12/31/2025

Digitization Note

The following two-page, letterpress document has four carbon copies. These carbon copies have not been scanned.

Robert Mar

Digitization Technician

May 20, 1968

-- Wage and price controls, in order to be effective, need to be imposed without forewarning the public.

  - In April 1942, President Roosevelt by Executive Order created an office to impose controls and the record was a reasonable one.
  - In January 1951, controls were imposed after a long period of public anticipation and it was difficult to ever make them effective.

-- There is no precedent for direct wage and price controls that are not contained in legislation.

  - In October 1942, Congress enacted legislation following through on the executive action that had been taken earlier in the year.
  - In 1951, Congress had acted in September 1950 to authorize the President to impose controls.

-- Under appropriate circumstances, the President's powers under the Constitution and various statutes would be sufficient to:

  - issue an Executive Order imposing controls and setting up an office to administer them;
  - request legislation to specifically carry out the system of controls.

-- Imposition of controls by Executive Order without a request for legislation would:

  - raise the possibility of the courts declaring the action illegal;
  - make the system of controls less acceptable politically and to the public.

-- No present statute would in itself justify the imposition of controls.

  - The Trading with the Enemy Act is the statute which comes the closest to providing this kind of authority, but would require a strained interpretation.
  - Congress has declared that no statute is to be construed to provide this kind of authority (Moore amendment).

May 20, 1968

JAC
C. Clifford
N. Katzenbach
R. Clark
A. Fortas
G. Ackley
J. Roberts
S.G.R.

THE WHITE HOUSE
WASHINGTON

Legislation be retroactive to
date of Pres. order.
— make ~~order~~ last 60 days

If No tax bill ~~it~~ →

If none, Clifford — not get controls.

— JAC's File
"Executive Controls" ~~File~~

Everyone against it —

MEMORANDUM

Press

THE WHITE HOUSE

WASHINGTON

February 1, 1968

FOR JOE CALIFANO

FROM Stan Ross

I have been looking into the experience of President Truman in imposing wage and price controls in 1950-51.

The statutory provisions authorizing controls were inserted in the 1950 Defense Production Act by Congress. Truman had requested some lesser, but vitally needed, economic powers (e.g., establish priorities, allocate supplies, etc.) on July 19 (about 3 weeks after the war started). The insertion of the control authority delayed passage of the DPA until September 8. Truman twice had to send letters to Congress to keep the pressure on since he needed the other powers quickly.

Once the control authority was in the law, Truman was asked by the press at every opportunity when he intended to use it. Such questions became particularly embarrassing after China entered the war on November 28. Truman has been much criticized for waiting too long to use his authority.

On December 15, selective (mandatory) controls were imposed on some key commodities and fair (voluntary) standards were promulgated for other cases. On December 19, it was announced that if further action were taken, no sellers would be permitted to derive any advantage from price increases after December 1. On January 26, 1951, the general freeze order was issued. Selective controls and the voluntary restraint were not workable.

The general freeze used a base of the highest price of the period December 19 - January 25. It was not feasible to roll back prices to the December 1 levels, and the earlier announcement of an intention to do so was a great embarrassment. The people who had voluntarily complied were hurt, and those who did not were, in effect, rewarded.

Wholesale prices rose 16 percent from June 1950 to February 1951, and consumer prices rose 8 percent. This created such great distortions that administration of the controls, and adjustments of the freeze, were ~~was~~ always difficult.

A leading authority has summarized the situation as follows:

> "The major lesson seems to be that it is better and easier to catch the price structure at a reasonable stage before it gets out of hand, rather than to let it get out of hand and then seek to restore it to some prior 'normalcy.' Congressional and business sentiments were much stronger against rollbacks than they were against an earlier imposition of a freeze."

The control authority under the 1950 DPA was scheduled to expire~~d~~ on July 31, 1951. Therefore, in a message on April 26, 1951, Truman sought a two-year extension and broader powers. The difficulties he encountered in securing this legislation were ~~was~~ enormous, and the results were not satisfactory to him.

The 1951 DPA Amendments Act contained numerous exceptions and special provisions that made the price and wage controls more unfair and onerous than they had to be. Truman made a Radio-TV appeal to the people on June 14, wrote a letter to Congress on July 4, and generally prodded. Nonetheless, Congress did not act until July 30, one day before the authority was to expire and too late for him to veto. On August 23, Truman sent up a message criticizing the 1951 DPA Amendment Act and calling for reform legislation. None was enacted, however.

The lesson here seems to be that broad authority for an extended period should be sought early when the emergency is persuasive to Congress and before business and labor lobbying reach~~es~~ full force.

February 1, 1968

FOR JOE CALIFANO

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January 31, 1968

Files; Jones

FOR JOE CALIFANO

FROM Stan Ross

Attachment

12/31/2025

Digitization Note

The following three-page, letterpress document has three carbon copies. Of these three copies, only the one with handwritten notations has been scanned.

Robert Mar

Digitization Technician

January 31, 1968

Chronology of President Truman's Principal Actions on Outbreak of Korean War

1950

June 26	Statement on the violation of the 38th parallel in Korea.
June 27	U.S. air and sea forces ordered to give the Korean government troops cover and support.
June 30	U.S. airforce authorized to conduct missions in northern Korea wherever necessary, naval blockage of entire Korean coast ordered, authorization of supporting ground units.
July 8	Seizure of Chicago, Rock Island-Pacific Railroad to avert strike.
July 19	Special Message and Radio-TV address reviewing military steps, announcing increases in draft and call-up of reserves and National Guard, requesting additional appropriations of $10 billion, calling for economic controls and tax increases.
July 21	Letters to Agency Heads directing a review of government programs to support defense effort.
July 25	Letter to Chairman of Senate Finance Committee on need for increased taxes.
July 26	Special Message: The President's Mid-Year Economic Report.
August 1	Letter to Committee Chairmen not to delay Defense Production Bill.
August 18	Letter to President of the Senate not to delay or confuse Defense Production Act.
August 25	Order taking control of the Nation's railroads to avert strike.

<u>1950 (con't)</u>

September 1	Radio-TV Report to the People reviewing military situation.
September 8	Defense Production Act signed.
September 9	Radio-TV address upon signing DPA to explain what was required domestically and push tax increase; voluntary restraint called for and records of prices and costs required to be preserved.
September 12	Louis Johnson resigns as Secretary of Defense.
September 13	Legislation submitted to permit General Marshall to serve as Secretary of Defense (passed Sept. 18).
October 15	Meeting with General Mac Arthur at Wake Island.
October 24	Address before United Nations General Assembly.
November 14	Letter to Committee Chairmen calling for excess profits tax (passed January 3, 1951).
November 27	Letters to Committee Chairmen recommending extension of rent control.
November 30	Statement commenting on entry of China into war (on November 28) and announcing supplemental request for appropriations. (Message delivered December 1).
December 15	Radio-TV Report to the People on the national emergency, calling for more taxes, announcing imposition of selected (mandatory) price controls and promulgation of fair (voluntary) standards in other cases, and establishing Office of Defense Mobilization.
December 16	Proclamation of National Emergency.

1951

January 26	General Ceiling Price Regulation issued -- prices frozen at highest level of December 19 - January 25; wages frozen at January 25 rates. /Wholesale prices rose 16 percent from June 27 to February 6; consumer prices rose 8 percent from June 15 to February 15/
January 27	Memoranda urging Agency cooperation in enforcing price and wage stabilization orders.
February 2	Special Message recommending "pay as we go" tax program.
April 26	Special Message calling for extension and broadening of the DPA.
June 14	Radio-TV Report to the People on the need for extending inflation controls.
July 4	Letter to the President of the Senate on the continued need for effective price, wage, and production controls.
July 30	Congress passes DPA Amendment Act due to expire July 31. (Signed July 31.)
August 23	Special Message criticizing DPA Amendment Act and calling for reform legislation.
September 20	Letter to the President of the Senate on the need for added tax revenue.

P-files

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Prices

February 1, 1968

FOR THE PRESIDENT

FROM Joe Califano

I met this morning with Ramsey Clark to get his views on possible imposition of wage and price controls.

Ramsey's opinion was that there was no individual statute which authorized general imposition of controls, but that the basic constitutional and statutory powers of the Presidency taken together would justify imposition of controls on an emergency basis pending action by the Congress.

Ramsey's view would be that the circumstances would have to call for issuing:

- -- a new proclamation declaring a state of national emergency;
- -- an Executive Order pointing out that the nation was imperiled and its economic well-being depended upon taking these actions; and
- -- a message to the Congress to enact as soon as possible a statutory framework for continuing the controls which were being imposed on an emergency basis.

Given this view of the legal situation, Ramsey believed that present circumstances did not justify taking this kind of action. He believed that the threat to the country would have to be more apparent than at present. If this were not so, the Congress would not follow through with the necessary legislation.

SGRoss:pdf:2/1/68

of the enemy or ally of enemy insurance or reinsurance company in the custody or control of the alien property custodian, hereinafter provided for, or of the Treasurer of the United States, may make application for the payment thereof and may institute suit as provided in section nine hereof [section 9 of this Appendix].

(b) During the present war, no enemy, or ally of enemy, and no partnership of which he is a member or was a member at the beginning of the war, shall for any purpose assume or use any name other than that by which such enemy or partnership was ordinarily known at the beginning of the war, except under license from the President.

Whenever, during the present war, in the opinion of the President the public safety or public interest requires, the President may prohibit any or all foreign insurance companies from doing business in the United States, or the President may license such company or companies to do business upon such terms as he may deem proper. (Oct. 6, 1917, ch. 106, § 4, 40 Stat. 413.)

References in Text

Proclamation of April 6, 1917, 40 Stat. 1654, and Proclamation of July 13, 1917, 40 Stat. 1684, referred to in the text, are set out as notes under this section.

Transfer of Functions

Functions of the Alien Property Custodian and the Office of Alien Property Custodian, except those relating to property or interest in the Philippines, are now vested in the Attorney General. See notes to section 6 of this Appendix.

Proclamation of April 6, 1917

40 Stat. 1654

Whereas, certain insurance companies, incorporated under the laws of the German Empire, have been admitted to transact the business of insurance in various States of the United States, by means of separate United States branches established pursuant to the laws of such States, and are now engaged in business under the supervision of the Insurance Departments thereof, with assets in the United States deposited with Insurance Departments or in the hands of resident trustees, citizens of the United States, for the protection of all policyholders in the United States;

And whereas, the interests of the citizens of the United States in the protection afforded by such insurance are of great magnitude, so that it is deemed to be important that the agencies of such companies in the United States be permitted to continue in business;

Now, therefore, I, Woodrow Wilson, President of the United States of America, by virtue of the powers vested in me as such, hereby declare and proclaim that such branch establishments of German insurance companies now engaged in the transaction of business in the United States pursuant to the laws of the several States are hereby authorized and permitted to continue the transaction of their business in accordance with the laws of such States in the same manner and to the same extent as though a state of war did not now exist; provided, however, that all funds of such establishments now in the possession of their managers or agents, or which shall hereafter come into their possession, shall be subject to such rules and regulations concerning the payment and disposition thereof as shall be prescribed by the insurance supervising officials of the State in which the principal office of such establishment in the United States is located, but in no event shall any funds belonging to or held for the benefit of such companies be transmitted outside of the United States nor be used as the basis for the establishment directly or indirectly of any credit within or outside of the United States to or for the benefit or use of the enemy or any of his allies without the permission of this Government.

Proclamation of July 13, 1917

40 Stat. 1684

Whereas, certain insurance companies, incorporated under the laws of the German Empire, have been admitted to transact the business of marine and war risk insurance in various States of the United States, by means of separate United States branches established pursuant to the laws of such States, and are now engaged in such business under the supervision of the Insurance Departments thereof, with assets in the United States deposited with Insurance Departments or in the hands of resident trustees, citizens of the United States, for the protection of all policyholders in the United States;

And whereas, the nature of marine and war risk insurance is such that those conducting it must of necessity be in touch with the movements of ships and cargoes, and it has been considered by the Government of great importance that this information should not be obtained by alien enemies;

Now, therefore, I, Woodrow Wilson, President of the United States of America, by virtue of the powers vested in me as such, hereby declare and proclaim that such branch establishments of German insurance companies now engaged in the transaction of business in the United States pursuant to the laws of the several States are hereby prohibited from continuing the transaction of the business of marine and war risk insurance either as direct insurers or re-insurers; and all individuals, firms, and insurance companies incorporated under the laws of any of the States or Territories of the United States, or of any foreign country, and established pursuant to the laws of such States and now engaged in the United States in the business of marine and war risk insurance either as direct insurers or re-insurers are hereby prohibited from re-insuring with companies incorporated under the laws of the German Empire, no matter where located; and all persons in the United States are prohibited from insuring against marine or war risks with insurance companies incorporated under the laws of the German Empire or with individuals, firms, and insurance companies incorporated under the laws of any of the States or Territories of the United States or of any foreign country and now engaged in the business of marine or war risk insurance in the United States, which re-insure business originating in the United States with companies incorporated under the laws of the German Empire, no matter where located.

The foregoing prohibitions shall extend and operate as to all existing contracts for insurance and re-insurance which are hereby suspended for the period of the war, except that they shall not operate to vitiate or prevent the insurance or re-insurance of, and the payment or receipt of, premiums on insurance or re-insurance under existing contracts on vessels or interest at risk on the date of this proclamation, and such insurance or re-insurance, if for a voyage, shall continue in force until arrival at destination, and if for time, until thirty days from the date of this proclamation.

§ 5. Suspension of provisions relating to ally of enemy; regulation of transactions in foreign exchange of gold or silver, property transfers, vested interests, enforcement and penalties.

(a) The President, if he shall find it compatible with the safety of the United States and with the successful prosecution of the war, may, by proclamation, suspend the provisions of this Act [sections 1—6, 7—39 and 41—44 of this Appendix] so far as they apply to an ally of enemy, and he may revoke or renew such suspension from time to time; and the President may grant licenses, special or general, temporary or otherwise, and for such period of time and containing such provisions and conditions as he shall prescribe, to any person or class of persons to do business as provided in subsection (a) of section four hereof [section 4(a) of this Appendix], and to perform any act made unlawful without such license in section three hereof [section 3 of this Appendix], and to file and prosecute applications under subsection (b) of section ten hereof [section 10 (b) of this Appendix]; and he may revoke or renew such licenses from time to time, if he shall be of opinion that such grant or revocation or renewal shall be compatible with the safety of the United States and with the successful prosecution of the war; and he may make such rules and regulations, not inconsistent with law, as may be necessary and proper to carry out the provisions of this Act [sections 1—6, 7—39 and 41—44 of this Appendix]; and the President may exercise any power or authority conferred by this Act [said sections] through such officer or officers as he shall direct.

If the President shall have reasonable cause to believe that any act is about to be performed in violation of section three hereof [section 3 of this Appendix] he shall have authority to order the postponement of the performance of such act for a period not exceeding ninety days, pending investigation of the facts by him.

