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## THE MOBILIZATION PROGRAM AND THE PUBLIC INTEREST

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It seems probable that the future historian will consider the Soviet-directed invasion of South Korea a turning point in history comparable to the Japanese attack on Pearl Harbor. In any event, it is clear that American intervention in Korea ended a brief and inglorious period in American history, which in less than five years had destroyed our military and diplomatic position and altered the whole balance of power existing at the conclusion of World War II.

Aroused from a sleep which in retrospect seems more of a nightmare, this nation set about repairing its international fences, and recapturing the position of leadership in the free world to which it is clearly entitled by reason of its inherent economic strength and military potentialities.

The chain reaction which the Soviet planners inadvertently set off in June 1950 is still moving forward; it is too early to say whether we will achieve a predominance of military and industrial strength in time to end the threat of all-out war. In my own judgment, the years 1951 and 1952 are the most critically dangerous for the nation in this respect. It is certain, however, that if diplomacy should fail and war should come in 1952 or thereafter, we will be far better prepared to wage it to a successful conclusion than at any time since we began the process of military self-destruction in 1946.

The American public, the Congress and the Executive Department of the Government all reacted promptly to the threat to our security made manifest by the Korean invasion. Supplemental appropriations,

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which soon reached staggering peacetime levels, were authorized for the military establishment. The Defense Production Act of 1950 became law on September 8, 1950.<sup>1</sup> This statute was modeled on the Second War Powers Act<sup>2</sup> which had evolved during World War II. It granted to the President complete power to regulate every phase of industry and commerce, through the authority to allocate materials and facilities. No such authority has ever previously been granted by Congress except in time of all-out war. Emergency agencies, based largely on World War II models, were speedily organized. These included first the National Production Authority in the Department of Commerce, then the Office of Defense Mobilization, and shortly after January 1, 1951, the Defense Production Administration. These agencies, in turn, wasted no time in getting to the tasks at hand.

I have described elsewhere<sup>3</sup> the general policies and procedures which were adopted by the emergency production agencies to carry out the responsibilities vested in them. I propose to describe here some of the more specific policies and procedures which have been developed in the year and one-half since Korea, designed primarily to supplement and strengthen the basic mobilization policies by assuring a continuous and vigilant regard for the public interest in the administration of these vast powers during an emergency period of uncertain duration.

In order to appreciate the breadth and variety of these special problems, it will be helpful to restate briefly the mobilization plan which has been adopted, and the procedures used to put it into effect. The basic plan, which has not been changed since the fall of 1951, is as follows:

First and foremost, the plan is based upon the premise that the nation is in peril and that all doubts must be resolved in favor of restoring our military and industrial strength at the earliest possible moment. Such mistakes as have been made, and of course there have been some, are generally the result of our attempt to do too much in too short a space of time, with inadequate planning in the early stages.

Second, the plan calls for the provision of munitions in quantities sufficient to supply comparatively small forces with the most modern implements of war. Instead of unlimited production of armament, with the attendant problem of rapid obsolescence, the plan requires

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1. Defense Production Act of 1950, 64 STAT. 798, 50 U.S.C.A. APP. § 2061 *et seq.* (1951). Hereafter section numbers refer to the original act.

2. Second War Powers Act, 56 STAT. 176 (1942), 50 U.S.C. APP. § 631 *et seq.* (1951).

3. Fleischmann, *Policies and Procedures for Limited Mobilization*, 278 ANNALS 110 (1951).

the construction of facilities in being, so that military production can be speedily and drastically increased in the event of all-out war.

Third, the plan calls for a tremendous industrial expansion. This includes the specialized items such as machine tools and industrial equipment which are needed to produce munitions, and also expansion of our basic capacity to produce materials such as steel, aluminum, synthetic rubber and chemicals. It is believed that this tremendous expansion of capacity will insure an industrial supremacy for the free world sufficient to make the prospect of an aggressive war very unattractive to our potential enemies. At the same time, as the very substantial new supply of material becomes available the shortages from which the nation now suffers will gradually disappear and normal civilian production can be resumed.

