ASSISTANT COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON 25

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C-37961

JUN 1 1944

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The Honorable,

The Secretary of Agriculture.

My dear Mr. Secretary:

Reference is made to letter dated October 21, 1943, from the Department of Agriculture, Office of Budget and Finance, forwarding the claim of the Federal Compress & Warehouse Company, Conway, Arkansas, in the sum of $10.50 of which (1) $5.25 represents amounts deducted by the Department of Agriculture, Surplus Marketing Administration (formerly the Federal Surplus Commodities Corporation), in making payment for the storage of cotton, under Federal Surplus Commodities Corporation Cotton Program G-1a, with respect to which the claimant billed the Surplus Marketing Administration at the rate of $0.15 per bale per month but was paid at the rate of $0.12½ per bale per month as provided in a contract between the claimant and the Commodity Credit Corporation from whom the cotton was obtained by the Surplus Marketing Administration while still in storage, and (2) $5.25 represents an amount alleged to be due for "shipping by tag numbers."

There is enclosed herewith a copy of my decision of today to the claimant.

Respectfully,

Assistant Comptroller General
of the United States.

Enclosure.

ASSISTANT COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON 25

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JAN 1 1941

Federal Compress & Warehouse Company,
c/o Frank C. Brocks, Esquire,
[redacted]

Gentlemen:

There has been considered your claim in the sum of $10.50 of which (1) $5.25 represents amounts deducted by the Department of Agriculture, Surplus Marketing Administration (formerly the Federal Surplus Commodities Corporation), in making payment for the storage of cotton, under Federal Surplus Commodities Corporation Cotton Program G-1a, with respect to which you billed the Surplus Marketing Administration at the rate of $0.15 per bale per month but were paid at the rate of $0.12½ per bale per month as provided in a contract between you and the Commodity Credit Corporation from which the cotton was obtained by the Surplus Marketing Administration while still in storage, and (2) $5.25 represents an amount alleged to be due for "Shipping by tag numbers."

The record shows that in the latter part of 1940 you presented a claim in the sum of $1,465.70 involving the same contract. Since the items involved in that claim--disallowed on January 4, 1941, by the Claims Division of the General Accounting Office--are similar to those represented by the amount now claimed and, inasmuch as you previously have not made any other form of request for a review of the larger claim, it is assumed that you desire this office to consider the allegations presented in support of the larger claim along with the statements accompanying the present claim.

There was received with your claim in the sum of $1,465.70 a copy of a letter dated September 27, 1940, from the National Cotton Compress and Cotton Warehouse Association, in pertinent part, as follows:

"This contract was made to cover cotton that had been on hand for a considerable length of time and which was expected to remain on hand for a considerable length of time without any active services. Furthermore, there was not involved any of the expensive handlings and re-handlings required when cotton is shipped and forwarded to specific destinations in small lots.

"There is absolutely no comparison in the storage of the two types of cotton. Loan cotton which is handled for the Commodity

Credit Corporation is not a moving stock and can be stacked several bales high and remains in storage a sufficient length of time to permit a warehouse to obtain a suitable revenue on the low rates granted the Corporation. Further, the attractive rates which the warehouses have given the Corporation are predicated upon volume and to induce volume.

"Not one of the governing factors in connection with the attractive rates granted the Commodity Credit Corporation obtains in connection with the F. S. C. C. Their purchases must be stored on the head with suitable aisles so as to enable the warehouseman to ship the cotton at any time and apparently all F. S. C. C. shipments are rush shipments. Further, the F. S. C. C. is not in a position to give any warehouseman any business, either a large or a small volume, and certainly they could not claim preferential rates on the basis of length of storage.

"By reason of the conditions under which the contract with the Commodity Credit Corporation was accepted, the warehousemen insisted and obtained an amendment to the contract which provided that its terms would not be applicable to subsequent owners of the cotton except for a period of 15 days after release thereof by the Commodity Credit Corporation. A copy of one of the contracts signed generally by the warehousemen is attached hereto and marked Exhibit 'A'. Your particular attention is called to item 2 of this contract which provides that:

"'The provisions of this contract shall accrue to the benefit of the holders of the warehouse receipt representing cotton released from the loan or sold by the corporation for a period extending from the effective date hereof to 15 days from the date of release of such warehouse receipt by the corporation; provided, the Corporation marks such warehouse receipt to show the date of such release.'

"By the terms of this provision, the sale of cotton by the Commodity Credit Corporation to the F. S. C. C. would entitle the latter to the terms of the contract for a period of 15 days after release of the warehouse receipts to the F. S. C. C. Thereafter, the charges would be predicated upon the warehouseman's general tariff of charges for the handling of cotton."

In support of your present claim, there was submitted on your behalf a statement dated October 16, 1943, signed by your attorney, as follows:

"This voucher raises a question that is substantially the same as has been presented in connection with numerous other vouchers presented to the Government for payment. It involves a determination

of the correct charges that should be paid to Federal Compress and Warehouse Company for storing and handling of cotton for the Federal Surplus Commodities Corporation.

"Federal Compress and Warehouse Company is a Delaware Corporation, having its General Offices in Memphis, Tennessee and operating at Conway, Arkansas, among other places, a cotton compress and cotton warehouse business. The company is licensed and bonded under the United States Warehouse Act and being so licensed and bonded is subject to the rules and regulations of the United States Warehouse Act administration setting forth and prescribing what shall be shown in the receipts issued to depositors of cotton. Among other things, it is required to show on the face of its warehouse receipt the amount of its charges for storage. The receipts issued by the company are negotiable and title passes by delivery of these receipts. The charges of the company for the various services performed are published in tariffs which are kept on file at, among other places, the offices of each of its establishments and which are furnished to all persons interested in the storing and warehousing of cotton. The total amount of this voucher is $10.50 of which $5.25 represents a claim for storage and $5.25 represents a service rendered in connection with the shipping of cotton which is called 'shipping by tag number and/or marking or branding.' It is conceded by all concerned that this sum of $10.50 is due and owing the company if Federal Surplus Commodities Corporation is to be charged the regular tariff rates of the company.

"The receipts covering the particular bales of cotton read in part as follows: 'The undersigned warehouseman claims a lien on said cotton for charges and liabilities as follows: "Receiving, tagging, weighing, sampling, including insurance and first month's storage 15¢. Storage and insurance each additional month or fractional part 15¢ and other charges as per published tariff." The applicable tariff of the company provides in part as follows:

"Receiving flat or compressed cotton from railroads, trucks or wagons, tagging, insurance against damage or loss by fire (weighing and sampling on arrival, if desired) including first months storage

	Per bale
	15¢
Storage and Insurance each additional month or fractional part thereof	15¢
Shipping by tag numbers and/or marking and branding	5¢"'

"When the company sent in its statement for the services rendered it billed Federal Surplus Commodities Corporation for storage at 15¢ per bale per month and for shipping by tag numbers, 5¢ per bale. This sum Federal Surplus Commodities Corporation refused to pay, but did pay the remainder of the invoice and paid the storage at the rate of 12½¢ per bale per month. The purpose of this voucher is to collect

the amount that Federal Surplus Commodities Corporation refused to pay.

"As it is admitted that the services were received and that the amount billed are the correct tariff charges there would seem to be no question but what the amount of the voucher should be paid. It is our understanding, however, that a contract between this company and Commodity Credit Corporation is relied upon to justify the refusal to pay these charges. We will therefore discuss this contract.

"Prior to the time the transaction covered by this voucher occured, this company had entered into a special contract with Commodity Credit Corporation which provided in part as follows:

'Whereas the warehouse company (Federal Compress and Warehouse Company) has in storage, at said warehouse plant, certain cotton owned by the Corporation (Commodity Credit Corporation) or pledged to secure loans.....

.....

'1. For the period the cotton is in storage.....the charge for storage and insurance on all cotton owned by the Corporation or pledged as security for loans.....shall be 12½¢ per bale per month or fraction thereof.....No charge shall be made for storage or handling of samples, ranging cotton or picking out by tag number, flat delivery or loading on trucks or into cars for shipment.' It is on the basis of the above quoted language however, that payment of the amount set forth in this voucher is refused. There exists no special contract of any sort between the warehouse company and Federal Surplus Commodities Corporation. As the whole matter will stand or fall upon the decision reached on the storage rates, we will, to save duplication and repetition, discuss only the storage question.

"Commodity Credit Corporation is a corporation organized and existing under the laws of the State of Delaware, the incorporators of which were Henry A. Wallace, Henry Morganthau, Jr. and Oscar Johnston. Among other things the Commodity Credit Corporation was chartered to buy, sell and lend money on cotton. One of the specific objects and purposes for which the corporation was created was 'To enter into, make, perform and carry out contracts of every kind and description for any lawful purpose without limit as to amount, with any person, firm, association, corporation, municipality, county, state, body politic, territory or government or colony or dependency thereof.' It was in connection with the buying and selling and making of loans on cotton that it entered into the contract, part of which is quoted above. In this connection we call attention to the fact

that the last clause of the contract reads in part as follows: 'In witness whereof the parties hereunto have caused these presents to be executed in duplicate form, their names on behalf and under their respective seals by the proper corporate officers hereunto duly authorized.....' and that the contracts were executed by Commodity Credit Corporation through its Assistant Treasurer and Assistant Secretary. In other words, the contract was made by the Commodity Credit Corporation to fulfill the purposes and objects it was specifically created for and it executed the contract as a corporation and in the regular manner of any other corporation.

"The contention in connection with this voucher arises out of the fact that Federal Surplus Commodities Corporation (hereafter called F.S.C.C.) acquired the cotton involved from Commodity Credit Corporation. (hereafter called C.C.C.). Inasmuch as the contract mentioned above is relied upon, we will have to inquire on what theory it can be contended that F.S.C.C. is entitled to the rates set forth in that contract.

"Certainly there can be no contention that F.S.C.C. is a party to this contract for it is obvious that the only two parties to the contract are specifically named and they are Federal Compress and Warehouse and Commodity Credit Corporation. Therefore, before the benefits of this contract can be claimed for F.S.C.C. the proponent must rely on some other theory. It has been suggested we understand, that as C.C.C. is an agency of the Government that the contract is in fact a contract with the United States Government, that as F.S.C.C. is also an agency of the Government the contract is in effect with it also. This is contrary to the holdings of the Courts cited below. However, we believe that we can show that it is erroneous in other respects. In the first place, it completely disregards the fact that C.C.C. is and was a corporation created under laws of the State of Delaware and was specifically given the powers set forth above to contract for itself. Not only to make such contracts, but to perform and carry them out. If it can be said that this is not C.C.C.'s contract, but one of all governmental agencies, then Congress has created a nullity. Such an intention on the part of Congress cannot be presumed. That Congress can create a governmental corporation to carry out particular functions is too well supported by decisions of our Courts to require citation of authority. It is not within our province to inquire as to why Congress prefers to act through a new corporation rather than through existing governmental departments nor are we authorized to question the wisdom of so doing. Once Congress has legally established and authorized a corporation to perform certain acts no one has the authority to nullify that action by refusing to recognize that corporation as such or to say that the actions of such corporation are not the actions of that corporation but of some other branch of the Government.

"Secondly, it overlooks the fact that under the applicable rules of law in this country an individual or a corporation can select and choose which agencies of the Government it will deal with and by naming it or them exclude those it does not desire to deal with. For instance, in United States vs. New York, C. & St. L. R. Co. 32 Fed.(2) 887 it was contended on a theory substantially as set out above that the railroad would have to transport goods belonging to the Emergency Fleet Corporation at the same reduced rates that the same railroad transported goods for other governmental agencies. The Circuit Court of Appeals for the 6th Circuit in passing on this question said in part as follows:

"(888) 'Appellee obligated itself in the equalization agreement "to accept for the transportation of property moved by the Quartermasters' Department, United States Army, United States Interior Department, or the United States Reclamation Service, and for which the United States Government is lawfully entitled to reduced rates over land grant roads, the lowest net rates lawfully available as derived from deductions account of land grant distances from a lawful rate filed with the Interstate Commerce Commission, applying from point of origin to destination at time of movement."'

"(889) 'Thus the agreement relates solely to the property of these specified departments, and in this aspect is to be construed, we think as excluding all other governmental property.'

"'It is said for the government that, inasmuch as the Quartermaster General was made exclusively responsible for the transportation of government property by the Act of 1884, the shipments in question must be regarded as having been made for the Quartermaster General's department. With this we cannot agree. The Fleet Corporation, although a governmental agency, had a distinct corporate entity. As such it was given enormous powers. Its officers controlled and managed its affairs, and it was itself engaged in the business of transporting government property; indeed, it was organized largely for that purpose.'

"There, as here, the contract named specific departments or agencies of the Government and the Court had no difficulty in finding that this excluded all other governmental agencies. Certainly when the contract names C.C.C. alone there is no way to contend that anyone else was meant other than C.C.C. Even a most cursory examination of the Charter of C.C.C. shows that it is and was given tremendous powers and there can be no doubt that it has a distinct corporate entity and falls within the quoted language. Not only that, but the very contract mentioned was executed by its officers and in conformity with the language mentioned above.

"To the same effect it was said in Detroit, Toledo & Ironton RR.

Co. vs United States 79 C. Clms. 227:

"(232) 'In the case here before the Court it was obviously the intention of the plaintiff to make its own equalization restrictive. It did not enter into the general agreement involved in the Norther Pacific case, but limited its agreement to certain business, naming it. By naming, in addition to the Quartermasters' Department, the Interior Department and the Reclamation Service, the intention was apparent to enumerate specifically the business to be covered.'

"Certainly this company did not enter into any general agreement, but specifically enumerated C.C.C. This enumeration excludes any other agency.

"Third, such a contention is entirely inconsistant with the position taken upon other cotton acquired by F.S.C.C. In other words, if F.S.C.C. is entitled to the rates set out in the contract set out above, because of the theory mentioned, it is entitled to those rates on all cotton that comes into its possession. Not only has it never been contended that F.S.C.C. is entitled to the lower rates on cotton acquired from sources other than C.C.C., it has never even been contended that F.S.C.C. is entitled to the contract rate on all of the cotton acquired from C.C.C. F.S.C.C. acquired cotton from C.C.C. in two manners: (1) It took cotton from C.C.C. and paid cash for the cotton (2) it took cotton from C.C.C. and gave C.C.C. cotton that it owned in exchange. In doing business in the second way F.S.C.C. bought cotton on the open market and then exchanged that cotton for cotton held by C.C.C. Generally speaking the cotton taken from C.C.C. was low-grade cotton and the cotton delivered to C.C.C. was of better grades and staples. As the value of a bale of cotton is determined primarily by its grade and staple the cotton delivered by F.S.C.C. was bale for bale worth more than that delivered by C.C.C. The agreement between the two agencies was that the cotton would be exchanged on the basis of equivalent values. While it is not so stated in the written agreement it is our understanding that it was also agreed that there would be a monetary settlement in the event the exchange did not come out even. In other words, for example, if the cotton delivered by C.C.C. was worth $30 per bale and that delivered by F.S.C.C. was worth $45 per bale and F.S.C.C. wanted 100 bales, C.C.C. would deliver 100 bales ($3,000 worth) to F.S.C.C. and F.S.C.C. would deliver 66 bales ($2,970 worth) to C.C.C. F.S.C.C. would then pay C.C.C. $30. If the value of each lot was the same there would be no payment in cash or by check. Whether there was such a difference or not obviously makes no change in the nature of the transaction.

