INDEX

CITATIONS

In the Supreme Court of the United States

OCTOBER TERM, 1943

No. 374

ALBERT YAKUS, PETITIONER

v.

THE UNITED STATES OF AMERICA

No. 375

BENJAMIN ROTTENBERG AND B. ROTTENBERG, INC., PETITIONERS

v.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The memorandum opinion of the District Court (No. 375, R. 59–67) is reported in 48 F. Supp. 913. The opinion of the Circuit Court of Appeals (No. 374, R. 42–56; No. 375, R. 68–82) is reported in 137 F. (2d) 850.

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JURISDICTION

The judgments of the Circuit Court of Appeals for the First Circuit in both cases were entered on August 23, 1943 (No. 374, R. 56; No. 375, R. 82). The petitions for writs of certiorari were filed in this Court on September 22, 1943. Certiorari was granted in both cases on November 8, 1943, and the cases were consolidated for argument (No. 374, R. 56; No. 375, R. 83). Jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether Section 204 (d) of the Emergency Price Control Act of 1942 operates to prevent consideration of the validity of maximum price regulations in suits for enforcement of the Act, including criminal prosecutions.

2. Whether Section 204 of the Act, in providing an exclusive procedure for judicial review of maximum price regulations under the Act, and in prohibiting consideration of the validity of such regulations in suits to enforce the Act, contravenes the Fifth and Sixth Amendments of the Federal Constitution or works an unconstitutional legislative interference with the judicial power.

3. Whether, to the extent here involved, the exclusive statutory procedure established in Sec-

tions 203 and 204 of the Act for administrative and judicial review of regulations meets the requirements of procedural due process.

4. Whether the Act involves an unconstitutional delegation of authority to control prices.

STATUTES AND REGULATION INVOLVED

The Emergency Price Control Act of 1942 (Act of January 30, 1942, 56 Stat. 23, 50 U. S. C. App. Supp. II, sec. 901 *et seq.*) will be found in the Appendix. The Act of October 2, 1942 (56 Stat. 765, 50 U. S. C. App., Supp. II, sec. 961 *et seq.*) will also be found in the Appendix. Sec. 7 (b) of the October 2 Act makes applicable the penalties and other provisions of the Price Control Act where authority is delegated to the Price Administrator. For such delegation, see Executive Order 9250, 7 Fed. Reg. 7871, issued October 3, 1942, covering agricultural products and commodities processed therefrom.

Revised Maximum Price Regulation No. 169 is published in 7 Fed. Reg. 10381 *et seq.* The applicable provisions are Sections 1364.451–1364.-455, establishing maximum prices for sales of wholesale cuts of beef, and Section 1364.401, prohibiting such sales at prices above the maximum established. The Statement of Considerations accompanying the Regulation will be found in OPA Serv. 41 : 339 *et seq.*

Revised Procedural Regulation No. 1, issued on November 2, 1942, is published in 7 Fed. Reg. 8961 *et seq.*

Copies of these Regulations and of the Statement of Considerations will be handed to the Court.

STATEMENT

Petitioners in both cases seek review of judgments of the Circuit Court of Appeals for the First Circuit which affirmed judgments of conviction against petitioners in the District Court for the District of Massachusetts (No. 374, R. 12; No. 375, R. 26) under indictments charging sales of wholesale cuts of beef at prices above the maximum legal prices established by Revised Maximum Price Regulation No. 169 (No. 374, R. 1-4; No. 375, R. 1–13).[1] In No. 374, peti-

[1] The indictments against the individual and corporate defendants in No. 375 were consolidated for trial and on the appeal below (No. 375, R. 20, 68). By stipulation (No. 375, R. 57–58) only the pleadings as to the individual defendant were printed in the record for the Circuit Court of Appeals, which is incorporated as part of the present Record. The pleadings as to the corporate defendant are similar to those in the present Record.

The regulation prescribed certain basic prices (called Zone Prices) for the respective grades of beef carcasses and wholesale cuts (sec. 1364.452). From these basic prices certain deductions were required to be made and certain additions were permitted to be added. Of these additions and deductions the only ones material here are those provided for in subdivisions (b) and (c) of section 1364.453 and subdivision (d) of section 1364.454. Originally subdivisions

tioner was found guilty under three counts, and received a concurrent sentence of six months' imprisonment and one thousand dollars fine (No. 374, R. 13). In No. 375, petitioner Benjamin Rottenberg was found guilty under fourteen counts, and received a concurrent sentence of six months' imprisonment and one thousand dollars fine. The corporate defendant-petitioner in No. 375 was found guilty under fifteen counts, and received a concurrent sentence of one thousand dollars fine (No. 375, R. 27, 30).

Petitioners filed pleas of not guilty in the District Court (No. 374, R. 5; No. 375, R. 13–14), but there is no dispute that they were guilty of violations. The District Court overruled a number of motions and requests for rulings raising defenses of law. Among the contentions so

(b) and (c) of section 1364.453 provided that a carload discount of 75 cents per cwt. should be deducted from the basic zone prices on carload sales and that a wholesaler's discount of 50 cents per cwt. should be deducted from the basic prices on less-than-carload sales to wholesalers; subdivision (d) of section 1364.454 provided that wholesalers might add a wholesaler's selling addition of 25 cents per cwt. to the basic prices. In effect, therefore, the regulation allowed wholesalers a margin of $1.00 per cwt. if they purchased in carload lots and a margin of $0.75 per cwt. if they purchased in less-than-carload lots.

Subsequent revisions, not here material, were made. By an amendment issued on June 7, 1943 (Amendment 15, 8 Fed. Reg. 7675), the carload and wholesalers' discounts were abolished and a quantity discount varying from 37½¢ per cwt. to 62½¢ per cwt. was substituted. By the same amendment the wholesalers' selling addition was increased from 25 cents to 37½ cents per cwt. On June 24, 1943, the quantity

overruled were the following: that the Regulation is invalid and that an offer of proof of such invalidity should be received (No. 374, R. 7–12, 14–16, 17–24, 26, 28, 31; No. 375, R. 16–20, 23–26, 32–37, 38–41, 42, 61–67);[2] that Section 204 (d) of the Act (the "exclusive jurisdiction" provision) should not be construed to bar such an assertion of invalidity or an offer of proof thereof (No. 375, R. 37, 50, 62–63); that Section 204 (d) is unconstitutional if construed to bar consideration of the validity of the Regulation (No. 374, R. 13–16, 25–26; No. 375, R. 23, 37, 38, 61–67); and that the Act makes an unconstitutional delegation of power to control prices (No. 374, R. 7,

discount was abolished and the carload and wholesalers' discounts of 75 cents and 50 cents per cwt., respectively, were restored (8 Fed. Reg. 8756). On July 16, 1943, the carload discount was reduced to 25 cents per cwt., the wholesalers' discount was abolished, and the wholesalers' selling addition was increased to 75 cents per cwt. (8 Fed. Reg. 9995), thus again allowing wholesalers a margin of $1.00 per cwt. if they purchased in carload lots and a margin of $0.75 if they purchased in less-than-carload lots.

[2] The defendants challenged the validity of the Regulations by motions to quash and motions in arrest of judgment on the grounds (1) that the Regulation was too vague and indefinite; (2) that it arbitrarily and unreasonably established prices too low; (3) that it failed to fix maximum prices for livestock; (4) that it was not supported by findings sustained by evidence; (5) that it was issued without prior approval of the Secretary of Agriculture; and (6) that it failed to allow a generally fair and equitable margin for processing (No. 374, R. 7–12, 14–16; No. 375, R. 16–20, 23–24). In No. 374 the defendant offered to prove by the testimony of Prentiss M. Brown, then Price Administrator, that the

10, 26, 27; No. 375, R. 15, 16, 18, 19, 38–39, 40, 59–61, 82). In No. 375 the District Court rendered a comprehensive opinion on the issues of law (R. 59–67).

The Circuit Court of Appeals, in affirming the convictions, held that Section 204 (d) of the Act operates to bar the attack sought to be made by petitioners against the Regulation; that Section 204 (d), as so construed, is constitutional; and that the Act does not improperly delegate legislative power to the Administrator of the Office of Price Administration (No. 374, R. 42–56; No. 375, R. 69–82).[3]

SUMMARY OF ARGUMENT

I

1. The courts below properly held that petitioners could not challenge the validity of the applicable price regulation in this proceeding. Section 204 (d) of the Act expressly provides that the validity of price regulations may be

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Regulation failed to allow an equitable margin for the processing of beef (No. 374, R. 18), and that compliance with the Regulation would require defendant to sell his products at prices lower than actual cost (No. 374, R. 19–23). In No. 375 the defendants offered to prove the average cost to wholesalers at Boston of dressed carcasses and wholesale cuts of beef based on the cost of livestock at Chicago and the cost of transporting, handling, and slaughtering, as well as incidental losses and expenses (No. 375, R. 32 *et seq.*).

[3] Petitioners have at no time attempted to obtain administrative or judicial relief in accordance with the available statutory procedures. See p. 32, n. 11, *infra*.

considered only in the Emergency Court of Appeals and on review in this Court. The record in such proceedings is formulated by protest or application for adjustment addressed to the Administrator, together with his action thereon. This provision for exclusive review is part of the procedural pattern of the statute, which is designed to protect against the premature interruption and disparate enforcement of wartime inflation control, and which at the same time affords to aggrieved persons an orderly avenue of administrative and judicial review. The protest procedure affords full opportunity to challenge a regulation, with an opportunity to be apprised of data considered by the Administrator and to rebut it. Oral hearings are not precluded where appropriate. The Emergency Court of Appeals has all the powers of a Federal District Court and is in a position to safeguard the interests of complainants.

2. In precluding an attack on the regulation in this proceeding, Congress acted under the war powers to preserve continuity of control and uniformity and expertness of review. The procedure, moreover, is fortified by established principles of administrative law. In criminal proceedings a regulation may not be challenged as invalid where there has been a failure to exhaust administrative remedies (*Bradley* v. *City*

of Richmond, 227 U. S. 477; cf. *United States* v. *Corrick,* 298 U. S. 435). The principle has been applied, for example, to prosecutions under the Interstate Commerce Act where a person has violated an order or a legal tariff which has not been set aside through resort to the administrative process (*Lehigh Valley R. Co.* v. *United States,* 188 Fed. 879; *United States* v. *Vacuum Oil Co.,* 158 Fed. 536). Cases under the Selective Service Act are similar.

3. Special objection has been made to the provisions of the Act which prohibit stays and interlocutory injunctive orders by any court, including the Emergency Court of Appeals. Petitioners have not sought relief by application to the Administrator and may not be in a position to attack the stay provisions. (Cf. *Anniston Manufacturing Co.* v. *Davis,* 301 U. S. 337.) Moreover, a stay is not a matter of absolute right under the Constitution. (See *Scripps-Howard Radio, Inc.* v. *Federal Communications Commission,* 316 U. S. 4, 10.) In the present statute Congress has generalized what would undoubtedly have been proper judicial practice governing the issuance or denial of stays, since that practice gives special weight to the public interests affected. The principle that vital public interests will not be set at naught by the granting of interlocutory relief in

the absence of overwhelming private need finds its most frequent application in cases involving property rights. (See *Phillips* v. *Commissioner,* 283 U. S. 589, 595, and cases there cited.)

Congress itself in several instances has crystallized a rule against interlocutory injunctive relief. R. S. 3224, in the field of taxation, is essentially this kind of statute. The District of Columbia World War Rent Act and the National Prohibition Act contained provisions against interlocutory relief which were sustained. See *Block* v. *Hirsh,* 256 U. S. 135, 157–158; *Cywan* v. *Blair,* 16 F. (2d) 279.

The decision in *Ex parte Young,* 209 U. S. 123, and the cases which have followed it, are not opposed to our position. In the first place, in holding that there was a right to a stay of penalties threatened by criminal prosecutions those cases emphasized the fact that the statutes under consideration provided no method of challenge save by defending in criminal actions, and where violations of the statute would subject the individual to oppressive penalties all effective avenues of redress were blocked. (See *Wadley Southern Railway* v. *Georgia,* 235 U. S. 651, 662.) In the present Act orderly challenge may be made by administrative protest and judicial review. Moreover, for the most part the cases relied on by petitioners involved the element of continuing

confiscation in relation to public-utility regulation. In the present case there is no constitutional right that regulation under the war powers shall yield a fair return to everyone. Finally, it would be wholly incompatible with the functioning of the price-control law to follow the practice pursued in public-utility cases. The giving of a bond, for example, would not serve to protect against the evils of inflation.

If we are sensitive to the actual perils of inflation, we must look elsewhere for analogies,—for example, to the decisions rejecting claims to preliminary hearings and interlocutory relief where action is taken to control the spread of disease. *Jacobson* v. *Massachusetts,* 197 U. S. 11, 17–18, 27–28.

It may be observed that in the case of revocation of licenses, not involved here, the statute requires a judicial order and makes provision for stays. (Compare *Porter* v. *Investors Syndicate,* 286 U. S. 461; *id.,* 287 U. S. 346.)

II

The price control provisions of the statute do not involve an unlawful delegation of legislative power. The standards are fully as definite as those which have been sustained in statutes regulating rates, wages, and prices.

ARGUMENT

I

THE COURTS BELOW PROPERLY BARRED THE ATTACK ON REVISED MAXIMUM PRICE REGULATION NO. 169 IN RECOGNITION OF THE EXPRESS RESTRICTIONS CONTAINED IN SECTION 204 (d) OF THE EMERGENCY PRICE CONTROL ACT

In seeking to challenge the validity of Revised Maximum Price Regulation No. 169 in this proceeding, petitioners have disregarded the statutory procedure provided in the Price Control Act. The validity of that procedure, particularly the limitations in Section 204 (d) of the Act, is here in issue.[4] Petitioners' contentions respecting Section 204 (d) may be summarized as follows: (1) that the Section does not operate to prevent consideration of the validity of the Regulation in this suit; (2) that if the Section does so operate, it is unconstitutional as a violation of petitioners' rights under the Fifth and Sixth Amendments and as an invasion of the judicial function; and (3) that the statutory procedure for review of regulations,

[4] The validity of Revised Maximum Price Regulation No. 169 is not before this Court. It is, however, before the Emergency Court of Appeals at the present time. (See, *e. g.*, *Heinz et al.* v. *Bowles*, No. 102, Em. Ct. App., now pending.)

Petitioners have set out fragments of testimony before a House Committee (Brief in No. 375, pp. 39–42), relating to the position of so-called nonprocessing slaughterers under the Regulation, with special reference to the then absence of a

afforded by Congress as a substitute for the avenues of review barred by Section 204 (d), fails to meet the requirements of procedural due process.

Contentions (1) and (2), *supra,* raise the primary issues in the case; in view of petitioners' failure to try out the available statutory review procedure, it is questionable whether the issues of procedural due process raised under contention (3), *supra,* are properly presented here, save perhaps those which are raised on the face of the statute. (Cf. ***Anniston Manufacturing Company***

legal maximum on livestock prices. Petitioners are not in the category discussed, but are wholesale dealers, whose prices are fixed in accordance with margins described in note 1, p. 4, *supra.* The Administrator's position regarding the Regulation is set forth *in extenso* in an opinion dated October 27, 1943, in the Record in the *Heinz* case, *supra* (pp. 55–136), and special reference is there made to the problem of the nonprocessing slaughterers (pp. 76–81). The latter were given an additional payment through Defense Supplies Corporation, by order of the Economic Stabilization Director on October 26, 1943 (*id.* 128–136), conditioned on purchasing livestock within a price range therewith established. The Administrator's opinion states (*id.* 81): "The institution of measures to correct the hardship of which they complain removes the basis for the only substantial objection to the Regulation which has been presented." In a letter to the Attorney General on March 13, 1943, the former Administrator, Prentiss M. Brown, stated that "no evidence which has thus far been brought to my attention establishes that the regulations fixing ceiling prices for meat, if adequately enforced, are inconsistent with the standards of the Emergency Price Control Act or the McKellar Amendment" (*id.* 82–83).

v. *Davis,* 301 U. S. 337, 354–355; *Hall* v. *Geiger-Jones Company,* 242 U. S. 539, 554; *Plymouth Coal Company* v. *Pennsylvania,* 232 U. S. 531, 542, 544–545.) Nevertheless the procedure which petitioners have failed to invoke will be discussed as part of a full description of the statutory plan of exclusive review to which attack is chiefly directed.

A. THE EXCLUSIVE REVIEW PROCEDURE AND THE CONSIDERATIONS IMPELLING ITS ADOPTION

Section 204 (d) of the Act is the keystone of the plan established in Sections 203 and 204 of the Act for administrative reconsideration and judicial review of maximum price and rent regulations issued pursuant to Section 2 of the Act. The Emergency Court of Appeals has been created (Section 204 (c)) as the exclusive judicial forum under this statutory plan, with review by writ of certiorari in this Court. In the interests of maintaining continuity of the price and rent controls while they are thus being judicially tested, however, the Act provides that the Emergency Court shall not issue interlocutory orders and that the regulations shall remain in force until final action by this Court (Sections 204 (c), 204 (d)). By the provisions of Section 204 (d) the exclusive jurisdiction thus vested in the Emergency Court of Appeals and this Court, to be exercised in proceedings instituted under the

statutory procedure, is preserved from infringement by any other tribunal in any other type of proceeding.