Finally, it is an integral part of the plan that the above objectives are to be accomplished if possible without an entire suspension of civilian production such as was required during World War II. This objective is by no means easy of accomplishment, since the military and industrial expansion programs make tremendous inroads on our limited supply of scarce materials, and tax our facilities to produce certain types of equipment and components to the utmost. Nevertheless, as we approach the half-way mark in the three-year mobilization drive, it still appears that the basic plan was a sound one and that we will be able to adhere to it without substantial alteration.

There is a corollary to this last point. It is certain that civilian production can only be maintained at a substantially reduced rate, since in every case military production has been and will be given the preference. The problem then arises of seeing to it that an equitable distribution of the inadequate supply of materials is made among competing and less essential producers. This is a problem which was eliminated to a substantial degree during World War II by banning non-essential production. We have felt that such a course would not be sound in the present emergency, which may continue for many years. Despite recently publicized opinions to the contrary, I think it clear that such action would not substantially increase production of the most essential military items, such as planes, tanks and missiles, where the limiting factors are machine tool bottlenecks, lack of adequate supplies of alloying elements, and design problems. In any event, the policy of maintaining some level of civilian production has been thought sound in order to avoid the tremendous dislocations, including widespread unemployment and loss of national revenue, which would flow from a complete cessation of such production; these dislocations could

only be adequately dealt with by an accompanying and unnecessary expansion of current production of "easy to get" military items such as jeeps and guns. Such an expansion would be justified only by the immediate threat of involvement in an all-out war.

On the procedural side, we have re-established a basic regulatory system which was used in World War II, the Controlled Materials Plan. This plan controls the entire economy in the interest of the mobilization effort by distributing the nation's supply of the three key metals, steel, copper and aluminum. The determining factor in our decision to institute this most drastic form of government regulation was again the conviction that the nation must be made strong enough to resist aggression at the earliest possible moment. There is no other known method of channeling scarce materials to the most essential military and industrial programs, although many others were tried and discarded in World War II. As a result of this conviction, the Controlled Materials Plan was put in operation less than a year after the Defense Production Act was passed, much earlier than most students of the subject believed feasible.<sup>4</sup> CMP continues to provide headaches for its administrators and for those who operate under it, as it did all during World War II, but we do know that the most important programs are now receiving material in accordance with basic policy determinations as to relative needs and urgencies. Here, at least, the Government cannot justly be accused of having done too little too late.

It will be observed that while the basic policy of limited mobilization differs radically from the mobilization program required for World War II, the procedures which have been adopted are in general almost identical to those developed between 1941 and 1945. I now wish to call attention to some of the special problems presented by a limited mobilization effort of uncertain duration, and describe the solutions which we are endeavoring to provide, particularly in the field of the public interest in a fair and equitable administration of the emergency powers.

#### THE DEVELOPMENT OF A BASIC MOBILIZATION PROGRAM

In a period of tremendous industrial effort, whether it be a time of war or partial mobilization, demands for scarce materials and for

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4. Drafting of the World War II model of CMP commenced in June 1942. The first transitional quarter of operations was the second calendar quarter of 1943. Construction was brought in during the third quarter but the plan was not fully operative until the last quarter of that year.

Drafting of the present CMP commenced in January 1951. The first transitional quarter of operations began in July, with construction and the consumer durable goods industries being brought under the plan in the fourth quarter of 1951.

industrial equipment, components and products inevitably greatly exceed the supply. For example, in the fourth quarter of 1951 the demand for structural steel, largely attributable to the military and industrial expansion programs, equalled approximately 220% of the available supply.

