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A Lawyers' Guide to OPA

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A Lawyers' Guide to OPA

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A Lawyers' Guide to OPA*

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Introductory‡

Every man, woman, and child in the country is affected by the regulations and orders of the Office of Price Administration in one or more of its three main divisions:

1. The control of prices of commodities.
2. The control of rents.
3. The rationing of scarce commodities.

Lawyers are called upon daily to advise their clients with reference to the effect of these orders and regulations. This article is intended as a practical guide to practicing lawyers in matters relating to the Office of Price Administration. The reader will find that, except for the following discussion of economic factors, it is a brief summary or thumbnail sketch setting forth the legislative authority for price control, the scope of the price control program, and the functional organization of the Office of Price Administration.

Under "I—Price Control" will be found an explanation of pre-statutory control of commodity prices, the present legislative authority for control of prices of commodities and rents, and specific treatment of price regulations, their contents, and procedures under them.

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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.

Under "II—Rent Control" is an exposition of the rent regulations and procedures thereunder.

"III—Rationing" contains a discussion of the statutory authority for rationing, the agencies charged with such authority, the regulations, and the administration of the regulations.

"IV—How to Work with OPA" contains a brief description of the physical setup of OPA. The location, titles and jurisdiction of the various OPA offices within the State of Colorado are set forth for the benefit of those in search of information or assistance.

ECONOMICS OF INFLATION CONTROL

No statement concerning OPA is complete without at least a reference to the underlying economic factors which affect prices and which in turn are affected by prices.

Under the present-day conditions of world-wide war, the normal flow of goods is violently disrupted. Normal production for civilian consumption is reduced and in many instances stopped, even though the demand for such goods continues. Vast quantities of material and labor are diverted to wartime channels. Income available for purchase of commodities and services is greater than ever before. In such circumstances, inflation is inevitable unless restraints and controls are exercised to prevent the pressure of purchasing power on a limited supply from sending prices spiraling upward.

To prevent inflation, no single act, such as fixing the maximum price of a commodity, is sufficient. (1) Prices must be fixed on all commodities and at all levels of selling. To fix the maximum prices at which a seller may sell while at the same time permitting the seller's cost of doing business to rise to the point where his business becomes unprofitable can only lead to one of two results: the seller must cease business, thus creating a further shortage in supply, or violate the price regulations by selling at higher prices. Either result is an aid to inflation. (2) Goods must be rationed so that every person will obtain his proportionate share. Failure to ration scarce commodities encourages bidding higher prices and the accumulation of goods not needed for immediate consumption—hoarding. (3) Purchasing power must be reduced by taxation and the diversion of funds into government bonds. A total national income far in excess of the value of goods available for consumer use tends to create a market in which the highest bidder takes home the goose. (4) Steps need be taken to encourage a maximum of production of needed commodities consistent with the nation's requirements and program of control.

In general, the United States has embarked on such a program, but it is not, at least as yet, a complete program. The chief points of pressure upon the price levels existing at the time the Emergency Price Control

Act of 1942 was enacted have been agricultural products and wages. Since November, 1942, there has been some control of salaries and wages, and some agricultural products are now being brought under control. What the ultimate program will be and the extent of success remains for the future to unfold.

I

Price Control

THE IMMEDIATE HISTORICAL BACKGROUND OF THE PRICE CONTROL PROGRAM

The United States is having its first experience with comprehensive price control. The history of the present price control program is a story of pioneering in the field of economic management. On May 29, 1940, President Roosevelt created the Advisory Commission to the Council for National Defense and set up in the Advisory Commission a Price Stabilization Division under Leon Henderson. Detailed studies were made of price control programs and the experiences under them in Canada, Great Britain, Germany, France, and Japan.¹

The Price Stabilization Division consulted with industry in an effort to restrain speculative and inflationary tendencies and made recommendations to Army and Navy procurement officers designed to assist in maintaining orderly markets in the fields in which Army and Navy purchasing was being done.² It also experimented with issuing maximum price schedules to be enforced by publicity and the voluntary cooperation of industry. The first of these schedules was issued on February 17, 1941, to cover the prices which could be paid or charged for second-hand machine tools.³ This schedule was followed within a few weeks by four similar schedules covering certain metals and bituminous coal. No effective sanctions were available at that time to secure compliance with the provisions of these price schedules. As the defense program gathered momentum, the inability of the Price Stabilization Division to cope with the pressure on prices became more and more apparent. On April 11, 1941, President Roosevelt issued Executive Order No. 8734, which established the Office of Price Administration and Civilian Supply (OPACS). This was authorized to:

“(2a) Take all lawful steps necessary or appropriate in order
 (1) to prevent prices spiraling, rising costs of living, inflation and profiteering * * *.”

¹P. 88, Hearings before the Committee on Banking and Currency, House of Representatives on HR 5479, superseded by HR 5990, 77th Congress, 1st Session, 1941.

