Electric, however. Westinghouse would submit a proposal on the remainder of the new design main propulsion equipment for [classified material deleted] SSN.

March 8, 1967.—General Electric, in a telegram to Electric Boat signed by Mr. Walsh (GE sales manager) confirms their telephone refusal to bid on the design and manufacture of [classified material deleted] SSN main propulsion equipment.

March 8, 1967.—Admiral Rickover calls Mr. D. E. Craig, vice president and general manager, General Electric Power Generation Division, and again asks that General Electric bid on the design and manufacture of the main propulsion equipment for [classified material deleted] SSN. Mr. Craig states that General Electric will not design and manufacture this equipment because they are so tied up with other work, Government and commercial. Admiral Rickover tells Mr. Craig that he would have to take this matter up with senior Government officials since the Navy needs this equipment for an urgent military project. Admiral Rickover states that he would appreciate it if Mr. Craig would reconsider his position and suggests that Mr. Craig take this matter up with the president of General Electric. Mr. Craig says he had already done so and the president had reaffirmed Mr. Craig's position.

March 9, 1967.—Electric Boat, in telegrams from Mr. J. W. Jones, Jr., president of Electric Boat, to Mr. Craig (GE vice president) and Mr. Charles Weaver, vice president, Westinghouse Atomic, Defense and Space Group, advises General Electric and Westinghouse that [classified matter deleted] SSN powerplant is required to fulfill an urgent military requirement and requests that General Electric and Westinghouse confirm by return telegrams that they will bid.

March 13, 1967.—General Electric, in a telegram from Mr. H. R. Hill, general manager, General Electric Medium Steam Turbine, Generator, and Gear Department (MSTG & G), advises Electric Boat that General Electric will not bid. This telegram gives lengthy reasons for not bidding, stating that current commitments of technical resources prevent General Electric from responding and that foreseeable future and current outstanding technical commitments severely tax General Electric's existing manpower.

March 13, 1967.—Electric Boat, in a telegram from Mr. Jones (EB president) to Mr. Craig (GE vice president), requests a direct telegram reply from General Electric simply stating whether or not General Electric will bid.

March 14, 1967.—General Electric, in a telegram signed by Mr. Walsh (GE sales manager) to Mr. Jones (EB president), advises Electric Boat that General Electric will not be bidding on any part of the February 9, 1967, Electric Boat inquiry due to lack of adequate technical personnel.

March 14, 1967.—Westinghouse, in a telegram from Mr. Weaver (Westinghouse vice president) to Mr. Jones (EB president), advises Electric Boat that Westinghouse cannot respond to the total February 9, 1967, Electric Boat inquiry due to lack of sufficient technical information to redesign the ships service turbine generators, however, Westinghouse will submit a proposal on the remainder of the [classified matter deleted] main propulsion equipment for [classified matter deleted] SSN.

March 15, 1967.—Admiral Rickover advises the Chief of Naval Material by memorandum that both General Electric and Westinghouse have refused to bid on the design and manufacture of the main propulsion equipment for [classified material deleted] SSN. Admiral Rickover requests the assistance of the Chief of Naval Material in obtaining industry agreement to design and manufacture this equipment. He states that he considers it is necessary to obtain a Government directive, as provided for in the Defense Production Act of 1950, to require that this work be performed for the Navy.

March 16, 1967.—Admiral Rickover testifies before the Joint Congressional Committee on Atomic Energy. In response to committee questions concerning the status of new projects, Admiral Rickover relates the current status of efforts to procure main propulsion equipment for [classified material deleted] SSN. The Joint Committee requests that they be kept advised of progress.

March 17, 1967.—Electric Boat officially requests Government assistance in the procurement of the main propulsion equipment for [classified material deleted] SSN. Electric Boat submits a request for priority assistance, as provided for by the Defense Production Act of 1950.

March 20, 1967.—The Navy concludes that General Electric is the only supplier that could provide the main propulsion equipment needed for [classified material deleted] SSN to meet Navy requirements. A substantial portion of the design concepts for [classified material deleted] are based on technology developed by General Electric for other Navy programs. This technology is not easily transferrable. Further, Westinghouse is in serious production difficulty on its present Navy contracts, as is evident from the March 1, 1967, letter from Admiral Galantin to Mr. Burnham (Westinghouse president).

March 23, 1967.—Admiral Rickover calls Mr. Craig (GE vice president). Mr. Craig reiterates that General Electric does not have the engineering talent to undertake the design of the main propulsion equipment for [classified material deleted] SSN. He suggests the Navy go to Westinghouse. Admiral Rickover points out that General Electric had developed under Navy contracts most of the design concepts associated with this project and thus there would be less strain on U.S. electricals and turbine engineering talent for General Electric to do this than for Westinghouse. Further, Westinghouse is in just as serious difficulty as General Electric for this type of design talent. Mr. Craig agrees that if the Government issued a directive for General Electric to do this job they would proceed faithfully to do the job and to charge a reasonable price.

March 27, 1967.—Admiral Rickover calls Mr. Craig (GE vice president) and advises Mr. Craig that the Chief of Naval Material (CNM) is going ahead with steps to obtain a directive for General Electric to design and manufacture the main propulsion equipment for [classified material deleted] SSN.

March 30, 1967.—CNM forwards the March 17, 1967, Electric Boat request for Government assistance to the Department of Commerce asking that a directive be issued requiring General Electric to accept and perform an order to design and manufacture the main propulsion equipment for [classified material deleted] SSN.

March 31, 1967.—Mr. W. J. Zepp, executive secretary, Business and Defense Services Administration (BDSA), Department of Commerce, advises NAVSHIPS that it is doubtful that the Department of Commerce could issue a directive for General Electric to design and manufacture the main propulsion equipment for [classified material deleted] SSN since design work is involved. NAVSHIPS requests a meeting as soon as possible to resolve this matter.