Under these circumstances, if the most important mobilization programs are to be completed on schedule, the Government must act as umpire in the fiercely competitive struggle for material, and must see to it that first things come first. Of equal importance, the Government must provide a balanced program, since the provision of the irreducible minimum of essential civilian goods, such as fire engines and water mains, is of comparable importance to the attainment of military production goals.

The accomplishment of a balanced program of this kind is essential in a mobilization effort, but most difficult of realization. After long experiments, there emerged in the War Production Board the device of a so-called Requirements Committee where "claimant agencies" for various military and other mobilization programs could present their demands for scarce material. The Requirements Committee improved its operations continuously, and late in World War II it had become a highly efficient organization for determining basic policy of the mobilization program.

The same device was adopted in the present effort, and an inter-agency Requirements Committee was set up early in 1951. Drawing on World War II experience, operating procedures were immediately available. Detailed requirements of various programs in terms of steel, copper and aluminum were presented as early as April of that year, permitting the activation of the Controlled Materials Plan on July 1.

An important organizational difference between the present mobilization effort and the World War II operation may here be noted. In the present operation, far greater responsibilities have been placed in existing government agencies, including the Commerce Department, where the National Production Authority has its home, and the Interior Department, which is responsible for the petroleum, solid fuels, electric power and natural gas programs, among others. Co-ordination among these programs is obtained through the Requirements Committee and through policy control exercised by the Office of Defense Mobilization and the Defense Production Administration. While an argument might be made as to the desirability of continuing this administrative arrangement in the event of all-out war, it is certain that it has resulted in substantial savings in money and personnel.

For example, the combined staffs of the DPA and NPA which between them exercise the majority of the powers which were lodged in the War Production Board, number less than 6,000 people, as compared with over 20,000 in WPB.

Very real improvements in integrating the mobilization program have been brought about by the development of new techniques in this field. We can predict with some certainty the supply-requirements picture in the three basic metals for the whole year 1952, since requirements have been analyzed months in advance. While material allocations are still made on a quarterly basis, as was done during World War II, the increasing accuracy of the data available to the mobilization agencies permits us to make reasonable forecasts of material distribution for several quarters in advance. In the same way, it is possible to predict that increased supply will catch up with combined requirements in many materials by the end of the year 1953 or earlier. If we escape all-out war, the period of scarcity and restrictive control will not be a long one.

#### UNIFORM STANDARDS FOR ADMINISTRATIVE ACTION

Like its predecessor, the Second War Powers Act, the Defense Production Act provides only the most general standards for administrative action. The most important portion of the statute reads as follows:

"Sec. 101. The President is hereby authorized (1) to require that performance under contracts or orders (other than contracts of employment) which he deems necessary or appropriate to promote the national defense shall take priority over performance under any other contract or order, and, for the purpose of assuring such priority, to require acceptance and performance of such contracts or orders in preference to other contracts or orders by any person he finds to be capable of their performance, and (2) to allocate materials and facilities in such manner, upon such conditions, and to such extent as he shall deem necessary or appropriate to promote the national defense. *No restriction, quota, or other limitation shall be placed upon the quantity of livestock which may be slaughtered or handled by any processor.*"

The tremendously complicated task of evolving adequate administrative policies and procedures to implement the general terms of the earlier statute has been described in an article by Mr. John Lord O'Brian and myself.<sup>5</sup> The need for such administrative control is

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5. O'Brian and Fleischmann, *The War Production Board Administrative Policies and Procedures*, 13 GEO. WASH. L. REV. 1 (1944).

even more apparent in the present limited mobilization effort because of the existence of a so-called dual economy, *i.e.*, the maintenance of civilian production simultaneously with military production. The simple test of essentiality from a war standpoint, which was always primary in 1941-1945, is wholly inadequate under existing circumstances.