²See p. 5, 1st Quarterly Report of the Office of Price Administration for the period ending April 30, 1942.

³Price Schedule No. 1, now Maximum Price Regulation No. 1.

“(c) Determine and publish, after proper investigation, such maximum prices, commissions, margins, fees, charges, or other elements of cost, or prices of materials or commodities, as the Administrator may from time to time deem fair and reasonable; and take all lawful and appropriate steps to facilitate their observance.”

The authority of OPACS was exercised primarily by the five following devices:

1. Suggestions and warnings to industry.
2. Publishing lists of prices, deemed by OPACS to be fair, with a request that industry adhere to such prices.
3. Use of the “freeze” letter, directed either to members of an entire industry or to a smaller group, calling upon them to hold their prices to the level of a specified date.
4. Voluntary agreements under which members of an industry voluntarily agreed not to exceed certain specified prices.
5. The issuance of formal price schedules.

Within several months, it became apparent that OPACS was inadequately equipped to perform the function of price control. On July 30, 1941, President Roosevelt sent a message to Congress in which he requested legislation authorizing the establishment of a formal price control program. On August 1, 1941, a bill⁴ embodying legislation of the character recommended in the President’s message was introduced. Ultimately, on January 30, 1942, the Emergency Price Control Act of 1942⁵ became a part of the federal statutory law.⁶

THE LEGISLATIVE AUTHORITY FOR CONTROL OF PRICES AND RENTS⁷

1. *The Emergency Price Control Act of 1942.*

Because of limitation of space and consideration for the reader’s time, no effort is being made to set forth herein the contents of this law. It is assumed that a copy is available to all lawyers. In reading the act, the following will be noted:

1. The Office of Price Administration is created and given specific powers and duties.⁸

⁴HR 5479.

⁵HR 5990: Act January 30, 1942, ch. 26, 56 STAT. 23; 50 U. S. C. A. sec. 901 (A).

⁶Any person desiring to study the background and legislative history of the Emergency Price Control Act of 1942 should refer to the Hearings before the Committee on Banking and Currency, House of Representatives, on HR 5479, superseded by HR 5990, 77th Congress, 1st Session, and to the 1st Quarterly Report of the Office of Price Administration for the period ending April 30, 1942.

⁷For the authority underlying the rationing program, see “III—Rationing.”

⁸50 U. S. C. A. sec. 921. See also secs. 902, 905, 922, 925 and 941.

2. The Administrator is authorized to make studies and conduct investigations to obtain such information as he deems needed for the performance of the functions of the Office of Price Administration. He may by subpoena require any person to produce books and records or to appear and testify.⁹

3. The Administrator is given authority to establish maximum prices for rents, commodities, and services rendered in connection with commodities. Before issuing an order or regulation fixing maximum prices for a commodity, the Administrator is required, insofar as it is practicable, to advise and consult with representative members of the industry affected. The powers granted under this section may not be used to compel changes in business practices except to prevent evasion.¹⁰

4. No maximum prices are permitted to be established for agricultural commodities below the highest of certain specified levels^{11, 12} and in no event without the prior approval of the Secretary of Agriculture.¹³

5. The Administrator is given authority to regulate or prohibit speculative or manipulative practices.¹⁴

6. The Administrator is authorized to buy, sell, store or use commodities on behalf of the United States to such extent as he may deem necessary to obtain the maximum necessary production thereof, or to supply demand therefor, and to make subsidy payments to domestic producers.¹⁵

7. Persons subject to regulations or orders of the Administrator are afforded a procedure under which they may file protests, setting forth objections to the provisions of such regulations or orders.¹⁶

8. A special court, known as the Emergency Court of Appeals, is created.¹⁷

⁹50 U. S. C. A. sec. 922.

¹⁰50 U. S. C. A. secs. 902 and 942.

¹¹The levels specified in the act are:

1. 110 per cent of the parity price for such commodity adjusted by the Secretary of Agriculture for grade, location, and seasonal differentials, or in case a comparable price has been determined by the Secretary of Agriculture for such commodity under sec. 3 (b) of the act, 110 per cent of such comparable price adjusted in the same manner in lieu of 100 per cent of the parity price so adjusted.

2. The market prices prevailing for any such commodity on October 1, 1941.

3. The market prices prevailing for such commodities on December 15, 1941.

4. The average price for such commodity during the period July 1, 1919, to June 30, 1929.

It is further provided that no maximum price shall be established for any commodity processed or manufactured from an agricultural commodity below a price which will reflect to the producers of such agricultural commodity a price equal to the highest price specified by the above provisions.

¹²The term "parity" as used in this act can be found defined in Title 7, U. S. C. A. sec. 301, Agricultural Adjustment Act of 1938, as amended.

¹³50 U. S. C. A. secs. 903 and 902 (A).

¹⁴50 U. S. C. A. sec. 902 (D).

