Selected Emergency Defense Agencies

Maurice S. Culp

Follow this and additional works at: http://repository.law.miami.edu/umlr

Recommended Citation
Maurice S. Culp, Selected Emergency Defense Agencies, 6 U. Miami L. Rev. 380 (1952)
Available at: http://repository.law.miami.edu/umlr/vol6/iss3/7
SELECTED EMERGENCY DEFENSE AGENCIES

MAURICE S. CULP*

SCOPE

In September, 1950, the Defense Production Act became a law. This Act, broken down into titles, establishes a basis for the many-sided activities now in progress for promoting the national defense. The major purpose of the Act is to grant adequate authority for “meeting promptly and effectively the requirements of the military program supporting our national security and foreign objectives by preventing undue strains and dislocations upon wages, prices and production or distribution of materials for civilian use, within the framework, as far as practicable, of the American system of competitive enterprise.” The Act is broken down into specific titles as follows: Title I, Priorities and Allocations; Title II, Authority to Requisition and Condemn; Title III, Expansion of Productive Capacity and Supply; Title IV, Price and Wage Stabilization; Title V, Settlement of Labor Disputes; and Title VI, Control of Consumer and Real Estate Credit. There is a Title VII, also, which contains general provisions incidental to the substantive functions authorized and outlined in the preceding titles.

Such a statute, carrying such great and varied authority, necessarily would require a vast amount of administrative machinery to effectuate its purposes. As is customary in statutes delegating administrative authority, the Defense Production Act vests all of the authority in the President, with specific authorization to the President to delegate authority; thus the President may delegate any power or authority conferred upon him by the Act to any officer or agency of government. He is also authorized to create new agencies other than corporate agencies as he deems necessary and he may authorize the executive of the new agency created to make such redelegations as he may deem appropriate.

Accompanying this power to delegate authority, the Defense Production Act confers upon the President authority to make rules, regulations and orders such as he deems necessary and appropriate to carry out its provisions. The standard provided for the President in the promulgation of such admin-

---

*A.B. 1927, A.M. 1928, University of Illinois; LL.B. 1931, Western Reserve University; S.J.D. 1932, University of Michigan; Member, Ohio and Georgia Bars; Assistant Professor of Law, 1935-39, Associate Professor of Law, 1939-46, Professor of Law, since 1946, Acting Dean, June-December, 1949, Emory University; Visiting Professor of Law, University of Kentucky, 1948-49; Visiting Professor of Law, Western Reserve University, 1948; Senior Attorney and Regional Price Attorney, OPA, Atlanta, 1942-46; Regional Counsel, Region V, OPS.

3. There are specific limitations on this power of a minor nature, but these need not be discussed in this article. See 64 Stat. 816 (1950), 50 U.S.C. App. § 2153(b) (Supp. 1951); 64 Stat. 807 (1950), 50 U.S.C. App. § 2103 (Supp. 1951).
EMERGENCY DEFENSE AGENCIES

Administrative legislation reads as follows: "Any regulation or order of this Act may be established in such form and manner, may contain such classifications and differentiations (and may provide for such adjustments and reasonable exceptions, as in the judgment of the President are necessary or proper to effectuate the purposes of this Act, or to prevent circumvention or evasion or to facilitate enforcement of this Act or any rule, regulation, or order issued under this Act . . . ."

The Defense Production Act of 1950, which was renewed for another year with some major modifications, has been implemented by delegations of authority by the President to officers and other officials, and by the creation of new administrative agencies to implement many of these delegations.

As of December, 1951, at least twenty-eight federal departments, bureaus or agencies were exercising authority derived from the Defense Production Act. Some of these agencies are largely policy making, while others are both policy making and administrative and some may be characterized as predominantly administrative. A pattern of organization has developed gradually over the year and a half of the existence of this legislation. At the present time, and without any attempt to be completely exhaustive, the overall administrative direction and coordination of the defense agency activities is in the Office of Defense Mobilization. As Charles E. Wilson has recently stated, the three keys to our strength are production, stability and free world unity.

For the purposes of the discussions in this article, the agencies' administrative machinery which are subject to the direction of the Office of Defense Mobilization may be divided into those dealing with production and those dealing with economic stabilization. To use a simile suggested by an important defense official recently, the head of the family of the emergency agencies is the Office of Defense Mobilization. The production and priorities child of this family is the National Production Authority, which is organizationally a part of the Commerce Department charged with carrying out the Defense Production Administration's allocation and priority orders. The other child of this family is the Economic Stabilization Agency, which controls policy on prices, wages, credits and rents and is characterized as the second most powerful civilian agency in the whole defense organization. To carry the simile one step further, the Economic Stabilization Administrator has referred to the operating agencies of his organization as the grandchildren, whose names are: the Office of Price Stabilization, the Office of Rent Stabilization, Wage Stabilization Board, the Salary Stabilization Board and the Railroad and Airlines Wage Board.

6. The letter of transmission with the third quarterly report to the President by the Director of Defense Mobilization, Oct. 1, 1951.
In the choice of agencies to be discussed in this article, attention has been given to two factors: (1) the relative importance of the agency and its general impact upon the public; and (2) the distinctive legal position of the organization which makes it highly desirable that a separate discussion of practice and remedial procedures should be undertaken.

Under these criteria the agencies to be discussed will be confined to those whose authority is derived from the Defense Production Act of 1950, as amended, for the most part, or to those intimately connected therewith, owing to the number of departments, offices and agencies engaged in the administration of authority derived from the Defense Production Act.

In order to avoid the complications which might arise from the applicability of general departmental procedure to the defense functions being exercised, those agencies selected are really separate administrative units rather than departments and offices within a department. Each agency has a very broad authority, a very well defined administrative organization, broad rule authority and well developed administrative machinery for effectuating its objectives and providing interested persons with an opportunity for correcting errors, as well as for challenging the legality of administrative legislation or adjudication.

Each agency will be examined separately in all its aspects rather than on a comparative basis, because of the specialization and variations which have developed from agency to agency. It is likely that the comparative method would confuse rather than provide a satisfactory picture of each agency.

Another reason for confining a discussion of the agencies to be selected to those exercising authority under the Defense Production Act and the Housing and Rent Act is that the Administrative Procedure Act is generally inapplicable to the functions exercised under the Defense Production Act, except as to the requirements of Section 3 of the Administrative

---

8. Supra note 1.
9. A recent publication of the U. S. Government Printing Office lists the following agencies exercising authority under the Defense Production Act: Defense Materials Procurement Agency; Defense Production Administration; Defense Transport Administration; Department of Agriculture; Department of Commerce through the Office of the Secretary; Bureau of Public Roads; Civil Aeronautics Administration; Maritime Commission; National Production Authority; Department of Defense, through the Department of the Army, the Department of the Navy and the Department of the Air Force; Department of Interior, through the Defense Electric Power Administration, Defense Fisheries Administration, Defense Minerals Administration, Defense Solid Fuels Administration, Petroleum Administration for Defense; Department of Labor, through the Economic Stabilization Agency, the Office of Price Stabilization, the Salary Stabilization Board, the Railroad and Airlines Wage Board; Federal Reserve System; Federal Security Administration; General Services Administration; Housing and Home Finance Agency; Office of Defense Mobilization and Small Defense Plant Administration.
10. Supra note 1.
14. 60 Stat. 238, 5 U.S.C. § 1002 (1946), which reads as follows: Except to the extent that there is involved (1) any function of the United States requiring secrecy
EMERGENCY DEFENSE AGENCIES

Procedure Act,\textsuperscript{16} and applicable to none of the activities of the Office of Rent Stabilization.\textsuperscript{16}

This exception of all functions exercised under the Defense Production Act of 1950 from the operation of the Administrative Procedure Act, except as indicated above with reference to the requirements of Section 3, makes it necessary for anyone interested in ascertaining the administrative procedures for reviewing the action taken by such excepted agencies and the possibilities of judicial review of such action, to examine the basic statute creating the agency, or under which it is created by virtue of delegated authority, and to determine on an agency by agency basis what administrative procedures are provided and what judicial review is available.\textsuperscript{17}

The four agencies selected for detailed examination are: (1) The National Production Authority; (2) The Office of Price Stabilization; (3) The Wage Stabilization Board; (4) The Office of Rent Stabilization.

In order that an opportunity for a comparison of powers, organization and operation of each agency may be provided for the reader, the discussion of each agency will touch upon the following factors: (1) The statutory or other authority for the agency; (2) The organization or structure of the agency; (3) The substantive powers of the agency; (4) Formulation of and the nature of its administrative legislation; (5) Sanctions; (6) Statutory or other administrative review of its rules and decisions; (7) Judicial review.

in the public interest or (2) any matter relating solely to the internal management of an Agency—

(a) Rules: Every agency shall separately state and currently publish in the Federal Register (1) descriptions of its central and field organization, including delegations by the agency of final authority and the established places at which, and methods whereby, the public may secure information or make submittals or requests; (2) statements of the general course and method by which its functions are channelled and determined, including the nature and requirements of all formal or informal procedures available as well as forms and instructions as to the scope and contents of all papers, reports or examinations, and (3) substantive rules adopted as authorized by law and statement of public policy or interpretations formulated and adopted by the agency for the guidance of the public, but not rules addressed to and served upon named persons in accordance with law. No person shall in any manner be required to resort to organization or procedure not so published.

(b) Opinions and Orders: Every agency shall publish or, in accordance with public rule, make available to public inspection all final opinions or orders in the adjudication of cases (except those required for good cause to be held confidential and not cited as precedents) and all rules.

(c) Public Records: Save as otherwise required by statute, matters of official record shall in accordance with published rules be made available to persons properly and directly concerned except information held confidential for good cause found.

15. 61 \textsc{Stat.} 201 (1947), 62 \textsc{Stat.} 99 (1948), 50 \textsc{U.S.C. App.} § 1900 (Supp. 1951); also see 60 \textsc{Stat.} 238 (1946), 5 \textsc{U.S.C.} § 1002(2) (Supp. 1951), which declares that the statute shall not apply to the Housing and Rent Act of 1947, as amended.

16. As a matter of practice, however, the Office of Rent Stabilization has developed satisfactory procedures as a matter of policy; see discussion of this agency later in this article.

17. The latter is important because § 10 of the Administrative Procedure Act cannot be invoked to provide the judicial review obtainable over unexcepted agency action. 60 \textsc{Stat.} 244 (1946), as amended, 63 \textsc{Stat.} 1067 (1949), 5 \textsc{U.S.C.} § 1010 (Supp. 1951).
The National Production Authority

The National Production Authority has been set up to administer the powers of the President under Title I of the Defense Production Act and certain collateral powers under Title VII of the Act.

This Agency has an elaborate administrative organization in Washington where the regulations and orders of the agency are issued and where compliance is supervised. The Department of Commerce provides field offices on a regional and district basis, which are largely concerned with the supplying of information to interested persons concerning the regulations and rules of the National Production Authority and with the compliance activities of the agency.

The authority delegated to the National Production Authority is concerned with the administration of the allocation and priorities authority vested in the President by the Defense Production Act of 1950, as amended.

This agency is charged with the issuance of orders and regulations to provide for priority in the filing of orders for scarce materials, to limit the use of such materials, to impose restrictions on inventories, and to allocate the existing supply of certain forms of steel, copper, and aluminum among the various users of these materials. These regulations establish general rules. In addition, the agency issues orders relating to specific materials or to specific industries. These orders control over the regulations in case of a conflict on the theory that the specific measure is controlling over a general rule.