In effectuation of this purpose, Section 204 (d) imposes certain limitations upon the jurisdiction of all courts outside the statutory review forum. These limitations may best be understood in terms of a twofold classification of suits arising under the Act: (1) suits to prevent or interfere with enforcement or operation of maximum price and rent regulations, *i. e.*, suits initiated in an attempt to have these wartime controls suspended or set aside, the situation presented in *Lockerty* v. *Phillips,* 319 U. S. 182; and (2) suits to enforce the regulations under the provisions of Section 205 of the Act, the situation presented in this suit.

In the first class of suits mentioned, the effect of Section 204 (d) is simply that the plaintiff may not have relief except in a proceeding instituted in the Emergency Court of Appeals under Section 204 of the Act. This aspect of the exclusive review plan was upheld in the *Lockerty* case, *supra.* In the second class of suits mentioned, enforcement suits, the applicable language of Section 204 (d) is that the Emergency Court of Appeals, and this Court on review of its judgments, "shall have exclusive jurisdiction to determine the validity" of regulations, and the further provision that no other court "shall have jurisdiction or power to consider the validity" of

regulations. The defendant in an enforcement proceeding is free to raise all proper defenses addressed to the constitutionality of the Act itself as distinct from the regulation involved. The defendant may not, however, raise any defense addressed to the validity of the regulation.

It is evident, we submit, that the court below was correct in its conclusion that the "blanket" statutory language vesting in the statutory review forum "exclusive jurisdiction to determine the validity of any regulation," and depriving all other courts of "jurisdiction or power to consider the validity of any such regulation," plainly comprehends a broader subject matter than a ban against suits initiated by aggrieved persons to enjoin or set aside price controls; the language cited operates to bar consideration of the validity of a particular regulation "however the litigation may originate." As the court below also recognized, the legislative history confirms this construction (No. 375, R. 75–76). Petitioners' contention that Section 204 (d) is not to be construed as barring an attack on the Regulation in this suit is plainly in error.[5] The suggestion that

[5] It is true that, in an analytical sense, it may be difficult to dissociate an attack, or a decision, directed at the validity of the statute from one directed at the validity of a regulation, since the statute impinges on the party involved through the regulation. Nevertheless the distinction has been drawn by Congress, and it is practicable to give it effect. (Cf. *Jameson & Co.* v. *Morgenthau*, 307 U. S. 171; *Dahnke-Walker Co.* v. *Bondurant*, 257 U. S. 282.) The Senate Com-

the Regulation was not "issued under" Section 2 of the Price Control Act (Brief in No. 375, p. 3) is answered not only by the recital in the Regulation that it was issued under both that Act and the Act of October 2, 1942, but also by the provision in Section 7 (b) of the October 2 Act making applicable the provisions of the earlier Act where authority is delegated to the Administrator by the President, as was done here (see Executive Order 9250, 7 Fed. Reg. 7871).

The statute and procedural regulations which have been issued pursuant to it (Revised Proce-

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mittee on Banking and Currency, in favorably reporting the bill which contained the provisions of Section 204 (d), stated (S. Rep. 931, 77th Cong., 2d sess., p. 25):

"* * * Thus the bill provides for exclusive jurisdiction in the Emergency Court and in the Supreme Court to determine the validity of regulations or orders issued under section 2. *Of course, the courts in which criminal or civil enforcement proceedings are brought have jurisdiction, concurrently with the Emergency Court, to determine the constitutional validity of the statute itself.*" [Italics supplied.]

The bill thus reported to the Senate, whose pertinent provisions were adopted, differed significantly from the bill as introduced in the House; in its original form Section 204 (d) provided: "The Emergency Court of Appeals, and the Supreme Court upon review of judgments of the Emergency Court of Appeals, shall have exclusive jurisdiction to determine the validity of any ceiling regulation or order, *and of the provisions of this Act authorizing such regulation or order.*" [Italics supplied.] H. R. 5479, 77th Cong., 1st sess., printed in Hearings before Committee on Banking and Currency, House of Rep., 77th Cong., 2d sess., on H. R. 5479, pp. 4, 7–8. See also the decision of the three-judge Federal

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dural Regulation No. 1)[6] afford to aggrieved persons full opportunities for administrative and judi-

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District Court in *Lockerty* v. *Phillips*, 49 F. Supp. 513, affd., 319 U. S. 182, where Circuit Judge Maris (a member of the bench of the Emergency Court of Appeals) stated for the court (p. 514):

"The portion of section 204 (d) which we are considering deprives the courts of the country, other than the Emergency Court of Appeals, merely of jurisdiction and power to 'stay, enjoin, or set aside * * *.' These words refer to the type of affirmative relief sought to be obtained from a court, the type being injunctive in its nature; they do not indicate or imply that a court may not consider the constitutionality of the act if that question arises incidentally in a criminal prosecution or civil suit. For example, we think it is clear that in a criminal prosecution or in a civil suit brought by the Price Administrator for an injunction to restrain a violation of the act or of a regulation issued thercunder section 204 (d) does not deprive the court of power to consider a defense based upon the alleged [un]constitutionality of the act. When Congress desired to prohibit courts from considering the question of validity under any circumstances it knew how to do so by the use of appropriate language for in the very sentence which we are considering it deprives all courts except the Emergency Court of Appeals of power 'to consider the validity of any such regulation, order, or price schedule' but it does not here or elsewhere in terms prohibit the courts from considering the validity of the act itself."

[6] The Price Control Act (Sec. 2 (c)) authorizes the Administrator to incorporate into maximum price regulations provisions "for such adjustments and reasonable exceptions, as in the judgment of the Administrator are necessary or proper in order to effectuate the purposes of the Act." (Cf. *Lakemore Company* v. *Brown*, 137 F. (2d) 355 (E. C. A., 1943); *Hillcrest Terrace Corporation* v. *Brown*, 137 F. (2d) 663 (E. C. A., 1943); *Armour and Co.* v. *Brown*, E. C. A., Aug. 6, 1943, OPA Service 610:59.) While Revised Maximum Price Regulation 169 does not contain a general provision for individual adjustments, section 1364.410 provides for petitions for amendment, and in fact amendments have been made from time to time. See, *e. g.*, note 1, p. 4, *supra.*

cial relief.[7] Under Revised Procedural Regulation No. 1 two types of administrative relief were available to petitioners herein: (1) a "protest" against Maximum Price Regulation No. 169 or any provision thereof (Act, Sec. 203; Proced. Reg., Subpart D); and, (2) a "petition for amendment" of the Regulation or any provision thereof (Proced. Reg., Subpart C), the latter being an additional remedy afforded by the Administrator and not required by the Act addressed to the Administrator's "legislative" discretion. (See *Bogart Packing Co., Inc.,* v. *Brown,* E. C. A., Oct. 19, 1943, OPA Service 610:84.)

The statutory "protest" is required to be filed within sixty days from the date of issuance of the aggrieving regulation or may be filed upon "new

[7] The contention that preissuance hearings are constitutionally required is answered by many cases dealing with administrative rule-making affecting a large group, where practical considerations and the inherent guaranty of fairness in such general action are decisive; see *Bi-Metallic Co.* v. *Colorado*, 239 U. S. 441. In emergency situations the answer is especially strong. See *Jacobson* v. *Massachusetts*, 197 U. S. 11; *Phillips* v. *Commissioner*, 283 U. S. 589, 595. In *Opp Cotton Mills* v. *Administrator*, 312 U. S. 126, the statute required preissuance hearings, and unless such hearings were held there would have been no opportunity for a hearing, since the record on review was limited to the record made before the Administrator. The Emergency Court of Appeals has sustained the procedure in respect of hearings. *Avant* v. *Bowles*, No. 63, decided December 31, 1943. It may be observed that Revised Procedural Regulation No. 1 makes provision for preissuance hearings in suitable cases (Secs. 1300.3–1300.5).

grounds" within sixty days from the date when the protestant had or might reasonably have had notice of such new grounds (Act, Sec. 203 (a); Proced. Reg., Sec. 1300.26). Petitioners complain that this limitation period affords inadequate time. The Act specifically provides that the Administrator may permit the presentation of evidence after the filing date (Sec. 203 (a)). Revised Procedural Regulation No. 1 contains detailed provisions in aid of protestants so circumstanced that they require additional time for presentation of evidence (Secs. 1300.30 (c), 1300.33 (b)). A sixty-day limitation period is more than a reasonable time in which to decide upon entry into an administrative forum. In *Opp Cotton Mills* v. *Administrator,* 312 U. S. 126, 153, this Court held forty days to be ample notice of a hearing for establishment of minimum wages under the Fair Labor Standards Act. The Court has held much shorter periods to be reasonable (*Wick* v. *Chelan Elec. Co.,* 280 U. S. 108 (18 days between first day of publication and return in condemnation); *Bellingham Bay, etc., Co.* v. *New Whatcom,* 172 U. S. 314 (10 days within which to file objection to notice of reassessment) cf. *Campbell* v. *Olney,* 262 U. S. 352 (20 days within which to sue to set aside assessment)). The Congressional adoption of a sixty-day, rather than a longer, period for protest is fully justified under the present circumstances.

These wartime regulations and orders affect millions of persons. It is of the utmost importance that necessary or desirable changes be brought to the Administrator's attention with the greatest possible dispatch. It would be difficult to justify a longer period (*Harlem Metal Corp.* v. *Brown,* 136 F. (2d) 242 (E. C. A. 1943); *Bogart Packing Co., Inc.* v. *Brown,* E. C. A. Oct. 19, 1943, OPA Service 610:84; *Taylor* v. *Brown,* 137 F. (2d) 654 (E. C. A. 1943), certiorari denied, No. 305, present Term.

In passing upon protests the Administrator is governed by the provisions of Section 203 of the Act. He is required to dispose of protests with reasonable dispatch; he is subject in this regard to corrective order by writ of mandamus from the Emergency Court of Appeals (*Safeway Stores, Inc.* v. *Brown,* 138 F. (2d) 278 (E. C. A. 1943)). Protestants may file documentary matter, and the implementing procedural regulation makes full provision for oral hearings (Secs. 1300.39–1300.42) and for the issuance of subpoenas at a protestant's request in proper cases (Sec. 1300.44). The Administrator must advise the protestant of the grounds upon which denial of a protest is based, and of any economic data and other facts of which he has taken official notice (Act, sec. 203 (a)).

The jurisdiction of the Emergency Court of Appeals attaches upon the filing of a complaint

in that court. The statute requires (Sec. 204 (a)) that in preparing the transcript for the Emergency Court the Administrator shall include such matter as is "material under the complaint." It is the complainant, therefore, who controls and shapes the issues in the Emergency Court. The provision (Sec. 204 (a)) that facts of which the Administrator has taken official notice shall be included in the transcript "so far as practicable" is not a peril to the complainant. Rule 15 (d) of the Emergency Court of Appeals specifically provides for "correction of the transcript." The complainant is in a position to decide advisedly whether to invoke this rule since he will have been informed by the Administrator of the data on which the order of denial is based (p. 20, *supra*). These safeguards, together with the provisions respecting introduction of new evidence in the Emergency Court of Appeals (Act, Sec. 204 (a)), ensure that persons entering the statutory forum will receive full opportunity for apprisal and rebuttal at all stages of the review process.[8]

[8] With respect to oral hearings, the statute permits, but does not require, the Administrator to limit protest proceedings to the filing of affidavits, or other written evidence, and the filing of briefs. Revised Procedural Regulation No. 1 (Sec. 1300.39 *et seq.*) provides for the granting of oral hearings where the protestant shows that "affidavits or other written evidence and briefs will not permit the fair and expeditious disposition of the protest." In view of the nature of the issues, written evidence, with apprisal of any countervailing

This Court has already had occasion to observe the practical operation of the statutory review procedure (E. g., *Davies Warehouse Co.* v. *Brown,* 137 F. (2d) 201 (E. C. A. 1943), certiorari granted, No. 112, present Term; *Taylor* v. *Brown,* 137 F. (2d) 654 (E. C. A. 1943), certiorari denied, No. 305, present Term). The Emergency Court of Appeals is endowed by the statute with powers sufficiently broad to assure aggrieved persons of the fullest judicial consideration and the fullest opportunity for judicial relief (*Taylor* v. *Brown, supra; Wilson* v. *Brown,* 137 F. (2d) 348 (E. C. A. 1943); *Armour and Co.* v. *Brown,* E. C. A., August 6, 1943, OPA Serv. 610: 59; *Hillcrest Terrace Corporation* v. *Brown,* 137 F. (2d) 663 (E. C. A. 1943)). The Emergency Court possesses authority to set aside any regulation which is shown to be "not in accordance with law, or * * * arbitrary or capricious" (Section 204 (b)). It also possesses power, of course, to pass upon any proper challenge to the constitutionality of the Act itself. (See p. 16, *supra.*) And it may exercise its corrective powers to prevent procedural abuses by the Administrator or to remand for correction. (See *Safeway*

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data and an opportunity to rebut it, will ordinarily be adequate. Administrative proceedings confined to written evidence and briefs are familiar practice. (See Report of Attorney General's Committee on Administrative Procedure, S. Doc. No. 8, 77th Cong., 1st sess., pp. 404–410; *United States* v. *Abilene & So. Ry.*, 265 U. S. 274, 289.)

Stores, Inc. v. *Brown, supra;* Act, Sec. 204 (b).) The Emergency Court of Appeals exercises the judicial power of the United States in reviewing the Administrator's determinations. Except for the restrictions as to issuance of interlocutory orders, it exercises the full powers of a district court of the United States, with respect to the jurisdiction conferred by the Act (Section 204 (c)). The plan of administrative and judicial review established in Sections 203 and 204 of the Act has been held, in its various aspects, to satisfy the requirements of due process. (E. g., *Lockerty* v. *Phillips,* 319 U. S. 182; *Avant* v. *Bowles,* E. C. A. Dec. 31, 1943, not yet reported; *Taylor* v. *Brown, supra; Montgomery Ward & Co.* v. *Bowles,* E. C. A., November 5, 1943, OPA Serv. 610:87; *Lakemore Company* v. *Brown,* 137 F. (2d) 355 (E. C. A. 1943); *Henderson* v. *Kimmel,* 47 F. Supp. 635 (D. Kan. 1942)).

Directly in issue in the present case is the provision of Section 204 (d) forbidding any court outside the exclusive statutory forum to consider the validity of maximum price regulations. This provision operates in protective combination with the jurisdictional restriction (Sec. 204 (d)) sustained in *Lockerty* v. *Phillips, supra,* and with the provisions which bar interlocutory relief in the Emergency Court of Appeals (Sec. 204 (c)) and preserve the regulations in force pending review by this Court (Section 204 (b)). These provisions are parts of a unified statutory plan.

They are designed to safeguard the nation against the perils which inhere in delay, premature interruption, or nonuniform application of inflation controls in wartime. Before considering the precedents which support their validity, we shall recount briefly the considerations which impelled their enactment and which demonstrate their function in the control of wartime inflation.

The need for continuity of control.—There will be no challenge, we are confident, of the judgment embodied in the Emergency Price Control Act that effective control of price inflation is a matter of the most urgent necessity for a nation at war today.[9] Effective control is difficult in part because the incidents of price inflation are as manifold and as widespread as the business transactions which take place each day in the economic life of a large industrial nation. The chief difficulty arises, however, from the cumulative and irremediable character of price inflation. An inflationary incident is virtually impossible to undo, because its consequences are rapid and pervasive. The only effective way to control inflation with respect to particular commodities is to control it uniformly, without delay, and without interruption.

If adverse adjudications—preliminary or final injunctions or other paralyzing orders—interfer-

[9] See Message of the President, July 30, 1941, 87 Cong. Rec. 6457, H. Rept. 1409, 77th Cong., 1st Sess.

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ing with the present controls could be secured in various judicial districts throughout the country, and if premature relief could be secured in the statutory forum, the purposes of the Emergency Price Control Act would be nullified. In the case of criminal proceedings, any opportunity for appeal by the Government would depend on whether the adverse decision of the trial court fell within the categories covered by the Criminal Appeals Act (18 U. S. C. § 682). Persons or localities benefiting by such adjudications in the regularly established courts of the country would be freed from the obligation to comply with regulations while others still had to obey. Such inequality in the operation of the statute would naturally create a sense of injustice in the community, would militate against popular acceptance of the statute, and would make its proper enforcement more difficult. More than this, however, such uneven and haphazard operation of the statute would carry a threat of serious damage to the domestic economy. The sudden development of price disparities entirely unrelated to natural geographical differentials would disrupt normal market relationships. Commodities would tend to be drained off toward the areas in which higher prices prevailed. Purchasers in lower-price areas would be at a serious disadvantage in procuring goods at the price established by the regulations. The disruption would

be the more acute because of wartime shortages in many commodities.

Similarly, premature orders in the statutory forum itself, suspending the effectiveness of regulations throughout the country in advance of a final decision on their validity, would defeat expeditious and fair methods of regulation. If a price regulation did not have to be obeyed during the period between its original promulgation and final judicial determination of its validity, many persons would find it more profitable to make the fullest use of the law's delays rather than to take advantage of the opportunities provided by the statute for a speedy decision. The consequences of any prolonged suspension of regulations might be disastrous and would be irrevocable.