(b) (1) During the time of war or during any other period of national emergency declared by the President, the President may, through any agency that he may designate, or otherwise, and under such rules and regulations as he may prescribe, by means of instructions, licenses, or otherwise—

(A) investigate, regulate, or prohibit, any transactions in foreign exchange, transfers of credit or payments between, by, through, or to any banking institution, and the importing, exporting, hoarding, melting, or earmarking of gold or silver coin or bullion, currency or securities, and

(B) investigate, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest,

by any person, or with respect to any property, subject to the jurisdiction of the United States; and any property or interest of any foreign country or national thereof shall vest, when, as, and upon the terms, directed by the President, in such agency or person as may be designated from time to time by the President, and upon such terms and conditions as the President may prescribe such interest or property shall be held, used, administered, liquidated, sold, or otherwise dealt with in the interest of and for the benefit of the United States, and such designated agency or person may perform any and all acts incident to the accomplishment or furtherance of these purposes; and the President shall, in the manner hereinabove provided, require any person to keep a full record of, and to furnish under oath, in the form of reports or otherwise, complete information relative to any act or transaction referred to in this subdivision either before, during, or after the completion thereof, or relative to any interest in foreign property, or relative to any property in which any foreign country or any national thereof has or has had any interest, or as may be otherwise necessary to enforce the provisions of this subdivision, and in any case in which a report could be required, the President may, in the manner hereinabove provided, require the production, or if necessary to the national security or defense, the seizure, of any books of account, records, contracts, letters, memoranda, or other papers, in the custody or control of such person; and the President may, in the manner hereinabove provided, take other and further measures not inconsistent herewith for the enforcement of this subdivision.

(2) Any payment, conveyance, transfer, assignment, or delivery of property or interest therein, made to or for the account of the United States, or as otherwise directed, pursuant to this subdivision or any rule, regulation, instruction, or direction issued hereunder shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same; and no person shall be held liable in any court for or in respect to anything done or omitted in good faith in connection with the administration of, or in pursuance of and in reliance on, this subdivision, or any rule, regulation, instruction, or direction issued hereunder.

(3) As used in this subdivision the term "United States" means the United States and any place subject to the jurisdiction thereof: *Provided, however*, That the foregoing shall not be construed as a limitation upon the power of the President, which is hereby conferred, to prescribe from time to time, definitions, not inconsistent with the purposes of this subdivision, for any or all of the terms used in this subdivision. Whoever willfully violates any of the provisions of this subdivision or of any license, order, rule or regulation issued thereunder, shall, upon conviction, be fined not more than $10,000, or, if a natural person, may be imprisoned for not more than ten years, or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment, or both. As used in this subdivision the term "person" means an individual, partnership, association, or corporation. (Oct. 6, 1917, ch. 106, § 5, 40 Stat. 415; Sept. 24, 1918, ch. 176, § 5, 40 Stat. 966; Mar. 9, 1933, ch. 1, § 2, 48 Stat. 1; May 7, 1940, ch. 185, § 1, 54 Stat. 179; Dec. 18, 1941, ch. 593, title III, § 301, 55 Stat. 839; Proc. No. 2695, July 4, 1946, 11 F.R. 7517, 60 Stat. 1352.)

CODIFICATION

Words "including the Philippine Islands, and the several courts of first instance of the Commonwealth of the Philippine Islands shall have jurisdiction in all cases, civil or criminal, arising under this subdivision in the Philippine Islands and concurrent jurisdiction with the district courts of the United States of all cases, civil or criminal, arising upon the high seas" immediately preceding the proviso in subsection (b) (3) of this section, have been omitted on the authority of 1946 Proc. No. 2695, which is set out as a note under section 1394 of Title 22, Foreign Relations and Intercourse, and in which the President proclaimed the independence of the Philippines.

Subsec. (b) is also set out as section 95a of Title 12, Banks and Banking.

AMENDMENTS

1941—Subsec. (b). Act Dec. 18, 1941, considerably broadened the powers of the President to take, administer, control, use and liquidate foreign-owned property and added a flexibility of control which enabled the President and the agencies designated by him to cope with the problems surrounding alien property, its ownership or control, on the basis of the particular facts in each case.

1940—Subsec. (b). Act May 7, 1940, included dealings in evidences of indebtedness or ownership of property

MEMORANDUM

Re: Legal authority available to the President to aid in the emergency stabilization of prices, wages and credit.

This statement, prepared on an urgent basis, describes certain legal powers available to the President to aid in the emergency stabilization of prices, wages, and credit. There are a number of other complicated statutes relating to such matters as banks and banking, agricultural stabilization, labor-management, etc., the effectiveness of which is not contingent upon the existence of a state of national emergency or war, which we have not had sufficient time to analyze.

We are now reviewing those statutes and will provide a supplemental statement as quickly as possible.

1. Consumer Credit Restrictions.

Section 5(b) of the Trading with the Enemy Act

(50 U.S.C. App. 5(b)) authorizes the President, during a national emergency proclaimed by him, to "investigate, regulate, or prohibit, transfers of credit or payments between, by, through or to, any banking institution."

Pursuant to that authority, the Federal Reserve Board was directed to impose consumer credit controls during World War II (Executive Order No. 8843 of August 9, 1941). That directive, with certain interruptions imposed by Joint Resolutions, was in effect until May 7, 1952.

The President is empowered to exercise that authority anew at the present time since the state of national emergency proclaimed by President Truman on December 16, 1950 (Proclamation No. 2914) is still in effect. If he elects to do so, it is advisable that he issue a new Executive order, along the lines of Executive Order No. 8843, designating the agency (or agencies) to perform the functions involved, delegating authority, and prescribing general standards for the performance of those functions.

2. Voluntary Agreements.

Although the provisions of Section 708 of the Defense Production Act no longer provide authority for voluntary agreements between the President and private businesses designed to stabilize prices, such agreements may be negotiated by the President pursuant to the constitutional authority vested in him as the Chief Executive.

3. Imports.

It might be possible to increase imports into this country of articles with respect to which prices shall have increased too steeply.

For example, by Proclamation No. 3709 of March 31, 1966, the President took emergency action pursuant to Section 22 of the Agricultural Adjustment Act (7 U.S.C. 624) to increase the amount of cheddar cheese that could be imported into the United States during the remainder of the quota year ending June 30, 1966.

During a recent crisis involving a shortage of plywood for home construction, it was discovered that Japan had voluntarily restricted exports of plywood to the United States at the behest of our Government. If voluntary arrangements of this type exist as to other scarce or unreasonably priced articles, it might be possible to get the countries involved to suspend those voluntary restrictions.

If petroleum prices become exorbitant, the President can revise the import quotas imposed by Proclamation No. 3279, as amended.

4. Exports.

The Export Control Act (50 U.S.C. App. 2022) authorizes the use of export controls to, among other things, protect the domestic economy from excessive drain of scarce materials and to reduce inflationary impact of abnormal foreign demand.

Pursuant to this authority, restrictions have been placed on exports of copper and certain classes of hides.

5. Stockpiles.

Releases of materials from the National Stockpile pursuant to Section 5 of the Strategic and Critical Materials Stockpiling Act (50 U.S.C. 98d) or sales from that stockpile pursuant to Section 3(e) of that Act (50 U.S.C. 98b(e)) might serve as a restraint on inflationary prices. The prices of copper and aluminum have been held in check by this means.

The same is true with respect to the Supplemental Stockpile (Section 416(2) of the Agricultural Act of 1949 (7 U.S.C. 1431)), and the Defense Production Act Inventory (50 U.S.C. App. 2093(a)).

6. Wage Disputes.

The services of the National Mediation Board (45 U.S.C. 154), and Emergency Boards (45 U.S.C. 160) may be utilized in the effort to stabilize wages with respect to rail and air carriers.

The services of the Labor Department and the Federal Mediation and Conciliation Service (29 U.S.C. 172) may be used in other national labor disputes.

In addition, the President may, under his authority as Chief Executive, create special bodies to investigate or conciliate disputes.

7. Procurement And Construction Contracts.

The President may require that Federal procurement and construction contracts contain a provision restricting the amount by which wages may be increased with respect to persons performing employment in connection with those contracts. This would probably necessitate a suspension of the Walsh-Healey and Davis-Bacon Acts (41 U.S.C. 35-45 and

40 U.S.C. 276a, respectively), except to the extent such action would represent an exercise of the authority (limited to defense contracts) conferred by the Act of August 28, 1958 (50 U.S.C. 1431).

This would be somewhat comparable to the program which has been instituted with respect to Wage Board employees.

8. Curtailment of Federal Expenditure.

The President is, within certain broad limits, authorized to withhold expenditures of appropriated funds. This possibility was mentioned by the President at the signing of the N.A.S.A. Authorization Act, 1967 (Weekly Compilation of Presidential Documents, August 8, 1966, p. 1027).

9. Antitrust And Related Laws.

Neither the antitrust laws, the Federal Trade Commission Act, nor the comparable provisions of our agricultural laws provide significant promise of producing results in the immediate effort to stabilize prices. These statutes are designed to achieve long-range results based upon intensive investigations and involved legal proceedings.

ASSISTANT ATTORNEY GENERAL

Department of Justice
Washington

JAN 6 1967

MEMORANDUM FOR MR. JOHN E. ROBSON
BUREAU OF THE BUDGET

In response to your request for further analysis of certain technical aspects of imposition of a system of price and wage controls, I enclose the following memoranda of this date:

1. A memorandum prepared by a member of my staff entitled "Methods for Implementing Price Controls." As indicated therein, this memorandum essentially consists of a summary of considerations bearing upon various methods of implementing such controls as reflected in the literature on the subject. Inasmuch as these considerations are largely economic or administrative rather than legal in nature, we have not made an independent evaluation of them except insofar as legal points are noted.

2. A memorandum prepared by a member of my staff entitled "Procedures for Establishing Price Controls Pending Congressional Approval." This memorandum discusses the relationship of an Executive order imposing a system of controls and the subsequent legislative action to provide legal sanctions for enforcement of the order.

3. A memorandum, classified SECRET, summarizing relevant classified national security documents.

Each of the foregoing is delivered to you in an original and one carbon copy.

Frank M. Wozencraft

Frank M. Wozencraft
Assistant Attorney General
Office of Legal Counsel

Enclosures

JAN 6 1967

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Frank M. Wozencraft
Assistant Attorney General
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JAN 6 1967

MEMORANDUM

Re: Procedures for establishing price controls pending Congressional approval.

This memorandum will discuss a procedure which might be used to impose interim price controls pending approval of legally binding sanctions by Congress.

There is no direct precedent for Presidential imposition of legally binding price controls. The history of price controls demonstrates this is a power which Congress has reserved to itself and which, except in the most extreme emergencies, may only be authorized by Congress. (See Memorandum of Oct. 5, 1966 re: Legal authority to control prices and wages under §5(b) of the Trading with the Enemy Act.)

There is, however, a procedural route which may be available as an alternative to legislation conferring advance authority. It involves the initial issuance of an Executive order and subsequent Congressional approval. Such a procedure may involve greater Executive commitment, and thus augment the risks involved in the possibility of Congressional rejection, than would submission of proposed legislation. It may, however, under certain circumstances, provide tactical advantages, by more quickly imposing controls and thus avoiding anticipatory price increases, and by seizing the initiative in dealing with Congress. It might be more difficult for Congress to modify a newly issued Executive order than to amend a bill presented to the Congress by the Administration.* This might be particularly so with respect to the order's effective dates for the system of controls imposed.

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* Modifications of Executive orders by legislation are not unknown, however. On a number of occasions Congress narrowed or suspended the effect of the Executive order regulating consumer credit, E.O. 8843, 6 F.R. 4035 (1941). See 61 Stat. 921, 62 Stat. 1291, 64 Stat. 812, 65 Stat. 137-38, 66 Stat. 305.

Whether this method is advisable from an economic point of view, or would be politically feasible, is not considered herein.

There are a number of ways the order could be drafted. The Executive order would not at the outset be intended to invoke conventional sanctions (i.e., criminal penalties, injunctions, etc.) but would rely on various methods of persuasion and such indirect economic sanctions as are available under existing law. The order might or might not include other stabilization measures, such as credit controls. The effective dates of the various measures could be staggered.

Under one approach the effective dates for those provisions for which the President had no clear authority, such as binding sanctions for enforcement of price controls or record keeping requirements, could be expressed as such date as the Congress would specify in the approving act.

Under another approach the Executive order would be silent on sanctions, and the Congressional act of approval would spell out the availability of binding sanctions, which would apply to sales made after its adoption at prices higher than those permitted by the Executive order. As a result, any price increase made in violation of the Executive order in the interim would have to be rolled back upon adoption of the legislation.

At the time of issuance of the order, a draft bill or joint resolution of ratification would be sent to Congress.

The sanctions could be expressed either in the order or in the draft resolution, in one of two ways: They could be set forth expressly or by incorporating those available under an existing statute, such as the Securities Exchange Act.* If Congressional ratification were not forthcoming, it would then become a tactical and political matter as to whether informal enforcement should be continued or whether the program should be abandoned.

* Compare the sanctions provisions of the consumer credit control part of the Defense Production Act of 1950 (§604, 64 Stat. 814).

It might be more difficult to secure ratification from Congress if the order claimed power to impose binding controls on prices under an existing law, such as §5(b) of the Trading with the Enemy Act, than if no existing power were claimed. Ratification of an order which claims power under an existing law might be regarded as an acknowledgment by Congress that the President had the power all along and would be free to exercise it on future occasions without Congressional authorization. Thus an extraneous issue would be brought into the Congressional consideration of the ratification of the order in question, which otherwise could be considered on the merits of its provisions and the particular circumstances in which it was issued.

JAN 6 1967

MEMORANDUM

Re: Methods for Implementing Price Controls

This memorandum will discuss various methods which can be employed to implement price controls and some of the advantages and drawbacks of each method. The considerations bearing on the advisability of instituting such controls at a given time are not discussed herein.

This memorandum also will not discuss the legal basis for imposition of controls. In a previous memorandum dated October 5, 1966, it was noted that there is no direct precedent for Presidential imposition of legally enforceable price or wage controls in the absence of express statutory authority to impose such controls. It was also concluded in that memorandum that serious obstacles exist to the use of Section 5(b) of the Trading with the Enemy Act as legal authority for imposition of price-wage controls.

Accordingly, the discussion herein proceeds on the assumption that Congressional authorization would be obtained to impose any of the kinds of controls discussed. Authorizing legislation might spell out the particular method to be utilized, or merely authorize the President in general terms to impose controls, leaving the choice of methods to administrative discretion.

I. Historical Background

Prices have been controlled by the Government during three wars: World War I, World War II and the Korean War.

A. World War I

Price control in World War I was limited both in extent and in duration. Except for sugar and coal, Government regulation was limited to the early stages of production, no limits being placed on the prices charged by retailers. There was statutory authority to fix the prices of coal and coke (40 Stat. 284). Other key prices, such as those of hogs and wheat, were limited by a combination of the wartime powers for licensing (40 Stat. 276), commandeering and setting of priorities, as well as by "persuasion."*

B. World War II

In the months before Pearl Harbor, although statutory authority and effective enforcement machinery for price controls did not yet exist, detailed price schedules for a number of specific items were promulgated. Congress passed the Emergency Price Control Act ("EPCA") at the end of January 1942. 56 Stat. 23. The Act had been under consideration in the Congress since the previous summer, including debate over the issue of whether to continue with the specific ceilings characteristic of the 1941 approach or to switch to overall controls. In the end, the Act left the method of price control to administrative discretion. The Stabilization Act,

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* One form of "persuasion" was the denial of the use of the mails by the Post Office to individuals and organizations considered out of sympathy with the war programs. George P. Adams, Jr., Wartime Price Control 57 (1942). See generally, Simon Litman, Prices and Price Control in Great Britain and the U.S. During the World War (1920). The Government could also fix prices at which it purchased military supplies. 39 Stat. 213.

passed in October 1942, provided for control of wages. 56 Stat. 765. Wages were frozen at levels obtaining on September 15, 1942 and subsequent increases were permitted only when approved by the War Labor Board.

