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A Lawyers' Guide to OPA

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A Lawyers' Guide to OPA[a]

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Continued from July Issue‡

PROHIBITIONS

Any agreement by a tenant to waive the benefit of any provision of the Regulations is specifically declared void and a landlord is prohibited from collecting more than the maximum rent provided by the Regulations even though he is given such right by contract, lease, or other obligation entered into before or after the effective date of the Regulations. However, a landlord may be permitted to enter into an agreement with his tenant whereby the tenant agrees to pay for the cost of converting a fuel oil heating system to some other system not using fuel oil.[43]

A tenant of housing accommodations is also permitted to pay more than the maximum rent under a lease option agreement executed before October 20, 1942, if he secures authority from the Rent Director for such payments.

The Hotel Regulation prohibits a landlord from requiring a tenant to change his term of occupancy and requires the landlord to offer as many rooms on a monthly basis of occupancy as were rented on that basis during June, 1942. If a tenant is occupying on a daily or weekly

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Footnotes designated by letters have been prepared by Percy S. Morris, Chief Price Attorney, Denver District Office, Frank E. Hickey, Chief Rationing Attorney, Denver District Office, and Charles H. Queary, Chief Rent Attorney, Denver Defense-Rental Area, to indicate changes that have been made since the original article was prepared.

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‡This article is a product of collaboration among the authors, all of the St. Louis bar; however, Mr. Foulis is responsible for that portion ending with Part I, dealing with Price Control; Mr. Hertzman for Part II, dealing with Rent Control; and Mr. Tremayne for Part III, dealing with Rationing.

[43]This provision was inserted by Supplementary Amendment No. 5 to the Housing Regulation, effective September 25, 1942, because of the fuel oil rationing program, and requires that the proposed agreement be submitted for approval to the Rent Director.

basis he may require the landlord to permit him to change to a monthly term unless the landlord is already renting as many rooms on a monthly term as he did during June, 1942. The operator of a tourist camp or similar establishment must also offer accommodations for rent on a monthly basis where they were continuously rented for sixty days or longer since October 1, 1942, on a daily or weekly basis to the same tenant. The Rent Director is authorized to fix the monthly rate in such case, and the monthly rate must be offered to any tenant whether or not he was the tenant occupying the accommodations during the sixty-day period.

MAXIMUM RENTS

The most pronounced difference between the two Regulations exists in the section providing for the method of determining the maximum rents for the accommodations involved.

The Housing Regulation fixes as the maximum rent for accommodations rented on the freeze date, the rent for the accommodations on that date, or if they were not rented on the freeze date but were rented at any time during the two months ending on that date, the last rent during such two-month period. If the accommodations were not rented during these two months or on the freeze date, the maximum rent is the first rent charged when the accommodations were first rented. If they have been changed between the freeze date and the effective date by a major capital improvement from unfurnished to fully furnished or from fully furnished to unfurnished, or by an increase or decrease in the number of units, the maximum rent is the first rent charged after such change. Where the maximum rent has been thus established after the freeze date, the Rent Director is authorized to decrease it if it is found to be higher than the rent generally prevailing in the area for comparable accommodations on the maximum rent date. If, however, the rent has been fixed by a priority rating from the United States, the Rent Director may not decrease such rent, and in this case the maximum rent is the priority rent which has been approved or the first rent charged for the accommodations, whichever is lower.

Prior to March 1, 1943, where a predominant part of housing accommodations was subrented, the landlord could increase the rent, on the termination of the lease or other rental agreement covering such accommodations, to an amount not in excess of the total aggregate maximum rents of the units subrented, provided the accommodations were to be used for similar occupancy. The provision permitting such increase was withdrawn from the Regulation on March 1, 1943, and the rents for such accommodations were frozen at the amount for which they rented on that date.[44] The Rent Director is now authorized to decrease

[44]Supplementary Amendment No. 15 to the Housing Regulation.

the rent which was established in this way if it is higher than the rent generally prevailing in the area for comparable accommodations on March 1, 1942, giving due consideration to any increased occupancy since that date.

The Hotel Regulation establishes different maximum rents for different terms of occupancy and for different numbers of occupants of a particular room, and uses a base period method rather than the freeze date method of establishing such maximum rents. The base period applicable is the thirty-day period prior to the maximum rent date, or if the room was not rented or offered for rent during that period, the thirty-day period when it was first rented or offered for rent after the maximum rent date. The maximum rent for the particular term or number of occupants is the highest rent charged during such base period. However, if a room was actually offered during the base period, but a new term of occupancy is offered or a new number of occupants rents the room, the maximum rent is the first rent so charged for the particular term or number of occupants. This rent, however, may not be more than the maximum rent for similar rooms in the same establishment for the same term and number of occupants.

If the landlord of a rooming house or hotel provided meals during the base period determining the rent and made but a single charge for both room and board, he must make an apportionment of the amount attributable to the room rent, and this apportionment establishes the maximum rent for the room. If a landlord did not require the taking of meals as a condition of renting a room on June 15, 1942, he may now establish such a requirement.

ADJUSTMENTS IN THE MAXIMUM RENT

Increases

The Rent Director is authorized to increase the maximum rent established by the Regulations after due consideration of a petition properly filed under the Regulations. There are eight grounds on which a landlord may petition for an adjustment to increase the maximum rent otherwise allowable under the Housing Regulation and seven grounds under the Hotel Regulation.

A landlord may file such petition where the accommodations were substantially changed by a major capital improvement after the effective date in the Housing Regulation or after the maximum rent date in the Hotel Regulation; or where they were changed in this way prior to the maximum rent date and the rent on such date was fixed by a lease or other rental agreement which was in force at the time of the change. In order to permit an adjustment in such case the major capital improvement must have resulted in a substantial change in the accommodations such as would materially increase the rental value in a normal market where

free bargaining prevailed unaffected by a shortage in housing accommodations.