"No one has ever contended that F.S.C.C. was entitled to the contract rates on that cotton for which it paid C.C.C. entirely in

money. It is only that cotton which F.S.C.C. paid for with other cotton that any such contention has been made. Surely on any logical basis, if F.S.C.C. is entitled to the contract rates on any cotton acquired from C.C.C. it is entitled to those rates on all cotton acquired from C.C.C. As long as the cotton comes from the same source it does not make any difference whether the cotton is paid for by check, cash, other cotton and cash, other cotton only, hay or peanuts. Thus we say it has been admitted that F.S.C.C. is not entitled to the contract rates in any circumstance when it is admitted that it is not entitled to those rates on cotton purchased from the trade or from C.C.C. on the payment of money.

"In this connection we wish to point out that both F.S.C.C. and C.C.C. evidently think they are separate corporate entities, have the power to contract with others and acquire cotton in their own name. The very contract or agreement that brought about the exchange reads in part: 'It is therefore agreed by and between Federal Surplus Commodities Corporation and Commodity Credit Corporation as follows:' and is executed in the name of each corporation by the appropriate corporate officer just as would have been done by any two ordinary corporations. Surely these corporations did not think they were impotent to act as corporations because of their governmental function. Each of them seemed to think they possessed or could possess cotton that they had the right to trade, barter or sell.

"If the above is not the contention made, we understand it to be that F.S.C.C. is entitled to the lower rates because there was never any sale by C.C.C. to F.S.C.C. The basis of this being that C.C.C. never owned the cotton involved, but that it was owned by the Government and that when the warehouse receipts were transferred from C.C.C. to F.S.C.C. this did not amount to a sale because it was in effect the Government taking something out of its right hand pocket and putting it in its left hand pocket. There are numerous things that prove that such a contention is not tenable. First, this overlooks the fact that the C.C.C. was organized for the express purpose of acquiring, owning and selling cotton and that there was no restriction as to whom it could sell to or that the sale had to be for cash. Unless it is conceded that C.C.C. can acquire title to cotton then again we have the situation where Congress has created a nullity. Congress created this corporation for the specific purpose of taking title in the corporation name and then we find that the corporation can't do this. That this is contrary to the thought and belief of Congress is shown by the statutes dealing with C.C.C. In 15 U.S.C.A. 713a-6 it is said: 'Notwithstanding any other provision of law, the C.C.C., with the approval of the President, is authorized to sell surplus agricultural commodities, acquired by such Corporation through its loan operations...' Certainly Congress in enacting this was under the impression that C.C.C. could 'sell' cotton.

"In 15 U.S.C.A. 713a-7 Congress said: 'The C.C.C. is authorized and directed to transfer to warehouses in or near cotton manufacturing centers in New England not to exceed 300,000 bales of cotton to which it now has title or may hereafter acquire title...' Certainly in enacting this Congress thought that C.C.C. could acquire title to cotton and so intended that it should. With a Congressional intention that C. C. C. should own cotton, with a Corporate Charter authorizing C.C.C. to acquire cotton and with a Congressional confirmation that C.C.C. did acquire title to the cotton a position to the contrary is at least difficult to maintain.

"In this connection we think that the case of Commodity Credit Corporation vs. County of Oklahoma 36 F.S. 694 is interesting. In that case the taxability of (1) cotton acquired by C. C. C. and (2) cotton on which C.C.C. had a loan was involved. There was also involved a question as to whether the cotton belonged to C.C.C. The Court found (P.695) 'The Commodity Credit Corporation acquired title to said cotton prior to September 11, 1939, but after May 31, 1938, and the tax warrant was issued January 31, 1940.' Also the Court said (P.698) 'This Court, therefore, concludes that the cotton owned by the Commodity Credit Corporation and for which it holds warehouse receipts is immune from State and local taxation....' There can be no doubt from the above language that the Court found that C.C.C. could acquire title to and own cotton. Further, inasmuch as there was no question that property owned by the Government was exempt from taxation and the whole case is a discussion and decision of whether property belonging to C.C.C. is exempt also, there must be ownership in C.C.C. rather than the Government directly.

"Secondly, this overlooks the fact that title to this cotton is represented by negotiable warehouse receipts and that title passes upon delivery of those receipts. Inasmuch as we understand that no objection of any sort is made to the payment of the tariff charges rather than the contract charges on that cotton for which money was paid, we will not discuss it except to point out that this is a definite recognition that C.C.C. owned the cotton in its possession and could sell it to another governmental agency in fact and within the meaning of the contract. Just why a distinction is made on that cotton which was received from C.C.C. in exchange for other cotton is difficult to understand. This is particularly so as the transfer was made on the basis of equivalent values i.e. F.S.C.C. transferred to C.C.C. cotton having substantially the same dollar value as that transferred by C.C.C. to F.S.C.C. and the difference in value was paid in money. It is fundamental in law that the consideration given in exchange for a commodity does not have to be money in order for the exchange to constitute a sale. The ordinary dictionary definition of 'sale' is 'the transfer of property and the title to it for money or its equivalent' and of 'sell' is 'transfer ownership or right of possession of something

to another for an equivalent.' There can be no doubt that a bale of cotton which can be sold for $X is the equivalent of $X. Neither can there be any doubt that when the warehouse receipts were delivered to F.S.C.C. by C.C.C. that the right of possession passed from C.C.C. to F.S.C.C. Not only did the right of possession pass but such right and all other attributes of ownership were exercised by F.S.C.C. disposing of the cotton. Unless there was a divestation of the ownership from C.C.C. to F.S.C.C. by what authority could F.S.C.C. dispose of the cotton? Further, unless there was a divestation of ownership from C.C.C. to F.S.C.C., F.S.C.C. has improperly expended its funds in paying any of the storage charges on this cotton. In other words, if C.C.C. still owns the cotton even though it has delivered the warehouse receipts to F.S.C.C., C.C.C. should be paying the storage and not F.S.C.C. Not only did C.C.C. deny that it still owned the cotton after the receipts were transferred to F.S.C.C., it specifically gave notice to the warehouseman that it was not responsible for such charges after the date of delivery of such receipts. In addition, if the exchange of the cotton does not result in F.S.C.C. 'owning' the cotton delivered to it then it follows as a matter of course that the cotton delivered to C.C.C. is not 'owned' by it. Yet C.C.C. has contended that the cotton it got in the exchange is owned by it and has claimed and only paid the contract rates. Thus if the contract rate is applicable on both the cotton transferred by C.C.C. and F.S.C.C. they have accomplished the impossible—— they can both have their cake and eat it. Thus it is no answer to say that C.C.C. did not own this cotton for that brings us to the next point.

"Third, one of the most important things is that such a contention completely overlooks the provisions of the contract which is relied upon. In the beginning we quoted part of the contract but we again call attention to the fact that the particular storage rate is to apply only on 'all cotton owned by the Corporation or pledged as security for loans.' If the cotton was not owned by C.C.C. it was not eligible to come within the terms of the contract and therefore was never entitled to the lower rates. Thus instead of F.S.C.C. being entitled to the lower rate from the time it acquired the cotton, this company has a claim against C.C.C. for the higher rates for all the time prior to the transfer. While as shown above the contract in question definitely limits itself to an arrangement between C.C.C. and the warehouseman and to cotton owned by C.C.C. or pledged for security on loans made by it, the contract did not stop there. It went further and in paragraph #2 definitely provided what would be the rights under the contract of anyone holding the warehouse receipts after they left the possession of C.C.C. This portion of the contract provides: 'The provisions of this contract shall accrue to the benefit of the holder of the warehouse receipts representing cotton released from the loan or sold by the Corporation for a period extending from the effective date hereof to 15 days from the date of

release of such warehouse receipt by the Corporation.' In other words, it was understood that C.C.C. would not retain these warehouse receipts forever and the contract specifies the rights of the party who subsequently takes the warehouse receipts. Surely there can be no question, regardless of any controversy on the question of sale, that F.S.C.C. became the 'holder of the Warehouse receipts,' or that the receipts were released by C.C.C. C.C.C. was careful to stamp on the backs of each of these receipts the wording: 'Released from loan....' or other language substantially the same and filled in the blank space the date on which it was released. The contract provides that its provisions shall inure to the benefit of the holders of the receipts for a period of only 15 days after the date of the release of such warehouse receipts. It is conceded that all of these charges accrued subsequent to 15 days after date of release of those receipts. When the receipts were delivered to F.S.C.C., C.C.C. properly released them from the loan and under the terms of the very contract which is relied upon this released the cotton represented by those warehouse receipts from the provisions of that contract.

"At this point we want to emphasize that the contract deals with cotton owned by a particular corporation rather than with particular bales of cotton. We do not think it should be necessary, but we wish to emphasize that the contract does not in effect say that bales Nos. 1,2,3,4,5 or 6 shall be stored at a certain rate, but that it provides that cotton owned by C.C.C. or pledged to secure loans made by C.C.C. shall be stored at the certain rate. In other words, the ownership of the bale of cotton rather than the actual bale of cotton itself determines the rate. If C.C.C. sold a bale of this cotton to WXY Company, the rates in the contract did not apply after the 15 day period although the bale of cotton may at one time have been charged only the lower rate.

"In conclusion we want to point out one additional thing in connection with this matter. It does not make any difference as to what the laws relating to the expenditure of public funds generally would require here, for Congress enacted what is now 15 U.S.C.A. 713c which reads in part: 'In carrying out Clause (2) of Section 612c, the funds appropriated by said Section may be used for the purchase without regard to the provisions of existing law governing the expenditure of public funds, of agricultural commodities and products thereof purchased under the preceeding paragraph hereof, may be donated for relief purposes.' In other words, it was not the intention of Congress to limit to the ordinary course how the funds of F.S.C.C. could be expended and therefore regardless of the general rules that are followed usually they are not applicable in the present situation. In this connection it is interesting to note that the Acts of Congress require F.S.C.C. to make a report to Congress annually setting forth what it has done and that in the report for the year 1941 F.S.C.C.

snows this cotton as part of that acquired under its program and includes in the amount of its expenditures the amount that it paid C.C.C. for this cotton.

"We submit that the above amply justifies paying the voucher under consideration and all others involving similar sums."

It appears that in the latter part of 1934, the Conway Compress Warehouse, Conway Compress Company, proprietor--later apparently acquired by you--Conway, Arkansas, received cotton from various cotton producers to whom the Conway Compress Company issued warehouse receipts, typical of which is one as follows:

CONWAY COMPRESS WAREHOUSE
CONWAY, ARKANSAS
CONWAY COMPRESS COMPANY, PROPRIETOR
Incorporated under the laws of Arkansas

Receipt and Tag No. 198446

...ED UNDER THE UNITED STATES WAREHOUSE ACT: ORIGINAL. NEGOTIABLE WAREHOUSE RECEIPT -FOR ONE BALE OF COTTON-	The undersigned warehouseman claims a lien on said cotton for charges and liabilities as follows:
...ed for ...s from B. F. Davis the one bale of cotton described ...stored in the above named warehouse, for which ...receipt is issued subject to the United States Ware... ...Act, the regulations for cotton warehouses there- ..., and the terms of this contract. Said cotton is ...URED by the undersigned warehouseman against loss ...age by fire or lightning. Said cotton is accepted ...orage for one year only from the date of this re- ..., but upon surrender by the holder this receipt may ...tended or a new receipt issued as provided in said ...tions. The undersigned warehouseman is not the ... of the cotton covered by this receipt, either ..., jointly, or in common with others, unless other- ...stated therein. Upon the return of this receipt ...yment of all charges and liabilities due the under- ...d warehouseman, as stated herein, said one bale of ... will be delivered to the above named depositor or ...r.	Warks 74 No. 6788316 Weight 526 Grade Staple Condition
Issued at Conway, Arkansas. on 9-22-34	
...ght determined ...weigher licensed ...the U. S. Ware... ...Act.	Conway Compress Company Licensed Warehouseman By J. Hamberg
Receiving, tagging, weighing and sampling, including 1 month's storage 40¢. Storage each additional month or frac. part 25¢. EXCEPT cotton remaining in storage longer than 3 full months the rate thereafter will be per month or fractional part, per bale 15¢.	According to the official standards of the United States for cotton.

"The issuance of a fraudulent receipt, or illegal conversion or removal of the cotton represented by this receipt, is punishable by a $10,000.00 fine, or imprisonment for ten years, or both."

Stamped across the fact of the receipt is the statement:

"INSURED FOR THE TWELVE CENT LOAN
Storage and insurance per month per bale 25¢. If withdrawn from loan, will take published tariff from date of receipt, plus insurance per month or fractional part thereof, per bale 10¢."

It further appears that in the latter part of 1933, the President of the United States authorized the formation of a corporation to be known as the Commodity Credit Corporation--the life of which later was extended by various acts of Congress--as shown in Executive Order No. 6340, dated October 16, 1933, which relies upon the authority of the National Recovery Act of June 16, 1933, 48 Stat. 195, authorizing the President of the United States "to establish such agencies * * * as he may find necessary" and states the purposes to be to carry out the provisions of seven specified acts, including the Agricultural Adjustment Act, the National Industrial Recovery Act, and the Federal Emergency Relief Act of 1933, enacted by the Congress to meet existent economic emergency conditions and to provide the relief necessary to protect the general welfare of the people, under the directorship of eight specified Government officials, two of whom--the Secretary of Agriculture and the Governor of the Farm Credit Administration--were authorized and directed (1) to cause the corporation to be formed, with such articles or certificate of incorporation and by-laws, as they might deem requisite and necessary; (2) to subscribe--from appropriated funds of the Department of Agriculture (see page 21 of the printed hearings held January 23, 1935, before the Senate Committee on Banking and Currency in connection with S. 1175) designated and set aside therein--for all of the capital stock, consisting of 30,000 shares of the par value of $100 each, later increased by $97,000,000 under the authority of the act of April 10, 1936, 49 Stat. 1191, 15 U.S.C.A. 713(a), for the use and benefit of the United States--the exercise of the rights of the United States arising out of the ownership of the capital stock being designated first to the Secretary of the Treasury, by Executive Order No. 7848, dated March 22, 1938, and later to the Secretary of Agriculture, by Executive Order No. 8219, dated August 7, 1939; (3) to vote any outstanding stock standing in the name of the United States; and (4) to fill any vacancies on the board of directors, subject to the approval of the President of the United States.

The certificate of incorporation of the Commodity Credit Corporation (of public record, among other places, in 79 Cong. Rec. 1552, and in the printed hearings before the House Committee on Banking and Currency on H. R. 2725 and H. R. 4011 (H. R. 3429) at pages 29 and 53, respectively), also dated October 16, 1933, and certifying the purposes and authority established by the said Executive Order No. 6340, provides, among other things, for perpetual existence and for authority in the board of directors to sell, lease or exchange

all of the property and assets of the corporation "When and as authorized by the affirmative vote of the holders of a majority /the Secretary of Agriculture since August 7, 1939/ of the stock issued and outstanding having voting power given at a stockholders' meeting duly called for that purpose, or when authorized by the written consent of the holders of a majority of the voting stock issued and outstanding." Under section 401 (a) of Reorganization Plan No. 1 promulgated pursuant to the Reorganization Act of 1939, 53 Stat. 561 and 1423, 5 U.S.C.A. 133t, the Farm Credit Administration, the Federal Farm Mortgage Corporation and the Commodity Credit Corporation, and their functions and activities, together with their respective personnel, records, and property were transferred to the Department of Agriculture, with the stipulation that they "shall be administered in such Department under the general direction and supervision of the Secretary of Agriculture, who shall be responsible for the coordination of their functions and activities." Apparently in recognition of the broad authority granted the Secretary of Agriculture under the said plan, the by-laws of the Commodity Credit Corporation were amended August 15, 1939, to authorize the Secretary of Agriculture, among other things, (1) to designate a director to serve as chairman of the board of directors, (2) to manage the property and business of the corporation, (3) to appoint--and remove with or without cause, at any time--such vice presidents, assistant secretaries, assistant treasurers, and other officers and such agents and employees of the corporation as he shall deem necessary or desirable, which officers, agents and employees shall exercise such powers and perform such duties as shall be prescribed from time to time by the Secretary of Agriculture.