April 3, 1967.—Representatives of NAVSHIPS and CNM meet with Mr. A. A. Bertsch, Assistant Administrator for Industrial Mobilization, Business and Defense Services Administration (BDSA), Department of Commerce. Mr. Bertsch states that the Department of Commerce stands ready to issue a directive if necessary to obtain performance of the design and manufacture of the main propulsion equipment for [classified material deleted] SSN. However, Mr. Bertsch states that the Navy should first try to work this matter out with General Electric.

April 3, 1967.—Mr. Bertsch (BDSA, Department of Commerce) meets with representatives of NAVSHIPS, CNM and General Electric. Mr. Bertsch advises General Electric that the Department of Commerce will issue a directive if necessary to obtain performance of the design and manufacture of the main propulsion equipment for [classified material deleted] SSN. However, Mr. Bertsch asks General Electric to reconsider its position and respond to the Navy by April 5, 1967.

April 6, 1967.—Although no reply has been received from General Electric, Mr. Bertsch (BDSA, Department of Commerce) advises NAVSHIPS that the Department of Commerce will not issue a directive for General Electric to design and manufacture the main propulsion equipment for [classified material deleted] SSN. Mr. Bertsch states that NAVSHIPS instead should have Electric Boat issue a rated order to General Electric for this work. The Department of Commerce position is that a directive should not be issued until General Electric had officially refused a rated order for this work and the Department of Commerce had evaluated General Electric's reasons for refusal.

April 13, 1967.—Electric Boat, in a telegram from Mr. Jones (EB president) to Mr. Craig (GE vice president), advises General Electric of Electric Boat's intention to issue General Electric a rated order for the design and manufacture of [classified material deleted] SSN main propulsion equipment. In this telegram Electric Boat requests that General Electric reconsider its position and agree to submit a proposal for performance of this work.

April 14, 1967.—General Electric, in a telegram from Mr. Craig (GE vice president) to Mr. Jones (EB president) advises Electric Boat that upon receipt of a rated order for this equipment, General Electric will immediately review the order and their ability to perform in light of other priority work already reviewed or committed.

April 14, 1967.—NAVSHIPS officially responds to the March 17, 1967 Electric Boat request for Government assistance and instructs Electric Boat to issue General Electric a rated order for this equipment.

April 19, 1967.—Electric Boat, in a telegram to Mr. Craig (GE vice president) from Mr. J. M. Cowell, vice president, Electric Boat, Planning and Control, issues a rated order requesting General Electric to design and manufacture the main propulsion equipment for [classified material deleted] SSN.

April 20, 1967.—General Electric, in a letter signed by Mr. Hill, (GE, M.S.T.G. & G. manager) advises Electric Boat that they are unable to accept the rated order for [classified material deleted] SSN vice president) to Mr. Craig (GE vice president), requests that General Electric cannot conform to the design requirements for the equipment and that prior technical commitments on similarly rated orders prevent General Electric from applying the necessary effort on an alternate proposal until after April 1968. Further, General Electric states that June 15, 1968 would be the earliest possible date for the submission of an alternate proposal.

April 27, 1967.—Electric Boat, in a telegram from Mr. Pierce (EB vice president) to Mr. Craig (GE vice president), requests that General Electric identify those specific requirements which General Electric feels cannot be met, and asks that General Electric advise of the earliest date when a meeting could be held to resolve these requirements.

April 28, 1967.—Mr. Hill (GE, M.S.T.G. & G. manager) calls Mr. Pierce (EB vice president) and states that General Electric can provide no specific requirements which they could not meet without completing the alternate proposals described in their April 20, 1967 refusal to bid. Mr. Hill reiterates that the reason for refusal to bid is lack of technical personnel.

April 28, 1967.—CNM, in a letter from Rear Adm. J. L. Howard, Deputy Chief of Naval Material (Procurement) to Mr. R. L. Borum, Administrator, Business and Defense Services Administration (BDSA), Department of Commerce, advises the Department of Commerce that General Electric has now officially refused to accept a rated order to design and manufacture the main propulsion equipment for [classified material deleted] SSN. In this letter, CNM again requests the Department of Commerce to obtain acceptance and performance of a rated order by General Electric for this work. This letter points out that the engineering work involved in this job is estimated to comprise about 10 to 15 percent of the total price and that it is inconceivable that the General Electric Co., the Nation's second largest defense contractor, cannot provide the modest technical resources required for this work.

May 1, 1967.—Admiral Rickover testifies before the Defense Appropriations Subcommittee of the House Appropriations Committee. In response to questions concerning the status of new projects, Admiral Rickover relates the current status of efforts to procure main propulsion equipment for [classified material deleted] SSN.

May 3, 1967.—Admiral Rickover advise Secretary of the Navy Nitze by memorandum of the difficulties the Navy is encountering in obtaining the main propulsion equipment for [classified material deleted] SSN.

May 3, 1967.—The AEC, in a letter signed by Mr. R. E. Hollingsworth, General Manager, Atomic Energy Commission, to Senator John O. Pastore, chairman, Joint Committee on Atomic Energy, informs the Joint Committee of developments regarding the procurement of the main propulsion equipment for [classified material deleted] SSN since Admiral Rickover's March 16, 1967, testimony.

May 3, 1967.—Mr. R. A. Carr, Director for Production Services, Office of the Deputy Assistant Secretary of Defense (Material), meets with NAVSHIPS representatives and is briefed on the current status of this matter. NAVSHIPS emphasizes that the Department of Commerce had been asked twice to issue a directive, first on March 30, 1967, and again on April 28, 1967. NAVSHIPS states that they would appreciate any assistance DOD could provide. Mr. Carr states that the General Electric refusal to bid is a matter which should be handled by the Department of Commerce; however, DOD would support the Navy.

May 3, 1967.—General Electric, in a letter from Mr. Hill (GE, M.S.T.G. & G. manager) to Mr. Pierce (EB vice president) advises Electric Boat that General Electric considers that preliminary design studies should be performed to verify the feasibility of [classified material deleted] SSN main propulsion equipment as described in the Electric Boat specifications. In this letter, General Electric again states that such a study could not be started until April 1968.