An adjustment may also be permitted where there has been a substantial increase in the services, furniture, furnishings, and equipment provided with the housing accommodations since the date or order determining the maximum rent. In the Hotel Regulation an adjustment is permitted in such case even though the tenant did not consent to the addition, but the Housing Regulation requires that the addition must have occurred with the consent of the tenant or while the accommodations were vacant, unless the addition or increase was necessary for the preservation or operation of the housing accommodations. The adjustment which is made in the case of a major capital improvement or an increase in services or equipment must be based on the difference in rental value on the maximum rent date by reason of such change or increase.

The landlord may file a petition for adjustment where the rent on the date determining the maximum rent was materially affected by a blood, personal, or other special relationship between the landlord or the tenant, independent and apart from the landlord-tenant relationship, and as a result was substantially lower than the rent generally prevailing in the area for comparable accommodations on the freeze date.

A landlord may also file a petition for an adjustment under either Regulation where the rent on the freeze date was fixed by a written lease, the term of which commenced at least one year prior to the maximum rent date and which required a rent substantially lower than the generally prevailing rent in the area for comparable accommodations on the freeze date, or where the rent was established by a lease or other rental agreement which provided for a substantially higher rent at other periods during the term of such lease or agreement. In the former case an adjustment is permitted because the landlord was not free to bargain within a reasonable time prior to the maximum rent date, and in the latter case relief is afforded in those cases where the tenant was enjoying a concession or short-term reduction on the maximum rent date. In both cases, the adjustment, if made, is on the basis of what comparable accommodations rented for on the maximum rent date.

A seventh ground for adjustment exists where the rent on the maximum rent date was lower because of seasonal demand.[45] The adjustment in such case may provide different rents for different periods of the year.

An eighth ground for adjustment has recently been added to the Housing Regulation in cases where there has been a substantial increase in the subtenants occupying the accommodations since the maximum rent date, or in the number of occupants within the accommodations over and above the normal occupancy for the particular class of accom-

[45]The Housing Regulation, by Supplementary Amendment No. 16, effective March 4, 1943, includes seasonal variations in the rent under this ground.

modations. Any increase in the number of occupants over and above the number contemplated by a specific rental agreement between the landlord and the tenant on the date or order determining the maximum rent may also permit an adjustment under this ground.[46]

Decreases

The Rent Director is authorized to decrease the maximum rent either on his own initiative, or on application of the tenant, where there has been a substantial deterioration or decrease in the minimum services, furniture, furnishings, or equipment provided with the accommodations since the date determining the maximum rent, or where the rent was higher on the maximum rent date or during the base period by reason of a blood, personal or other special relationship between the landlord and the tenant.

In the Housing Regulation a decrease may also be ordered where the rent was established after the maximum rent date and is higher than the rent generally prevailing in the area. Such a decrease is permitted under the Hotel Regulation regardless of when the maximum rent for the room was established. The Housing Regulation also permits a decrease where a lease in effect on the maximum rent date contained a concession or other lower rental period during the term of the lease, but the adjustment in such case is not based upon the concession but upon the rent which was generally prevailing for comparable accommodations on the freeze date. A decrease may be ordered where the rent for housing accommodations was higher by reason of a seasonal demand or variations, or where there has been a substantial decrease in the number of subtenants or other occupants, or where the rent was established prior to March 1, 1943, under the provision in the Housing Regulation prior to that date permitting the landlord to increase the rent where the premises were predominantly occupied by subtenants.

Interim Orders

An order increasing or decreasing the maximum rent is not retroactive, but a provision has been inserted in the Housing Regulation permitting the Rent Director to issue an interim order increasing the maximum rent, subject to refund, in cases where a proper petition is filed clearly justifying the Rent Director to increase the rent after a complete investigation.[47] An interim order is generally entered only in clear cases where there has been an increase in rental value by reason of a major capital improvement, or in the services, furniture, or equipment provided with the accommodations. The Hotel Regulation does not authorize the issuance of interim orders.

Doubtful or Disputed Facts

Both Regulations provide procedure for a determination by the

[46]Supplementary Amendment No. 15 to the Housing Regulation.

[47]Section 5 (f) added by Supplementary Amendment No. 3 to the Housing Regulation on September 17, 1942.

Rent Director of a disputed or doubtful fact which is necessary for a determination of the maximum rent. In such case the Rent Director may proceed on his own initiative to determine the fact, or if he is unable to do so, he is authorized to fix the rent on the basis of the rent which he finds was generally prevailing in the area for comparable accommodations on the maximum rent date.

SERVICES

Both Regulations require that every landlord continue to provide with the accommodations as a minimum, the same essential services, furniture, furnishings, and equipment as those provided on the date determining the maximum rent, and those of a non-essential type must not be substantially less than those provided on that date.[48]

A landlord may not decrease these items below the amount required unless he files a petition requesting permission to decrease the same and an order is entered by the Rent Director granting such permission; or until the accommodations become vacant, or it becomes impossible to provide them. In the last two cases, however, he must file a report within ten days after re-renting the accommodations without the minimum services where the accommodations were vacant, or ten days after the decrease occurs because of the impossibility of continuing them. Where an order is entered by the Rent Director permitting the decrease, the order may also provide for a decrease in the maximum rent to reflect the rental value of the decreased services on the maximum rent date.

EVICTIONS

The sixth section of the Regulations deals with the restrictions on the removal of tenants and, accordingly, this section probably has as important a meaning to lawyers as any other part of the Regulations.

Prior to the effective dates of the Maximum Rent Regulations for the defense-rental areas within the State of Missouri, a landlord could immediately institute eviction proceedings against a tenant whose lease or other rental agreement had expired or otherwise terminated if the tenant failed to surrender possession.[j] The mere holding over by the tenant was ground for this eviction suit. Because of the scarcity of dwelling accommodations due to the war and because the maximum rent

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[48]Prior to Supplementary Amendments 10 and 6a to the Housing and Hotel Regulations respectively, effective December 1, 1942, the landlord was obligated to continue to provide all services of the same type, kind, and quality as those provided on the maximum rent date. In addition to changing this requirement, the amendments provided that where the heat or hot water provided with the accommodations are supplied by fuel oil, the landlord is not required to supply an amount in excess of that which he can supply under the fuel oil rationing program.