It is evident, then, that control of price inflation in wartime, perhaps unlike other kinds of governmental regulatory action, cannot accomplish its purpose unless it is effective from the very outset and continues to be effective while normal administrative remedies are being applied and the fullest judicial consideration of the program is being completed. No bond or deposit in court could safeguard the incalculable values both public and private which are at stake when inflationary controls are challenged in wartime. No price can be placed upon military need and national morale. Congress recognized in this Act that the national safety demands continuity of

price control until, in pursuance of an orderly course of proceedings, the decision of the highest court of the land has been had upon the questions of law involved.

The need for a simplified enforcement mechanism and for expert review.—The need for simplified enforcement in aid of wartime price controls is apparent. Maximum price regulations affect millions of persons. Unless effective enforcement measures are available, a price-control program cannot long proceed successfully. If, in every suit to enforce compliance with the regulations, the Government were under an obligation to present the mass of economic data which might be required to establish the validity of the regulation, and to meet the evidence and arguments which might be presented by each defendant, the already great difficulties of enforcement might well become insuperable. Congress in adopting the review provisions of this Act had before it the discouraging history of delay in the litigation of public utility rate cases. (See Mr. Justice Brandeis, concurring, in *St. Joseph Stock Yards Co.* v. *United States,* 298 U. S. 38, at 84–88; Mr. Justice Black, dissenting, in *McCart* v. *Indianapolis Water Co.,* 302 U. S. 419, 435–436.) The technical and complex economic questions involved in challenges to the validity of price regulations have accordingly been reserved by Congress for consideration in

orderly proceedings before a specially constituted tribunal which can act on a proper administrative record, can develop the essential expertise for a fair, well advised, and expeditious appraisal of the regulations, and can build up the necessary uniformity in standards of review. The Emergency Court of Appeals thus enjoys the advantage of a continuous and concentrated experience in disposing of these important controversies. It can render its decisions upon a comprehensively informed basis and with proper recognition of national aspects.

The need for administrative flexibility.—Thousands of persons are often affected by the establishment of a single price ceiling. Careful investigation prior to the issuance of a regulation will have brought the general economic considerations to the attention of the Administrator. No amount of preliminary economic survey, however, can bring to the attention of the Administrator all of the significant facts in the situation and all of the ways in which the regulation will affect the persons subject to it. The unique problems of particular business units can only be known if they bring their cases to the attention of the Administrator and advise him of the facts. Often there is no occasion for controversy between persons subject to a regulation and the Administrator, but merely the need for an opportunity to present significant and relevant facts to the Ad-

ministrator. Precision in adjustment or modification of a regulation is only possible within the framework of the administrative processes. The agency which establishes the regulation is in the best position to make a thorough and complete reexamination of the considerations which led to the issuance of the regulation in its original form.

In contrast with the flexibility of the administrative remedy is initial judicial determination of the validity of a maximum price regulation. A court in passing upon the validity of a particular regulation would be limited to a finding that it is either valid or invalid. It could not make the adjustments or modifications appropriate for a particular case. If a maximum price of twenty-four dollars per cwt. is judicially determined to be invalid, the result would not be that a maximum of twenty-five dollars would be substituted; the seller would be free to sell at any price the traffic would bear. Instead of flexible but secure control of prices the result would be absolute release of control for a period.

That the considerations outlined above dictated the adoption of these provisions by Congress is amply shown by the legislative history of the provisions, as set forth in the accompanying footnote.[10]

[10] The following excerpts are from the report of the Senate Banking and Currency Committee, recommending adoption

The instant suit illustrates the needs which Congress had in view when it passed this Act. Established metropolitan wholesale dealers in meat, a food not less scarce than vital in the

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of the provisions (77th Cong., 2d Sess., S. Rep. No. 931, pp. 23, 24–25):

"* * * In keeping with the emergency character of the regulations and orders of the Administrator issued under section 2 of the bill, and to expedite action affecting the validity of such regulations or orders without overburdening the regular courts and judges, exclusive jurisdiction to determine the validity of any such regulation or order is vested in an Emergency Court of Appeals created under Section 204 (c) of the bill, and upon review of judgments or orders of such Emergency Court, in the Supreme Court of the United States. * * *

"The Emergency Court of Appeals is given exclusive jurisdiction to set aside, in whole or in part, any regulation or order under section 2, to dismiss the complaint, or to remand the proceedings, and all the powers of a district court are conferred upon it with respect to this jurisdiction, except the power to issue interlocutory orders staying the effectiveness of any such regulation or order.

* * * * *

"The bill contains provisions necessary to insure that price control administration will not be paralyzed by preliminary injunctions, interlocutory restraining orders, or stays. The Emergency Court of Appeals and the Supreme Court upon review of judgments and orders of the Emergency Court, are granted exclusive jurisdiction under section 204 (d) to determine the validity of any regulation or order issued under section 2 or of any price schedule effective under the provisions of section 206. If the judgment of the Emergency Court is to enjoin or set aside, in whole or in part, any such regulation or order, the effectiveness of such judgment is postponed under section 204 (b) until after 30 days from the entry thereof. This 30-day period is necessary in order to prevent

present emergency, are dissatisfied with the maximum price regulation applicable to their business. Under the statute methods are provided whereby these objections could be disposed of in an orderly manner without violent dislocations—without subjecting the public to the hardships of a reduced supply of meat or excessive meat prices, and without involving the dissatisfied meat dealers in prosecutions for breaking the law. The dealers, however, have not pursued their statutory remedy and have invited criminal prosecutions by violat-

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prices from rising without restraint while the Administrator is modifying or supplanting the regulation in accordance with the judgment of the court or preparing a petition for certiorari to the United States Supreme Court. If a petition for a writ of certiorari is filed with the Supreme Court within such 30 days, under the provisions of section 204 (d), the effectiveness of such judgment is postponed until final disposition of the case by the Supreme Court.

"Section 204 (d) further provides expressly that no court, other than the Emergency Court and the Supreme Court, shall have jurisdiction or power to consider the validity, constitutional or otherwise, of any regulation or order issued under section 2. It also provides that no court, except as provided in section 204, shall have jurisdiction or power to stay, restrain, enjoin, or set aside (whether by declaratory judgment or otherwise) any provision of the bill authorizing the issuance of such regulation or order, or to restrain or enjoin the enforcement of any provision of any such regulation or order. Thus the bill provides for exclusive jurisdiction in the Emergency Court and in the Supreme Court to determine the validity of regulations or orders issued under section 2. Of course, the courts in which criminal or civil enforcement proceedings are brought have jurisdiction,

ing the price regulation.[11] Finally, they have attempted to thwart these prosecutions by invoking a forbidden judicial authority below to have the entire meat regulation declared invalid. Thus, petitioners, having chosen to forego their statutory remedy, now ask that this Court order the trial court and the Government to undertake a task which could be terminated with reasonable

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concurrently with the Emergency Court, to determine the constitutional validity of the statute itself."

The following excerpt from the hearings on the bill is also pertinent:

"Mr. GINSBURG. The bill [as originally passed by the House] further omits provisions with regard to a stay. In our bill—and I believe in the bill proposed by Senator Taft—the price remains in effect while it is being reviewed by the courts. The idea is that if the price could be stayed while it is being reviewed by the courts, there would be no possibility of price control in the interval.

"The House bill omits the stay provision. It permits diversity of decision and review by 11 different courts. In some circuits the price could go up because the price fixed by the Administrator or the Board is no longer in effect; in other circuits, where there have not been any appeals, the price would remain fixed.

"Senator TAFT. There should be no stays" (Hearings before the Committee on Banking and Currency, Senate, 77th Cong., 1st Sess., H. R. 5990, pp. 146, 147).

[11] The initial statutory 60-day period provided in section 203 (a) for filing of protests against Revised Maximum Price Regulation No. 169 (7 F. R. 10381), expired on February 8, 1943. The indictments against petitioners were handed down on February 24, 1943. Petitioners have not attempted to file protests on new grounds arising after the initial 60-day period, as they are entitled to do under section 203 (a) upon a proper showing that such new grounds have in fact arisen. (See p. 19, *supra.*)

promptness only at the expense of thoroughness and accuracy, which could be performed with even so much as a minimum regard for the complex problems involved only at the expense of expeditious and efficient enforcement, and which in no event would be aided by the necessary underlying administrative record.

If the events described should establish a model for other persons subject to maximum price regulations the price control program would collapse. The provisions of the Act which provide for exclusive jurisdiction and prevent the issuance of premature stays are intended to avert this danger and at the same time afford to aggrieved persons an appropriate avenue of relief.

B. THE PROVISION WHICH BARS CONSIDERATION OF THE VALIDITY OF MAXIMUM PRICE REGULATIONS IN SUITS TO ENFORCE THE ACT AND GRANTS EXCLUSIVE AUTHORITY IN THAT REGARD TO THE EMERGENCY COURT OF APPEALS IS CONSTITUTIONAL

We have previously shown (pp. 23–32, *supra*) that a restriction against consideration of the validity of the regulations had to be imposed in proceedings to enforce the regulations as a necessary corollary of the grant of exclusive jurisdiction to the Emergency Court of Appeals and this Court. This provision of Section 204 (d), like the bar against injunctions in the district courts, is designed to ensure that the exclusive purview reserved to the statutory forum will not be infringed by other courts. The pro-

vision constitutes a recognition by Congress of the need for uniform application and proper enforcement of wartime price controls. The provision fulfills this need, as has been seen, by ensuring well-advised judicial consideration, uniformity of judgment, and due reliance on a proper administrative record, in determining the complex questions presented by a challenge to a price regulation; and by ensuring that persons who disregard the statutory opportunities for review will not be permitted to convert prosecutions for violation of price ceilings into controversies resembling peacetime rate litigation.

Thus, the statutory ban against inquiry respecting the validity of regulations in enforcement suits is an integral part of a statutory plan adopted in furtherance of vital wartime objectives. This provision of the Act rests, therefore, like the other features of the exclusive review plan attacked by petitioners, primarily on the war powers of Congress. In exercising these powers for the control of prices in wartime, the choice of measures and procedures to make that control effective is a necessary part of the Congressional authority. The war power of the Federal Government "is a power to wage war successfully" (*Home Building & Loan Association* v. *Blaisdell,* 290 U. S. 398, 426; see also *Stewart* v. *Kahn,* 11 Wall. 493, 506; *Hamilton* v. *Kentucky Distilleries Co.,* 251 U. S. 146, 163).

The constitutionality of the provision forbidding consideration of the validity of price regulations in enforcement suits is fortified by established principles of administrative law. Even in the absence of section 204 (d) petitioners would probably not have the right to challenge the regulation in the proceedings below. Petitioners would be prevented from challenging the regulation as a normal consequence of their failure to exhaust their administrative remedies. In specifically compelling the same result, therefore, the Act has not deprived petitioners of any rights they might otherwise have had. And certainly they have not been denied due process of law. The numerous generalizations quoted by petitioners (Brief in No. 375, pp. 35–39) to the effect that the validity of official action may be challenged by way of defense, deal with situations where other recourse was not available; they do not reach the issue presented here.

Any objection against the validity of the regulation is available if raised in the appropriate manner and at the proper time. The essential purpose of the rule requiring exhaustion of administrative remedies before resort to the courts—which Mr. Justice Brandeis described in *Myers* v. *Bethlehem Shipbuilding Corp.*, 303 U. S. 41, 50, as a "rule of judicial administration"—is to allow the administrative body which promulgated the regulation an opportunity to consider ob-

jections to it and if necessary modify it upon full consideration of the relevant facts, accommodating the relief to the needs of the particular case. That rule, together with the rule preventing collateral attack upon administrative determinations, makes an administrative enactment unassailable in proceedings instituted to enforce it.

Thus, in *Bradley* v. *City of Richmond,* 227 U. S. 477, a defendant in a criminal prosecution for violation of an ordinance requiring private bankers to obtain licenses was held barred from challenging his administrative classification because of his failure to appear before the classifying agency. No statute required the Court to refrain from considering the validity of the administrative action; yet the Court ruled that, because the procedure established by the statute which might have afforded relief was not pursued, invalidity even on constitutional grounds could not be urged as a defense in a criminal proceeding. This Court said (p. 485):

> The plaintiff in error might have appeared and shown the character and extent of the business he was doing and compared it with that of others more favored in classification. He did nothing of the kind. He seems to have stood by and let the matter of classification go by without contest. It is no answer to say that it would have been unavailing. The presumption is otherwise. The authority to classify was

> committed primarily to the finance committee, subject to review by the council. It was expected to use its judgment and knowledge. If it erred there was ample opportunity to show that by an appeal to the council. Of the right to appear and to be heard plaintiff in error elected not to avail himself. Under these circumstances he is not warranted in resorting to the extraordinary jurisdiction of this court to arrest an administrative error susceptible of correction by an appeal to the council. * * *

In *United States* v. *Vacuum Oil Co.*, 158 Fed. 536 (W. D. N. Y. 1908) the court upheld the constitutionality of the Elkins Act (Act of Feb. 19, 1903, c. 708, sec. 1, 32 Stat. 847, 49 U. S. C. 41), which was construed to deprive a shipper of the right to contest the reasonableness of the carrier's filed rate in defending against a criminal prosecution for receiving rebates.[12] The shipper was

[12] The court said (p. 540):

"* * * That Congress had power under the commerce clause of the Constitution to regulate commerce is conceded, and its purpose in enacting the statute forbidding unjust discrimination and preference to the end that all shippers shall secure unform treatment is beyond question. How this object and purpose of Congress can be effectuated if a shipper receiving rebate, concession, or discrimination is permitted to question or litigate the legality of the rate as to its reasonableness or unreasonableness in a criminal prosecution charging him with having received a concession is difficult to understand. Indeed such a construction of the act would nullify its general scope, and render its strict enforcement wholly impracticable, for juries and judges in different

bound to obey the filed rate until set aside by the Commission as unlawful, though he had not set the rate and insisted it was unreasonable. The same statute was involved in *Lehigh Valley R. Co.* v. *United States,* 188 Fed. 879 (C. C. A. 3d, 1911), a criminal prosecution for improperly cancelling demurrage charges. The defense that the demurrage rates set up by the Interstate Commerce Commission were discriminatory was held unavailable in a criminal prosecution, since the validity of the rate could be questioned only in an administrative proceeding before the Commission. These cases are sought to be distinguished by petitioner (Brief in No. 375, p. 57) on the ground that the Interstate Commerce Commission is an older agency than the Office of Price Administration—a distinction which, all else aside, is hardly of constitutional stature.

The similar situation in cases under the Selective Service Act—holding that in a prosecution for failure to report for induction the defendant may not litigate the alleged arbitrariness or invalidity of his classification as determined by the Local Board—has been presented

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jurisdictions would not be likely to reach a conclusion upon the subject of just or unjust tariff charges which would secure uniformity of rates. It is therefore clear that there can be no departure or deviation from the established rates except in the manner provided by the act, and such rate must be regarded as binding upon the shipper * * *."

to the Court in *Falbo* v. *United States,* No. 73, present Term.

The rule thus forbidding collateral attack on administrative orders in criminal proceedings has, of course, likewise been applied in other types of enforcement suits. The principle requiring exhaustion of administrative remedies has equally compelling force in both civil and criminal suits. Only the method outlined in the statute for testing the validity of an administrative order may be used. Unless and until the order has been set aside in direct proceedings to challenge it, it must be observed and compliance will be enforced. This result is reached although no statute expressly commands it, and a statute which does command it is undoubtedly constitutional (*American Bond & Mortgage Co.* v. *United States,* 52 F. (2d) 318 (C. C. A. 7th, 1931), certificate dismissed, 282 U. S. 374; *United States* v. *Piuma,* 40 F. Supp. 119 (S. D. Cal. 1941), affirmed, 126 F. (2d) 601 (C. C. A. 9th, 1942); *Interstate Commerce Commission* v. *Consolidated Freightways,* 41 F. Supp. 651 (D. N. D. 1941). Cf. *Ingraham* v. *Union Stock Yards Co.,* 64 F. (2d) 390 (C. C. A. 8th, 1933); *Forbes* v. *United States,* 125 F. (2d) 404 (C. C. A. 9th, 1942); *United States* v. *R. L. Dixon and Bro.,* 36 F. Supp. 147 (N. D. Tex. 1940); *United States* v. *Hawthorne,* 31 F. Supp. 827 (N. D. Tex. 1940), affirmed on other grounds, 115 F. (2d) 805 (C. C. A. 5th, 1940); *Harris* v. *Cen-*

tral Nebraska Public Power & Irr. Dist., 29 F. Supp. 425 (D. Neb. 1938)).[18]

This Court has declared that where rates have been established by an administrative agency, they may be challenged only in the manner prescribed by statute and that other courts may not prevent the agency from prosecuting violators (*United States* v. *Corrick,* 298 U. S. 435). In that case operators of market agencies sought to file higher rates than those prescribed by the Secretary of Agriculture for market services under the Packers and Stockyards Act of 1921, 7 U. S. C., secs. 181–229, and to restrain the Secretary from prosecuting them for charging the higher rates. Dismissing the bill, this Court said (p. 440):

> The bill shows that the Secretary, after inquiry and full hearing, fixed rates thereafter to be charged by the appellees, and these had not been set aside or enjoined in any appropriate judicial proceeding or been altered by subsequent order of the Secre-

[18] To the same effect are numerous State court decisions. *Town of Pittsfield* v. *Town of Exeter*, 69 N. H. 336, 41 Atl. 82 (1898); *Town of Rockingham* v. *Hood ex rel. Bank of Pee Dee*, 204 N. C. 618, 169 S. E. 191 (1933); *Fitt* v. *Central Illinois Public Service Co.*, 273 Ill. 617, 113 N. E. 155 (1916); *Friedman Mfg. Co.* v. *Industrial Commission*, 284 Ill. 554, 120 N. E. 460 (1918); *St. Louis Pressed Steel Co.* v. *Schorr*, 303 Ill. 476, 135 N. E. 766 (1922); *People ex rel. Brittain* v. *Outwater*, 360 Ill. 621, 196 N. E. 835 (1935); *People ex rel. McDonough* v. *Beemsterboer*, 356 Ill. 432, 190 N. E. 920 (1934), certiorari denied, 293 U. S. 575, rehearing denied, 293 U. S. 630.