May 5, 1967.—Electric Boat in a telegram from Mr. Pierce (EB vice president) to Mr. Hill (GE, M.S.T.G. & G. manager), advises General Electric that Electric Boat considers the basic equipment described in the specifications completely feasible and encourages General Electric to proceed immediately with any necessary design and specification review studies since the equipment is required to support an urgent military need.

May 8, 1967.—General Electric, in a telegram from Mr. Hill (GE, M.S.T.G. & G. manager), acknowledges receipt of the May 5, 1967, Electric Boat telegram but reiterates that General Electric is unable to address themselves to a review and analysis of the specification requirements until after April 1968.

May 8, 1967.—Senator John O. Pastore and Representative Chet Holifield, chairman and vice chairman of the Joint Committee on Atomic Energy, in a letter to Acting Secretary of Commerce Alexander L. Trowbridge, strongly urge that the Department of Commerce make every effort within its authority to assist the Navy in getting General Electric to accept and perform an order for [classified material deleted] SSN main propulsion equipment. Senator Pastore provides a copy of this letter to Secretary of Defense McNamara asking DOD to assist the Navy in this matter.

May 10, 1967.—General Electric, in a letter from Mr. Hill (GE, M.S.T.G. & G. manager) to Mr. Bertsch (BDSA, Department of Commerce), summarizes the General Electric position. The letter states that under normal circumstances General Electric would be pleased to consider undertaking development of [classified material deleted] for the Navy but their current workload for the Navy, coupled with a very limited resource of experienced main propulsion turbine engineers, prevents them from considering such a project at this time. General Electric again states that they would not be in a position to review existing design specifications until approximately April 1968 and that the results of their feasibility studies would not be available until approximately June 1968. The letter further states that General Electric's experience with similar equipment indicates that a period of about 42 months would be required to produce hardware after all designs are available.

May 12, 1967.—NavShips representatives meet with Rear Adm. J. D. Arnold, Deputy Chief of Naval Material (Logistic Support). NavShips points out that the Department of Commerce had not as yet issued a directive as requested by CNM. NavShips tells Admiral Arnold that the excessive delays while the Department of Commerce is corresponding on this matter is jeopardizing the project schedule. Admiral Arnold calls Mr. Borum (Administrator, BDSA, Department of Commerce). Mr. Borum states that he has disqualified himself from this particular case since he was formerly employed by General Electric. Mr. Borum states that Mr. Bertsch (BDSA, Department of Commerce), who was now handling this matter, was out but Mr. A. U. Sufrin, Acting Assistant Administrator, Industrial Mobilization, Business and Defense Services Administration (BDSA), Department of Commerce, should be able to help. Shortly thereafter, Mr. Sufrin calls Admiral Arnold and states that the Department of Commerce has received another letter from General Electric refusing to accept a rated order for this work. Mr. Sufrin states that he has asked General Electric for more details in defense of their position. He agrees to provide Admiral Arnold with a copy of the latest General Electric letter. Admiral Arnold concludes the meeting with NavShips by stating that there is little else CNM can do but wait for the Department of Commerce.

May 12, 1967.—The Department of Commerce, in a letter from Mr. Sufrin (BDSA, Department of Commerce) to Admiral Arnold (Deputy CNM, Logistics Support), forwards to CNM a copy of the May 10, 1967, General Electric letter and states that the Department of Commerce has requested General Electric to provide more detailed information regarding the statements made in the letter.

May 15, 1967.—General Electric, in a letter from Mr. Hill (GE, M.S.T.G. & G. manager) to Mr. Bertsch (BDSA, Department of Commerce), provides more detailed information concerning their refusal to bid and the statements made in the May 10, 1967, letter from Mr. Hill to Mr. Bertsch. This letter states that

there are at least two technical breakthroughs required for successful completion of this project and that General Electric has available for all of their Navy and marine turbine design work only 10 engineers experienced in propulsion turbines. The letter also lists the present Navy turbine work which General Electric has under contract.

May 23, 1967.—Representatives of General Electric, Electric Boat, Department of Commerce, NAVSHIPS, and the Joint Committee on Atomic Energy staff meet at the General Electric plant in Lynn, Mass., to discuss the technical requirements for the main propulsion equipment for [classified material deleted] SSN. Mr. Hill (GE, M.S.T.G. & G. manager) states that General Electric does not question and never have intended to question the basic technical feasibility of the job. General Electric representatives reiterate that they will not have qualified people available to begin design work until approximately April 1968. Mr. Hill states that he has been unable to recruit or otherwise obtain additional personnel. General Electric representatives state that it will take about 5½ years to provide this equipment unless a higher priority is assigned and other Navy work deferred. This estimate reflects a 4½-year-work-cycle time plus the approximate 1-year delay in starting work.

May 24, 1967.—Admiral Howard (Deputy CNM, Procurement) meets with Mr. Craig (GE, vice president); Mr. Berkely Davis, vice president and general manager, General Electric Defense Programs Division; and Mr. Hill (GE, M.S.T.G. & G. manager). Mr. Craig states that General Electric would do the work to design and manufacture this equipment, however, they cannot start feasibility studies leading to a firm proposal until April 1968, and it will take 4½ years to produce the equipment after a firm proposal. Mr. Craig agrees to do all possible to start sooner but is not optimistic on this point.

May 26, 1967.—Secretary of the Navy Nitze, in a memorandum for the Secretary of Defense, recommends signature of attached letters to Senator Pastore and Acting Secretary of Commerce Trowbridge. The letter to Secretary Trowbridge requests him to direct General Electric to accept and perform the Electric Boat order for [classified material deleted] SSN main propulsion equipment. (This memorandum was withdrawn by Secretary Nitze to revise the wording of the letter to Secretary Trowbridge to indicate that subsequent to the preparation of this memorandum, Mr. Craig (GE vice president) had agreed that General Electric would do this work but the schedule was not acceptable.)

