WAR PROCUREMENT AND MAXIMUM PRICE REGULATION*

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INTRODUCTION

Price control is a very real phase of total war: this in relation to both the immediate weapons of war and the civilian economy. In World War I, the initial aspects of price regulation dealt with prices paid by war procurement agencies. In the present war there has been no such restricted approach, although, of course, the first controls were applied to commodities essential in the waging of active warfare or essential in the making of such commodities. The present broad application of over-all price regulation makes it pertinent to examine the special phases dealing directly with war procurement agencies, and this article is so intended.

* This article is not to be deemed an official release of the OPA.

Glossary of abbreviations:

GMPR—General Maximum Price Regulation.
MEPR—Maximum Export Price Regulation.
MPR—Maximum Price Regulation.
RMEPR—Revised Maximum Export Price Regulation.
RFS—Revised Price Schedule.
RSR—Revised Supplementary Regulation.
SO—Supplementary Order.
SR—Supplementary Regulation.
WPB—War Production Board.

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Although inflationary tendencies began to develop as early in World War I as in the present conflict, and in general prices rose more rapidly, control measures did not get under way until a very much later date. The United States entered that conflict April 6, 1917, 32 months after its outbreak. The Council of National Defense had been organized on October 11, 1916, and within it a General Munitions Board was set up on March 31, 1917. On April 17, 1917, the Secretary of War, who was chairman of the Council of National Defense, authorized this Board "to act on questions involving the determination of fair and just prices for munitions and related supplies, when called to do so by a department head." Eventually the War Industries Board, created July 28, 1917, and the Price Fixing Committee, which was appointed by the President March 14, 1918, assumed the tasks of fixing prices to be paid by Government agencies.

Prices were fixed usually by agreement with the industries concerned—although occasionally pressure was used to secure compliance from recalcitrants. At first prices were fixed principally in those cases where Government and Allied purchases were so large that they threatened to upset the market. But the fixed prices were made applicable also to civilian purchases; and at last the War Industries Board and Price Fixing Committee were forced by soaring prices to move into the field of textiles and clothing prices in the summer of 1918. This was over a year after President Wilson had said "... We must make the prices to the public the same as the prices to the government. Prices mean the same thing everywhere now; they mean the efficiency or the inefficiency of the Nation, whether it is the government that pays them or not. They mean victory or defeat." ¹

Prices of foodstuffs and fuels were subject to control, respectively, of the Food and the Fuel Administrations. In August, 1917, after the passage of the Food and Fuel Control Act, the Food and Fuel Administrations were set up. Prices were fixed for coal at the mine, but the Food Administration did not consider itself authorized to impose fixed prices except in the case of wheat, the minimum price of which was established in the act itself. Reliance was placed on agreements, on limitations of profits to "reasonable" amounts, and on the fixing of "fair" margins for dealers.² Thus it is clear that in World War I price control was initiated in the interest of war procurement, and subsequently extended only to parts of the civilian economy; and, in comparison with present efforts, such control was late and incomplete.

². First Quarterly Report, OPA, April 30, 1942.
WAR PROCUREMENT AND MAXIMUM PRICE REGULATION

From the very outset of World War II the activities of the OPA and its predecessor organizations have been purposed to prevent inflation, and, unlike initial efforts in the earlier conflict, to keep down the cost of war material only as part of the broader program. In a larger sense every maximum price established by the OPA has a bearing on the war effort; runaway price inflation on any commodity has a bad effect on civilian morale, and so on the morale of workers in factories directly engaged in war production; by not too remote a chain of causation a rise in the price of hairnets or baby carriages may lead to demands for an increase in wage rates, or an uncontrolled inflationary rise in the price of luxury articles might result in a fall in sales of war bonds.

More important, it was believed that to fix prices for sales to the armed forces alone could make the Army and Navy suffer at the hands of those who preferred to sell in channels free of regulation; and to fix prices for civilians alone could subject the War Procurement Agencies to unwarranted prices. Confiscation could prove a sufficient protection in price but not an incentive to production. The course adopted, therefore, was a general policy of over-all control at reasonable levels, with war procurement specially treated or excepted in certain cases, the more important of which are below discussed.

The problem is a complex one, and the method of treatment depends upon practical problems involved, such as difficulties of administration, lack of inflationary forces in a particular industry, or the administrative facilities of a given War Procurement Agency. No general summarizing statement can be made, therefore, and it is not even possible to give a uniform definition of "War Procurement Agency," a term that appears frequently in OPA Regulations. Each Regulation, in fact, that makes reference to "War Procurement Agencies" gives its own definition. In all cases such definitions include the War Department, the Department of the Navy, and the Lend-Lease Section of the Procurement Division of the Treasury Department; they usually include the U. S. Maritime Commission, and many provisions applying to such agencies are also made to apply to governments of foreign countries receiving lend-lease aid.

3. War Procurement Agencies may be variously defined, as will appear. The term will be used herein generally to cover any agency of the U. S. Government or of any country receiving lend-lease aid under the Lend-Lease Act (55 Stat. 31, 22 U. S. C. A. §§ 411-419) making purchases of military equipment or supplies for the armed forces.

4. The Lend-Lease Act, 22 U. S. C. A. § 411 (1942), defines "defense article" to mean:

(1) Any weapon, munition, aircraft, vessel, or boat;
(2) Any machinery, facility, tool, material, or supply necessary to the manufacture, production, processing, repair, servicing, or operation of any article described in this subsection;
to sales of particular commodities apply to purchases by any agency of the Government of the United States, or of Lend-Lease Governments, or, in some cases, to agencies of such agencies.

**War Procurement**

The Price Schedules, issued before price control by the OPA was implemented by the EPCA of 1942, in most instances made no distinction between government purchases and purchases by and sales to civilians, or to persons or firms engaged in producing commodities essential to the war effort. Such commodities have been defined as those purchased for the ultimate use of the Armed Forces of the U. S., for Lend-Lease purposes, or by any government (or agency thereof) of any country whose defense the President deems vital to the defense of the U. S., under the terms of the Lend-Lease Act. The Price Schedules covered specific commodities, most of which were either basic (strategic) raw materials—machine tools (Nos. 1, 67), iron and steel (Nos. 6, 10, 49), scrap (Nos. 2, 3, 4, 8, 12, 14, 20, 30, 70, 87), coal (Nos. 5, 9, 27, 29, 77), oil (Nos. 22, and 72)—or consumer goods the supply of which had been curtailed by limitations of production occasioned by the conversion of manufacturing plants (flashlights—No. 48; carpets—Nos. 57, 65; radios—Nos. 83, 84; automobiles—No. 85, etc.). Many of these Schedules covered sales made directly to the War or Navy Departments, notably the lumber Schedules (Nos. 13, 19, 26, 94, 97); large quantities of lumber and other building materials were purchased by the War Department to fill requirements, for example, in building airports and cantonments, and by the Department of the Navy.

"(3) Any component material or part of or equipment for any article described in this subsection;

"(4) Any agricultural, industrial or other commodity of article for defense."

This definition, generally speaking, will be followed in this article, although some purchases by agencies of the U. S. (such as the War Department) which are strictly war procurement agencies, of commodities not falling within this definition, will be considered. See also note 8 infra.

5. See note 2 supra.

6. Price Schedules Nos. 1 to 105; subsequent Regulations were termed Maximum Price Regulations (MPR). The Price Schedules were re-issued and, insofar as they have not been revoked, or replaced by MPRs dealing with the same subject, remain in effect. Those that were re-issued, as provided in the EPCA of 1942 (56 Stat. 23, 50 U. S. C. A. App. 901 (1942)), § 203, are termed Revised Price Schedules (RPS).


8. OPA Price Interpretation, September 6, 1942.


10. Later revoked.

11. Later revoked.

12. Later revoked.
Many of the problems that later developed in connection with such transactions first appeared during the administration of price control under the early Schedules. The need of a War Procurement Agency is, or is believed to be, urgent; the supply is limited and orders can be filled at short notice only through unusual channels or from distant sources; extra costs are involved, and the supplier may find that he cannot offer to sell the desired commodity or can only do so at a price above the scheduled ceiling. The need became apparent for a special form of relief, applicable in the case of sales to government agencies whose requirements in a dislocated market were urgent.

Another problem arose as one commodity after another was brought under control. Contracts for commodities manufactured to particular specifications, or involving unusual quantities, might have been entered into with a War Procurement Agency before a schedule was issued. The prices provided in the new Schedule might be such as to impose hardship on individual manufacturers thus brought under control, or even to compel cessation of production of particular items. To avoid possible interference with individual contracts by a generally equitable Price Schedule, and to allow opportunity for adjustment, a provision was inserted in some Schedules permitting contracts entered into with an agency of the United States prior to the effective date of the Schedule to be completed at contract price. This usually gave the manufacturer time to adjust his production costs to the new price levels.

Many questions, however, remained unsolved, or were not yet raised. Were sales by government agencies under control? The definition of "person" contained in the Price Schedules did not expressly cover such entities. Although the Federal Agencies co-operated with the Price Administrator in directing their purchasing departments to observe ceiling prices, the need of supplies sometimes presented a temptation to accept bids at more than maximum prices. It should be noted that there was no prohibition in most of the early schedules against buying or receiving goods at above ceiling; the prohibition was on selling goods above permitted maxima.

Some of these questions were resolved by the EPCA. The policy that had been followed by the Departments and Agencies of the Federal Government was restated in the Act. 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,

14. The standard definition was: "Person" means an individual, partnership, association, corporation, or other business agency." This, substantially, appeared in all the Price Schedules as re-issued February 21, 1942, 7 Fed. Reg. 1201-1406.
15. § 1 (a).
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 towards a stabilization of prices, fair and equitable wages, and cost of production."