Guided by World War II experience, a complete system of internal administrative control was set up in NPA at once. The early difficulty encountered by the War Production Board in the broadside issuance of unauthorized orders and directions was completely obviated. General orders and regulations were promulgated and published; written delegations of authority to administer the orders were provided in every case; and written criteria for administration were also developed and continuously improved as new information on the impact of the Government's regulatory activities was received. All of the official actions of the National Production Authority are issued through a single office which provides a control point for the verification of official action. In this way, we have tried to maintain a uniformity of policy and a consistency of treatment of persons in similar circumstances which cannot be achieved by any other procedure.

#### EQUITABLE DISTRIBUTION OF MATERIAL FOR CIVILIAN PRODUCTION

In no other area of government controls is an impartial and efficient distribution of materials more necessary than in the field of civilian production. By the same token, no field presents more difficulties in bringing about such a result.

Section 701(c) of the Defense Production Act, as amended, has this to say on the subject:

"Whenever the President invokes the powers given him in this Act to allocate, or approve agreements allocating, any material, to an extent which the President finds will result in a significant dislocation of the normal distribution in the civilian market, he shall do so in such a manner as to make available, so far as practicable, for business and various segments thereof in the normal channel of distribution of such material, a fair share of the available civilian supply based, so far as practicable, on the share received by such business under normal conditions during a representative period preceding June 24, 1950 and having due regard to the current competitive position of established business: *Provided, That the limitations and restrictions imposed on the production of specific items shall not exclude new concerns from a fair and reasonable share of total authorized production.*"<sup>6</sup>

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6. The italicized portion represents changes made by the Wolcott Amendment in the Defense Production Act Amendments of 1951, Pub. L. No. 96, 82d Cong., 1st Sess. § 701(c) (July 31, 1951).

I think it clear that the statute was not intended to prevent administrative decisions giving different amounts of material to various civilian items based on comparative essentiality, since such an interpretation would create an impossible administrative standard. Metal for plumbing supplies and metal for ash trays and window shades are obviously not of equal importance in a mobilization economy; we can do without the latter, but must have the former if we wish to accomplish our industrial expansion and defense housing programs.

On the other hand, it would require the wisdom of Solomon to arrive at refined judgments of comparative degrees of essentiality with respect to the many thousands of civilian items containing metal; such wisdom is a commodity as scarce in Washington as elsewhere. Simpler standards had to be evolved for the distribution of metals among competing civilian demands if the whole allocation system was to escape public disrepute. I will describe two somewhat different policies which have been under consideration in dealing with this problem. The first policy, which is not currently in operation, recognizes the legal authority to differentiate between civilian products on the grounds of varying essentiality in the civilian economy, but proceeds on the assumption that such differentiations are not required at the present time. It takes into account the fact that inventories of most civilian goods are currently high and that no widespread shortages need be expected during coming months as a result of even very substantial cutbacks. Accordingly, under this policy the entire supply of the three basic metals would be divided up among all competing civilian users *pro rata*, on the basis of their historical pre-Korea use, without regard to comparative essentiality. Under this policy, the manufacturer of refrigerators would receive the same percentage allotment, based on his pre-Korea use, as the jewelry manufacturer. This policy has the obvious advantage of spreading the dislocations caused by the mobilization effort as equitably as possible over all classes of civilian producers.

The second policy, which has been adopted for the first quarter of 1952, proceeds upon the assumption that the increasing tempo of the military production program will soon result in civilian shortages which can only be met by concentrating on more essential items for civilian use at the expense of the less essential or clearly frivolous products. Under this policy, all civilian goods are divided into one of two categories which for convenience I will refer to as *essential* and *non-essential*. In the "non-essential" class are placed two groups of items: (1) those which are non-essential because they perform no indispensable function in the economy or in American life—or at least the need for them is clearly deferrable (In this group are such items as

jewelry, metal ash trays, venetian blinds and the like.); (2) those which may be essential from a functional standpoint but which could be made of a less scarce material. (Examples are aluminum windows or siding, since steel could be substituted in either case with reasonable facility.)

All civilian or consumer type items which do not fall in this "non-essential" class are considered as falling within the "essential" class, and different rules are applied in determining metal allocations for the two classes.