This leads to a brief discussion of the second major activity of the NPA. This is the hearing of applications for relief from the various substantive provisions imposed by the regulations or orders it issues. Generally, anyone who is eligible for an allotment of controlled materials may apply to the NPA for such allotment. These applications are made on forms supplied by NPA. They are usually submitted by mail, though a personal interview in support of the application is permitted. A person who seeks to apply a priority rating on a purchase order for materials may likewise seek that authority, by mail, in person or through an attorney. A decision will be made on such an application and the applicant's rating will be determined by the appropriate division of the agency. There is in each regulation or order a standard provision for adjustments and exceptions on the basis of individual hardships. Thus, any person who feels that the application to him of a document in question will cause any undue hardship not borne by others generally in the same position may


19. NPA has issued a number of substantive regulations and orders, delegations and formal interpretations and directives. There are at least five NPA regulations, seven CMP regulations, about 100 orders and numerous supplementary documents. All of these have been published in the Federal Register. In general each specific order and regulation sets forth methods and procedures for requesting relief from its provisions.
seek relief from the appropriate administrative division. Again this relief may be sought through mail, a personal interview or an attorney.

Under NPA Regulation 5, an applicant may appeal from the decisions of an NPA Industry Division to an Appeal Board. This three-man board has no other duties under the agency than those connected with the hearing of the appeal. Any person who feels that a regulation or an order of the agency is improperly implied to him, or feels that his application for adjustment because of hardship has been improperly rejected, may appeal to the Special Appeals Board.

In the preparation of regulations and orders within the field of priorities and allocations, the NPA does provide an opportunity for interested persons to object generally to proposed orders providing allocations or priorities, but there is no statutory requirement that the agency hold hearings or consult with the industry before issuing regulations.

The General Counsel's Office of the NPA interprets the regulations and orders of the agency for its own administrative staff and for the public. Any person may submit a request for an interpretation by mail, telephone or personal interview. These requests are based upon actual factual situations, though they may be stated in the form of hypothetical questions. This procedure is very helpful to the administrative staff and members of the public in complying with the agency's regulations.

A willful violation of any duly promulgated regulation or order of the NPA subjects the violator upon conviction to severe criminal penalties.

It seems likely that most violations of National Production Authority orders and regulations will be handled by administrative action. This administrative sanction will take the form of denial of future privileges of making or receiving the delivery of material; that is, withdrawal or withholding of priority assistance, withdrawal or withholding of allocations or allotments, prohibiting or restricting the respondent in the acquisition, possession, use or disposition of materials or facilities, or otherwise requiring compliance with the provisions in Title I of the Defense Production Act or regulations, orders or directives of the National Production Authority.

Such enforcement, however, cannot take place until the procedures set forth for hearings before hearing commissioners have been completed. These procedures call for the statement of charges and a formal hearing before a hearing commissioner with the authority to receive evidence and issue findings, conclusions and an order of disposition. If the hearing commissioner finds that a violation has occurred, he may issue a suspension order denying the respondent certain privileges under NPA regulations.

20. This procedure is provided by NPA Regulation No. 5, as amended, issued October 11, 16 Fed. Reg. 10386 (1951). An appeal is instituted by filing of four copies of a written notice.
Any person or corporation affected by the provisions of an order issued by a hearing commissioner may appeal from this order to the Chief Hearing Commissioner. 24

As distinguished from appeals from a suspension order issued, or other action taken in connection with compliance proceedings, the NPA has set up administrative machinery for appeals from administrative decisions in connection with decisions on applications for adjustments or exceptions. 25

Under this regulation any person who has filed an application for adjustment or exception, requesting relief from the provisions of any order or regulation issued by NPA, and any person who has applied to NPA for a CMP allotment or an allotment authorization pursuant to an order or regulation issued by NPA, and who has thereafter filed an application for adjustment or exception requesting relief from an action taken on his application, may appeal to the NPA Appeals Board upon stated grounds, which may include any one of the following: that the order (1) works an exceptional and unreasonable hardship on him, which is not suffered generally or otherwise in the same trade or industry, or (2) results in unreasonable discrimination against him, or (3) is not in the public interest or the national defense. 26

An appeal is instituted by the filing of a designated number of copies of a written notice, together with the documentary and other materials required by the procedural regulation. 27 It is important to notice that an appeal may not be filed more than forty-five (45) days after the date of the NPA decision with respect to the application for adjustment or exception.

The NPA Appeals Board may determine that relief is justified, in which case it will grant appropriate relief to the extent permitted by the available materials. The decision of this Board is final. However, rules of the agency permit a reconsideration in the discretion of the Board. 28

24. This appeal must be taken in accordance with Sections 3, 4 and 5 of Implementation 1 to NPA Gen. Ad. Order 16-06, 16 Fed. Reg. 8799 (1951).

25. This procedure is set forth in detail in NPA Regulation 5, as amended.

26. If a person has a new and substantial fact to submit, which was not included in his application for adjustment or exception, he should not file an appeal to NPA Appeals Board, but should apply to the NPA official administering the applicable order or regulation for reconsideration of his application for adjustment or exception upon the basis of these new facts. Then if the reconsideration does not result in a decision satisfactory to him, he may file an appeal on the grounds stated in § (a) of § 2. See NPA Regulation 5, as amended, § 2(b).

27. See § 4 of NPA Regulation 5, as amended.

28. It is interesting to refer to § 8 of NPA Regulation 5. It points out that the NPA Appeals Board is not a judicial body; that hearings before the board are informal. It is not required that the appellant be represented by counsel, though he may be if he so desires. If he is represented by counsel and not present at the hearing, the appellant must notify the NPA Appeals Board in writing that he has authorized counsel to represent him at the hearing and has furnished counsel with the information necessary for presenting the appellant's case. Section 9 is also interesting in that the NPA Appeals Board has a discretion to permit other interested persons or government agencies, officers or departments to intervene.
As indicated in the general discussion preceding this detailed discussion, there is no statutory judicial review of action taken by the NPA. This observation applies both (1) to administrative action taken by the agency on appeal from a decision of the NPA Appeals Board on a review of administrative action taken regarding applications for adjustments or exception, and (2) to final decisions of the chief hearing commissioner in administrative proceedings involving non-compliance with the orders and regulations issued by the National Production Authority. Whether administrative action be primarily legislative or primarily judicial in character, the courts have been quite willing to review administrative action taken, in whatever proceedings the issues might be raised. It is not within the scope of this discussion to discuss the concept of reviewability of administrative action. However, it is quite clear that NPA’s final administrative action on appeals from decisions refusing adjustments or exceptions or on final decisions of the Chief Hearing Commissioner in compliance cases is subject to judicial review in the event the United States takes judicial action through further criminal action against an alleged violator, through civil litigation seeking to restrain the violations or by injunctions by the respondent to prevent enforcement of such decisions. Also, it is conceivable that the validity of rules and regulations of the NPA might come into question in the course of civil litigation between private individuals.

The Office of Price Stabilization

The chief purpose of the Office of Price Stabilization is to promote national defense by reducing the effects of inflation and preserving the value of the national currency. The major functions are to establish price ceilings to stabilize the cost of living and cost of production, both civilian and military; to prevent profiteering, hoarding, manipulation, speculation and other disruptive practices resulting from abnormal marketing conditions or scarcities; to protect consumers, wage earners, investors and persons with relatively fixed incomes from undue impairment of their living standards; to maintain a reasonable balance between purchasing power and the supply of consumer goods and services and to protect the national economy against future losses of needed purchasing power by the dissipation of individual savings and the prevention of a future collapse in values. The principal authority of the agency is derived from Title IV of the Defense Production Act. It also exercises some authority, delegated with

29. See Davis, Administrative Law 812 (1950), on the reviewability of administrative action.
30. The General Counsel’s office of NPA recognizes that the agency action is subject to the customary judicial review methods for reviewing administrative action.
31. Valuable assistance in the preparation of this discussion of the NPA's activities was obtained by personal letter from the Office of General Counsel of the NPA. The author gratefully acknowledges the assistance of Mr. John Alexander, the General Counsel of NPA, and Mr. I. Beverley Lake of his office for giving of their time and great knowledge of the agency in assisting the writer to a more complete understanding of its operation.
respect to the allocation of meats, through the Economic Stabilization Agency from the Secretary of Agriculture, which authority in turn is derived from Title I of the Defense Production Act.

The Office of Price Stabilization has an elaborate administrative organization. There is a National Office located in Washington, D.C. There are thirteen Regional Offices and eighty-four District Offices covering the continental United States and one Regional Office and five District Offices covering the territories and possessions of the United States. Naturally the National Office of this organization is the key office for the purposes of determining policy and deciding on the promulgation of the rules and regulations necessary to carry out the price stabilization function of informing industry, agriculture, labor and consumers of the need for price stabilization and promoting and soliciting their cooperation in this effort, of consulting and advising with other government agencies responsible for various phases of the defense effort and of maintaining close liaison with Congress concerning the activities of the agency, especially with reference to the activities of the Joint Congressional Committee established by the Defense Production Act Amendments of 1951.

The Office of Price Operations, headed by the Director of Price Operations, is charged with the responsibility of preparing regulations, orders and standards governing allocations, distributions and prices, and of entertaining, approving or disapproving requests for the establishment of ceiling prices and applications for individual adjustments of existing ceiling prices and is required to collect and analyze data on costs, prices and business practices which may be necessary in the formulation and operation of the price program. It is charged with the details of consulting with industry with respect to the preparation of and compliance with the rules and regulations of the Office of Price Stabilization. For better operation of this office, it is divided into divisions along the lines of commodity groups.

The Regional Offices supervise and coordinate the program, activities...
and operations of District Offices in accordance with standards and instructions issued by the National Office of OPS and they perform for the most part only such operational functions as may not be performed feasibly by District Offices.38

Each of the eighty-four District Offices in the continental United States is set up to provide efficient operation of the price program at the level of contact with industry, labor, agriculture and members of the public. These District Offices primarily perform the detail work of the Office of Price Stabilization under the supervision of the Regional Offices. They execute and effectuate OPS programs by administering the specific operational functions assigned or delegated to them in accordance with standards and instructions issued by the National Office of the District Directors supervise the operations of subordinate offices in the districts wherever authorized. Each District Office is broken down into five branches, namely, Price Operations, Legal, Management, Accounting, Enforcement and Public Information.

The main powers of this agency are set forth in Title IV of the Defense Production Act of 1950, as amended. Two sections are principally involved in the statement of the powers of the agency. The first39 is a statement of the intention of Congress to provide authority necessary to achieve the purposes of stabilization and promotion of national defense.40

Title IV carries a voluntary action clause. This was invoked early in

38. The OPS has issued an elaborate manual for the guidance of its field offices, which establishes standards, designed to control internal administration on a uniform basis throughout the United States. This manual is the most efficient method possible for securing equality of treatment and uniformity in the exercise of discretion. It is uniformly administered by the regional offices through the supervision of the operations of subordinate offices, namely, district offices. Thus a very uniform and fair administration of the OPS programs may be obtained.