[j]Evictions in Colorado, prior to Regulation, are governed by COLO. STAT. ANN. (1935) ch. 70.

clauses of the Regulations could very easily be evaded if evictions were not restricted, the Regulations provide that so long as a tenant pays the rent to which the landlord is entitled *unless* a certificate to evict is issued by the Rent Director, or *unless* one of the grounds specified in section 6[k] of the Regulations is present, in which case no certificate or permission is necessary, no tenant of dwelling accommodations may be evicted even though his lease or other rental agreement has expired. He may, of course, be evicted solely for non-payment of rent. The eviction provisions of the Regulations do not authorize an eviction, of course, unless one is authorized under the local laws.

Under the Regulations a tenant may be evicted in accordance with the requirements of local law where he had a written lease and refused on demand of the landlord to renew it on the same terms except as inconsistent with the Regulations, and for no longer than one year. In such case the landlord must have demanded that the lease be renewed prior to the time of its termination.[49] The length of time prior to such termination when the demand could have been made would depend upon the rent-paying periods in the expiring lease.[50]

A second ground for eviction exists where the tenant unreasonably refuses the landlord access to the housing accommodations for inspection or repair, unless the right to such access is contrary to the provisions of the tenant's lease or rental agreement.

A tenant who has violated a substantial obligation of his tenancy other than an obligation to pay rent may be evicted if he has continued or failed to cure the violation after written notice from the landlord that it cease. Under the same heading, a tenant who is committing or permitting a nuisance or using the accommodations for an immoral or illegal purpose may also be evicted. The standards suggested by the Office of Price Administration in nuisance cases are that the nuisance be of such a nature as would authorize the local court to issue an injunction against its continued maintenance.

A landlord who seeks in good faith to recover possession for the immediate purpose of demolishing or altering the accommodations by a structural change may also evict the tenant provided the plans for such change have been approved by the proper local authorities if such approval is necessary under local law.

These four grounds of eviction are similar in both Regulations. The Housing Regulation also permits a landlord to evict a tenant whose rental agreement has ended if, at that time, the occupants of the accommodations are subtenants of the tenant and the tenant himself is not living in any part of the accommodations.

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[k]Section 6 (a).
[49]Interpretation No. 59.
[50]Interpretation No. 31.

The last ground for eviction under the Housing Regulation permits a landlord who owned the property before October 20, 1942, and who desires in good faith to occupy the property as a dwelling for himself, to evict the tenant, and the Hotel Regulation permits a landlord, who in good faith does not wish to offer the room for rent, to evict the tenant. If the tenant is removed under this paragraph of either Regulation, the landlord must file a written report before he may rent the accommodations again at any time during the six months period following the eviction.

Certificate to Evict

The Rent Director may issue a certificate permitting the landlord to evict the tenant where a ground for eviction does not exist under the Regulation if the landlord shows that evictions of the character sought are not inconsistent with the Regulations or the Emergency Price Control Act of 1942.

The Housing Regulation specifically prohibits the issuance of a certificate to a purchaser who acquired his rights in the accommodations on or after October 20, 1942, unless and until such purchaser has paid at least one-third of the purchase price, the funds for which must not have been borrowed for the purpose. If a certificate is issued in such case the landlord must wait three months from the date of its issuance before proceeding to remove the tenant. The Rent Director may issue a certificate in such cases without requiring that one-third of the purchase price be paid and without requiring the landlord to wait for three months where he finds that a reasonable sale could not be made unless the accommodations were vacant, or that other special hardship would result or that equivalent accommodations are available for rent where the tenant could move without substantial hardship or loss.

Notices

The Housing Regulation requires that every notice given to a tenant to vacate accommodations must state the ground under the Regulation upon which the eviction is sought and a copy of such notice must be given to the Area Office within twenty-four hours after it is given to the tenant. Unless notice has been given to the tenant and to the Area Office at least ten days before the time specified for the removal of the tenant, no eviction may be obtained. The preliminary notice requirements of the Regulation need not be met where the Rent Director has issued a certificate relating to the eviction of the tenant.

In non-payment of rent cases the notice must also state the amount of rent for the accommodations, the amount due and the periods covered. Such notice must be given to the tenant and to the Area Office no less than the length of time prior to the eviction suit as is required under local

law, but in no event less than three days.[51] Since the Missouri Statutes require no prior notice before beginning an eviction suit based upon non-payment of rent, the minimum notice which the Regulation requires in this state is a three-day preliminary notice.

In all cases where an eviction suit is instituted, a notice must be given to the Area Office at the time the suit is begun, stating the ground under the Regulation upon which the suit is based.

The Hotel Regulation does not require that any preliminary notice be served on the tenant or be given to the Area Office, and the Area Office need not be notified of an eviction suit which is based upon non-payment of rent.

Exceptions

The eviction provisions of the Regulations do not apply where the landlord seeks to evict a subtenant of his tenant, unless there is a tenancy relationship between the landlord and such subtenant under local law. Since in most instances no such tenancy relationship exists under Missouri law, the eviction provisions of the Regulation seldom apply in such cases. The eviction sections also do not apply to an occupant of a furnished room located within the residence of the landlord where the landlord does not rent to more than two occupants within his residence.[1]

The Hotel Regulation eviction section does not apply to a tenant occupying a hotel room on a daily or weekly basis or a tenant of a rooming house occupying on a daily basis. It does apply, however, to such tenant if he has requested a weekly or monthly term of occupancy in cases where he is permitted to do so under other provisions of the Regulation.

REGISTRATION

The Regulations required the registration with the Area Office of all housing accommodations rented or offered for rent within forty-five days after the effective date of the Regulation. Property which was not rented prior to such time must be registered within thirty days after it is first rented. Where changes of tenancy occur in accommodations subject to the Housing Regulation the landlord must exhibit his registration statement to the new tenant, who must sign a change of tenancy form which is to be returned to the Area Office. This requirement does not exist in the Hotel Regulation, but persons subject to that Regulation must post their room rental rates on signs in the rooms which are rented or offered for rent.