Under either policy, we have tried to avoid the so-called "death sentence" even for the manufacturer of the least essential item. During World War II, the use of copper in making ash trays or aluminum in windows was forbidden, and many business failures resulted from this policy which is certainly indispensable in all-out mobilization. Today, circumstances are far different; the military demand for material does not pre-empt the entire supply; the period of semi-mobilization is of indefinite duration, but greatly increased production of steel and aluminum is just around the corner; most important of all, the limited military program can use only a portion of the metal fabricating facilities which would be made idle by the "death sentence."

Under these circumstances, we have thus far made small amounts of metal available even to the jewelry manufacturers and I hope that it will be possible to continue this policy. I think it probable that we can do so with aluminum and steel, but I am not so optimistic about our supplies of copper and nickel.

In any event, under the second policy the treatment of the two classes of civilian products—"essential" and "non-essential"—is quite different. We have been able so far to allot metals to the first class in amounts sufficient to maintain adequate production from the standpoint of the needs of our civilian economy. Allocation is based upon metal consumption during a base period, as required by statute. During the first quarter of 1952 we are allocating to the essential group approximately 50% of the steel and 35% of the copper and aluminum consumed in an average quarter of the banner production year 1950. In view of the nation's bulging warehouses and stores, it seems apparent that this production level means no austerity for the civilian in the predictable future.

The non-essential producer is less fortunate. He, too, receives something like 50% of his 1950 steel use, but only 20% of his aluminum use and 10% of copper. Additional steel may be allowed him if he can show that he can substitute it for aluminum or copper. Many will not survive this Spartan diet but the ingenuity of American industry is

boundless, and the policy at least provides a chance for survival to every business concern. The nation's metal stringency permits no more than that.

Within the two classes, the most strenuous efforts are made to insure equal treatment. Here again the task presents almost unimaginable difficulties because of the tremendous complexities of the American industrial machine. One man fabricates an entire article, while his competitor merely assembles purchased parts. One concern had a strike in the base period; as a result its competitors had a record year at its expense. These are but two of an infinite number of variables which must be dealt with if the goal of equal treatment for individuals in the same circumstances is even to be approximated. These and many others have been made the subject of detailed written "processing instructions" for the issuance of CMP allocations. The instructions are available for public inspection and are constantly being improved.

At the present time, the agencies with which I am associated are making a study of the effect of the adoption of the second policy which I have described, and the desirability of continuing it in preference to the first policy outlined above. Either policy has its obvious drawbacks. The first policy is patently preferable from the standpoint of what might be called "natural justice," since it treats all classes of civilian producers on the same basis. On the other hand, it seems very probably that civilian shortages will result from the mobilization effort at some time in the not too distant future. When that happens, it will certainly be necessary to provide some kind of an essentiality test as the basis for allocation.

In any event, at the time this is written the issue has not been finally determined; in this field of government regulation one must in fact be a "re-examinationist" continuously of both policies and procedures. I believe that either policy satisfies the statutory standard and can be administered fairly and impartially. The ultimate decision will have to be made on the basis of a judgment as to which policy will best serve the public interest in the months ahead.

A word should be said about a small but important exception that has been made to the general rules just discussed. From the outset of the program, special arrangements have been made for the smallest business concerns. This is a recognition, sanctioned by statute,<sup>7</sup> of the special difficulties encountered by these concerns in a period of

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7. See, e.g., Armed Services Procurement Act of 1947, § 2(b) 62 STAT. 21 (1948), 41 U.S.C. § 151(b) (Supp. 1951); Selective Service Act of 1948, § 18(a), 62 STAT. 604, 626 (1948), 50 U.S.C. § 468(a) (Supp. 1951); Defense Production Act, *supra* note 1, § 701; Defense Production Act Amendments, Pub. L. No. 96, 82d Cong., 1st Sess. (July 31, 1951).

scarcity. These difficulties are of two kinds: in the first place the small concern finds it difficult to compete with his larger competitor for the inadequate supply of material, in view of the latter's superior purchasing power and better supplier relationships; second, the smaller concern usually has a higher break-even point and fewer resources with which to survive a prolonged period of reduced activity. Accordingly, the CMP regulations, and many individual orders, permit self-certification on a preferred basis for the requirements of the smallest users of scarce materials.<sup>8</sup> The total use of materials by small concerns which receive this authority is very small compared with the advantage to the nation in maintaining small industrial units throughout an emergency period.