40. A statement of these purposes is well worth quoting and reads as follows: “To prevent inflation and preserve the value of the National currency, to assure the defense appropriations are not dissipated by excessive costs in prices; to stabilize the cost of living for workers and other consumers and the cost of production for farmers and businessmen. To eliminate and prevent profiteering, hoarding, manipulation and speculation and other disrupted practices resulting from abnormal market conditions, or scarcities. To protect consumers, wage earners, investors and persons who are relatively fixed with limited incomes from undue impairment of the living standards; to prevent economic disturbances, labor disputes, interferences with the effective mobilization of National resources and impairment of National unity and morale. To assist in maintaining a reasonable balance between purchasing power and supply of consumer goods and services. To protect the National economy against future loss of needed purchasing power by the present dissipation of individual savings and to prevent a future collapse of values. It is the intent of Congress that the authority conferred by this Title shall be exercised in accordance with policy set forth in Section 2 of this Act and particularly with full consideration and emphasis as far as practicable on the maintenance and furtherance of the American system of competitive enterprise, including independent small business enterprises. The maintenance and furtherance of sound agricultural industry, the maintenance and furtherance of sound relations, including collective bargaining and the maintenance and furtherance of the American way of life. Whenever the authority granted under this title is exercised, all agencies of the Government dealing with the subject matter of this Title within the limits of their authority and jurisdiction shall cooperate in carrying out these purposes.”
the life of the Act and was found unsatisfactory. Therefore, the President was obliged to utilize the compulsory provisions of Title IV. These begin with Section 402(b). The President is authorized under the compulsory provisions of the Defense Production Act to issue regulations and orders establishing ceiling prices on the price, rental, commission, margin, rate, fee, charge or allowance paid or received on the delivery or sale, or the purchase or receipt, by or to any person, of any material or service, and at the same time issue regulations and orders stabilizing wages, salaries and other compensation in accordance with the provisions of the subsection. The President may take action under this subsection, either with respect to individual materials and services and to individual types of employment or with respect to materials, services and types of employment generally. As previously mentioned, however, when a ceiling has been imposed with respect to a particular material or service, the President is required to stabilize wages, salaries and other compensations in the industry or business producing the material or performing the service.

It became necessary in 1951 to establish ceiling prices on materials and services comprising a substantial part of all sales at retail and materially affecting the cost of living. This necessitated the imposition of wage, salary and compensation controls generally. Insofar as practical, the President was required to base his calculations with reference to ceilings with regard to the prices which prevailed during the period of May 24, 1950, to June 24, 1950, or a generally comparable representative period. The President was also required to give due consideration to the national effort to achieve maximum production in furtherance of the objectives in the Act.

The President is required to determine if any regulation or order issued under Title IV will be fair and equitable and will effectuate the purpose of Title IV. It must be accompanied by a Statement of Considerations involving the issuance of such regulation or order. The President in establishing ceilings is required to make such adjustments as he deems necessary to prevent or correct hardships or inequities. Additional elaborate provisions are provided to prevent the establishment of ceiling prices for any agricultural commodity below certain definite standards set forth in the statute. It is from this portion of the Act that the so-called "parity" problem arises.43

The Defense Production Act Amendments of 1951 added to the statute

42. See 64 Stat. 803 (1950), 50 U.S.C. App. § 2102(c) (Supp. 1951) for a consideration of this particular problem. In World War II the old Office of Price Administration was required to issue Statements of Considerations to accompany its regulations or orders. These Statements of Considerations are very valuable to indicate the intent and purpose of the draftsmen of the regulations and are of great value in interpreting the meaning of such legislation.
the so-called Capehart Amendment. In effect this Amendment required OPS to adopt a somewhat different base period as to any future ceiling price regulations and to authorize non-distributive sellers of commodities and services to apply for an adjustment of ceiling prices to recognize certain cost increases.

This same Defense Production Amendments Act of 1951 added paragraph (k) to Section 402, which prevents the Director from issuing rules, regulations, orders or amendments, after the effective date of the Amendment, which shall deny to sellers of materials at retail or wholesale their customary percentage margins over costs of materials during the period May 24, 1950, to June 24, 1950, or on such other nearest representative date determined under Section 402(c) as shown by their records during that period.

Title IV also contains fairly extensive limitations on the scope of subjects to which the agency may address itself in establishing prices. Some of the more important areas denied it are: prices or rentals of real property; rates or fees charged for professional services; prices or rentals for manuscript materials, books, magazines, motion pictures, periodicals and newspapers, other than waste or scrap; rates charged by any person in the business of operating or publishing a newspaper, periodical magazine, radio broadcasting, television station, motion picture or other theater enterprise, or outdoor advertising facilities; rates charged by any person in the business of selling or underwriting insurance; rates charged by any common carrier or other public utility; margin requirements on any commodity exchange

---

44. This was the addition of subparagraph 4 to § (d) of § 2102; 64 Stat, 803 (1950), as amended, 65 Stat, 134 (1951), 50 U.S.C. App. § 2101(d) (4).

45. It might be worthwhile to quote this paragraph in full: "After the enactment of this paragraph, no ceiling price on any material (other than an agricultural commodity) or any service shall become affected which is below the lower of: (a) The price prevailing just before the date of issuance of the regulation, or orders, establishing such ceiling price, or (b) The price prevailing during the period of January 25, 1951, to February 24, 1951, inclusive. Nothing in this paragraph shall prohibit the establishment or maintenance of a ceiling price with respect to any material (other than agricultural commodity) or service which (1) based upon the highest price between January 1, 1950, and June 24, 1950, inclusive, if such ceiling price reflects adjustments for increases or decreases in costs occurring subsequent to the date on which such highest price was received prior to July 26, 1951, or (2) if it is established under regulation issued prior to the enactment of this paragraph. Upon application and a proper showing of his prices and costs by any person subject to ceiling price, the President shall adjust that ceiling price in the manner prescribed in Clause (1) of the preceding sentence. For the purposes of this paragraph, the term "costs" includes material, indirect and direct labor, factory, selling, advertising, office and all other production, distribution, transportation and administration costs, except such as the President may determine to be unreasonable and excessive."

46. This section defines a seller of material at retail or wholesale in the following language: "To the extent that such person purchases and resells an item of material without substantially altering its form; or to the extent that such person sells to ultimate consumers (1) to government and institutional users, and (2) to consumers who purchase for consumption in the course of trade or business." 64 Stat, 803 (1950), as amended, 65 Stat, 134 (1951), 50 U.S.C. App. § 2102(k) (Supp. 1951).

47. At this point it should be noted that no common carrier or other public utility shall, after the President issues any stabilization regulation or order, increase his charges
and prices charged and wages paid for services performed by barbers and beauticians.

The Director of Price Stabilization is also authorized by delegated authority to exempt materials or services by regulation or order upon the showing of certain conditions, such as the necessity to promote the national defense or that it is unnecessary that ceilings upon such materials or services be imposed in order to effectuate the purposes of the law.

The President and his delegates are cautioned by the statute not to compel changes in the business practices, costs practices, or methods or means of agency distribution that are established in any industry, except and unless there is finding that such action is affirmatively necessary to prevent circumvention or evasion of the regulation, order or any other requirements under this Title. Nor may the agency restrict the use of trade or brand names; require grade labeling; require the standardization of any material or service without a determination that such standardization is absolutely necessary to secure effective price control; or impose the requirement of any specifications or standards unless those standards or specifications were in general use by the trade or industry affected or had previously been promulgated and their use lawfully required by another government agency.

Also of general interest is the statement in the statute that no rule, regulation or order issued under Title IV shall require any seller of materials at retail to limit his sales with reference to any highest price line offered for sale by him at any time, and that nothing in the statute may be construed to require any person to sell any material or service, or to perform personal services.

Within this framework the President is authorized to delegate authority and the Office of Price Stabilization may proceed to establish ceiling prices for materials and services in accordance with the legislative standards, and to exercise a sound discretion in carrying out the stabilization program in accordance with the basic statutory standards and the standards which may be established from time to time by the Economic Stabilization Agency, which maintains a policy supervision over the Office of Price Stabilization.

The Office of Price Stabilization has issued elaborate procedural rules which govern its legislative activity. Article 2 of this Regulation sets forth for property or services sold by it for resale to the public, for which application is filed after date of issuance of the stabilization regulation or order before the appropriate regulating authority, unless it first gives 30 days notice to the President, or now to the Office of Price Stabilization, and consents to the intervention of that agency before the regulatory body having jurisdiction to consider the increase. Effective April 28, 1952 the Office of Price Stabilization has issued a revision of this general procedural regulation. The revision bears the designation of OPS Price Procedural Regulation No. 1, Revision 2. This new revision makes miscellaneous changes in the
rules for the issuance of Ceiling Price Regulations. The Director may issue Ceiling Price Regulations after having made such studies and investigations as he deems necessary. Before issuing a ceiling price regulation the Director will, insofar as practical, advise and consult with representatives of persons substantially affected by any such a regulation. He may, if he deems it necessary and proper, give notice by publication in the Federal Register of a proposed price hearing prior to the issuance of a Ceiling Price Regulation. While it is quite clear from the Defense Production Act\textsuperscript{51} that the Agency must, insofar as practical, advise and consult with representatives of persons substantially affected by regulations or orders, it is also clearly understood that such consultation is purely advisory and neither the concurrence nor the approval of the affected persons is necessary to the validity of the administrative legislation.

In addition to the procedure for the issuance of Ceiling Price Regulations, the General Procedural Regulation sets forth the procedure for petitioning for an amendment of an existing regulation. Such a petition may be filed at any time by any person subject to or affected by a provision of a Ceiling Price Regulation. The principal limitation is that the petition for amendment shall propose an amendment of general applicability which shall be granted or denied solely on the merits of the amendments proposed. Such petitions in general request a modification of the Ceiling Price Regulation more favorable to the views of the petitioner, or perhaps proposed the decontrol of a particular commodity. Such a petition is directed to the "legislative" discretion of the Director and his denial is not subject to protest or judicial review.

By way of contrast to petitions for amendments, provision is often made in the various regulations for petitions for adjustments, which, in substance, authorize persons who feel that their special situation meets the criteria set forth for a modification of their own individual price situation in reference to the general rules established by the regulation to file a request that a different rule be adopted or made for their special situation. An application for adjustment may be made only if the specific regulation in question authorized such an adjustment. Unless the regulation authorizing the adjustment sets forth the specific procedure for filing an application, it should be made in accordance with the General Procedure Regulation already mentioned. If, however, the specific regulation provides for the

former price procedures. In addition to refining some of the old material, a new provision has been inserted relative to the filing of reports required by OPS regulations, and it also makes some changes in the procedures for processing applications for adjustment. It now provides that applications are to be filed with the office specified in the applicable adjustment provisions, and in the absence of this designation, the applications are to be filed in Washington. A formal review of an order of a regional or district office has been provided. There are other minor changes of which space does not permit a consideration since this regulation appeared after this article was set in type.

\textsuperscript{51} 64 STAT. 807 (1950), 50 U.S.C. App. § 2104 (Supp. 1951).
use of forms or other specific methods of presenting a petition for adjustment, it is incumbent upon the petitioner to comply with them.  

Within a reasonable time after the filing of an application for adjustment, the Director may either dismiss the application for failing to substantially comply with provisions for adjustment or he may grant or deny it in whole or in part. In any event the applicant is informed in writing of the action taken by the Director or by some person to whom he has delegated authority to act on his behalf. Any applicant whose application for adjustment has been denied in whole or in part by the Director may file a protest against such order in accordance with provisions of Price Procedural Regulation 1. Inasmuch as time is of the essence in such cases, the effective date of the order for the purpose of filing a protest is the date on which the order was mailed to the applicant. The protest may be based only upon grounds raised in the application for adjustment.

The meat distribution regulations also contain some provisions for adjustment. While adjustment action taken under these regulations, which are based upon Article IV, is not subject to the statutory protest, the Office of Price Stabilization has provided a system of administrative review of such action. Distribution Procedural Regulation 1 provides for "reconsiderations" and also for appeals from the denial of adjustment applications filed under the various provisions of the distribution regulations. Under this system the appellant must move within 30 days of the date of the order in question by filing his appeal with the Board of Appeals in Washington. After hearing and decision by this Board, there is no further opportunity to have administrative review of the action taken on the application, although the Board may grant a rehearing on request. The decisions of the Board of Appeals are not reviewable in the Emergency Court of Appeals.