May 31, 1967.—A proposed memorandum for the Secretary of Defense from Secretary of the Navy Nitze recommending signature of revised letters to Senator Pastore and Secretary of Commerce Trowbridge is sent forward to Secretary Nitze by the Assistant Secretary of the Navy (Installations and Logistics), Mr. Graeme C. Bannerman. The proposed letter to Mr. Trowbridge requests that the Department of Commerce direct General Electric to accept and perform the Electric Boat order for [classified material deleted] SSN main propulsion equipment to avoid an unacceptable delay in the delivery of this equipment.

June 7, 1967.—Secretary of the Navy Nitze signs the proposed memorandum for the Secretary of Defense requesting signature of letters to Senator Pastore and Secretary of Commerce Trowbridge.

June 9, 1967.—Secretary of Defense McNamara discusses the procurement of [classified material deleted] SSN main propulsion equipment with Mr. F. J. Borch, president of General Electric.

June 9, 1967.—Secretary of Defense McNamara calls Secretary of the Navy Nitze and asks that Secretary Nitze take this matter up with the president of General Electric.

June 9, 1967.—Secretary of the Navy Nitze, Admiral Galantin (CNM), Maj. Gen. A. T. Stanwix-Hay, Deputy Assistant Secretary of Defense (Material), and Mr. Borch, president of General Electric, meet and discuss the current problems in procuring [classified material deleted] SSN main propulsion equipment. Mr. Borch and Secretary Nitze agree that General Electric and the Navy should meet the following week to discuss this matter. Mr. Borch says that General Electric was also to build the [classified material deleted] at Lynn and asks the Navy to specify which job should get the priority. Admiral Galantin tells Mr. Borch that both jobs should be done within the time required by the Navy.

June 10, 1967.—Rear Adm. F. C. Jones, vice commander, NAVSHIPS, phones Admiral Rickover and advises him that Secretary of the Navy Nitze had met with an official of General Electric and following this discussion Secretary Nitze had turned the problem over to the Assistant Secretary of the Navy (Research and

Development), Mr. Robert A. Frosch, and the Assistant Secretary of the Navy (Installation and Logistics), Mr. Graeme C. Bannerman. Admiral Jones states that Secretary Frosch will hold a meeting with General Electric on June 12, 1967. (This meeting is not held until June 14, 1967.) On June 13, 1967, various Navy people, including Rear Adm. R. B. Fulton, commander, Naval Ship Engineering Center, plan to go to the General Electric plant at Lynn, Mass., to analyze General Electric's statement that 5½ years are necessary to produce this equipment and show General Electric how the time can be reduced. Admiral Rickover tells Admiral Jones that there have already been innumerable meetings with General Electric on this subject, including one at Lynn and the proposed Tuesday trip would place Admiral Fulton or any other Navy people in the impossible position of telling General Electric how to do their job. Admiral Rickover states that the real issue is whether General Electric is willing to apply the number of engineers needed to do this job and to give it some precedence over commercial work. Admiral Rickover points out that Secretary of the Navy Nitze has already signed a letter to Secretary of Defense McNamara stating that the work is necessary and required by the Navy in 3 years.

June 10, 1967.—Secretary of the Navy Nitze, in a memorandum to the Secretary of Defense, requests signature of an interim reply to Senator Pastore's May 8, 1967, letter to Secretary of Defense McNamara. In this memorandum Secretary Nitze advises Secretary McNamara that he has discussed this matter with Mr. Borch, president of General Electric, and they agreed that the Navy and General Electric should meet this next week to sort out these problems.

June 12, 1967.—Assistant Secretary of the Navy Frosch meets with representatives of NAVSHIPS. It is agreed that the proposed visit to Lynn on June 13, 1967, should not be made.

June 13, 1967.—Secretary of Defense McNamara forwards an interim reply to Senator Pastore's May 8, 1967, letter. Secretary McNamara's reply states that DOD is identifying what actions are required to assure that the Navy obtains [classified material deleted] SSN main propulsion equipment as needed to support the shipbuilding schedule and that DOD is consulting with General Electric.

June 14, 1967.—Assistant Secretary of the Navy Frosch, Admiral Jones (vice commander, NAVSHIPS), and other NAVSHIPS representatives meet with representatives of General Electric including Mr. Craig (GE vice president) and Mr. Hill (GE, M.E.T.G. & G. manager). The General Electric representatives question whether the delays in other work, Government and commercial, which they contend would result if they agreed to do this work, are justified. However, General Electric agrees to make an effort to get additional people for this job but they maintain that even with additional people it will take 5½ years. NAVSHIPS states that the job can be done in 3 years if General Electric starts now and applies available resources. For example, NAVSHIPS points out that General Electric presently has a number of turbine designers with experience on Navy work working on commercial work. General Electric states that this is a difficult design job, particularly in view of the tight administrative control the Navy wishes to maintain over the design. NAVSHIP states that it may be possible to ease some of the administrative requirements to which General Electric objects and NAVSHIPS is willing to discuss such terms and conditions. General Electric repeats that the problem is finding qualified personnel and states that the Navy is responsible for the reduction in design capacity that has occurred at Lynn since 1961 in that the Navy has not awarded sufficient contracts to General Electric.

NAVSHIPS again points out that General Electric has a number of turbine designers with experience on Navy work working on commercial work. Further, NAVSHIPS points out that the Navy can hardly be blamed if others underbid General Electric and obtained competitive contract awards which General Electric wanted. With regard to additional technical personnel, NAVSHIPS emphasizes that the Navy is asking the General Electric Co. as a whole to provide this equipment and it is inconceivable that the General Electric Co. cannot provide the few additional technical personnel required to complete this job in the time required.