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[51]Prior to Supplementary Amendment No. 17 to the Housing Regulation, effective March 24, 1943, a ten-day prior notice was required.

[1]The eviction section of the Hotel and Rooming House Regulation does not apply to an occupant of a furnished room or rooms not constituting an apartment located within the residence occupied by the landlord or his immediate family, where such landlord rents to not more than two occupants within such residence.

PROTESTS[52]

Any landlord who has had a petition for adjustment or other relief denied in whole or in part, or who has had an order affecting him entered by the Rent Director on his own initiative, may seek a review of such denial or order by filing an application for a review in triplicate in the Area Office within sixty days after the date of its issuance. The matter will then be reviewed by the Regional Administrator and the decision of the Regional Administrator is the order which is then protestable. A protest from his order is filed with the Secretary in the National Office and is acted upon by the Administrator whose decision is appealable to the Emergency Court of Appeals.

A petition for amendment to the Regulation proposing an amendment of general applicability may be filed at any time by a person subject to the Regulation, and is filed with the National Office in Washington. There is no provision in the Emergency Price Control Act for a review of the Administrator's decision on such petition.

MISCELLANEOUS

There are various provisions in the Regulation applying to accommodations constructed or rented by the United States or rented to the Army or Navy. However, no attempt has been made to discuss the provisions since lawyers generally will not be affected by them.

III

Rationing

The coming of war and rationing finds money playing second fiddle to the ration stamp. This enthronement of the lowly stamp and other ration currency results from a tremendous increase in the demand for goods brought about principally by the needs of our armed forces and our Allies and by a decrease in our supply of goods occasioned by the loss of our sources of supply, as in the case of rubber, the decreases in our available shipping facilities, as in the case of coffee and sugar, and our conversion to war production of manufacturing facilities which has formerly produced such commodities as automobiles and typewriters. The purposes of rationing are essentially threefold: to channel to our armed forces and Allies the goods of victory, to distribute equitably those which remain for civilian consumption according to personal need or to the recipient's importance on the home front, and to relieve pressure for price increases. It will perhaps be of interest to trace the sources of authority by which the Office of Price Administration has rationed essential com-

[52]The present procedure to be followed in filing petitions for a review, protest, or amendment to the Regulation is set forth in Revised Procedural Regulation No. 3, issued January 12, 1943, and effective February 1, 1943.

modities, to describe briefly the regulations and other orders which have been issued thereunder, and to emphasize some of their features which are of most practical interest to lawyers.

SOURCES OF AUTHORITY TO RATION

The act of June 28, 1940, entitled "An Act to Expedite National Defense and for Other Purposes," was amended May 31, 1941,[53] to provide in part as follows: "Whenever the President is satisfied that the fulfillment of requirements for the defense of the United States will result in a shortage in the supply of any material for defense or for private account or for export, the President may allocate such material in such manner and to such extent as he shall deem necessary or appropriate in the public interest and to promote the national defense. * * * The President may exercise any power, authority, or discretion conferred on him by this section, through such department, agency, or officer of the Government as he may direct and in conformity with any rules and regulations which he may prescribe.".

By his Executive Order of August 28, 1941,[54] the President delegated to the Office of Production Management these power thus conferred upon him, and on September 2, 1941,[55] the Office of Production Management sub-delegated said powers to its division of priorities, to be exercised by the Director of Priorities. By Supplementary Order M-15-C,[56] the Director of Priorities, on December 27, 1941, delegated to the Office of Price Administration the authority to regulate the distribution of new tires, casings, and tubes, the distribution of which previously had been frozen by the Office of Production Management. Pursuant to this authority, the Office of Price Administration issued and made effective on December 30, 1941, the Tire Rationing Regulations.[57]

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[53]55 STAT. 236; 41 U. S. C. A. Note preceding sec. No. 1.

[54]Executive Order 8875, 6 F.R. 4483.

[55]OPM Regulation 3; amended 6 F.R. 4865.

[56]6 F.R. 6792; amended 7 F.R. 121, 350, 434, 473, 1009, 1026.

[57]In order to avoid frequent footnoting, we here list and briefly describe the important Rationing Regulations, General Ration Orders, Restriction Orders, and Procedural Regulations.

Rationing Regulations: Tire Rationing Regulation, 7 F.R. 72, effective date Dec. 30, 1941; Ration Order 2 (new passenger automobiles), 7 F.R. 667, Feb. 2, 1942; Revised Tire Rationing Regulations, 7 F.R. 1027, Feb. 19, 1942; Ration Order 2A (new passenger automobiles), 7 F.R. 1542, Mar. 2, 1942; Ration Order 4 (typewriters), 7 F.R. 2003, Mar. 13, 1942; Ration Order 3 (sugar), 7 F.R. 2966, April 20, 1942; Ration Order 5 (temporary gasoline rationing regulation for eastern states), 7 F.R. 3482, May 12, 1942; Ration Order 7 (bicycles), 7 F.R. 3666, May 15, 1942; Revised Ration Order 7 (bicycles), 7 F.R. 5062, July 9, 1942; Ration Order 5A (Gasoline Rationing Regulations for eastern states), 7 F.R. 5225, July 9, 1942; Ration Order 6 (rubber boots and rubber work shoes), 7 F.R. 7749, Sept. 29, 1942; Ration Order 11 (fuel oil), 7 F.R. 8480, Oct. 22, 1942; Ration Order 12 (coffee), 7 F.R. 9710, Nov. 21, 1942; Ration Order 1A (mileage rationing regulations—tires), 7 F.R. 9160, Dec. 1, 1942; Ration Order 5C (mileage rationing regulations—gasoline), 7 F.R. 9135, Dec. 1, 1942; Ration Order 9 (stoves), 7 F.R. 10720, Dec. 19, 1942; Ration Order 4A (typewriters), 7 F.R. 10806, Dec. 28,