The question of the applicability of OPA Price Regulations to the U. S. Government was also clarified: the word "person" as used in the Act was defined \(^{16}\) to include "... 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." It was further provided, however, "That no punishment provided by this Act shall apply to the United States, or to any such government, political subdivision, or agency." In accord with the policy of Congress as expressed in the Act, Maximum Price Regulations (MPR), as the Regulations issued after the enactment of the EPCA were termed,\(^{17}\) generally contained such definition of a "person". The definitions of "person" in the Price Schedules were later amended by an Order \(^{18}\) of general application to conform to this definition.

It became necessary, however, to give the War Procurement Agencies more freedom from control, particularly from the obligation to investigate the price at which each of thousands of commodities were purchased, in view of the urgency frequently present where purchases are made by such Agencies.\(^{19}\) This was especially true in the case of sales subject to the GMPR.\(^{20}\) The General Regulation, freezing the prices of the vast majority of commodities not previously under price control, at all levels of distribution, was well designed for the control of prices charged by retailers selling to the civilian population, but appeared to be less satisfactory in its application to the manufacturing field where new commodities required by the War Procurement Agencies were constantly being designed and produced. Its application to sales or deliveries to, or to contracts with, the War Department or the Department of the Navy was accordingly postponed to July 1, 1942.\(^{21}\) Before that date the prohibition section \(^{22}\) of the GMPR was amended \(^{23}\) to provide that the prohibition against buying a com-

\(^{16}\) § 302 (h); and see note 25 infra.

\(^{17}\) Note 6 supra.


\(^{19}\) Statement of Considerations of Amendment 7 (infra note 23) to the GMPR,


\(^{21}\) Amendment 1 to SR No. 2, issued May 9, 1942, effective May 11, 1942, 7 Fed. Reg. 3489.

\(^{22}\) § 1499.1.

modity at prices above those determined under the Regulation should not "be applicable to any war procurement agency or any contracting or paying finance officer thereof and any such agency or contracting or paying finance officer shall be relieved of any and every liability, civil or criminal, imposed by this General Maximum Price Regulation, or by the Emergency Price Control Act of 1942. ‘War Procurement Agency’ as used in this paragraph, includes the War Department, the Department of the Navy, the United States Maritime Commission, and the Lend-Lease Section of the Procurement Division of the Treasury Department, or any agency of any of the foregoing."

This exemption from liability under the GMPR was shortly thereafter supplemented by a blanket order to the same effect, applying to all Price Regulations. Four subsidiaries of the RFC, the Rubber Reserve Corporation, Metals Reserve Corporation, Defense Plant Corporation, and Defense Supplies Corporation were added to the list of exempted agencies.

Sales to these agencies, of course, remained subject to the Price Regulations and the sellers were liable to all prohibitions and penalties provided by the Act. Since sellers of war materials could not be expected to meet emergency demands of the Agencies by selling at a loss, further special provisions had to be made for this type of sale. Also sales by the Agencies were covered, so far as maximum prices were concerned, and the mandate of the EPCA remained applicable to them. The policy of the OPA was to allow the War Procurement Agencies necessary freedom of action in their task of supplying the Armed Forces, and at the same time to exert control over prices, where such control would not hamper procurement policies. Sales of certain commodities, and certain types of sales, were thus exempted from time to time from price control; and certain sales by the agencies themselves, where no inflationary effect was discernable, and where the civilian war economy was not affected, were also removed from price control.

It should be borne in mind that before the issuance of the GMPR price control had been selective only. The effect upon war procurement policies of a Price Schedule relating to a single commodity could be anticipated and carefully provided for. The effect of a general Regulation, such as the GMPR or the Maximum Export Price Regulation was more unpredictable. Before the GMPR became effective,

26. The term "Price Regulation" includes the Price Schedules; see the EPCA, § 206.
therefore, Supplementary Regulations\(^{28}\) were issued to restrict its application to certain types of war contracts.

Reference has already been made to SR No. 2,\(^{29}\) which postponed until July 1, 1942, the application of the GMPR to sales or deliveries to or contracts with the War Department or the Department of the Navy. Before that date the principal commodities involved in the War Procurement Program had either been brought under control by specific Regulations, or had been exempted from control, and it did not prove necessary to extend the effective date of the exemption, except in the case of specified commodities. Isolated hardship cases might thereafter obtain relief under the provisions (later discussed)\(^{30}\) for quick relief set up for sellers under such contracts.

**Exemptions**

RSR No. 1\(^{31}\) contains the most interesting and important exemptions. This Regulation contains most of the provisions formerly found in SR No. 4,\(^{32}\) effective in its original form on May 18, 1942, which exempted sales to the U. S. or any agency thereof (in RSR No. 4\(^{33}\) effective July 1, 1942, the exemption also included sales to allied governments, as designated by the President under the Lend-Lease Act,\(^{34}\) and to their agencies) of completely assembled combatant items of ships and boats, and of certain imported commodities, sales of certain metals to the Metals Reserve Corporation and sales to any person of parts of combatant items. It also provided a method for obtaining exemption from price control in three special situations, and a method for adjusting prices in the case of government contracts. In their original form these latter provisions adumbrated the entire machinery for special exemptions of purchases by War Procurement Agencies, and they will be separately considered.\(^{35}\)

**Combatant Items**

The exemption of sales to the U. S. and Allied governments of completely assembled combatant items\(^{36}\) includes such articles as air-

\(^{28}\) See §§ 1499.2, 1499.4, 1499.9, and 14999.10, providing that specific maximum prices might be set, or specific sales of commodities or of services excepted, by Supplementary Regulation.

\(^{29}\) Supra note 21.

\(^{30}\) Supra page 705.

\(^{31}\) RSR No. 1, issued April 16, 1942, effective April 17, 1942, 7 Fed. Reg. 4978.


\(^{33}\) RSR No. 4, issued and effective July 1, 1942, 7 Fed. Reg. 5056; amended 7 Fed. Reg. 5089, etc.

\(^{34}\) Supra note 4.

\(^{35}\) Infra page 703.

\(^{36}\) SR No. 4, note 32 supra.
craft, bombs, projectiles, artillery, ships, boats and torpedoes. Armored vehicles and armored trains were originally listed, but trucks other than armored vehicles were excluded. Sales of such trucks to the Army and Navy were then exempt by SR No. 2 as above noted; RSR No. 4, effective July 1, 1942, excluded sales of “amphibians, armored vehicles, automobiles, tanks, trailers and trucks for military purposes.” It may be supposed that the success of the renegotiation of contracts program has made the exercise of price control in this field unnecessary.

In a great number, if not in the majority of cases, the production of parts of combatant items is in the hands of subcontractors. Typically the completely assembled weapons are machines, or at least predominantly mechanical, and the subcontractors are inevitably machinery manufacturers. On the effective date of the GMPR, MPR No. 136, designed for the special problems of the machinery industry, was already issued, although not yet effective; other items were covered by specific Regulation; it was desirable to exempt all sales of the component parts of combatant items, other than raw materials, not covered by Regulations designed with the particular problems of the producer in view, from the control of the GMPR. It should be noted that most of these component parts and subassemblies are now under price control; none of the combatant items, however, has yet been covered by specific Regulations, and remain free from OPA control.

In both SR No. 4 and in RSR No. 4 and later in RSR No. 1 sales to War Procurement Agencies of certain Quartermaster supplies, such as ski-troop equipment, field ranges, canteen cups and plates, and paratroop knives, were exempted.

37. Supra note 21.
38. Supra note 33.
39. MPR No. 136, issued April 28, 1942, 7 Fed. Reg. 3198; originally to be effective May 18, 1942. The effective date was postponed from time to time, to July 1, 1942, when it was superseded by an amended MPR No. 136, issued June 30, 1942, 7 Fed. Reg. 5047, effective July 22, 1942. Sales of commodities covered by these Regulations were excepted from the coverage of the GMPR by SR No. 1, § 1499.26 (a), issued April 28, 1942, effective May 11, 1942, 7 Fed. Reg. 3158; amended 7 Fed. Reg. 3488, etc.
40. Statement of Considerations to SR No. 4, supra note 32.
41. See SR No. 4, § 1499.29 (a) (4), and Statement of Considerations to RSR No. 4.
42. In RSR No. 4 (supra note 33), services performed by sub-contractors in connection with combatant items, or parts thereof, on materials supplied by the manufacturer of the complete item, were also excluded; this was necessitated by the fact that services in connection with commodities came under control on July 1, 1942; GMPR, §§ 1499.10, 1499.23.
45. The exemption was effective only until January 1, 1943; it was later extended to July 1, 1943, by Amendment 17 to RSR No. 4, issued January 4, 1943, effective as of January 1, 1943, 8 Fed. Reg. 239, as to certain commodities; as to other commodities, such as wire cutters, identification tags, and metal insignia, it has expired.
Imports

Another exception to be noted deals with imported commodities. The problem of imports, complicated as it is by shortage of shipping, the dislocation of foreign markets, the lack of price control in certain foreign countries, and the rise in cost of marine and war risk insurance, is one of the more difficult problems that the OPA has had to face. To provide for the free flow of imported commodities needed for the war effort, sales of commodities imported after March 31, 1942, to the U. S. or any agency thereof (in the RSR this was extended to Allied governments and their agencies) or to any person who will use the imported commodity purchased by him to fulfill a contract with such agency were exempted from the GMPR. The exemption does not apply to lumber and shingles produced in Canada (and later Mexico) nor to fish and seafoods (canned, salted, pickled, smoked or frozen), foodstuffs processed after importation, silver bullion, and crude rubber, balata and guayale. In general, the Regulations covering specific commodities cover the imported as well as the domestically produced article. It is not possible within the scope of this article to classify the diverse ways in which imported articles are treated by the specific Regulations. In only a few instances do War Procurement Agencies receive special treatment. Thus, the Metals Reserve Corporation may import iron or steel scrap without being subject to control by the OPA, and in several other Regulations governing scrap sales, sales to the Metals Reserve Corporation, or other subsidiaries of the RFC, are exempt, and this includes sales of scrap imported or to be imported. A number of recent Regulations provide that maximum prices