June 14, 1967.—Assistant Secretaries of the Navy Bannerman and Frosch, Admiral Howard (Deputy CNM, Procurement), Admiral Jones (Vice Commander, NAVSHIPS), and other NAVSHIPS representatives meet with representatives of General Electric, including Mr. Craig (GE, Vice President) and Mr. Hill (GE, MSTG&G Manager). Secretary Frosch summarizes his comments and conclusions on this matter based on his meeting this morning with representatives of General

Electric and NAVSHIPS. Secretary Frosch says that he considers that this job is neither as difficult as General Electric contends nor as easy as the Navy may think, however, it is an engineering job and not an esoteric development. Secretary Frosch points out that General Electric is working on many more difficult tasks for the Government. With regard to General Electric's questioning of the justification for this project, Secretary Frosch states that this is not General Electric's business. Finally, Secretary Frosch says that the 5½-year schedule which General Electric proposes appears to him to be longer than this job should take, especially if General Electric starts immediately. Secretary Bannerman asks if General Electric has anything to add. General Electric reiterates that they feel that 5½ years is the only realistic estimate based on their experience. Secretary Bannerman asks if General Electric would agree to accept a letter contract to start design work on this equipment. Mr. Craig states they will accept such a contract. Secretary Bannerman asks if General Electric would agree to apply their best efforts to get the qualified technical personnel to start this job immediately and complete it in the time required by the Navy. Mr. Craig agrees but states that General Electric still feels the job will take 5½ years and wants this recognized in the letter contract. Secretary Bannerman asks if General Electric would agree to give this job priority over all commercial work, Mr. Craig says yes. Secretary Bannerman asks if General Electric wants a Government directive to do this job. Mr. Craig says that General Electric would want a directive since they will defer commercial work.

June 14, 1967.—General Electric, in a letter from Mr. Hill (GE, MSTG&G Manager) to Assistant Secretary of the Navy Bannerman, summarizes General Electric's understanding of the agreements reached in the meetings with Navy representatives this day. The letter states that General Electric will accept a letter contract through proper channels so that a feasibility study of this equipment can get started; this letter contract will indicate that the Navy needs his equipment in 3½ years but that General Electric considers that based on their experience 5½ years is the most realistic estimate for the time required to complete such a job. The letter further states that General Electric does not feel that the deployment of resources to this project and the resultant harmful effect on other critical Navy and commercial work is justified, however, in spite of this opinion General Electric will put forth their best effort to complete this job in the shortest possible time.

June 15, 1967.—A proposed memorandum for the Secretary of Defense from Secretary of the Navy Nitze recommending signature of letters to Senator Pastore and Secretary of Commerce Trowbridge is sent forward to Secretary Nitze by Assistant Secretary of the Navy Bannerman. The proposed memorandum to Secretary McNamara summarizes the results of the June 14, 1967 meetings with General Electric and states that since this project will probably interfere with Electric's commercial work, the Navy and General Electric agree that a Government directive should be issued to General Electric in accordance with the Defense Production Act of 1950.

June 16, 1967.—Secretary of the Navy Nitze discusses his proposed memorandum to Secretary of Defense McNamara with the Office of the Assistant Secretary of Defense (Installations and Logistics).

June 20, 1967.—Assistant Secretary of the Navy Banerman approves a NAVSHIPS draft of a letter contract for the design and manufacture of the main propulsion equipment for [classified material deleted] SSN. Secretary Bannerman indicates that the Navy has been told by DOD to resolve this problem without a Government directive.

June 21, 1967.—Secretary of the Navy Nitze signs a revised memorandum for the Secretary of Defense requesting signature of a proposed letter to Senator Pastore. The revised memorandum does not request signature of a letter to Secretary of Commerce Trowbridge since it no longer states that a Government directive should be issued.

June 21, 1967.—Electric Boat, in a letter from Mr. E. J. Behney, vice president, operations, to Mr. Craig (GE vice president) offers the letter contract approved by Assistant Secretary of the Navy Bannerman to General Electric to start work on [classified material deleted] SSN main propulsion equipment. This letter contract states that based upon the agreements reached in the June 14, 1967, General Electric-Navy meeting it is understood and agreed that the Navy and Electric Boat require this equipment on or before June 30, 1970, and consider 3 years a reasonable period for contract performance; that General Electric presently

considers the work will require 5½ years to complete, however, General Electric, will start immediately, will transfer the necessary additional qualified manpower from other departments in order to complete this order in the shortest possible time and will exert its best efforts to meet as nearly as possible the Government-required delivery date.

June 22, 1967.—Secretary of Defense McNamara, in response to the May 8, 1967, letter from Senator Pastore, chairman, Joint Committee on Atomic Energy, advises Senator Pastore that General Electric has agreed to assign the necessary additional manpower to start design work now for the required equipment and to complete the order as expeditiously as possible. In this letter to Senator Pastore, Secretary McNamara states that the Navy and General Electric are continuing to work out additional details and, hopefully, within the next few days a contract for this work will be executed.

June 22, 1967.—General Electric, in a letter from Mr. Craig (GE vice president) to Mr. Behney (EB vice president), acknowledges receipt of the June 21, 1967, Electric Boat letter offering General Electric a letter contract to start work on [classified material deleted] SSN main propulsion equipment. The letter states that General Electric will contact Electric Boat when they have resolved any changes they consider necessary in the proposed letter contract.

June 27, 1967.—Mr. Howard Spears, manager, Marine and Naval Turbine Design, General Electric Medium Steam Turbine, Generator and Gear Department, calls Mr. E. E. Lindahl, Electric Boat, [classified material deleted] SSN project manager. Mr. Spears advises Mr. Lindahl that he, Mr. Spears, has been appointed the General Electric project engineer for [classified material deleted] SSN main propulsion equipment. Mr. Lindahl lists for Mr. Spears the individuals within Electric Boat associated with his procurement. Mr. Lindahl also advises Mr. Spears that Electric Boat is ready at any time to answer any questions General Electric may have concerning this project. Mr. Spears states that he will contact Mr. Lindahl again when General Electric is ready to discuss this project further.

July 6, 1967.—Mr. Walsh (GE sales manager) calls Mr. Price (EB vice president) and requests an informal meeting with no signed minutes or agreed conclusions and commitments between General Electric and Electric Boat to discuss [classified material deleted] SSN main propulsion equipment procurement. Mr. Pierce agrees and the meeting is set for July 11, 1967.