By his two Executive Orders of January 16, 1942,[58] and January 24, 1942,[59] the President established the War Production Board, defined its functions and duties, transferred to it the functions of Office of Production Management, and then abolished the Office of Production Management. On January 24, 1942, the War Production Board delegated to the Office of Price Administration by its Directive No. 1[60] the authority "to provide for the equitable rationing of products at the retail level." It was specifically provided that the Office of Price Administration would perform the functions and exercise the power, authority, and discretion conferred upon the President by section 2(a) of the act of June 28, 1940, as amended by the act of May 31, 1941, with respect to the exercise of rationing control over transfers at retail to any person and over transfers by any person to an ultimate consumer. Specifically excluded from the authority granted was control over the acquisition of products by or for the account of certain specified federal agencies including the armed forces and over the acquisition of products for exportation for consumption or use in any foreign country. This Directive likewise authorized the Office of Price Administration "to regulate or prohibit the sale, transfer, or other disposition of products to any retailer who has acted in violation of any rationing regulation or order prescribed by the Office of Price Administration hereunder." Previous actions of the Director of Priorities, including the delegation to the Office of Price Administration of tire rationing authority, were ratified.

1942; Ration Order 17 (shoes), 8 F.R. 1749, Feb. 7, 1943; Ration Order 13 (processed foods), 8 F.R. 1840, Mar. 1, 1943; Ration Order 2B (new passenger automobiles), 8 F.R. 2483, Mar. 6, 1943; Ration Order 16 (meats, fats, fish, and cheeses), 8 F.R. 3591, Mar. 29, 1943.

General Ration Orders: General Ration Order 1 (administrative exceptions), 7 F.R. 8653, effective date Oct. 30, 1942; General Ration Order 2 (records to be kept by institutional users), 7 F.R. 10070, Dec. 1, 1942; General Ration Order 3 (ration banking; banks), 8 F.R. 865, Dec. 27, 1942; General Ration Order 3A (ration banking; depositors), 8 F.R. 1130, Jan. 27, 1943; General Ration Order 3B (ration banking—exempt agencies), 8 F.R. 2665, Mar. 1, 1943; General Ration Order 4 (territorial limitation and Boards' jurisdiction), 8 F.R. 1963, Mar. 16, 1943; General Ration Order 5 (food rationing for institutional users), 8 F.R. 2195, Mar. 1, 1943; General Ration Order 6 (War Ration Book 2), 8 F.R. 2190, Feb. 21, 1943; General Ration Order 7 (method of surrender and deposit of ration stamps and coupons), 8 F.R. 2858, Mar. 5, 1943; General Ration Order 8 (general prohibitions and penalties), 8 F.R. 3783, Apr. 15, 1943.

Restriction Orders: Restriction Order 1 (slaughter of live stock and delivery of meat), 7 F.R. 7839, Oct. 1, 1942; Restriction Order 3 (canned meat and canned fish), 8 F.R. 2214, Feb. 18, 1943; Restriction Order 5 (fats and oils), 8 F.R. 3615, Mar. 22, 1943.

Procedural Regulations: Procedural Regulation 4 (issuance of rationing suspension orders), 8 F.R. 1744, effective date Mar. 1, 1943; Procedural Regulation 9 (uniform appeal procedure under Ration Orders), 7 F.R. 8796, Nov. 9, 1942; Procedural Regulation 12 (replacement of lost, stolen, destroyed, mutilated or wrongfully withheld ration checks or coupon sheets), 8 F.R. 3171, Mar. 29, 1943.

[58]Executive Order 9024, 7 F.R. 329.
[59]Executive Order 9040, 7 F.R. 527.
[60]7 F.R. 562.

Pursuant to Directive No. 1 and to one or more Supplementary Directives of the War Production Board, which contained more detailed authority relative to the commodity to be rationed, and which often extended the rationing authority beyond that granted by Directive No. 1, the Office of Price Administration issued Ration Order No. 2 on the distribution of new passenger automobiles, Revised Tire Rationing Regulations, which superseded the earlier Tire Rationing Regulations and which extended rationing to retreaded and recapped tires and retreading and recapping services, Ration Order No. 2A, which superseded Ration Order No. 2 and Ration Order No. 4, which regulated the distribution of typewriters.

On March 27, 1942, the "Second War Powers Act, 1942"[61] was passed by Congress, which amended section 2(a) of the Act of January 28, 1940, as amended by the Act of May 31, 1941, and which clarified and extended the allocation and priorities powers of the President and improved the means for their enforcement. On April 7, 1942, by Executive Order No. 9125,[62] the President delegated to the War Production Board the additional functions, duties, and powers conferred upon him by Title 3 of the "Second War Powers Act, 1942," specifically authorizing the Chairman of the War Production Board to delegate to the Office of Price Administration such of those functions, powers, and discretion with respect to priorities or rationing as the War Production Board might deem necessary or appropriate for the effective prosecution of the war. All War Production Board Directives and the action taken by the Office of Price Administration thereunder were ratified.

There followed in succession Ration Orders on sugar, gasoline (for the Eastern Seaboard area), bicycles, rubber boots and rubber work shoes, fuel oil, coffee, a new Tire Rationing Regulation, a Gasoline Rationing Regulation for the entire country, a regulation on stoves, a new typewriter regulation, and a rationing order on shoes.

On December 5, 1942, by Executive Order No. 9280,[63] the President delegated to the Secretary of Agriculture the authority "to assume full responsibility for and control over the nation's food program." It was provided that the Secretary of Agriculture, after determining the need and the amount of food available for civilian rationing, should, through the Office of Price Administration, exercise the priorities and allocation power conferred upon him by the Executive Order for civilian rationing, with respect to the sale, transfer, or other disposition of food by any person who sells at retail to any person, the sale, transfer, or other disposition of food by any person to an ultimate consumer, and the sale, transfer, or other disposition of food by any person at such other

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[61] 56 STAT. 176, 50 U. S. C. A. secs. 631-645.
[62] 7 F.R. 2719.
[63] 7 F.R. 10179.

levels of distribution as he might determine. The Secretary of Agriculture, on January 16, 1943, by Food Directive No. 1,[64] ratified the food rationing authority, then possessed by the Office of Price Administration under War Production Board Directives, and extended its authority to "processed foods" which, by definition, included most foods which were preserved by canning, freezing, or drying, except meats and grains. The Office of Price Administration then issued Ration Order No. 13 on processed foods, and later, pursuant to Food Directive No. 1 and additional food directives of the Secretary of Agriculture,[65] issued Ration Order No. 16 on meats, fat, fish, and cheese.