Section 405(a) of the Defense Production Act of 1950, as amended, reads as follows: "It shall be unlawful, regardless of any obligation heretofore or hereinafter entered into, for any person to sell or deliver or in their regular course of business to trade, to buy or receive any material or service, or otherwise to do or omit to do any act, in violation of this Title, or of any regulation, order or requirement issued thereunder, or to offer, solicit or attempt to agree to do any of the foregoing. The President shall also prescribe the extent to which any payment made, either in money or property, by any person in violation of any such regulation, order or requirement, shall be disregarded by the Executive Department or other governmental

52. Under the so-called Capehart Amendment, the Office of Price Stabilization has issued a number of regulations called General Overriding Regulations, which are designed to implement the statutory standards for adjustment. These General Overriding Regulations frequently require data to be presented on specific forms and in such cases the forms must be used and the general provisions of Article III of Price Procedural Regulation 1 may not be safely resorted to in presenting such applications.  

EMERGENCY DEFENSE AGENCIES

agencies in determining the costs or expenses of any such person for the purpose of any other law or regulation, including bases in determining gain for tax purposes."

Any person who willfully violates any provision of the section just quoted is declared by the Defense Production Act\(^5\) guilty of a misdemeanor and shall, upon conviction, be subject to a fine of not more than $10,000.00 or to imprisonment of not more than one year, or both.

The Office of Price Stabilization has an Office of Enforcement, the function of which is to obtain compliance with OPS regulations and orders and to collect evidence for use in legal proceedings against alleged violators. In addition the office recommends sanctions to be applied to alleged violators of price control regulations and represents OPS in litigation for the prosecution of such violators. Under the Defense Production Act\(^6\) the President, whenever he believes that any person is liable to punishment criminally, may certify the fact to the Attorney-General, who, in his discretion, may cause appropriate proceedings to be brought. This, in effect, gives the actual control of litigation to the Department of Justice, which, however, relies very heavily upon the Office of Enforcement of the Office of Price Stabilization and the enforcement branch in each of the local offices throughout the continental United States.

While the Office of Price Stabilization has no administrative procedures for imposing sanctions as a means of securing compliance with regulations and orders dealing with price controls, it has recently instituted the administrative remedies of suspension and revocation of registrations under its meat distribution program.\(^6\) Agency action under this procedure is subject to the administrative procedures now provided by Distribution Procedural Regulation 1, although not subject to protest under Section 407(a) of the Defense Production Act of 1950, as amended. Suspension and revocation proceedings are instituted before a special administrative tribunal which is called the Board of Appeals. The final decision of this Board may result in the suspension or revocation of a registration for a specified period of time.\(^6\) There is no provision for any special statutory judicial review of the Board's final decision, but it seems apparent that judicial review may be obtained through appropriate conventional means.

In addition to criminal sanctions there are civil sanctions which may be addition to criminal sanctions there are civil sanctions which may be enforced against a violator. Thus, any person who is engaged in or about

to be engaged in any action or practice which constitutes, or will constitute, a violation of Section 405 of Title IV, may be enjoined from such practices or proposed practices. Authority granted in this subsection of Section 409(a) is very broad.  

The Defense Production Act provides another remedy. This remedy has a potentially dual character in some instances. Any person who buys material or services for use or consumption, other than in the course of trade or business, may, within one year from the day of the occurrence of a violation, bring an action against the seller on account of any overcharge. In this action against the seller the statute makes the seller liable for reasonable attorney’s fees and costs, as determined by the court. This action is the so-called “treble damages” action for willful violation of a regulation or order. However, it is but a single damage action, providing for damage in the amount of the overcharge, if the defendant proves that the violation was not due to willful conduct or the result of failure to take practical precautions against the occurrence of the violation. In case the violation is willful or the result of extreme carelessness the amount of the damages may not exceed (1) three times the amount of the overcharge or overcharges upon which the action is based, or (2) an amount not less than $25.00, nor more than $50.00 as the court in its discretion may determine, whichever of these sums is greater.

This sanction, while available to the buyer not engaged in purchasing the material or services in the course of trade or business within one year, must be acted upon within thirty days from the date of the occurrence of the violation to prevent the concurrent remedy being available to the United States. Thus, if the buyer fails to institute an action within thirty days, the President may institute such an action on behalf of the United States within the one year period, or compromise with the seller the liability which might be assessed against the seller in the action. When the action is instituted, or where the liability is compromised by the Office of Price Stabilization the buyer is barred from bringing any action for the same violation or violations. Such actions may be brought by the buyer or the United States in any court of competent jurisdiction. Under certain circumstances, however, the action of the United States is barred.

---

60. The President may not institute any action under this subsection under provisions of 50 U.S.C. App. § 2109(c), if the violation arose because the person selling the material or service acted upon and in accordance with the written advice and instructions of the President or any official authorized to act for him and if the violation arose out of the sale of any material or service to any agency of the Government and such sale was made pursuant to the lowest bid made in response to an invitation for competitive bids. The term “court of competent jurisdiction” has been defined to mean
Petitions for adjustments filed under the individual provisions of a price regulation or general order in accordance with the procedure therein set forth, or in accordance with the general provisions of the basic Procedural Regulation, whichever is applicable, are essentially petitions directed to the discretion of the Director or his authorized representative to modify administrative legislation. They are not petitions normally classified as requesting action adjudicative in nature.

Despite the nature of these applications, Section 18 of Price Procedural Regulation 1, revised, authorizes an administrative review. This administrative review is obtained by filing a protest; the mechanics of which are specified in Article 5 of the general procedure regulation. While this procedure is elaborately set forth in Price Procedural Regulation, it is nevertheless basic, inasmuch as it is a procedure which is set forth by a statute.

Under the basic statute, any time within six months after the effective date of the regulation or order relating to price controls under Title IV, or in the case of new grounds arising after the effective date of any such regulation or order, within six months after such new grounds arise, any person subject to any provision of the regulation or order may, in accordance with the rule mentioned above, file a protest specifically setting forth any objections he may have.

In order to file a protest under Article V of the general procedure regulation, it is necessary that the person be subject to the provisions of the regulation or order. Section 31 of the regulation states that a person is subject only if the provision prohibits or requires action by him, with the exception of a producer of an agricultural commodity, who is considered to be subject to a Ceiling Price Regulation for the purpose of asserting any right created by Section 402(c) of the Act for the benefit of producers of an agricultural commodity without being affected directly by the regulation or order.

Any protest filed shall be granted or denied by the Director, or granted in part and the remainder of it denied within a reasonable time after it is filed. Some steps toward ultimate disposition must be taken within thirty days after the filing.

In the event the OPS denies any such protest in whole or in part it is required to inform the protestant of the grounds upon which the decision

---

any federal court of competent jurisdiction, regardless of the amount in controversy in any state or territorial court of competent jurisdiction.

63. Under 50 U.S.C. App. § 2107(d), any protestant who is aggrieved by undue delay on the part of the President in disposing of his protest, may petition the Emergency Court of Appeals for relief and that court has jurisdiction by appropriate order to require the President, or his delegatee, to dispose of such protests within such time as may be fixed by the court. If such public officer does not act finally within the time fixed by the court, the protest may be deemed to be denied at the expiration of that period.
was based and of any economic data or other facts of which it has taken official notice. 64

Under the Defense Production Act of 1950, 65 as amended, any protestant may demand a Board of Review, 66 which will consist of one or more officers employed by the United States, to conduct hearings and hold sessions with a view to hearing the complaints of the protestant. After a hearing with an opportunity to present rebuttal evidence in writing and oral argument before the Board, the Board makes written recommendation to the Director. The protestant is informed of the recommendation of the Board and, in the event the Director rejects the recommendations in whole or part, the protestant is informed of the reasons for the rejection.

In addition to the statutory procedure just mentioned, the OPS Manual, which establishes elaborate rules for the guidance of the OPS administrative offices in the carrying out of its many adjustment procedures, authorizes any person whose application for adjustment has been denied in whole, or in part, to request a review by the next higher office in the OPS administrative hierarchy. Thus if an application for adjustment has been denied by a District Office, the petitioner has a right under agency rules to request a review of the action taken by the Regional Office which has jurisdiction over the processing office. 67 This inter-agency review procedure is apart from, and in addition to, the basic statutory procedure for administrative review of formal objections to OPS regulations or orders or action taken on adjustment decisions.

This "review" proceeding is not discussed or mentioned in the Defense Production Act and it is wholly optional and apparently is not a prerequisite to the filing of a protest. On the other hand, the filing of a protest is, with one exception, a prerequisite to obtaining judicial review by the Emergency Court of Appeals of the validity of any regulation or order relating to price controls. 68

The regulations and orders issued by the Office of Price Stabilization

64. Under 50 U.S.C. App. § 2107(b), the agency may take official notice of economic data and other facts of which it has taken official notice under § 705 of this act. This refers to 50 U.S.C. App. § 2155(a), which permits the President by regulation, subpoena or otherwise to obtain information; to require reports, the keeping of records, the making of inspection books, records and other writings; to take sworn testimony; and administer oaths and affirmations in the enforcement or administration of the act and the regulations and orders issued thereunder.


66. See § 42(b), Price Procedural Regulation No. 1, revised, 16 Fed. Reg. 4974 (1951), for the time limit imposed for filing such requests.

67. If the action taken is at the regional level, this procedure would permit a review at the national office level. Since this article was written OPS Price Procedural Regulation No. 1, Revision 2, has been issued, which formalizes this procedure by setting forth provisions for review in sections 28 and 29. Under this new procedure the notice of review must be filed within 60 days after the date on which the notice of dismissal or denial was mailed the applicant.

68. The only other method of obtaining judicial review is the filing of complaint in the Emergency Court of Appeals after obtaining special leave to do so, as a result of compliance proceedings brought against the petitioner. The conditions for filing such complaints are set forth in 50 U.S.C. App. § 2108(3)(c).
on the basis of authority other than Title IV, such as Distribution Regulation 1, Revision 1, are not protestable and their validity is not reviewable in the Emergency Court of Appeals. Such administrative action exercised under authority of Title I, for example, would appear to be reviewable by the courts by methods similar to the review which may be obtained of the final action of the National Production Authority, already discussed. Thus the validity of such orders could be challenged defensively in civil or criminal proceedings in which the Attorney General is seeking to apply the sanctions of the Defense Production Act and affirmatively through equitable or other procedures in civil litigation initiated by the persons subject to such regulations or orders.

While not a review of administrative action in the ordinary sense, one of the most important devices for securing protective assistance on determining a course of conduct under an OPS regulation or order is the utilization of the interpretative procedures which have been set up by the Office of Price Stabilization. This procedure is fully set forth in Article VI of Price Procedural Regulation 1. It is the function of the Office of Chief Counsel of the Office of Price Stabilization to issue interpretations of the statutes and the rules, orders and regulations issued by OPS. This function is exercised not only at the national office at Washington, but in appropriate cases by the representatives of the Office of Chief Counsel in the various field offices. The field officials authorized to issue official interpretations are Regional Counsel and District Counsel. In addition to the issuance of interpretations in the national office, each of the fourteen regional offices has a regional counsel authorized to issue official interpretations, and each of the eighty-four district offices in the continental United States and the five district offices in the territories and possessions have counsel authorized to exercise this function. An official interpretation can be applicable only with respect to the particular person to whom and to a particular factual situation with respect to which it is rendered, unless it is published in the Federal Register as an interpretation of general application. Such a general interpretation may be issued only by the Office of Chief Counsel in the national office.