47. Statement of Considerations to Amendment 1 to SR No. 4.
48. Amendment No. 1 to RSR No. 4, issued July 2, 1942, effective July 1, 1942, 7 FED. REG. 5059, § 1499.29 (a) (14); RSR No. 4, §1499.29 (a) (13); later revoked Amendment No. 15, 7 FED. REG. 10531, and embodied in RSR No. 12, issued December 14, 1942, 7 FED. REG. 10532, effective December 19, 1942, §1499.1404 (a); the exemption now appears also in RSR No. 1, § 4.3.
49. RSR No. 12, supra note 48, §1499.1404 (a) (2) (v) added by Ammd. 2, issued February 13, 1943, effective February 15, 1943. After the revocation of §1499.29 (a) (13) of RSR No. 4, supra note 48, and until February 15, 1943, sales of imported Mexican and Canadian lumber (of varieties not covered by specific Regulation) to U. S. agencies, or to Lend-Lease, were exempt from the GMPR, and from price control, perhaps by inadvertence.
50. RPS No. 4, "Iron & Steel Scrap", § 1304.17, as amended by Ammd. 6 to the Regulation, issued June 13, 1942, effective June 17, 1942, 7 FED. REG. 4488.
51. See RPS No. 2, "Aluminum Scrap and Secondary Aluminum Ingot", § 1302.1 (b), added by Amendment No. 1, issued and effective February 26, 1942, 7 FED. REG. 1600; RPS No. 8, "Pure Nickel Scrap, etc.", § 1308.1 (b), added by Ammd. 2, issued April 30, 1942, effective as of April 15, 1942, 7 FED. REG. 3270, and see §1308.34; RPS No. 15, "Copper", § 1309.51; MPR No. 20, "Copper Scrap and Copper Alloy Scrap", § 1309.70 (g) (2); MPR No. 248, "Manganese Ores", §1405.54, excepting sales to the U. S. or any agency thereof; MPR No. 258, "Chrome Ores", §1405.104, also excepting sales to the U. S. or any agency thereof; it should be remembered that the exemption of SO No. 35 applying to purchases by the Metals Re-
on sales of imported commodities are to be determined under RSR No. 12 to the GMPR; the exemption of sales to U. S. agencies above described will then apply in cases of such sales.

So far we have dealt with the application of general freezing Regulations to War Procurement Agencies. Certain Regulations covering sales of specific commodities make special provisions for sales of the kind in question. Such provision may relate simply to the exemption from the effect of a Regulation of deliveries under government contracts in existence at the effective date of the Regulation, or entered into prior to a certain date or of deliveries to or under government contracts affecting specific items. In recent instances this provision has usually permitted deliveries up to a certain date under such existant contracts. Such specific Regulations are below discussed.

**Apparel and Textiles**

Before the deadline of July 1, 1942, when the GMPR was to become effective as to contracts of war agencies, many of the specific

serve Corporation (infra note 153) applies only to domestically produced materials. Note also the provisions of MPR No. 138, "Standard Ferromanganese", § 1405.10 (f). This Regulation provides dollar and cents prices; where standard ferromanganese is made from imported ore, and is then exported or sold to a U. S. agency for export, custom duties on the ore (if any) may be recovered. The cited paragraph therefore provides for a deduction from the maximum prices provided by the Regulation where such standard ferromanganese is sold to the U. S. or any agency thereof. Under these Regulations, however, sales by the agencies generally are controlled. Where a Regulation excepts, or does not apply to, sales of imported commodities (cf., RPS No. 24, "Washed Cattle Tail Hair and Winter Hog Hair", § 1342.10, footnote 2; RPS No. 9, "Hides, Kips, and Calfskins", see §§ 1314.11, 1314.12; RPS No. 75, "Dead-Burned Grain Magnesite", § 1362.8 (d), added by Amdt. 1, issued and effective March 5, 1942) sales of the imported commodity will generally be subject (unless specifically excepted) to the GMPR, and the exception of RSR No. 1, supra note 31, will apply.


54. Examples are PS No. 67, "New Machine Tools", note 13 supra, at § 1301.51 (b); PS No. 105, "Gears, Pinions, Sprockets and Speed Reducers", issued February 10, 1942, effective February 18, 1942, 7 Fed. Reg. 954, § 1406.1 (b) (later revoked, the commodities covered being transferred to MPR No. 136); PS No. 82, "Wire, Cable and Cable Accessories", issued and effective January 29, 1942, 7 Fed. Reg. 622, § 1349.1 (c); and, among other Regulations affecting War Procurement, a number of the food Regulations.


56. Cf. RPS No. 41, "Steel Castings", issued November 14, 1941, effective November 15, 1941, § 1306.100 (a), as amended by Amdt. 4, issued February 20, 1943, effective February 26, 1943, 8 Fed. Reg. 2275.
MPRs covering machinery and textiles had been issued. No Regulation, however, covered masculine apparel. The manufacturer supplying uniforms and related articles to War Procurement Agencies had in many cases granted substantial wage increases to their employees prior to April 27, 1942; many of their contracts in effect during March, 1942, were long term contracts, negotiated months earlier when both labor and material costs were lower. Such manufacturers, furthermore, were not in a position to absorb cost increases by means of changes in style or in detail of construction not affecting the quality or serviceability, owing to the nature of military requirements. Accordingly, Regulation No. 157 was issued effective July 1, 1942, covering maximum prices on such sales of textiles, apparel, and related articles for military purposes and of services in connection with the fabrication of such commodities as would otherwise have been covered by the GMPR. Sales affected by specific Price Schedule or Regulation (many of which had been in effect since 1941, so that adjustments may be supposed to have been effected as to the prices of manufacturers having long term contracts) were not covered. Briefly stated, the formula provided by this MPR No. 157 was that a seller might add to the highest price at which he delivered an article or supplied a fabrication service between April 1, 1941, and March 31, 1942, the increase in material and labor costs occurring between the date of that contract and March 31, 1942, where specification changes occurred. The maximum price was to be adjusted up or down by an amount equal to the changes in cost resulting from the changes in specifications. Other sweeping provisions relating to sales of textiles to War Procurement Agencies are those contained in MPR No. 118, "Cotton Products" effective May 4, 1942. As originally issued, the Regulation provided that its provisions would not apply to deliveries pur-


58. Statement of Considerations to MPR No. 157, infra note 59.

59. MPR No. 157, "Sales and Fabrication of Textiles, Apparel and Related Articles for Military Purposes"; issued June 3, 1942, effective July 1, 1942, 7 FED. REG. 4273, amended June 16, 1942, 7 FED. REG. 4541, etc.

60. Certain fabrics which otherwise would have been covered by MPR No. 118, "Cotton Products", supra note 57, and which are made to certain specifications of War Procurement Agencies, were exempted from all price control, as of July 1, 1942, by Amdt. 5 (issued July 7, 1942, 7 FED. REG. 5224) to the Regulation, until July 15, 1942, when they came under the control of MPR No. 157.

61. MPR No. 157, supra note 59, § 1378.3.

62. Producers who did not supply such articles during the period April 1, 1941, to March 31, 1942, were temporarily exempted, in order to afford a time to obtain manufacturing experience and cost data for converted plants. Id. at § 1378.4.

63. MPR No. 118, "Cotton Products"; issued April 22, 1942, effective May 4, 1942, 7 FED. REG. 3038.
suant to a contract entered into before May 4, 1942, where the purchaser was the United States or a Lend-Lease Nation, or a person who certifies that he receives the product in order physically to incorporate it into an article which he is under contractual obligation to supply to any of such governments.\(^{64}\) As to purchases on or after May 4, 1942, by agencies of the United States government it was provided that the Regulation should not apply if the agency finds that the prosecution of the war requires the production of a particular cotton product in an establishment, or with machinery designed for and normally engaged in the manufacture of a substantially different product, or under conditions substantially abnormal in any other respects, and that as a result the cost of producing the cotton product is such that the maximum prices established by the Regulation would not yield a reasonable return to the manufacturer. The agency was required to report such purchases to the OPA.

This provision was amended, effective June 15, 1942,\(^{65}\) to define the agencies of the United States entitled to give such exemption to include the War Department, the Department of the Navy, the U. S. Maritime Commission, the Lend-Lease Section of the Procurement Division of the Treasury Department, or any agency of such agencies, and it was also provided that the GMPR and MPR No. 157 should not apply to such sales.

A less inclusive exemption appeared in MPR No. 127, "Finished Piece Goods,"\(^{66}\) which exempted sales to certain War Procurement Agencies\(^{67}\) of listed fabrics made to their specifications until July 15, 1942, when sales of such fabrics were to be covered by MPR No. 157.\(^{68}\)

**SPECIAL PRICES ON SALES TO WAR PROCUREMENT AGENCIES**

Many OPA Regulations contain specific maximum prices, or pricing formulas, for a whole industry, or branch of an industry, devoted to the production of war material. The maximum prices established by these Regulations are designed to fit the pattern of the particular

\(^{64}\) MPR No. 118, § 1400.106.

\(^{65}\) Id. at Amdt. 4, issued June 9, 1942, 7 Fed. Reg. 4405.


\(^{67}\) Id. at § 1400.81 (a) (16), added by Amdt. 6 (issued July 13, 1942, 7 Fed. Reg. 5864), the effect of which was to include the War and Navy Department, U. S. Maritime Commission, Lend-Lease Section of the Procurement Division of the Treasury Department and their agencies; by Amdt. 10 (issued March 10, 1943, effective March 15, 1943, 8 Fed. Reg. 3057) Army Canteens, Post Exchanges, and ships service activities were added; and by Amdt. 11 (issued April 13, 1943, effective April 19, 1943, 8 Fed. Reg. 4851) sales by contractors or subcontractors with such agencies, under contracts existing at the time of sale were also included.