> tary. The court was, therefore, without power to enjoin the prosecution of the appellees for charging rates other than those established by the Secretary.

It is recognized in the foregoing cases that, where the statutory review procedure has not been pursued, a defense based upon the alleged invalidity of administrative action is as inadmissible as the institution of a suit to enjoin enforcement. (Cf. *Lockerty* v. *Phillips,* 319 U. S. 182.) See the cases upholding Section 204 (d) in enforcement suits, cited in our Memorandum on petition for certiorari in No. 375, at p. 6.

Petitioners in choosing to disregard the available statutory methods of review and to subject themselves to criminal prosecution by violating the regulation have made that choice knowing in advance that they would not be permitted to challenge the violated regulation in the criminal suits. Congress has accorded to petitioners ready access to a proper forum in which all objections to a regulation may be presented and fully considered. Their right to challenge an allegedly invalid regulation has not been abridged. The only restrictions placed on their rights in this respect are (1) the customary requirement, enforced by the courts themselves even in the absence of statute, that objections to any administrative order first be brought to the attention of the administrative agency; (2) the requirement, traditionally ob-

served under statutes of this type, that where a statutory judicial forum is provided and designated as exclusive, objections to an administrative order shall be presented in such forum; and (3) the indispensable wartime enforcement of obedience to price controls pending completion of review proceedings (see pp. 13–16, 23–32, *supra,* 42–60, *infra*).

There is no merit in petitioners' contention that the Act violates their right under the Sixth Amendment to a jury trial. The issue of the validity of the regulation need not be settled by jury trial. (Cf. *Block* v. *Hirsh,* 256 U. S. 135, 158.) This Act does not trench upon any right guaranteed to petitioners by the Sixth Amendment.[14]

Finally, it is submitted that the considerations and authorities presented above are sufficient to dispose of petitioners' contention that the provision barring consideration of the validity of regulations in enforcement suits is an unlawful abridgment of the judicial power.[15]

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[14] It may be observed that if the objection is addressed to the need to come to Washington to appear before the Emergency Court of Appeals, the rules of that Court specifically provide that it may sit anywhere. Rule 4 (a), Rules of the United States Emergency Court of Appeals.

[15] *United States* v. *Klein,* 13 Wall. 128, is not opposed. The statute there prescribed an arbitrary rule for the judicial determination of a question of fact, and in addition it thwarted the executive power of pardon.

C. THE PROVISIONS WHICH PROHIBIT STAYS AND INTERLOCUTORY INJUNCTIVE ORDERS FOR THE PURPOSE OF MAINTAINING CONTINUITY OF PRICE CONTROL PENDING COMPLETION OF STATUTORY REVIEW PROCEEDINGS ARE CONSTITUTIONAL

In addition to complaining of the provision which channels attacks on the regulations in the exclusive statutory forum, petitioners complain of the accompanying provision denying stays in the statutory forum (sections 204 (b), 204 (c)). Attack is thus made upon the provisions of the Act which insure the continuity necessary for success of the present wartime price controls.

The provisions assailed are an indispensable part of a statute which rests on the war powers of Congress. We have pointed out above (see pages 23–32, *Supra*) that these provisions are essential because the principal difficulty in dealing effectively with wartime price inflation arises from its "runaway" or "spiral" character. Delayed or interrupted control is futile. The harm done to the public interest by a release of control could not be guarded against by any bond or deposit. Petitioners' assertion that they suffer loss under this statute cannot outweigh the overwhelming considerations on the side of the public. The validity of the denial of stays in this Act rests, then, primarily upon the war powers of Congress. Further, however, it is submitted (1) that petitioners cannot attack the stay provisions because

they have not been injured by them; and (2) that there is no constitutional right to a stay.

1. *Petitioners Have Not Been Injured by the Stay Provisions*

Petitioners have not been injured by the provisions of the statute which preserve the continuity of price regulations in the statutory forum, because they have not gone into the administrative forum provided in section 203 of the Act and in the implementing regulations. By applying for administrative reconsideration petitioners might have obtained complete relief in the form of a substantive order or amendment which would have been the equivalent of a stay. There would then have been no need for a judicial stay or for the present controversy on this point.

It is well established that persons may not challenge a statutory procedure which they have declined to pursue and whose untried incidents cannot properly form the subject of collateral inquiry or attack. (See the cases cited at p. 13, *supra.*) Before petitioners can complain that they are hurt by the provisions of the statute denying them judicial stays, they are under a duty to show that they have made an effort under the statutory procedure to obtain administrative relief which might have obviated the need for such a stay.

2. *A Stay is not a Matter of Absolute Right Under the Constitution*

As this Court recently had occasion to declare in *Scripps-Howard Radio, Inc.* v. *Federal Communications Commission,* 316 U. S. 4, there is no absolute right to a stay pending judicial review of legislative or administrative enactments; the right to such a stay is never recognized where the public interest demands otherwise. The Court said (p. 10):

> A stay is not a matter of right, even if irreparable injury might otherwise result to the appellant (*In re Haberman Manufacturing Co.,* 147 U. S. 525). It is an exercise of judicial discretion. The propriety of its issue is dependent upon the circumstances of the particular case (*Virginian Ry. Co.* v. *United States,* 272 U. S. 658, 672–73; * * *).

The question before the Court in that case was whether Congress intended to authorize stays in a certain class of proceedings for judicial review of orders of the Federal Communications Commission. The statute was construed as authorizing stays. Neither the majority nor the dissenting opinion treated the question on any level save that of Congressional intention. In the case at bar the answer is not in doubt. This Court indicated the answer when, in the *Scripps-Howard* case, it adverted to the present Act and declared

that Congress "knew how to use apt words" (316 U. S. at 17) to express its command that the present wartime price controls shall remain immune against judicial stays.

The recognition in the *Scripps-Howard* case that stays are not a matter of absolute right and may be subject to Congressional control in the public interest is in accord with the well-established principle that the courts themselves do not permit stays in situations involving some object of paramount public concern. The rule traditionally followed in such cases is that the "balance of convenience" between the parties must condition the granting of a stay. Frequently granted in suits between private parties, stays even in that class of suits are not absolutely assured because the right is qualified by two conditions; first, it must appear that the rights of the party to be aided will suffer heavily if relief is denied; but, second, it must also appear that the rights of the party to be enjoined will not be seriously injured in the meantime or can be protected by the posting of financial security. That the first of these conditions is met is not enough; the second must also be met.[16]

[16] In the following private litigation relief was denied under this rule: *Kryptok Co.* v. *Stead Lens Co.*, 190 Fed. 767 (C. C. A. 8th, 1911); *Shubert* v. *Woodward*, 167 Fed. 47 (C. C. A. 8th, 1909); *Green* v. *Gravatt*, 19 F. Supp. 87 (W. D. Pa. 1937); *International Film Service Co.* v. *Associated Producers*, 273 Fed. 585 (S. D. N. Y. 1921); *DeKoven* v. *Lake*

When a suit between private parties is one involving a matter seriously affecting the public interest,[17] and, *a fortiori,* when a governmental entity or agency is directly involved as a party in a suit, this rule achieves the status of a virtual bar against stays.[18] (See *Harrisonville* v. *Dickey Clay Co.,* 289 U. S. 334, 338.) If a stay is granted in such a suit against a public agency, it is strictly

Shore & M. S. Ry. Co., 216 Fed. 955 (S. D. N. Y. 1914); *Napier* v. *Westerhoff*, 138 Fed. 420 (C. C. S. D. N. Y. 1905); *Gring* v. *Chesapeake & Delaware Canal Co.*, 129 Fed. 996 (C. C. Del. 1904), affirmed, 159 Fed. 662 (C. C. A. 4th, 1908), certiorari denied, 212 U. S. 571; *Amelia Milling Co.* v. *Tennessee Coal, Iron & R. Co.*, 123 Fed. 811 (C. C. N. D. Ga. 1903); *Day* v. *Candee*, Fed. Cas. 3676 (C. C. Conn. 1853). In the following private cases relief was given under the rule: *Selchow & Righter Co.* v. *Western Printing & Lithographing Co.*, 112 F. (2d) 430 (C. C. A. 7th, 1940); *Phillips* v. *Sager*, 276 Fed. 625 (App. D. C. 1921); *Chew* v. *First Presbyterian Church of Wilmington, Del., Inc.*, 237 Fed. 219 (D. Del. 1916); *Colgate* v. *James T. White & Co.*, 169 Fed. 887 (C. C. S. D. N. Y. 1909); *Harriman* v. *Northern Securities Co.*, 132 Fed. 464 (C. C. N. J. 1904), reversed, 134 Fed. 331 (C. C. A. 3rd, 1905), affirmed, 197 U. S. 244; *Cohen* v. *Delavina*, 104 Fed. 946 (C. C. Maine 1900).

[17] *E. g., Stein* v. *Bienville Water Supply Co.*, 32 Fed. 876 (C. C. S. D. Ala. 1887), denying an injunction *pendente lite* as between private parties where the public water supply of a city was involved. The public interest was also a ground for denial of relief as between private parties in *Marconi Wireless Telegraph Co.* v. *Simon*, 227 Fed. 906 (S. D. N. Y. 1915). See *Gulf, M. & N. R. Co.* v. *Illinois Cent. R. Co.*, 21 F. Supp. 282 (W. D. Tenn. 1937).

[18] E. g., *Tennessee Valley Authority* v. *Tennessee Electric Power Co.*, 90 F. (2d) 885 (C. C. A. 6th, 1937), certiorari denied, 301 U. S. 710; *Railroad Commission of Alabama* v. *Central of Georgia Ry. Co.*, 170 Fed. 225 (C. C. A. 5th, 1909),

conditioned upon the posting of a bond or other security to protect the public interest.[19] (Cf. *Prendergast* v. *New York Tel. Co.*, 262 U. S. 43, 51.) If no bond is required it is because the subject matter is such that the court can exercise a preservative control over it *pendente lite*.[20] But when the case is one where the public interest is substantial and cannot be protected by bond or otherwise the courts are emphatic in rejecting petitions for interlocutory relief.

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certiorari denied, 214 U. S. 521; *Pope* v. *Blanton*, 10 F. Supp. 18 (N. D. Fla. 1935); *Dryfoos* v. *Edwards*, 284 Fed. 596 (S. D. N. Y. 1919), affirmed, 251 U. S. 146, 264; *Hannah & Hogg* v. *Clyne*, 263 Fed. 599 (N. D. Ill. 1919); *F. W. Cook Brewing Co.* v. *Garber*, 168 Fed. 942 (C. C. M. D. Ala. 1909). *See* Hughes, *Federal Practice*, Sec. 1023; Nichols, *Cyclopedia of Federal Procedure*, Sec. 3210; McKean, *The Balance of Convenience Doctrine*, 39 Dickinson L. Rev. 211 (1935).

[19] *Magruder* v. *Belle Fourche Valley Water Users' Ass'n.*, 219 Fed. 72 (C. C. A. 8th, 1914); *Love* v. *Atchison, T. & S. F. Ry. Co.*, 185 Fed. 321 (C. C. A. 8th, 1911), certiorari denied, 220 U. S. 618; *Menominee & Marinette Light & Traction Co.* v. *City of Menominee*, 11 F. Supp. 989 (W. D. Mich. 1935); *Birkheiser* v. *City of Los Angeles*, 11 F. Supp. 689 (S. D. Cal. 1935); *Joplin & P. Ry. Co.* v. *Public Service Commission of Missouri*, 267 Fed. 584 (W. D. Mo. 1919); *Contra Costa Water Co.* v. *City of Oakland*, 165 Fed. 518 (C. C. N. D. Cal. 1904); *San Joaquin & Kings River Canal & Irrigation Co.* v. *Stanislaus County*, 163 Fed. 567 (C. C. N. D. Cal. 1908); *Indianapolis Gas Co.* v. *City of Indianapolis*, 82 Fed. 245 (C. C. Ind. 1897). Cf. *United States* v. *Dominion Oil Co.*, 241 Fed. 425 (S. D. Cal. 1917). See *Pacific Live Stock Co.* v. *Lewis*, 241 U. S. 440.

[20] Cf. *In re Arkansas Railroad Rates*, 168 Fed. 720 (C. C. E. D. Ark. 1909); *Buffalo Gas Co.* v. *City of Buffalo*, 156 Fed. 370 (C. C. W. D. N. Y. 1907).

Thus, in *Tennessee Valley Authority* v. *Tennessee Electric Power Co.*, 90 F. (2d) 885 (C. C. A. 6th, 1937), certiorari denied, 301 U. S. 710, the circuit court of appeals reversed an order of the lower court entering an interlocutory injunction against the Tennessee Valley Authority. The court said (p. 894):

> Without denying that some injury may be suffered if the injunction is lifted, it does not so clearly appear that it will of necessity overbalance the injury which must inevitably be suffered by the defendants and the public.
>
> * * * To appraise the injury to the defendants from the disorganization which must follow substantial or even partial cessation of activity is impossible, but that it will be great cannot be denied. So also in respect to the public interest involved. The loss, inconvenience, and discomfort of the residents of the area in failing to obtain cheap electric energy, if it be found in the end that it may lawfully be supplied to them, may likewise not be measured, but equally incontrovertible is it that it will be great. Insofar, also, as restraint will delay effective control of the floodwaters of the Tennessee river and its tributaries, the public interest in the achievement of that objective is similarly beyond appraisal. Human experience of the catastrophic effect upon great areas of overflowing rivers is too recent and too painful to permit of any

> doubt either as to the existence or extent of the public interest that is threatened by the maintenance of the injunction, and against which the threat to private interests must be balanced. From such possible injury, it is clear no bond can adequately safeguard the public interest.

In *Dryfoos* v. *Edwards,* 284 Fed. 596 (S. D. N. Y. 1919), affirmed, 251 U. S. 146, 264, a temporary injunction against the World War Prohibition Act was refused. Judge Learned Hand said (p. 603):

> * * * The damage done by an injunction meanwhile cannot be measured in money, as in the case of *Cotting* v. *Kansas City Stockyards* (C. C.), 82 Fed. 857. Here is a question of national public policy, of allowing the sale of what the constituted authorities apparently regard as injurious to the public, or to so much of it as they have the right to consider. To annul their will, if only for a season, is to do an injury which is, to say the least, as irreparable, if the laws be valid, as to prevent the plaintiffs from selling intoxicants for the same period, if they are not * * *.

(Cf. *Petroleum Co.* v. *Public Service Comm'n,* 304 U. S. 209, 222–223.)

The observations of Mr. Justice Frankfurter, concurring, in *Mayo* v. *Canning Co.,* 309 U. S. 310, are applicable, *mutatis mutandis,* here. The company had sued in the federal district

court to enjoin enforcement of a Florida statute regulating the citrus fruit industry. This Court reversed the decree granting a temporary injunction. The concurring opinion emphasized the damage done to the public interest by the granting of the interlocutory decree (pp. 319–322):

> Citrus fruit occupies a central and indeed pervasive role in the economy of Florida. That state's well-being is dependent on the cultivation of the citrus crop, its packing, transportation, financing and exportation. * * * In *Nebbia* v. *New York,* 291 U. S. 502, this Court recognized price control as one of the means open to a state for the protection of its welfare * * *
>
> * * * * *
>
> * * * [In this case] the [interlocutory] injunction effectively suspended the operation of the Florida law during the whole marketing season, although this Court now finds that the injunction should never have been granted.
>
> I do not believe we should now let this bill hang over next year's crop. We ought not to encourage the use of the judicial process for such unjustifiable attempts to set aside a state law by allowing them to be successful in result even though legally erroneous.