On April 28, 1942, after the passage of the EPCA and following several months of experience with limited schedules under the Act, a General Maximum Price Regulation ("GMPR") was issued, freezing prices at the highest price charged during March 1942 (7 Fed. Reg. 3153). The GMPR continued the previously-issued schedules in effect, and did not end the promulgation of new dollars-and-cents and formula regulations for selected industries.

C. Korean War

The Korean pattern was different. Although the Defense Production Act of 1950 provided power to control prices either selectively or comprehensively, there was also a requirement that if a ceiling was imposed as to a particular material or service, then wages also had to be controlled in the business or industry concerned. 64 Stat. 803-804.

Formal control began with a specific regulation freezing prices on new automobiles in December 1950. 15 Fed. Reg. 9061. On January 26, 1951, the General Ceiling Price Regulation ("GCPR") was issued based on prices obtaining in that month. 16 Fed. Reg. 808 (1951). It was largely patterned after the GMPR of World War II. However, whereas prior to the issuance of the GMPR in 1942 more than one hundred specific regulations had been issued, there were only two prior to the GCPR. Alfred Letzler, The General Ceiling Price Regulation--Problems of Coverage and Exclusion, 19 Law & Contemp. Prob. 486 (1954).

II. Extensiveness of Controls

A basic question to be faced in any system of price controls is how extensive the coverage is to be.* This is primarily an economic and administrative question, rather than a legal one. To some extent the choice of techniques to be

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* This memo does not, however, consider the broader question of implementing consistent controls in other fields, which may be necessary to make price controls effective, such as rationing, allocation, subsidies (See §303 of the Defense Production Act of 1950), and fiscal and monetary action.

used in establishing maximum prices turns on the decisions as to how extensive the coverage will be. Therefore, the discussion of extensiveness in this part of the memorandum, and the comparison of various methods of implementation in the next part, will consist in large part of summaries of published evaluations made by others of the prior experiences with controls. No evaluation of the economic and policy judgments of the various writers will be made, except insofar as legal considerations appear.

Selective controls are said to be easier to enforce than general controls.# Deciding which items are the key ones in a complex economy is very difficult, however. Prices are often so interrelated that some cannot be fixed if others are left free. The price of one item can be affected by the price of

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E.g., U.S. Office of Temporary Controls, OPA, Problems in Price Control: Pricing Techniques 6 (1947), hereafter cited "OPA: Pricing Techniques." A companion monograph, Problems in Price Control: Pricing Standards (1947) will be cited "OPA: Pricing Standards."

another that enters into its costs, and a controlled price cannot compete with an uncontrolled price in bidding for scarce supplies. Furthermore, a policy that holds some incomes down while permitting others to rise may be viewed as unfair and thus diminish voluntary compliance.

According to one view, attention should be directed to those goods where the most serious shortages are felt and where the signs of inflation first appear, usually the materials and the facilities required for the production of defense supplies. The pressures at bottlenecks of production, according to this view, should be the main concern of price control. Thus, during World War II, the first regulations issued by the O.P.A. put ceilings over the prices of such products as machine tools, metallic scrap, hides and steel.

Another view holds that the emphasis should be placed on prices that affect the cost of living, since a rise in living costs will evoke demands for higher wages and a rise in wages will increase the costs of production and necessitate higher prices all along the line. (This assumes that monetary and fiscal action will not be able to hold down the prices of consumers' goods by checking the expansion of demand.) Thus, during the Korean War the first regulation fixed maximum prices, not for the materials entering into defense production, but for civilian automobiles. The theory here was to combat general rather than specific inflationary pressures. Statement of Considerations, 15 Fed. Reg. 9061 (1950).

Over the long run, it has been said, if control starts with industries producing for defense it will have to be extended to other industries to prevent the diversion of scarce materials. If it starts with primary producers it will have to be extended to fabricators and to distributors to hold down the cost of living and to check the spiral of wages, costs, and prices.

If controls start, on the other hand, with cost-of-living items, the rising prices of defense supplies will add to inflationary pressures by necessitating larger public expenditures. The rising profits of defense industries will tend to invite new wage demands. Wage increases for defense workers will lead to wage increases for producers of civilian goods. Moreover, if the profits and wages of one indsutry are permitted to rise, there will be claims of inequity from those which are curbed.*

It can be argued, therefore, that although selective controls may be employed for limited periods of time, to be effective controls must in the long run be extended throughout the economy. See Clair Wilcox, Public Policies Toward Business 694-96 (1955).

III. Techniques for Establishing Maximum Prices

Techniques by which prices may be fixed initially include (1) dollars-and-cents schedules set by the Government; (2) a freeze based on the highest figures obtained by individual sellers in some previous period; and (3) computations by individual sellers or by the Government in accordance with a formula or standard.

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* It has been said that the requirement in the Defense Production Act of 1950 that wages be controlled in industries where prices were controlled made selectivity difficult, since wages could not be held down in some industries and allowed to rise in others. Wilcox, Public Policies Toward Business 698.

Once prices are fixed by one of these methods, adjustments which prove to be necessary may be accomplished by various techniques, such as (1) applications for prior agency approval of increases; (2) computations by sellers in accordance with escalation formulas (which may be the same as or different from the formulas used to fix initial maximum prices); or (3) pre-filing of proposed increases by sellers, with a limited period of deferral to give the agency an opportunity to reject the proposed increases.

There is some overlap between initial and adjustment techniques, and between the alternatives in each of those categories, and writers have not always classified them in the same way. See OPA: Pricing Techniques 91 (1947); Wilcox, Public Policies Toward Business 699. However, for analytical purposes various techniques will be discussed in this part as alternatives along the lines described above. As noted earlier, the major economic and administrative considerations which observers have raised in connection with these techniques are summarized here without evaluation.

A. Initial Pricing Techniques

(1) Dollars-and-cents Schedules

Dollars-and-cents ceilings expressed in detailed schedules can be fixed best where products are standardized, producers few in number, markets well organized and information readily available, as in trade journals. This technique is facilitated where there is a market leader.* It does not require the extensive records and detailed reports necessary for freeze and formula ceilings (where bases must be determined and mark-ups computed). Since the legal maximum is announced to the buyer by publication of the schedule, the technique is hard to evade and comparatively easy to enforce where evasion is attempted.

In many industries, however, the needed information is difficult to obtain. It takes a lot of time and work and will not be effective if action must be prompt and comprehensive. This technique necessarily can only be used selectively. (For an illustrative example of ceilings imposed essentially by the schedule technique, see the bituminous coal price schedule of 1942 attached as Appendix A.)

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* For example, in World War II, the OPA adopted U.S. Steel's prices, including its basing point system and freight rate book.

(2) <u>Freezes</u>

A freeze may be specific or general, that is, applying to a particular industry or to all producers and distributors.* In either case, it establishes a ceiling based on the highest price obtained during some given period. The advantages are speed, lack of necessity for detailed information and conformity to existing price structures and pricing practices. The text of a general freeze order can be relatively simple and short. (For example, see the text of the GMPR of 1942 attached as Appendix B.) Since a minimum of advance preparation is necessary, it can be imposed quickly, thus minimizing advance notice to sellers and buyers.

Even in the short run, however, the freeze is said to have serious disadvantages. To check inflation effectively a freeze must be imposed without substantial advance warning

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* Compare the GMPR (7 Fed. Reg. 3153) and the GCPR (16 Fed. Reg. 811), both broadly applicable freezes, with the specific Korean War freezes on new automobiles (15 Fed. Reg. 9061) and hides (16 Fed. Reg. 727.

or public debate. Although an early base period may be chosen to avoid the effect of anticipatory increases, a rollback to an early date is likely to be particularly unpopular and inequitable in particular cases. If a recent base period is chosen, the freeze will tend to reward those who have raised prices and to penalize those who have previously attempted to cooperate by keeping them down.

A freeze may catch prices at abnormal or fortuitous levels and relationships, catching some prices at figures established in long term contracts, clearance sales, etc. Hardships may result, as where the freeze results in prices for some sellers that are abnormally low compared to those of other sellers, or where the price fixed for manufacturers is abnormally high compared to that of the retailer and the latter is forced to absorb the excess cost to him. When a freeze is applied at successive stages of production and distribution it tends to squeeze those closest to the consumer. A retailer may not have had time to reflect an earlier increase from a supplier in his own price and the freeze will keep him from doing so. See OPA: Pricing Standards 423. The problem cannot be met simply by staggering the freeze base date for manufacturers, wholesalers and retailers, since the speed with which different goods move through the channels of distribution is not the same. Wilcox, Public Policies Toward Business 701; OPA: Pricing Techniques 41; Statement of Considerations, GMPR, Pike & Fischer, OPA Service 11:119-20 (1942). Consequently, the initial simplicity of the general freeze must be balanced by the need for adjustments that have to be made after the freeze is imposed.

Moreover, although a freeze covers the most common situation--where the same seller sold the same product in the base period--it does not work for a new seller, a new or altered product, an old seller who has taken on a new product, custom-made goods, seasonal commodities, etc. See OPA: Pricing Techniques 12, 37. These situations can be dealt with by issuance of dollar-and-cent schedules, under certain formulas or through specific authorizations where pricing standards are applied by a Government agency.

A freeze is hard to enforce because the seller will know what his highest price was in the base period but the buyer will not. And the enforcement agency can only hope to check a very small percentage of prices against records.

(3) Formulas

Formulas are devised to cover the areas where goods or services are not standardized, so that dollar-and-cents schedules will not work, and where base period information is lacking, so that a freeze will not be effective. Some formulas involve calculating the price of one item by comparing it to others whose price is fixed by one of the other techniques. An example of this is the section of the GMPR which permitted sellers who were unable to use the freeze method to compute their maximum prices by adding to their costs for the commodity involved the percentage margin obtained on the most comparable product price by reference to the base period experience. See §1499.3 of GMPR attached as Appendix B. OPA: Pricing Techniques 76.

Formula pricing can be used in regulations where dollar-and-cents schedules are the basic determining method but where it is impractical to issue flat ceilings for all variations of a given product line. Moreover, in some industries (such as fabricated structural steel) where there is virtually no uniformity in the commodity furnished, the freeze and flat ceiling techniques may be inappropriate and formula pricing is most effective. OPA: Pricing Techniques 76-77.

It has been said that the latitude involved in cost accounting can make formula-set prices difficult to enforce. It is often difficult for either the buyer or the Government to tell whether the price being charged is correct.

B. Adjustment Techniques

Methods of adjustment must be considered in connection with the various techniques for imposing prices. As indicated above, the initial simplicity of the general freeze must be balanced against the number of adjustments that must be made. Controllers will try to avoid the necessity for individual adjustment, as by writing regulations tailored to industries for which a freeze does not work well. Even such tailored regulations, however, may have to include provisions for adjustment. (See §1340.207 of Bituminous Coal regulation attached as Appendix A.) Various administrative methods for making adjustments are possible. Some are considered below together with examples.

(1) Applications requiring prior approval.

Hardship adjustments under the GMPR did not take effect until granted by the OPA, and were not retroactive. The GMPR permitted a retailer to apply for an adjustment if his maximum price was abnormally low in relation to the maximum prices of other retailers to such an extent as to constitute a hardship.* In July 1942 a similar adjustment was permitted for sellers other than retailers where the adjustment would not increase retail prices. After these adjustment provisions had served their initial purpose a deadline was set at November 30, 1942, after which no further applications for such adjustments were accepted. OPA: Pricing Standards 434-35.

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* 7 Fed. Reg. 3155, §1499.18 of GMPR, attached as Appendix B. A comparable adjustment provision was incorporated into about a dozen other regulations.

It had been the OPA's intention to roll-back prices at wholesale and manufacturing levels, rather than to raise retail prices, in order to eliminate the squeeze. However, special regulations covering important commodity groups where the freeze technique of the GMPR was not appropriate were not issued promptly, and pending their issuance many applications were filed by sellers seeking relief. See <u>OPA: Pricing Standards</u> 428.

(2) <u>Formula adjustments without approval</u>.

In contrast to the GMPR, the GCPR of 1951 included no adjustment provisions when first issued. The Government, with only the beginnings of a price control staff in January 1951, was reluctant to engage in a wide-scale program of individual adjustments. The main emphasis was on the development of regulations to replace the freeze. Within a few months of the freeze, however, the need for individual adjustments to meet a number of different problems became apparent and regulations were issued to authorize such adjustments. One such regulation, designed to deal with the "replacement squeeze," in effect permitted the reseller to realize his normal margin on each of his products. No showing of an abnormally low ceiling or of hardship was required nor was it necessary to file applications or reports; thus, the workload occasioned by the OPA rules was avoided. This regulation was intended as an interim measure to solve the squeeze problem for re-sellers remaining under the GCPR pending the development of regulations tailored to particular industries. While such regulations were later issued for resellers in many areas, some resellers remained permanently under the GCPR. Robert E. Olson, Adjustments and Other Special Problems under the General Ceiling Price Regulation, 19 Law & Contemp. Prob. 539, 542 (1954).

(3) Adjustment by pre-filing with Government.

A method, not heretofore used in price control, might be considered whereby adjustments following a freeze or other form of control would be effected by individual sellers if (a) notice were given to the Government control agency and (b) a stipulated waiting period had passed. Under this method, if the agency believed the increase was unreasonable it would have to make a finding to this effect, whereupon the increase could not be put into effect. If no finding were made by the Government within the specified waiting period, the new price would go into effect. This is a method used in public utilities regulation. It puts the burden of making an investigation and determination within a limited time period upon the agency, and thus may involve less interference with business practices than the OPA method of prior applications for price control changes. (See Washington Metropolitan Area Transit Regulation Compact attached as Appendix C.)

This type of regulation would probably have to be selective to avoid a vast administrative burden. It would, except in degree, be similar to price control on a specific authorization basis with its attendant disputes and delays. Whether it could be successfully administered would also depend on the nature of the standard for rejection of an increase, the evidence the Government was required to produce, whether there would be a hearing, the scope of judicial review, etc.

IV. Sanctions

The difficulties of administering and enforcing price controls are so numerous that compliance must rest mainly on public acceptance and understanding. Mansfield, A Short History of OPA 255 (1947). Nevertheless, an effective statute should provide the controlling agency with a wide variety of possible sanctions for enforcement. These should include criminal penalties, injunctions, cease and desist orders, subpoena power, licensing requirements, and treble damage actions to recover overcharges. Perhaps the most widely used sanction during World War II was the injunction. See Comment, The Statutory Injunction as an Enforcement Weapon of Federal Agencies, 57 Yale L.J. 1023 (1948). Criminal law sanctions, although necessary to punish and deter flagrant violators, are alone inadequate because of the delays and proof problems in criminal cases.