July 11, 1967.—Representatives of General Electric, Mr. Spears (GE, MSTG & G) and Mr. Walsh (GE sales manager), meet with representatives of Electric Boat, including Mr. Pierce (EB vice president) and Mr. Lindahl (EB, [classified material deleted] SSN project manager). The General Electric representatives state that General Electric will not accept the letter contract proposed by Electric Boat on June 21, 1967. They present, instead, an alternate letter contract to perform a general study of the [classified material deleted] whose functions are described in the February 9, 1967, Electric Boat inquiry, and a comparison of the relationship of that system and other systems with the objectives of this project. Specifically, General Electric proposes to study [classified material deleted] Mr. Pierce states that Electric Boat considers that studies should be limited to those specifically supporting the preliminary design of the [classified material deleted] equipment requested by Electric Boat. Mr. Pierce points out that Electric Boat had requested General Electric to conduct feasibility studies of this equipment in November 1965 but General Electric had responded that it could not start such studies until after December 1966. In order to avoid delay, the Navy and Electric Boat had proceeded with the studies necessary to select the [classified material deleted] described in the Electric Boat inquiry. Mr. Pierce states, however, that Electric Boat would discuss any questions General Electric had relative to the objectives of this project and would summarize for General Electric at any time the basis for equipment selection and plant design. The substitute letter contract proposed by General Electric also requires that the work be done in four phases each phase requiring a separate contract agreement. This letter contract, therefore, would not commit General Electric to build the equipment requested by Electric Boat. In addition, the substitute letter contract proposed by General Electric omits any General Electric commitment to start work on this project immediately, to assign the necessary qualified personnel to the work and to use its best efforts to meet the Government's required delivery date for the equipment. It also omits any reference to General Electric furnishing the ship's service turbine generators.

July 14, 1967.—Electric Boat, in a telegram from Mr. Pierce, (EB vice president) to Mr. Craig (GE vice president), summarizes for General Electric the Electric Boat position on the substitute letter contract proposed by General Electric at the July 11, 1967, meeting. Electric Boat again requests General Electric to accept the letter contract proposed by Electric Boat on June 21, 1967.

July 14, 1967.—Mr. Hill (GE, MSTG & G manager) calls Mr. Pierce (EB vice president). Mr. Hill states that he did not consider the letter contract proposed by Electric Boat on June 21, 1967, to be consistent with the June 14, 1967, agreement between Mr. Craig (GE vice president) and Assistant Secretary of the Navy Bannerman. Mr. Hill states that he considers that his letter of June 14, 1967, to Bannerman set forth General Electric's understanding of the agreements reached between the Navy and General Electric and that the General Electric proposal to contract at this time only for a general study was consistent with his June 14, 1967, letter. Mr. Hill states that since Secretary Bannerman did not answer this letter, General Electric considers this represents passive agreement. Mr. Hill states that the Navy had agreed during the June 14, 1967, meeting to make a presentation to General Electric on the objectives of [classified material deleted] SSN program. He states that General Electric must first understand these objectives in order that they may evaluate the ability of the equipment specified by Electric Boat to meet the program objectives. Mr. Hill states that General Electric will not design equipment which does not meet the program objectives. Mr. Pierce states that he has sent a telegram to Mr. Craig which summarizes the Electric Boat position since the substitute letter contract proposed by General Electric differed substantially from the one provided to Electric Boat by the Navy. Mr. Pierce states that there appears to be disagreement as to what was agreed in the June 14, 1967 meeting between the Navy and General Electric and Mr. Pierce considered Mr. Craig should be advised of this. Mr. Pierce states that Electric Boat would not contract with General Electric to [classified material deleted] Mr. Pierce agrees to immediately set up a meeting to summarize for General Electric the objectives of this program and the basis for selection of the main propulsion equipment.

July 14, 1967.—Admiral Rickover advises Assistant Secretary of the Navy Bannerman by memorandum that General Electric has informed Electric Boat that General Electric will not accept the letter contract which Secretary Bannerman had previously approved to start preliminary design work on [classified material deleted] SSN main propulsion equipment. In this memorandum Admiral Rickover states that he considers that for the NAVY to get General Electric to design and furnish this equipment in a timely manner a Government directive will be required. Admiral Rickover requests Secretary Bannerman's assistance.

July 17, 1967.—Assistant Secretary of the Navy Bannerman reviews the substitute letter contract proposed by General Electric on July 11, 1967, and advises NAVSHIPS that he agrees that the General Electric proposal is not acceptable to the Navy. Secretary Bannerman states that the substitute letter contract proposed by General Electric is not consistent with his June 14, 1967, agreements with Mr. Craig (GE vice president) and Secretary Bannerman requests that NAVSHIPS authorize Electric Boat to inform General Electric of his specific objections.

July 17, 1967.—Mr. Hill (GE, MSTG & G manager) calls Mr. Pierce (EB vice president) and requests another meeting to discuss the letter contract for [classified material deleted] SSN main propulsion equipment. It is agreed to meet later this same day.

July 17, 1967.—General Electric representatives, Mr. Hill (GE, MSTG & G manager), Mr. Walsh (GE sales manager), and Mr. Spears (GE, MSTG & G), meet with Electric Boat representatives, including Mr. Pierce (EB vice president) and Mr. Lindahl (EB [classified material deleted] SSN project manager). Mr. Pierce advises Mr. Hill of Assistant Secretary of the Navy Bannerman's specific objections to the substitute letter contract proposed by General Electric on July 11, 1967. Mr. Hill states that General Electric would modify the position stated in their July 11, 1967, proposed substitute letter contract and agree to proceed with the preliminary design of the [classified material deleted] main propulsion equipment described in the Electric Boat inquiry and delete reference in the letter contract to studies of [classified material deleted]. However, Mr. Hill states that General Electric still intends to perform these studies at their own expense. Mr. Pierce states that Electric Boat could not object as long as the conduct of these studies did not delay the progress of the preliminary design of the required equipment. Mr. Hill states that General Electric will not accept a contract which commits

them to manufacture any equipment—they must have a contract in phases. However, Mr. Hill states that General Electric will negotiate in good faith for equipment manufacture following completion of the preliminary design. General Electric insists that the following statement be included in the letter contract for the preliminary design: "Based upon preliminary design, if General Electric determines that the equipment is feasible and can be manufactured, General Electric will enter into negotiations for a contract to manufacture the equipment." Mr. Pierce states that the multiple-phase-type contract proposed by General Electric is not acceptable.