The basic procedural regulation sets forth the procedure to be employed in making requests for interpretations. Interpretations may not be requested or given with respect to any hypothetical situation or in response to any hypothetical question. Interpretations are subject to retraction or modification at any time by authorized officials by a statement in writing mailed to the person to whom the original interpretation was sent or, in the case of a general interpretation, by a publication in the Federal Register. The importance of obtaining an official interpretation cannot be over-emphasized, because it would seem that any possibility of

criminal or civil responsibility as to sales to the United States would be avoided if action is taken pursuant to such an interpretation. 70

The Defense Production Act of 1950, as amended, continues the major features of the judicial review provided for OPA regulations by the Emergency Price Control Act of 1942, as amended. 70a

The exclusive judicial review 71 provided for the determination of the validity of regulations and orders of the OPS under Title IV relating to price controls is by way of appeal to the Emergency Court of Appeals. There are two avenues whereby this judicial review may be obtained. The first 72 is through a complaint filed with the Emergency Court of Appeals by any person who is aggrieved by the denial or partial denial of his protest as heretofore described. Section 408(a) 73 of the Defense Production Act sets forth the details of this procedure and there need be no elaborate discussion of it at this point. The other avenue of judicial review is provided by Section 408(e) of the Defense Production Act of 1950, as amended. 74 Whenever in the course of compliance proceedings, whether criminal or civil, a person requests leave to file a petition with the Emergency Court of Appeals setting forth objections to the validity of any provision of any regulation or order which the defendant is alleged to have violated, or conspired to violate, the court in which such compliance proceeding is pending shall grant the relief if it finds that the request is made in good faith and with respect to which it finds there is reasonable and substantial excuse for the defendant's failure to present such objections in a protest filed in accordance with other sections. Upon such findings the court will stay the compliance proceedings and they shall be held in abeyance until the review proceeding in the Emergency Court of Appeals has been concluded.

If the compliance proceedings are criminal in nature, this motion may be made within thirty days after arraignment or such additional time as the court may allow for good cause shown. In both criminal and civil

interpretation of a provision of any regulation or order (prior to any revocation or modification of such an interpretation, or to any suspending thereof by regulation, order or amendment) shall constitute action in good faith pursuant to the provision of the regulation or order to which such official interpretation relates.”

70. This would seem to prevent any civil action by way of injunctive procedure under 50 U.S.C. App. § 2109(a) and also any civil action for damages under 50 U.S.C. App. § 2109(c) because of the following statutory language: “The President may not institute any action under this subsection on behalf of the United States (1) if the violation arose because of the person selling the material or service acted upon and in accordance with the written advice and instructions of the President, or any official authorized to act for him.”

It is reasonable to consider that an official interpretation issued by a counsel authorized to issue such an interpretation under the appropriate delegation of authority would be the written advice of an official as set forth in the foregoing quotation.

71. The validity of the exclusive judicial review methods provided by the EPCA of 1942, as amended, was sustained in two leading Supreme Court decisions, Yakus v. United States, 321 U.S. 414 (1944) and Bowles v. Willingham, 321 U.S. 503 (1944).
73. Ibid.
74. Id. § 2108(e).
proceedings the motion may be allowed within five days after judgment; however, in civil proceedings a stay may be granted only after judgment and upon application made within five days after judgment. Upon the filing of the complaint the Emergency Court of Appeals has exclusive jurisdiction to set aside the regulation or order in whole or in part or to dismiss the complaint or remand the proceedings, subject, however, to the power of the President or his delegates to amend or rescind the regulation or order at any time, notwithstanding the pendency of the complaint. The Emergency Court of Appeals may not enjoin or set aside a regulation or order in whole or in part unless the complaint establishes to its satisfaction that the regulation or order is not in accordance with law or is arbitrary or capricious. The Emergency Court of Appeals has the powers of a District Court with respect to the jurisdiction conferred, except it has no power to issue a temporary restraining order or interlocutory decree sustaining or restraining in any part the effectiveness of any regulation or order relating to price controls.

This provision for exclusive jurisdiction to hear complaints in regard to the validity of the regulations or orders in the Emergency Court of Appeals, with a provision for review of its judgments and orders by the Supreme Court of the United States, is accompanied by a jurisdictional limitation which expressly prohibits any other courts exercising jurisdiction to consider the validity of any price control regulations or orders issued under the authority of the Defense Production Act of 1950, as amended.

Having thusly confined judicial review of OPS regulations to a single court, there cannot be the inconsistency of a regulation being held valid in one federal district and invalid elsewhere. It is obvious that such inconsistency of decisions would make administration of the price stabilization program impossible.

75. It is imperative that any objections which are sought against the regulation or order which are relied upon be set forth by the complainant in the protest or such evidence contained in the transcript. If leave is requested to introduce additional evidence and the court determines that such evidence should be admitted, the court will order the evidence to be presented to the President or his delegates. The President on occasion may request the court to receive the evidence.

76. Furthermore, the effectiveness of the judgment of the court enjoining or setting aside any such regulation or order is postponed for the expiration of 30 days from the entry thereof, provided that if a petition for a writ of certiorari is filed in the Supreme Court within the 30 day period, the effectiveness of the judgment is postponed until an order of the Supreme Court denying the petition becomes final or until such other disposition by the Supreme Court.

This limitation upon the power of the Emergency Court of Appeals is deemed necessary in order to prevent an unwarranted interference with price stabilization.

77. 50 U.S.C. App. § 2108(d) contains the following jurisdictional language: "The Emergency Court of Appeals, and the Supreme Court upon review of judgments and orders of the Emergency Court of Appeals, shall have exclusive jurisdiction to determine the validity of any regulation or order relating to price controls issued under this title and of any provision of any such regulation or order. Except as provided in this section, no court, Federal, State, or Territorial, shall have jurisdiction or power to consider the validity of any such regulation or order relating to price controls, or to stay, restrain or enjoin or set aside, in whole or part, any provision of this title authorizing the issuance of such regulations or orders, or any provision of any such regulation or order, or to restrain or enjoin enforcement of any such provision."
program unworkable and seriously impair the orderly marketing and distribution of merchandise and the sale of services. Exclusive review also greatly simplifies enforcement litigation because the validity of the regulation cannot be an issue in the enforcement action.

Wage Stabilization

Statutory authority for a wage stabilization program is contained in the Defense Production Act, specifically Title IV of the Act relating to wage and price stabilization and Title V of the Act relating to the settlement of labor disputes. The functions conferred upon the President in Title IV are delegated to the Economic Stabilization Administrator and subdelegated to the Wage Stabilization Board by him and jurisdiction over labor disputes threatening an interruption of work affecting the national interest is delegated to the Board by the President in Executive Order 10233. Wage stabilization under the Defense Production Act of 1950 began with a rigid freeze of all wages and salaries on January 25, 1951, which accompanied a freeze of most prices announced by the Office of Price Stabilization on the same day in the form of the now famous General Ceiling Price Regulation. This freeze was a temporary measure, pending the development of a wage policy. In the next six months the Wage Stabilization Board spent most of its time alleviating the situation created by the general wage freeze. By the late summer of 1951, the Wage Stabilization Board had developed what might be called a balanced program designed to take care of past inequities and to provide for future requirements.

On May 10, 1951, the Economic Stabilization Agency issued General Order No. 8, establishing the Salary Stabilization Board. With a few exceptions the persons who work for or pay a wage are subject to wage stabilization regulations. Administrators, executives and professionals, except those represented by labor unions who come under the Wage Stabilization Board, are subject to regulations of the Salary Stabilization Board. Wage stabilization control has been completed by the creation of the Railroad and Airline Wage Board. This agency, authorized by the


79. The views of the writer expressed in connection with the portion of this article dealing with the Office of Price Stabilization are all the personal observations and judgments of the writer, and no statement made in this article should be considered in any respect the presentation of any official position of any agency discussed herein.

80. Exec. Order No. 10161, § 401, 15 Fed. Reg. 6105 (1950). At this point the writer wishes to acknowledge the helpful correspondence with Mr. Isaac N. Gröner, Chief Counsel, WSB.


The Defense Production Act of 1950, as amended, was activated by General Order No. 7, revised, issued by the Economic Stabilization Administrator on September 27, 1951.

The organizational patterns of these three agencies vary widely. The Wage Stabilization Board is centralized in Washington and is made up of eighteen members; six members representing the public, six industry and six labor. They are appointed by the President. The chairman and vice-chairman are appointed from the ranks of the public members. In addition, there are fourteen regional boards, each of which has twelve members equally divided among the public, industry and labor. These members are appointed by the national board. This is a system of bipartisanism with participation by equals in solving national problems. Under this system each of the three sides presents its views on a particular issue or policy and conclusions are reached through discussion and persuasion. The participation with equal authority by the three groups is considered desirable in gaining acceptance of wage stabilization policy and insuring compliance with decisions. In addition to the regional offices, the Wage and Hour Division of the Department of Labor, through its seventy-six local offices, acts as field agent for the Board in receiving petitions, answering inquiries and distributing interpretations.

The Salary Stabilization Board is centralized in Washington and it operates in conjunction with the Office of Salary Stabilization. The Office of Salary Stabilization plans to open fourteen field offices in cities which correspond very generally to the cities in which the Wage Stabilization Board has regional offices. In addition to the distribution of regulations, orders and interpretations, the staffs of these field offices will assist businessmen from an information standpoint and will receive petitions. At the present time copies of all general salary stabilization regulations, salary orders and interpretations may be obtained from the seventy-six odd local offices of the Wage and Hour Division of the Department of Labor. It is understood that these offices will continue this function, even after the opening of the contemplated fourteen field offices.

The Railroad and Airline Wage Board is centralized in Washington and has a small staff, and no regional offices are contemplated. Its jurisdiction is limited to employees subject to the provisions of the Railway Labor Act as amended.

Each of these three administrative organizations is authorized to issue rules and regulations within the spheres of activity designated for it by the various general orders of the Economic Stabilization Administrator.

The Defense Production Act sets forth the standards governing these various boards in the exercise of their administrative-legislative authority.83 In exercising its powers, each agency must take into consideration the

purpose of Congress which is, in the field of Wage Stabilization: (1) To prevent an inflationary spiral resulting from uncontrolled pay increases; (2) To promote industrial stability and preserve collective bargaining to the fullest possible extent; (3) To foster maximum defense production; (4) To correct and prevent hardships and inequities. The statute is clear on the latter point, in that it prohibits increases in wages, salaries and other compensation which would require increases in the price ceilings and impose hardships and inequities on sellers operating under price ceilings. Other limitations on wage administrative regulations include the general stabilization standard of the period from May 24, 1950, to June 24, 1950, inclusive, and also the requirement that no action be taken under the authority of Title IV which is inconsistent with the provisions of the Fair Labor Standards Act of 1938, the Labor Management Relations Act of 1947, or any other law of the United States or any state, the District of Columbia or any territorial possession.\textsuperscript{84}

The Wage Stabilization Board has issued a considerable number of regulations designed to make the wage stabilization policy as self-administering as possible. For example, General Wage Regulation 6 permits a 10 per cent increase in wages over the level of January 15, 1950, without prior approval of the Board. Other general regulations deal with cost of living increases, merit and length of service increases, new plants or enterprises, tangible wage adjustments, productivity increases, employee bonuses and incentive and piece rates. Certain special problems with reference to agriculture are dealt with in General Wage Regulation 11, and General Wage Regulation 12 deals with a construction industry stabilization commission. Many of these regulations establish certain definite limits within which wage adjustments may be made without prior Board approval. Still other regulations require approval of wage adjustments upon satisfactory proof of specific facts required by the terms of the regulations and rulings. Wage adjustments falling within these regulations are considered on their individual merit by the Wage Stabilization Board on a case-by-case basis.