\(^{68}\) Supra note 59.
industry concerned, and do not necessarily make special provision for sales to War Procurement Agencies. Thus MPR No. 134,69 issued simultaneously with the GMPR provides maximum rental prices for a wide variety of road building and construction equipment, such as steam shovels, tractors and bulldozers, cranes, pumps, and air compressors. This Regulation was, and still is, one that is of great and direct importance in the war effort. At the time the Regulation was issued it was estimated by the U. S. Engineers Office, that about 90% of all such equipment was then directly employed in the prosecution of the program to build cantonments, air fields, and other military projects. Most of the remainder was probably at work on defense housing projects. The need of this Regulation was urgent, as production of this equipment had been curtailed by WPB orders, and by the conversion of manufacturing plants; and the principal safeguard against exorbitant rentals, the Army "recapture" clause whereby the Army received an option to purchase equipment when the total rent paid amounted to the list price of the equipment, had been abandoned due to strenuous opposition by lessors, although such clause had been in use for over twenty years.70

MPR No. 136,71 also issued at the same time as the general freeze Regulation 72 dealt with practically all items of industrial and manufacturing machinery and equipment, parts and machine work, or services, not already under formal price control. A number of the products covered had for sometime been under informal control by voluntary agreement, or by informal request by the OPA. A great number of the classes of machinery subjected to price control by MPR No. 136 are of vital importance to the war effort; it covers 73 such general categories as prime movers, processing machinery, construction and mining machinery (including maximum prices on sales of equipment, rentals for which are covered by MPR No. 134), electrical equipment and railroad equipment. Among the more specific classes of machines covered are military searchlights, screw machine products,74 and siren blowers.75 Notable exceptions from the Regulation are automobile and trucks, aircraft and aircraft engines, and other completed assembled

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69. MPR No. 134, "Construction and Road Maintenance Equipment Rental Prices and Operating or Maintenance Service Charges", issued April 28, 1942, effective May 11, 1942, 7 Fed. Reg. 3203, etc.
70. Statement of Considerations to MPR No. 134.
71. Supra note 39.
72. GMPR, supra note 20.
73. MPR No. 136, §§ 1390.32, 1390.33.
74. Other than those covered by MPR No. 147, "Bolts, Nuts, Screws and Rivets".
75. Added to § 1390.33 (c) by Amdt. 24 to the Regulation, issued October 2, 1942, effective October 8, 1942, 7 Fed. Reg. 7967.
combatant items listed in RSR No. 1 (described above), household and office machines and appliances, health supplies, and rubber products.

An early price Schedule, RPS No. 41, "Steel Castings", deals with prices of a vast number of castings used for warships and for ordnance. MPR No. 199, "Lead Bullet Rod," provides prices for one of the basic constituents of small arm ammunition. MPR No. 109, "Aircraft Lumber," is a Regulation giving dollar and cents maximum prices for lumber used by the aircraft industry, and MPR No. 338 provides maximum prices on sales of aircraft veneer. In this article we are more concerned with provisions where war procurement is specially treated. Most of the exemptions have been noted. It remains to refer to Regulations which provide special prices.

Thus, RPS No. 48, "Wool and Wool Tops and Yarns," set maximum prices on sales of certain shirting flannel to the U. S. Army, in line with the prices under negotiated contracts. These flannels had previously been covered by the GMPR and were exempt until July 1, 1942, the effective date of the Schedule as to the sales in question. In RPS No. 35 special premiums were provided for sales of grey goods and rubberized or water-repellent fabrics made for use in products to meet certain army specifications.

A formula for determining maximum prices for ethyl alcohol produced in converted plants, based on a specified fixed addition to be added to specified costs, has been provided in the Regulations governing that product; prices computed under these formulas are to be reported

76. Supra note 31.
77. X-ray and therapeutic electrical apparatus formerly covered by the Regulation were removed from its coverage by Amdt. 66, issued January 12, 1943, effective January 18, 1943, 8 Fed. Reg. 534.
78. Supra note 56.
83. Statement of Considerations to Amdt. 3 to RPS No. 58.
84. See notes 29 and 82, supra.
86. RPS No. 28, infra note 89, § 1335.159 (e), added by Amdt. 2, issued September 17, 1942, effective September 23, 1942, 7 Fed. Reg. 7401; MPR No. 28, § 1412.263 (h); MPR No. 295, infra note 88, § 1412.165 (9); these provisions are presently effective only until December 31, 1943.
and are subject to revision by the OPA. All sales of alcohol from such converted plants, formerly producing beverage alcohol, are made to the Defense Supplies Corporation.  

Sales of ethyl alcohol (other than certain fermentation alcohol produced in California, Oregon, or Washington) by that corporation to any agency of the United States, or to Lend-Lease governments and their agencies or to persons who will use the alcohol to fulfill contracts with War Procurement Agencies were exempted from price control. These provisions were made because sufficient data had not yet been obtained to enable maximum prices to be set up for sales of ethyl alcohol by the new industrial plants being built with the assistance of the Defense Supplies Corporation.

The Regulation covering primary slab zinc (RPS No. 81) also contains a provision exempting sales made to War Procurement Agencies of zinc resulting from production in excess of any quota established by the WPB.

The Schedule covering domestic cooking and heating stoves permits specification changes (but not price changes) where sales are made, as a result of competitive bidding, to the U. S. Government or its agencies, for Lend-Lease or to certain listed foreign countries. The Regulation generally prohibits substantial specification changes, and if such changes are made a new price must be authorized by the OPA by order; the exception described requires only a report to the OPA.

MPR No. 141, "Domestic Raw Shearlings, and Tanned Shearlings for the Armed Forces," provides specific dollar and cents maximum prices for sales of these sheep and lamb skins to the U. S. Army, the Air Corps, The Navy, Marines, or Merchant Marine, or if sold to a person for use in the manufacture of garments for such agency. It also sets prices for imported raw shearlings, the raw material for the tanned shearlings.

87. Statement of Considerations to Amdt. 2 to RPS No. 28.
88. Such alcohols are covered by MPR No. 295, "West Coast Ethyl Alcohol", issued and effective December 29, 1942, 7 Fed. Reg. 11115.
89. MPR No. 28, "Ethyl Alcohol (Excluding West Coast Ethyl Alcohol)", issued February 22, 1943, effective February 27, 1943, 8 Fed. Reg. 2339, §1412.251 (b); RPS No. 28, "Ethyl Alcohol", §1335.161, added by Amdt. 3, issued September 17, 1942, effective September 23, 1942, 7 Fed. Reg. 7402.
90. Statement of Considerations to MPR No. 28; see also Statement of Considerations to Amdt. 3 to RPS No. 28.
92. RPS No. 64, "Domestic Cooking and Heating Stoves", issued December 31, 1941, effective January 5, 1942, 7 Fed. Reg. 125, etc.
93. Id. at §1356.1 (d).
Food

Many of the Food Regulations have special pricing provisions that should be noted. A few Food Schedules apply only to sales to certain federal agencies, including purchasing agencies of the armed forces: MPR No. 156,76 "Certain Beef and Beef Products purchased by certain Federal Agencies"; and MPR No. 286,78 "Certain Sausage Products for War Procurement Agencies."

RSR No. 197 provides that the GMPR shall not apply to a number of important food commodities sold to the U.S. or any agency thereof, including, in many cases, governments benefited by the Land-Lease Act. Some such exemptions are only applicable to such sales made prior to January 1, 1943, as in the cases of certain canned hash and stew; others prior to April 1, 1943, as in the case of certain Army field and emergency rations. Other foods are completely exempt, as in the case of canned dried eggs, certain dehydrated fruits and vegetables, and certain completed field and emergency rations.

SR No. 14,88 specially regulating, among other commodities, the sale of milk and cream in certain markets, contains in some instances specific references to sales to government agencies.

A few specific Regulations contain full and express exemptions for sales of certain commodities to the U.S. or agencies thereof: MPR No. 152,99 "Canned Vegetables," exempts such sales of canned tomatoes and pears; and RPS No. 53,100 "Fats and Oils," exempts foreign fats and oils purchased by or on behalf of the U.S.

A number of specific food Regulations, by their own terms, make expressly applicable to commodities covered thereby those sections of Revised Supplementary Regulation No. 1 which authorize, as to commodities covered by the GMPR, exemptions for developmental contracts or subcontracts, secret contracts, and emergency purchases;101 and many specific food Regulations authorize special maximum prices or price adjustments on sales to such agencies, generally based upon particular specifications or unusual packing or shipping conditions.102

95. MPR No. 156, issued and effective June 2, 1942, 7 Fed. Reg. 4230.
97. Supra note 31.
99. MPR No. 152, issued May 23, 1942, effective May 25, 1942, 7 Fed. Reg. 3895, etc.
100. RPS No. 53, issued December 12, 1941, effective December 13, 1941, 6 Fed. Reg. 6409.
102. See note 101 supra.
In certain schedules, where the "weighted average price" of a seller of food is used in determining his maximum price, it is provided that sales to the U. S. or its Agencies shall not be included in computing the average.

Services

OPA control of charges for services has not affected war procurement to the same extent as has its control of commodity prices. In general, services required by the Army and Navy are not exempt. The important field of machinery services has been noted; MP No. 157, above described, covers services in connection with the fabrication of textiles for military purposes. Certain services in connection with the maintenance and repair of automotive equipment, performed for War Procurement Agencies, are covered by MP No. 165.

Most maintenance services in connection with military equipment are of course performed by the Armed Forces with their own personnel. An exception to both preceding statements is laundry service. By Supplementary Service Regulation No. 1 to MP No. 165 (the General Service Regulation) War Procurement Agencies were permitted to renew laundry service contracts entered into before March 1, 1942, and expiring on or after April 1, 1942, at the contract price plus a specified percentage addition, from figures set forth in MP No. 165 representing the increase in cost of living between the date on which the expiring contract became effective and March 1, 1942. Recently charges for storage of property and services incidental thereto (other than cold storage and other than tank storage of liquid commodities for the War Department) have been temporarily exempted.