The Supreme Court has upheld provisions which limit the right of an individual to contest price orders to a limited period of time and before a special court. It has held that if this procedure is not followed, the price order cannot again be contested even in a criminal case. Yakus v. United States, 321 U.S. 414 (1944). Therefore the establishment of a single emergency court to handle appeals from the price control agency, such as has existed in the past, might also be advisable.

However, it should be noted that price schedules have been issued by the Government even when there was no statutory authority to enforce them by legal sanctions such as those discussed above. Although the EPCA was not passed until January 1942, schedules listing "reasonable limitations" as to what might be charged were issued as early as February 17, 1941. The first schedule covered second-hand machine tools. 6 Fed. Reg. 1021. Various methods of publicity and persuasion and voluntary agreements with businessmen were used to secure compliance. Even after an Executive Order was issued on April 11, 1941 establishing the Office of Price Administration and Civilian Supply (6 Fed. Reg. 1917), no enforcement of the price schedules or voluntary agreements was possible except insofar as sanctions could be applied against violators by other Government agencies. Mansfield, _A Short History of OPA_ 40 (1947). See generally U.S. Office of Temporary Controls, OPA, _The Beginnings of OPA_ 24-50 (1947).

Prices

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George P. Adams - WAR TIME PRICE CONTROL - (1942)

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1. Study of Monopoly Powers
Hearings - Subcommittee on Study of Monopoly Powers
Committee on the Judiciary
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2. 36 Minesota Law Review
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4. The Relationship between the Price Control Program and Other Federal and State Laws
by: R. V. Faragher
Fritz Heimann

5. Rubber, Chemicals and Drugs in the Pre-Freeze Period - Dec. 15, 1950 to January 26, 1951
by: George W. Strasser

6. The Problem of Coordinating Price & Wage Programs in 1950-1953 (See P. 518)
by: John H. Kaufmann

7. Administrative Histo y of the Economic Stabilization Agency under Administrator Alan Valentine Sept. 9, 1950 - Jan. 19, 1951 (pp. 12, 19, 26, 31, 44)
by: Marven H. Bernstein

Presidential Economic authorities folder

EXECUTIVE OFFICE OF THE PRESIDENT
BUREAU OF THE BUDGET
WASHINGTON, D.C. 20503

August 25, 1966

MEMORANDUM TO MR. JOSEPH A. CALIFANO, JR.

FROM John Robson JR

SUBJECT: Presidential Authorities

1. Attached is an interim memo I received from Justice last night. It's fairly broad and was given to me on the understanding that, in view of the time request, it would serve only as an interim survey pending completion of the more comprehensive review.

2. Briefly summarized, the memo:

   - confirms the President's authority to impose consumer credit controls under the "Trading With The Enemy Act";

   - confirms the President's authority to enter voluntary agreements or pledges with private business designed to stabilize prices;

   - upholds the President's power to withhold expenditures of appropriated funds within certain broad limits (the limits are not defined);

   - reviews certain powers of the President which bear indirectly on price or wage levels (for example, import and export controls, stockpile releases, federal procurement, etc.).

3. Since this is an interim memo which only outlines some of the areas, I recommend that transmission to the President await the more complete review which I am advised will be in my hands early next week.

Attachment

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Attachment

1966 AUG 25 PM 12 33

RECEIVED
JOE CALIFANO, JR.

STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

TO : Mr. John Robson
Bureau of the Budget

DATE: August 24, 1966

FROM : Martin F. Richman, First Assistant
Office of Legal Counsel
Department of Justice

SUBJECT:

Enclosed, pursuant to your request, is a brief memorandum touching upon certain areas of legal authority available to the President to aid in the emergency stabilization of prices, wages and credit. A fuller treatment will follow as soon as we can make a more comprehensive review of the general statutes which may bear on the problem.

Enclosure

MEMORANDUM

Re: Legal authority available to the President to aid in the emergency stabilization of prices, wages and credit.

This statement, prepared on an urgent basis, describes certain legal powers available to the President to aid in the emergency stabilization of prices, wages, and credit. There are a number of other complicated statutes relating to such matters as banks and banking, agricultural stabilization, labor-management, etc., the effectiveness of which is not contingent upon the existence of a state of national emergency or war, which we have not had sufficient time to analyze.

We are now reviewing those statutes and will provide a supplemental statement as quickly as possible.

1. Consumer Credit Restrictions.

Section 5(b) of the Trading with the Enemy Act

(50 U.S.C. App. 5(b)) authorizes the President, during a national emergency proclaimed by him, to "investigate, regulate, or prohibit, transfers of credit or payments between, by, through or to, any banking institution."

Pursuant to that authority, the Federal Reserve Board was directed to impose consumer credit controls during World War II (Executive Order No. 8843 of August 9, 1941). That directive, with certain interruptions imposed by Joint Resolutions, was in effect until May 7, 1952.

The President is empowered to exercise that authority anew at the present time since the state of national emergency proclaimed by President Truman on December 16, 1950 (Proclamation No. 2914) is still in effect. If he elects to do so, it is advisable that he issue a new Executive order, along the lines of Executive Order No. 8843, designating the agency (or agencies) to perform the functions involved, delegating authority, and prescribing general standards for the performance of those functions.

2. <u>Voluntary Agreements</u>.

Although the provisions of Section 708 of the Defense Production Act no longer provide authority for voluntary agreements between the President and private businesses designed to stabilize prices, such agreements may be negotiated by the President pursuant to the constitutional authority vested in him as the Chief Executive.

3. <u>Imports</u>.

It might be possible to increase imports into this country of articles with respect to which prices shall have increased too steeply.

For example, by Proclamation No. 3709 of March 31, 1966, the President took emergency action pursuant to Section 22 of the Agricultural Adjustment Act (7 U.S.C. 624) to increase the amount of cheddar cheese that could be imported into the United States during the remainder of the quota year ending June 30, 1966.

During a recent crisis involving a shortage of plywood for home construction, it was discovered that Japan had voluntarily restricted exports of plywood to the United States at the behest of our Government. If voluntary arrangements of this type exist as to other scarce or unreasonably priced articles, it might be possible to get the countries involved to suspend those voluntary restrictions.

If petroleum prices become exorbitant, the President can revise the import quotas imposed by Proclamation No. 3279, as amended.

4. Exports.

The Export Control Act (50 U.S.C. App. 2022) authorizes the use of export controls to, among other things, protect the domestic economy from excessive drain of scarce materials and to reduce inflationary impact of abnormal foreign demand.

Pursuant to this authority, restrictions have been placed on exports of copper and certain classes of hides.

5. Stockpiles.

Releases of materials from the National Stockpile pursuant to Section 5 of the Strategic and Critical Materials Stockpiling Act (50 U.S.C. 98d) or sales from that stockpile pursuant to Section 3(e) of that Act (50 U.S.C. 98b(e)) might serve as a restraint on inflationary prices. The prices of copper and aluminum have been held in check by this means.

The same is true with respect to the Supplemental Stockpile (Section 416(2) of the Agricultural Act of 1949 (7 U.S.C. 1431)), and the Defense Production Act Inventory (50 U.S.C. App. 2093(a)).

6. <u>Wage Disputes</u>.

The services of the National Mediation Board (45 U.S.C. 154), and Emergency Boards (45 U.S.C. 160) may be utilized in the effort to stabilize wages with respect to rail and air carriers.

The services of the Labor Department and the Federal Mediation and Conciliation Service (29 U.S.C. 172) may be used in other national labor disputes.

In addition, the President may, under his authority as Chief Executive, create special bodies to investigate or conciliate disputes.

7. <u>Procurement And Construction Contracts</u>.

The President may require that Federal procurement and construction contracts contain a provision restricting the amount by which wages may be increased with respect to persons performing employment in connection with those contracts. This would probably necessitate a suspension of the Walsh-Healey and Davis-Bacon Acts (41 U.S.C. 35-45 and

40 U.S.C. 276a, respectively), except to the extent such action would represent an exercise of the authority (limited to defense contracts) conferred by the Act of August 28, 1958 (50 U.S.C. 1431).

This would be somewhat comparable to the program which has been instituted with respect to Wage Board employees.

8. Curtailment of Federal Expenditure.

The President is, within certain broad limits, authorized to withhold expenditures of appropriated funds. This possibility was mentioned by the President at the signing of the N.A.S.A. Authorization Act, 1967 (Weekly Compilation of Presidential Documents, August 8, 1966, p. 1027).

9. Antitrust And Related Laws.

Neither the antitrust laws, the Federal Trade Commission Act, nor the comparable provisions of our agricultural laws provide significant promise of producing results in the immediate effort to stabilize prices. These statutes are designed to achieve long-range results based upon intensive investigations and involved legal proceedings.

Pres. Auth

THE DEFENSE PRODUCTION ACT

OF 1950, AS AMENDED

AUGUST 1, 1955

UNITED STATES OF AMERICA
OFFICE OF DEFENSE MOBILIZATION
WASHINGTON, D. C.

THE DEFENSE PRODUCTION ACT

OF 1950, AS AMENDED

AUGUST 1, 1955

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OFFICE OF DEFENSE MOBILIZATION
WASHINGTON, D. C.

EXPLANATORY NOTE

Roman type is used to indicate text preceding the 1953 Amendments, with the exception of titles II, IV, V, VI, and section 714 which are omitted because terminated in 1953 and no longer of current interest. Material which has been deleted by amendment in 1953 and 1955 is retained in the text, but is included in bold brackets **[ ]**. The 1953 Amendments appear in *italics.* The 1955 Amendments appear in ***bold italics.*** Footnote references appear for each of the 1953 and 1955 Amendments, and for deletions or additions provided by other acts.

PREPARED BY THE
GENERAL COUNSEL'S OFFICE
OFFICE OF DEFENSE MOBILIZATION

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[1] "And condemn" added by sec. 107, 1951 Amendments. Title II terminated at the close of June 30, 1953, by sec. 11, 1953 Amendments.
[2] Title IV terminated at the close of April 30, 1953, by sec. 11, 1953 Amendments.
[3] Title V terminated at the close of April 30, 1953, by sec. 11, 1953 Amendments.
[4] Title VI terminated at the close of June 30, 1953, by sec. 11, 1953 Amendments.

THE DEFENSE PRODUCTION ACT OF 1950, AS AMENDED [1]

AN ACT

To establish a system of priorities and allocations for materials and facilities, authorize the requisitioning thereof, provide financial assistance for expansion of productive capacity and supply, provide for price and wage stabilization, provide for the settlement of labor disputes, strengthen controls over credit, and by these measures facilitate the production of goods and services necessary for the national security, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act, divided into titles, may be cited as "the Defense Production Act of 1950".

SEC. 2. DECLARATION OF POLICY

[*In view of the present international situation and in order to provide for the national defense and national security our mobilization effort continues to require some diversion of certain materials and facilities from civilian use to military and related purposes. It also requires expansion of productive facilities beyond the levels needed to meet the civilian demand.* **]** [2]

In view of the present international situation and in order to provide for the national defense and national security, our mobilization effort continues to require some diversion of certain materials and facilities from civilian use to military and related purposes. It also requires the development of preparedness programs and the expansion of productive capacity and supply beyond the levels needed to meet the civilian demand, in order to reduce the time required for full mobilization in the event of an attack on the United States. [3]

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[1] Pub. Law 774, 81st Cong., Sept. 8, 1950, c. 932, 64 Stat. 798, 50 U. S. C. App. 2061–2166; Pub. Law 96, 82d Cong., July 31, 1951, c. 275, 65 Stat. 134, 50 U. S. C. App. 2061–2166; Pub. Law 429, 82d Cong., June 30, 1952, c. 530, 66 Stat. 296, 50 U. S. C. App. 2061–2166; Pub. Law 295, 84th Cong., Aug. 9, 1955, c. 655, 69 Stat. 580, 50 U. S. C. App. 2061–2166. The provisions of the 1955 Amendments took effect as of the close of July 31, 1955.

[2] Revised by sec. 2, 1953 Amendments.

[3] Revised by sec. 2, 1955 Amendments.

TITLE I—PRIORITIES AND ALLOCATION

SEC. 101. PRIORITIES AND ALLOCATIONS

[(a) The President is hereby authorized (1) to require that performance under contracts or orders (other than contracts of employment) which he deems necessary or appropriate to promote the national defense shall take priority over performance under any other contract or order, and, for the purpose of assuring such priority, to require acceptance and performance of such contracts or orders in preference to other contracts or orders by any person he finds to be capable of their performance, and (2) to allocate materials and facilities in such manner, upon such conditions, and to such extent as he shall deem necessary or appropriate to promote the national defense. No restriction, quota, or other limitation shall be placed upon the quantity of livestock which may be slaughtered or handled by any processor. Nor shall any restriction or other limitation be established or maintained upon the species, type, or grade of livestock killed by any slaughterer, nor upon the types of slaughtering operations, including religious rituals, employed by any slaughterer; nor shall any requirements or regulations be established or maintained relating to the allocation or distribution of meat or meat products unless, and for the period for which, the Secretary of Agriculture shall have determined and certified to the President that the over-all supply of meat and meat products is inadequate to meet the civilian or military needs therefor: *Provided*, That nothing in this Act shall be construed to prohibit the President from requiring the grading and grade marking of meat and meat products.

(b) When all requirements for the national security, for the stockpiling of critical and strategic materials, and for military assistance to any foreign nation authorized by any Act of Congress have been met through allocations and priorities it shall be the policy of the United States to encourage the maximum supply of raw materials for the civilian economy, including small business, thus increasing employment opportunities and minimizing inflationary pressures. No agreement shall be entered into by the United States limiting total United States consumption of any material unless such agreement authorizes domestic users in the United States to purchase the quantity of such material allocated to other countries participating in the International Materials Conference and not used by any such participating country. Nothing contained in this Act shall impair the authority of the President under this Act to exercise allocation and priorities controls over materials (both domestically produced and imported) and facilities through the controlled materials plan or other methods of allocation.]

(a) The President is hereby authorized (1) to require that performance under contracts or orders (other than contracts of employment) which he deems necessary or appropriate to promote the national defense shall take priority over performance under any other contract or order, and, for the purpose of assuring such priority, to require acceptance and performance of such contracts or orders in preference to other contracts or orders by any person he finds to be capable of their performance, and (2) to allocate materials and facilities in such manner, upon such conditions, and to such extent as he shall deem necessary or appropriate to promote the national defense.

(b) The powers granted in this section shall not be used to control the general distribution of any material in the civilian market unless the President finds (1) that such material is a scarce and critical material essential to the national defense, and (2) that the requirements of the national defense for such material cannot otherwise be met without creating a significant dislocation of the normal distribution of such material in the civilian market to such a degree as to create appreciable hardship.[1]

SEC. 102. HOARDING AND ACCUMULATING

In order to prevent hoarding, no person shall accumulate (1) in excess of the reasonable demands of business, personal, or home consumption, or (2) for the purpose of resale at prices in excess of prevailing market prices, materials which have been designated by the President as scarce materials or materials the supply of which would be threatened by such accumulation. The President shall order published in the Federal Register, and in such other manner as he may deem appropriate, every designation of materials the accumulation of which is unlawful and any withdrawal of such designation. In making such designations the President may prescribe such conditions with respect to the accumulation of materials in excess of the reasonable demands of business, personal, or home consumption as he deems necessary to carry out the objectives of this Act. This section shall not be construed to limit the authority contained in sections 101 and 704 of this Act.