¹⁵50 U. S. C. A. sec. 902 (A).

¹⁶50 U. S. C. A. sec. 923.

¹⁷50 U. S. C. A. sec. 924 (C).

9. Persons whose protests have been denied are given the right of appeal to the Emergency Court of Appeals. Appeals are made subject to review by the Supreme Court upon certiorari.¹⁸

10. The four principal methods of enforcement are:¹⁹

1. Criminal proceedings, with penalties of fines up to \$5,000 or imprisonment for not more than one year, or both fine and imprisonment.¹⁹⁽¹⁾

2. Injunctions and compliance orders. Violations may be enjoined or compliance with the Administrator's regulations or orders may be ordered by the federal district courts and state courts.²⁰

3. Licensing. The Administrator may license persons, subject to maximum price regulations and rent regulations, and make such license a condition of selling any commodity or service to which the regulations are applicable. Such licenses may be suspended by any state court and in certain cases by federal district courts upon petition of the Administrator. As a condition precedent to suspension of a license, it is required that there be a warning notice received by the licensee from the Administrator and that there has been a violation subsequent to the receipt of such warning notice.²¹

4. Treble damages. Suits for treble damages plus attorney's fees and costs may be brought by any purchaser for use or consumption, *other than in the course of trade or business* (i. e., individual consumers such as the housewife). If the buyer is not such a person, a treble damage suit may be brought by the Administrator.²²

11. Salaries and wages, public utilities, insurance rates, newspapers and magazines, radios, motion picture theatres, outdoor advertising and professional services are expressly exempted.²³

2. *Second Price Control Act.*

The Emergency Price Control Act was amended by the Second Price Control Act, effective October 2, 1942.²⁴ The primary features of this act are:

¹⁸50 U. S. C. A. sec. 924.

¹⁹A violation of a price regulation in some instances will also constitute a violation of a rationing regulation and cause the violator to be subject to suspension order proceedings. See "Enforcement Actions," Part III *infra*.

¹⁹⁽¹⁾50 U. S. C. A. sec. 925 (B).

²⁰50 U. S. C. A. sec. 925 (A).

²¹50 U. S. C. A. sec. 925 (A).

²²50 U. S. C. A. sec. 925 (E).

²³50 U. S. C. A. sec. 942 (C).

²⁴Act Oct. 2, 1942, ch. 578, 56 STAT. ———; 50 U. S. C. A. sec. 961.

1. The President was authorized and directed on or about November 1, 1942, to issue a general order stabilizing prices, wages and salaries affecting the cost of living and to provide for making adjustments with respect thereto.²⁵

2. Public utilities are required to give a 30-day notice to the President, or an agency designated by him, prior to establishing any general increase in rates or charges in effect on September 15, 1942.^{26, 27}

3. Provisions of the Emergency Price Control Act of 1942, with reference to the level of agricultural prices, are modified.²⁸

On October 3, 1942, the President issued Executive Order 9250, under which was established the Office of Economic Stabilization. James F. Byrnes was appointed as Economic Stabilization Director and Chairman of the Economic Stabilization Board, created by the President's order. The Director is given the power to formulate and develop a national economic policy relative to the control of civilian purchasing power, prices, rents, wages, salaries, profits, rationing, subsidies, and all related matters and is authorized to issue directives on policy to other federal departments and agencies concerned with such matters. The President, by this same order, established control of wages and salaries.

By Executive Order 9322, issued March 30, 1943, the President consolidated the Food Production Administration (except the Farm Credit Administration), the Food Distribution Administration, the Commodity Credit Corporation, and the Extension Service within the Department of Agriculture into a newly created "Administration of Food Production and Distribution" and thus transferred some of the powers previously vested in the Secretary of Agriculture to the Adminis-

²⁵U. S. C. A. sec. 901.

²⁶See Procedural Regulation No. 11 of the Office of Price Administration.

²⁷50 U. S. C. A. sec. 901.

²⁸No maximum prices are permitted to be established for agricultural commodities below the highest of the following prices as determined and published by the Secretary of Agriculture:

1. The parity price for such commodity (adjusted by the Secretary for grade, location and seasonal differentials) or if the Secretary has determined a comparable price for such commodity in accordance with the provisions of section 3(b) of the Emergency Price Control Act, such comparable price.

2. The highest price received by producers between January 1, 1942, and September 15, 1942, adjusted by the Secretary of Agriculture for grade, location and seasonal differentials, or if the market for the particular commodity was inactive during the latter half of said period, then a price for the commodity determined by the Secretary to be in line with the prices charged during such period for other agricultural commodities produced for the same general use.

It is further provided that no maximum price shall be established for any commodity processed or manufactured from an agricultural commodity below a price which will reflect to the producers of such commodity a price equal to the higher of those specified above. Provisions are made under which the President may make certain adjustments in maximum prices established for agricultural commodities and for commodities processed or manufactured from agricultural commodities.

trator of the newly created department. Mr. Chester W. Davis was named as Administrator.