The law furnishes many examples of this preference in favor of the public interest. There are numerous situations in which there is imposed a

duty to obey first and litigate afterwards. The Selective Service Act is an outstanding example.[21]

The principle, however, finds its most frequent application in cases involving property rights. Mr. Justice Brandeis summarized it in *Phillips* v. *Commissioner,* 283 U. S. 589, 595: "Property rights must yield provisionally to governmental need." Relying on cases involving health measures and wartime controls, the opinion added (pp. 596–597):

> Where only property rights are involved, mere postponement of the judicial enquiry is not a denial of due process, if the opportunity given for the ultimate judicial determination of the liability is adequate (*Springer* v. *United States,* 102 U. S. 586, 593; *Scottish Union & National Ins. Co.* v. *Bowland,* 196 U. S. 611, 631). Delay in the judicial determination of property rights is not uncommon where it is essential that governmental needs be immediately satisfied. For the protection of public health, a State may order the summary destruction of property by administrative authorities without antecedent notice or hearing (Compare *North American Cold Storage Co.* v. *Chicago,* 211 U. S. 306;

[21] Administrative appeals to the appeal boards and the President are the selectees' only remedy prior to induction since no judicial review is afforded them in advance. E. g., *Petition of Soberman,* 37 F. Supp. 522 (E. D. N. Y. 1941); *Shimola* v. *Local Board No. 42, for Cuyahoga County,* 40 F. Supp. 808 (N. D. Ohio 1941).

Hutchinson v. *Valdosta,* 227 U. S. 303; *Adams* v. *Milwaukee,* 228 U. S. 572, 584). Because of the public necessity, the property of citizens may be summarily seized in wartime (*Central Union Trust Co.* v. *Garvan,* 254 U. S. 554, 566; *Stoehr* v. *Wallace,* 255 U. S. 239, 245; *United States* v. *Pfitsch,* 256 U. S. 547, 553. Compare *Miller* v. *United States,* 11 Wall. 268, 296; *International Paper Co.* v. *United States,* 282 U. S. 399; *Russian Volunteer Fleet* v. *United States,* 282 U. S. 481). And at any time, the United States may acquire property by eminent domain, without paying, or determining the amount of the compensation before the taking. (Compare *Kohl* v. *United States,* 91 U. S. 367, 375; *United States* v. *Jones,* 109 U. S. 513, 518; *Crozier* v. *Fried Krupp Aktiengesellschaft,* 224 U. S. 290, 306.)

Congress itself has prohibited stays or injunctive relief where the public interest was deemed sufficiently exigent. In the field of taxation, R. S. 3224 is essentially a provision of this sort. (See *State Railroad Tax Cases,* 92 U. S. 575, 613). An application of the balance of convenience rule was also made under the District of Columbia World War Rent Law (the "Ball Act").[22] In *Block* v.

[22] Section 110 of the Ball Rent Act, 41 Stat. 298 (1919), provided that rent determinations by the statutory commission should remain in full force and effect pending the final decision on appeal. This provision was applied in *Porter* v. *Gardner,* 277 Fed. 556 (App. D. C., 1922).

Hirsh, 256 U. S. 135, rejecting the contention that a wartime rent control law allowing tenants to remain in possession at the existing rentals pending judicial review was unconstitutional, Mr. Justice Holmes, speaking for the Court, declared (pp. 157–158):

> The preference given to the tenant in possession is an almost necessary incident of the policy and is traditional in English law. If the tenant remained subject to the landlord's power to evict, the attempt to limit the landlord's demands would fail.

A similar provision is found in the wartime National Prohibition Act of 1919, Sec. 9, 41 Stat. 312. The Act provided that upon judicial review of orders of the Commissioner of Internal Revenue revoking permits to deal in liquor for non-beverage purposes, the permit should remain revoked pending judicial review. The provision was upheld in *Cywan* v. *Blair,* 16 F. (2d) 279 (N. D. Ill., 1926); *Spartan Mfg. Co.* v. *Campbell,* 40 F. (2d) 745 (E. D. N. Y., 1930); *Rondinella* v. *Campbell,* 40 F. (2d) 746 (E. D. N. Y., 1930); *Triborough Chemical Corp.* v. *Doran,* 36 F. (2d) 496 (E. D. N. Y. 1929). See *Liscio* v. *Campbell,* 34 F. (2d) 646 (C. C. A. 2, 1929).

It is difficult to imagine a situation calling more strongly than the present one for the application of the rules limiting the right to a stay. It is plain where the "balance of convenience" lies.

No case of private inconvenience or even hardship can be allowed to avail to disorganize the operation, delicate and precarious enough at best, of the wartime price control program before a full and orderly review has been had. As was stated by the three-judge district court in *Henderson* v. *Kimmel,* 47 F. Supp. 635, 644–645 (D. Kan. 1942) cited with approval by the Emergency Court of Appeals in upholding the denial of stays, in *Taylor* v. *Brown,* 137 F. (2d) 654 (E. C. A. 1943), certiorari denied, No. 305, present Term:

> While the inhibition against the granting of the stay until a final decision by the Supreme Court deprives the courts of an historic power—a power as old as the judicial system of the nation, it is deprivation of jurisdiction essential to the successful operation of rent control for the reasons we have heretofore adverted to and is justified under the war power, to insure the safety of the nation and the perpetuation of our liberties. Moreover, a stay is not a matter of right, even if irreparable injury might otherwise result. It is an exercise of judicial discretion and the propriety of its issue ordinarily depends on the circumstances of each case. The considerations we have adverted to would warrant a court in denying a stay and in our judgment warranted the Congress in denying the power to grant the stay. Congress had

> the power to impose the duty to obey first and litigate afterwards.

Petitioners specifically complain of the provision of the present Act which requires that judgments of the Emergency Court of Appeals setting aside a regulation shall not become effective until 30 days have passed or until final disposition of the matter by the Supreme Court (section 204 (b)). The Senate Committee in favorably reporting this provision explained its purpose (77th Cong., 2d Sess., S. Rep. No. 931, p. 24):

> This 30-day period is necessary in order to prevent prices from rising without restraint while the Administrator is modifying or supplanting the regulation in accordance with the judgment of the court or preparing a petition for certiorari to the United States Supreme Court. If a petition for a writ of certiorari is filed with the Supreme Court within such 30 days, under the provisions of section 204 (d), the effectiveness of such judgment is postponed until final disposition of the case by the Supreme Court.

There is nothing unfamiliar about statutory postponement of the effectiveness of judgments pending review even when the decree is one for injunction. (Cf. *Federal Rules of Civil Procedure,* Rule 62, see especially subdivisions (*c*) and (*g*); 28 U. S. C., sections 350, 874). Moreover, it is not uncommon for final injunctions against a governmental entity to be stayed or postponed

for very long periods, even where no appeal is in view, on the ground that the public interest so requires. Thus, in *Wisconsin* v. *Illinois,* 278 U. S. 367, while an injunction was granted against a sanitary district restraining it from diverting water from the Great Lakes for sewage-disposal purposes, the decree was so framed as to allow sufficient time to the district to find some other means of disposal.

To the same effect are *Mayor and City Council of Baltimore* v. *Brack,* 3 Atl. (2d) 471 (Md., 1939); *Livezey* v. *Town of Bel Air,* 199 Atl. 838 (Md., 1938); *Board of Health of Ocean T'p* v. *White,* 110 Atl. 43 (N. J. Ct. of Errors and Appeals, 1919); *Simmons* v. *Paterson,* 60 N. J. Eq. 385, 45 Atl. 995 (1900); *Bogart* v. *Walker,* 248 N. Y. Supp. 19 (1931); *Sponenburgh* v. *City of Gloversville,* 87 N. Y. Supp. 602, 96 App. Div. 157 (1904); *Sammons* v. *City of Gloversville,* 70 N. Y. Supp. 284, 34 Misc. (N. Y.) 459 (1901). See 17 Va. L. Rev. 714–715 (1931).

Cases such as *Ex Parte Young,* 209 U. S. 123, and other cases involving public utilities,[23] which might be taken as indicating that a statute denying the right to a stay is unconstitutional, are not in point. The frequent practice of granting a stay in the public utility rate cases cannot furnish a

[23] E. g., *Driscoll* v. *Edison Light & Power Co.,* 307 U. S. 104; *Mountain States Power Co.* v. *P. S. Commission of Montana,* 299 U. S. 167; *Pacific Tel. & Tel. Co.* v. *Kuykendall,* 265 U. S. 196; *Prendergast* v. *New York Tel. Co.,* 262 U. S. 43; *Oklahoma Gas Co.* v. *Russell,* 261 U. S. 290.

model for legislation such as the Emergency Price Control Act, where the bond or court deposit required in the rate cases would be unavailing. Moreover, the essential basis of the rule applied in the rate cases is that the compulsion upon a public utility to accept rates which may give an inadequate return and the sufficiency of which cannot be determined in advance of a protracted judicial investigation may result in a continuing "confiscation" of the utility's property, and ought not to be enforced by heavy cumulative penalties. These considerations are wholly inapplicable to the present Act.

First, the protection which is accorded to utilities against "confiscation" of their property cannot in all instances be given to persons subject to wartime price ceilings. Utilities are few in number, usually enjoy a monopolistic position, and ordinarily must continue to render their services to the public until permission to cease is given. The primary objective in these circumstances must be a balancing of consumer and company interests which will ensure the maintenance of the essential public services furnished by utilities. The standard of fair return fills the need for some basis in fixing proper rates for utility services. Under this Act, however, the considerations of public policy involved are wholly different. The primary objective of the Act is the prevention of inflation. Loss to some sellers is incidental to the accom-

plishment of this vital wartime purpose. *Wilson* v. *Brown,* 137 F. (2d) 348 (E. C. A., 1943.) The desirability of preventing such losses cannot be permitted to compromise or nullify the essential legislative objective. There is, accordingly, no place under this statute for the concept of fair return which gives rise to the problem of "confiscation" in public utility rate cases. The concept, appropriate though it may be in the public utility field, is derived by analogy from principles of eminent domain (see the concurring opinion in *Federal Power Commission* v. *Natural Gas Pipeline Co.,* 315 U. S. 575, 602–603, and the authorities there cited) and is wholly inappropriate to a wartime measure for control of inflationary prices. The "just compensation" clause of the Fifth Amendment does not limit Congress in legislating for the general interest to accomplish a general object of national policy under a regulatory statute. Property rights are held subject to proper legislative regulation and any resulting loss is merely consequential or incidental injury (*Omnia Commercial Co., Inc.,* v. *United States,* 261 U. S. 502; *Morrisdale Coal Co.* v. *United States,* 259 U. S. 188; *Block* v. *Hirsh,* 256 U. S. 135; *Hamilton* v. *Kentucky Distilleries Co.,* 251 U. S. 146; *Jacob Ruppert* v. *Caffey,* 251 U. S. 264).

Second, it would be incompatible with the functioning of the price control law to follow the practice of granting stays as in public utilities cases

during the necessarily protracted judicial hearings required for determination of the reasonableness of fixed rates. Speed is frequently the controlling consideration in the issuance of a price regulation. Protracted formal hearings, whether at the administrative or judicial stage, would postpone the effectiveness of regulations until a threatened price or rent increase had already materialized and had already worked its destruction in the familiar pattern of the inflationary spiral. It is noteworthy that, during the consideration of the various price-control bills, Congress, in addition to its recognition that judicial stays must be prevented (see note 10, pp. 29–31, *supra*), squarely rejected the proposition that formal administrative hearings be required before the issuance of price regulations. (See the Government's Brief, pp. 32–35, in *Bowles* v. *Willingham,* No. 464.) Congress recognized that the plan established for the issuance and review of price regulations must not be too cumbersome to meet emergency situations.

Third, the principle of decision applied in some public utility cases, and in other types of cases, to the effect that a stay is required as a protection against excessive or cumulative penalties, is not applicable to the present Act. The rule that penalties *pendente lite* are unconstitutional and ought to be stayed if they are so excessive as to deter resort to the courts was originally developed in cases where the only means of obtaining judicial review of a statute or an administrative order was

by committing a violation and awaiting prosecution (*Oklahoma Gin Co.* v. *Oklahoma,* 252 U. S. 339; *Oklahoma Operating Co.* v. *Love,* 252 U. S. 331; *Ex parte Young,* 209 U. S. 123; *Federal Trade Commission* v. *Miller's Nat. Federation,* 23 F. (2d) 968 (App. D. C. 1927); *Allen* v. *Omaha Live Stock Commission Co.,* 275 Fed. 1 (C. C. A. 8th, 1921)). This condition does not obtain under the present Act, of course. Nor is the Act open to the objection that penalties are laid on the very exercise of the right of review, as in *Terral* v. *Burke Construction Co.,* 257 U. S. 529.

It is submitted, therefore, that the stay provisions of this Act are a valid exercise of the war powers of Congress, and are fully supported by established principles of public law. These provisions are the most essential feature of the entire statutory plan of review and enforcement. They are indispensable for effective price control. Petitioners' constitutional rights are in no way abridged by these provisions.[24]

[24] *Porter* v. *Investors Syndicate,* 286 U. S. 461, affirmed on rehearing, 287 U. S. 346, contains a dictum to the effect that a statutory denial of a stay during review of an order revoking licenses under a state Blue Sky law would abridge constitutional rights. It is submitted that the considerations set forth in the preceding pages make the language of the *Porter* case inapplicable to this wartime statute. It may also be observed that in license suspension proceedings under this Act the Administrator is not empowered to suspend, but must apply for a judicial order of suspension which may, in turn, be stayed (Section 205 (f)).

II

THE EMERGENCY PRICE CONTROL ACT DOES NOT UNLAWFULLY DELEGATE AUTHORITY TO CONTROL PRICES TO THE ADMINISTRATOR

The question of delegation of power was not regarded by the court below as presenting any serious difficulty. The numerous federal and state decisions—including decisions by two other circuit courts of appeals, the Emergency Court of Appeals, and two state supreme courts—sustaining the delegation made in the present price provisions or in the closely similar rent provisions are collected in the Government's brief in the *Willingham* case, No. 464, pp. 22–23, n. 10.

The attack here [25] is addressed to the statutory declaration of policy, the standards relating to control of prices of processed agricultural commodities, and the asserted lack of findings.

Statement of Policy.—Section 1 (a) of the Act (Appendix, *infra*) sets forth the statutory objectives. It is declared to be in the interest of the national defense and necessary to the effective prosecution of the war that measures be taken for various essential purposes, including stabilization of prices, prevention of inflationary increases in prices and rents, prevention of wartime profiteering and other disruptive practices resulting from wartime scarcities, and protection of persons with fixed and limited incomes against

[25] The delegation issue is raised only in No. 375.

undue impairment of living standards. The legislative policy so expressed is definite and clear; it plainly satisfies the requirements which have been stated by this Court. See *Opp Cotton Mills* v. *Administrator,* 312 U. S. 126 (Fair Labor Standards Act);[26] *Sunshine Anthracite Coal Co.* v. *Adkins,* 310 U. S. 381 (Bituminous Coal Act);[27] *United States* v. *Rock Royal Co-op.,* 307 U. S. 533 (milk marketing provisions of Agricultural Marketing Agreement Act);[28] *Mulford* v. *Smith,*

[26] The pertinent provision, 29 U. S. C. 208 (a) provides that wage orders shall be issued to attain—

"as rapidly as is economically feasible without substantially curtailing employment, the objective of a universal minimum wage of 40 cents an hour in each industry engaged in commerce * * *."

[27] The pertinent provision, 15 U. S. C. 828, provides:

"Regulation of the sale and distribution in interstate commerce of bituminous coal is imperative for the protection of such commerce; there exist practices and methods of distribution and marketing of such coal that waste the coal resources of the Nation and disorganize, burden, and obstruct interstate commerce in bituminous coal, with the result that regulation of the prices thereof and of unfair methods of competition therein is necessary to promote interstate commerce in bituminous coal and to remove burdens and obstructions therefrom."

[28] The pertinent provision, 7 U. S. C. 602, provides:

"* * * to establish and maintain such orderly marketing conditions for agricultural commodities in interstate commerce as will establish prices to farmers at a level that will give agricultural commodities a purchasing power with respect to articles that farmers buy, equivalent to the purchasing power of agricultural commodities in the base period * * *

307 U. S. 38 (tobacco marketing quota provisions of the Agricultural Adjustment Act.) [29]

Petitioners have focused on one of the stated objectives, the protection of persons with relatively fixed incomes from undue impairment of their standard of living (Br. in No. 375, pp. 12–17). But this is obviously one of the purposes which will be served by stabilization of prices; and the Administrator has no roving commission to choose other means to accomplish the objective.

The statutory standards.—Sections 2 (a), 2 (c), 2 (d), 2 (g) and 2 (h) of the Emergency Price Control Act set forth standards which govern the Administrator's exercise of his authority to control prices. The standards of section 3 of the

"To protect the interest of the consumer by (a) approaching the level of prices * * * by gradual correction of the current level at as rapid a rate as the Secretary of Agriculture deems to be in the public interest and feasible in view of the current consumptive demand * * * and (b) authorizing no action under this title which has for its purpose the maintenance of prices to farmers above the level which it is declared to be the policy of Congress to establish * * *."

[29] The pertinent provision, 7 U. S. C. 1282, provides:

"* * * to regulate interstate and foreign commerce in * * * tobacco * * * to the extent necessary to provide an orderly, adequate, and balanced flow of such commodities in interstate and foreign commerce through storage of reserve supplies, loans, marketing quotas, assisting farmers to obtain, insofar as practicable, parity prices for such commodities and parity of income, and assisting consumers to obtain an adequate and steady supply of such commodities at fair prices."