THE RATION ORDERS

In this manner has the force and effect of law been given to rationing regulations which now control hundreds of the commodities most important in the lives of the people of our country. They deal with transportation (tires, new passenger automobiles, gasoline, and bicycles), food (sugar, coffee, processed foods, meats, fats, fish, and cheese), clothing (rubber boots and rubber work shoes, and general wear shoes), and heating (fuel oil and stoves).

These regulations defy any logical and accurate groupings; nor is there one model regulation after which the others are patterned. A lot of pioneering has been done and much of it has followed the trial-and-error method. Consequently, the later regulations frequently have characteristics about them which are not found in the earlier ones. In some respects, more uniformity is constantly being striven for, although complete uniformity is not only impossible but is undesirable. The job to be done dictates, to a large measure, the techniques to be applied, and especially is this true in view of the Office of Price Administration policy to avoid dislocation of trade and consumer practices wherever possible. Some of the commodities rationed, such as meat, sugar, butter, and shoes, are essential to the well-being of nearly everyone. Fortunately, there is enough of these things to go around if they are spread evenly and somewhat more thinly than previously. Consumer registration, therefore, was required, War Ration Books by which these commodities are acquired were issued, and transactions in these commodities from the consumer level to the manufacturer level must be accompanied by transfers of ration stamps or other evidences. With a few minor exceptions, all persons are granted equal privileges in the acquisition of these commodities. Other rationed commodities are still more scarce, are somewhat less essential to the actual existence of people, and are not distributed equally but are allocated in accordance with the applicant's relationship to our war effort. Categories of "eligibility" have been established, and

[64] 8 F.R. 827; revoked Mar. 20, 1943, 8 F.R. 3469.

[65] No. 3, 8 F.R. 2005; No. 4, 8 F.R. 2530; No. 5, 8 F.R. 2251; No. 6, 8 F.R. 3471; No. 7, 8 F.R. 3471.

whether an applicant is able to acquire a rationed commodity, or whether he is able to acquire as much of it as he thinks he will need, depends upon his ability to bring himself within one of the established classifications. Tires, gasoline, automobiles, typewriters, bicycles, rubber boots and rubber work shoes, and other commodities are rationed in this way. The important job of applying the standards of eligibility to the facts of a specific case has been delegated, in the first instance, to the Local War Price and Rationing Boards. If eligibility and need are established to the Board's satisfaction, it will issue a certificate, or certificates, or other ration evidences authorizing the applicant to purchase the rationed commodities requested.

Notwithstanding their many differences, all the Ration Orders have some provisions in common. A regulation will describe its scope of operations, will define the commodity to be rationed and the meaning of the key words used in the regulation, will describe the jurisdiction and authority of the Local War Price and Rationing Boards, will state who may acquire the rationed commodity, how it may be acquired, how much may be obtained, how the rationed commodity may be transferred to the consumer and between the trade, what transfers of said commodity are prohibited and what are permitted, what agencies are exempted from the Regulation or treated in a special manner, what records must be kept, what adjustments and additional rations of the commodity may be obtained, what appeals may be taken from the action of Local Boards and other Office of Price Administration actions, what penalties are provided for the violation of said Order, how the enforcement thereof is to be obtained, and what the effective dates of the Order are. These provisions will appear in almost every Order, although manifested in various forms. In addition, there will appear numerous miscellaneous provisions with special application to the Order at hand and concerning which no generalization can be made.

There must also be included among the regulations several important restriction orders. These Orders are usually issued as temporary stopgaps to "hold the line" against maldistribution or hoarding of scarce commodities until such time as a more or less permanent rationing program can be perfected. Best known of these is Restriction Order No. 1, which became effective October 1, 1942, and was designed to curb the slaughtering and delivery of most meats by those persons and corporations engaged in their slaughter and to channel such meat to the armed forces and to our Allies. On April 1, 1943, much of this Order was superseded by Orders[66] of the Food Distribution Administration of the Department of Agriculture, and what remains of it is now administered by that organization. Restriction Order No. 3 on canned meat and canned fish was issued to prevent the hoarding of those items pending

[66]Food Distribution Orders 26, 27, and 28.

the advent of Ration Order No. 16, which established a system of rationing for such commodities. Restriction Order No. 5 on butter and fats was similarly motivated.

The Orders and Procedures of General Application

There are a number of important orders and procedural regulations having general application to all ration orders. In them an attempt has been made to get together some of the common provisions which would otherwise have to be inserted in each separate Ration Order. The administrative advantage of such practice is obvious.

General Ration Order No. 1 empowers the Deputy Administrator of the Office of Price Administration in charge of rationing to grant exceptions to provisions of the Rationing Regulations where to grant relief "would not defeat or affect the effectiveness or policy of the Ration Order involved." While this power is limited, it does provide a technique whereby the Deputy Administrator can avoid hardship in unusual cases.