SEC. 103. WILLFUL VIOLATION

Any person who willfully performs any act prohibited, or willfully fails to perform any act required, by the provisions of this title or any rule, regulation, or order thereunder, shall, upon conviction, be fined not more than $10,000 or imprisoned for not more than one year, or both.

[1] Revised by sec. 3, 1953 Amendments.

[SEC. 104. IMPORT CONTROLS]

[Import controls of fats and oils (including oil-bearing materials, fatty acids, and soap and soap powder, but excluding petroleum and petroleum products and coconuts and coconut products), peanuts, butter, cheese and other dairy products, and rice and rice products are necessary for the protection of the essential security interests and economy of the United States in the existing emergency in international relations, and imports into the United States of any such commodity or product, by types or varieties, shall be limited to such quantities as the Secretary of Agriculture finds would not (a) impair or reduce the domestic production of any such commodity or product below present production levels, or below such higher levels as the Secretary of Agriculture may deem necessary in view of domestic and international conditions, or (b) interfere with the orderly domestic storing and marketing of any such commodity or product, or (c) result in any unnecessary burden or expenditures under any Government price support program: *Provided, however*, That the Secretary of Agriculture after establishing import limitations, may permit additional imports of each type and variety of the commodities specified in the section, not to exceed 15 per centum of the import limitation with respect to each type and variety which he may deem necessary, taking into consideration the broad effects upon international relationships and trade. The President shall exercise the authority and powers conferred by this section.] [1]

[TITLE II—AUTHORITY TO REQUISITION AND CONDEMN]

NOTE.—Title *II* was terminated at the close of June 30, 1953, by sec. 11, 1953 Amendments.

TITLE III—EXPANSION OF PRODUCTIVE CAPACITY AND SUPPLY

SEC. 301. FINANCING THE EXPANSION

(a) In order to expedite production and deliveries or services under Government contracts, the President may authorize, subject to such regulations as he may prescribe, the Department of the Army, the Department of the Navy, the Department of the Air Force, the Department of Commerce, and such other agencies of the United States engaged in procurement for the national defense as he may designate (hereinafter referred to as "guaranteeing agencies"), without regard to provisions of law relating to the making, performance, amendment,

[1] Sec. added by sec. 101 (c), 1951 Amendments; revised by sec. 103, 1952 Amendments; terminated at the close of June 30, 1953, by sec. 11, 1953 Amendments.

or modification of contracts, to guarantee in whole or in part any public or private financing institution (including any Federal Reserve bank), by commitment to purchase, agreement to share losses, or otherwise, against loss of principal or interest on any loan, discount, or advance, or on any commitment in connection therewith, which may be made by such financing institution for the purpose of financing any contractor, subcontractor, or other person in connection with the performance [, or in connection with or in contemplation of the termination,] [1] of any contract or other operation deemed by the guaranteeing agency to be necessary to expedite production and deliveries or services under Government contracts for the procurement of materials or the performance of services for the national defense[.] [2], *or for the purpose of financing any contractor, subcontractor, or other person in connection with or in contemplation of the termination, in the interest of the United States, of any contract made for the national defense; but no small-business concern (as defined in section 714 (a) (1) of this Act) shall be held ineligible for the issuance of such a guaranty by reason of alternative sources of supply.*[3]

(b) Any Federal agency or any Federal Reserve bank, when designated by the President, is hereby authorized to act, on behalf of any guaranteeing agency, as fiscal agent of the United States in the making of such contracts of guarantee and in otherwise carrying out the purposes of this section. All such funds as may be necessary to enable any such fiscal agent to carry out any guarantee made by it on behalf of any guaranteeing agency shall be supplied and disbursed by or under authority from such guaranteeing agency. No such fiscal agent shall have any responsibility or accountability except as agent in taking any action pursuant to or under authority of the provisions of this section. Each such fiscal agent shall be reimbursed by each guaranteeing agency for all expenses and losses incurred by such fiscal agent in acting as agent on behalf of such guaranteeing agency, including among such expenses, notwithstanding any other provision of law, attorneys' fees and expenses of litigation.

(c) All actions and operations of such fiscal agents under authority of or pursuant to this section shall be subject to the supervision of the President, and to such regulations as he may prescribe; and the President is authorized to prescribe, either specifically or by maximum limits or otherwise, rates of interest, guarantee and commitment fees, and other charges which may be made in connection with loans, discounts, advances, or commitments guaranteed by the guaranteeing agencies through such fiscal agents, and to prescribe regulations gov-

[1] Deleted by sec. 4, 1953 Amendments.
[2] Period deleted by sec. 4, 1953 Amendments.
[3] Added by sec. 4, 1953 Amendments.

erning the forms and procedures (which shall be uniform to the extent practicable) to be utilized in connection with such guarantees.

(d) Each guaranteeing agency is hereby authorized to use for the purposes of this section any funds which have heretofore been appropriated or allocated or which hereafter may be appropriated or allocated to it, or which are or may become available to it, for such purposes or for the purpose of meeting the necessities of the national defense.

SEC. 302. LOANS TO PRIVATE ENTERPRISE

To expedite production and deliveries or services to aid in carrying out Government contracts for the procurement of materials or the performance of services for the national defense, the President may make provision for loans (including participations in, or guarantees of, loans) to private business enterprises (including research corporations not organized for profit) for the expansion of capacity, the development of technological processes, or the production of essential materials, including the exploration, development, and mining of strategic and critical metals and minerals, and manufacture of newsprint. Such loans may be made without regard to the limitations of existing law and on such terms and conditions as the President deems necessary, except that financial assistance may be extended only to the extent that it is not otherwise available on reasonable terms.

SEC. 303. PURCHASES AND COMMITMENTS TO PURCHASE

(a) To assist in carrying out the objectives of this Act, the President may make provision (1) for purchases of or commitments to purchase metals, minerals, and other materials, for Government use or resale; and (2) for the encouragement of exploration, development, and mining of critical and strategic minerals and metals: *Provided, however*, That purchases for resale under this subsection shall not include that part of the supply of an agricultural commodity which is domestically produced except insofar as such domestically produced supply may be purchased for resale for industrial uses or stockpiling, and no commodity purchased under this subsection shall be sold at less than the established ceiling price for such commodity (except that minerals and metals shall not be sold at less than the established ceiling price, or the current domestic market price, whichever is lower), or, if no ceiling price has been established, the higher of the following: (i) the current domestic market price for such commodity, or (ii) the minimum sale price established for agricultural commodities owned or controlled by the Commodity Credit Corporation as provided in section 407 of Public Law 439, Eighty-first Congress: *Provided further, however*, That no purchase or commitment to purchase any imported agricultural commodity shall be made calling for delivery more than one year after the expiration of this Act.

(b) Subject to the limitations in subsection (a), purchases and commitments to purchase and sales under such subsection may be made without regard to the limitations of existing law, for such quantities, and on such terms and conditions, including advance payments, and for such periods, but not extending beyond June 30, **[**1962**]** *1963*,[1] as the President deems necessary, except that purchases or commitments to purchase involving higher than established ceiling prices (or if there be no established ceiling prices, currently prevailing market prices) or anticipated loss on resale shall not be made unless it is determined that supply of the materials could not be effectively increased at lower prices or on terms more favorable to the Government, or that such purchases are necessary to assure the availability to the United States of overseas supplies.

(c) If the President finds—

(1) that under generally fair and equitable ceiling prices for any raw or nonprocessed material, there will result a decrease in supplies from high-cost sources of such material, and that the continuation of such supplies is necessary to carry out the objectives of the Act; or

(2) that an increase in cost of transportation is temporary in character and threatens to impair maximum production or supply in any area at stable prices of any materials,

he may make provision for subsidy payments on any such domestically produced material other than an agricultural commodity in such amounts and in such manner (including purchases of such material and its resale at a loss without regard to the limitations of existing law), and on such terms and conditions, as he determines to be necessary to insure that supplies from such high-cost sources are continued, or that maximum production or supply in such area at stable prices of such materials is maintained, as the case may be.

(d) The procurement power granted to the President by this section shall include the power to transport and store and have processed and refined, any materials procured under this section.

(e) When in his judgment it will aid the national defense, the President is authorized to install additional equipment, facilities, processes or improvements to plants, factories, and other industrial facilities owned by the United States Government, and to install government-owned equipment in plants, factories, and other industrial facilities owned by private persons.

(f) Notwithstanding any other provision of law to the contrary, metals, minerals, and materials acquired pursuant to the provisions of this section which, in the judgment of the President, are excess to the

[1] Changed by sec. 5, 1953 Amendments.

needs of programs under this Act, shall be transferred to the national stockpile established pursuant to the Act of June 7, 1939, as amended (50 U. S. C. 98–98h), when the President deems such action to be in the public interest.

Transfers made pursuant to this subsection shall be made without charge against or reimbursement from funds available under such Act of June 7, 1939, as amended, except that costs incident to such transfer other than acquisition costs shall be paid or reimbursed from such funds, and the acquisition costs of such metals, minerals, and materials transferred shall be deemed to be net losses incurred by the transferring agency and the notes payable issued to the Secretary of the Treasury representing the amounts thereof shall be canceled. Upon the cancellation of any such notes the aggregate amount of borrowing which may be outstanding at any one time under section 304 (b) of this Act, as amended, shall be reduced in an amount equal to the amount of any notes so cancelled.[1]

(g) When in his judgment it will aid the national defense, and upon a certification by the Secretary of Agriculture or the Secretary of the Interior that a particular strategic and critical material is likely to be in short supply in time of war or other national emergency, the President may make provision for the development of substitutes for such strategic and critical materials.[2]

SEC. 304. NEW AGENCIES; AUTHORITY TO BORROW

(a) For the purposes of sections 302 and 303, the President is hereby authorized to utilize such existing departments, agencies, officials, or corporations of the Government as he may deem appropriate, or to create new agencies (other than corporations).

(b) Any agency created under this section, and any department, agency, official, or corporation utilized pursuant to this section is authorized, subject to the approval of the President, to borrow from the Treasury of the United States, such sums of money as may be necessary to carry out its functions under sections 302 and 303: *Provided*, That the amount borrowed under the provisions of this section by all such borrowers shall not exceed an aggregate of $2,100,000,000 outstanding at any one time: *Provided further*, That when any contract, agreement, loan, or other transaction heretofore or hereafter entered into pursuant to section 302 or 303 imposes contingent liability upon the United States, such liability shall be considered for the purposes of sections 3679 and 3732 of the Revised Statutes, as amended, as an obligation only to the extent of the probable ultimate net cost to the United States under such transaction; and the President shall submit a report to the Congress not less often than once each quarter setting forth the gross amount of each such transaction entered into by any agency of the United States Government under this authority and the basis for determining the probable ultimate net cost to the United States thereunder. For the purpose of borrowing as authorized by this subsection, the borrower may issue to the Secretary of the Treasury its notes, debentures, bonds, or other obligations to be redeemable at its option before maturity in such manner as may be stipulated in such obligations. Such obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average rate on outstanding marketable obligations of the United States as of the last day of the month preceding the issuance of the obligations. The Secretary of the Treasury is authorized and directed to purchase such obligations and for such purpose the Secretary of the Treasury is authorized to use as a public-debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act, as amended, and the purposes for which securities may be issued under the Second Liberty Bond Act, as amended, are extended to include any purchases of obligations hereunder.

[1] Added by sec. 6, 1953 Amendments.
[2] Added by sec. 3, 1955 Amendments.

[TITLE IV—PRICE AND WAGE STABILIZATION]

NOTE.—Title IV terminated at the close of April 30, 1953, by sec. 11, 1953 Amendments.

[TITLE V—SETTLEMENT OF LABOR DISPUTES]

NOTE.—Title V terminated at the close of April 30, 1953, by sec. 11, 1953 Amendments.

[TITLE VI—CONTROL OF REAL ESTATE CREDIT]

NOTE.—Title VI terminated at the close of June 30, 1953, by sec. 11, 1953 Amendments.

TITLE VII—GENERAL PROVISIONS

SEC. 701. ENCOURAGEMENT OF SMALL-BUSINESS ENTERPRISES

(a) It is the sense of the Congress that small-business enterprises be encouraged to make the greatest possible contribution toward achieving the objectives of this Act.

(b) In order to carry out this policy—

(i) the President shall provide small-business enterprises with full information concerning the provisions of this Act relating to, or of benefit to, such enterprises and concerning the activities of the various departments and agencies under this Act;

(ii) such business advisory committees shall be appointed as shall be appropriate for purposes of consultation in the formulation of rules, regulations, or orders, or amendments thereto issued under authority of this Act, and in their formation there shall be fair representation for independent small, for medium, and for large business enterprises, for different geographical areas, for trade association members and nonmembers, and for different segments of the industry;

(iii) in administering this Act, such exemptions shall be provided for small-business enterprises as may be feasible without impeding the accomplishment of the objectives of this Act; and

(iv) in administering this Act, special provision shall be made for the expeditious handling of all requests, applications, or appeals from small-business enterprises.

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

[*(c) Whenever the President invokes the powers given him in this Act to allocate any material in the civilian market, he shall do so in such a manner as to make available, so far as practicable, for business and various segments thereof in the normal channel of distribution of such material, a fair share of the available civilian supply based, so far as practicable, on the share received by such business under normal conditions during a representative period following June 30, 1953: Provided, however, That the President shall from time to time give effect to the then current competitive position of established businesses as measured over a reasonable period of time, except as the same may result from Government controls under this or any other Act: Provided further, That the limitations and restrictions imposed on the production of specific items shall not exclude new concerns and newly acquired operations from a fair and reasonable share of total authorized production, and shall give due consideration to the needs of new concerns and newly acquired operations: Provided further, That if the President continues or reimposes allocation controls after June 30, 1953, in the civilian market of any materials subject to such controls on July 1, 1953, he shall do so in the manner above provided but on the basis of the share received by such business during a representative period preceding June 24, 1950, adjusted to reflect, since such date, attained competitive position, the requirements of new concerns and newly acquired operations.***]**[1]

(c) Whenever the President invokes the powers given him in this Act to allocate any material in the civilian market, he shall do so in such a manner as to make available, so far as practicable, for business and various segments thereof in the normal channel of distribution of such material, a fair share of the available civilian supply based, so far as practicable, on the share received by such business under normal conditions during a representative period preceding any future allocation of materials: Provided, That the President shall, in the allocation of materials in the civilian market, give due consideration to the needs of new concerns and newly acquired operations, undue hardships of individual businesses, and the needs of smaller concerns in an industry.[2]

(d) In order to further the objectives and purposes of this section, the Office of Defense Mobilization is directed to investigate the distribution of defense contracts with particular reference to the share of such contracts which has gone and is now going to small business, either directly or by subcontract; to review the policies, procedures, and administrative arrangements now being followed in order to increase participation by small business in the mobilization program; to explore all practical ways, whether by amendments to laws, policies, regulations, or administrative arrangements, or otherwise, to increase the share of defense procurement going to small business; to get from the departments and agencies engaged in procurement, and from other appropriate agencies including the Small Business Administration, their views and recommendations on ways to increase the share of procurement going to small business; and to make a report to the President and the Congress, not later than six months after the enactment of the Defense Production Act Amendments of 1955, which report shall contain the following: (i) a full statement of the steps taken by the Office of Defense Mobilization in making investigations required by this subsection; (ii) the findings of the Office of Defense Mobilization with respect to the share of procurement which has gone and is now going to small business; (iii) a full and complete statement of the actions taken by the Office of

[1] Revised by sec. 7, 1953 Amendments.
[2] Sec. (c) revised by sec. 4, 1955 Amendments.