Act of October 2 likewise apply.[30] The standards mentioned are detailed and specific; they carefully circumscribe the Administrator's discretion, guiding him in respect of when he may act and how he may act.

The Administrator may promulgate price regulations when in his judgment "the price or prices of a commodity or commodities have risen or threaten to rise to an extent or in a manner inconsistent with the purposes of this Act" (Act, Section 2 (a)). Petitioners concede that such a rise or threatened rise of beef prices preceded the present administrative action (No. 375, Pet. Brief, p. 60). The Act does not leave the promulgation of price regulations to the Administrator's subjective and unconfined discretion. He must examine the pertinent data objectively to determine whether the promulgation of a regulation would effectuate the Act's purposes.[31] The grant of

[30] Executive Order 9250 (7 F. R. 7871) directed the Administrator to exercise the authority conferred on the President by the amendatory Act to stabilize prices of agricultural commodities and products processed from agricultural commodities, so far as practicable, on the basis of levels which existed on September 15, 1942. Section 2 of the Act authorizes the President to redelegate in this manner.

[31] The circumstance that the Administrator must exercise "judgment" as to whether action would achieve the Act's purposes does not vitiate the conclusion that his discretion in determining whether to act is properly circumscribed. A provision of this nature is as necessary to sensible regulation as it is familiar. Thus in *United States* v. *Rock Royal*

power, moreover, acquires meaning from the clearly stated objectives of the Act (see pp. 61–62, supra). Cf. *Pittsburgh Plate Glass Co.* v. *National Labor Relations Board,* 313 U. S. 146, 165–166. And the discretion reposed in the Administrator to select the commodities which are to be controlled is a recognition of the practical necessities of administration under such a wartime program. Cf. *United States* v. *Rock Royal Co-op.,* 307 U. S. 533. Inflationary events may demand control of some prices and not of others. Regulation of producers' or distributors' prices may serve as an effective check on price increases by their suppliers. The law does not require that all products be uniformly controlled or exempted from control. Cf. *Tigner* v. *Texas,* 310 U. S. 141.[32]

Co-op., 307 U. S. 533, the Court held lawful a delegation of authority to the Secretary of Agriculture which provided that he might initiate action whenever he "has reason to believe that the issuance of an order will tend to effectuate the declared policy of this title" (7 U. S. C. 608c (3)). Similarly in *Dakota Central Telephone Co.* v. *South Dakota,* 250 U. S. 163, the Court upheld the Joint Resolution of July 16, 1918, which authorized the President to take over the telephone system of the country "whenever he shall deem it necessary for the national security or defense * * * and to operate the same in such manner as may be needful or desirable" (40 Stat. 904). Plainly, the Act is not invalid simply because the Administrator is entitled to exercise his judgment; such an exercise is implicit in such standards as "public convenience and necessity," "public interest," "just and reasonable," and similar traditionally proper standards.

[32] Under the present legislation, which contains a conditional grant of authority to control livestock prices (original Act, Secs. 2, 3; Amendatory Act, Secs. 1–3) any objection

The Acts contain detailed standards governing the determination of maximum price levels. Not only must the prices fixed be "generally fair and equitable," and "effectuate the purposes of this Act" (Act, Section 2 (a)), but in addition and going beyond the usual provisions governing rate making, price fixing and wage determinations, which contain the familiar requirements of fairness, equity, or reasonableness, there is here a statutory guide in terms of time, that is, in terms of prices actually prevailing as of a given period. The basic Act directs the Administrator to give consideration, so far as practicable, to prices prevailing between October 1 and October 15, 1941. By the amendatory Act, stabilization of prices at the levels of September 15, 1942 is directed so far as practicable, a standard thus being provided for the guidance of the Administrator in holding fast against further price increases. It may be observed that the "dollars-and-cents" ceilings established by Revised Maximum Price Regulation No. 169 set prices at a level slightly higher than those prevailing between March 16 and March 28, 1942 [33] and resulted in stabilization

addressed to asserted discrimination in favor of livestock sellers would seem to involve issues going to the validity of a particular regulation and would thus be barred by Section 204 (d). Such an objection in any event would not involve an issue of delegation.

[33] See Statement of Considerations accompanying Revised Maximum Price Regulation No. 169, OPA Service 41:339. This document was filed with the Division of the Federal

of beef prices on the basis of levels existing on September 15, 1942.[34]

The basic Act (Sec. 2 (a)) also provides for adjustments, in the determination of price levels, to take account of such relevant factors as the Administrator "may determine and deem to be of general applicability, including * * * Speculative fluctuations, general increases or decreases in costs of production, distribution, and transportation, and general increases or decreases in profits * * * during and subsequent to the year ended October 1, 1941." The similar provision in the rent section of the Act (Sec. 2 (b)) is discussed at p. 20, n. 8, of the Government's brief in the *Willingham* case, No. 464. The considerations and authorities there advanced indicate that it would have been impracticable for Congress rigidly to circumscribe the exercise of judgment by the Administrator as to the efficacy of adopting in particular situations, the statutory guide dates (October 1 to 15, 1941), or as to the weight to be given to particular "relevant" adjustment factors.

Further, under Section 3 of the Act of October 2, the maximum price established for any com-

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Register. Under Sec. 2.4 (b) of the Federal Register Regulations, the Director has determined that filing constitutes compliance with the Federal Register Act (44 U. S. C. § 301 et seq.) and has excluded statements of considerations from publication.

[34] *Id.*, OPA Service 41 : 341–C, 41 : 341–D.

modity processed or manufactured in whole or in substantial part from any agricultural commodity must reflect to the producer of the commodity designated prices as set forth in two numbered clauses of the Section. The provisions of the second clause may be waived upon a finding of necessity to correct gross inequities. Modifications must be made in maximum prices for agricultural commodities or products processed therefrom in any case where it appears that this is necessary to increase production of a commodity for war purposes, or where increased costs since January 1, 1941 are not reflected in the maximum prices. Adequate weighting must be given to farm labor in setting prices for both agricultural products and commodities processed therefrom.

Insofar as practicable, the Administrator must consult with industry representatives before issuing an order affecting them. Finally, the preservation of Congressional guardianship over the authority delegated is indicated by the requirement in Section 301 of the original Act that the Administrator make quarterly reports to Congress, by the provision of the Act limiting its duration to June 30, 1943 (Section 1 (b)), and by the amendment thereto extending the life of the Act only to June 30, 1944 (Amendatory Act, Section 7 (a)).

Findings.—As suggested at pp. 23–27 of the Government's brief in the *Willingham* case, No. 464, the relevancy of the presence or absence of findings to the delegation issue is highly dubious; the question is more properly one which goes to the validity of a particular regulation and should therefore be urged in the exclusive statutory forum (see pp. 15–16, *supra*). It may be noted, however, that Section 2 (a) of the Emergency Price Control Act specifically requires findings in that every maximum price regulation must be accompanied by a "statement of considerations." Findings in support of the present Regulation appear both in the preamble of the Regulation itself and in the Statement of Considerations.[35] The latter contains a thoroughgoing description and analysis of the facts and considerations underlying the provisions adopted. There are findings as to the history, structure, and operation of the beef industry, the problems encountered under earlier price regulations, cattle price trends, the fairness and equitableness of the revised prices, and administrative compliance with the statutory objectives of increased production and price stabilization at the September 15, 1942, levels. In short, the considerations leading to the issuance of the Regulation have been articulated with a fullness that would be uncommon even under peacetime standards.

[35] See OPA Service 41: 339 et seq.

CONCLUSION

For the foregoing reasons the judgments below should be affirmed.

Respectfully submitted.

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U. S. GOVERNMENT PRINTING OFFICE: 1944

[PUBLIC LAW 421—77TH CONGRESS]

[CHAPTER 26—2D SESSION]

[H. R. 5990]

AN ACT

To further the national defense and security by checking speculative and excessive price rises, price dislocations, and inflationary tendencies, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—GENERAL PROVISIONS AND AUTHORITY

PURPOSES; TIME LIMIT; APPLICABILITY

SECTION 1. (a) It is hereby declared to be in the interest of the national defense and security and necessary to the effective prosecution of the present war, and the purposes of this Act are, to stabilize prices and to prevent speculative, unwarranted, and abnormal increases in prices and rents; to eliminate and prevent profiteering, hoarding, manipulation, speculation, and other disruptive practices resulting from abnormal market conditions or scarcities caused by or contributing to the national emergency; to assure that defense appropriations are not dissipated by excessive prices; to protect persons with relatively fixed and limited incomes, consumers, wage earners, investors, and persons dependent on life insurance, annuities, and pensions, from undue impairment of their standard of living; to prevent hardships to persons engaged in business, to schools, universities, and other institutions, and to the Federal, State, and local governments, which would result from abnormal increases in prices; to assist in securing adequate production of commodities and facilities; to prevent a post emergency collapse of values; to stabilize agricultural prices in the manner provided in section 3; and to permit voluntary cooperation between the Government and producers, processors, and others to accomplish the aforesaid purposes. It shall be the policy of those departments and agencies of the Government dealing with wages (including the Department of Labor and its various bureaus, the War Department, the Navy Department, the War Production Board, the National Labor Relations Board, the National Mediation Board, the National War Labor Board, and others heretofore or hereafter created), within the limits of their authority and jurisdiction, to work toward a stabilization of prices, fair and equitable wages, and cost of production.

(b) The provisions of this Act, and all regulations, orders, price schedules, and requirements thereunder, shall terminate on June 30, 1943, or upon the date of a proclamation by the President, or upon the date specified in a concurrent resolution by the two Houses of the Congress, declaring that the further continuance of the authority granted by this Act is not necessary in the interest of the national defense and security, whichever date is the earlier; except that as to offenses committed, or rights or liabilities incurred, prior to such termination date, the provisions of this Act and such regulations,

orders, price schedules, and requirements shall be treated as still remaining in force for the purpose of sustaining any proper suit, action, or prosecution with respect to any such right, liability, or offense.

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

PRICES, RENTS, AND MARKET AND RENTING PRACTICES

SEC. 2. (a) Whenever in the judgment of the Price Administrator (provided for in section 201) the price or prices of a commodity or commodities have risen or threaten to rise to an extent or in a manner inconsistent with the purposes of this Act, he may by regulation or order establish such maximum price or maximum prices as in his judgment will be generally fair and equitable and will effectuate the purposes of this Act. So far as practicable, in establishing any maximum price, the Administrator shall ascertain and give due consideration to the prices prevailing between October 1 and October 15, 1941 (or if, in the case of any commodity, there are no prevailing prices between such dates, or the prevailing prices between such dates are not generally representative because of abnormal or seasonal market conditions or other cause, then to the prices prevailing during the nearest two-week period in which, in the judgment of the Administrator, the prices for such commodity are generally representative), for the commodity or commodities included under such regulation or order, and shall make adjustments for such relevant factors as he may determine and deem to be of general applicability, including the following: Speculative fluctuations, general increases or decreases in costs of production, distribution, and transportation, and general increases or decreases in profits earned by sellers of the commodity or commodities, during and subsequent to the year ended October 1, 1941. Every regulation or order issued under the foregoing provisions of this subsection shall be accompanied by a statement of the considerations involved in the issuance of such regulation or order. As used in the foregoing provisions of this subsection, the term "regulation or order" means a regulation or order of general applicability and effect. Before issuing any regulation or order under the foregoing provisions of this subsection, the Administrator shall, so far as practicable, advise and consult with representative members of the industry which will be affected by such regulation or order. In the case of any commodity for which a maximum price has been established, the Administrator shall, at the request of any substantial portion of the industry subject to such maximum price, regulation, or order of the Administrator, appoint an industry advisory committee, or committees, either national or regional or both, consisting of such number of representatives of the industry as may be necessary in order to constitute a committee truly representative of the industry, or of the industry in such region, as the case may be. The committee shall select a chairman from among its members, and shall meet at the call of the chairman. The Administrator shall from time to time, at the request of the committee, advise and consult with the committee with respect to the regulation or order, and with respect to the form thereof, and classifications, differentiations, and adjustments therein. The committee may make such recommendations to

the Administrator as it deems advisable. Whenever in the judgment of the Administrator such action is necessary or proper in order to effectuate the purposes of this Act, he may, without regard to the foregoing provisions of this subsection, issue temporary regulations or orders establishing as a maximum price or maximum prices the price or prices prevailing with respect to any commodity or commodities within five days prior to the date of issuance of such temporary regulations or orders; but any such temporary regulation or order shall be effective for not more than sixty days, and may be replaced by a regulation or order issued under the foregoing provisions of this subsection.

(b) Whenever in the judgment of the Administrator such action is necessary or proper in order to effectuate the purposes of this Act, he shall issue a declaration setting forth the necessity for, and recommendations with reference to, the stabilization or reduction of rents for any defense-area housing accommodations within a particular defense-rental area. If within sixty days after the issuance of any such recommendations rents for any such accommodations within such defense-rental area have not in the judgment of the Administrator been stabilized or reduced by State or local regulation, or otherwise, in accordance with the recommendations, the Administrator may by regulation or order establish such maximum rent or maximum rents for such accommodations as in his judgment will be generally fair and equitable and will effectuate the purposes of this Act. So far as practicable, in establishing any maximum rent for any defense-area housing accommodations, the Administrator shall ascertain and give due consideration to the rents prevailing for such accommodations, or comparable accommodations, on or about April 1, 1941 (or if, prior or subsequent to April 1, 1941, defense activities shall have resulted or threatened to result in increases in rents for housing accommodations in such area inconsistent with the purposes of this Act, then on or about a date (not earlier than April 1, 1940), which in the judgment of the Administrator, does not reflect such increases), and he shall make adjustments for such relevant factors as he may determine and deem to be of general applicability in respect of such accommodations, including increases or decreases in property taxes and other costs. In designating defense-rental areas, in prescribing regulations and orders establishing maximum rents for such accommodations, and in selecting persons to administer such regulations and orders, the Administrator shall, to such extent as he determines to be practicable, consider any recommendations which may be made by State and local officials concerned with housing or rental conditions in any defense-rental area.

(c) Any regulation or order under this section may be established in such form and manner, may contain such classifications and differentiations, and may provide for such adjustments and reasonable exceptions, as in the judgment of the Administrator are necessary or proper in order to effectuate the purposes of this Act. Any regulation or order under this section which establishes a maximum price or maximum rent may provide for a maximum price or maximum rent below the price or prices prevailing for the commodity or commodities, or below the rent or rents prevailing for the defense-area housing accommodations, at the time of the issuance of such regulation or order.

(d) Whenever in the judgment of the Administrator such action is necessary or proper in order to effectuate the purposes of this Act, he may, by regulation or order, regulate or prohibit speculative or manipulative practices (including practices relating to changes in form or quality) or hoarding, in connection with any commodity, and speculative or manipulative practices or renting or leasing practices (including practices relating to recovery of the possession) in connection with any defense-area housing accommodations, which in his judgment are equivalent to or are likely to result in price or rent increases, as the case may be, inconsistent with the purposes of this Act.

(e) Whenever the Administrator determines that the maximum necessary production of any commodity is not being obtained or may not be obtained during the ensuing year, he may, on behalf of the United States, without regard to the provisions of law requiring competitive bidding, buy or sell at public or private sale, or store or use, such commodity in such quantities and in such manner and upon such terms and conditions as he determines to be necessary to obtain the maximum necessary production thereof or otherwise to supply the demand therefor, or make subsidy payments to domestic producers of such commodity in such amounts and in such manner and upon such terms and conditions as he determines to be necessary to obtain the maximum necessary production thereof: *Provided*, That in the case of any commodity which has heretofore or may hereafter be defined as a strategic or critical material by the President pursuant to section 5d of the Reconstruction Finance Corporation Act, as amended, such determinations shall be made by the Federal Loan Administrator, with the approval of the President, and, notwithstanding any other provision of this Act or of any existing law, such commodity may be bought or sold, or stored or used, and such subsidy payments to domestic producers thereof may be paid, only by corporations created or organized pursuant to such section 5d; except that in the case of the sale of any commodity by any such corporation, the sale price therefor shall not exceed any maximum price established pursuant to subsection (a) of this section which is applicable to such commodity at the time of sale or delivery, but such sale price may be below such maximum price or below the purchase price of such commodity, and the Administrator may make recommendations with respect to the buying or selling, or storage or use, of any such commodity. In any case in which a commodity is domestically produced, the powers granted to the Administrator by this subsection shall be exercised with respect to importations of such commodity only to the extent that, in the judgment of the Administrator, the domestic production of the commodity is not sufficient to satisfy the demand therefor. Nothing in this section shall be construed to modify, suspend, amend, or supersede any provision of the Tariff Act of 1930, as amended, and nothing in this section, or in any existing law, shall be construed to authorize any sale or other disposition of any agricultural commodity contrary to the provisions of the Agricultural Adjustment Act of 1938, as amended, or to authorize the Administrator to prohibit trading in any agricultural commodity for future delivery if such trading is subject to the provisions of the Commodity Exchange Act, as amended.

(f) No power conferred by this section shall be construed to authorize any action contrary to the provisions and purposes of section 3, and no agricultural commodity shall be sold within the United States pursuant to the provisions of this section by any governmental agency at a price below the price limitations imposed by section 3 (a) of this Act with respect to such commodity.