When the GMPR, on July 1, 1942, became effective as to services it became necessary to exempt certain services performed for War Procurement Agencies. Among these are services in connection with the operation of aircraft at modification centers or abroad.

104. Supra page 692.
106. In footnote 2 to § 1499.103.
107. RSR No. 11, § 1499.46 (a) (2), added by Amdt. 17, issued and effective April 10, 1943; the exemption was from April 10 to June 15, 1943.
108. RSR No. 4, § 1499.29 (a) (28), added by Amdt. 20, issued and effective February 4, 1943, 8 Fed. Reg. 1681; but see note 4 supra; now RSR No. 11, § 1499.46 (b) (108).
109. RSR No. 11, issued August 13, 1942, and effective August 19, 1942, 7 Fed. Reg. 6426, etc., § 1499.46 (b) (108), added by Amdt. 10, issued and effective Novem-
repairs,110 stevedoring and carloading services.111 These services are also exempt from the General Service Regulation No. 165.112

TRANSPORTATION COST ADJUSTMENTS

Certain commodities which are heavy in relation to their value have typically been sold on the basis of delivered prices, uniform in various zones; they are not generally transported for long distances.113 Where such products are purchased in quantities by War Procurement Agencies, dislocation of normal market conditions may result, and special treatment of the resulting pricing problems is required.

Thus in the case of cement,114 it was found that the concentration of war construction projects in areas not equipped to produce the necessary volume of cement created deficiencies in some of the areas. Under normal pricing practices plants in other areas having cement available could not profitably ship cement to the deficiency areas.115 When issued, MPR No. 224 allowed manufacturers two alternative pricing methods to be used on sales outside the normal market area.116 Either the price established under the Regulation for a mill whose normal market area included the destination to which the cement was to be shipped, or a price, f. o. b. mill, not in excess of certain prices stipulated in the Regulation could be used. A mill might avail itself of this alternative only if the cement was to be sold to a person who will not resell it except to a War Procurement Agency, or a contractor or subcontractor with any such agency, for use on a project of such agency. Protection was secured by requiring that the manufacturer secure an affidavit to that effect from the purchaser, and by requiring the billing to indicate the method of pricing employed.

Certain cases appeared, however, where War Procurement Agencies found it necessary to procure cement from areas already threatened with deficiencies. This still further dislocated the normal pricing practices of the mills in the areas from which the cement was being moved, as it appeared 117 that shipments outside of normal market

ber 25, 1942, 7 Fed. Reg. 9394. By SO No. 45, issued April 26, 1943, effective May 1, 1943, 8 Fed. Reg. 5320, § 1305.59 (a) (4) all servicing of aircraft, including maintenance and repair of parts and accessories, was entirely exempted from price control.
110. Id. at § 1499.46 (b) (11).
111. Id. at § 1499.46 (b) (101), added by Amdt. 1, issued and effective September 1, 1942, 7 Fed. Reg. 6995.
112. MPR No. 165, supra note 105, § 1499.107.
113. Statement of Considerations to Amdt. 2 to MPR No. 206, "Vitrified Clay Sewer Pipe and Allied Products", infra note 119.
115. Statement of Considerations, MPR No. 224.
116. MPR No. 224, supra note 114, § 1346.104 (b).
117. Statement of Considerations to Amdt. No. 1 to MPR. No. 224.
areas, having usually been merely the disposition of marginal production, provided lower realizations than normal shipments. A third, carefully guarded, alternative for pricing such out-of-area shipments was therefore provided by an amendment to the Regulation allowing the mills to use for a maximum price, f. o. b. mill, the highest price realized at the mill during the period March 1 to 15, 1942, on certain types of sales, but regardless of whether the sale was made inside or outside of the normal market area. Where this alternative pricing method is used the billing must indicate this fact and, as before, the affidavit must be secured from the purchaser. In addition the WPB must certify to the mill and to the OPA that the cement should not be shipped from a district having a surplus of cement, and that both the area from which cement is shipped and that to which it is shipped are in districts in which a deficiency of cement exists or is threatened.

A comparable situation arose under MPR No. 206 (setting maximum prices for vitrified clay sewer pipe) which was solved by allowing manufacturers an alternative pricing method where sales are made for use on projects controlled by government agencies, deliveries to be made outside the manufacturer's normal marketing area.

Price Reporting

Another method by which sellers to War Procurement Agencies are given preferred treatment is by exemption from reporting provisions, or by relaxation of the report requirements of specific Regulations.

MPR No. 188 is a Regulation providing a method by which manufacturers of a wide variety of durable goods and building materials determine their prices. Practically all the articles were governed by the GMPR before they were covered by this Regulation. The pricing of a newly manufactured or changed article presented certain

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118. MPR No. 224, supra note 114, §1346.104 (b) (1) (iii), added by Amdt. 1, issued October 23, 1942, effective September 23, 1942, 7 Fed. Reg. 8650.
120. Id. at §1362.101a, added by Amdt. 2, issued January 28, 1943, effective February 3, 1943, 8 Fed. Reg. 1314.
121. Somewhat comparable problems were similarly treated in MPR No. 116, "China and Pottery", §1362.61 (a), as amended by Amdt. 1 to the Regulation, issued May 21, 1942, effective May 22, 1942, 7 Fed. Reg. 3858, and in MPR No. 216 (as originally issued), infra note 133. See also RPS No. 35, supra note 85, §1316.61 (c) (8), added by Amdt. 9, issued October 22, 1942, effective October 28, 1942, 7 Fed. Reg. 8586.
123. Id. at §1499.153 (b).
difficulties under the formula provided by the GMPR. Under MPR No. 188 the manufacturer is given three methods of determining new maximum prices. Two of these provisions require that the proposed price and the method by which it was computed be reported to the Washington Office of the OPA; the manufacturer must then wait for 15 days before offering the article for sale. If neither of these formulas can be used, or if the manufacturer believes that their provisions operate too rigorously to his case, he may apply to the OPA for a specifically authorized price. The inevitable delays incident to such a course might seriously interfere with the war effort, and even the 15 day waiting period might prevent a manufacturer from bidding on a war contract. It was therefore provided that on sales to the U. S. or an allied government (or any agency of either) the manufacturer might offer the article for sale, or deliver it at any time, at a tentative price, informing the purchaser that his price must be determined under the Regulation. He then reports his price as in the case of ordinary sales, and such price is subject to adjustment by the OPA. If these provisions are availed of, and the manufacturer’s price is in fact adjusted, refunds must be made of any payments received in excess of the amount reported.

In at least one case the OPA has taken direct notice of the renegotiation policies of War Procurement Agencies. MPR No. 251 deals with the maximum prices charged in the construction industry and in allied trades. It provides a fairly rigid formula for the computation of labor and material costs and of margins for overhead and profit; it also required, until amended on March 22, 1943, a number of reports showing how maximum prices on individual jobs are computed. A large part of the construction now being done is performed directly for the War Procurement Agencies. Since these agencies, through the negotiations and renegotiation of contracts, exercise control over the prices charged them for construction work, it seemed unnecessary that OPA controls be also applied. Prime contracts, with certain War Procurement Agencies and subcontracts thereto which otherwise would be covered by the Regulation were exempted, therefore, on the condition that the War Agency file its methods of negotiating or renegotiating contracts with the OPA, and certify to that

124. Id. at § 1499.156, 157 and 158.
125. Id. at § 1499.158 (b).
127. Id. at Amdt. 1, issued and effective March 22, 1943, 8 Fed. Reg. 3628.
128. Statement of Considerations to MPR No. 251, supra note 126.
129. MPR No. 251, supra note 126, § 1397.53.
Office that the contract for which exemption is sought has been negotiated or will be renegotiated in accordance with one of the filed methods. The contractor, as a final check, is required to file before final payment a certificate with the Office that he has purchased or rented no equipment or materials at prices higher than those permitted under the applicable Price Regulations.

**Classification of Purchasers**

A seller’s maximum prices under many Regulations, especially those not providing dollar and cents prices, but requiring each seller to determine his prices with reference to prices charged by him during a “base” or reference period, may vary depending upon the purchaser or “class of purchasers” (e.g., retailer, wholesaler, consumer). Generally speaking, governmental agencies are considered as purchasers of a class by themselves. Problems arise therefore when a seller wishes to make a sale to a governmental agency, where no such sales were made during the designated base period, and where the seller had no customary differentials applicable to such sales. Some Regulations have accordingly provided that a seller’s maximum price on sales under such circumstances to a governmental agency will be the maximum price to classes of purchasers to whom the seller customarily sold the article involved in the most nearly equal quantities. In other cases a specific discount from list or scheduled prices is provided.