The Wage Stabilization Board has issued a regulation known as the General Wage Procedural Regulation,\textsuperscript{85} which covers administrative practice before it in its various phases. This procedural regulation provides methods for handling three different types of administrative actions. They are namely, rulings, petitions and reports. By and large, all reports and all requests for rulings and petitions are filed with the Wage and Hour Office which serves the area in which the petitioner is located.\textsuperscript{86} Requests for

\textsuperscript{86} Section 4.2 of the General Wage Procedural Regulation provides for those instances in which the petition, report or request must be filed with the Executive Director of the National Board, or with the Federal Agencies Division of the National Board.
rulings may be made to the Wage and Hour Office which is nearest to
the applicant's principal place of business. The Wage and Hour Office is
required to make a ruling promptly and transmit the ruling to the party
making the request and to other persons directly affected by the ruling.

Petitioners' reports or requests are filed for rulings by the employer,
where he certifies that there is no union; however, where there is a union
the petitioner's report is made jointly by the employer and the union. The
Wage and Hour Office with which such a petition is filed inspects it
for completeness and transmits it, if complete, to the appropriate board
agency of the regional office if it has jurisdiction, otherwise to the national
office or any division thereof. Any decision issued by a board agency to
which the petitioner's report is referred shall be final, unless reviewed and
modified by the national board on its own motion, or unless a petition for
review is filed in accordance with the General Wage Procedural Regulation.

The emphasis of the wage stabilization program is on compliance
rather than punishment; however, important sanctions are imposed by
the Defense Production Act, and no employer shall pay and no employee
shall receive any wage, salary or other compensation in contravention of
any regulation or order promulgated by the President. The President or
his delegatee is also authorized to describe the extent to which wage, salary
or compensation payment made in contravention of any regulation or
order shall be disregarded by the executive departments and other govern-
mental agencies in determining the cost or expenses of an employer for
the purposes of any other law or regulation. This is particularly important
in taxation matters. Any willful violation of any provision of Section 405,
namely, any violation of a wage, salary or compensation regulation or
order, constitutes a misdemeanor, subject to a fine of not more than
$10,000 or to imprisonment of not more than one year or both. The Act
also makes provision for referring any case in which it is believed that any
person is liable to punishment to the attorney-general with a recommenda-
tion of the appropriate procedures.

Under the General Wage Procedural Regulation whenever, in the
judgment of the regional counsel or chief counsel, a person has violated
Section 405 of the Act, he may recommend that appropriate action be taken
against such person under Section 409(a) or (b). Thus enforcement pro-
cedure in wage cases, as far as injunctions or criminal prosecutions are
concerned, is under the ultimate control of the Department of Justice as
is the case in price violations.

In addition to the statutory penalties for violations of wage regulations,
the Wage Stabilization Board has set up regional enforcement commissions.
This administrative hearing procedure is set up to hear complaints in con-

89. 16 Fed. Reg. 10018, § 5.9 (1951).
formity with the General Wage Procedural Regulation. Thus in any case where the regional counsel believes that an employee is paid wages, salaries or other compensations in contravention of the Act and a hearing should be held in the matter he issues a complaint and notice of hearing in which he directs the employer to appear at a hearing before the regional enforcement commission or before a panel or hearing officer designated by it. Such complaint and notice of hearing contains a concise statement of the facts alleged to constitute a violation of the Act or regulation, and a statement advising the employer that at the hearing he may be represented by counsel and will be given full opportunity to present testimony and evidence, and to examine and cross-examine the witnesses on all matters relating to his allocations. No answer is required to such complaint; however, the employer may, if so desired, file an answer with the Regional counsel. After a hearing before a panel or hearing officer, the panel or hearing officer shall make a proposed findings and this determination shall be filed with the regional enforcement commission. If this procedure is followed, within fourteen days after mailing of the proposed findings the parties may submit to the regional enforcement commission written comments or objections. The findings and determinations of the Regional Enforcement Commission are final unless it directs a rehearing. The findings and determinations of this Commission are required to be in writing showing the names of the members of the commission participating in the decision, and any dissent from the majority shall be recorded on the findings or the determination. If, upon the entire record of the case, the regional enforcement commission finds that any wage, salary or other compensation payment has been made in contravention of the Act, it shall determine that the entire amount of such payment be disregarded and disallowed by any executive department of any other agency of the government for the purpose of calculating deductions under the revenue laws of the United States.

While such hearings are normally held before the panel or hearing officer or the regional enforcement commission, there is provision for a hearing in appropriate cases before the National Enforcement Commission. In such cases the notice of hearing is issued by the chief counsel and the procedure shall be consistent with that in hearings before regional enforcement commissions.

Under the General Wage Procedural Regulation any person dissatisfied with a ruling of a wage and hour office, may appeal the ruling within fourteen days after the mailing of the ruling, unless the time of filing has been extended by the wage and hour office. The wage and hour office, upon receipt of an appeal, may upon its own motion reconsider the case. If its decision is changed on rehearing, it shall be subject to appeal as if it

91. 16 Fed. Reg. 10018, § 4.3(c) (1951).
EMERGENCY DEFENSE AGENCIES

were an original ruling. If the ruling is not changed or modified, it transmits the entire record to the regional counsel for review. The regional counsel decides the appeal upon the basis of the record before the wage and hour office and such other evidence or data as he may require. The decision of the regional counsel shall be final for the purpose of the review or request for ruling, but this does not in any way affect the right of any party to file a petition for approval of a proposed adjustment in wage or salary, or any other compensation. The decision of the Board on any such petition shall not be affected by the ruling. The regional counsel, subject to the supervision of the chief counsel, may on his own motion review, reverse or modify any ruling.

A decision of any regional board, or duly constituted commission established by the national office, on a petition may be reviewed and modified by the national board on its own motion or upon petition for review filed in accordance with Section 4.5 of the General Wage Procedural Regulation. A petition for review may be filed by any party affected by the decision within fourteen days after the Board agency has mailed its decision, unless the time for filing the petition has been extended by the Board agency. It is incumbent upon the petitioner to demonstrate that on the facts submitted to the Board agency the decision contravenes established stabilization regulations or policies, or presents a novel case of such importance to warrant action by the national Board. The Board agency, upon review of the petition for review, may reconsider the case; if the decision is changed, a petition for review will treat the new decision as if it were the original decision. If the decision is not changed on rehearing, the Board agency must transmit the entire record of the case to the national Board for review. The national Board will make its decision upon a petition for review upon the basis of the record before the Board agency and such further evidence and data as the national Board may require. The national Board's function is exercised by the Review and Appeals Committee. The decision of this committee shall be final when approved by the national Board. When the national Board has issued an original decision, a petition for reconsideration may be filed with the national Board.92

In the case of the decisions by a Regional Enforcement Commission, the General Wage Procedural Regulation93 authorizes both the employer and regional counsel to appeal to the National Enforcement Commission for review of its findings and determination. Like the other appeals, this appeal must be made within fourteen days of the date of the mailing to the parties of the findings of the determination. A petition for review must state in detail the objections to the findings and determinations or other

92. This petition should be filed under the procedure set forth in paragraphs (c) and (d) of § 4.5 of the General Wage Procedural Regulation.
portion of the record or transcript of the proceedings upon which reliance is placed. The entire record in the case is transferred to the National Enforcement Division. Either party is entitled to file comments on the petition. The National Enforcement Commission will render its decision upon the entire record of the case, and under special circumstances the National Enforcement Commission may permit further oral or written argument of proof. The national body may affirm, reverse or modify the findings or the determinations of any part or either and send the case back to the Regional Enforcement Commission for appropriate action. In the case of petitions heard before the National Enforcement Commission, the findings and determinations of that body are final.

Finally, the final decision of a Regional Enforcement Commission or the National Enforcement Commission, as the case may be, are transmitted or certified to the appropriate governmental agency or agencies. The determination in such final decisions is conclusive for the purposes stated therein, and the executive departments and other agencies of the Government which received such certification must disregard and disallow the amounts thus certified. Also, the National Enforcement Commission may recommend to any executive department or any other agency responsible for the issuance and granting of priorities and materials allocations, that such department or agency withhold priority assistance in the allocation of materials to the person who has paid wages, salaries or other compensation in contravention of the Act.

The Salary Stabilization Board has not yet issued its general salary stabilization procedural regulation, however one is presently under consideration.94 When this agency issues a procedural regulation, it is likely to be a somewhat modified pattern of that already issued by the Wage Stabilization Board.

It is important to make a distinction between the Salary Stabilization Board and the Office of Salary Stabilization. The Board, under its authority to determine substantive policies, makes decisions as to the scope and content of regulations of general applicability. The Office of Salary Stabilization,95 however, decides particular cases arising under the statute or the regulations promulgated by the Salary Board. Decisions of the Salary Board are arrived at after thorough consideration by the Board members of questions of policy after the evidence on such matters has been fully briefed and presented to the Board by the staff of the office. The experience of the office in handling individual cases often indicates to the Board the

94. A great deal of assistance in evaluating the work of the Salary Stabilization Board and the Office of Salary Stabilization has been reported by personal correspondence with Mr. V. Henry Rothschild, Vice Chairman of the Salary Stabilization Board and formerly its Chief Counsel.

95. In a classification of function, it would appear that the Salary Stabilization Board falls within the classification of rule-making, whereas the functions of the Office of Salary Stabilization constitute by and large the issuance of orders in the sense that their decision is limited to facts of a particular case.
need of new or changed policies. In other cases, suggestions for new or changed policies comes from affected members of the Board. In all instances the Board consults with representatives of employer groups prior to any major policy promulgation. The Office of Salary Stabilization in reaching its decisions on cases before it applies to those cases the provisions of the regulations wherever applicable and, in those cases not encompassed within the regulations, such standards or criteria as may be laid down by the Board for treatment of individual applications not covered by general regulations.

The Railroad and Airline Wage Board has issued one regulation.\(^\text{96}\) Under this regulation all reports and petitions required to be filed under regulations and orders previously issued by the Wage Stabilization Board are filed with the Board in Washington. The primary function of the Board is to consider and rule upon petitions for wage adjustments which are submitted jointly by carriers and representatives of their employees and, in cases where the employees are not represented by carriers alone. Jurisdiction extends only to employees subject to the provisions of the Railway Labor Act, as amended. There is no procedure for appearance by a petitioner before the Board. The petition is processed upon the basis of the facts submitted. Very informal proceedings are invoked to obtain additional information if necessary. There are no rules of practice or procedure; however, all petitions and requests for interpretations or any other inquiries are to be directed to the Board in Washington, which renders two kinds of decisions: rulings on petitions for wage adjustments and the interpretations of its regulations. The function of the Board is confined to the issuance of regulations. The chairman, under Section 5 of General Order No. 8,\(^\text{97}\) Revision, makes rulings on petitions for wage adjustments which are issued in letter form and signed by the chairman, who has sole authority to make such rulings. If the petition is denied, the denial is sent directly from the Board to the petitioner, or if the petition is approved the ruling of the chairman is subject to the approval of the Economic Stabilization Administrator. The ruling, signed by the chairman, is sent to the Administrator's office and after the Administrator indicates his approval thereon, is sent to the petitioning parties.