#### APPEALS BOARD

Following the experience of the War Production Board, an appeals board was set up in the NPA at an early date, and has functioned continuously and on an increasing scale ever since. The establishment of the Board is a recognition of the fact that no system of allocation and control works perfectly, and that individual cases of hardship and inequity will result from the mechanical application of any general rules. The Appeals Board is appointed by, and responsible only to, the Administrator. It consists of full-time government employees exclusively. The present membership of the Board includes individuals with outstanding records in the fields of law, industry and labor relations. The Board does not undertake to review or reverse agency policy, but it does have authority to mitigate the impact of that policy upon a particular firm where an unusual hardship is proven, beyond that suffered by the industry generally. Just as in the last war, the Appeals Board has proven an invaluable "escape valve" for the whole regulatory program, and its reputation for impartial and expeditious handling of appeals is high both within and without the Government. No formal procedure of any kind is provided. Cases may be presented by counsel or by the individual appellant. Oral hearings are granted when appropriate, but the appellant may always confine himself to a written submission if that is more convenient. Public notice has been given regarding the grounds for appeal and methods of filing.<sup>9</sup> Approximately 330 cases have been submitted to the Appeals Board since its inception; 44 have been granted in whole or in part, and 115 denied; 88 are pending and the balance have been dismissed or withdrawn.

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8. For a summary of NPA orders and regulations as they affect small business, see Progress Report No. 11, Joint Committee on Defense Production, 82d Cong., 2d Sess., pp. 50-57 (1951).

9. 16 FED. REG. 10386 (1951).

## STAFFING THE DEFENSE AGENCIES

During World War II, there was much congressional criticism—much of it unjustified—of the activities of so-called “Dollar-a-Year Men.” As a result of this criticism, there was substantial congressional opinion in favor of prohibiting the employment of businessmen without compensation under the Defense Production Act. Fortunately for the success of the mobilization effort, World War II precedent was followed, and section 710(b) permits the employment of “persons of outstanding experience and ability without compensation.” The present-day equivalent of the war-time Dollar-a-Year Man is called a “WOC” (Without Compensation).<sup>10</sup>

If war-time administrators found it difficult to convince capable businessmen that they should accept inadequate government salaries in time of war, it will be understood that such difficulties have been multiplied many times in the present semi-mobilization period. The number of outstanding business leaders who have been willing to sever their connections with their own concerns and go on the government payroll at a personal sacrifice may be counted on the fingers of two hands. At the same time, it has been quite impossible to recruit any adequate number of government career employees with the industrial experience and specialized abilities to organize and administer the extensive and complicated organizations and procedures without which the operation cannot be conducted. As a result, much reliance has necessarily been placed on WOC employees made available by private concerns, usually on a temporary basis. Obviously, this is not an ideal situation, but no one has yet suggested a practicable alternative.

In order to obviate the criticism of WOC employees, whether justified or not, definite limitations on their authority have been set up by Executive Order<sup>11</sup> and by internal agency regulation.<sup>12</sup> For example, no WOC employee is permitted to pass upon individual applications for relief or assistance made by any business organization in which he has a pecuniary interest. More importantly, the most far-reaching policy decisions of the Office of Defense Mobilization, the Defense Production Administration and the National Production Authority (such as the decision to adopt the controlled materials plan)

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10. A full account of Dollar-A-Year men and the problem of the conflict of interest during World War II may be found in a study by James A. McAleer, *Dollar-A-Year and Without Compensation Personnel Policies of the War Production Board and Predecessor Agencies, August 1939 to November 1945*. See Special Study No. 27 in the series, *Historical Report on War Administration*, published by the Civilian Production Administration (1947).