On April 9, 1943, the President issued Order 9328, under which:

1. The powers of the Economic Stabilization Director (James F. Byrnes) are broadened.

2. The Price Administrator and the Administrator of Food Production and Distribution are directed to take immediate steps to place ceiling prices on all agricultural commodities affecting the cost of living, and the Price Administrator is directed to do likewise as to all other commodities affecting the cost of living.

3. The powers, functions, and duties of the Secretary of Agriculture under section 3 of the Emergency Price Control Act of 1942 and section 3 of the Second Price Control Act of October 2, 1942, are transferred to the Food Administrator.

4. The National War Labor Board and certain other agencies are directed to authorize no further increase in wages or salaries except those necessary to correct substandards of living.

5. The Chairman of the War Manpower Commission is authorized to forbid "employment by any employer of a new employee or the acceptance of employment by a new employee" except as authorized by War Manpower Commission regulations.

6. The attention of all agencies concerned with the rates of common carriers and other public utilities is "directed to the stabilization program * * * so that rate increases will be disapproved and rate deductions effected consistent with the Act of October 7, 1942, and other applicable * * * laws."

THE PRICE REGULATIONS

On January 30, 1942, the effective date of the Emergency Price Control Act, there were in existence 84 maximum price schedules²⁹ issued by the Price Stabilization Division of the Advisory Committee and the Office of Price Administration and Civilian Supply (OPACS). The act expressly provides that these regulations shall have the same effect as if issued under the provisions of section 2 of the act.³⁰ Between January 30 and February 11, 1942, when the Administrator formally took office, the Office of Price Administrator issued 21 additional price schedules. From then until the end of April, 1942, fourteen more price regulations were issued—a total of 119. These regulations were all part of an effort to control prices by creating ceilings on commodities where the threat of

²⁹Price regulations which were issued up to January 30, 1942, were entitled "price schedules." Thereafter, they were entitled "maximum price regulations." As price schedules are revised, they are entitled "maximum price regulations."

³⁰See sec. 206 E. P. C. A., 50 U. S. C. A. 926.

inflation was found to be greatest. By the spring of 1942, this piecemeal method of control was found to be inadequate even though the regulations issued up to that time covered nearly half of the commodities sold at the wholesale level. The growing threat of inflation, clearly indicated by increasing demand and shrinkage in supply, showed the necessity of a program of wider scope than the selective price control methods theretofore used. On April 27, 1942, the President, in a message to Congress, announced a seven-point anti-inflation program which called for:

1. Heavy taxation to curtail wartime profits.
2. An overall ceiling on prices paid by manufacturers, wholesalers, retailers, and consumers and on rents in areas affected by war industries.
3. Stabilization of wages.
4. Stabilization of farm prices and a modification of the level specified in the Emergency Price Control Act.
5. An expanded war-savings program.
6. Rationing of essential and scarce commodities.
7. Reduction of credit and installment buying.

On the day following, the Office of Price Administration issued the General Maximum Price Regulation (under which an overall ceiling was placed on prices charged for commodities and services at all levels—manufacturing, wholesale, and retail). The General Maximum Price Regulation was designed to cover all prices which legally and practically could be controlled under the authority granted to OPA. A "catchall" regulation of this type obviously was not adequate to provide satisfactory treatment of some commodities and services. Nor was it sufficiently elastic to deal with changes in circumstances affecting some commodities and services and conditions of sale. On the same day that the General Maximum Price Regulation was issued, specific regulations covering a variety of commodities, such as coal, newsprint, farm equipment, and motor fuel were issued. Also issued were a number of Temporary Maximum Price Regulations³¹ covering commodities for which permanent regulations were later issued.

Since the issuance of the General Maximum Price Regulation, approximately 250^b additional price regulations have been promulgated. These subsequent regulations, for the most part, serve to remove commodities or services previously covered by the GMPR and set up specific pricing methods better suited to the particular commodities or the circumstances under which they are sold. In a few instances, the new reg-

³¹A temporary maximum price regulation is a regulation issued for a period of sixty days and establishing as maximum prices the prices prevailing during the five days immediately preceding the issuance of the regulation. See sec. 2(a) E. P. C. A. of 1942; 50 U. S. C. A. sec. 902.

^bNow approximately 280.

ulations have been issued for the purpose of setting ceilings on the prices of commodities theretofore exempt under the provisions of the GMPR. At the time of writing, there are approximately 370^c maximum price regulations issued by the OPA, including the 119 promulgated prior to April 27, 1942.

HOW TO PROCEED IN MATTERS INVOLVING PRICE REGULATIONS— WHERE TO FIND THE REGULATIONS

The regulations and orders of the Price Administrator are prepared after careful study by the Administrator's staff. When the regulations are signed, they are filed with the Federal Register³² and published therein as provided by the act of Congress of July 26, 1935.³³ Copies of the regulations are prepared by OPA and distributed to its various offices, where such copies are available to the public. Looseleaf services, familiar to most lawyers, provide another convenient source for finding such documents.