By Executive Order No. 9322, dated March 26, 1943, the Commodity Credit Corporation was consolidated with certain other agencies into the Administration of Food Production and Distribution within the Department of Agriculture. Later, the said order was amended by Executive Order No. 9334, dated April 19, 1943, in which it is stated that the "Food Production Administration (except the Farm Credit Administration), the Food Distribution Administration, the Commodity Credit Corporation, and the Extension Service, together with all their powers, functions, and duties, are hereby consolidated within the Department of Agriculture into a War Food Administration, to be administered under the direction and supervision of a War Food Administrator. The Administrator shall be appointed by the President and shall be directly responsible to him."

Also, it appears that the aforesaid producers, to whom the warehouse receipts were issued, pledged the warehouse receipts to the Commodity Credit Corporation as security for loans made by the said corporation to the producers, pursuant to C.C.C. Cotton Form 1, "INSTRUCTIONS CONCERNING THE MAKING OF LOANS BY COMMODITY CREDIT CORPORATION TO COTTON PRODUCERS ON NOTES SECURED BY COTTON WAREHOUSE RECEIPTS," providing, in pertinent part, as follows:

"The Reconstruction Finance Corporation has extended to Commodity Credit Corporation a line of credit for the purpose of enabling Commodity Credit Corporation to make loans and/or purchase paper of producers of cotton, secured by pledge of cotton warehouse receipts. These instructions state the requirements with reference to making such loans and the purchase of such paper.

* * *

"2. Forms.--The following documents must be delivered in connection with every loan made or note purchased by Commodity Credit Corporation:

* * *

"(g) Warehouse receipts complying with the provisions of Section 12 hereof issued by approved warehouses.

* * *

"11. Warehouses.--Commodity Credit Corporation will accept only insured warehouse receipts pledged as collateral to notes on 1934-35 C.C.C. Cotton Form A covering cotton issued by any warehouse, licensed under the laws of any State or of the United States, or such other warehouses as may be approved by the Loan Agency of the Reconstruction Finance Corporation of the district in which such warehouse is located. Warehousemen are advised to communicate with the Loan Agency of the Reconstruction Finance Corporation concerning unlicensed warehouses. When warehouses not licensed as aforesaid are approved, notification will be given either by letter or published lists.

"12. Warehouse receipts.--Only negotiable insured warehouse receipts dated prior to the date of the Producer's note and properly assigned by an endorsement in blank so as to vest title in the holders or issued to bearer, executed, by warehousemen who are not owners of the cotton, will be acceptable. They must set out in their written or printed terms a description by tag number and weight of the bale or bales represented thereby, and all other facts and statements required to be stated in the written or printed terms of a warehouse receipt under the provisions of section 2 of the Uniform Warehouse Receipts Act. Warehouse receipts issued prior to August 1, 1934, which by their terms will expire prior to August 1, 1935, must bear endorsement of the warehouse extending the terms of the warehouse receipt for a period of one year from August 1, 1934. Block warehouse receipts will be accepted only when the tag number and weight of each bale is indicated on the block receipt.

"13. Warehouse charges.—The warehouseman's charges are limited and his obligations defined by the form of warehouseman's certificate and waiver provided in paragraph 1 of the loan agreement. This should be read carefully and must be executed by the warehouseman issuing the cotton warehouse receipts pledged as collateral to the producer's note.

* * *

"15. Federal Reserve Banks.—The Federal Reserve banks and branches thereof, will act as fiscal agents of the Reconstruction Finance Corporation, in their respective districts, in making disbursement on eligible paper approved by the Loan Agency of the Reconstruction Finance Corporation in that district. Such notes, together with the warehouse receipts securing the same, will be held by the Federal Reserve banks as security for the loans made by the Reconstruction Finance Corporation to Commodity Credit Corporation.

"Upon the approval of the documents by specified Loan Agencies, the Federal reserve banks or branches thereof, are authorized to make payment therefor to the lending agency or the producer.

* * *

"18. Release of collateral.—If the producer's note was made payable directly to Commodity Credit Corporation and he desires to obtain the return of the note and the release of the collateral upon payment, he should notify the Federal Reserve bank or branch thereof serving the district in which he resides. If his note was made payable to a payee other than Commodity Credit Corporation, the producer should notify the payee named therein. Warehouse receipts representing cotton held by Commodity Credit Corporation will be released by the Federal Reserve bank or branch thereof holding the receipts, upon the payment of the amount of the loan, the accrued interest, and proper charges. Upon written request of the producer the note and warehouse receipts will be forwarded to an approved bank, to be released to the producer or his agent against payment. Where receipts are transmitted to a bank they will be sent, with a request to return them to the sender, if payment and release are not effected within 15 days. All charges and expenses of the bank are to be paid by the producer."

Pursuant to this referred-to C.C.C. Cotton Form 1, the producers, to whom the Commodity Credit Corporation made loans, executed Commodity Credit Corporation Form A, "Cotton Producers Loan Documents," containing, among other things, (1) the cotton producers' note, and (2) the loan agreement which included the "WAREHOUSEMAN'S CERTIFICATE AND WAIVER" as follows:

"All charges on the cotton listed in the above or attached schedule are paid to August 1, 1934, or dates of warehouse receipts, whichever are later. This cotton is in existence, is undamaged, and is and will be kept under cover within a structure enclosed in such a manner that the cotton is adequately protected from weather damage. The above cotton is tagged with a Government bale tag, representing tax-paid or tax-exempt cotton. The warehouse receipts listed above or in the attached schedule state in their printed terms or are stamped 'Insured.' This cotton is insured, in a company or companies licensed to do business in the State in which said cotton is stored, against loss or damage by fire for the full market value and will be kept insured so long as the receipt is outstanding. Lien for all charges, including receiving, tagging, weighing, storing, sampling, turning out, and insurance, will not be claimed for more than 25 cents per bale for each full month and the proportionate part of 25 cents for each fractional part of a month, or the charges applicable under the warehouseman's established tariffs in existence at the date of the receipts, whichever is less. Commodity Credit Corporation may, by agents or otherwise, inspect the cotton, the warehouse, and the records of the warehouse at any time. The warehouseman agrees that if the cotton is ordered shipped by Commodity Credit Corporation, for the purpose of reconcentration or otherwise, shipments will be made promptly and storage charges will stop on receipt of shipping instructions and surrender of the warehouse receipts. All cotton is low middling or better in grade and is 7/8 inch or better in staple unless receipt number in the above or attached schedule is marked 'X' (indicating below 7/8 inch in staple).

"Date_____,193 _____ By_____
(Signature of warehouseman) (Agent or officer—Title)

"(Attention is called to paragraph (11) referring to the criminal section quoted at the end of this agreement. Warehouseman's certificate must not be dated more than 5 days preceding date of above-mentioned note.)

"2. In consideration of the loan evidenced by the aforementioned note, the undersigned represents to and agrees with all holders of the note as follows:

"That the cotton represented by the warehouse receipts listed herein was produced or acquired by or for the undersigned as landowner, landlord, or tenant; that he is the owner, has the legal right to pledge same, and that the beneficial title thereto is and always has been in the undersigned producer.

* * *

"6. The undersigned agrees that if any Federal agency or instrumentality shall become the holder of the above-mentioned note,

it may, before or after maturity, move the collateral cotton from one storage point to another and pay freight; may compress the commodity; may store separately, in block, or otherwise; may insure or reinsure against any risks, or otherwise handle or deal with the commodity, as may be deemed appropriate and proper, subject to the terms of this loan agreement, releasing, substituting, and obtaining any and all instruments and documents, and paying or discharging any accrued or accruing charges or expenses as may in any way be appropriate or necessary therefor. Any costs and expenses connected with such handling without regard to insurance savings by reclassification or duration shall be a charge against the commodity, payable out of any proceeds thereof.

* * *

"8. The undersigned warrants and represents that he has signed the 1934-1935 Cotton Acreage Reduction Contract with the Secretary of Agriculture (AAA Form No. Cotton 1), and inasmuch as the above-mentioned note is eligible for discount or purchase by the Commodity Credit Corporation, an agency of the United States Government, the undersigned agrees, with and for the benefit of the United States, to do and perform any and all acts required of him, under said Cotton Acreage Reduction Contract with the Secretary of Agriculture, and to reduce or adjust his acreage or production of cotton during or for the crop year of 1935, as required by said contract.

"9. The undersigned, all lien holders and their agents by executing waiver and consent in paragraph two (2), and all warehousemen by executing certificate and waiver in paragraph one (1) agree that they and each of them have full knowledge of the provisions of section 16 (a) of the Reconstruction Finance Corporation Act as amended ["Whoever makes any statement knowing it to be false, or whoever willfully overvalues any security, for the purpose of obtaining for himself or for any applicant any loan, or extension thereof by renewal, deferment of action, or otherwise, or the acceptance, release, or substitution of security therefor, or for the purpose of influencing in any way the action of the Corporation, or for the purpose of obtaining money, property, or anything of value, under this act, shall be punished by a fine of not more than $5,000, or by imprisonment for not more than 2 years, or both."], and have made the representations and statements contained in this loan agreement, for the purpose of influencing the Reconstruction Finance Corporation, to acquire the above-mentioned note by purchase, discount, or rediscount, or as security for a loan to the payee or its assignees, or otherwise, or to extend or renew credit in reliance thereon."

Pertinent provisions of the United States Warehouse Act, 39 Stat. 486, amended 42 Stat. 1282 and 46 Stat. 1463, under which the Conway Compress Warehouse was licensed and bonded, as referred to in the typical receipt hereinbefore quoted, are as follows:

"Sec. 4. That the Secretary of Agriculture, or his designated representative, is authorized, upon application to him, to issue to any warehouseman a license for the conduct of a warehouse or warehouses in accordance with this Act and such rules and regulations as may be made hereunder: Provided, That each such warehouse be found suitable for the proper storage of the particular agricultural product or products for which a license is applied for, and that such warehouseman agree, as a condition to the granting of the license, to comply with and abide by all the terms of this Act and the rules and regulations prescribed hereunder.

* * *

"Sec. 13. That every warehouseman conducting a warehouse licensed under this Act shall receive for storage therein, so far as its capacity permits, any agricultural product of the kind customarily stored therein by him which may be tendered to him in a suitable condition for warehousing, in the usual manner in the ordinary and usual course of business, without making any discrimination between persons desiring to avail themselves of warehouse facilities.

* * *

"Sec. 18. That every receipt issued for agricultural products stored in a warehouse licensed under this Act shall embody within its written or printed terms (a) the location of the warehouse in which the agricultural products are stored; (b) the date of issue of the receipt; (c) the consecutive number of the receipt; (d) a statement whether the agricultural products received will be delivered to the bearer, to a specified person, or to a specified person or his order; (e) the rate of storage charges; (f) a description of the agricultural products received, showing the quantity thereof, or, in case of agricultural products customarily put up in bales or packages, a description of such bales or packages by marks, numbers, or other means of identification and the weight of such bales or packages; (g) the grade or other class of the agricultural products received and the standard or description in accordance with which such classification has been made: Provided, That such grade or other class shall be stated according to the official standard of the United States applicable to such agricultural products as the same may be fixed and promulgated under authority of law: Provided further, That until such official standards of the United States for any agricultural product or products have been fixed and promulgated, the grade or other class thereof may be stated in accordance with any recognized standard or in accordance with such rules and regulations not inconsistent herewith as may be prescribed by the Secretary of Agriculture; (h) a statement that the receipt is issued subject to the United States Warehouse Act and the rules and regulations prescribed thereunder; (i) if the receipt be issued for agricultural

products of which the warehouseman is owner, either solely or jointly or in common with others, the fact of such ownership; (j) a statement of the amount of advances made and of liabilities incurred for which the warehouseman claims a lien: Provided, That if the precise amount of such advances made or of such liabilities incurred be at the time of the issue of the receipt unknown to the warehouseman or his agent who issues it, a statement of the fact that advances have been made or liabilities incurred and the purpose thereof shall be sufficient; (k) such other terms and conditions within the limitations of this Act as may be required by the Secretary of Agriculture; and (l) the signature of the warehouseman, which may be made by his authorized agent: Provided, That unless otherwise required by the law of the State in which the warehouse is located, when requested by the depositor of other than fungible agricultural products, a receipt omitting compliance with subdivision (g) of this section may be issued: Provided, however, The Secretary of Agriculture may in his discretion require that such receipt have plainly and conspicuously embodied in its written or printed terms a provision that such receipt is not negotiable.

* * *

"Sec. 23. That every warehouseman conducting a warehouse licensed under this Act shall keep in a place of safety complete and correct records of all agricultural products stored therein and withdrawn therefrom, of all warehouse receipts issued by him, and of the receipts returned to and cancelled by him, shall make reports to the Secretary of Agriculture concerning such warehouse and the condition, contents, operation, and business thereof in such form and at such times as he may require, and shall conduct said warehouse in all other respects in compliance with this Act and the rules and regulations made hereunder.

* * *

"Sec. 25. That the Secretary of Agriculture, or his designated representative, may, after opportunity for hearing has been afforded to the licensee concerned, suspend or revoke any license to any warehouseman conducting a warehouse under this Act, for any violation of or failure to comply with any provision of this Act or of the rules and regulations made hereunder, or upon the ground that unreasonable or exorbitant charges have been made for services rendered. Pending investigation, the Secretary of Agriculture, or his designated representative, whenever he deems necessary, may suspend a license temporarily without hearing.

* * *

"Sec. 27. That the Secretary of Agriculture is authorized

through officials, employees, or agents of the Department of Agriculture designated by him to examine all books, records, papers, and accounts of warehouses licensed under this Act and of the warehousemen conducting such warehouses relating thereto.

* * *

"Sec. 29. That nothing in this Act shall be construed to conflict with, or to authorize any conflict with, or in any way to impair or limit the effect or operation of the laws of any State relating to warehouses, warehousemen, weighers, graders, inspectors, samplers or classifiers; but the Secretary of Agriculture is authorized to cooperate with such officials as are charged with the enforcement of such State laws in such States and through such cooperation to secure the enforcement of the provisions of this Act; nor shall this Act be construed so as to limit the operation of any statute of the United States relating to warehouses or warehousemen, weighers, graders, inspectors, samplers, or classifiers now in force in the District of Columbia or in any Territory or other place under the exclusive jurisdiction of the United States.