(g) Regulations, orders, and requirements under this Act may contain such provisions as the Administrator deems necessary to prevent the circumvention or evasion thereof.

(h) The powers granted in this section shall not be used or made to operate to compel changes in the business practices, cost practices or methods, or means or aids to distribution, established in any industry, except to prevent circumvention or evasion of any regulation, order, price schedule, or requirement under this Act.

(i) No maximum price shall be established for any fishery commodity below the average price of such commodity in the year 1941.

AGRICULTURAL COMMODITIES

SEC. 3. (a) No maximum price shall be established or maintained for any agricultural commodity below the highest of any of the following prices, as determined and published by the Secretary of Agriculture: (1) 110 per centum 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 for such commodity under subsection (b), 110 per centum of such comparable price, adjusted in the same manner, in lieu of 110 per centum of the parity price so adjusted; (2) the market price prevailing for such commodity on October 1, 1941; (3) the market price prevailing for such commodity on December 15, 1941; or (4) the average price for such commodity during the period July 1, 1919, to June 30, 1929.

(b) For the purposes of this Act, parity prices shall be determined and published by the Secretary of Agriculture as authorized by law. In the case of any agricultural commodity other than the basic crops corn, wheat, cotton, rice, tobacco, and peanuts, the Secretary shall determine and publish a comparable price whenever he finds, after investigation and public hearing, that the production and consumption of such commodity has so changed in extent or character since the base period as to result in a price out of line with parity prices for basic commodities.

(c) No maximum price shall be established or maintained for any commodity processed or manufactured in whole or substantial part from any agricultural commodity below a price which will reflect to producers of such agricultural commodity a price for such agricultural commodity equal to the highest price therefor specified in subsection (a).

(d) Nothing contained in this Act shall be construed to modify, repeal, supersede, or affect the provisions of the Agricultural Marketing Agreement Act of 1937, as amended, or to invalidate any marketing agreement, license, or order, or any provision thereof or amendment thereto, heretofore or hereafter made or issued under the provisions of such Act.

(e) Notwithstanding any other provision of this or any other law, no action shall be taken under this Act by the Administrator or any other person with respect to any agricultural commodity without the prior approval of the Secretary of Agriculture; except that the Administrator may take such action as may be necessary under section 202 and section 205 (a) and (b) to enforce compliance with any regulation, order, price schedule or other requirement with respect to an agricultural commodity which has been previously approved by the Secretary of Agriculture.

(f) No provision of this Act or of any existing law shall be construed to authorize any action contrary to the provisions and purposes of this section.

PROHIBITIONS

SEC. 4. (a) It shall be unlawful, regardless of any contract, agreement, lease, or other obligation heretofore or hereafter entered into, for any person to sell or deliver any commodity, or in the course of trade or business to buy or receive any commodity, or to demand or receive any rent for any defense-area housing accommodations, or otherwise to do or omit to do any act, in violation of any regulation or order under section 2, or of any price schedule effective in accordance with the provisions of section 206, or of any regulation, order, or requirement under section 202 (b) or section 205 (f), or to offer, solicit, attempt, or agree to do any of the foregoing.

(b) It shall be unlawful for any person to remove or attempt to remove from any defense-area housing accommodations the tenant or occupant thereof or to refuse to renew the lease or agreement for the use of such accommodations, because such tenant or occupant has taken, or proposes to take, action authorized or required by this Act or any regulation, order, or requirement thereunder.

(c) It shall be unlawful for any officer or employee of the Government, or for any adviser or consultant to the Administrator in his official capacity, to disclose, otherwise than in the course of official duty, any information obtained under this Act, or to use any such information, for personal benefit.

(d) Nothing in this Act shall be construed to require any person to sell any commodity or to offer any accommodations for rent.

VOLUNTARY AGREEMENTS

SEC. 5. In carrying out the provisions of this Act, the Administrator is authorized to confer with producers, processors, manufacturers, retailers, wholesalers, and other groups having to do with commodities, and with representatives and associations thereof, to cooperate with any agency or person, and to enter into voluntary arrangements or agreements with any such persons, groups, or associations relating to the fixing of maximum prices, the issuance of other regulations or orders, or the other purposes of this Act, but no such arrangement or agreement shall modify any regulation, order, or price schedule previously issued which is effective in accordance with the provisions of section 2 or section 206. The Attorney General shall be promptly furnished with a copy of each such arrangement or agreement.

TITLE II—ADMINISTRATION AND ENFORCEMENT

ADMINISTRATION

SEC. 201. (a) There is hereby created an Office of Price Administration, which shall be under the direction of a Price Administrator (referred to in this Act as the "Administrator"). The Administrator shall be appointed by the President, by and with the advice and consent of the Senate, and shall receive compensation at the rate of $12,000 per annum. The Administrator may, subject to the civil-service laws, appoint such employees as he deems necessary in order to carry out his functions and duties under this Act, and shall fix their compensation in accordance with the Classification Act of 1923, as amended. The Administrator may utilize the services of Federal, State, and local agencies and may utilize and establish such regional, local, or other agencies, and utilize such voluntary and uncompensated services, as may from time to time be needed. Attorneys appointed under this section may appear for and represent the Administrator in any case in any court. In the appointment, selection, classification, and promotion of officers and employees of the Office of Price Administration, no political test or qualification shall be permitted or given consideration, but all such appointments and promotions shall be given and made on the basis of merit and efficiency.

(b) The principal office of the Administrator shall be in the District of Columbia, but he or any duly authorized representative may exercise any or all of his powers in any place. The President is authorized to transfer any of the powers and functions conferred by this Act upon the Office of Price Administration with respect to a particular commodity or commodities to any other department or agency of the Government having other functions relating to such commodity or commodities, and to transfer to the Office of Price Administration any of the powers and functions relating to priorities or rationing conferred by law upon any other department or agency of the Government with respect to any particular commodity or commodities; but, notwithstanding any provision of this or any other law, no powers or functions conferred by law upon the Secretary of Agriculture shall be transferred to the Office of Price Administration or to the Administrator, and no powers or functions conferred by law upon any other department or agency of the Government with respect to any agricultural commodity, except powers and functions relating to priorities or rationing, shall be so transferred.

(c) The Administrator shall have authority to make such expenditures (including expenditures for personal services and rent at the seat of government and elsewhere; for lawbooks and books of reference; and for paper, printing, and binding) as he may deem necessary for the administration and enforcement of this Act. The provisions of section 3709 of the Revised Statutes shall not apply to the purchase of supplies and services by the Administrator where the aggregate amount involved does not exceed $250.

(d) The Administrator may, from time to time, issue such regulations and orders as he may deem necessary or proper in order to carry out the purposes and provisions of this Act.

INVESTIGATIONS; RECORDS; REPORTS

SEC. 202. (a) The Administrator is authorized to make such studies and investigations and to obtain such information as he deems necessary or proper to assist him in prescribing any regulation or order under this Act, or in the administration and enforcement of this Act and regulations, orders, and price schedules thereunder.

(b) The Administrator is further authorized, by regulation or order, to require any person who is engaged in the business of dealing with any commodity, or who rents or offers for rent or acts as broker or agent for the rental of any housing accommodations, to furnish any such information under oath or affirmation or otherwise, to make and keep records and other documents, and to make reports, and he may require any such person to permit the inspection and copying of records and other documents, the inspection of inventories, and the inspection of defense-area housing accommodations. The Administrator may administer oaths and affirmations and may, whenever necessary, by subpena require any such person to appear and testify or to appear and produce documents, or both, at any designated place.

(c) For the purpose of obtaining any information under subsection (a), the Administrator may by subpena require any other person to appear and testify or to appear and produce documents, or both, at any designated place.

(d) The production of a person's documents at any place other than his place of business shall not be required under this section in any case in which, prior to the return date specified in the subpena issued with respect thereto, such person either has furnished the Administrator with a copy of such documents (certified by such person under oath to be a true and correct copy), or has entered into a stipulation with the Administrator as to the information contained in such documents.

(e) In case of contumacy by, or refusal to obey a subpena served upon, any person referred to in subsection (c), the district court for any district in which such person is found or resides or transacts business, upon application by the Administrator, shall have jurisdiction to issue an order requiring such person to appear and give testimony or to appear and produce documents, or both; and any failure to obey such order of the court may be punished by such court as a contempt thereof. The provisions of this subsection shall also apply to any person referred to in subsection (b), and shall be in addition to the provisions of section 4 (a).

(f) Witnesses subpenaed under this section shall be paid the same fees and mileage as are paid witnesses in the district courts of the United States.

(g) No person shall be excused from complying with any requirements under this section because of his privilege against self-incrimination, but the immunity provisions of the Compulsory Testimony Act of February 11, 1893 (U. S. C., 1934 edition, title 49, sec. 46), shall apply with respect to any individual who specifically claims such privilege.

(h) The Administrator shall not publish or disclose any information obtained under this Act that such Administrator deems confi-

dential or with reference to which a request for confidential treatment is made by the person furnishing such information, unless he determines that the withholding thereof is contrary to the interest of the national defense and security.

PROCEDURE

SEC. 203. (a) Within a period of sixty days after the issuance of any regulation or order under section 2, or in the case of a price schedule, within a period of sixty days after the effective date thereof specified in section 206, any person subject to any provision of such regulation, order, or price schedule may, in accordance with regulations to be prescribed by the Administrator, file a protest specifically setting forth objections to any such provision and affidavits or other written evidence in support of such objections. At any time after the expiration of such sixty days any persons subject to any provision of such regulation, order, or price schedule may file such a protest based solely on grounds arising after the expiration of such sixty days. Statements in support of any such regulation, order, or price schedule may be received and incorporated in the transcript of the proceedings at such times and in accordance with such regulations as may be prescribed by the Administrator. Within a reasonable time after the filing of any protest under this subsection, but in no event more than thirty days after such filing or ninety days after the issuance of the regulation or order (or in the case of a price schedule, ninety days after the effective date thereof specified in section 206) in respect of which the protest is filed, whichever occurs later, the Administrator shall either grant or deny such protest in whole or in part, notice such protest for hearing, or provide an opportunity to present further evidence in connection therewith. In the event that the Administrator denies any such protest in whole or in part, he shall inform the protestant of the grounds upon which such decision is based, and of any economic data and other facts of which the Administrator has taken official notice.

(b) In the administration of this Act the Administrator may take official notice of economic data and other facts, including facts found by him as a result of action taken under section 202.

(c) Any proceedings under this section may be limited by the Administrator to the filing of affidavits, or other written evidence, and the filing of briefs.

REVIEW

SEC. 204. (a) Any person who is aggrieved by the denial or partial denial of his protest may, within thirty days after such denial, file a complaint with the Emergency Court of Appeals, created pursuant to subsection (c), specifying his objections and praying that the regulation, order, or price schedule protested be enjoined or set aside in whole or in part. A copy of such complaint shall forthwith be served on the Administrator, who shall certify and file with such court a transcript of such portions of the proceedings in connection with the protest as are material under the complaint. Such transcript shall include a statement setting forth, so far as practicable, the economic data and other facts of which the Administrator has taken official notice. Upon the filing of such complaint the court shall have

exclusive jurisdiction to set aside such regulation, order, or price schedule, in whole or in part, to dismiss the complaint, or to remand the proceeding: *Provided*, That the regulation, order, or price schedule may be modified or rescinded by the Administrator at any time notwithstanding the pendency of such complaint. No objection to such regulation, order, or price schedule, and no evidence in support of any objection thereto, shall be considered by the court, unless such objection shall have been set forth by the complainant in the protest or such evidence shall be contained in the transcript. If application is made to the court by either party for leave to introduce additional evidence which was either offered to the Administrator and not admitted, or which could not reasonably have been offered to the Administrator or included by the Administrator in such proceedings, and the court determines that such evidence should be admitted, the court shall order the evidence to be presented to the Administrator. The Administrator shall promptly receive the same, and such other evidence as he deems necessary or proper, and thereupon he shall certify and file with the court a transcript thereof and any modification made in the regulation, order, or price schedule as a result thereof; except that on request by the Administrator, any such evidence shall be presented directly to the court.

(b) No such regulation, order, or price schedule shall be enjoined or set aside, in whole or in part, unless the complainant establishes to the satisfaction of the court that the regulation, order, or price schedule is not in accordance with law, or is arbitrary or capricious. The effectiveness of a judgment of the court enjoining or setting aside, in whole or in part, any such regulation, order, or price schedule shall be postponed until the expiration of thirty days from the entry thereof, except that if a petition for a writ of certiorari is filed with the Supreme Court under subsection (d) within such thirty days, the effectiveness of such judgment shall be postponed until an order of the Supreme Court denying such petition becomes final, or until other final disposition of the case by the Supreme Court.

(c) There is hereby created a court of the United States to be known as the Emergency Court of Appeals, which shall consist of three or more judges to be designated by the Chief Justice of the United States from judges of the United States district courts and circuit courts of appeals. The Chief Justice of the United States shall designate one of such judges as chief judge of the Emergency Court of Appeals, and may, from time to time, designate additional judges for such court and revoke previous designations. The chief judge may, from time to time, divide the court into divisions of three or more members, and any such division may render judgment as the judgment of the court. The court shall have the powers of a district court with respect to the jurisdiction conferred on it by this Act; except that the court shall not have power to issue any temporary restraining order or interlocutory decree staying or restraining, in whole or in part, the effectiveness of any regulation or order issued under section 2 or any price schedule effective in accordance with the provisions of section 206. The court shall exercise its powers and prescribe rules governing its procedure in such manner as to expedite the determination of cases of which it has jurisdiction under this Act. The court may fix and establish a table of costs and

fees to be approved by the Supreme Court of the United States, but the costs and fees so fixed shall not exceed with respect to any item the costs and fees charged in the Supreme Court of the United States. The court shall have a seal, hold sessions at such places as it may specify, and appoint a clerk and such other employees as it deems necessary or proper.

(d) Within thirty days after entry of a judgment or order, interlocutory or final, by the Emergency Court of Appeals, a petition for a writ of certiorari may be filed in the Supreme Court of the United States, and thereupon the judgment or order shall be subject to review by the Supreme Court in the same manner as a judgment of a circuit court of appeals as provided in section 240 of the Judicial Code, as amended (U. S. C., 1934 edition, title 28, sec. 347). The Supreme Court shall advance on the docket and expedite the disposition of all causes filed therein pursuant to this subsection. The Emergency Court of Appeals, and the Supreme Court upon review of judgments and orders of the Emergency Court of Appeals, shall have exclusive jurisdiction to determine the validity of any regulation or order issued under section 2, of any price schedule effective in accordance with the provisions of section 206, and of any provision of any such regulation, order, or price schedule. Except as provided in this section, no court, Federal, State, or Territorial, shall have jurisdiction or power to consider the validity of any such regulation, order, or price schedule, or to stay, restrain, enjoin, or set aside, in whole or in part, any provision of this Act authorizing the issuance of such regulations or orders, or making effective any such price schedule, or any provision of any such regulation, order, or price schedule, or to restrain or enjoin the enforcement of any such provision.

ENFORCEMENT

SEC. 205. (a) Whenever in the judgment of the Administrator any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of section 4 of this Act, he may make application to the appropriate court for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, and upon a showing by the Administrator that such person has engaged or is about to engage in any such acts or practices a permanent or temporary injunction, restraining order, or other order shall be granted without bond.

(b) Any person who willfully violates any provision of section 4 of this Act, and any person who makes any statement or entry false in any material respect in any document or report required to be kept or filed under section 2 or section 202, shall, upon conviction thereof, be subject to a fine of not more than $5,000, or to imprisonment for not more than two years in the case of a violation of section 4 (c) and for not more than one year in all other cases, or to both such fine and imprisonment. Whenever the Administrator has reason to believe that any person is liable to punishment under this subsection, he may certify the facts to the Attorney General, who may, in his discretion, cause appropriate proceedings to be brought.

(c) The district courts shall have jurisdiction of criminal proceedings for violations of section 4 of this Act, and, concurrently with

State and Territorial courts, of all other proceedings under section 205 of this Act. Such criminal proceedings may be brought in any district in which any part of any act or transaction constituting the violation occurred. Except as provided in section 205 (f) (2), such other proceedings may be brought in any district in which any part of any act or transaction constituting the violation occurred, and may also be brought in the district in which the defendant resides or transacts business, and process in such cases may be served in any district wherein the defendant resides or transacts business or wherever the defendant may be found. Any such court shall advance on the docket and expedite the disposition of any criminal or other proceedings brought before it under this section. No costs shall be assessed against the Administrator or the United States Government in any proceeding under this Act.

(d) No person shall be held liable for damages or penalties in any Federal, State, or Territorial court, on any grounds for or in respect of anything done or omitted to be done in good faith pursuant to any provision of this Act or any regulation, order, price schedule, requirement, or agreement thereunder, or under any price schedule of the Administrator of the Office of Price Administration or of the Administrator of the Office of Price Administration and Civilian Supply, notwithstanding that subsequently such provision, regulation, order, price schedule, requirement, or agreement may be modified, rescinded, or determined to be invalid. In any suit or action wherein a party relies for ground of relief or defense upon this Act or any regulation, order, price schedule, requirement, or agreement thereunder, the court having jurisdiction of such suit or action shall certify such fact to the Administrator. The Administrator may intervene in any such suit or action.