Defense Mobilization and other agencies to increase such small business share; (iv) a full and complete statement of the recommendations made by the procurement agencies and other agencies consulted by the Office of Defense Mobilization; and (v) specific recommendations by the Office of Defense Mobilization for further action to increase the share of procurement going to small business.[1]

SEC. 702. DEFINITIONS

As used in this Act—

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

(b) The word "materials" shall include raw materials, articles, commodities, products, supplies, components, technical information, and processes.

(c) The word "facilities" shall not include farms, churches or other places of worship, or private dwelling houses.

[(d) The term "national defense" means the operations and activities of the armed forces, the Atomic Energy Commission, or any other Government department or agency directly or indirectly and substantially concerned with the national defense, or operations or activities in connection with the Mutual Defense Assistance Act of 1949, as amended.]

(d) The term "national defense" means programs for military and atomic energy production or construction, military assistance to any foreign nation, stockpiling, and directly related activity.[2]

(e) The words "wages, salaries, and other compensation" shall include all forms of remuneration to employees by their employers for personal services, including, but not limited to, vacation and holiday payments, night shift and other bonuses, incentive payments, year-end bonuses, employer contributions to or payments of insurance or welfare benefits, employer contributions to a pension fund or annuity, payments in kind, and premium overtime payments.

SEC. 703. DELEGATIONS; NEW AGENCIES

(a) Except as otherwise specifically provided, the President may delegate any power or authority conferred upon him by this Act to

[1] Sec. (d) added by sec. 5, 1955 Amendments.
[2] Revised by sec. 8, 1953 Amendments.

any officer or agency of the Government, including any new agency or agencies (and the President is hereby authorized to create such new agencies, other than corporate agencies, as he deems necessary), and he may authorize such redelegations by that officer or agency as the President may deem appropriate. The President is authorized to appoint heads and assistant heads of any such new agencies, and other officials therein of comparable status, and to fix their compensation, without regard to the Classification Act of 1949, as amended, the head of one such agency to be paid at a rate comparable to the compensation paid to the heads of executive departments of the Government, and other such heads, assistant heads, and officials at rates comparable to the compensation paid to the heads and assistant heads of independent agencies of the Government. Any officer or agency may employ civilian personnel for duty in the United States, including the District of Columbia, or elsewhere, without regard to section 14 of the Federal Employees Pay Act of 1946 (60 Stat. 219), as the President deems necessary to carry out the provisions of this Act.

(b) The head and assistant heads of any independent agency created to administer the authority conferred by title IV of this Act shall be appointed by the President, by and with the advice and consent of the Senate. There shall be included among the policy-making officers of each regional office administering the authority conferred by title IV of this Act a resident of each State served by such office whose governor requests such representation.

SEC. 704. ISSUANCE OF REGULATIONS

The President may make such rules, regulations, and orders as he deems necessary or appropriate to carry out the provisions of this Act. Any regulation or order under this Act may be established in such form and manner, may contain such classifications and differentiations, and may provide for such adjustments and reasonable exceptions as in the judgment of the President are necessary or proper to effectuate the purposes of this Act, or to prevent circumvention or evasion, or to facilitate enforcement of this Act, or any rule, regulation, or order issued under this Act. No rule, regulation, or order issued under this Act which restricts the use of natural gas (either directly, or by restricting the use of facilities for the consumption of natural gas, or in any other manner) shall apply in any State in which a public regulatory agency has authority to restrict the use of natural gas and certifies to the President that it is exercising that authority to the extent necessary to accomplish the objectives of this Act.

SEC. 705. OBTAINING INFORMATION

(a) The President shall be entitled, while this Act is in effect and for a period of two years thereafter, by regulation, subpena, or otherwise, to obtain such information from, require such reports and the keeping of such records by, make such inspection of the books, records, and other writings, premises or property of, and take the sworn testimony of, and administer oaths and affirmations to, any person as may be necessary or appropriate, in his discretion, to the enforcement or the administration of this Act and the regulations or orders issued thereunder. The President shall issue regulations insuring that the authority of this subsection will be utilized only after the scope and purpose of the investigation, inspection, or inquiry to be made have been defined by competent authority, and it is assured that no adequate and authoritative data are available from any Federal or other responsible agency. In case of contumacy by, or refusal to obey a subpena served upon, any person referred to in this subsection, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the President, shall have jurisdiction to issue an order requiring such person to appear and give testimony or to appear and produce documents, or both; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(b) No person shall be excused from complying with any requirement under this section or from attending and testifying or from producing books, papers, documents, and other evidence in obedience to a subpena before any grand jury or in any court or administrative proceeding based upon or growing out of any alleged violation of this Act on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to penalty or forfeiture; but no natural person shall be prosecuted or subjected to any penalty or forfeiture in any court, for or on account of any transaction, matter, or thing concerning which he is so compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that such natural person so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying: *Provided*, That the immunity granted herein from prosecution and punishment and from any penalty or forfeiture shall not be construed to vest in any individual any right to priorities assistance, to the allocation of materials, or to any other benefit which is within the power of the President to grant under any provision of this Act.

(c) The production of a person's books, records, or other documentary evidence shall not be required at any place other than the place where such person usually keeps them, if, prior to the return date specified in the regulations, subpena, or other document issued with respect thereto, such person furnishes the President with a true copy of such books, records, or other documentary evidence (certified by such person under oath to be a true and correct copy) or enters into a stipulation with the President as to the information contained in such books, records, or other documentary evidence. Witnesses shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

(d) Any person who willfully performs any act prohibited or willfully fails to perform any act required by the above provisions of this section, or any rule, regulation, or order thereunder, shall upon conviction be fined not more than $1,000 or imprisoned for not more than one year or both.

(e) Information obtained under this section which the President deems confidential or with reference to which a request for confidential treatment is made by the person furnishing such information shall not be published or disclosed unless the President determines that the withholding thereof is contrary to the interest of the national defense, and any person willfully violating this provision shall, upon conviction, be fined not more than $10,000, or imprisoned for not more than one year, or both.

All information obtained by the Office of Price Stabilization under this section 705, as amended, and not made public prior to April 30, 1953, shall be deemed confidential and shall not be published or disclosed, either to the public or to another Federal agency except the Congress or any duly authorized committee thereof, and except the Department of Justice for such use as it may deem necessary in the performance of its functions, unless the President determines that the withholding thereof is contrary to the interests of the national defense, and any person willfully violating this provision shall, upon conviction, be fined not more than $10,000 or imprisoned for not more than one year, or both.[1]

(f) Any person subpenaed under this section shall have the right to make a record of his testimony and to be represented by counsel.

SEC. 706. INJUNCTIONS; VENUE; SERVICE OF PROCESS

(a) Whenever in the judgment of the President any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of this Act, he may make application to the appropriate court for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, and upon a showing by the President that such person has engaged or is about to engage in any such acts or practices a perma-

[1] Added by sec. 9, 1953 Amendments.

nent or temporary injunction, restraining order, or other order, with or without such injunction or restraining order, shall be granted without bond.

(b) The district courts of the United States and the United States courts of any Territory or other place subject to the jurisdiction of the United States shall have jurisdiction of violations of this Act or any rule, regulation, order, or subpena thereunder, and of all civil actions under this Act to enforce any liability or duty created by, or to enjoin any violation of, this Act or any rule, regulation, order, or subpena thereunder. Any criminal proceeding on account of any such violation may be brought in any district in which any act, failure to act, or transaction constituting the violation occurred. Any such civil action may be brought in any such district or in the district in which the defendant resides or transacts business. Process in such cases, criminal or civil, may be served in any district wherein the defendant resides or transacts business or wherever the defendant may be found; the subpena for witnesses who are required to attend a court in any district in such case may run into any other district. The termination of the authority granted in any title or section of this Act, or of any rule, regulation, or order issued thereunder, shall not operate to defeat any suit, action, or prosecution, whether theretofore or thereafter commenced, with respect to any right, liability, or offense incurred or committed prior to the termination date of such title or of such rule, regulation, or order. No costs shall be assessed against the United States in any proceeding under this Act. All litigation arising under this Act or the regulations promulgated thereunder shall be under the supervision and control of the Attorney General.

SEC. 707. EXCULPATORY PROVISION

No person shall be held liable for damages or penalties for any act or failure to act resulting directly or indirectly from compliance with a rule, regulation, or order issued pursuant to this Act notwithstanding that any such rule, regulation, or order shall thereafter be declared by judicial or other competent authority to be invalid. No person shall discriminate against orders or contracts to which priority is assigned or for which materials or facilities are allocated under title I of this Act or under any rule, regulation, or order issued thereunder, by charging higher prices or by imposing different terms and conditions for such orders or contracts than for other generally comparable orders or contracts, or in any other manner.

SEC. 708. VOLUNTARY AGREEMENTS

(a) The President is authorized to consult with representatives of industry, business, financing, agriculture, labor, and other interests,

with a view to encouraging the making by such persons with the approval by the President of voluntary agreements and programs to further the objectives of this Act.

(b) No act or omission to act pursuant to this Act which occurs while this Act is in effect, if requested by the President pursuant to a voluntary agreement or program approved under subsection (a) and found by the President to be in the public interest as contributing to the national defense shall be construed to be within the prohibition of the antitrust laws or the Federal Trade Commission Act of the United States***: "Provided, however, That after the enactment of the Defense Production Act Amendments of 1955, the exemption from the prohibitions of the antitrust laws and the Federal Trade Commission Act of the United States shall apply only (1) to acts and omissions to act requested by the President or his duly authorized delegate pursuant to duly approved voluntary agreements or programs relating solely to the exchange between actual or prospective contractors of technical or other information, production techniques, and patents or patent rights, relating to equipment used primarily by or for the military which is being procured by the Department of Defense or any department thereof, and the exchange of materials, equipment, and personnel to be used in the production of such equipment; and (2) to acts and omissions to act requested by the President or his duly authorized delegate pursuant to voluntary agreements or programs which were duly approved under this section before the enactment of the Defense Production Act Amendments of 1955. The Attorney General shall review each of the voluntary agreements and programs covered by this section, and the activities being carried on thereunder, and, if he finds, after such review and after consultation with the Director of the Office of Defense Mobilization and other interested agencies, that the adverse effects of any such agreement or program on the competitive free enterprise system outweigh the benefits of the agreement or program to the national defense, he shall withdraw his approval in accordance with subsection (d) of this section. This review and determination shall be made within ninety days after the enactment of the Defense Production Act Amendments of 1955.***[1]

A copy of each such request intended to be within the coverage of this section, and any modification or withdrawal thereof, shall be furnished to the Attorney General and the Chairman of the Federal Trade Commission when made, and it shall be published in the Federal Register unless publication thereof would, in the opinion of the President, endanger the national security.

[1] **Added by sec. 6 (1), 1955 Amendments.**

(c) The authority granted in subsection (b) shall be delegated only (1) to officials who shall for the purpose of such delegation be required to be appointed by the President by and with the advice and consent of the Senate, unless otherwise required to be so appointed, and (2) upon the condition that such officials consult with the Attorney General and with the Chairman of the Federal Trade Commission not less than ten days before making any request or finding thereunder, and (3) upon the condition that such officials obtain the approval of the Attorney General to any request thereunder before making the request. For the purpose of carrying out the objectives of title I of this Act, the authority granted in subsection (b) of this section shall not be delegated except to a single official of the Government.

(d) Upon withdrawal of any request or finding made hereunder, ***or upon withdrawal by the Attorney General of his approval of the voluntary agreement or program on which the request or finding is based,***[1] the provisions of this section shall not apply to any subsequent act or omission to act by reason of such finding or request.

(e) The Attorney General is directed to make, or request the Federal Trade Commission to make for him, surveys for the purpose of determining any factors which may tend to eliminate competition, create or strengthen monopolies, injure small business, or otherwise promote undue concentration of economic power in the course of the administration of this Act. ***Such surveys, and the reports hereafter required, shall include studies of the voluntary agreements and programs authorized by this section.***[2] The Attorney General shall submit to the Congress and the President within ninety days after the approval of this Act, and ⟦at such times thereafter as he deems desirable,⟧[3] **at least once every three months,**[4] reports setting forth the results of such surveys and including such recommendations as he may deem desirable.

(f) After the date of enactment of the Defense Production Act Amendments of 1952, no voluntary program or agreement for the control of credit shall be approved or carried out under this section.

SEC. 709. STATEMENTS OF CONSIDERATION

The functions exercised under this Act shall be excluded from the operation of the Administrative Procedure Act (60 Stat. 237) except as to the requirements of section 3 thereof. Any rule, regulation, or order, or amendment thereto, issued under authority of this Act shall be accompanied by a statement that in the formulation thereof there

[1] Added by sec. 6 (2), 1955 Amendments.
[2] Added by sec. 6 (3), 1955 Amendments.
[3] Deleted by sec. 6 (4), 1955 Amendments.
[4] Added by sec. 6 (4), 1955 Amendments.

has been consultation with industry representatives, including trade association representatives, and that consideration has been given to their recommendations, or that special circumstances have rendered such consultation impracticable or contrary to the interest of the national defense, but no such rule, regulation, or order shall be invalid by reason of any subsequent finding by judicial or other authority that such a statement is inaccurate.

SEC. 710. SUPER GRADES; CONSULTANTS; SPECULATION

⟦(a) The President, to the extent he deems it necessary and appropriate in order to carry out the provisions of this Act, is authorized to place positions and employ persons temporarily in grades 16, 17, and 18 of the General Schedule established by the Classification Act of 1949, and such positions shall be additional to the number authorized by section 505 of that Act.⟧[1]

⟦(b) The President is further authorized, to the extent he deems it necessary and appropriate in order to carry out the provisions of this Act, and subject to such regulations as he may issue, to employ persons of outstanding experience and ability without compensation; and he is authorized to provide by regulation for the exemption of such persons from the operation of sections 281, 283, 284, 434, and 1914 of title 18 of the United States Code and section 190 of the Revised Statutes (5 U. S. C. 99). Persons appointed under the authority of this subsection may be allowed transportation and not to exceed $15 per diem in lieu of subsistence while away from their homes or regular places of business pursuant to such appointment.⟧

(b) (1) The President is further authorized, to the extent he deems it necessary and appropriate in order to carry out the provisions of this Act, and subject to such regulations as he may issue, to employ persons of outstanding experience and ability without compensation;

(2) The President shall be guided in the exercise of the authority provided in this subsection by the following policies:

(i) So far as possible, operations under the Act shall be carried on by full-time, salaried employees of the Government, and appointments under this authority shall be to advisory or consultative positions only.

(ii) Appointments to positions other than advisory or consultative may be made under this authority only when the requirements of the position are such that the incumbent must personally possess outstanding experience and ability not obtainable on a full-time, salaried basis.