"Sec. 30. That every person who shall forge, alter, counterfeit, simulate, or falsely represent, or shall without proper authority use, any license issued by the Secretary of Agriculture, or his designated representative, under this Act, or who shall violate or fail to comply with any provision of section 8 of this Act, or who shall issue or utter a false or fraudulent receipt or certificate, or change in any manner an original receipt or certificate subsequently to issuance by a licensee, or any person who, without lawful authority, shall convert to his own use, or use for purposes of securing a loan, or remove from a licensed warehouse contrary to this Act or the regulations promulgated thereunder, any agricultural products stored or to be stored in such warehouse, and for which licensed receipts have been or are to be issued, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not more than $10,000, or double the value of the products involved if such double value exceeds $10,000, or imprisoned not more than ten years, or both, in the discretion of the court, and the owner of the agricultural products so converted, used, or removed may, in the discretion of the Secretary of Agriculture, be reimbursed for the value thereof out of any fine collected hereunder, by check drawn on the Treasury at the direction of the Secretary of Agriculture, for the value of such products to the extent that such owner has not otherwise been reimbursed. That any person who shall draw with intent to deceive, a false sample of, or who shall willfully mutilate or falsely represent a sample drawn under this Act, or who shall classify, grade, or weigh fraudulently, any agricultural products stored or to be stored under the provisions of this Act, shall be deemed guilty of a misdemeanor, and upon conviction thereof fined

not more than $500, or imprisoned for not more than six months, or both, in the discretion of the court."

The United States Warehouse Act confers upon licensees certain privileges and secures to the national government, by means of the licensing provisions, a measure of control over those engaged in the business of storing agricultural products, who find it advantageous to apply for the license. The Government exercises that control in the furtherance of a governmental purpose to secure fair and uniform business practices. Federal Compress & Warehouse Co., et al. v. McLean, 291 U.S. 17, 22, 23. Regulations promulgated by the Secretary of Agriculture relating to cotton warehouses have the effect of law and become a part of the contract between the warehouseman and the owners of the warehouse receipts. Dixey, et al. v. Federal Compress & Warehouse Co. (C.C.A. 8, 1942), 132 F.2d 275.

The Uniform Warehouse Receipts Act, adopted in 1915 by the State of Arkansas in which State your warehouse involved herein is located, requires that every warehouse receipt embody, among other things, the rate of storage charges and a statement of the liabilities incurred for which the warehouseman claims a lien; that a warehouseman shall be liable, to any person injured thereby, for all damage caused by the omission from a negotiable receipt of any of the terms required; that a person to whom a receipt has been negotiated acquires, among other things, the direct obligation of the warehouseman to hold possession of the goods for him according to the terms of the receipt as fully as if the warehouseman had contracted directly with him; and that:

"A warehouseman, or any officer, agent or servant of a warehouseman, who fraudulently issues or aids in fraudulently issuing a receipt for goods knowing that it contains any false statement, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both."

The warehouse receipts filed in support of your claim are stamped to show--and other evidence of record tends to indicate--that after the Commodity Credit Corporation became the holder of the receipts, the said corporation each year paid all charges in advance to August 1, for the years 1935 through 1939. The record shows that on the 10-cent loan in 1933, the Commodity Credit Corporation paid the warehousemen their regular tariff rate; that in 1934, the Corporation paid 25 cents per bale per month for storage on the 12-cent loan cotton; that after this the 12-cent loan cotton remained in storage until July 31, 1935, when the storage rate was reduced to 15 cents per bale per month; that this storage rate remained in effect until July 31, 1937, at which time the Commodity

Credit Corporation allowed the warehousemen a 20 percent increase in the storage rate which brought the rate up to 18 cents per bale per month; and that this last said rate remained in effect until October 31, 1939. The total paid to you for storage of cotton in your various warehouses, including the one at Conway, Arkansas, during the period August 1, 1936, to August 1, 1939, is established by John D. Goodloe, vice president, Commodity Credit Corporation, as $8,518,718.15 (84(10) Cong. Rec. 10233, 76th Congress, 1st Session). Apparently, a sum of approximately a million dollars, at least, could be added for the two years preceding August 1, 1936, making almost ten million dollars in storage payments to you by August 1, 1939. During this period in which storage payments aggregating the said sum were being paid to you, the record shows that notwithstanding the penal provisions of paragraph 9 of Commodity Credit Corporation Cotton Form A and its applicability to the warehouseman's certificate and waiver on the said form whereon you certified that the cotton "is and will be kept under cover within a structure enclosed in such a manner that the cotton is adequately protected from weather damage" (underscoring supplied) you apparently were receiving storage payments on cotton stored in the open at the same rates as that stored in the shelter required by the United States Warehouse Act, referred to on your warehouse receipts, and for the privileges of which act you gave a bond for the faithful performance of the duties exacted by the act. In 1937, for example, cotton was stored in the open in the State of Arkansas as late as December, 1937, and some apparently into January, 1938. Although the record tends to show that you issued temporary unbonded receipts to cover such cotton, pursuant to a special form of agreement and bond, there is nothing to indicate that you were not paid the same storage rate as that paid to warehousemen who actually furnished the structure required by the certificate and waiver provision in Cotton Form A.

The contract between you and the Commodity Credit Corporation, in pertinent part, is as follows:

"This agreement made and entered into by and between COMMODITY CREDIT CORPORATION, Washington, D. C., organized and existing as an agency of the United States, hereinafter referred to as the 'Corporation,' and FEDERAL COMPRESS WAREHOUSE COMPANY, Conway, Arkansas, hereinafter referred to as the 'Warehouse Company,' witnesseth:

"WHEREAS the Warehouse Company controls by ownership or lease and operates a certain warehouse plant located at Conway, Arkansas and commonly known as Federal Compress & Warehouse Company; and

"WHEREAS the Warehouse Company has in storage, at said warehouse plant certain cotton owned by the Corporation or pledged to secure loans on 1938-39 C.C.C. Cotton Form A;

"NOW, THEREFORE, in consideration of the benefits accruing from the operation of this contract, irrespective of and without reference to any previous contracts or agreements covering storage charges entered into between the Corporation and the Warehouse Company, the parties hereto agree each with the other as follows:

"1. For the period the cotton is in storage after August 1, 1939, the charge for storage and insurance on all cotton owned by the Corporation or pledged as security for loans on 1938-39 C.C.C. Cotton Form A shall be 12½ cents per bale per month or fraction thereof. Charges for resampling and reweighing shall be at the regular tariff rates, but in no event more than 10 cents per bale for resampling and 10 cents per bale for reweighing. No charge shall be made for storage or handling of samples, ranging cotton or picking out by tag number, flat delivery or loading on trucks or into cars for shipment.

"2. The provisions of this contract shall accrue to the benefit of the holders of the warehouse receipts representing cotton released from the loan or sold by the Corporation for a period extending from the effective date hereof to 15 days from the date of release of such warehouse receipts by the Corporation.

"3. The Warehouse Company agrees that if the cotton is ordered shipped by the Corporation, shipments will be made promptly and storage charges will stop on receipt of shipping instructions and surrender of the warehouse receipts unless the cotton is shipped within a reasonable time as determined by the Corporation. Whenever any of such cotton is shipped upon its orders, the Corporation will pay the accrued storage charges to that date, and all other charges in connection therewith on receipt of the invoice for same. Storage charges determined in accordance with this agreement, accrued through July 31 of any year in which it is in effect shall be paid by the Corporation promptly thereafter on such of the cotton as is represented by warehouse receipts held by the Corporation at the time of payment.

"4. The Warehouse Company agrees to notify the Corporation of any cotton that may be damaged after being received and stored in the warehouse and to recondition all cotton free of all charges, and to pay the Corporation for all losses sustained.

"5. The Warehouse Company agrees to insure and keep insured against loss or damage by fire for its full market value, so long as its receipts for same are outstanding, all cotton subject to this agreement.

"6. It is further agreed that any of the cotton covered by

this agreement damaged by water from the Warehouse Company's sprinkler system will be under the Warehouse Company's insurance coverage, when such damage results from fire originating in the same warehouse in which the Corporation's cotton is stored on rates named herein." (Underscoring supplied.)

This contract—signed by the Commodity Credit Corporation's assistant treasurer, an official removable at will by the Secretary of Agriculture—like most of the other contracts between the Commodity Credit Corporation and your other warehouses, and many warehouses of other companies, appears, in part at least, to have been entered into as the result of severe congressional criticism—during the 1st session of the 76th Congress, especially during the months of July and August, 1939 (84 Cong. Rec. 3643; 4012; 10230 ff.)—of the excessive storage rates being paid for the storage of cotton.

Under date of October 19, 1939, the Department of Agriculture issued a press release, as follows:

"INFORMATION FOR THE PRESS

"United States Department of Agriculture

"Release - Immediate

WASHINGTON, D. C., October 19, 1939

"STORAGE RATES REDUCED
ON GOVERNMENT LOAN COTTON

- - -

"The Department of Agriculture announced today that, effective November 1, 1939, the maximum rate approved by Commodity Credit Corporation for storing and insuring cotton already under loan or held by the Government will be 12½ cents per bale per month.

"Provisions of the contract submitted to the warehousemen on October 7 stipulated that the 12½ cent rate would become effective on August 1, 1939. After a conference with warehousemen and officials of the CCC, an understanding was reached that an addition would be made to the contract to provide for a rate of 15 cents per bale per month for the three-month period August, September, and October 1939. Another addition to the contract previously submitted will protect the investment of warehousemen in the compression of cotton, prior to October 15, normally shipped by rail under rates that make compression necessary. All rates include fire insurance for the full market value of the cotton.

"Commodity Credit Corporation will execute acceptance of the contracts, and insert the additions described above, on October 25, and in any instance in which signed contracts are not received by the Corporation it will be necessary to move the cotton to warehouses at concentration points where lower rates are available.

"Under the new cotton storage program a saving of approximately 10 million dollars per year will be made for cotton producers and the Government in carrying charges. This does not include a saving to cotton producers of approximately 2½ million dollars on their 1938 loan cotton as a consequence of the reduction of the interest rate, recently announced, from 4 to 3 percent on CCC loans which will be effective November 1.

"The maximum 12½ cent rate is applicable only to cotton from the 1938 and earlier crops."

While no evidence has been found of record that the Commodity Credit Corporation ordered the Conway Compress Company to compress the cotton, the record shows that the corporation paid for compress and patchings in October, November and December, 1935. Under the terms of the 1934-1935 loans, they matured July 31, 1935, but were extended to February 1, 1936, and after that time they were carried by the corporation as past due. Accordingly, the producers of the cotton involved in your claim eventually forfeited the cotton to the Commodity Credit Corporation by reason of their failure to pay the aforesaid loans made upon the warehouse receipts issued for such cotton. The cotton involved was a part of at least three million bales of cotton acquired by the Commodity Credit Corporation through forfeitures on the 1934-1935 (12 cent) cotton loan.

By the early part of 1939, various proposals were being made to facilitate the Commodity Credit Corporation's disposal of the cotton. For example, H. R. 4399 proposed that the Commodity Credit Corporation be authorized and directed to transfer title to one million six thousand bales of the cotton to the Work Projects Administration to be used for the manufacture by such administration of mattresses and other articles to be distributed to families on relief and to other needy persons, without cost to them, through the Federal Surplus Commodities Corporation or such other agency as the Work Projects Administration might designate. Finally, about 181,291 bales were transferred to the Federal Surplus Commodities Corporation.

The Federal Surplus Commodities Corporation, a corporation with no capital stock, became, on November 18, 1935, the successor of the Federal Surplus Relief Corporation--public announcement of which was the subject of a press release dated October 5, 1933, issued by the Federal Emergency Relief Administration (the office responsible

for the administration of the Federal Emergency Relief Act, hereinbefore specifically mentioned as one of the seven acts passed by the Congress to meet the economic and welfare problems of the depression years)--for which a certificate of incorporation, pursuant to the general corporation law of the State of Delaware, was filed October 4, 1933, by the incorporators, H. A. Wallace, Harold L. Ickes, and Harry L. Hopkins. The certificate of incorporation, as variously amended through December 28, 1938, including the change of name to the Federal Surplus Commodities Corporation, shows the purposes, among others, to be (1) to relieve the existing national emergency by expansion of markets for, removal of, and increasing and improving the distribution of, surplus agricultural and other commodities and products thereof, and to dispose of the same so as to relieve the hardship and suffering caused by unemployment; (2) to perform any and all functions and exercise any and all powers that may be delegated to it under and pursuant to certain acts of Congress, similar to those specified in the certificate of incorporation of the Commodity Credit Corporation; (3) to perform any and all functions, and exercise any and all powers, as a governmental agency or instrumentality; (4) to cooperate with any private, public or governmental agency or agencies; (5) to purchase, or otherwise acquire, to hold, or otherwise to deal in, to sell or otherwise dispose of, any and all agricultural or other commodities, or products thereof and to loan or borrow money upon the same; and (6) to purchase and hold securities or evidences of indebtednesses created by any other corporation, and, while the owner thereof, to exercise all the rights, powers and privileges of ownership. The amended certificate shows the corporation to be a membership corporation whose members are to be three in number and made up of the persons who from time to time may occupy the offices of Secretary, Under Secretary, and Assistant Secretary of Agriculture, who are authorized to dissolve the corporation, when in their judgment the purposes shall be accomplished, and to pay the net proceeds into the Treasury of the United States.

Under section 5 of Reorganization Plan No. III, effective June 30, 1940, 54 Stat. 1232, 5 U.S.C.A. 133t, the Division of Marketing and Marketing Agreements of the Agricultural Adjustment Administration of the Department of Agriculture and its functions "and the Federal Surplus Commodities Corporation as an agency of the Department of Agriculture and its functions are consolidated into an agency in the Department of Agriculture to be known as the Surplus Marketing Administration" to be headed by an Administrator, appointed by and subject to the direction and supervision of the Secretary of Agriculture. Pursuant to section 601 of the First War Powers Act of December 18, 1941, 55 Stat. 838, Executive Order No. 9069 of February 23, 1942, declared that the "Surplus Marketing Administration (including the Federal Surplus Commodities Corporation as an agency of the Department of Agriculture), the Agricultural Marketing Service (except the Agricultural Statistics Division), and the

Commodity Exchange Administration of the Department of Agriculture and their functions, personnel, property, and records are consolidated into an agency to be known as the Agricultural Marketing Administration of the Department of Agriculture, which agency shall be administered under the direction and supervision of such officer as the Secretary of Agriculture shall designate."

By Executive Order No. 9280 of December 5, 1942, the Agricultural Marketing Administration, the Sugar Agency of the Agricultural Conservation and Adjustment Administration, and their functions, personnel, and property, were consolidated with the functions, personnel, and property of other similar offices and bureaus into one agency to be known as the Food Distribution Administration of the Department of Agriculture, to be under the direction and supervision of a Director of Food Distribution appointed by the Secretary. Later, the referred-to Executive Order No. 9322, dated March 26, 1943, as amended by Executive Order No. 9334, dated April 19, 1943, consolidated the Food Distribution Administration, the Commodity Credit Corporation and the Extension Service into a War Food Administration within the Department of Agriculture.

By memorandum dated October 28, 1939, Acting Secretary of Agriculture Harry L. Brown, authorized and directed the President, Federal Surplus Commodities Corporation, to purchase cotton and cotton fabrics for mattress ticking and for comforters, and to distribute same to persons eligible to receive surplus commodities, that is, to persons of incomes of not more than $400 annually.

In a memorandum dated December 21, 1939, from Milo Perkins, Associate Administrator, Agricultural Adjustment Administration, to the Secretary of Agriculture--seeking to amend the cotton purchases authorization contained in the aforesaid memorandum of October 28, 1939--it was proposed and recommended that since low grades of cotton were extremely scarce, the Federal Surplus Commodities Corporation be authorized to purchase cotton of certain specified grades and to deliver such cotton to the Commodity Credit Corporation in exchange for cotton of lower grades suitable for making mattresses and comforters. In the said memorandum, it was stated further:

"The Commodity Credit Corporation recently acquired title to all cotton held by it under the 1934 and 1937 Cotton Loan Programs. As of November 15, 1939, the cotton to which the Commodity Credit Corporation has acquired title and on hand, totaled approximately 6.8 million bales.