General Ration Orders Nos. 3, 3A, and 3B, on "Ration Banking," have recently effected an important change in rationing methods. Heretofore, the billions of ration stamps and coupons which were acquired by the trade from their customers were presented to Local War Price and Rationing Boards for the purpose of redemption in larger denominations of ration currency. This placed upon Local War Price and Rationing Boards a tremendous and unnecessary burden of a purely routine and mechanical kind which they were not staffed or prepared to handle. It was seriously impairing their more important administrative and "judicial" duties. The Ration Banking plan was evolved whereby this burden was transferred to the commercial banks of the country, which already possessed the machinery, facilities, and experience to handle the job. The plan was tested in New York state, where it worked successfully, and is now being operated on a nation-wide basis in connection with the rationing programs on sugar, coffee, processed foods, meats, fats, fish, and cheese, gasoline, and shoes. Under ration banking, ration stamps, coupons, and other evidences which are acquired by persons or businesses required or permitted to open ration bank accounts are deposited in said accounts. Checks may then be drawn by the depositor on these credits when acquiring rationed commodities for his own use or when surrendering ration evidences to the Office of Price Administration. Checks thus drawn are not negotiable but must be deposited by the drawee in his own ration bank account, or, if he has none and is not required to have one, they are redeemed at his Local War Price and Rationing Board.[m] Overdrafts are prohibited except in the case of "certain

[m]By Amendment No. 3 to General Ration Order No. 3A, a person who does not have and is not required to have a Ration Book Account may indorse and negotiate a Ration Check which he receives in much the same manner as a money check, but he must receive what it calls for from the person who gets the check from him.

exempt agencies" and are reported by the participating banks to the Office of Price Administration for enforcement proceedings, if necessary. The certain exempt agencies designated in General Ration Order No. 3B are permitted unlimited overdrafts. The inclusion of these agencies in the plan was for the purpose of facilitating their acquisition of the rationed commodities. Banks which participate in this program are compensated on a cost basis and are rendering a notable service to the rationing program.

General Ration Order No. 5 concerns institutional users of rationed foods, such as hotels, cafes, restaurants, and boarding houses. The first food rationing regulations contained provisions for institutional users within the framework of the regulations. With the coming of processed foods rationing and meats, fats, fish, and cheese rationing, it became apparent that unnecessary complications would result by treating institutional users separately in each regulation. In order to avoid the confusion which would necessarily result, General Ration Order No. 5 was promulgated. It brings together all rules which institutional users must know and follow in order to obtain their supplies of rationed foods.

General Ration Order No. 8 is a collection of "prohibitions and penalties" and supplements the provisions of this kind which are contained in each regulation.

There are also several procedural regulations which have application to all of the rationing regulations. Chief among them are Procedural Regulation No. 4 on Suspension Hearings, Procedural Regulation No. 9 on Uniform Appeals Procedure, and Procedural Regulation No. 12 dealing with the replacement of ration books, certificates, etc.

REPRESENTING ONE'S CLIENT

It is no secret that lawyers are more often called in to "lock the door after the horse is stolen" than to retain Old Dobbin in his stable. So it is most frequently with a lawyer's practice before the rationing agencies of the Office of Price Administration. Usually his client has sought to obtain from a ration board authority to acquire a rationed commodity believed to be vital in his business or in making his livelihood and has been refused or has been granted a lesser quantity than desired. Or perhaps he is charged with violating a Rationing Regulation.

We do not imply that a lawyer is necessary each time a person goes before his War Price and Rationing Board, or before any other body of the Office of Price Administration, for such is not the case. The Local Boards and other Office of Price Administration officers are mindful of the public's needs and do not regard themselves as adversaries of the public. Their purpose is to assist persons to acquire such rationed commodities as they are believed to be entitled to. There are situations, however, where the requested commodity is fundamental to the applicant's business and livelihood and where the applicant's right to what he is seeking

presents a close issue. A lawyer is often useful here, not so much to argue his client's contention on the applicable law, but to clearly, concisely, and relevantly present the facts. Such representation, of course, is more effective if made to the Local Board and before an adverse decision has been received. The matter is not foreclosed there, however, for an applicant may appeal from an adverse action of a Board.

Appeals

The appeal procedure is simple and informal. Subject to the few prerequisites contained in Procedural Regulation No. 9, the appeal can be prepared in whatever form the appellant desires. An appeal from a Local Board's action must be taken within thirty days of the mailing or giving of notice of said action to the applicant and is addressed to the Director of the District Office of the district where the Board is situated. It is taken by filing, in duplicate, with the Local Board from whose action the appeal is taken, executed copies of OPA Form R-122. It should be accompanied by such other written evidence as the appellant may desire to present. While there are no unyielding requirements that all the evidence to be relied on must be presented at this time, and although the Director and other appeals agents often permit the later presentation of additional evidence, it is strongly recommended that an appellant "shoot the works" at this time. The requirement that the appeal be filed with the Local Board from whose action the appeal is taken is analogous to the requirement that a motion for a new trial be made to the trial judge before an appeal may be perfected. It serves the useful purpose of allowing the Local Board to reconsider its action to ascertain whether an error has been made. Sometimes it is discovered that the action of the Board has been incorrect, and especially is this true in the early days of a new rationing program where some decisions are necessarily left to temporary volunteer workers who may not be well versed in the requirements of the regulations. The Local Board members who make up the Reconsideration Panels, although also uncompensated volunteers, are usually battle-scarred warriors of many a campaign, whose knowledge of the regulations and procedures is frequently very thorough.

If, after reconsideration, the Board believes its action was required under the appropriate regulation, it will note the reasons for its action on the reverse sides of the appeal forms and will forward to the Director one copy thereof, together with the appellant's original application and any other evidence which may have been submitted. The Director refers all appeals to the Chief Rationing Attorney and his aides, who study the case, decide it, and prepare an opinion for the signature of the Director. If the Director concurs in the decision and opinion, he signs the opinion and the original is mailed to the appellant, copies going to the Board. The opinion may affirm, reverse, or modify the action of the Board, and may remand the case for the Board's further determination of fact ques-

tions. The Director may, on his own motion, or in his discretion, at the request of the appellant, personally or by his representative, conduct a formal hearing on the merits of the appeal. This provision of Procedural Regulation No. 9 is rarely availed of by appellants, but its informal equivalent is often conducted as a meeting of the Rationing Attorneys with the appellant and his attorney. The St. Louis District Office has disposed of almost 2,000 appeals since June 1, 1942, by far the greater part of which have been handled since December 15, 1942.[n] This office, the Kansas City District Office, and, in fact, most District Offices have avoided the use of form decisions. Each case has been seriously considered in the knowledge that it is of real importance to the appellant, and the opinion on appeal reflects this individual treatment by a recital of the facts of the case and the specific provisions of the regulation which, it is believed, compel the decision arrived at.