HOW TO ASCERTAIN WHETHER A COMMODITY OR SERVICE IS COVERED BY A PRICE REGULATION

Ceiling prices are provided for all commodities or services unless they are expressly exempted by the Emergency Price Control Act or by order of the Price Administrator.

For *commodities exempted* for the latter reason, examine Revised Supplementary Regulation No. 1 to the General Maximum Price Regulation, which contains exceptions to the GMPR, and Supplementary Order No. 45, which contains general exemptions from all price regulations. Revised Supplementary Regulation No. 1, which was issued April 16, 1943, brings together the exceptions formerly contained in Section 9 of the General Maximum Price Regulation, Supplementary Regulation No. 1 and Supplementary Regulation No. 4. The latter supplementary regulation contained a list of those items and transactions which are exempt for the primary reason that the United States government or certain governmental agencies are a party to the transaction.

If a commodity is not listed among these exemptions, it may be found excluded by the terms of a price regulation otherwise governing such commodities. All commodities which are not so expressly exempted are covered either by a specific regulation or by the terms of the GMPR. In many instances a commodity may be covered at different

³²Lawyers not familiar with the Federal Register and its uses should read *The Federal Register and Code of Federal Regulations* by John H. Wigmore in the AMERICAN BAR ASSOCIATION JOURNAL for January, 1943.

³³U. S. CODE, Tit. 44, ch. 8-A-S301.

^cNow approximately 400.

levels of selling or under different conditions of sale by more than one regulation. For example, most raw agricultural products are exempt under Revised Supplementary Regulation No. 1 (formerly under section 9(a) (1) of the GMPR). (Some raw agricultural products have lately been made subject to regulation, such as corn, cabbage, beans, peas, and a few others.) When exempt agricultural products are processed they become subject to regulation. For instance, canned vegetables, at the canners' level are covered by MPR 152, at the wholesale level by MPR 237, and at the retail level by MPR 238.⁴ Canned agricultural products, other than vegetables, are covered by still different regulations. If they are not found to be under a specific regulation, they are covered by the General Maximum Price Regulation for the reason that they are not specifically exempted or covered by another regulation.

Oftentimes, the appropriate regulation is not readily ascertained from the title and style of the regulation. By way of example, MPR 188, "Manufacturers' Maximum Prices for Specific Building Materials and Consumers' Goods Other Than Apparel" covers several hundred items ranging from hardware to artificial Christmas trees, listed in the appendix to the regulation. MPR 210, "Retail and Wholesale Prices for Fall and Winter Seasonal Commodities" covers many articles, including: "Coats, jackets, and vests when fully lined or entire body is lined with cotton flannel, cotton suede, cotton blanket or any wool or part-wool material, but not including tailored garments covered by MPR 177 or rainwear garments (men's and boys' only, all sizes except infants' garments)," "husking gloves and husking mittens," "ear muffs," "snow shovels, snow pushers and sidewalk scrapers," "cold pack canners," "shotgun shells," and "footballs." Persons who do not have available a good index to the price regulations should ask their nearest OPA office to advise them what regulations are applicable to their particular circumstance.

For *services exempted* by order of the Price Administrator, reference should be made to Supplementary Regulation No. 11^e to the GMPR. If a particular service is not exempt under the E. P. C. A. or Supplementary Regulation No. 11,^e a searcher should next examine the list of services expressly covered by Maximum Price Regulation 165—Services. If the particular service is not found there, regulations covering commodities in connection with which the particular service is sold should be examined. For instance, a service involving the repair of machinery might be found to be covered by MPR 136—Machines and Parts. If the particular service is not expressly exempt or covered by MPR 165 or some other specific regulation, it is subject to the provisions of the GMPR.

⁴The 1943 pack of a number of canned vegetables at the canner's level is now covered by MPR 306.

^eNow Revised Supplementary Regulation No. 11.

Services, subject to the General Maximum Price Regulation, which cannot be priced under the provisions of section 1499.2 of that regulation are required to be priced by the pricing methods set forth in Maximum Regulation No. 165 (see section 1499.3 (d) of the GMPR).

WHAT TO LOOK FOR IN READING A PRICE REGULATION

1. Does the regulation cover the commodity you are seeking to price? For instance, does it cover the same grade, size, or specifications? In this connection and in all others involving the use of terms, read the definitions contained in the regulation.