"* * * Of the 1934 cotton already classified, the following quantities of low grade cotton are in stock:

* * *

	Number of bales
* * *	
Total	195,162

"Although the Commodity Credit Corporation has title to the 1934 and the 1937 Loan Cotton, it is unable to sell it in the open market because the minimum price at which such cotton can be sold is considerably higher than the present market level. It is in a position, however, to exchange such cotton for other cotton of higher grade. By doing this the Federal Surplus Commodities Corporation can secure larger quantities of the types of cotton suitable for mattresses and comforters for a given expenditure."

Under date of December 27, 1939, the Solicitor, Department of Agriculture, advised the Secretary of Agriculture, as follows:

"MEMORANDUM FOR THE SECRETARY

with respect to

"Amendment to the Cotton Purchase Program (Fiscal Year 1940)

"In a Memorandum to the President of the Federal Surplus Commodities Corporation, dated October 28, 1939, the Corporation was authorized to purchase cotton for relief distribution at a maximum price of 11.50 cents per pound. The Marketing Section, Division of Marketing and Marketing Agreements, now recommends that this maximum purchase price be increased to 15 cents a pound in order that the Corporation may buy better grades of cotton and that the Corporation also be authorized to exchange these better grades with the Commodity Credit Corporation for lower grades suitable for use in making mattresses and comforters. From the standpoint of the Cotton Purchase Program and the pertinent statutes under which it is operating, there appears to be no legal objection to an exchange of this kind since such exchange is to be made upon the basis of ratios determined by the values of the grades and staples exchanged (including location differentials) as determined by the Agricultural Marketing Service of the Department of Agriculture.

"Accordingly, there is transmitted in the docket herewith an amendment to the Cotton Purchase Program and a Second Finding and Determination which are in proper legal form for signature of the Secretary of Agriculture."

Consequently, in a memorandum dated December 29, 1939, the Secretary of Agriculture amended the aforesaid memorandum of October 28, 1939, to allow delivery of certain grade cotton purchased by the Federal Surplus Commodities Corporation to the Commodity Credit Corporation in exchange for lower grade cotton, and provided that such exchanges should be "in ratios based on the values of the grades and staples exchanged (including location differentials) as determined by the Agricultural Marketing Service of the Department of Agriculture." A later amendment of February 16, 1940--issued pursuant to an advisory memorandum dated February 13, 1940, from the Solicitor, United States Department of Agriculture, stating pertinently: "Since the Commodity Credit Corporation is under the direction of the Secretary of Agriculture, there appears to be no legal objection to acceptance of such a certificate"--provided that a certificate of the Commodity Credit Corporation that the cotton is of a specified grade, color, and staple, as determined by a cotton classer licensed under the United States Cotton Standards Act, working under the supervision of a specialist in cotton classing of the United States Department of Agriculture, could be accepted in lieu of the certificate as to grade, color, and staple otherwise required. (Underscoring supplied.) Fourth and fifth amendments dated May 29, 1940, and June 22, 1940, respectively, increased the maximum quantities of cotton and the expenditures therefor.

The memorandum of October 28, 1939, and most of the amendments thereto were the result of findings and determinations by the Secretary of Agriculture--first through sixth--made during the period October 28, 1939, to June 22, 1940.

Pursuant to the directions contained in the said memorandum dated October 28, 1939, to him, the President of the Federal Surplus Commodities Corporation, in a memorandum dated December 1, 1939, authorized and directed H. C. Albin, Chief, Purchase and Distribution Division, Federal Surplus Commodities Corporation, to purchase in continental United States and to distribute cotton and cotton fabrics from December 1, 1939, to and including June 30, 1940, as authorized by the Acting Secretary of Agriculture. Subsequently, the said memorandum of December 1, 1939, was amended to conform to each of the referred to amendments to the October 28, 1939, memorandum of the Acting Secretary of Agriculture. The actual distribution of the cotton was delegated to the Agricultural Adjustment Administration by a memorandum agreement of February 28, 1940.

The public was informed of contemplated cotton exchanges by the Commodity Credit Corporation in a press release, in pertinent part, as follows:

"United States Department of Agriculture

"Release - Immediate

WASHINGTON, D. C., Jan. 6, 1940

CCC PLANS TO EXCHANGE LOW-GRADE
1934 LOAN COTTON FOR BETTER GRADES

- - -

"In order to help supply the demand for low grade cotton, the Department of Agriculture announced today that the Commodity Credit Corporation, as soon as the necessary plans can be made will exchange 1934 loan stocks for cotton of better grades and staple. Most of the low grade cotton of the types desired is held under the 1934 loan." (Underscoring supplied.)

Under date of February 9, 1940, the Federal Surplus Commodities Corporation and the Commodity Credit Corporation executed a cotton exchange agreement providing, in pertinent part, as follows:

"1. Commodity Credit Corporation will deliver cotton of grade and staple and at locations selected by Federal Surplus Commodities Corporation, such deliveries to be made in accordance with directions of Federal Surplus Commodities Corporation.

"2. Federal Surplus Commodities Corporation will deliver to Commodity Credit Corporation an equivalent value of cotton in accordance with directions to be given by Commodity Credit Corporation.

"3. The value of all cotton affected by this agreement shall be based on grade, staple and location differentials as determined by the Agricultural Marketing Service of the Department of Agriculture."

A memorandum dated June 24, 1940, from B. C. Albin, Chief, Purchase and Distribution Division, Federal Surplus Commodities Corporation, to D. J. Harrill, Chief, Audit Division, is as follows:

"Since the ending date for which storage has been paid by the Commodity Credit Corporation is not available to us, claims received from warehousemen for storage and other charges on cotton received in exchange from the Commodity Credit Corporation under Program C-1a will be approved in blank. It is understood that when such approval is made you will approve such claims for payment on the basis of existing Commodity Credit Corporation contracts with warehouses and agreements between the Commodity Credit Corporation and Federal Surplus Commodities Corporation effecting this exchange.

"It is understood that this arrangement is agreeable with you since in certain instances the Commodity Credit Corporation has paid storage beyond the dates that the exchange agreement calls for and that records of such payments are available to you for audit purposes.

"If this agreement is satisfactory to you, will you so indicate by signing and returning the attached carbon copy of this letter."

This memorandum was approved by the Audit Division.

By memorandum dated June 27, 1940, H. C. Albin addressed G. E. Rathell, Director, Cotton Division, Commodity Credit Corporation—who approved the said memorandum—as follows:

"Reference is made to various agreements entered into between the Federal Surplus Commodities Corporation and the Commodity Credit Corporation, respecting the exchange of cotton procured by the Federal Surplus Commodities Corporation under Program G-1a, for cotton owned by the Commodity Credit Corporation.

"Pursuant to paragraphs numbered 1 and 2 of the memorandum of February 9, 1940, and to paragraph numbered 2 of the memorandum of May 3, 1940, it is now desired to establish effective dates of transfer of each exchange for the purpose of establishing bases for storage charges accrued against cotton exchanged. /Underscoring supplied./

"It is therefore agreed by and between the Federal Surplus Commodities Corporation and the Commodity Credit Corporation as follows:

"On cotton delivered to the Commodity Credit Corporation by the Federal Surplus Commodities Corporation, the Commodity Credit Corporation shall pay storage charges accruing on and after the date shown for each exchange, and on cotton delivered to the Federal Surplus Commodities Corporation by the Commodity Credit Corporation, the Federal Surplus Commodities Corporation shall pay storage charges accruing on and after the date shown for each exchange, provided, however, that if the storage is on a monthly rate, and if the storage month ending date is other than the day preceding the date specified for such exchange, storage will be paid to and including the nearest following ending date of such storage month by the corporation owning the cotton before such exchange is made.

"First exchange	:	March 1, 1940, or date of shipment, whichever is earlier.
"Second exchange	:	June 1, 1940, or date of shipment, whichever is earlier.
"Third exchange	:	July 1, 1940, or date of shipment, whichever is earlier.
"Fourth exchange	:	August 1, 1940, or date of shipment, whichever is earlier.

"If this arrangement is satisfactory to you, will you so indicate by signing and returning the attached copies of this letter."

Subsequently, the effective dates for the fifth and for the last exchange were agreed upon by the corporations involved.

A later memorandum of August 8, 1940, from Mr. Albin to Mr. Mathell, is as follows:

"Reference is made to our memorandum to you of June 27, 1940 respecting the establishment of effective dates of transfer for each exchange of cotton under Program G-1a.

"The memorandum referred to establishes July 1, 1940, or date of shipment, whichever is earlier, as the effective date of transfer under the third exchange.

"Since storage and insurance charges are paid to August 1, 1940 on cotton delivered to the Commodity Credit Corporation by the Surplus Marketing Administration under the third exchange, it is now desired to establish August 1, 1940, or date of shipment, whichever is earlier, as the effective date of transfer under the third exchange.

"If this arrangement is satisfactory to you, will you so indicate by signing and returning the attached copies of this letter."

Mr. Mathell's reply of August 14, 1940, to the quoted memorandum dated August 8, 1940, is as follows:

"Reference is made to your memorandum of August 8th regarding the effective date of transfer under the third exchange as established in the memorandum of June 27, 1940.

"Commodity Credit Corporation has notified warehousemen to invoice storage charges to July 1, 1940, covering cotton delivered to you on the third exchange, to the Corporation and in some instances these charges have been paid. It would be difficult to attempt to change the arrangements which have been made with the warehouses.

"Since the cotton to be received by Commodity Credit Corporation under the third exchange will have storage charges paid to August 1, 1940, there is no objection on the part of the Corporation to adjusting the final valuations under the exchange to provide for Commodity Credit Corporation assuming storage charges on the cotton delivered to you to August 1, 1940 or the date of shipment, whichever is earlier, provided such charges are determined upon the basis of the storage

rate applicable under the contract of Commodity Credit Corporation with warehouses.

"We are returning, herewith, copies of your memorandum of August 8th."

The record shows that many of the referred-to warehouse receipts issued by the Conway Compress Company were transferred in the exchange of cotton between the Commodity Credit Corporation and the Federal Surplus Commodities Corporation, which Corporation forwarded the said warehouse receipts by registered mail to the Conway Compress Company and received the cotton represented thereby, and that the transfer involved in your claim is identified as the "3rd Exchange" on the bale tag lists--identifying each bale of cotton by bale tag number, which number serves, also, as the warehouse receipt number--attached to each of the paid vouchers involved, to wit, Nos. 2-100536, 2-100537 and 2-100538 of the November, 1940, accounts of G. F. Allen, symbol No. 78-420, covering storage for the months of July and August, 1940. Thus, while the Surplus Marketing Administration (F.S.C.C.) paid you for storage covering both of the months billed on the said vouchers, it appears that the Surplus Marketing Administration actually was not liable for the month of July and, to that extent, has overpaid its obligation to you. While you may not have known that the effective date of the third exchange actually was August 1 instead of July 1, 1940, thereby making the Commodity Credit Corporation liable for the July storage in this case, it is clear from the facts heretofore presented that there is no basis whatever for that part of the instant claim--against the Surplus Marketing Administration--covering the month of July, 1940. Clearly, since the Surplus Marketing Administration never was liable for the July storage involved in the third exchange--at any storage rate--neither the said Administration nor the United States may be held liable for the additional sum now claimed for the same cotton for the month of July, 1940.

With respect to the month of August, 1940, it appears from certifications by a representative of the auditor in charge--which certifications are attached to the paid vouchers and, also, identify the cotton involved as acquired from the Commodity Credit Corporation on exchange No. 3--that with a Federal Surplus Commodities Corporation (SMA) delivery order (Form 810) there were mailed to you warehouse receipts for 12 of the bales, under delivery order No. 8158 on August 12 and 14, 1940, for 57 of the bales, under delivery orders Nos. 10297 and 10280, on August 20 and 22, 1940, and for 36 of the bales under delivery order No. 9091, on August 26 and 28, 1940. The consignee's receipt, form FSC 238 (Rev. 3/11/40), shows that the said 12 bales and 36 of the said 57 bales actually were out of storage

and received by the consignee, the Fulkner Co., A.C.A. Treasurer, on August 14 and 23, 1940, respectively. Bill of lading FSC-1147692 shows that the remaining 21 of the said 57 bales were received by the carrier for shipment on August 23, 1940. Bill of lading No. 1149632 shows that the 36 bales of cotton, for which the warehouse receipts were forwarded to you on August 26 and 28, 1940, were received by the carrier for shipment August 28, 1940. Although a part of the total of 105 bales involved apparently was in storage for only 14 days, more than half of the bales for but 23 days and the balance for 28 days, you were paid for the whole month of August. Yet, without crediting the Surplus Marketing Administration with the amount determinable by applying the contract rate of 12½ cents for the first 15 days—to which the Surplus Marketing Administration, even under your own interpretation of the contract, is entitled by the plain provisions of paragraph 2 of the contract—you now demand an additional sum, denying the right of the Surplus Marketing Administration to apply the Commodity Credit Corporation contract rate of 12½ cents per bale per month, alleging that paragraph 2 of the contract, restricting the Commodity Credit Corporation contract rate to a period of 15 days from the date of the Commodity Credit Corporation's release of the warehouse receipts, precludes the Surplus Marketing Administration's application of the contract rate to the storage charges involved in your claim and entitles you to the total amount claimed.

It would appear that even if your theory were accepted, you would not be entitled to any additional sum as storage for the month of August. If the Surplus Marketing Administration were to be precluded from applying the contract rate and, therefore, were to be limited in its exercise of the said contract to the 15-day provision in paragraph 2 thereof, paragraph 1 providing for a charge of 12½ cents per bale for a fractional part of a month could not be applied to those involved in that part of paragraph 2 relating to subsequent holders of the warehouse receipts. Nor could such provision be defeated by your published tariff rates insofar as this particular claim involves the month of August, 1940—the only month for which the Surplus Marketing Administration is in any way liable—since the transfer of the warehouse receipts specifically was made effective by the Surplus Marketing Administration and the Commodity Credit Corporation as of August 1, 1940. To construe the transfer of the warehouse receipts as effective at some date other than the termination date of the Commodity Credit Corporation's liability for storage is unwarranted, by reason of the referred-to and quoted memorandum of June 27, 1940—wherein there are stated the "effective dates of transfer of each exchange for the purpose of establishing bases for storage charges accrued against cotton exchanged"—as amended by the quoted memorandum dated August 14, 1940, from G. S. Rathell to H. C. Albin.