An appeal lies from the action of the Director to the Regional Administrator and is taken in the same manner as is an appeal from the Local Board to the Director. Likewise, and in the same manner, an appeal may be taken from a Regional Administrator's action to the Deputy Administrator in charge of rationing in the Washington Office of the Office of Price Administration. This is the last of the administrative remedies.

Amendments to the Regulations

An appeal is appropriate and serves a purpose only where the appellant has reason to believe that under the regulation he has a right to the thing sought. Often it will appear quite clear, even to the appellant himself, that the regulation makes no provision for him. If his business survival depends upon obtaining that commodity, it is natural for him to seek another way out. It must be recognized that war brings with it economic casualties as surely as it brings physical casualties, and there is no guarantee by the Office of Price Administration, or any other government agency, that a business will be able to survive the rigors of war regulations. It is not, however, the purpose of the Office of Price Administration to destroy business enterprises; indeed, its efforts in every way possible are bent to permit their survival. Nevertheless, on occasions, its actions will threaten the early demise of a business enterprise or the livelihood of an individual. Before "folding one's tent," it is fair to ask whether the provision of the regulations which is threatening one's business death is essential to the program of rationing and to the furtherance of the efforts successfully to terminate the war. If a candid and fair-minded answer is in the negative, and if any substantial number of other persons are similarly situated, it is sometimes possible to secure a change in the regulations. The Office of Price Administration is pioneering in

[n]The Denver District Office disposed of over 600 appeals between December 1, 1942, and June 1, 1943, over one-half of which were handled in the first two months.

one of the most difficult undertakings which this country has ever embarked upon. Mistakes are often made. This is manifest by the number of times these regulations have been amended. For example, the Sugar Rationing Regulation, effective April 20, 1942, has been amended, at this writing, 52 times;[o] the Fuel Oil Rationing Regulation, effective October 22, 1942, has been amended 60 times;[p] the Processed Foods Rationing Regulation, which was not effective until March 1, 1943, has been amended 13 times.[q] These amendments very often are issued to grant relief from what is believed to be unnecessary hardship. The St. Louis District Office, on several occasions, has been instrumental in effecting changes in the regulations to correct provisions which cause "the shoe to pinch unnecessarily."[r] Lawyers and the public in general are prone to "run up to Washington." This may be helpful sometimes, but it is usually far better to take up the matter directly with the District Offices. The attorneys and administrative heads of these offices usually are able to give a sound opinion on whether there exists any possibility of relief. If such a possibility exists, the District Office will forward the request for a change through well-established channels to the attention of the officials who are empowered to make a change, and if the cause is sufficiently worthy, will often become its champion. This approach, in the long run, will probably result in quicker and more favorable action.

(To Be Concluded in September)

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[o]Amended sixty times to May 21, 1943.

[p]Not in force in Colorado.

[q]Amended twenty-nine times to May 10, 1943. All of the other Regulations have been amended as frequently and there are always amendments in process.

[r]This has also been true as to the Denver District Office and doubtless as to all field offices. The same situations arise in many jurisdictions at about the same times, and the Washington office receives suggestions for amendments to correct them from many of these offices.

Success

The May issue of DICTA carried a request by Judge Steele for the return of volume 16 of the Colorado Appeals Reports to the library of division I of the district court. As a result the judge received from Allyn Cole of Glenwood Springs *a* volume 16 and the following letter, which is self-explanatory:

ALLYN COLE
Lawyer
NOONAN BUILDING
GLENWOOD SPRINGS, COLO.

May 19th, 1943.

HON. ROBERT W. STEELE,
Judge of the District Court,
Denver, Colorado.
Dear Judge Steele:

I have often nursed a mild desire to be a philanthropist, without any possible expense to myself. It looks like fate has afforded the opportunity.

Some ten or fifteen years ago, an extra Vol. 16, C. A., appeared in my office without any mark of identification that I could ever discover. I toted it around to all the courts in which I was in the habit of appearing, and to all the law offices in that part of the country, in a vain attempt to return it to its rightful owner. I was then at Lamar. When I came here, for lack of some better idea, I brought it along. I have tried to give it away, but what lawyer wants it when he already has a duplicate? I have even tried to give it to new members of the bar, but again, what lawyer wants to start out with a one volume library, especially when that one volume is 16 C. A.?

Now, the last issue of DICTA carries the information that your library is short this same volume. Thus fate has brought to me the opportunity to get this thing out of my office, on what appears a fair excuse. A lot of books have strayed out of my office in the course of time, but this is the only one that has strayed in, and persisted in staying with me. I know it isn't mine, and guess it isn't yours, but it is in the way here, and you have a vacant space that just fits it. So, here it is. This is the first chance I ever had to get rid of it, so I'll send it in before someone returns your own volume.

Yours truly,
ALLYN COLE.

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Legislation Which Should Interest the Bar

I. Amended Criminal Procedure

The House at the last session of the Colorado General Assembly passed an act concerning criminal procedure which was killed in committee in the Senate. That act was as follows:

> The Supreme Court of the State of Colorado shall have the power to prescribe by general rules for the courts of record in the State of Colorado the practice and procedure in criminal actions and all forms in connection therewith. Such rules shall neither abridge, enlarge nor modify the substantive rights of any defendant. Such rules shall take effect three (3) months after their promulgation, and thereafter all laws in conflict therewith shall be of no further force nor effect.

The main purpose of that act was to correct a situation that is confusing to lawyers who handle both criminal and civil practice. In civil cases, exceptions are no longer taken. In criminal cases, they must be saved. In civil cases, the writ of error in the Supreme Court is based upon the record on error, which no longer contains a bill of exceptions. In a criminal case there is both the record and the bill of exceptions. Both must be differently prepared.

There should be one procedure in trials and in the Supreme Court. The passage of this bill would ensure a rule by the Supreme Court carrying this change into effect.

No other change in criminal procedure appears to be necessary at this time and should not be undertaken until a thorough study has been