[1] Repealed by sec. 505 (c) (1) of the Act of June 28, 1955 (69 Stat. 180).

(iii) In the appointment of personnel and in assignment of their duties, the head of the department or agency involved shall take steps to avoid, to as great an extent as possible, any conflict between the governmental duties and the private interests of such personnel.

(3) Appointees under this subsection (b) shall, when policy matters are involved, be limited to advising appropriate full-time salaried Government officials who are responsible for making policy decisions.

(4) Any person employed under this subsection (b) is hereby exempted, with respect to such employment, from the operation of sections 281, 283, 284, 434, and 1914 of title 18, United States Code, and section 190 of the Revised Statutes (5 U. S. C. 99), except that—

(i) exemption hereunder shall not extend to the negotiation or execution, by such appointee, of Government contracts with the private employer of such appointee or with any corporation, joint stock company, association, firm, partnership, or other entity in the pecuniary profits or contracts of which the appointee has any direct or indirect interest;

(ii) exemption hereunder shall not extend to making any recommendation or taking any action with respect to individual applications to the Government for relief or assistance, on appeal or otherwise, made by the private employer of the appointee or by any corporation, joint stock company, association, firm, partnership, or other entity in the pecuniary profits or contracts of which the appointee has any direct or indirect interest;

(iii) exemption hereunder shall not extend to the prosecution by the appointee, or participation by the appointee in any fashion in the prosecution, of any claims against the Government involving any matter concerning which the appointee had any responsibility during his employment under this subsection, during the period of such employment and the further period of two years after the termination of such employment; and

(iv) exemption hereunder shall not extend to the receipt or payment of salary in connection with the appointee's Government service hereunder from any source other than the private employer of the appointee at the time of his appointment hereunder.

(5) Appointments under this subsection (b) shall be supported by written certification by the head of the employing department or agency—

(i) that the appointment is necessary and appropriate in order to carry out the provisions of the Act;

(ii) that the duties of the position to which the appointment is being made require outstanding experience and ability;

(iii) that the appointee has the outstanding experience and ability required by the position; and

(iv) that the department or agency head has been unable to obtain a person with the qualifications necessary for the position on a full-time, salaried basis.

(6) The heads of the departments or agencies making appointments under this subsection (b) shall file with the Division of the Federal Register for publication in the Federal Register a statement including the name of the appointee, the employing department or agency, the title of his position, and the name of his private employer, and the appointee shall file with such Division for publication in the Federal Register a statement listing the names of any corporations of which he is an officer or director or within 60 days preceding his appointment has been an officer or director, or in which he owns, or within 60 days preceding his appointment has owned, any stocks, bonds, or other financial interests, and the names of any partnerships in which he is, or was within 60 days preceding his appointment, a partner, and the names of any other businesses in which he owns, or within such 60 day period has owned, any similar interest. At the end of each succeeding six-month period, the appointee shall file with such Division for publication in the Federal Register a statement showing any changes in such interests during such period.

(7) At least once every three months the Chairman of the United States Civil Service Commission shall survey appointments made under this subsection and shall report his findings to the President and the Joint Committee on Defense Production and make such recommendations as he may deem proper.

(8) Persons appointed under the authority of this subsection may be allowed transportation and not to exceed \$15 per diem in lieu of subsistence while away from their homes or regular places of business pursuant to such appointment.[1]

(c) The President is authorized, to the extent he deems it necessary and appropriate in order to carry out the provisions of this Act to employ experts and consultants or organizations thereof, as authorized by section 55a of title 5 of the United States Code. Individuals so employed may be compensated at rates not in excess of \$50 per diem and while away from their homes or regular places of business they may be allowed transportation and not to exceed \$15 per diem in lieu

[1] Revised by sec. 7, 1955 Amendments.

of subsistence and other expenses while so employed. The President is authorized to provide by regulation for the exemption of such persons from the operation of sections 281, 283, 284, 434, and 1914 of title 18 of the United States Code and section 190 of the Revised Statutes (5 U. S. C. 99).

(d) The President may utilize the services of Federal, State, and local agencies and may utilize and establish such regional, local, or other agencies, and utilize such voluntary and uncompensated services, as may from time to time be needed; and he is authorized to provide by regulation for the exemption of persons whose services are utilized under this subsection from the operation of sections 281, 283, 284, 434, and 1914 of title 18 of the United States Code and section 190 of the Revised Statutes (5 U. S. C. 99).

(e) The President is further authorized to provide for the establishment and training of a nucleus executive reserve for employment in executive positions in Government during periods of emergency. Members of this executive reserve who are not full-time Government employees may be allowed transportation and not to exceed $15 per diem in lieu of subsistence while away from their homes or regular places of business for the purpose of participating in the executive reserve training program. The President is authorized to provide by regulation for the exemption of such persons who are not full-time Government employees from the operation of sections 281, 283, 284, 434, and 1914 of title 18 of the United States Code and section 190 of the Revised Statutes (5 U. S. C. 99).[1]

[(e)][2] *(f)* Whoever, being an officer or employee of the United States or any department or agency thereof (including any Member of the Senate or House of Representatives), receives, by virtue of his office or employment, confidential information, and (1) uses such information in speculating directly or indirectly on any commodity exchange, or (2) discloses such information for the purpose of aiding any other person so to speculate, shall be fined not more than $10,000 or imprisoned not more than one year, or both. As used in this section, the term "speculate" shall not include a legitimate hedging transaction, or a purchase or sale which is accompanied by actual delivery of the commodity.

[(f)][3] *(g)* The President, when he deems such action necessary, may make provision for the printing and distribution of reports, in such number and in such manner as he deems appropriate, concerning the actions taken to carry out the objectives of this Act.

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[1] New subsection (e) added by sec. 8, 1955 Amendments.
[2] Redesignated as subsection (f) by sec. 8, 1955 Amendments.
[3] Redesignated as subsection (g) by sec. 8, 1955 Amendments.

SEC. 711. APPROPRIATIONS

There are hereby authorized to be appropriated such sums as may be necessary and appropriate for the carrying out of the provisions and purposes of this Act by the President and such agencies as he may designate or create. Funds made available for the purposes of this Act may be allocated or transferred for any of the purposes of this Act, with the approval of the Bureau of the Budget, to any agency designated to assist in carrying out this Act. Funds so allocated or transferred shall remain available for such period as may be specified in the Acts making such funds available.

SEC. 712. JOINT CONGRESSIONAL COMMITTEE ON DEFENSE PRODUCTION

(a) There is hereby established a joint congressional committee to be known as the Joint Committee on Defense Production (hereinafter referred to as the committee), to be composed of ten members as follows:

(1) Five members who are members of the Committee on Banking and Currency of the Senate, three from the majority and two from the minority party, to be appointed by the chairman of the committee; and

(2) Five members who are members of the Committee on Banking and Currency of the House of Representatives, three from the majority and two from the minority party, to be appointed by the chairman of the committee.

A vacancy in the membership of the committee shall be filled in the same manner as the original selection. The committee shall elect a chairman and a vice chairman from among its members, one of whom shall be a member of the Senate and the other a member of the House of Representatives.

(b) It shall be the function of the Committee to make a continuous study of the programs and of the fairness to consumers of the prices authorized by this Act and to review the progress achieved in the execution and administration thereof. Upon request, the committee shall aid the standing committees of the Congress having legislative jurisdiction over any part of the programs authorized by this Act; and it shall make a report to the Senate and the House of Representatives, from time to time, concerning the results of its studies, together with such recommendations as it may deem desirable. Any department, official, or agency administering any of such programs shall, at the request of the committee, consult with the committee, from time to time, with respect to their activities under this Act.

(c) The committee, or any duly authorized subcommittee thereof, is authorized to hold such hearings, to sit and act at such times and places, to require by subpena (to be issued under the signature of the chairman or vice chairman of the committee) or otherwise the attendance of such witnesses and the production of such books, papers, and documents, to administer such oaths, to take such testimony, to procure such printing and binding, and to make such expenditures as it deems advisable. The cost of stenographic services to report such hearings shall not be in excess of [25] [1] *40* cents per hundred words. The provisions of sections 102 to 104, inclusive, of the Revised Statutes shall apply in case of any failure of any witness to comply with any subpena or to testify when summoned under authority of this subsection.

(d) The committee is authorized to appoint and, without regard to the Classification Act of 1949, as amended, fix the compensation of such experts, consultants, technicians, and organizations thereof, and clerical and stenographic assistants as it deems necessary and advisable.

(e) The expenses of the committee under this section, which shall not exceed [$50,000] [2] ***$65,000*** in any fiscal year, shall be paid one-half from the contingent fund of the Senate and one-half from the contingent fund of the House of Representatives upon vouchers signed by the chairman or vice chairman. Disbursements to pay such expenses shall be made by the Clerk of the House of Representatives out of the contingent fund of the House of Representatives, such contingent fund to be reimbursed from the contingent fund of the Senate in the amount of one-half of disbursements so made without regard to any other provision of law.

SEC. 713. TERRITORIAL APPLICABILITY

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

[SEC. 714. SMALL DEFENSE PLANTS ADMINISTRATION]

NOTE.—Sec. 714 of the Act, and all authority conferred thereunder, terminated at the close of July 31, 1953. For purposes of sec. 301 (a) of this Act, sec. 714 (a) (1) defined a small-business concern thusly: ". . . a small-business concern shall be deemed to be one which is independently owned and operated and which is not dominant in its field of operation," and provided that, "The Administration, in making a detailed definition, may use these criteria, among others: independency of ownership and operation, number of employees, dollar volume of business, and nondominance in its field."

[1] Changed by sec. 9, 1955 Amendments.
[2] Changed by sec. 9, 1955 Amendments.

SEC. 715. SAVING PROVISION

If any provision of this Act or the application of such provision to any person or circumstances shall be held invalid, the remainder of the Act, and the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

SEC. 716. STRIKES AGAINST GOVERNMENT

That no person may be employed under this Act who engages in a strike against the Government of the United States or who is a member of an organization of Government employees that asserts the right to strike against the Government of the United States, or who advocates, or who is a member of an organization that advocates, the overthrow of the Government of the United States by force or violence: *Provided*, That for the purposes hereof an affidavit shall be considered prima facie evidence that the person making the affidavit has not contrary to the provisions of this section engaged in a strike against the Government of the United States, is not a member of an organization of Government employees that asserts the right to strike against the Government of the United States or that such person does not advocate, and is not a member of an organization that advocates, the overthrow of the Government of the United States by force or violence: *Provided further*, That any person who engages in a strike against the Government of the United States or who is a member of an organization of Government employees that asserts the right to strike against the Government of the United States, or who advocates, or who is a member of an organization that advocates, the overthrow of the Government of the United States by force or violence and accepts employment the salary or wages for which are paid from any appropriation or fund contained in this Act shall be guilty of a felony and, upon conviction, shall be fined not more than $1,000 or imprisoned for not more than one year, or both: *Provided further*, That the above penalty clause shall be in addition to, and not in substitution for, any other provisions of existing law.

SEC. 717. TERMINATION

[(a) Titles I, II, III, VI, and VII of this Act and all authority conferred thereunder shall terminate at the close of June 30, 1953; and titles IV and V of this Act and all authority conferred thereunder shall terminate at the close of April 30, 1953.]

(a) Title I (except section 104), title III, and title VII (except section 714) of this Act, and all authority conferred thereunder, shall terminate at the close of [June 30, 1955] [July 31, 1955] [1] ***June 30,***

[1] "June 30, 1955" was changed to July 31, 1955, by sec. 5 of the Act of June 30, 1955 (69 Stat. 225).

1956.[1] *Section 714 of this Act, and all authority conferred thereunder shall terminate at the close of July 31, 1953. Section 104, title II, and title VI of this Act, and all authority conferred thereunder shall terminate at the close of June 30, 1953. Title IV and V of this Act, and all authority conferred thereunder, shall terminate at the close of April 30, 1953.*

(*b*) Notwithstanding the foregoing—

(1) The Congress by concurrent resolution or the President by proclamation may terminate this Act prior to the termination otherwise provided therefor.

(2) The Congress may also provide by concurrent resolution that any section of this Act and all authority conferred thereunder shall terminate prior to the termination otherwise provided therefor.

(3) Any agency created under this Act may be continued in existence for purposes of liquidation for not to exceed six months after the termination of the provision authorizing the creation of such agency.

(*c*) The termination of any section of this Act, or of any agency or corporation utilized under this Act, shall not affect the disbursement of funds under, or the carrying out of, any contract, guarantee, commitment or other obligation entered into pursuant to this Act prior to the date of such termination, or the taking of any action necessary to preserve or protect the interests of the United States in any amounts advanced or paid out in carrying on operations under this Act**[.]**[2], *or the taking of any action (including the making of new guarantees) deemed by a guaranteeing agency to be necessary to accomplish the orderly liquidation, adjustment or settlement of any loans guaranteed under this Act, including actions deemed necessary to avoid undue hardship to borrowers in reconverting to normal civilian production; and all of the authority granted to the President, guaranteeing agencies, and fiscal agents, under section 301 of this Act shall be applicable to actions taken pursuant to the authority contained in this subsection.*

Notwithstanding any other provision of this Act, the termination of title VI or any section thereof shall not be construed as affecting any obligation, condition, liability, or restriction arising out of any agreement heretofore entered into pursuant to, or under the authority of, section 602 or section 605 of this Act, or any issuance thereunder, by any person or corporation and the Federal Government or any agency thereof relating to the provision of housing for defense workers or military personnel in an area designated as a critical defense housing area pursuant to law.[3]

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[1] Revised by sec. 10, 1955 Amendments.
[2] Deleted by sec. 12, 1953 Amendments.
[3] Sentence added by sec. 20 of the Act of June 30, 1953 (67 Stat. 126).

(*d*) No action for the recovery of any cooperative payment made to a cooperative association by a Market Administrator under an invalid provision of a milk marketing order issued by the Secretary of Agriculture pursuant to the Agricultural Marketing Agreement Act of 1937 shall be maintained unless such action is brought by producers specifically named as party plaintiffs to recover their respective share of such payments within ninety days after the date of enactment of the Defense Production Act Amendments of 1952 with respect to any cause of action heretofore accrued and not otherwise barred, or within ninety days after accrual with respect to future payments, and unless each claimant shall allege and prove (1) that he objected at the hearing to the provisions of the order under which such payments were made and (2) that he either refused to accept payments computed with such deduction or accepted them under protest to either the Secretary or the Administrator. The district courts of the United States shall have exclusive original jurisdiction of all such actions regardless of the amount involved. This subsection shall not apply to funds held in escrow pursuant to court order. Notwithstanding any other provision of this Act, no termination date shall be applicable to this subsection.

U. S. GOVERNMENT PRINTING OFFICE: 1955

Presidential Authorities

August 10, 1966

Don Bull / Fed /

MEMORANDUM FOR JOE CALIFANO

FROM: John Robson

SUBJECT: Presidential Authorities Related to OEP

Attached is a memo from Gov. Bryant's office. In summary the memo says:

1. The President has no present authority to control prices or wages. He does have authority under the Defense Production Act of 1950 (now delegated to the OEP) to exercise controls over production and distribution of strategic goods and services.