2. Does the regulation cover the same type of sale, i. e., by a manufacturer, wholesaler, broker, retailer, etc.?

3. Is your client selling the particular commodity under a contract? It will be noted that most price regulations cut through all existing contracts and prohibit any sale or delivery at a price in excess of the maximum price prescribed by the regulation.³⁴

4. How is the maximum price to be determined under the regulation? Different methods of computing ceiling prices are used. Basically, there are three methods:

a. Prices fixed as of a base period as in the case of the GMPR, under which prices are determined by transactions in March, 1942.

b. Specific dollar and cents prices are set forth.

c. A formula is provided which must be applied to determine the price. Among the formula methods used is the so-called percentage markup under which the seller adds a markup to his cost, which must be arrived at in the manner expressly prescribed.

Some regulations combine features of two or all three of the above methods. For example, a regulation which sets specific dollar and cents prices at a specified basing point and provides for an adjustment to compensate for freight and certain additions and deductions to be made depending on such factors as method of sale, shipment, type of seller or processing performed upon the article sold.

In determining the maximum price under all regulations, check carefully for additions permitted or deductions required because of quality, quantity, method of shipment, delivery, packaging, and the many other factors normally affecting the price to be paid in a business transaction.

³⁴For the effect of such provisions in the price regulations, see *Kramer & Uchitelle, Inc. v. Eddington Fabrics Corp.*, 288 N. Y. 467, 48 N. E. (2d) 493, 141 A. L. R. 1497 (July 29, 1942); *Export Syndicate of Steel Products, Inc. v. Dilsizan*, N. Y. Sup. Ct., June 30, 1940, 107 N. Y. L. J. 2732 col. 1; and the matter of *Mendelson*, N. Y. Sup. Co., July 18, 1942, 108 N. Y. L. J. 147 col. 4.

5. To what extent to trade practices affect the price? Most regulations provide that maximum prices shall be established for each class of customer and that all customary allowances, discounts, credit terms, and other price differentials must be maintained, unless a change results in a lower price. It will be noted from the definition in section 20(k) of the General Maximum Price Regulation that "purchaser of the same class" refers to a seller's practice in setting different prices in sales to different purchasers, or kinds of purchasers, or for purchasers located in different areas, or for different quantities or grades, or under different conditions of sale. The determination of the existence of a class of customers must be made by reference to the seller's pricing practices as shown by his custom of doing business, i. e., his past practices and records.

6. Does the regulation require the seller to absorb certain increases in freight costs?

7. Taxes—Is the seller permitted to vary his maximum price to compensate for changes in tax rates? What are the provisions with respect to stating and collecting separately taxes in effect at the present or at an earlier date?

8. What practices are prohibited? Does the regulation make it a violation to change a business practice such as in connection with the grading or labeling of the product, or to require the purchaser to buy some other commodity or service in order to obtain the commodity or service desired, i. e., a tying agreement?

9. What records are the parties to the transaction required to keep? What reports are necessary to be prepared and are such reports to be filed with OPA? As to reports which must be filed, should they be sent to a War Price and Rationing Board, an OPA State, District, Regional or National Office?

10. What provisions does the regulation contain by which a seller can obtain relief from hardship? May he file an application for adjustment or is his only remedy to apply to Washington for an amendment of the regulation?

11. What is the effective date of the regulation? Note that the effective date seldom coincides with the date of issuance.

12. Is there any other regulation or order of the Administrator effecting the particular commodity or service? In this connection, it is important to remember that the price regulations are frequently revised and more frequently amended. Be absolutely certain that you have the latest revision and the latest amendments.

The Administrator sometimes issues orders of general application and these should be checked. These are known as Supplementary Orders. Supplementary Orders treat matters such as licensing sellers, providing for alternate methods of posting prices, exempting from control

certain items sold at judicial sales, providing liability for tax on transportation, i. e., whether to be borne by the buyer or seller, and providing conditions under which applications for adjustment may be made when the application is based on a wage or salary increase requiring the approval of the National War Labor Board.¹

It is also advisable to recheck the general exemptions. For instance, a sale of a used household vacuum cleaner might be covered under the provisions of MPR 294 and yet be exempt in a particular instance because it was sold at an auction of used household effects, and therefore exempt under Article III, sec. 3.2(d) of Revised Supplementary Regulation No. 1 (formerly section 9(b) (4) of the GMPR).

INTERPRETATIONS OF PRICE REGULATIONS

From time to time the price regulations are construed or interpreted by the Office of Price Administration. These interpretations are made public and can be obtained from any office of the OPA. The meaning of many of the provisions and terms used in the regulations is clarified by these interpretations. OPA will interpret a regulation as applied to a particular set of circumstances and any person obtaining such an interpretation is entitled to rely upon it and is afforded protection from the penalty provisions. However, in order to obtain such protection, the interpretation must be obtained in accordance with provisions which are specifically set forth in Revised Procedural Regulation No. 1 of the Office of Price Administration. In substance, a request for interpretation must be set forth in writing, accompanied by a statement of all pertinent facts and the interpretation itself must be received in writing from OPA, signed by a person specifically authorized under Revised Procedural Regulation No. 1 to issue such interpretations. Advice received from any other employee of the Office of Price Administration does not afford such protection.