Also, with respect to the first underlined portion of paragraph 1 of the partially quoted contract, your attention is invited to section 3648, Revised Statutes, 31 U.S.C. 529, providing, in pertinent part, as follows:

"No advance of public money shall be made in any case. And in all cases of contracts for the performance of any service, or the delivery of articles of any description, for the use of the United States, payment shall not exceed the value of the service rendered, or of the articles delivered previously to such payment. * * *"

Under this statutory provision, the United States may not be obligated to pay storage charges for the periods during which no goods were in storage. Therefore, even if the contract were to be construed as you contend, you would be entitled to be paid at the 15-cent rate, which you claim, for only certain portions of the last half of the month of August, that is, 8/16 and 13/16 after August 15, 1940, whereas you already have been paid for 15/16 with respect to all the cotton, or for the whole remaining half of the month of August, and thereby it would result in your being indebted to the United States, as follows:

		Payment Made			Payment Due			
Voucher Number	No. of Bales	8-16 to 8-31-40, incl. No. Days	Amount	8-16 to 8-31-40, incl. No. Days	Amount	Over Payment	Due United States
2-100536 (D.O. 9091)	36	16	$2.25	13 (13/16 of $2.70)	$2.19	$0.06	
2-100537 (D.O. 8158)	12	16	1.50	0	—	1.50	
(D.O. 10297)	36	16	2.25	8 (8/16 of $2.70)	1.35	.90	
2-100538 (D.O. 10280)	21	16	2.63	8 (8/16 of $3.15)	1.58	1.05	
				Total		$3.26	$3.51

The sum due the United States would, of course, be materially increased if your whole account were to be reaudited.

However, I am constrained to conclude that there is no conceivable basis upon which this office might properly allow you credit for any sum in excess of that provided in the referred-to and quoted contract of October 16, 1939. It appears that of your total claim for $10.50, you never previously made a claim for the item of $5.25 representing the amount alleged to be due for "Shipping by tag numbers"; also, it appears that the claim voucher submitted in the sum of $10.50 is one which was withdrawn or selected out by the

administrative office from a number of claim vouchers aggregating over $200, submitted by you to the Department of Agriculture. Irrespective of what construction of the involved contract might be adopted, or what might be the service charges contained in your published tariffs, the warehouse receipts issued on the cotton involved in your claim do not reserve a lien--in the column on the receipt provided for a statement of the liens claimed--for shipping by tag numbers and, since the document purports to be a negotiable instrument--and apparently is, Federal Compress and Warehouse Company v. Free (S.C. Arkansas, 1935), 82 S.W. 2d 253, 254--you are precluded from claiming any amount for shipping by tag numbers and are obligated to surrender the cotton free therefrom, in accordance with the specific terms of the warehouse receipt, in pertinent part, as follows:

"* * * Upon the return of this receipt and the payment of all charges and liabilities due the undersigned warehouseman, as stated herein, said one bale of cotton will be delivered to the above named depositor or bearer." (Underscoring supplied.)

Where the owner of cotton stores it with a warehouseman at an agreed rate, charges on the cotton already stored may not be increased unless the owner agrees thereto. Cowart and Lancer v. Bush, 139 S.E. 920. A charge not entered on a negotiable warehouse receipt at the time of the issue thereof is invalid, Wilson Distilling Co., Inc. v. Foust Distilling Co. (U.C. M.D. Pa., 1943) 51 F. Supp. 744.

The issuance of a negotiable warehouse receipt imports an agreement by the warehouseman to hold the goods not solely for the depositor but for the holder of the warehouse receipt, whoever he may be--A. K. Burrow and Company, Inc. v. Planters Oil Mill and Gin Company, 103 So. 9; National Match Company v. Empire Storage and Ice Company, 19 S.W. 2d 565, 58 S.W. 2d 797, certiorari denied, 290 U.S. 668, and to account to him therefor, A. K. Burrow and Company, Inc. v. Planters Oil Mill and Gin Co., supra, and all stipulations in the receipt which place obligations on the warehouseman for the benefit of the holder of the property inure to the benefit of the transferee of the receipt, Clark Cotton Company v. Jones, 121 S.E. 519.

With respect to the storage rate properly payable--that is, the other claimed item of $5.25, as distinguished from the claimed item of $5.25 for shipping by tag numbers--it cannot be overlooked that the specific stipulation in the warehouse receipt recognizing the depositor-bailor's right to a reduction in the storage rate per bale per month from 25 cents to 15 cents after the cotton has been in storage more than three months, offers persuasive grounds to support an additional reduction of a mere 2½ cents per bale per month, or to a rate of 12½ cents after the cotton has been in stora

for over 60 months, or for a period of over five years, irrespective of any contract. In fact, the record shows that even in the early part of 1935, less than a year after your issuance of the warehouse receipts involved, there were available cotton storage rates as low as 12½ cents per bale per month as shown in a letter dated April 13, 1935, from G. E. Bathell, Treasurer, Commodity Credit Corporation, to Mr. R. L. Taylor, President, Federal Compress and Warehouse Company, Memphis, Tennessee, as follows:

"This will acknowledge your letter of April 10th /offering a rate of 15 cents per bale per month/, with further reference to the handling of reconcentrated cotton.

"We too are interested in moving cotton from congested points, although we are also interested in reducing the storage rates on cotton pledged as security to twelve cent loans due to the fact that it now appears that this cotton may be under the loan for a considerable length of time.

"I do not, however, see your position in offering us a rate to apply only on cotton moved from some of your other warehouses. This would leave us in a position to take care of only a part of the congestion and we would have no means of relief for the independent warehouses which might be congested.

"We also feel that the rate of 15 cents per bale per month for storage and insurance is too high and we may say to you that we have lower rates at some points which are competitive with your plants. This, of course, means that in the sections where we have these rates it will be necessary for us to avail ourselves of the lower rate.

"We shall be glad to enter into an agreement with you on the basis of a receiving charge of 15 cents per bale and a charge for storage and insurance of 12½ cents per bale per month or fraction thereof, such agreement to apply on any cotton that we might reconcentrate to your plants.

"We would also expect to consider the cotton which you have already reconcentrated as under this reduced rate from the state of reconcentration.

"We shall be glad to hear from you in this connection." (Underscoring supplied.)

Further proof of the availability of rates lower than those offered by your company, irrespective of any contract, is to be found in the minutes of a conference held in the Board Room of the Commodity Credit Corporation on August 15, 1939, in pertinent part, as follows:

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* * *

"Mr. Anderson [B. L. Anderson of the Traders Compress Co.]: 'If this Alabama decision is correct, will it be your policy to give consideration to the thought that the warehousemen will assume the liability and be entitled to the fruits? We have executed a Warehouseman's Certificate and Waiver for liability beyond the time the cotton is in our possession. Do you not think that calls for some consideration?'

"'The cotton which has been repossessed, have you sold any of the cotton back to the shipper? The farmer has paid his note and claimed his cotton and then sold it. He satisfied your bill and then sold it. Does the obligation in that certificate follow that cotton after the farmer has withdrawn his note?'

"Mr. Rathell: 'With respect to storage rates that is my understanding of the Alabama decision.'

"Mr. Anderson: 'Is this 12½ cents rate you have from my territory?'

"Mr. Rathell: 'We have rates available in most locations at that figure or less. We are not prepared to give out information as to the rates in proposals submitted. We have 12 cents rates in New Orleans and Gulfport at the present time. We have propositions which have been made and are being considered.'

* * *

"Mr. J. M. Johnston of the American Ports Cotton Compress & Warehouse Association: '* * * Certainly, I believe the Government and everbody else feels like the real purpose of the loan was to benefit the farmers and not to subsidize the warehouse operations. * * * We had advice from New Orleans yesterday that the largest compress and warehouse in the world had reduced their rate for cotton to 15 cents per bale, including insurance. If they can store producers' cotton or merchants' cotton at 15 cents per bale, including insurance, it certainly seems that a substantially lower rate would be justified for long time stored cotton.'

"'* * * We think 12½ cents as suggested by you is quite reasonable and we believe you can store all the cotton at that rate or even less. * * *'"

To conjure some favorable inference that you nevertheless should be paid your presently claimed rate of 15 cents per bale per month would

be to substitute speculation for proof. Proof so contradictory to your argument—as stated in the partially quoted letter of September 27, 1940—of an alleged need for a higher rate from the Federal Surplus Commodities Corporation is no occasion for an inference that a rate of 15 cents per bale per month is required, but rather supports the view that a rate of even 12½ cents per bale per month actually is more than sufficient to constitute a fair and reasonable return on the warehouseman's investment. In view of the exceptionally long period during which the involved cotton was stored in your Conway, Arkansas, warehouse and, in view of the availability of other more reasonable rates, it seems clear that the rate might fairly have been appreciably lower than 12½ cents, even under the contract involved.

Moreover, there is no conclusive showing that the service which you rendered the Surplus Marketing Administration was in any respect different than the service which you rendered, or were obligated to render, the Commodity Credit Corporation. In other words, it is not established that the service you furnished the Surplus Marketing Administration was different than that previously furnished the Commodity Credit Corporation or which the Commodity Credit Corporation was entitled to require you to furnish under the contract. You were contractually bound to remove the involved cotton from storage when requested and, irrespective of any theory of corporate metaphysics, it seems immaterial that in this case the Surplus Marketing Administration accepted the cotton from the Commodity Credit Corporation while still in storage and that when you finally were requested to remove it from storage you moved it for the Surplus Marketing Administration rather than for the Commodity Credit Corporation. There is nothing in the contract to guarantee or to indicate the time, the manner, or under what circumstances you would be required to fulfill your obligation to move the said cotton from storage. On the contrary, the files of the Commodity Credit Corporation show that the Corporation made it clear that the "Corporation does not guarantee to leave cotton on storage for any specified length of time," and that under date of April 11, 1940, G. E. Mathell, Director, Cotton Division, Commodity Credit Corporation, advised R. L. Taylor, Chairman of the Board, Federal Express and Warehouse Company, in pertinent part, as follows:

"Commodity Credit Corporation has <u>never</u> entered into any agreement for the storage of cotton or any other commodity owned by or pledged to it whereby it agreed to store the commodity for any definite period of time. Further, the Corporation has carefully refrained from giving any warehouseman any assurance, informal or otherwise, concerning the period in which the commodity will be stored * * *." (Underscoring supplied.)

The referred-to and quoted memorandum of December 21, 1939, clearly

shows that before the negotiated exchange of the cotton with the Surplus Marketing Administration, the Commodity Credit Corporation had been attempting to dispose of the cotton but that it was "unable to sell it in the open market because the minimum price at which such cotton can be sold is considerably higher than the present market level." Insofar as any provision of the contract is concerned, the arrangements which the Commodity Credit Corporation might have made to dispose of the cotton could have involved a much greater service than that rendered in removing the cotton for the Surplus Marketing Administration. In fact, the allegations of additional and different services rendered the Surplus Marketing Administration (Federal Surplus Commodities Corporation) to support your referred-to claim in the sum of $1,465.70 appear even more unconvincing when considered in the light of the record of invoices submitted, it appearing that on a substantial number of the vouchers, which you submitted to the Surplus Marketing Administration you certified the rate of 12½ cents per bale per month—that is, the rate provided in the Commodity Credit Corporation contract—as "correct and just." Therefore, at one time, at least, you apparently considered that 12½ cents per bale per month constituted a fair rate to give you what you considered properly due you as compensation for the same service which you rendered the Surplus Marketing Administration in connection with the cotton involved in your present claims. It thus appears that your allegations of additional and different services rendered the Surplus Marketing Administration (F.S.C.C.) are induced by an afterthought and now are introduced in an attempt to bolster, by alleging unestablished facts, that which heretofore has been demonstrated to be an argument having no substantial merit. However, even if your realizations out of the contract may not have come up to your expectations, the contract obligations and considerations are not subject to alteration by reason of such a situation. It is well settled that the law requires the parties to a contract to do what they have agreed to do and that performance is not excused by the fact that the contract may be considered by one of the parties as hard and improvident, less profitable or unexpectedly burdensome. Columbus Railway Power & Light Company v. Columbus, 249 U.S. 399; Lay v. United States, 245 U.S. 159; United States v. Gleason, 175 U.S. 588; Jacksonville &c. Railway v. Hooper, 160 U.S. 514, 528.

It is only a fortuitous circumstance that the convenience of the two corporations was best served by making the exchanges effective before the cotton actually left the warehouses involved. Had the Commodity Credit Corporation chosen to have you remove the cotton to the carriers before making the exchanges effective, nothing in your contract would entitle you to bill the Commodity Credit Corporation an extra charge for shipping by tag numbers. The fact that the Commodity Credit Corporation chose to have you select certain bales for the use of the Federal Surplus Commodity Corporation instead

of having you withdraw the bales at random could hardly be grounds for charging the Federal Surplus Commodities Corporation for the service in effect requested by the Commodity Credit Corporation.

Notwithstanding the conclusiveness with which the specific terms of your warehouse receipts preclude your claim for (1) shipping by tag numbers and--when associated with the already related facts showing the availability and propriety of storage rates lower than you are claiming--(2) a storage rate in excess of 12½ cents per bale per month, it is to be noted that paragraph 1 of your contract with the Commodity Credit Corporation, providing that the charge for storage and insurance shall be 12½ cents per bale per month, or a fraction thereof and that "No charge shall be made for storage or handling of samples, ranging cotton or picking out by tag number, flat delivery or loading on trucks or into cars for shipment" is but a republication of that to which the Commodity Credit Corporation already was entitled under the provisions of the referred-to and quoted warehouseman's certificate and waiver stipulating that the "Lien for all charges, including receiving, tagging, weighing, storing, sampling, turning out, and insurance, will not be claimed for more than" the rate per bale specified in the said certificate and waiver, which rate per bale is modified by the provisions of the warehouse receipt and by contracts subsequently executed between you and the Commodity Credit Corporation (underscoring supplied). In a letter dated November 1, 1935, from G. E. Fathell, head of the cotton division of the Commodity Credit Corporation, to various warehouses, it is stated, in pertinent part, as follows:

"Our interpretation of the expression, 'turning out,' as used in the Certificate and Waiver, is precisely the same as it has been for the past two years. We interpret this term to mean that the cotton will be loaded by the warehouseman without any charge for such loading, whether such charge is termed by the warehouseman as 'flat delivery', 'loading out', or any other term. This is the construction which we have placed on the term, 'turning out' for the past two years and has been generally accepted by the warehouseman." (Underscoring supplied.)

That the Commodity Credit Corporation specifically provided in the warehouseman's certificate and waiver, and later in the involved contract with you, for shipping by tag numbers, provides abundant evidence that the corporation contemplated the possibility of requiring you--and apparently did require you--to ship the cotton by tag number selections rather than by bales withdrawn at random or by whole stacks. Also, such evidence is persuasive to show that at the time of the execution of both the certificate and waiver and the contract of October, 1939, you considered the stipulated rate per bale per month sufficient to provide reimbursement not only for

the space occupied, the insurance coverage, handling of samples, ranging and loading on trucks or into cars for shipment, flat delivery costs, but also for picking out (shipping) by tag numbers. In other words, the consideration which the Commodity Credit Corporation exacted from you before agreeing to pay the stipulated rate included, among other things, all of the specific service items, of which picking (shipping) by tag numbers is one. Whenever you received any sum, as for storage, from the Commodity Credit Corporation--or later from the Federal Surplus Commodities Corporation (Surplus Marketing Administration)--a part of such sum was compensation in advance for the various referred-to services later to be performed, which both you and the Commodity Credit Corporation agreed were reflected in the stipulated monthly rate, and one of such services so paid for in advance was picking (shipping) by tag numbers. Until you performed the services--such as shipping by tag numbers--for which the advance payments were made, your right to receive and hold such payments was no more than the right of a trustee whose duty, in this case, was faithfully to discharge the obligation of performing the said services without compensation in excess of that held by you in trust therefor. The advance payments not only vested an indefeasible right in the Commodity Credit Corporation to require the said services without additional compensation but, also, formed an inseparable increment to each bale of cotton, enhancing its value to anyone becoming entitled thereto by virtue of a transfer of the warehouse receipts--representing the cotton--by the Commodity Credit Corporation. Thus, it mattered not that there might be some changes in the bailor-beneficiary of the trust imposed upon you so long as the most immediately tangible and permanent beneficiary of the trust was the chattel bailed--the cotton--rather than the bailor. Once the value of the cotton became augmented by the trust obligation imposed upon you, the augmented portion of such value became fixed and, had you failed as bailee to recognize such augmented value by refusing to perform the services imposed upon you by the trust relationship, you would have rendered yourself amenable to damages for breach of trust and to possible criminal prosecution under the pertinent quoted provisions of the United States Warehouse Act and the Uniform Warehouse Receipts Act, irrespective of your liability for breach of your contract with the Commodity Credit Corporation. Also, there is for consideration the fact that a warehouseman is bound to deliver the goods upon the demand of the holders of the warehouse receipts, Federal Compress & Warehouse Company v. Coleman, 109 So. 20, 21; Traders Compress Co. v. Precure, 282 P. 165; and, if delivery is refused, the holders of the warehouse receipts are entitled to the value of the cotton for which the receipts are issued, Sewell, et al. v. Federal Compress & Warehouse Co. (Arkansas, 1937), 106 S.W. 2d 209.