July 21, 1967.—Representatives of NAVSHIPS and Electric Boat meet with representatives of General Electric, including Mr. Spears (GE, MSTG & G) and Mr. Rhode (GE, MSTG & G), and summarize for General Electric the objectives of the [classified material deleted] SSN and the basis for selection of the [classified material deleted]. Following the NAVSHIPS-Electric Boat presentation, Mr. Spears states that he considers the Navy has satisfied its commitment to brief General Electric on this project. Mr. Spears also reiterates the General Electric position that they intend to perform studies of [classified material deleted] and that they will not agree to a contract which commits them to manufacture equipment.

July 27, 1967.—Admiral Rickover, in a memorandum, advises Assistant Secretary of the Navy Bannerman of the current status of the procurement of the main propulsion equipment for [classified material deleted] SSN. In this memorandum, Admiral Rickover again requests Secretary Bannerman's assistance in obtaining a contract for this equipment. Admiral Rickover points out that General Electric would not accept a letter contract which committed them to manufacture equipment; that General Electric insisted on the right not to proceed with manufacture of this equipment unless General Electric concurred; and that General Electric still planned to study [classified material deleted].

July 31, 1967.—Assistant Secretary of the Navy Bannerman meets with Mr. Craig (GE vice president). Mr. Craig states that General Electric has now withdrawn any questions concerning the "wisdom" of [classified material deleted] SSN and that General Electric would not perform studies of [classified material deleted] as they had previously indicated. Mr. Craig agrees to accept a single contract for both the design and manufacture of this equipment, however, he insists that it be a "phased" contract to assist General Electric in pricing the work. Further, Mr. Craig states that General Electric must have some special contract provisions which require that the details of design, inspection, quality control, etc., be established as a "baseline" for pricing prior to the start of equipment manufacture. Mr. Craig agrees that the Government could retain the unilateral right to change this "baseline" but the Government would have to pay for all such changes.

August 1, 1967.—Assistant Secretary of the Navy Bannerman meets with Admiral Rickover, Admiral Galatin (CNM), Admiral Jones (vice commander, NavShips), Admiral Fulton (commander, NavSec) and other NavShips representatives. Secretary Bannerman summarizes the latest General Electric position as stated by Mr. Craig (GE vice president). Admiral Rickover, Admiral Jones, and Admiral Fulton point out that the special pricing arrangement insisted upon by General Electric would limit the normal rights of the Government and might be used as a precedent to force the Navy to change the proven method of procuring equipment for naval warships. They point out that General Electric had previously requested similar special provisions on other contracts but NavShips had rejected these as unacceptable. Secretary Bannerman asks NavShips to prepare a suitable agreement which he could ask Mr. Craig to sign.

August 2, 1967.—Assistant Secretary of the Navy Frosch advises Assistant Secretary of the Navy Bannerman by memorandum that he has looked into the questions raised by General Electric representatives concerning [classified material deleted] SSN. In this memorandum Secretary Frosch states that he can see no bona fide technical grounds for delaying this project to conduct additional studies of [classified material deleted] and that he is convinced that [classified material deleted] SSN should be pursued so that the [classified material deleted] can be evaluated at sea as soon as possible.

August 2, 1967.—Assistant Secretary of the Navy Bannerman meets with Admiral Rickover, Admiral Jones, and other NavShips representatives. NavShips provides a revised agreement for Secretary Bannerman's use in further discussions with Mr. Craig (GE vice president).

August 2, 1967.—Assistant Secretary of the Navy Bannerman meets again

with Mr. Craig (GE vice president). A proposed agreement between Secretary Bannerman and Mr. Craig is drafted.

August 3, 1967.—Assistant Secretary of the Navy Bannerman meets with Admiral Rickover, Admiral Galantin (CNM), Admiral Jones (Vice Commander, NavShips), and Mr. Samuel Pinn, Jr., counsel, NavShips. Secretary Bannerman presents the tentative agreement reached between him and Mr. Craig on August 2, 1967. Secretary Bannerman states that he considers this tentative agreement contains no essential difference from the one he and NavShips had discussed on August 2, 1967. Admiral Rickover objects. He points out three points which he considers different. Admiral Rickover points out that under the latest tentative Bannerman-Craig agreement (1) work would not proceed immediately on the design and development of the equipment but would only proceed on a study of the specifications; (2) work would not start on equipment manufacture until all detailed drawings were approved; and (3) the special contract provisions on inspection, quality control, and equipment variations would restrict the normal rights of the Government and could prevent obtaining satisfactory equipment. Admiral Rickover states he will give Secretary Bannerman his written comments.

August 4, 1967.—Admiral Rickover advises Assistant Secretary of the Navy Bannerman by memorandum of his comments on the latest proposed agreement between Secretary Bannerman and Mr. Craig (GE vice president). In this memorandum Admiral Rickover suggests certain changes to the latest proposed agreement to make it clear that the development and preliminary design of the equipment should start immediately and that equipment manufacture should proceed as detailed design approvals are obtained. Further, Admiral Rickover explains his objections to the special contract provisions limiting the normal rights of the Government with regard to inspection, quality control and equipment variations. He emphasizes the undesirable precedent which these special provisions would establish and recommends that the contract for this equipment include the Navy's existing standard provisions.