11. 15 FED. REG. 8013 (1950); 16 *id.* 419 (1951).

12. See NPA, General Administrative Instructions 204-6 and 204-26 (May 1, 1951).

have been made by top officials who have severed their private connections and have become full-time government employees for the duration.

Finally, the events to date overwhelmingly demonstrate both the invaluable service performed by WOC employees and the complete integrity and patriotic motivation of their work. I know of no single case in which a WOC employee has preferred his own concern or discriminated against a competitor; on the contrary, the typical WOC employee is quick to disqualify himself in the event of a real or imagined conflict of interest, and will invariably insist that any such decision be made by a person whose decision would not involve such a conflict. As a matter of fact, there are many cases where a WOC employee has leaned over backwards to avoid giving even the impression of favoritism to his own concern. Under these circumstances, it is clear that the public interest is amply protected, and the mobilization effort is greatly strengthened by the wise decision of American industry to cooperate with the government actively in this program.

#### PUBLIC INFORMATION POLICY

During World War II, the requirements of war-time security were frequently abused and used as excuse for concealing war agency mistakes. A directly contrary policy has been followed in the present operation. We have deliberately adopted a "goldfish bowl" policy, and permit and encourage the widest possible publicity for all official actions. This policy is adhered to, even when it appears that serious mistakes have been made.

It is clear that the public interest is best served by such a rule. As a result of the very widespread publicity that has been given to NPA actions, much intelligent criticism and many recommendations for improvement have been made and adopted. Public confidence in the integrity of our operations has, I think, remained high even in a period of general distrust of government activity. The policy has been widely commended by the press and by industry, and I am certain that it has paid many dividends in public understanding and confidence.

#### INDUSTRY ADVISORY COMMITTEES

The defense agencies in the present program have capitalized on the experience of the War Production Board in the utilization of industry advisory committees. This is both a matter of determined policy by the agencies, and statutory mandate.<sup>13</sup> More than 500 industry advisory committees have been set up by the NPA. Great

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13. Defense Production Act, *supra* note 1, §§ 701(b) (ii) and 709.

care is taken in the selection of committee members. A separate office has been set up under an Assistant Administrator to see to it that the committees are representative, as required by the statute and by internal administrative regulations. I believe that this has been done successfully, as the complaints concerning this make-up of the committees have decreased to almost nothing. A representative cross-section of industry views and advice is assured by offering membership to persons associated with: large, small, and medium-sized concerns; members and nonmembers of trade associations; and concerns located in different geographical areas and active in different segments of the particular industry involved.

We have worked out with the Department of Justice detailed procedures governing the conduct of industry advisory committee meetings. Such meetings are always held at the call of the NPA and under the chairmanship of full-time government officials who serve as the government presiding officers; agenda are initiated and formulated by the NPA; full minutes are kept; and full publicity is given to the deliberations.

Complaints are sometimes made that industry committees are called to consider action which has really been determined in advance of the meeting. I do not believe this criticism to be generally justified, although I think it probable that there have been such cases. The criticism most usually reflects the fact that contemplated action discussed by the government presiding officer, frequently in the nature of a cutback of the industry's allocations, is objected to by most of the committee. Much time and effort is saved by having a preliminary draft of a proposed regulation available for discussion when the committee meets. After examining many complaints along these lines, I have generally found that the criticism really is directed against the failure of the Government to accept the committee's recommendations, rather than a failure to obtain such recommendations.