Notwithstanding the allegations in the partially quoted letter of September 27, 1940, that the cotton stored by the Commodity Credit

Corporation is not a moving stock and remains in storage for "a considerable length of time," neither the contract nor the warehouseman's certificate and waiver contain any reference to the exact length of the time in which the cotton would be kept in storage and, therefore, nothing could have prevented the Commodity Credit Corporation's demanding that you withdraw the cotton by tag numbers at any time, with no liability for any charge in excess of the stipulated rate per bale per month or a fraction thereof. What you believe to be "a considerable length of time" is not known. However, the Commodity Credit Corporation apparently considered the cotton already had been in storage for a considerable length of time in the early part of 1937 when in a memorandum dated February 9, 1937--included in the minutes of the meeting on that date of the executive committee of the Commodity Credit Corporation--issued to all warehousemen, the warehousemen were advised as follows:

"TO ALL WAREHOUSEMEN:

"Commodity Credit Corporation has received advices that in many instances warehousemen are making excessive charges for delivering loan cotton which is released to producers or to parties named by the producers to receive the cotton.

"This release plan is designed to allow such parts of the loan stocks as are required to move into consuming channels and provides certain concessions to producers as compensation for handling the sale of the cotton.

"If excessive charges are made by warehousemen the producers will not be in position to obtain any compensation for the sale of the cotton and, therefore, will not be interested in disposing of the cotton, thus stopping the movement of the cotton which may be required for consumption.

"The warehouses generally have had this cotton on storage for a long period of time and have obtained adequate compensation for services through the storage charges which have been collected and are now accrued.

"Commodity Credit Corporation feels that warehousemen should make no charges for delivery of the cotton which could not properly be assessed against the cotton if the cotton were shipped from the warehouse by the Corporation." (Underscoring supplied.)

It is obvious from this memorandum that the Commodity Credit Corporation would not have hesitated in February, 1937, to require that all of the cotton be shipped from the warehouses and that there be rendered in that connection any services provided for in the contract

for the form of shipment requested. That is to say, it is clear that the Commodity Credit Corporation was certain that in February, 1937, the various payments, made in advance by the corporation to you for the aforesaid services, had reached such an aggregate sum of money as amply to provide the reimbursement reasonably to have been anticipated by you at the time the warehouseman's certificate and waiver provision was executed.

Thus, the corporation--entitled to have the cotton delivered by tag number selections from any of the warehouses, including your own--had no hesitancy in requiring the warehousemen to "make no charges for delivery of the cotton which could not properly be assessed against the cotton if the cotton were shipped from the warehouse by the Corporation." Viewing the matter in the most favorable light insofar as your position is concerned--by granting for purposes of argument, your right to anticipate storage for "a considerable length of time" when the certificate and waiver was executed, and to consider that the right of the Commodity Credit Corporation to the services provided in the certificate and waiver provision, such as picking (shipping) out by tag number, etc., was but an inchoate one not becoming consummate until the expiration of "a considerable length of time"--it is manifest that the right of the Commodity Credit Corporation to have the cotton delivered by tag number selections had become a consummate one by February, 1937, and--in the absence of any defeasance in the contract--being so vested, it remained so; most persuasively so, because the warehouses already had been paid for the right. No longer could there have been any proper expectation that additional consideration would be due from the Commodity Credit Corporation--or from any successor of the Corporation's interest in the cotton--at the time it should demand that the cotton be selected and shipped by bale tag numbers to whomever the Commodity Credit Corporation directed it be delivered. The requisite consideration long had been fulfilled by the Commodity Credit Corporation. The only consideration unfulfilled was your obligation to furnish, when required, the specified services such as picking (shipping) by tag numbers, etc.

Irrespective of the referred-to and quoted memorandum of February 9, 1937, there is not found any reasonable basis, either under the facts of the case or under any well established legal or equitable precepts, which could support your claim for additional sums for shipping the cotton involved by tag numbers. The fact is that you may already have been paid, in effect, at least three times for making such a shipment inasmuch as the cotton continued in storage after the referred-to memorandum of February 9, 1937, not only one year or two years, but much of it well into the third year. Hence, there can be no reasonable doubt that you already have been most liberally reimbursed for shipping the cotton involved by bale

tag number selections. This fact overshadows any question of the right of the Federal Surplus Commodities Corporation (Surplus Marketing Administration) to apply the Commodity Credit Corporation contract storage rates.

Your contentions with respect to the status of the Commodity Credit Corporation appear equally without merit. Whatever independence (and the previously noted extent of the Secretary of Agriculture's control raises grave doubts of such independence) as a sole and separate entity may have characterized the agreements and other activities and functions of the Commodity Credit Corporation prior to July 1, 1939—and, therefore, prior to October 10, 1939, the date of your involved storage agreement with the Corporation—it is clear that such a status no longer existed on and after the said date of July 1, 1939, by reason of the referred to reorganization plan of the President of the United States directing the transfer of the Corporation, and its activities and functions, to the Department of Agriculture. Official public recognition of the said transfer is shown in an annual report of the Corporation, in pertinent part, as follows:

"REPORT OF THE PRESIDENT OF THE COMMODITY CREDIT CORPORATION, 1940

"United States Department of Agriculture,
Commodity Credit Corporation,
Washington, D. C., August 31, 1940.

"Hon. Henry A. Wallace,
Secretary of Agriculture.

"Dear Mr. Secretary: Herewith is transmitted the annual report of the President of the Commodity Credit Corporation for the fiscal year ended June 30, 1940.

"Respectfully submitted.

Carl B. Robbins,
President.

* * *

"FOREWORD

"In view of the fact that this is the first formal annual report of the President of the Commodity Credit Corporation it appears to be desirable to include a summary description of the

Corporation and its functions. For the same reason it seems to be appropriate to review the Corporation's loan programs for the period beginning with their inception in 1933 rather than merely for the fiscal year ending June 30, 1940, which was the first year of operation of the Commodity Credit Corporation as part of the United States Department of Agriculture."

Later public recognition of the corporation's change in status was made May 12, 1941, by Dr. Carl B. Robbins and Mr. Robert Shields, the Corporation's president and general counsel, respectively, in the hearings May 12, 1941, on H. R. 4972, "CONTINUANCE OF COMMODITY CREDIT CORPORATION," before the House Committee on Banking and Currency, 77th Congress, 1st Session, the printed report of which hearings, pertinent in this connection, is, on page 42, as follows:

"Mr. Patman. Do you not consider that this is an agency of the Government, responsible to Congress? Do you not agree on that, Dr. Robbins? I do not think there should be any question on that.

"Mr. Robbins. Under the President's reorganization plan which became effective July 1, 1939, the Commodity Credit Corporation was made a part of the Department of Agriculture, and my interpretation has been that that meant that the Corporation was no longer a so-called independent agency but was part of the Department of Agriculture, and therefore responsible to the Secretary of Agriculture.

"Mr. Patman. You drew this bill, I assume, did you not, or had it drawn?

"Mr. Robbins. Mr. Shields, here, our legal advisor, aided in drafting the bill.

"Mr. Patman. You state in the bill it is an agency of the United States?

"Mr. Robbins. Since you ask again, and you are a lawyer, I would like to ask Mr. Shields whether that term has any particular technical significance.

"Mr. Shields. We agree with you, Congressman, this is an agency of the United States, and is now, after the reorganization plan, a part of the Department of Agriculture, just the same as any other bureau, except that it had a different origin. The answer to your question is 'Yes,' so far as we are concerned." (Underscoring supplied.)

Still later acknowledgement of the corporation's change in status is found in a statement by Chester C. Davis, administrator, War Food

Administration, on page 3 of the printed report of the hearings before the Senate Committee on Banking and Currency, 78th Congress, 1st Session, with respect to S. 1108, in pertinent part, as follows:

"* * * Under the Presidential Reorganization Order, effective July 1, 1939, the Corporation became a part of the U. S. Department of Agriculture, and the exclusive voting rights of the Corporation's stock were vested in the Secretary of Agriculture by an Executive order of the President dated August 7, 1939. * * *"

Pages 7, 8 and 9 of the same printed report show the balance sheets of the corporation, titled "U. S. Department of Agriculture--Commodity Credit Corporation--balance sheet." That the quoted statements made by the said two officials of the corporation and by the War Food Administrator are a true representation of the status in which the corporation actually went about performing its activities after the effective date of the reorganization plan, finds abundant confirmation in the already related general background in which the Secretary of Agriculture (Department of Agriculture) clearly appears as the principal upon whom both the Commodity Credit Corporation and the Federal Surplus Commodities Corporation, as agents, relied to authorize the exchange of the cotton involved in this case. That these corporations cleared through the Solicitor of the Department of Agriculture the proposed exchange of high for low grade cotton and that the Solicitor advised the Secretary of Agriculture before he authorized such an agreement would seem to contradict your contentions that the two corporations are complete and separate entities and that "Each of them seemed to think they possessed or could possess cotton that they had the right to trade, barter or sell."

The status of the Commodity Credit Corporation in negotiating with the Federal Surplus Commodities Corporation is apparent in the background of these negotiations, which shows that both corporations acted by and through the advice and consent of the Secretary of Agriculture as the representative of the Department of Agriculture. And it is not by mere chance that these corporations so acted for in the message from the President of the United States transmitting Reorganization Plan No. 1 to the Congress, it is stated, in pertinent part, as follows:

"This Act [Reorganization Act of 1939] says that the President shall investigate the organization of all agencies of the Government and determine what changes are necessary to accomplish any one or more of five definite purposes:

"(1) To reduce expenditures;

"(2) To increase efficiency;

"(3) To consolidate agencies according to major purposes;

"(4) To reduce the number of agencies by consolidating those having similar functions and by abolishing such as may not be necessary;

"(5) To eliminate overlapping and duplication of effort.

"It being obviously impracticable to complete this task at one time, but having due regard to the declaration of Congress that it should be accomplished immediately and speedily, I have decided to undertake it promptly in several steps.

"The first step is to improve over-all management, that is, to do those things which will accomplish the purposes set out in the law, and which, at the same time, will reduce the difficulties of the President in dealing with the multifarious agencies of the executive branch and assist him in distributing his responsibilities as the chief administrator of the Government by providing him with the necessary organization and machinery for better administrative management.

"The second step is to improve the allocation of departmental activities, that is, to do those things which will accomplish the purposes set out in the law and at the same time help that part of the work of the executive branch which is carried on through executive departments and agencies. In all this the responsibility to the people is through the President.

"The third step is to improve intradepartmental management, that is, to do those things which will enable the heads of departments and agencies the better to carry out their own duties and distribute their own work among their several assistants and subordinates."

Coordination of functions and activities within the Department of Agriculture patently was one of the chief purposes of placing both the Commodity Credit Corporation and the Federal Surplus Commodities Corporation under the Department of Agriculture. To consider your particular storage agreement with the Commodity Credit Corporation--entered into after the Commodity Credit Corporation as well as the Federal Surplus Commodities Corporation became a part of the Department of Agriculture--inapplicable to the Federal Surplus Commodities Corporation, as successor in interest in the cotton storage under the agreement, is to ignore the coordination directed and anticipated by Reorganization Plan No. 1. The disposition of cotton such as was exchanged between the Commodity Credit Corporation and the Federal Surplus Commodities Corporation constituted one of many activities in which the two corporations--as designed--supplemented each other.

Other indications of this interdependence are shown in the partially quoted provisions of (1) C.C.C. Cotton Form 1 wherein reference is made, in the introductory paragraph, to the Reconstruction Finance Corporation, and in paragraphs 15 and 18 to the Federal Reserve Bank, and (2) Commodity Credit Corporation Cotton Form A wherein reference is made, in paragraph 6, to any Federal agency or instrumentality; in paragraph 8, to the Secretary of Agriculture; and, in paragraph 9, to the Reconstruction Finance Corporation. In agreeing to store this cotton, you became a part of a stupendous governmental program; and to differentiate, as you attempt to do, between one Government corporation and another in the same department in connection with this program is to ignore the actual facts of public record as to the essential interdependence of the various governmental relief organizations shown in the various referred-to acts of the Congress, Executive orders, press releases, and articles of incorporation to have been anticipated by those who designed the said organizations. Obviously, no such differentiation, as you propose may be indulged. These two corporations, in the matters covered by your claims, did not act with the same independence as the ordinary business corporation but were mere alter egos of the Secretary of Agriculture--functioning at the time in the Department of Agriculture. See page 89 of hearings on H. R. 4972. Therefore, the cotton storage contract in this case, in effect, was executed between you and the Department of Agriculture, and it is only the Department of Agriculture which claims the rights granted thereby. This fact readily distinguishes the present case from the cases upon which you rely, United States v. New York Central & St. Louis Railroad Co., 32 F. 2d 887, and Detroit, Toledo & Ironton R. R. Co. v. United States, 79 C. Cls. 227, wherein the United States Shipping Board Emergency Fleet Corporation claimed certain rights under an agreement specifically restricted to the Quartermaster's Department, United States Army, United States Interior Department, or United States Reclamation Service, and wherein it was held that, since the agreement related solely to the property of three specified departments, it excluded all other Government property.

In this case, no department, other than the one to which your agreement relates, is claiming any rights under the agreement. Also, in this case it has been shown that the Commodity Credit Corporation is a part of the Department of Agriculture and that the Department of Agriculture, through the Secretary, controls and manages the affairs of the corporation. In the cases cited, the units involved and the service required by the Government corporation seeking the privileges of the agreement with the particular railroads were separate and distinct from those of the departments specifically named in the agreement; thereby presenting, on the surface at least, some semblance of resultant contractual costs greater than possibly may have been anticipated by the contractor, whereas in this case, where the service required and the units involved are the same--the identical cotton already being held in storage for

the Commodity Credit Corporation, with all services involved already paid for in advance--there is nothing to warrant a presumption of any costs in excess of those which reasonably may be considered to have been anticipated at the time you entered into the agreement.