**Exports; Special Packing**

Another peculiar problem arose in connection with the export business. Exporter’s maximum prices are determined under the Second MEPR and its predecessors by formula based primarily on cost plus a premium. Like the GMPR and the Service Regulation this is

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130. *Id.* at § 1307.61 (c).
131. Statement of Considerations to Amdt. 1 to MPR No. 1888.
132. MPR No. 188, *supra* note 122, § 1499.159 (a), added by Amdt. 1, issued and effective October 6, 1942, 7 Fed. Reg. 7967. Lend-Lease countries are also covered by this section. *Cf.* MPR No. 116, “China and Pottery”, issued April 22, 1942, effective April 27, 1942, 7 Fed. Reg. 3036, §§ 1362.61 (a) (1) and 1362.61 (b) (1) before Amdt. of May 21, 1942, *supra* note 121. An order recently issued under § 1499.159 (b) of MPR No. 188 (Order 342, 8 Fed. Reg. 6669, issued May 8, 1942, effective May 10, 1942) gave manufacturers of certain hand tools a method of finding maximum prices to government agencies. Of special interest is the provision (paragraph (b)) allowing the seller, in the case of an order amounting to less than $100, to add 33 1/3 per cent. to the maximum price for larger orders.
133. MPR No. 111, “New Household Vacuum Cleaners and Attachments”, § 1370.12 (f), added by Amdt. 7, issued March 15, 1943, effective March 20, 1943, 8 Fed. Reg. 3252. See also MPR No. 216, “Eastern Railroad Ties”, issued and effective September 5, 1942, 7 Fed. Reg. 7007, § 1426.2 (b); the Regulation was revised, effective December 26, 1942; the RMPR, issued December 21, 1942, 7 Fed. Reg. 10782, provided a different pricing formula which made the special provision for government purchase unnecessary. See also RPS. No. 38, “Glycerine”, § 1335.414 (a) (3), as added by Amdt. 4, effective January 8, 1943, *supra* note 52.
134. *Supra* note 27.
a Regulation of general coverage. It applies to export sales by producers and manufacturers, as well as to export merchants. Many of the former customarily sold at a higher price in the foreign than in the domestic market, and this customary differential is preserved by the Export Price Regulation,135 with appropriate safeguards. The substantial purchases made by those foreign governments the defense of which the President "deems vital to the defense of the U. S." under the Lend-Lease Act136 are to a large extent financed by this government through the Lend-Lease Section of the Procurement Division of the Treasury Department. Deliveries on such sales are made to the Procurement Division, or to the Lend-Lease Administration, and the OPA had ruled137 that such sales are not export sales. Since many of such sales were made by exporters, and by manufacturers who were accustomed to receiving export premiums for sales to their foreign markets, this ruling received some criticism. The only valid basis for objection, however, was that compensation for extra packing expenses incident to export sales was not generally provided for under domestic ceilings, and the OPA indicated that compensation would be allowed.

SO No. 34,138 an order of general application to all Price Regulations, provided that special packing expenses on sales to procurement agencies of the U. S. might be added to maximum prices to the extent of the additional direct cost of labor and materials actually incurred. The special packing must be specifically required by the buyer, and the charge must be separately stated in the contract or invoice.

These rulings were embodied in the Second MEPR,139 where it was provided that on sales to a procurement agency of the U. S. for Lend-Lease, the maximum price should be the seller's applicable domestic price plus extra packing costs determined under SO No. 34140 (unless the applicable domestic Regulation expressly allows and provides for expense on Lend-Lease sales), and if installation or other necessary services are contracted for by the procurement agency, the extra cost of such installation or service shall be added, over and above the cost thereof which would have been involved on a domestic sale.

SALES BY WAR PROCUREMENT AGENCIES

A special problem was presented in the case of sales by Army canteens, post exchanges, ship's service activities, etc., and commissaries

135. Cf. § 3 (b) of the 2nd RMEPR.
136. Supra note 4.
137. Press Release, OPA 988, October 23, 1942.
139. Second MEPR, supra note 27, § 1375.1; by § 1375.11, however, Lend-Lease sales were classed as export sales.
140. Supra note 138.
and the stores operated by the War and Navy Departments. Sales by commissaries and ships and stores ashore, and the like, were originally excepted from the GMPR 141 (but not, of course, from specific Regulations) and have remained so.142 Army canteens or post exchanges, and ship's stores operated as ship's activities are, however, not operated by the Departments, but are in the nature of cooperatives financed and owned by the personnel of the Army or Navy; 143 and sales by these stores were not at first exempted. Such stores are, however, operated under Army or Navy Regulations, are not open to the public, and generally sell at less than prevailing market prices.144 The OPA finally, at the request of the Departments, exempted sales by these stores from control under the GMPR. The exemption was later extended to all Regulations.145

Other commodities sold by War Procurement Agencies have been exempted from the GMPR for a variety of reasons. Used, damaged, or waste materials sold by the War Department or the Navy Department are exempt,146 as much delay might result from an attempt to ascertain prices under the GMPR; many such materials are, however, under specific ceilings. Sales of ammunition by the D. S. C. constitute another exemption from the General Regulations.147 Since the War Department buys all ammunition produced by private concerns, essential civilian users (police, defense plants) receive their supply through the D. S. C. which sells to jobbers at not more than a price agreed upon with the OPA.148 Since the jobbers' prices are controlled, no inflationary tendency is apparent in excepting sales by the D. S. C.

There is as yet no blanket exemption of sales by the War Procurement Agencies and there are few exemptions in specific Regulations.

SALES BY AND TO THE METALS RESERVE CORPORATION

From time to time maximum prices have been set for sales of specific commodities by or to the Metals Reserve Corporation, a sub-

141. Amdt. 1 to SR No. 2, supra note 21, issued May 9, 1942, effective as to this provision May 19, 1942, 7 Fed. Reg. 3751, § 1499.27 (a) (2) and (6), added by Amdt. 3, 7 Fed. Reg. 3904, issued and effective May 23, 1942. By § 1378.4 (c) of MPR No. 157, supra note 59, sales of textiles, apparel, and related articles by war procurement agencies were exempted from that Regulation and from the GMPR. The paragraph was added by Amendment 1, issued and effective June 16, 1942, 7 Fed. Reg. 4541.

142. RSR No. 4, supra note 33, § 1499.29 (a) (15); SO No. 27, issued November 9, 1942, effective November 14, 1942, 7 Fed. Reg. 9229.

143. Statement of Considerations to Amdt. 3 to SR No. 2.

144. Statement of Considerations to RSR No. 4.

145. Note 142 supra.

146. Amdt. 8 to SR No. 1, supra note 39, § 1499.26 (a) (26); Amdt. 46, § 1499.26 (b) (1) (i).

147. RSR No. 1, § 5.2 (c); SR No. 1, § 1499.26 (b) (9), added by Amdt. 36, effective September 21, 1942.

148. Statement of Considerations to Amdt. 36 to SR No. 1.
sidiary of the RFC, both under the GMPR and under specific Regulations. The treatment of sales of imported commodities to the Metals Reserve Corporation has already been considered under the general exemption of sales of such commodities to U. S. Agencies. By Orders issued under Section 1499.3 (b) of the GMPR prices have been set for sales of new or partly used nickel anodes to the Metals Reserve Corporation by nickel platers, and for sales of such anodes by that Corporation for nickel plating purposes, and for sales by the Corporation to consumers of Indian mica splittings and of non-strategic domestic mica.

On November 27, 1942, a blanket Order, SO No. 35, exempted from price control all sales or deliveries to the Corporation (or its agents) of domestically produced strategic or critical materials, as listed with the OPA by the Corporation, produced in the 48 states or the District of Columbia. The exemption does not include fabricated commodities, but only such materials as ores, concentrates, bullion, and refined metals in commercial shapes; it includes ferro-alloys and chemical compounds but not alloy ingots, wire brass, or rods, sheets or tubes or other forms customarily demanding a premium.

DEVELOPMENTAL AND SECRET CONTRACTS; EMERGENCY PURCHASES

When the amended machinery regulation and RSR No. 4 were issued at the end of June, 1942, they contained certain provisions permitting an agency of the U. S., or of a Lend-Lease government, to certify developmental contracts, secret contracts, or emergency purchases to the OPA in order to obtain exemption for certain sellers from the GMPR, or from the machinery regulation. A developmental contract is one in which the manufacturer or supplier has not yet accumulated sufficient production experience to permit a fair estimate of production costs; a contract may also be deemed developmental during the period required for the selection of a product by the purchasing agency, as where specifications must frequently be changed. The OPA will not determine that a contract has ceased to be developmental until after

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149. *Supra* note 51.
152. Order 141 under §§ 1499.3 (b), 1499.1157, issued November 18, 1942, effective November 18, 1942, 7 Fed. Reg. 9616.
153. SO No. 35, § 1305.61, issued and effective November 27, 1942, 8 Fed. Reg. 1449.
154. *Supra* note 32.
155. RSR No. 1, § 4.4 (c); MPR No. 136, as amended, *supra* note 39, § 1390.21 (a).
consultation with the certifying agency. The supplier is required to report to the OPA the terms of his contract, a description of the product and of his plan of production.

A "secret" contract is one so certified by the contracting agency, and remains a secret contract until the agency notifies the OPA that it is no longer deemed to be such. No reports are required of the supplier in cases of such contracts.156

Emergency purchases157 are purchases for immediate delivery. Where the amount involved exceeds $500 the purchasing agency must certify to the OPA (within 10 days) that the purchase was made in a situation where it was imperative to secure the commodity (or machinery service) immediately, and in which it was unfair to require, or impossible to secure immediate delivery or performance at maximum prices. The agency must give full particulars of the purchase, including the name and address of the supplier, and a brief statement of the facts giving rise to the emergency. If the statement is insufficient the OPA may, of course, refuse to recognize the purchase as having fallen within the exemption. This might occur where the purchase involved deliveries extending over a period of time, in which case more adequate remedies would be available to the seller.

Many specific Regulations since issued provide for two or more of these exceptions, including MPR No. 165,158 the Service Regulation, and a number of the food Regulations.159 MPR No. 157,160 above described, relating to textiles sold for military purposes, contains a secret contract and an emergency purchase provision. Somewhat analogous provisions regarding developmental contracts appear elsewhere.161

156. RSR No. 4, § 1499.29 (a) (6), this provision was not repeated in RSR No. 1, as on the same day on which the latter Regulation was issued there was also issued SO No. 42, issued April 16, 1943, effective April 22, 1943, applying the exception to all Price Regulations (8 Fed. Reg. 4978). MPR No. 136, as amended, § 1390.22.
157. RSR No. 1, § 4.3 (f) ; MPR No. 136, § 1390.23.
158. MPR No. 165, supra note 105; § 1499.117 (a)—Developmental Contracts; § 1499.117 (b)—Secret Contracts; § 1499.117 (c)—Emergency Purchases. Note that the exceptions of Developmental and Secret Contracts from the GMPR (notes 155, 156 supra) apply also to services; see also RSR No. 11, § 1499.46 (b) (114), added by Amdt. 19, issued April 16, 1943, effective April 22, 1943, 8 Fed. Reg. 4978. The emergency purchase exemptions to GMPR apparently does not cover services.
159. See also note 101 supra.
160. Supra note 59, § 1378.4a (a)—Emergency Purchases, and § 1378.4 (b)—Secret Contracts.
Recently the secret contract exemption has been extended by Supplementary Order 162 to sales or deliveries of commodities or services covered by any Price Regulation.