In any event, the industry advisory committees have been of the greatest possible benefit to the Government in organizing the mobilization program. Scores of ill-considered proposals have been permanently shelved by reason of valid criticism from the committees. Arbitrary regulations have been improved and in many cases the necessity for regulation has been entirely obviated as a result of the free and frank discussion which is a feature of these meetings. In no sense have the industry advisory committees acted as a rubber stamp for government policy; on the contrary, the general tenor of many meetings is often critical of the Government, as one would expect in a period of restrictive regulation.

Every effort is made to see to it that violations of the antitrust laws are not sponsored or permitted by the Government through its use of industry advisory committees. Trained government men are in attendance at all meetings to remind the committee members that their function is advisory only; that they do not make decisions, carry out decisions, or coerce any member of the industry; and that they may not with immunity agree among themselves as to a proposed course of action, however meritorious it may appear. All decisions are made and carried out solely by the responsible officials of the Government and are generally incorporated in appropriate written regulations and orders.

#### OTHER ANTITRUST PROBLEMS

The mobilization program inevitably encourages the development of certain monopolistic trends, sometimes with the encouragement of the Government itself. Continuous vigilance is needed in this area of mobilization management. The special treatment given to small business concerns, the rules restricting the activities of employees without compensation, and the procedural regulations governing the activities of industry advisory committees<sup>14</sup> are all measures designed to reduce or eliminate monopolistic trends which might otherwise get out of hand.

During World War II, Congress authorized immunity from antitrust prosecution for defense producers participating in voluntary agreements approved by the Government.<sup>15</sup> More than 600 of these arrangements were approved, and contributed substantially to the war production effort. Nevertheless, it is perfectly clear that the arrangements sanctioned activities which in ordinary times would violate the antitrust laws and would give a preferred competitive status to the participants. Examples of such advantages are authorizations to exchange technical information, concentration of orders for special items in one particular concern, and other arrangements.

We have felt that there was less justification for such arrangements in the present limited mobilization effort, despite the fact that broad statutory authority has been set up in Section 708 of the Defense Production Act of 1950, as amended, for the approval of "voluntary agreements and programs to further objectives of this Act." We have limited approvals, in most instances, to cases where the item to be manufactured was used primarily by the military. We have not per-

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14. National Production Authority General Program Order No. 6, issued December 18, 1950.

15. 56 STAT. 357 (1942), 50 U.S.C. APP. § 1112 (1946), repealed, 61 STAT. 449, 50 U.S.C. APP. § 1112 (Supp. 1951).

mitted such arrangements with respect to the production of consumer items, such as shoes, kitchenware, etc. The Act provides that the authority to approve such arrangements shall be delegated only to a single official appointed by the President, with the advice and consent of the Senate; that consultation with the Attorney General and the Chairman of the Federal Trade Commission with respect to these arrangements shall be had and that approval by the Attorney General of requests to participate in them shall be obtained. Only 36 arrangements have been authorized by me as Administrator of the Defense Production Administration since the passage of the Act, and it seems unlikely that any large number of approvals will be granted in the future.

#### SUMMARY

The Office of Defense Mobilization, the Defense Production Administration and the various executive agencies exercising allocation authority under the Defense Production Act have been entrusted with powers never before vested in the executive branch of the Government except in time of all-out war. The American people, through their representatives in Congress, have approved this unique creation and delegation of authority. It has been their reasoned conviction that only thus can a democracy compete with a totalitarian state in time of emergency. Since the period of emergency may continue for an indefinite time, it is obviously of the greatest possible importance that the drastic powers so granted be exercised with a continuing and vigilant concern for the public interest. Due process of law in the traditional sense clearly cannot be insisted upon. Instead, we have relied on impartial administration according to public and published standards. Mistakes have been made in the past and undoubtedly will be made in the future, but honest and unremitting efforts to improve the basic policies and the operating procedures of this vast undertaking have also been made and will continue in the future. At about the half-way point in the mobilization effort, it is my own belief that the goal of national security will be reached pretty much on schedule and without impairment of the American tradition of impartial justice according to law.