The second type of decision is also made by the chairman, wherein no approval by the Administrator is necessary. These are interpretations or requests for rulings as to whether a proposed wage adjustment is permissible under one of the outstanding regulations without specific prior approval by the Board. These rulings are also in form of a letter, and are

\(^{96}\) This regulation is known as General Railroad and Airline Stabilization Regulation 1, 16 Fed. Reg. 12196 (1951).

specifically based upon the presumption that the facts submitted therein are correct.  

As far as the Wage Stabilization Board is concerned, it may be significant that the Defense Production Act confines judicial review to action taken under Title IV, to denials of protest files relative to regulations or orders relating to price control under that Title, or to proceedings filed subsequent to price control compliance proceedings instituted against a petitioner through criminal or civil proceedings. The legislative history surrounding the enactment of the Defense Production Act of 1950, is not clearly indicative of the congressional intention. There are some statements which indicate that judicial review should not be permitted, but the statute is completely silent on the point. One experienced writer and expert has suggested, in view of World War II experience, that the question of administrative finality may never arise. If it does occur, it is probable that a limited review on substantive questions of law might be permitted by construing the Defense Production Act as not precluding all review. In any event it would seem that such judicial review as may exist would be confined to instances where a court of equity, having jurisdiction of the parties, might grant injunctive relief upon the showing of arbitrary or capricious action. This might take place either in a suit on behalf of a supposed aggrieved party, or in enforcement proceedings brought by the Department of Justice pursuant to Section 409(a) of the Defense Production Act. Judicial review would apparently be available to the defense in a criminal proceeding instituted to enforce the stabilization program. It is anticipated that the major penalty for violation of Wage and Salary Stabilization regulations will be that of tax disallowance with respect to the taxpayer, who has been found in violation. In certain cases it seems appropriate that a taxpayer who feels that the procedure of the particular wage stabilization body was unfair or arbitrary could secure a judicial review and appropriate relief in the tax court in proceedings relative to the disallowance of the over-ceiling wage payments, or in the event the taxpayer elects to pay the deficiency arising from the disallowance and test the action by suit to recover a refund, judicial review would be appropriate in the federal district courts.

The Office of Rent Stabilization

The basic authority for the operation of the Office of Rent Stabilization is the Housing and Rent Act of 1947, as amended.

The rent stabilization program is administered by the Director of

98. A great deal of information concerning the activities of the Railway and Airline Wage Board was supplied by personal letter from Mr. Nelson N. Bortz, Chairman, Railway and Airline Wage Board.

99. 96 CONG. REC. 12332, 12686, 12712 (1950).

100. 96 CONG. REC. 12685, 12686 (1950).

Rent Stabilization in Washington with a national organization, consisting of the office of General Manager and the following divisions: Advisory Boards, Public Relations, Legal and Administrative. The field organization consists of seven regional offices and an area rent office in each defense-rental area, of which there are about 270 in the continental United States. In the local defense-rental area there is an area rent director and an administrative and legal staff and probably a local advisory board appointed by the director upon recommendations made by the governor or as otherwise provided by Section 204(c) of the Housing and Rent Act of 1947, as amended.

Under this statute there is a very definite statement of congressional policy which reads as follows:

(a) The Congress reaffirms the declaration in the Price Control Extension Act of 1946, that unnecessary or unduly prolonged controls of rents would be inconsistent with the return of peacetime economy, which would tend to prevent the attainment of the goals therein declared.

(b) Congress, therefore declares that it is its purpose to terminate at the earliest practical date all federal restrictions on rents on housing accommodations. At the same time Congress recognizes that an emergency exists and that for the prevention of inflation and for the achievement of reasonable stability in the general level of rents during the transition period, as well as the attainment of other statutory objectives of the above named Act, it is necessary for a limited time to impose certain restrictions upon rents charged for rental of housing accommodations in defense-rental areas. Such restrictions should be administered with a view to prompt adjustments, where owners of rental housing accommodations are suffering hardships because of the inadequacies of the maximum rents applicable to their housing accommodations, and under procedures designed to minimize delay in the granting of necessary adjustments, which, insofar as practical, shall be made by local boards with the minimum control by any central agency.

(c) To the end that these policies may be effectively carried out with the least possible impact on the economy pending complete decontrol, the provisions of this title are enacted.

Under the Maximum Rent Act the President is directed to make, by regulation or order, such individual and general adjustments in maximum rents in any defense-rental area or any portion thereof, with respect to housing accommodations or any class of housing accommodations within any such area or portion, as may be necessary to remove hardship or correct other inequities or further to carry out the purposes and provisions of the title. The President and the local boards are to observe these principles

102. Regional offices are located at Boston, Philadelphia, Cleveland, Atlanta, Chicago, Dallas and San Francisco.
and maintain maximum rents for controlled housing, insofar as practical, at levels which will yield to landlords a fair net operating income from such housing accommodations. As standards to determine whether maximum rents for controlled housing accommodations yield a fair net operating income from such housing accommodations, due consideration must be given to the following, among other relevant factors: (a) increase of property taxes; (b) unavoidable increase in operating and maintenance expenses; (c) major capital improvement of the housing accommodations, as distinguished from ordinary repair replacement and maintenance; (d) increases or decreases in living space, service, furniture, furnishings or equipment and (e) substantial deterioration of the housing accommodation other than ordinary wear and tear, or failure to perform ordinary repair replacement on maintenance. The act calls for the creation of an officer to advise with tenants and small landlords in each defense-rental area and also for the creation of defense-rental area local advisory boards. The President upon recommendation of the local advisory board, or upon his own initiative, whenever in his judgment such action is necessary or proper in order to effectuate the purpose of Title II, may by regulation or order establish for the first time maximum rents for any or all controlled housing accommodations in any defense-rental areas which are decontrolled by federal administrative action on or after the date of the enactment of the Housing Act of 1949. The act establishes policies with reference to state laws establishing adequate systems of rent control and governing the recontrol of such areas.\textsuperscript{105}

The Congress in 1951\textsuperscript{106} made provision for the establishment of maximum rents by the President on the recommendation of state and local authorities and the extension of control to all housing accommodations without exception in any area certified jointly by the Secretary of Defense and the Director of Defense Mobilization to be a critical defense housing area and for the adjustment of maximum rents in areas under control on June 30, 1947, to compensate for increased cost and prices and for major improvements.

These and other policies concerning the removal, initiation and reestablishment of rent control involve factors other than the discretion of the Office of Rent Stabilization, and their discussion is not feasible in this article.

The only activity of the Office of Rent Stabilization discussed in this article is the administration of the rental provisions of the Housing and Rent Act of 1947, as amended. As previously indicated, the decontrol,

\textsuperscript{105} Under 50 U.S.C. App. § 1894(n) "No maximum rents may be established in subsection (1) for housing accommodation in any State where rent control is in effect, unless the rent component of the Consumers' Index of the Bureau of Labor Statistics for such State or locality has increased more than the United States average of the rent components of such index during the last six months for which such index is available immediately preceding the establishment of such maximum rents."

recontrol and extension of maximum rent provisions to new defense-rental areas depend largely on outside decisions authorized and reached under the provisions of the Act.\textsuperscript{107}

Once a decision has been made as to whether a particular area is or should be a defense-rental area, that territory becomes subject to the general regulations of the ORS. These regulations are of two types: substantive and procedural.

The basic substantive regulation\textsuperscript{108} takes the form of a general regulation, applicable to certain housing accommodations within each defense-rental area listed. The regulation contains basic provisions governing maximum rents and provisions for adjustment, removal of tenants, registration of landlords, evasion and enforcement and a general statement as to the procedure in filing landlords' petitions and tenants' applications with the area rent office having jurisdiction.

The general regulation just discussed applies to the ordinary defense-rental area. However, in those cases where the Secretary of Defense and the Director of Defense Mobilization jointly designate an area as a critical defense housing area, it is mandatory under certain conditions to establish such maximum rents\textsuperscript{109} for any housing accommodations in the defense-rental area not then subject to rent control as will be fair and equitable in the judgment of the President. Thus, in a critical defense housing area all housing accommodations in the area must be covered without exception.\textsuperscript{110}

The basic procedural regulations are concerned with procedures before the Office of Rent Stabilization Board.\textsuperscript{111}

The Rent Act makes it unlawful to demand, accept, receive or retain any rent for controlled housing accommodations in excess of the maximum rent or to do any act in violation of the rent law or any regulation, order or requirement or to offer, solicit, attempt or agree to do any of the prohibited things. It is likewise unlawful for any person to evict, remove or exclude, or cause to be evicted, removed or excluded, any tenant from any controlled housing accommodations in any manner or on any grounds

\textsuperscript{107} See 50 U.S.C. App. \S 1894(c) (n) (Supp. 1951).

\textsuperscript{108} This basic regulation is entitled Rent Regulation No. 1, Housing, including Schedules A and B, issued Dec. 19, 1951, which except for the provisions contained in Schedule B, applies to each of the defense-rental areas and to each of the portions of a defense-rental area which is listed in Schedule A, except as otherwise provided in Sections 36-58. 16 Fed. Reg. 12879 (1951).


\textsuperscript{110} Under this requirement regulations have been issued as applicable to such areas which apply to new construction and conversions, hotels, tourist homes, trailers, trailer spaces, motor courts and non-housekeeping, furnished rooms. See Rent Regulation 2, 16 Fed. Reg. 13133 (1951), applying to rooming houses and other establishments, and Rent Regulation No. 3, 16 Fed. Reg. 9658 (1951), relative to hotels.

other than that provided by the Act or some regulation, order or require-
ment. It is unlawful for any person to remove or attempt to remove from
any controlled housing accommodations the tenant or occupants therefor
or to refuse to renew the lease or agreement because the tenant or occupant
has taken or proposes to take any action under procedures authorized by
the Act or any regulation, order or requirement thereunder.

The sanctions against such unlawful conduct are civil actions. These
take the form of civil enforcement actions and suits for damages.

The Office of Rent Stabilization may invoke the jurisdiction of any
competent federal, state or territorial court to obtain an order enjoining
violations or threatened violations of any provisions of the Act, or any
regulation or order, request an order enforcing compliance with such
provisions or upon a showing that the person has engaged or is about to
engage in any such acts or practices, a permanent or temporary injunction
or other appropriate order will be granted without bond.\footnote{112}

The Office of Rent Stabilization has still another civil remedy. If the
person who has a cause of action under the statute fails to institute any
action within thirty days of the violation or is otherwise unable to bring
the action, the United States may settle the claim arising out of the
violation or, within one year after the date of the violation, may institute
an action for damages. If the claim is settled or the action instituted, the
person who originally had the cause of action is barred from bringing any
action for the violation.\footnote{113}

The Office of Rent Stabilization has issued Rent Procedural Regula-
tion 2,\footnote{114} revising existing procedures and covering changes in the statute
made by Congress in 1951, involving procedures in applying for adjust-
ments securing administrative review and in procuring interpretations. In
general this procedural regulation deals with three major procedural prob-
lems; Sections 2 to 12 deal with petitions by landlords and applications
by tenants for adjustments of maximum rents, certificates relating to
eviction and other relief provided by the maximum rent regulation. The
regulation, however, does not authorize adjustment in maximum rents or
any other relief, and such applications can be made only if the applicable
maximum rent regulation contains specific provisions for the relief sought.