RELIEF FROM HARDSHIP

There are three methods provided to afford relief to persons who are caused hardship by the provisions of price regulations; namely, application for adjustment, petitions for amendments, and protests.

Applications for Adjustment. An application for adjustment may be filed only if the applicable regulation provides for the filing of appli-

¹Recently, authority has been given to Regional and District Offices to issue orders relating to maximum prices of certain classes of commodities in the respective jurisdictions. Notable among these are the community food pricing orders issued by the various District Offices, fixing specific maximum prices for a great number of food items in various communities. The Denver District Office has issued such community food pricing orders for the Denver, Pueblo, Colorado Springs-Manitou and Trinidad communities. It is expected that in the near future similar orders will be issued for certain other communities in Colorado.

cations for such adjustments. All applications for adjustment must be filed in accordance with the provisions of the paragraph in the regulation permitting the filing of the application and in accordance with the provisions of the applicable procedural regulation. There are at the present time two such procedural regulations applicable in such instances: (a) Revised Procedural Regulation No. 1, which is of general application, and (b) Procedural Regulation No. 6, which is used only in instances involving contracts with the government or governmental agencies. In all cases where the basis of an application for adjustment is an increase in salaries or wages, the application for adjustment must be made in accordance with the provisions of Supplementary Order No. 28.

Petitions for Amendment. All price regulations contain a clause under which any person seeking modification of the provisions of the particular regulation may petition for amendment in accordance with the provisions of Revised Procedural Regulation No. 1. Petitions for amendment may be filed at any time. All proposed amendments are required to be of general applicability.

Protests. Revised Procedural Regulation No. 1 contains regulations prescribed by the Administrator as required by section 203 (a) of the Emergency Price Control Act,³⁵ governing the filing and processing of protests. Protests must be filed within a period of sixty days after the *date of issuance* of the particular regulation or order to which protest is made. The Administrator is required to grant or deny the protest within a limited time after the protest is filed. In the event the protest is denied, the Administrator is required to inform the protestant of the grounds upon which his decision is based and of any economic data and other facts of which the Administrator has taken official notice. An appeal may be taken from any adverse rule to the Emergency Court of Appeals, as provided in section 204 (a) of the Emergency Price Control Act.³⁶

The relief afforded by the filing of a protest and the procedure which the protestant is required to follow is of primary importance in that no other course can be followed to obtain relief. The Emergency Price Control Act specifically vests exclusive jurisdiction in the Emergency Court of Appeals. Congress, in making this provision, recognized that the functions of OPA could not be exercised efficiently and with the requisite speed demanded by conditions of war time if it was subject to being restrained by the ordinary formal court procedure.

³⁵50 U. S. C. A. sec. 923.

³⁶50 U. S. C. A. sec. 924.

II

Rent Control

No attempt has been made in the portion of this article dealing with Rent Control to discuss minutely every detail of the Regulations. On the other hand, those provisions of the Regulations concerning which it is felt that lawyers should be generally acquainted are considered.

DESIGNATION OF DEFENSE-RENTAL AREAS

Section 2 (b) of the Emergency Price Control Act of 1942 requires that the Administrator issue a declaration setting forth the necessity for, and the recommendations as to, rent control in any particular defense-rental area at least sixty days before he may issue an effective Regulation controlling the rents in such area.

On April 28, 1942, the Administrator, in four separate declarations, designated 303 defense-rental areas for which he proposed to issue Rent Regulations. Prior to that date he had designated twenty-one areas,³⁷ and from that date until October 5, 1942, he had designated sixty-nine additional areas. On October 5, 1942, the Administrator designated forty-five additional defense-rental areas covering all portions of forty-five states which had not been otherwise or previously designated as a part of a defense-rental area.³⁸ At the time of the present writing, no Regulation has as yet been issued for those portions of Missouri designated in the declaration of October 5, 1942.³⁹

ISSUANCE OF REGULATIONS

Since the time of the designation of the first defense-rental areas, 371 areas (including Alaska) have been brought under effective rent control through the issuance of Maximum Rent Regulations covering dwelling accommodations within these areas.⁴⁰ Two Regulations have been issued for each of these defense-rental areas; one covers housing accommodations other than hotels and rooming houses, and the other covers hotels and rooming houses. With the exception of differences in the date designated as the maximum rent date and the date on which the Regulation became effective, the respective Regulations are the same for

³⁷Twenty areas were designated on March 2, 1942, and one on April 2, 1942.

³⁸All portions of the states of Connecticut, Delaware, and Massachusetts had previously been designated as being within a defense-rental area.

³⁹Colorado has, as of June 1, 1943, five Defense-Rental Areas with effective dates of Regulation shown as follows: Denver, Aug. 1, 1942; Colorado Springs, Oct. 1, 1942; La Junta, Nov. 1, 1942; Pueblo, Nov. 1, 1942; Leadville, Dec. 1, 1942.