August 4, 1967.—Admiral Rickover, at the request of Assistant Secretary of the Navy Bannerman, calls Mr. Craig (GE vice president) to explain to Mr. Craig his objections to the latest proposed agreement between Secretary Bannerman and Mr. Craig. Mr. Craig agrees to certain specific changes suggested by Admiral Rickover. These changes make it clear that General Electric would start immediately with development and preliminary design of equipment and that General Electric would start equipment manufacture as detailed design approvals are obtained. Although Mr. Craig is insistent on the special contract provisions on inspection, quality control, and equipment variations, he does assure Admiral Rickover that these special provisions are for pricing purposes only and will not be used as a precedent for any future contracts. Mr. Craig assures Admiral Rickover that the Government will retain the right to require any inspection or quality control measures it deems necessary and to reject equipment variations for any reason, as long as the Government pays the cost. Admiral Rickover explains his reasons for objecting to these special provisions. Admiral Rickover states that although he does not agree with this portion of the Bannerman-Craig agreement he would raise no further objection to it.

August 4, 1967.—Admiral Rickover calls Assistant Secretary of the Navy Bannerman and advises Secretary Bannerman of the results of his conversation with Mr. Craig (GE vice president). Admiral Rickover states that although he does not agree with the special provisions on inspection, quality control, and equipment variations, it seemed clear to him that the Navy could get nothing better from General Electric at this time. Admiral Rickover states that he had told Mr. Craig he would raise no further objection to the Bannerman-Craig agreement, modified in accordance with his conversation with Mr. Craig. Admiral Rickover tells Secretary Bannerman that the memorandum he had prepared (dated August 4, 1967) had now been overtaken by events but he would send it to Secretary Bannerman for his information. Further, Admiral Rickover tells Secretary Bannerman that he will prepare a memorandum summarizing his conversation with Mr. Craig.

August 4, 1967.—Mr. Craig (GE vice president), based on his conversation with Admiral Rickover, revises the latest draft of his agreement with Assistant Secretary of the Navy Bannerman and forwards a signed copy to Secretary Bannerman. In the forwarding letter, Mr. Craig states he has revised the agreement in accordance with his discussions with Admiral Rickover. Mr. Craig states that the agreement is now written such that it is not objectionable to Admiral Rickover.

August 8, 1967.—Admiral Rickover advises Assistant Secretary of the Navy Bannerman by memorandum of the results of his conversation with Mr. Craig (GE vice president) on August 4, 1967. In this memorandum Admiral Rickover states that he has received a copy of Mr. Craig's August 4, 1967, letter to Secretary Bannerman and that the agreement forwarded with this letter reflects the changes which Mr. Craig agreed to make in his conversation with Admiral Rickover. Further, Admiral Rickover states that although he does not agree with the special contract provisions on inspection, quality control and equipment variations, he will raise no further objection.

August 8, 1967.—NavShips representatives meet with Electric Boat representatives and draft a proposed letter contract based on the August 4, 1967, agreement between Assistant Secretary of the Navy Bannerman and Mr. Craig (GE vice president).

August 8, 1967.—Representatives of NavShips and Electric Boat meet with representatives of General Electric to discuss the proposed letter contract drafted by NavShips and Electric Boat based on the August 4, 1967, agreement between Assistant Secretary of the Navy Bannerman and Mr. Craig (GE vice president). Although the General Electric representatives make it clear that they are not authorized to negotiate or sign the letter contract at this meeting, they question each section in which the wording is not identical to the August 4, 1967, Bannerman-Craig agreement. NavShips points out that a number of changes in the words of the August 4, 1967, Bannerman-Craig agreement had been necessary to reflect in the letter contract that the design and manufacture of this equipment would be done under an Electric Boat contract and not directly for the Navy. The General Electric representatives agree that such changes are necessary but specifically question the wording of the letter contract provision on the disapproval of equipment variations. They state that the letter contract makes it clear that General Electric has the burden to prove that equipment variations do not affect "performance, safety, reliability, or essential interchangeability," whereas the August 4, 1967, Bannerman-Craig agreement, as they read it, places the contrary burden on the Government. They state that the letter contract makes it clear that the Government could disapprove equipment variations for any cause as long as the Government pays the additional cost, whereas the August 4, 1967, Bannerman-Craig agreement, as they read it, implies that equipment variations will only be disapproved "for technical cause which may affect performance, safety, reliability, or essential interchangeability." NavShips and Electric Boat object to the interpretation of the August 4, 1967, Bannerman-Craig agreement stated by the General Electric representatives at this meeting.

August 11, 1967.—Mr. G. R. Sloan, Washington manager, General Electric Military and Defense Facilities Supply Operation, calls Mr. Coleman Morris, head, NavShips machinery purchase branch, and advises Mr. Morris that General Electric will not sign the proposed letter contract offered to General Electric on August 8, 1967. Mr. Sloan states that General Electric objects to the letter contract provision on disapproval of equipment variations.

August 14, 1967.—Assistant Secretary of the Navy Bannerman signs the agreement forwarded to him by Mr. Craig (GE vice president) on August 4, 1967.

August 15, 1967.—Mr. Morris (NavShips, contracts) calls Mr. Sloan (GE sales manager) and advises Mr. Sloan that NavShips and Electric Boat are willing to use the exact words of the August 4, 1967, Bannerman-Craig agreement for the letter contract provision on disapproval of equipment variations and to delete the words of clarification discussed between NavShips, Electric Boat, and General Electric on August 8, 1967.

August 22, 1967.—General Electric, Mr. Walsh (GE sales manager) signs a letter contract with Electric Boat for the design and manufacture of the main propulsion equipment for [classified matter deleted] SSN.

August 28, 1967.—Assistant Secretary of the Navy Bannerman meets with Mr. Craig (GE, vice president), Mr. Hill (GE MSTG & G manager), and Mr. Sloan (GE, sales manager). Secretary Bannerman points out that in view of statements made by General Electric representatives at the August 8, 1967 meeting with NavShips and Electric Boat, there may be some misunderstanding of the August 4, 1967 agreement he had reached with Mr. Craig. In order to clarify the intent of the letter contract provision on disapproval of equipment variations, Mr. Craig agrees to add a statement to his agreement with Secretary Bannerman which makes it clear that Government decision that cause exists to disapprove an equipment variation will be conclusive. General Electric can recover costs only under the normal Government "Disputes" article where General Electric would have the burden to prove that such cause did not exist.