Under Section 3, landlords’ petitions or tenants’ applications for
adjustment or relief are filed with the area rent director of the Office of
Rent Stabilization for the defense-rental area in which the housing accom-
modations involved are located. The responding parties are afforded a
period of seven days from the date of service of the petitioner’s application
within which to file written objections to the petition or application;

\footnote{113. 61 Stat. 199 (1947), as amended, 65 Stat. 147 (1951), 50 U.S.C. App. § 1895(c) (Supp. 1951).}
\footnote{114. 16 Fed. Reg. 11923 (1951).}
thereupon a period is permitted for filing a written rebuttal to the response.\footnote{115} Upon the commencement of any proceedings, the area rent director makes any investigation of the facts, holds such conferences, requires the filing of any such report and demands evidence in affidavit form or other material relative to the proceeding as he may deem necessary or appropriate. At any appropriate stage of the proceedings the area rent director may dismiss the petition or application, if it fails to substantially comply with the provisions of the maximum rent regulation or the procedural regulation, or grant or deny the petition or application in whole or in part, or issue an order, in proceedings commenced by him. It is a departure from the ordinary case if the area rent director does receive evidence other than in written form. That procedure is deemed to be conductive to a fair and expeditious disposition of proceedings. If an oral hearing is ordered notice is given of such hearing, the time and place of the hearing is stated in the notice, and a presiding officer is appointed with all necessary powers to conduct the hearing.

With the exceptions set forth in Section 9(b) of this Rent Procedural Regulation 2, any landlord affected by any provision of the Maximum Rent Regulation or any landlord or tenant affected by an order issued by an area rent director may file an appeal in the manner set forth, except that in Section 3(b) proceedings a tenant may file an appeal only from an order entered after the tenant's request for revocation or modification.

The party who files an appeal from an order issued by an area rent director is limited to the presentation of briefs, arguments directed to objections raised and evidence presented in prior proceedings. No new evidence or objection may be presented, received or considered on any such appeal, except as authorized by this regulation. An applicant may request leave to present further specific evidence or objections. This request may be granted only upon a showing that the evidence is newly discovered or a showing that prior presentation was not possible. Such evidence should not be submitted without a request and will be received only upon the entry of an order authorizing its introduction into the record.

Appeals are of two types. One type of appeal is directed against the provisions of the Maximum Rent Regulation. This may be filed at any time. The other type is directed against an order and must be filed within twenty days after date of the issuance of the order to be reviewed, unless special circumstances are shown to justify the delay.

Section 21 sets forth form and contents of an appeal. Among the

\footnote{115} Section 9 deals with the action of the Area-Rent Director on his own initiative. Under this section when a proposal to reduce a maximum rent is made on the initiative of the Area-Rent Director and it does not result from the tenant's application, the tenant is not deemed to be a party to the proceeding and notice connected with such action need not be served on the tenant, but a copy of any order reducing the maximum rent should be served upon the tenant as well as upon the landlord.
various things required is a simple, concise statement of objections pertinent to the provision or provisions appealed from, making known the precise grievance of the appellant. Each such objection is to be separately stated and numbered with a clear and concise statement, based upon the record of the proceedings in the area rent office, of all facts supporting each objection, and the supporting facts must be limited to the objections specified. The appellant must make a statement of the relief requested or, if he is seeking a modification of a provision of a Maximum Rent Regulation, he must set forth a statement of the specific changes which he seeks to have made in this provision. The appellant must affirm or swear that the appeal and the documents in the file were prepared in good faith. Where an appeal is directed against a regulation, the person filing the appeal must file an oath or affirmation that the facts are true to the best of his knowledge, information and belief, and he must specify which of the facts are alleged to be known to be true, and which are alleged on information and belief. Filing appeals under Sections 25 and 26 results in the stay of the various orders of which a review is sought.

Sections 39 and 40 deal with the action by the Director of Rent Stabilization upon appeal. Any order dismissing, granting or denying any appeal in whole or in part, or remanding the appeal proceedings to the area-rent director, must be accompanied by a statement of the grounds upon which the decision is based and must set forth any economic data or other facts of which the Director of Rent Stabilization takes official notice. The order and opinion is required to be served on all parties to the appeal proceedings together with any evidence in the record which has not previously been served upon or made available for inspection by a party at the time of the entry of the order.

An important part of the agency's administrative activity is the issuance of interpretations. Rent Procedural Regulation 2 contains provisions for the issuance of interpretations. Under Section 46, the Director of Rent Stabilization or any officer of the Office of Rent Stabilization will regard an interpretation as an official interpretation, only if the interpretation was requested and issued in accordance with Sections 47 and 48, or was issued as an interpretation of general applicability. Official interpretations are applicable only with respect to the particular persons to whom and the particular factual situations regarding which they are given, unless issued as an interpretation of general applicability. Section 47 sets forth the terms and conditions, form and content of requests for such interpretations. They must be written and, in order to be binding, they must be written by one of the following officials: any general counsel, any assistant

116. An interesting feature of this request is set forth in § 47. If the inquirer has previously requested an interpretation on substantially the same facts, his request must so indicate and he is required to state the official office to which this previous request was addressed. This effectively prevents shopping of offices for interpretations.
general counsel; any regional attorney, or any chief rent attorney for a defense rental area office. The interpretations of general applicability may be issued only by Director of Rent Stabilization and the general counsel or assistant general counsel.

The other procedural regulation, the Local Advisory Board Procedural Regulation, is issued to prescribe and explain procedures before local advisory boards and the Office of Rent Stabilization in connection with the removal or establishment of controls and general rent adjustments as provided in Section 204 of the Housing and Rent Act of 1947, as amended. Of special interest are Sections 18 to 28, which deal with petitions for public hearings by local Advisory Boards, the conduct of such hearings and the recommendations by the boards and Sections 29-41, which are concerned with hearing by the Director of Rental Stabilization in the event of a refusal or failure of a local advisory board to hold a public hearing, the determination of such notices and the conduct of public hearings.

It is upon the recommendations of the local boards relative to the decontrol of defense-rental areas and general adjustments that the President must take action under the Housing and Rent Act of 1947, as amended. From this decision relative to the decontrol or adjustment, any representative group of interested parties or the local board may file an appeal to the Emergency Court of Appeals, which is hereafter discussed under the topic of judicial review. There is no similar appeal granted from the administrative decision to recontrol or control for the first time.

While Section 204(e) of the Housing and Rent Act of 1947 provides for limited appeals to the Emergency Court of Appeals on behalf of certain individuals, it should be noted that this judicial review is not generally available to review action taken by the Director of the Rent Stabilization on appeals filed with him, or filed pursuant to Sections 18 to 40 of Rent Procedural Regulation 2.

Under Section 204(e) any representative group of interested parties or a local advisory board may file a complaint concerning the recommendations of the local board with the Emergency Court of Appeals within thirty

119. For example § 18(a) sets forth the qualifications for the filing of a petition as follows: Any representative group of landlords or tenants may file a petition requesting a local advisory board to hold a public hearing with respect to control or decontrol of a defense-rental area, part thereof, or a class of housing accommodations or with respect to general rent adjustments.
days after the day on which the President notifies the local board of his decision, or the date of expiration of such thirty day period, as the case may be.

On local board decisions relative to the removal of any or all maximum rents in an area or any portion thereof with respect to any class of housing in the area or with respect to general adjustments of maximum rents, in any area or any portion of it with respect to any class of housing accommodation in that area, if it is deemed by the local board to be necessary to remove hardship or correct other inequities and further carry out the purposes of the title that the President holds a hearing, such a group may file a complaint with the Emergency Board of Appeals within thirty days after the rendering of the decision, or within thirty days after the expiration of the time in which the decision should be made. A similar right of appeal should be afforded in the event the President makes a decision as to a general adjustment, or is about to remove maximum rents for any class of housing accommodation (other than luxury housing accommodation) under the second sentence of Section 204(c), on his own initiative.

If a complaint is filed with the Emergency Court of Appeals within thirty days after the date of the receipt of the recommendation or decision of the President, that court will make ruling in the case, approving or disapproving the recommendation of the decision of the President; in the event the court determines the recommendation of the decision is not in accordance with the law, or that the evidence in the records before the court including such additional evidence may be brought before the court is not of sufficient weight to justify the recommendation or decision, the court will enter an order disapproving the recommendation and decision. Otherwise, it will enter an order approving the recommended decision and the judgment of the court shall be final. There appears to be no provision for any review of the action of the Emergency Court of Review.

Despite the absence of any statutory provision for judicial review, the agency's administrative action is subject to the usual methods of judicial review by federal courts. The decisions discussed relate to action taken by the Housing Expediter where there was no administrative remedy provided by the statute. In the case of Koepke v. Fontecchio the court held that the owner of a motor court could maintain an action for a declaratory judgment on the question of controls. Also in the case of Jacobs v. Office of Housing Expediter, while recognizing that the Expediter was a necessary and indispensable party in the suit and action could not proceed, the court expressed confidence in the validity of the decision that a declaratory judgment procedure was a satisfactory method of raising the question of the local office's use of a standard in conflict with the maximum rent regulation.

123. 177 F.2d 125 (9th Cir. 1949).
124. 176 F.2d 338 (7th Cir. 1949).
Such judicial review as is available, however, is subject to the requirement that the person seeking judicial review exhausts his administrative remedies. For example, in *Arguelo v. Cross*, the owner of realty who failed to exhaust his administrative remedies had his suit dismissed in which he sought to restrain the Housing Expediter from enforcing rent ceilings on the ground that the realty in question was decontrolled. A similar provision is well expressed in the case of *Smith v. Duldner*. The provision in the rent regulations for administrative appeal by aggrieved landlords from rent director to the regional rent administrator and from them to the Housing Expediter is designed for purposes of affording landlords a plain, adequate and complete remedy at law. Until the landlord has availed himself or herself of such administrative remedy and has been deprived of rights guaranteed under the Constitution, the landlord cannot be granted an injunction against the enforcement of a rent reduction order.

Under these rulings it is apparent that there is a judicial review available in the courts by any of the customary methods, usually by an injunction proceeding or by a declaratory judgment proceeding, providing a person has exhausted his administrative remedies by taking the appeal provided, if any, in the rent regulations, including the general procedural regulation, without success.

**CONCLUSION**

This study of the four emergency defense agencies shows an operation comparable to other government agencies which are subject to the Administrative Procedure Act. The agencies studied display an organization and decentralization of authority which is calculated to render the type of service for which they have been created. The fact that these agencies have been excepted from the provisions of the Administrative Procedure Act has not in the least encouraged their administrators to disregard the fundamentals of fair administrative procedures. Each agency has created procedures to carry out the legislative policy for adjustment and has provided adequate and impartial review procedures to assure that applications will be processed fairly and in accordance with uniform standards. While the exclusive judicial review procedures provided for price control regulations may appear theoretically inconvenient, there is no inconvenience in practice because the Emergency Court of Appeals is quite willing to hold hearings at any place in the United States at the request of a petitioner who is seeking to have a judicial review of his protest. While the statutes are otherwise silent on the question of judicial review, it cannot be assumed that the courts will take the silence of Congress to mean that judicial

126. To the same effect see *May v. Maurer*, 185 F.2d 475 (10th Cir. 1950).
127. 175 F.2d 629 (6th Cir. 1949).
128. Valuable assistance in the preparation of the portion of this article dealing with rent controls was given by Mr. Ed Dupree, General Counsel, and Mr. James Lowery, Regional Attorney of the Office of Rent Stabilization, Region IV.
review is unavailable. In the case of rent legislation the courts have not hesitated to provide a judicial review through the usual methods available for the purpose of reviewing the validity of administrative action. It is fair to assume that the courts will be equally receptive to the review of administrative action through orthodox methods in the case of priorities and wage controls. Finally, one of the distinctive contributions of the emergency agencies is the general availability to the public of an opportunity to secure competent and prompt interpretations of the regulations and orders of these agencies. It is noteworthy that the procedural regulations of these agencies go into the method and manner of issuing interpretations with thoroughness.