⁴⁰As of May 1, 1943, 458 Defense-Rental Areas have been designated in the United States, Alaska, and Puerto Rico, of which 370 are now under federal rent control.

all areas.³⁰ Since most of the general provisions of the Housing Regulation and the Hotel Regulation are quite similar, the general provisions of both Regulations will be discussed together and attention will be called to particular differences between the two, where such differences exist.

THE REGULATIONS THEMSELVES

Accommodations Covered

The provisions of the Housing Regulation apply to all housing accommodations within the defense-rental area which are not specifically exempt. Since the Hotel Regulation covers rooms and other accommodations within hotels and rooming houses, the Housing Regulation does not apply to such rooms and accommodations.

The Regulations have no application to purely commercial or business property. Although a bill was pending in Congress at the end of the second session of the 77th Congress to control the rents of commercial property, the bill has not been enacted into law. However, since some business properties are also used partly for dwelling accommodations, some business properties may be subject to the Housing Regulation, depending upon the separability of the portions used for the separate purposes or upon the predominant use which is made of the property.

Most dwelling units, whether they are rented furnished or unfurnished, are subject to the Housing Regulation. In order to come within the provisions of the Hotel Regulation, the definition set forth in that Regulation must apply. A hotel means any establishment generally recognized as such in its community, containing more than fifty rooms, and used predominantly for transient occupancy. All rooms within such a structure are subject to the Hotel Regulation even though a particular room involved is not used for transient occupancy. If a building is considered a rooming house within its customary usage, all accommodations within the building are governed by the Hotel Regulation. If not, then only those portions of the building in which a furnished room or rooms, not constituting an apartment, are rented on a short-time basis to more than two paying tenants who are not members of the landlord's immediate family, are subject to the Hotel Regulation, and the portions not meeting these requirements are subject to the Housing Regulation. However, where any portion of a building contains furnished accommodations rented on a short-time basis, the landlord may petition the Rent Director to bring all of the accommodations under the Hotel Regulation. The Rent Director may consent to such election if the rental practices

³⁰All of the defense-rental areas in Missouri have a maximum rent date of March 1, 1942, except the Rolla-Waynesville Area, the maximum rent date of which is April 1, 1941, and the Joplin-Neosho Area, which has a maximum rent date of July 1, 1941; the effective dates of the Regulation for the defense-rental areas in Missouri are as follows: Joplin-Neosho, Rolla-Waynesville, and St. Louis, July 1, 1942; Kansas City and Pike (Louisiana), September 1, 1942, and Sedalia, December 1, 1942.

are found to be better adapted to the Hotel Regulation than the Housing Regulation.

The term "rooming house" also includes boarding houses, dormitories, auto camps, trailers, tourist cabins and all other establishments of a similar nature.

Exemptions

Dwelling accommodations situated on a farm are exempt from the Regulations, if they are occupied by a tenant who is engaged for a substantial portion of his time in farming operations on the farm. In order to come within this exemption, the tenant need not himself be doing the actual farming if it is done under his supervision and constitutes a commercial venture as a farm.⁴⁰

Dwelling space which is occupied by domestic servants, caretakers, managers or other employees who receive the space as part of their pay and who are employed to render service in connection with the premises in which their dwelling is located, is also exempt.

Entire structures, in which rooms were rented as hotel or rooming house rooms, were all formerly subject to the Housing Regulation, but by an amendment which became effective March 1, 1943, the underlying lease on structures containing more than twenty-five rooms which are subrented were exempted from the Regulation.⁴¹ The Housing Regulation still applies to underlying leases of premises containing twenty-five or less rooms. It also still applies to such lease of any structure, regardless of size, where the lease was entered into between the maximum rent date and the effective date of the Regulations while such lease remains in force, and where the tenant has no power to cancel the same.

Rooms in hospitals and rooms of charitable or educational institutions which are used in carrying out their charitable or educational purposes are also specifically exempted by the Hotel Regulation. However, in the latter two instances the rooms must actually be used to carry out a bona fide charitable or educational purpose of a bona fide charitable or educational institution.^{42 1}

Leases

The Regulations provide that all leases and other rental agreements remain in force pursuant to their terms, with the exception of the particular provisions which are inconsistent with the provisions of the Regulations.

(Concluded in August Issue)

⁴⁰Interpretation No. 19 issued by the Assistant General Counsel.

⁴¹Supplementary Amendment No. 15 to the Housing Regulation.

⁴²Interpretations Nos. 23, 24 and 36.

¹The Housing and Hotel Regulations by recent Supplemental Amendments Nos. 18 and 10(a), respectively, provide an exemption for housing accommodations located in a resort community and customarily rented or occupied on a seasonal basis which were not rented during any portion of the period beginning on Nov. 1, 1942, and ending Mar. 31, 1943.