The initial statement in your contract makes it clear that the agreement with you was made by the Commodity Credit Corporation "as an agency of the United States." The elementary rule that the principal in a principal-agency relationship may exercise the rights arising under a contract made between the principal's agent and a third party (Mechem on Agency, Sect. 2055, 2d Ed.) has been recognized in connection with contracts made by Government authorized corporations so as to permit the Government, as principal, (1) to claim rights thereunder as the "real party in interest," Ship Contruction Company, Inc. v. United States (1940), 91 C. Cls. 419, 421, 464; Crane v. United States (C. Cls. 1932), 55 F. 2d 734, 737, certiorari denied, 287 U.S. 601; United States v. Skinner & Eddy Corporation (D.C.W.D. Wash., N.D. 1928), 28 F. 2d 373, 377, even where, as here, it has been contended that the agent acted in its own private corporate capacity, North Dakota-Montana Wheat Growers' Ass'n v. United States (C.C.A. 8), 66 F. 2d 573, 578; United States v. Skinner & Eddy Corporation (C.C. 9, 1929), 35 F. 2d 889, 892, petition for certiorari dismissed on motion of petitioner, 281 U.S. 770; Russell Wheel & Foundry Company v. United States (C.C.A. 6, 1929), 31 F. 2d 826, affirming 11 F. 2d 531; and (2) to be considered as the real owner of the property in custody, Clallam County v. United States, 263 U.S. 341; United States Grain Corporation v. Phillips, 261 U.S. 106. Also, see John Morrell and Company v. United States, 89 C. Cls. 167, 169. There would appear to be no reasonable ground for denying the same rights to a department of the Government when that department actually must be considered either as the real principal in the agency involved or as the real agent with the Commodity Credit Corporation as a subagent.

It appears, therefore, that whether the Department of Agriculture, as such, the Commodity Credit Corporation, the Surplus Marketing Administration, or the Federal Surplus Commodities Corporation be deemed the agent or representative used by the United States in this case in dealing with the cotton, is wholly immaterial (Inland Waterways Corporation v. Young (1940), 309 U.S. 517, 523) and, accordingly, ineffectual to limit the contractual rights involved to any of the said agents. The cotton at all times was held by and for the Department of Agriculture and the transfer of jurisdiction over the subject matter between the agents thereof did not affect the contractual rights of the Department. Such a conclusion represents nothing peculiarly applicable to Government corporations. Even as to private corporations, it is a well established legal principle that where a corporation is so organized and controlled and its affairs are so conducted as

to make it merely an instrumentality or an adjunct of another corporation, the two may be treated as one in disregard of factual legal distinctions. In re Watertown Paper Company, 169 F. 252, 255; Hunter v. Baker Motor Vehicle Company, 225 F. 1006, 1015, 1016; 5 Comp. Gen. 448; id. 484; 13 id. 453; 34 Ops. Atty. Gen. 353. "In such a case the courts will not permit themselves to be blinded or deceived by mere forms of law but, regardless of fictions, will deal with the substance of the transaction involved as if the corporate agency did not exist and as the justice of the case may require." Continental Oil Company v. Jones, 26 F. Supp. 694, 701, quoting from Chicago, M. & St. P. Ry. v. Minneapolis Civic & Commerce Association, 247 U.S. 490. Also, see Centmont Corporation v. Marsch, 68 F. 2d 460,464, certiorari denied, 291 U.S. 680. While the general rule is that a corporation will be considered a legal entity distinct from its stockholders and that property or rights acquired by it or liabilities incurred are those of such legal entity as distinguished from the members composing it, it is equally well established that when the notion of distinct legal entity will defeat public convenience, justify wrong, protect fraud, or defend crime, the law will regard the corporation as an association of persons. See McCaskill Company v. United States, 216 U.S. 504; United States v. Milwaukee Refrigerator Transit Co., 142 F. 247, Callas v. Independent Taxi Owners' Association, Inc., 66 F. 2d 192.

It must be presumed that when you entered into the contract of storage with an agent of the Department of Agriculture you knew of the status of that agent, the Commodity Credit Corporation, and that you gave appropriate consideration to the rights of that agent's principal, the Department of Agriculture, with respect to any agreements made. Since the cotton storage contract with the Commodity Credit Corporation, in effect, is a contract with the Department of Agriculture, the real holder of the warehouse receipts—referred to in paragraph 2 of the contract—was the Department of Agriculture both at the time the Commodity Credit Corporation held them and when the Federal Surplus Commodities Corporation later held them.

Government corporations are conceived not for the purpose of limiting the Government prerogative, as your view of the Commodity Credit Corporation attempts to do, but of accelerating and enlarging it and of making it more flexible. See, in this connection, 48 Harvard Law Review 775, 776, 787; 21 Virginia Law Review 351, 368; 83 Pennsylvania Law Review 356, 357; 10 Tulane Law Review 79, 85; 33 Michigan Law Review 473; Van Dorn - "Government Owned Corporations" 2; McDiarmid - "Government Corporations and Federal Funds" 7, 8.

Some Government corporations were designed to work together as

agents of each other. The Commodity Credit Corporation, as its name implies, primarily is a credit organization, the main activity of which has been to lend money on stored agricultural products, while the Federal Surplus Commodities Corporation, also as its name implies, is a corporation primarily devised to deal in surplus commodities and, as a part of its work, it was obligated to take over some of the commodities the Commodity Credit Corporation obtained by defaults on its loans. Such corporations must be considered as links in the recovery program chain, 33 Michigan Law Review 480, and, to consider them as isolated links, is to ignore the realities of the matter.

It would be destructive of such purpose and intention to recognize that officers of the United States--since officers of a corporation created first as an agency of the United States and then made a subagent of another agency of the United States, obviously are officers of the United States--ever intended, in the absence of a statutory provision to that effect, to impose by contract any restriction upon the rights of the United States, or of other related agents and subagents thereof--especially in view of the rule that "the United States are neither bound nor estopped by the act of their officers and agents in entering into an agreement or arrangement to do or cause to be done what the law does not sanction or permit." Wilber National Bank v. United States, 294 U.S. 120, 123. Also, see United States v. Stewart, 311 U.S. 60, 71; Royal Indemnity Company v. United States, 313 U.S. 289, 294; United States v. Standard Oil Company of California, 20 F. Supp. 427, 453. In its dealing with individuals "public policy demands that the government should occupy an apparently favored position," United States v. Verdier, 164 U.S. 213; 83 Pennsylvania Law Review 357. Such reasoning logically denies any rights in agents of the United States to bargain away any of the advantages of the Government thus demanded by public policy.

As a summary to show the irrelevancy of the emphasis placed upon the corporate nature of the Commodity Credit Corporation, it is particularly pertinent to note the conclusions stated in volume 21 of the Virginia Law Review at pages 498 and 499, in pertinent part, as follows:

"Upon reflection, one is led to the conclusion that a government proprietary corporation is not a corporation at all, except by courtesy or by analogy to the powers of a private corporation. For the essential idea of a corporation is that of a group of natural persons united in the desire to pursue certain purposes and achieve certain ends. We speak of the distinction between the corporation and those who join to form it. When we speak in such fashion what we really mean by the corporation is those activities and relationships of the members of the corporation, and of the agents they

appoint, having to do with the purposes for which the members joined. In other words, a corporation is not a mere fiction or some nebulous impersonal entity, but rather is those aspects of the existence of the members of the corporation relating to the purpose for which they have joined to act together as one body. These aspects relating to the purpose for which the corporation was formed we separate from other aspects of the lives of the same persons. To put it another way, a corporation is the union of parts of men and is a union which does not involve the remaining parts of those persons. Thus a member of a corporation is usually liable for the debts of the corporation only to the extent to which he has contributed to the capital stock of the corporation; there we draw the line, and the remainder of his life and property is not involved.

"But in the case of a so-called government proprietary corporation where the government holds the entire interest there are no persons who have joined together into a body in order to carry out some common purpose, and who can properly be regarded as the members. Rather what we have is a public agency created by the legislature, forming a part of the government, and managed by persons who are servants of the state. A government proprietary corporation is nothing more nor less than an instrumentality set up by the people through their representatives in order to render to the people a particular service. Such a corporation is a branch of the government, that is, of the organization acceded to by the people of the whole country for the purpose of performing certain functions in a unified manner or in a particular direction rather than leaving them to the uncoordinated efforts of individuals or smaller groups."

Also, see 1 Public Administration Review 381, 389.

With respect to your contention that the transfer of the cotton involved from the Commodity Credit Corporation to the Federal Surplus Commodities Corporation constituted a sale, various opinions of the Solicitor, Department of Agriculture, show the administrative position of that Department to be that the transfer of cotton by one agency of the United States to another is not, in a legal sense, a sale even though the agency parting with the cotton is compensated therefor at its market value, since title to the cotton still remains in the United States. Of special interest in this connection is Opinion No. 3844, dated January 29, 1942, of the said solicitor, in pertinent part, as follows:

"OPINION NO. 3844

"It is our opinion, for the reasons discussed below, that the proposed program would not involve a sale of cotton held on behalf

of The Government, within the meaning of section 381 (c) [Agricultural Adjustment Act of 1938].

"The transfer of cotton by Commodity Credit Corporation to the order of the Army or Navy for a consideration paid is justified under section 601 of the Act of June 30, 1932 (47 Stat. 417; 31 U.S.C. 686), providing for the requisition of stores or materials by one bureau or department from another. Property held by an agency of the United States is held on behalf of the Government, and its status in this respect is not changed by transfer from one such agency to another. Thus, the 'sale' of cotton held on behalf of the United States contemplated in section 381 (c) is one divesting the United States of its interest in the cotton.

"The transfer of cotton by one agency of the United States to another does not constitute such a 'sale', even though the agency parting with the cotton is compensated in money, since the interest of the United States therein remains constant. See Op. Sol. No. 2535. Therefore, the supplying of cotton by Commodity Credit Corporation for the Army or Navy, in furtherance of the contemplated program, would not be a sale of cotton within the meaning of the statute.

"The transaction between the Army or Navy and the mill would not, of course, involve a transfer to the mill of any cotton held on behalf of the Government - since the mill would replenish its supply from merchant stocks.

"The remaining question relates to the arrangement whereby the merchant would furnish the required cotton to the mill, and secure in turn an equal quantity of cotton from the stocks of Commodity Credit Corporation. It is our opinion that this amounts to an exchange only, which may not be construed as a sale within the meaning of the statute.

"An exchange is legally distinguished from a sale in that the latter contemplates the transfer of property at a fixed money price to be paid in money or goods, while in an exchange the consideration is not measured in terms of money. In Postal Telegraph Cable Co. v. Ry. Co., 248 U.S. 471, Mr. Justice Holmes, speaking for the Supreme Court, said:

"'But "exchange" is barter and carries with it no implication of reduction to money as a common denominator. It contemplates simply an estimate determined by self-interest of the relative value and importance of the services rendered and those received.'

"See also Hartwig v. Rushing, 182 Pac. 177, 180, 181; State v. Brown, 102 S.W. 394; Edwards v. Baldwin Piano Co., 83 So. 915, 917; Lake v.

State, 41 So. 170; Still v. Cannon, 75 Pac. 284; Godwin v. Marsten /Goodwin v. Mortsen/, 128 S.W. 1182, 1183; State v. Colonial Club, 69 S.E. 771, 772, 773; Clark v. State, 52 So. 893, 31 L.R.A. (N.S.) 517; Boonville Milling Co. v. Roth, 127 N.E. 823, 825; Westfall v. Ellis, 170 N.W. 339, 340; Ratigen /Ng Sing/ v. United States, 8 F. (2d) 919, 921; In re Frank's Estate, 277 N.Y.S. 573, 575, 576; Northern Pacific R. Co. v. Sanders, 47 Fed. 604; Gochstetter /Cockstetter/ v. Williams, 9 F. (2d) 355.

"Here it is conceivable, and even probable, that in many instances there will have been a change in the market price of cotton between the time when the merchant supplies cotton to the mill and the time when he presents the certificate to Commodity Credit Corporation. Any such change will be immaterial under the proposed program. The transaction is not one where the consideration is to be measured in terms of money, but an exchange of equal quantities of cotton without regard to interim fluctuations in price.

"Neither the provision for payment of the 'merchant's commission' nor the provision for adjustment of differences in grade, staple, and location of the cotton selected by the merchant, can be said to convert the transaction into a sale. 23 C.J. 186. In Law v. McLaughlin, 2 F. Supp. 601 (D.C.N.D. Cal. S.D. 1933), it was held that an exchange is a mutual transfer of property other than money, although one of the parties may pay a sum of money in addition to the property. In Gunter v. Leckey, 30 Ala. 591, where the defendant had transferred to /two/ slaves for two other slaves and $100 and was accused of selling slaves without a license required by statute, the court said 'To bring the transaction within the statute, it is not enough to show that the defendant received a sum of money and some other valuable thing for his slaves. It must also be shown that the other valuable thing was, by the terms of the transaction, received or treated by him as money, and as an ascertained and specified part of the agreed price of his slaves.' In B. and H. Motor Co. v. Tucker, 299 S.W. 949 (Tex. 1927), in a suit for fraudulent representation where there had been a mutual transfer of automobiles with the difference in value being reduced to money and a note given, the transaction was held to be an exchange and not a sale, and the measure of damages applicable to exchange was applied. In Morriss-Buick Co. v. Huss, 84 S.W. (2d) 264 (Tex. 1935), the court, while holding to the contrary, said 'If this transaction were a mere exchange of automobiles, in which it was contemplated that appellee should pay the difference between the value of his used Buick sedan and the appellant's new sedan, appellant's theory as to the measure of damages /based upon an exchange/ would be correct. * * * On the other hand, if the transaction is a sale of appellant's supposed new Buick sedan, of the 1929-47 model, for a consideration to be paid in money,

or what was agreed to be the equivalent of money, then the transaction would clearly be a sale and not an exchange of automobiles * * *.'

"Nor can it be said that the word 'sale' in section 381 (c) has a broader connotation than that ordinarily given in law. On the contrary, it is believed that forcible evidence points to a stricter interpretation."

Decisions of this office are to the same effect, in which connection, see 19 Comp. Gen. 313. Accordingly, there appears no justification for accepting your contention that the transfer of the cotton involved in your claims constituted a sale.

It is manifest that your rights with respect to the cotton stored in your warehouses are circumscribed by (1) the terms of the negotiable warehouse receipts, the United States Warehouse Act, and the Uniform Warehouse Receipts Act, (2) the warehouseman's certificate and waiver, (3) the contract executed between you and the Commodity Credit Corporation, (4) the effective dates of the exchange agreement between the Commodity Credit Corporation and the Federal Surplus Commodities Corporation, (5) the advance payments received for various services, as aforesaid, and (6) well established concepts of principal and agent. Even if there were ignored all but the first of these, it has been shown that your own warehouse receipts alone are a bar to the relief sought. On the other hand, if the significance of the warehouse receipts be ignored, certain of the other enumerated considerations have shown the vulnerability of your claims either partially, together with your resultant indebtedness to the United States, as in the second and fourth, or completely, as in the third, fifth and sixth items.

Accordingly, I have to advise that your claims must be and hereby are denied.

Aside from the fact that no amount is found to be due you on your claims it appears affirmatively that there are claims in favor of the United States--long outstanding--against your Memphis, Tennessee, branch, alone, in the sum of at least $15,637.33. To what additional extent you are indebted to the United States with respect to possible overpayments for storage in connection with the F.S.C.C. program, or with respect to claims--similar to the said claim in the sum of $15,637.33--against your other branches, and exactly to what extent, if any, you may have violated the penal provisions of (1) Commodity Credit Corporation Cotton Form A, (2) the Uniform Warehouse Receipts

Act, (3) the United States Warehouse Act, and (4) the bonds filed under the latter act, are matters which remain for further development and consideration.

Respectfully,

Assistant Comptroller General
of the United States.