(e) If any person selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or maximum prices, the person who buys such commodity for use or consumption other than in the course of trade or business may bring an action either for $50 or for treble the amount by which the consideration exceeded the applicable maximum price, whichever is the greater, plus reasonable attorney's fees and costs as determined by the court. For the purposes of this section the payment or receipt of rent for defense-area housing accommodations shall be deemed the buying or selling of a commodity, as the case may be. If any person selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or maximum prices, and the buyer is not entitled to bring suit or action under this subsection, the Administrator may bring such action under this subsection on behalf of the United States. Any suit or action under this subsection may be brought in any court of competent jurisdiction, and shall be instituted within one year after delivery is completed or rent is paid. The provisions of this subsection shall not take effect until after the expiration of six months from the date of enactment of this Act.

(f) (1) Whenever in the judgment of the Administrator such action is necessary or proper in order to effectuate the purposes of this Act and to assure compliance with and provide for the effective enforcement of any regulation or order issued or which may be issued under section 2, or of any price schedule effective in accordance with

the provisions of section 206, he may by regulation or order issue to or require of any person or persons subject to any regulation or order issued under section 2, or subject to any such price schedule, a license as a condition of selling any commodity or commodities with respect to which such regulation, order, or price schedule is applicable. It shall not be necessary for the Administrator to issue a separate license for each commodity or for each regulation, order, or price schedule with respect to which a license is required. No such license shall contain any provision which could not be prescribed by regulation, order, or requirement under section 2 or section 202: *Provided*, That no such license may be required as a condition of selling or distributing (except as waste or scrap) newspapers, periodicals, books, or other printed or written material, or motion pictures, or as a condition of selling radio time: *Provided further*, That no license may be required of any farmer as a condition of selling any agricultural commodity produced by him, and no license may be required of any fisherman as a condition of selling any fishery commodity caught or taken by him: *Provided further*, That in any case in which such a license is required of any person, the Administrator shall not have power to deny to such person a license to sell any commodity or commodities, unless such person already has such a license to sell such commodity or commodities, or unless there is in effect under paragraph (2) of this subsection with respect to such person an order of suspension of a previous license to the extent that such previous license authorized such person to sell such commodity or commodities.

(2) Whenever in the judgment of the Administrator a person has violated any of the provisions of a license issued under this subsection, or has violated any of the provisions of any regulation, order, or requirement under section 2 or section 202 (b), or any of the provisions of any price schedule effective in accordance with the provisions of section 206, which is applicable to such person, a warning notice shall be sent by registered mail to such person. If the Administrator has reason to believe that such person has again violated any of the provisions of such license, regulation, order, price schedule, or requirement after receipt of such warning notice, the Administrator may petition any State or Territorial court of competent jurisdiction, or a district court subject to the limitations hereinafter provided, for an order suspending the license of such person for any period of not more than twelve months. If any such court finds that such person has violated any of the provisions of such license, regulation, order, price schedule, or requirement after the receipt of the warning notice, such court shall issue an order suspending the license to the extent that it authorizes such person to sell the commodity or commodities in connection with which the violation occurred, or to the extent that it authorizes such person to sell any commodity or commodities with respect to which a regulation or order issued under section 2, or a price schedule effective in accordance with the provisions of section 206, is applicable; but no such suspension shall be for a period of more than twelve months. For the purposes of this subsection, any such proceedings for the suspension of a license may be brought in a district court if the licensee is doing business in more than one State, or if his gross sales exceed $100,000 per annum. Within thirty days after the entry of the judgment or order of any

court either suspending a license, or dismissing or denying in whole or in part the Administrator's petition for suspension, an appeal may be taken from such judgment or order in like manner as an appeal may be taken in other cases from a judgment or order of a State, Territorial, or district court, as the case may be. Upon good cause shown, any such order of suspension may be stayed by the appropriate court or any judge thereof in accordance with the applicable practice; and upon written stipulation of the parties to the proceeding for suspension, approved by the trial court, any such order of suspension may be modified, and the license which has been suspended may be restored, upon such terms and conditions as such court shall find reasonable. Any such order of suspension shall be affirmed by the appropriate appellate court if, under the applicable rules of law, the evidence in the record supports a finding that there has been a violation of any provision of such license, regulation, order, price schedule, or requirement after receipt of such warning notice. No proceedings for suspension of a license, and no such suspension, shall confer any immunity from any other provision of this Act.

SAVING PROVISIONS

SEC. 206. Any price schedule establishing a maximum price or maximum prices, issued by the Administrator of the Office of Price Administration or the Administrator of the Office of Price Administration and Civilian Supply, prior to the date upon which the Administrator provided for by section 201 of this Act takes office, shall, from such date, have the same effect as if issued under section 2 of this Act until such price schedule is superseded by action taken pursuant to such section 2. Such price schedules shall be consistent with the standards contained in section 2 and the limitations contained in section 3 of this Act, and shall be subject to protest and review as provided in section 203 and section 204 of this Act. All such price schedules shall be reprinted in the Federal Register within ten days after the date upon which such Administrator takes office.

TITLE III—MISCELLANEOUS

QUARTERLY REPORT

SEC. 301. The Administrator from time to time, but not less frequently than once every ninety days, shall transmit to the Congress a report of operations under this Act. If the Senate or the House of Representatives is not in session, such reports shall be transmitted to the Secretary of the Senate, or the Clerk of the House of Representatives, as the case may be.

DEFINITIONS

SEC. 302. As used in this Act—

(a) The term "sale" includes sales, dispositions, exchanges, leases, and other transfers, and contracts and offers to do any of the foregoing. The terms "sell", "selling", "seller", "buy", and "buyer", shall be construed accordingly.

(b) The term "price" means the consideration demanded or received in connection with the sale of a commodity.

(c) The term "commodity" means commodities, articles, products, and materials (except materials furnished for publication by any press association or feature service, books, magazines, motion pictures, periodicals and newspapers, other than as waste or scrap), and it also includes services rendered otherwise than as an employee in connection with the processing, distribution, storage, installation, repair, or negotiation of purchases or sales of a commodity, or in connection with the operation of any service establishment for the servicing of a commodity: *Provided*, That nothing in this Act shall be construed to authorize the regulation of (1) compensation paid by an employer to any of his employees, or (2) rates charged by any common carrier or other public utility, or (3) rates charged by any person engaged in the business of selling or underwriting insurance, or (4) rates charged by any person engaged in the business of operating or publishing a newspaper, periodical, or magazine, or operating a radio-broadcasting station, a motion-picture or other theater enterprise, or outdoor advertising facilities, or (5) rates charged for any professional services.

(d) The term "defense-rental area" means the District of Columbia and any area designated by the Administrator as an area where defense activities have resulted or threaten to result in an increase in the rents for housing accommodations inconsistent with the purposes of this Act.

(e) The term "defense-area housing accommodations" means housing accommodations within any defense-rental area.

(f) The term "housing accommodations" means any building, structure, or part thereof, or land appurtenant thereto, or any other real or personal property rented or offered for rent for living or dwelling purposes (including houses, apartments, hotels, rooming or boarding house accommodations, and other properties used for living or dwelling purposes) together with all privileges, services, furnishings, furniture, and facilities connected with the use or occupancy of such property.

(g) The term "rent" means the consideration demanded or received in connection with the use or occupancy or the transfer of a lease of any housing accommodations.

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

(i) The term "maximum price", as applied to prices of commodities means the maximum lawful price for such commodities, and the term "maximum rent" means the maximum lawful rent for the use of defense-area housing accommodations. Maximum prices and maximum rents may be formulated, as the case may be, in terms of prices, rents, margins, commissions, fees, and other charges, and allowances.

(j) The term "documents" includes records, books, accounts, correspondence, memoranda, and other documents, and drafts and copies of any of the foregoing.

(k) The term "district court" means any district court of the United States, and the United States Court for any Territory or other place subject to the jurisdiction of the United States; and the term "circuit courts of appeals" includes the United States Court of Appeals for the District of Columbia.

SEPARABILITY

SEC. 303. If any provision of this Act or the application of such provision to any person or circumstances shall be held invalid, the validity of the remainder of the Act and the applicability of such provision to other persons or circumstances shall not be affected thereby.

APPROPRIATIONS AUTHORIZED

SEC. 304. There are authorized to be appropriated such sums as may be necessary or proper to carry out the provisions and purposes of this Act.

APPLICATION OF EXISTING LAW

SEC. 305. No provision of law in force on the date of enactment of this Act shall be construed to authorize any action inconsistent with the provisions and purposes of this Act.

SHORT TITLE

SEC. 306. This Act may be cited as the "Emergency Price Control Act of 1942".

Approved, January 30, 1942.

[PUBLIC LAW 729—77TH CONGRESS]

[CHAPTER 578—2D SESSION]

[H. R. 7565]

AN ACT

To amend the Emergency Price Control Act of 1942, to aid in preventing inflation, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in order to aid in the effective prosecution of the war, the President is authorized and directed, on or before November 1, 1942, to issue a general order stabilizing prices, wages, and salaries, affecting the cost of living; and, except as otherwise provided in this Act, such stabilization shall so far as practicable be on the basis of the levels which existed on September 15, 1942. The President may, except as otherwise provided in this Act, thereafter provide for making adjustments with respect to prices, wages, and salaries, to the extent that he finds necessary to aid in the effective prosecution of the war or to correct gross inequities: *Provided*, That no common carrier or other public utility shall make any general increase in its rates or charges which were in effect on September 15, 1942, unless it first gives thirty days notice to the President, or such agency as he may designate, and consents to the timely intervention by such agency before the Federal, State, or municipal authority having jurisdiction to consider such increase.

SEC. 2. The President may, from time to time, promulgate such regulations as may be necessary and proper to carry out any of the provisions of this Act; and may exercise any power or authority conferred upon him by this Act through such department, agency, or officer as he shall direct. The President may suspend the provisions of sections 3 (a) and 3 (c), and clause (1) of section 302 (c), of the Emergency Price Control Act of 1942 to the extent that such sections are inconsistent with the provisions of this Act, but he may not under the authority of this Act suspend any other law or part thereof.

SEC. 3. No maximum price shall be established or maintained for any agricultural commodity under authority of this Act or otherwise below a price which will reflect to producers of agricultural commodities the higher of the following prices, as determined and published by the Secretary of Agriculture—

(1) 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 for such commodity under and in accordance with the provisions of section 3 (b) of the Emergency Price Control Act of 1942, such comparable price (adjusted in the same manner), or

(2) The highest price received by such producers for such commodity 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 such commodity

was inactive during the latter half of such period, a price for the commodity determined by the Secretary of Agriculture to be in line with the prices, during such period, of other agricultural commodities produced for the same general use;

and no maximum price shall be established or maintained under authority of this Act or otherwise for any commodity processed or manufactured in whole or substantial part from any agricultural commodity below a price which will reflect to the producers of such agricultural commodity a price therefor equal to the higher of the prices specified in clauses (1) and (2) of this section: *Provided*, That the President may, without regard to the limitation contained in clause (2), adjust any such maximum price to the extent that he finds necessary to correct gross inequities; but nothing in this section shall be construed to permit the establishment in any case of a maximum price below a price which will reflect to the producers of any agricultural commodity the price therefor specified in clause (1) of this section: *Provided further*, That modifications shall be made in maximum prices established for any agricultural commodity and for commodities processed or manufactured in whole or substantial part from any agricultural commodity, under regulations to be prescribed by the President, in any case where it appears that such modification is necessary to increase the production of such commodity for war purposes, or where by reason of increased labor or other costs to the producers of such agricultural commodity incurred since January 1, 1941, the maximum prices so established will not reflect such increased costs: *Provided further*, That in the fixing of maximum prices on products resulting from the processing of agricultural commodities, including livestock, a generally fair and equitable margin shall be allowed for such processing: *Provided further*, That in fixing price maximums for agricultural commodities and for commodities processed or manufactured in whole or substantial part from any agricultural commodity, as provided for by this Act, adequate weighting shall be given to farm labor.

SEC. 4. No action shall be taken under authority of this Act with respect to wages or salaries (1) which is inconsistent with the provisions of the Fair Labor Standards Act of 1938, as amended, or the National Labor Relations Act, or (2) for the purpose of reducing the wages or salaries for any particular work below the highest wages or salaries paid therefor between January 1, 1942, and September 15, 1942: *Provided*, That the President may, without regard to the limitation contained in clause (2), adjust wages or salaries to the extent that he finds necessary in any case to correct gross inequities and also aid in the effective prosecution of the war.

SEC. 5. (a) No employer shall pay, and no employee shall receive, wages or salaries in contravention of the regulations promulgated by the President under this Act. The President shall also prescribe the extent to which any wage or salary payment made in contravention of such regulations shall be disregarded by the executive departments and other governmental agencies in determining the costs or expenses of any employer for the purposes of any other law or regulation.

(b) Nothing in this Act shall be construed to prevent the reduction by any private employer of the salary of any of his employees which is at the rate of $5,000 or more per annum.

(c) The President shall have power by regulation to limit or prohibit the payment of double time except when, because of emergency conditions, an employee is required to work for seven consecutive days in any regularly scheduled work week.

SEC. 6. The provisions of this Act (except sections 8 and 9), and all regulations thereunder, shall terminate on June 30, 1944, or on such earlier date as the Congress by concurrent resolution, or the President by proclamation, may prescribe.

SEC. 7. (a) Section 1 (b) of the Emergency Price Control Act of 1942 is hereby amended by striking out "June 30, 1943" and substituting "June 30, 1944".

(b) All provisions (including prohibitions and penalties) of the Emergency Price Control Act of 1942 which are applicable with respect to orders or regulations under such Act shall, insofar as they are not inconsistent with the provisions of this Act, be applicable in the same manner and for the same purposes with respect to regulations or orders issued by the Price Administrator in the exercise of any functions which may be delegated to him under authority of this Act.

(c) Nothing in this Act shall be construed to invalidate any provision of the Emergency Price Control Act of 1942 (except to the extent that such provisions are suspended under authority of section 2), or to invalidate any regulation, price schedule, or order issued or effective under such Act.

SEC. 8. (a) The Commodity Credit Corporation is authorized and directed to make available upon any crop of the commodities cotton, corn, wheat, rice, tobacco, and peanuts harvested after December 31, 1941, and before the expiration of the two-year period beginning with the 1st day of January immediately following the date upon which the President by proclamation or the Congress by concurrent resolution declares that hostilities in the present war have terminated, if producers have not disapproved marketing quotas for such commodity for the marketing year beginning in the calendar year in which such crop is harvested, loans as follows:

(1) To cooperators (except cooperators outside the commercial corn-producing area, in the case of corn) at the rate of 90 per centum of the parity price for the commodity as of the beginning of the marketing year;

(2) To cooperators outside the commercial corn-producing area, in the case of corn, at the rate of 75 per centum of the rate specified in (1) above;

(3) To noncooperators (except noncooperators outside the commercial corn-producing area, in the case of corn) at the rate of 60 per centum of the rate specified in (1) above and only on so much of the commodity as would be subject to penalty if marketed.

(b) All provisions of law applicable with respect to loans under the Agricultural Adjustment Act of 1938, as amended, shall, insofar as they are not inconsistent with the provisions of this section, be applicable with respect to loans made under this section.

(c) In the case of any commodity with respect to which loans may be made at the rate provided in paragraph (1) of subsection (a), the President may fix the loan rate at any rate not less than the loan rate otherwise provided by law if he determines that the loan rate so fixed is necessary to prevent an increase in the cost of feed for livestock and poultry and to aid in the effective prosecution of the war.

SEC. 9. (a) Section 4 (a) of the Act entitled "An Act to extend the life and increase the credit resources of the Commodity Credit Corporation, and for other purposes", approved July 1, 1941 (U. S. C., 1940 edition, Supp. I, title 15, sec. 713a–8), is amended—

(1) By inserting after the words "so as to support" a comma and the following: "during the continuance of the present war and until the expiration of the two-year period beginning with the 1st day of January immediately following the date upon which the President by proclamation or the Congress by concurrent resolution declares that hostilities in the present war have terminated,".

(2) By striking out "85 per centum" and inserting in lieu thereof "90 per centum".

(3) By inserting after the word "tobacco" a comma and the word "peanuts".

(b) The amendments made by this section shall, irrespective of whether or not there is any further public announcement under such section 4 (a), be applicable with respect to any commodity with respect to which a public announcement has heretofore been made under such section 4 (a).

SEC. 10. When used in this Act, the terms "wages" and "salaries" shall include additional compensation, on an annual or other basis, paid to employees by their employers for personal services (excluding insurance and pension benefits in a reasonable amount to be determined by the President); but for the purpose of determining wages or salaries for any period prior to September 16, 1942, such additional compensation shall be taken into account only in cases where it has been customarily paid by employers to their employees.

SEC. 11. Any individual, corporation, partnership, or association willfully violating any provision of this Act, or of any regulation promulgated thereunder, shall, upon conviction thereof, be subject to a fine of not more than $1,000, or to imprisonment for not more than one year, or to both such fine and imprisonment.

Approved, October 2, 1942.