**Adj ustment of Prices Under Government Contracts**

When government contracts in the textile and machinery fields and for miscellaneous commodities were brought under control during July, 1942, a special procedure for obtaining relief by adjustment, suitable for use in connection with such contracts, was set up.163 When first issued on July 1, 1942, Procedural Regulation No. 6,164 which defined this procedure, was applicable only to cases where relief was sought from maximum prices determined under the GMPR,165 or where a specific Regulation contained a provision permitting use.166

The procedure was made available under all Price Regulations on July 16, 1942, by a Supplementary Order.167 (On November 14, 1942,168 the right to apply for an adjustment under Procedural Regulation No. 6 was withdrawn from sellers whose contracts were governed by the various Regulations covering scrap, salvage, and waste materials 169 since the trade dealing in these materials was found to be highly competitive, so that an upward adjustment in the prices for one seller might tend to divert to him the flow of waste materials from normal channels, since the prices paid for scrap, by dealers, are generally not subject to control.) As will be shown below, certain Regulations, relating primarily to maximum prices at the producers' level, have analogous adjustment provisions, replacing those of Procedural Regulation No. 6. 170

Most Regulations did not contain, at the time Procedural Regulation No. 6 was issued, any provisions for adjustments, and in No-

162. *Supra* note 156.

163. There is not space in this article to consider the different procedures by which changes in OPA Price Regulations may be sought or obtained. Generally speaking, a person adversely affected by a Regulation or a provision thereof may petition for an adjustment (if expressly authorized by the Regulation) of his individual maximum prices, or petition for an amendment which will have general applicability to the trade or industry affected or to a particular section of it; or he may file a protest. The protest is a formal proceeding, and the denial thereof is subject to judicial review. 164. Procedural Regulation No. 6, issued July 1, 1942, effective July 3, 1942, 7 Fed. Reg. 5087, etc. Since May 10, 1943, the Regulation has been amended in certain aspects not relevant to this discussion.

165. RSR No. 4, *supra* note 33, § 1490.29 (b).

166. See Statement of Considerations to SO No. 9; this did not expressly appear in the text of the Procedural Regulation.


168. SO No. 6, § 1305.12 (b), as amended by Amdt. 1, issued November 11, 1942, effective November 14, 1942, 7 Fed. Reg. 9323.

169. Statement of Considerations to Amdt. 1 to SO No. 9.

170. *Infra* p. 706.
November, 1942, many existing provisions were repealed.\textsuperscript{171} In the interest of facilitating procurement, and in order to make sure that requests for relief from abnormally low prices, filed by persons having government contracts or subcontracts, might be handled as expeditiously as possible, the Procedural Regulation was issued.\textsuperscript{172}

Price Regulation No. 6 has two distinctive features: the requested price may be charged as soon as a petition for relief is filed under the Regulation, always subject to adjustments if the petition is not granted; and very complete information to be supplied on a special form is required of the petitioner. To insure that this remedy shall not be subject to abuse the petitioner is required to present balance sheets and profit and loss statements for the past 5 years, and figures showing the importance of the commodity (or service), which is the subject of the application, in relation to applicant's total sales of all commodities, both during a period preceding the filing of the application, and, on the basis of estimates, during an ensuing period, on the assumption that the application is granted. The applicant is also required to submit a breakdown of current unit costs of producing the commodity, and of estimated costs during the ensuing period, on the basis of estimated production. If increased costs are anticipated the reasons are to be stated in detail.

Reference has been made to certain Regulations governing manufacturers or producers of certain commodities which contain special adjustment provisions and, under which Regulations, petitions for adjustment under Procedural Regulation No. 6 may not be filed. These adjustment provisions are generally similar to those of the Procedural Regulation No. 6.\textsuperscript{173} They are available, however, to a somewhat wider group of producers. Under MPR No. 136 petitions for adjustment may be filed by "essential" producers of a commodity which "aids directly in the War program, or is essential to a standard of living appropriate to the prosecution of the war";\textsuperscript{174} the test here is the judgment of the Price Administrator, and this is expressly stated in the cognate provision of RMPR No. 125.\textsuperscript{175} An "essential" producer, under MPR No. 136, is one whose output cannot reasonably be ex-

\textsuperscript{171} For the background of this action see the Statements of Considerations to Amdt. 33 to the GMPR and to Amdt. 78 to MPR No. 136 as amended.

\textsuperscript{172} Statement of Considerations to SR No. 4.

\textsuperscript{173} The adjustment provisions of MPR No. 214, "High Alloy Castings", § 1421.8, and of MPR No. 235, "Manganese Steel Castings", § 1421.58, will not be separately discussed; they are substantially similar to those of Procedural Regulation No. 6, but apply if a casting "is or will be the subject of a contract for production essential to the war program."

\textsuperscript{174} MPR No. 136, as amended, supra note 39, § 1390.25a (a) (1), added by Amdt. 78, issued April 6, 1943, effective April 10, 1943, 8 Fed. Reg. 4516; the provisions are also available to machinery service suppliers; an order issued under the section may make provision for prices of other sellers.

\textsuperscript{175} RMPR No. 125, issued January 27, 1943, effective February 1, 1943, 8 Fed. Reg. 1271, § 1395.12 (a) (1) (I).
pected to be replaced at prices lower than the proposed adjusted maximum price; any producer who has, or proposes to enter into a war contract, or subcontract under a war contract, is also ipso facto an "essential" producer of an "essential commodity." 176 A "war contract" is defined as a contract with the U. S. or any agency thereof, or with Lend-Lease governments or their agencies, for the sale of a machine or part sold for the ultimate use of the armed forces, or for Lend-Lease, or for use of a Lend-Lease government or under a contract for the sale of a machine or part for use in the production of any such machine or part. 177

Under MPR No. 125 178 the existence of such a war contract is not determinative; the adjustment provisions of that Regulation are available not only where (in the opinion of the Price Administrator) the product aids directly in the war program, or is necessary to a standard of living consistent with the prosecution of the war, both because of the type of casting being produced and the necessity of continued production by the particular seller, but also where (in the case of any casting) the seller's maximum prices, after adjustment, will still not exceed those of competitive sellers. In both cases it must be shown that production will be impeded, and the principal criterion applied by the Administrator, as set forth in the Regulation, is the relation of future annual earnings, as estimated by the OPA on the basis of current earnings, to average profit or loss during the years 1936 to 1939. The Administrator may, however, use highest figures where such average profits are lower than those considered adequate for foundries of similar size.

A suggestion of what factors will be considered by the Administrator in determining the necessity of continued production by a particular seller is found in the provision recently added to MPR No. 244, "Gray Iron Castings", 179 which also supersedes the provisions of Procedural Regulation No. 6. This provision applies where a seller of castings necessary to the war effort either has entered into or proposes to enter into a government contract, 180 or shows that unless adjustment is granted he will cease (or not produce) the castings, and that the purchaser will thereby be handicapped because of the loss of applicant's special knowledge and experience, because applicant's foundry is the

176. MPR No. 136, § 1390.25a (a) (1).
177. Id. at § 1390.25a (a) (5) (vi).
178. RMPPR No. 125, supra note 175, § 1395.12a (a).
180. Defined as in Procedural Regulation No. 6, but does not include subcontracts — MPR No. 244, § 1421.164 (a) (12), added by Amdt. 3, supra note 179.
only one conveniently situated, because there is a general shortage of
the type of facility possessed by applicant, or because otherwise the
purchaser will have to pay higher prices.

Under the present adjustment provisions of MPR No. 136 con-
sideration is given to whether the maximum price from which relief
is sought is above or below costs, what relation it bears to prices pre-
vailing in the industry and to current profits as related to those pre-
vailing in the period 1936-1939 (or some other normal period in the
discretion of the administrator), and, in addition, consideration is to
be given to the importance of the machine in question in the manufac-
turer's overall picture and to whether in the past he has sold the ma-
chine at a loss. In line with these criteria an alternative, or supple-
mentary, method for obtaining relief, somewhat simplified so far as
the form of application is concerned, is provided for a manufacturer
who agrees to make a downward adjustment of prices of other prod-
ucts to compensate for the increase in the price of the product which
is the subject of the application.

Relief under Procedural Regulation No. 6 has been sparingly
granted, and its provisions have been strictly construed. An especially
interesting case arose where a producer of non-ferrous castings
requested an adjustment of his prices on contracts in existence when
the petition was filed (October 23, 1942) and also on future contracts.
Relief as to the existing contracts was denied. The petitioner had
entered into some of the contracts before price control went into effect
as to the product in question, and under MPR No. 125 the prices pro-
vided in such contracts became his maximum prices; subsequent to
the effective date of the MPR he entered into further contracts at his
maximum price without complaint. It appeared that petitioner found
his cost to be substantially higher than at first anticipated. The loss
that he would have to sustain, however, if compelled to complete his
contracts at his established maximum prices, would not be greater than
the damages he would be required to pay for breach of contract if he
discontinued production; since he was financially solvent, it must be
assumed that he would reject the latter alternative, and hence the
Administrator found no threat to impede the production of a com-
modity essential to the war effort. However, the petitioner could not

181. MPR No. 136, § 1390.25a (a) (2) (ii).
182. Id. at § 1390.25a (c).
183. Cf. Id. at § 1390.25a (a) (3).
184. In the matter of Leavenworth Packing & Storage Company, Opinion on
Order No. 6 under § 1499.114 (b) of MPR No. 165, December 4, 1942.
185. In the matter of Meta-Mold Casting Co., Opinion on Order No. 1 under MPR
No. 125, December 21, 1942.
186. MPR No. 125, issued April 28, 1942, effective May 11, 1942, 7 Fed. Reg. 3202,
§ 1395.11 (later superseded by the RMFR No. 125, supra note 175).
be expected to enter into new contracts at a loss, so his prices for future contracts were adjusted to cover his costs plus a reasonable profit. The "reasonable profit" was held to be one in line with those considered reasonable for foundries comparable in size and type to petitioner; the profit allowed was less than that requested by petitioner.

In another case relief was granted under Procedural Regulation No. 6, although the application had been made under Revised Procedural Regulation No. 1, since 90% of applicant's orders and contracts were made pursuant to subcontracts under U. S. Government and Lend-Lease contracts.\footnote{187} Under the applicable Regulation (MPR No. 244)\footnote{188} the petitioner was required to compute his maximum prices for grey iron castings on the basis of labor rates and material costs in effect on February 1, 1942, and of his method of figuring overhead in effect on that date. Petitioner requested permission to use current labor costs and an increased rate of overhead. It appeared that applicant had operated at a loss during 1938 and 1939. Profits were made during 1940 and 1941, but although profits were made during the first four months of 1942, these profits had been wiped out by the end of September of that year, when the petition was filed, so that the first 9 months of 1942 showed a loss of 9% of sales, losses having reached 25% of sales in September. The favorable position during 1941 and the first part of 1942 was attributed by applicant to a large order which permitted mass production methods; the losses during the remaining months of 1942 were attributed by him to decreased volume, changes in type of work, and increases in labor rates amounting to 14%, resulting in a 7% increase in costs. Applicant stated that it may be required to cease production, and the Administrator in fact considered it unlikely that he could continue to absorb losses running up to 25% of sales, and found that the loss of applicant's production might seriously hamper the war effort since applicant's factory was the only jobbing foundry with equipment and experience to manufacture heavy grey and alloyed iron machinery castings within a radius of some 75 miles. The applicant was therefore permitted to increase its maximum prices on current production to specified customers, representing about 75% of its business. On one large order this relief was granted as of the date of filing the petition, since the application was granted under Procedural Regulation No. 6 under which such relief would have been permitted. Specific prices apparently were set for these sales. Applicant was not, however, granted the full relief it

\footnote{187. In the matter of Sweets Foundry, Opinion on Order No. 3 under § 1421.157 (a) of MPR No. 244, December 12, 1942.\footnote{188. Supra note 179.}}
requested. Under such relief it was estimated that a 16% profit on sales (before taxes) would have resulted. This was deemed excessive.

The war agencies themselves have had recourse to Procedural Regulation No. 6. On November 20, 1942, the Norfolk Navy Yard, an agency of the U. S. Government, petitioned for adjustment of its maximum prices for steel castings determined under RPS No. 41. By Regulations and Directives of the Department of the Navy, the yard was prohibited from selling its steel castings to any person other than the Department without reimbursement for actual cost. The yard's maximum prices were below its costs. The Administrator found that there existed a shortage of capacity for the production of such castings. In order to expedite production under contracts essential to the war effort through permitting the yard's facilities to be used at times when they would otherwise be idle or operating at less than capacity, the yard had from time to time produced castings for sale to government contractors or subcontractors. The application of RPS No. 41 to such sales threatened to impede the production of steel castings essential to the war effort, and the yard was permitted to sell its castings at a price not in excess of its actual cost.

Where the supply of a commodity essential to the war effort is not threatened, relief under Procedural Regulation No. 6 will not be granted. Thus, surgical sutures prepared from sheeps intestines were apparently commodities essential to the war effort, and in fact under WPB Order most intestines must be used for sutures. The OPA had held that "second cut" sheep intestines, customarily used for sausage casings, and "first cuts" sheep intestines, customarily used for sutures, were similar commodities under the GMPR, carrying the same ceiling price when used for making sutures. Cudahy Packing Co. sought an adjustment of its maximum prices for "second cuts" used for sutures, apparently on the ground that it was more expensive to produce sutures than sausage casings. The application was denied; the cost of preparing "second cuts" and "first cuts" for sutures was the same, and that the sale of sheep intestines for either purpose was the most profitable way of disposing of what otherwise would be wasted; hence the existing maximum price would not result in a curtailment of production.

Relief under Procedural Regulation No. 6 may be obtained in cases of abnormally low prices—as distinguished from cases where

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189. In the matter of Norfolk Navy Yard, Opinion on Order No. 5 under RPS No. 41, December 15, 1942.
190. Supra note 56.
191. In the matter of Cudahy Packing Co., Opinion on Order No. 8 under SR No. 4, December 11, 1942.
costs have increased, heretofore described—where an essential commodity is involved and curtailment of production is threatened. This factor appears to have been considered in a case involving No. 10 catsup cans.\textsuperscript{192} Applicant during 1941 had canned this size as an accommodation package sold to large buyers of other size packages. Due to this fact and to the small volume in that year, applicant's markup had been 16.2% instead of the normal markup of 24.68%. Relief was granted in this case. In another case involving grey iron castings, it appeared\textsuperscript{193} that Bass Foundry and Machine Division of National Industries, Inc., had in March, 1942, taken over the property and assets of a foundry that had been operated, at a loss by a Federal equity receiver since 1936. Under MPR No. 244\textsuperscript{194} it also took over the receiver's prices although it had been necessary for the transferee to make considerable expenditures to rehabilitate the business. The castings were essential commodities, and loss of applicant's production, as the Administrator found, might well hamper the war effort, since applicant produced castings of large sizes, and since an appreciable period of time would have to elapse before such production could be replaced by other producers. Relief was granted in this case.

The matter of prices for meat has been the subject of petitions for adjustment under Procedural Regulation No. 6. On or before November 9, 1942, several sellers of beef and veal filed application for adjustment under Procedural Regulation No. 6,\textsuperscript{195} seeking specific increases in their maximum prices, determined under MPR No. 169, for beef and veal carcasses and wholesale cuts for contracts undertaken by them with the United States, with agencies thereof, or with prime contractors with such agencies. The applicants contended that their costs in fulfilling their contracts were unduly high with respect to the maximum prices established under the Regulation, and that unless the prices were raised the effect would be to impede the production of commodities essential to the war effort. It was pointed out, in the Administrator's opinion denying the application, that the volume of beef and veal products involved in the several applications represented a substantial portion of the nation's meat supply. While civilian demand has increased, because of greater purchasing power, the available supply was smaller than it was in 1942, due to the great quantities diverted

\textsuperscript{192} In the matter of P. J. Ritter Co., Opinion on Order No. 4 under MPR No. 152, "Canned Vegetables", December 15, 1942.

\textsuperscript{193} In the matter of Bass Foundry & Machine Division of National Industries, Inc., Opinion on Order No. 4 under § 1421.157 (a) of MPR No. 244, December 15, 1942.

\textsuperscript{194} Supra note 179.

\textsuperscript{195} In the matter of Kroger Grocery & Baking Co. \textit{et al}., Opinion on Order No. 20 under MPR No. 169.
to war needs; the shortage of meat was real. Competition between sellers of meat for the available supply of live cattle (on which there is no ceiling) is most intense, and the cost of this raw material has been bid up by the meat sellers, who thus narrowed their margins. The Administrator pointed out that all the applications rested "ultimately upon the rising costs of live cattle and the shortage of beef relative to demands"; conditions peculiar to the operations of the individual applicants and detrimental to the supplying of war needs, were not shown to exist; the alleged disadvantageous cost situation complained of was attributable to increased cost of raw materials, and was common to the entire industry, including both firms supplying civilian needs and those supplying war needs.

The opinion pointed out that "the problems which have arisen because of the desire of sellers to increase or maintain their normal volume of business in order to satisfy all demand, or briefly the problems of shortage, can neither be solved nor corrected by upward revision of prices established by the MPR. The granting of the relief sought would only serve to aggravate the problem and set in motion an inflationary spiral which would not alleviate the conditions which the applicants are encountering but would increase the costs of prosecuting the war and deplete the funds which the Congress has appropriated therefor. Should the Price Administrator grant the increases sought, such action would place all sellers not engaged in supplying the Government at a competitive disadvantage." The granting of such relief, in the opinion of the Administrator, would be unfair and inequitable to other sellers, including those selling in the civilian market. To remedy this inequality it would be necessity to raise prices for all sellers, and the applicant's relief would be illusory, as all packers would then be able to compete with him on equal terms in the live cattle market. The applications were therefore denied, as being predicated on grounds common to the entire industry, and on the ground that the granting of relief would not solve the difficulties complained of.¹⁹⁶

CONCLUSION

The OPA has calculated that the munitions program between June 1940 and December 1942 cost 25 billions less than it would have cost if prices had been permitted to rise as they did in World War I. In the light of the vastly greater pressure upon prices this time, it would appear that in the absence of price control the rise of prices would

¹⁹⁶. The same grounds were relied on by the Administrator in denying the petition of Cudahy Packing Co. to increase their prices for pork sausage to the Navy and to the Marines. Opinion on Order No. 1 under SR No. 4, January 15, 1943.
have outstripped by far that which occurred in the earlier war. The saving which has already been made approaches in magnitude our entire war outlay in 1917-18. It has been estimated that if prices are held at reasonable levels, this saving will grow to nearly $80,000,000,000 by the end of 1943; arms that would cost $236,000,000,000 under a repetition of World War I inflation will cost only $157,000,000,000. It must be remembered that contract renegotiation, a policy which is also saving billions of dollars, checks individual price excesses but not excessive price levels. With all its inconveniences, it would appear that an effective policy of price control will, in the field of war procurement as in the civilian economy, operate as a powerful war weapon.

The sensitive character of a war-time economy and the continued impacts of new controls by the many civilian agencies regulating the home front mean constant changes in price relationships. Every such change must be met with appropriate measures and with speed, or war procurement will suffer. Trade is indeed a delicate mechanism in the "arsenal of democracy", and the war procurement aspect of maximum price regulation is a most delicate part of that mechanism.