2. The OEP has standby legislation prepared covering direct price-wage controls. The memo raises the question whether price controls can be sustained constitutionally other than under Congress' war power. (They did it in Korea so I would think so. However, I'm having this checked at Justice).

3. Gov. Bryant recommends a program of corresponding each department and agency head to ask what they can do for economic stabilization.

Attachment

AUG 8 1966

MEMORANDUM FOR THE DIRECTOR

SUBJECT: Presidential Authorities

DIRECT CONTROLS FOR WHICH THERE IS NO STATUTORY AUTHORITY

There is no existing authority applicable to the current situation for direct controls on credit, prices, wages, and rents.

Under section 301 of Executive Order 11051, the Director of the Office of Emergency Planning has the "primary responsibility" for developing the emergency planning in "economic stabilization." Under section 303 of the same Executive Order, the Director of OEP has the following responsibility:

> "The Director shall provide for the prompt exercise of Federal emergency authority through the advance preparation of such proposed legislation, Executive orders, rules, regulations, and directives as would be necessary to put into effect operating programs appropriate to the emergency situation."

In accordance with the above responsibilities, there is an Economic Stabilization Division in OEP's Resource Readiness Office, and the OEP Legal Adviser's Office has worked with that division in its emergency planning. Moreover, the draft "Defense Resources Act," which is part of the ODR planning, has been prepared with the following XIII titles:

Title I	Priorities and Allocations
Title II	Authority to Requisition and Condemn
Title III	Expansion of Productive Capacity and Supply
Title IV	Emergency Contracting Authority
Title V	Plant Seizure
Title VI	Emergency Foreign Assistance
Title VII	Price and Wage Stabilization
Title VIII	Control of Consumer and Real Estate Credit
Title IX	Civilian Manpower
Title X	Settlement of Labor Didputes
Title XI	Censorship of Communications
Title XII	Emergency Federal Financing
Title XIII	General Provisions

The theory of the above draft bill is to cover in one piece of legislation all known programs that are to operate in an emergency. The entire bill can be introduced, or specific titles may be introduced to support specific programs.

DIRECT CONTROLS FOR WHICH THERE IS STATUTORY AUTHORITY

The most important statutory authority in the fields of materials, production, and procurement is the Defense Production Act of 1950. Under that existing authority, it is possible for the President to operate a homogeneous and effective system of controls over the production and distribution of goods. Necessary action in the field of resources can, therefore, be based upon adequate statutory authority without additional legislation.

The President's functions under the Defense Production Act of 1950 have been delegated to the Director of the Office of Emergency Planning by Executive Orders 10480 and 11051. The first section of Executive Order 10480 specifically provides as follows:

> "Every officer and agency of the Government having functions under the Defense Production Act of 1950, as amended, delegated, redelegated, or otherwise assigned thereto by or under the authority of the President after the date of this order (whether heretofore or hereafter acquired, or acquired by this order) shall perform the said functions subject to the direction and control of the Director of the Office of Emergency Planning."

(Originally, direct controls on credit, prices and wages were contained in Titles IV and VI of the Defense Production Act, but those titles expired in 1953).

The above described controls under the Defense Production Act of 1950 are for the purpose of assuring that the Department of Defense will have all the materials it needs, the defense supporting industries will have all the materials they need, and the civilian economy will have all that is essential for its needs. These controls may incidentally affect economic stabilization, but they are important to the national defense primarily.

INDIRECT CONTROLS

Some examples of a third category, indirect controls, follow:

1. The Federal Reserve System may be used to restrict or encourage credit.

2. The Federal Home Loan Bank System provides credit reserves for savings and home-financing institutions and regulates Federal Savings and Loan Associations, and the interest rates on accounts.

3. Another statute of importance is the Export Control Act which gives the President the authority to prohibit or curtail exports of materials or supplies, and the financing, transporting, and other servicing of exports. Conversely, the Trade Expansion Act of 1962 gives the President broad authority with regard to the control of imports.

4. The Trading with the Enemy Act may be used for the regulation of foreign exchange or transactions in which a foreign country or person has an interest.

5. The formulation and execution of domestic and international tax policies are constantly under study at the Treasury Department.

6. The Interstate Commerce Commission promotes sound economic conditions in the transportation services of the common carriers within its jurisdiction. It can prescribe rates, fares, and charges.

7. The Securities and Exchange Act of 1934, as ammended, authorizes the SEC, with the approval of the President, summarily to suspend all trading on any national securities exchange for a period not exceeding ninety days.

8. The "Agricultural Stabilization and Conservation Service" of the Department of Agriculture administers price supports, marketing quotas, acreage allotments, and the Department has other controls over agricultural industries.

9. The Department of the Interior has economic research functions. It conducts special studies in natural resource economics, public works, investment and returns, and maintains liaison with the Council of Economic Advisers. Since one of the objectives of the Department of the Interior is to assure adequate resource development in order to meet the requirements of national security and an expanding national economy, it is in a position to affect certain major industries for purposes of economic stabilization; for example, the minerals, solid fuels, oil, gas, and coal industries.

10. The Business and Defense Services Administration of the Department of Commerce administers programs which are executed by 26 business and industry divisions. These divisions are grouped by related industries into seven offices, the titles of which suggest their significance: Marketing and Services, Chemicals and Consumer Products, Industrial Equipment, Metals and Minerals, Scientific and Technical Equipment, Construction and Materials Industries, and Textiles. A series of control steps could be considered by BDSA.

RECOMMENDATIONS

1. If the President determines that direct controls on credit, prices, wages, and rents are necessary, I would recommend that authority to issue a price and wage freeze, to establish consumer and real estate credit controls, to establish an emergency financial system and raise the debt limit, and to take necessary organizational and procedural steps in support of these authorities, should be requested of the Congress. The draft "Defense Resources Act" covers all of these authorities.

Similar legislation was under consideration within this agency, and possibly at the White House, during the Cuban Crisis, but such legislation became unnecessary when the missiles were withdrawn.

2. I should also like to emphasize that the possibility of obtaining such legislation from the Congress at this time appears to be unlikely. Last June, when a Congressman attached a consumer credit control rider to our extension of the Defense Production Act, the House rejected the rider. Moreover, while the Secretary of Labor is reported to have said that the airline strike and the steel price increase "together have created

a threat to the future of the country's stabilization program," he also stated that there is "no threat to the national, health, safety and defense."

Price controls and rent controls have been sustained by the Supreme Court of the United States only under the war power of Congress. Can Congress pass a valid price control or rent control law while the Administration states that there is no threat to the national defense? I believe we would have a serious constitutional question.

Therefore, because of the present attitude of Congress and the stated fact that there is no threat to the national defense, I do not recommend that the President seek statutory authority for imposing direct controls on credit, prices, wages, and rents at this time.

3. The alternative appears to be indirect controls under existing authorities. The above examples of indirect controls are a few possibilities.

I recommend that we follow the same procedure that was followed after the Alaskan earthquake. The Director of OEP wrote to the head of each department and agency of the Government, with some exceptions, and asked him what his agency could do to be of assistance in Alaska. About one week was allowed for a reply. After the replies were received, we were able to analyze the real potential of Federal assistance to meet that particular major disaster, and we were able to direct a tremendous Federal contribution toward the rehabilitation of Alaska. With regard to economic stabilization, however, I would suggest that the President sign the letter and state that the replies shall be sent to the Director of OEP.

There undoubtedly are various programs that could be applied to the current problems of economic stabilization in an appropriate way, if we collect them, analyze them, and make recommendations to the President. Accordingly, I recommend the attached memorandum to the President for your consideration.

S

Mordecai M. Merker
Legal Adviser

Attachment

MEMORANDUM FOR THE PRESIDENT

SUBJECT: Economic Stabilization

There is no existing authority for direct controls on credit, prices, wages, and rents.

Under Executive Order 11051, the Director of the Office of Emergency Planning has the "primary responsibility" for developing emergency planning in "economic stabilization." In accordance with this responsibility, the Office of Emergency Planning has prepared draft legislation for direct controls. We are also constantly developing and updating stabilization programs involving the use of direct controls for credit, prices, wages, rents, and consumer rationing. At the present time, however, I do not recommend that the President seek statutory authority for direct controls because (1) the Secretary of Labor has placed this Administration on record that there is no threat to the national defense, and (2) I do not believe that Congress would pass such legislation in the circumstances.

The alternative is to make the most effective use of indirect controls under existing authorities.

There undoubtedly are various Federal programs that could be applied to the current problems of economic stabilization in an appropriate way; for example, the Interstate Commerce Commission which can prescribe rates; fares, and charges; the Securities and Exchange Commission which can suspend trading on any national securities exchange; the Department of Agriculture which administers controls over agricultural industries; the Department of the Interior which has economic research functions and industry responsibilities; Business and Defense Services Administration of the Department of Commerce which has 26 business and industry divisions; as well as the Federal Reserve System, the Federal Home Loan Bank System, restraints on capital investments, the Export Control Act, the Trade Expansion Act of 1962, the domestic and international tax policies studied by the Treasury Department, and other programs.

Accordingly, I recommend that the President write a letter to the head of each department and agency and ask him what his agency could do now to be of assistance in stabilizing the economy. After the replies are received, I would analyze them and make my recommendations to the President. A proposed letter is attached.

Farris Bryant
Director

Attachment

MAR 1 6 1966

MEMORANDUM

Re: Executive Powers Available by Virtue of National Emergency or War -- Statutes in Effect on January 1, 1966, Relating to the Economy.

Attached is a list of statutory provisions relating to the economy which are applicable in a national emergency or war. The provisions are summarized under subject headings -- e.g., agriculture, contracts and procurement, labor provisions. The conditions under which the statutes are operative are underlined.

For convenience there follows a capsule summary of the statutes grouped under the following categories: (A) National emergency (presently applicable by virtue of the 1950 national emergency declaration (Proc. No. 2914 of December 16, 1950, as reaffirmed by Proc. No. 2974 of April 28, 1952); (B) time of war (not presently applicable; would require a substantial increase in level of hostilities); (c) other conditions (e.g., requirement of an additional proclamation).

A. National Emergency

Agriculture

1.*/ Secretary of Agriculture authorized to increase or terminate marketing quotas or acreage allotments for cotton, rice, peanuts, and tobacco.

2. Agricultural commodity set-asides may be reduced by donation, sale or other disposition.

3. President may modify limitations on procurement of slaughtered livestock.

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*/ All references are to the equivalent numbered item in the attachment.

Armed Forces

4. Regular working hours of laborers and mechanics of the Army and the Air Force producing military supplies or munitions may be exceeded.

Banking and Currency

5. President may regulate or prohibit certain transactions in foreign exchange.

Contracts and Procurement

Contracting procedures and terms

6. Purchases of and contracts for property or services covered by Title 10, chapter 137, United States Code, may be exempted from formal advertising requirements.

7. Disposals and contracts for disposal of surplus property may be negotiated without regard to advertising requirements.

8. President may exempt any government agency exercising national defense functions from certain statutory restrictions regarding contracts.

10. The plant, books and records of any defense contractor may be inspected.

12. Contracts of Defense Department and certain other departments may provide that payments to an assignee shall not be subject to reduction or set-off.

Labor provisions

13. President may suspend provisions of the Davis-Bacon Act.

14. President may exempt contract for construction or equipment of a naval vessel from the Walsh-Healey Act.

Customs Duties and Export Controls

21. President may authorize the Secretary of the Treasury to extend certain time limitations relating to customs duties and to permit free importation of emergency relief supplies.

Munitions and Strategic Materials

22. Strategic and critical materials stockpiled may be released on the order of an agency designated by the President.

Public Utilities and Natural Resources

27. Secretary of the Interior is authorized to suspend helium licenses and to reacquire supplies of helium.

29. During actual or threatened hostilities, proceeds from operating a public utility overseas in connection with Army or Air Force operations are available for that utility.

30. The United States may take possession of power projects licensed by the Federal Power Commission for the manufacture of munitions (when the safety of the United States demands it).

31. When the Federal Power Commission determines that an emergency exists (or during any war) the Commission may require temporary connection or construction of electric power facilities.

33. Provisions relating to bonds for financing TVA power program shall not prevent transmission of power to the AEC or Defense Department.

35. The United States may have priority rights to minerals produced from the outer continental shelf.

Real Property

39. A temporary fort or air base may be built on private land, with the owner's consent, if in an emergency the President considers it urgent.

41. Leases of real or personal property are revokable by the Secretary of the military department which made the lease.

43. Payment for withdrawal for defense purposes of grazing land to be made from funds appropriated for the particular project.

44. Restrictions on amount of rent which may be paid for building used for government purposes do not apply to leases vital to the national emergency or prosecution of the war.

45. Tax deduction provided with respect to the amortization of emergency defense facilities.

Transportation

48. The Secretary of the Navy may authorize persons to be transported on naval vessels at government expense.

50. The Secretary of a military department may provide, at reasonable rates, transportation of personnel engaged in defense production to and from their places of employment.

Vessels

51. Vessels placed by the Secretary of Commerce in national defense reserve may be used for account of any federal department or agency.

52. President may arm, or allow to be armed, any American vessel or aircraft.

53. The Secretary of Commerce may requisition or purchase or charter citizen-owned vessels.

54. The Secretary of Commerce may purchase or requisition any alien-owned vessel.

55. The Secretary of the Interior may pay a subsidy for fishing vessels suitable for conversion into naval or military or other suitable use in time of war or national emergency.

56. Obsolete vessels may not be used for commercial operation except during national emergency.

57. Certain shipping requirements with respect to U.S. flag commercial vessels may be waived.

B. Time of War

Contracts and Procurement--requisitions and seizures.

15. President may take possession of plant equipped to manufacture arms, ammunition, and other military supplies under certain circumstances.

16. President may place mandatory orders for ships or war materials, modify or cancel contracts and requisition or take over any factory or any ships or war materials.

17. President may order from any person or industry necessary products or materials of the type usually produced by the person or industry.

18. The United States may requisition for military use any supplies or military publications bought from the Army or Air Force by any state or territory, for its National Guard.

Miscellaneous

19. Requirement that General Accounting Office settle certain accounts within three years shall be suspended.

20. President may sell war materials to allies.

Patents

26. President may permit use of enemy patents, copyrights or trademarks.

Public Utilities and Strategic Materials

32. TVA products may be sold outside the United States to allies.

34. The United States may take possession of TVA property for war purposes.

Real Property

37. United States may have immediate use of property to be condemned for defense purposes.

38. United States may have immediate use of timber land, saw mills and other property to be condemned.

40. The Secretary of the Army or the Secretary of the Air Force may lease any building in the District of Columbia for military purposes.

Transportation

46. Preference to be given to transportation of troops and war materials over all other traffic.

47. The President may certify to the ICC that it is essential to the national defense that certain traffic be given preference.

49. The President may take possession and assume control of all or part of any transportation system for war purposes.

58. Hospital ships are exempt from dues, taxes and pilotage charges.

C. Other Conditions

Contracts and Procurement

Contracting procedures and terms

9. Exemptions for standard commercial articles and services under provisions for renegotiation of excess profits do not apply. (National emergency proclaimed after August 1, 1956).

11. Administrator of General Services authorized to terminate and settle claims under war contracts. (Probably refers to those made during World War II).

Munitions and Strategic Materials

23. Certain provisions relating to the regulation of the manufacture and use of explosives are operative (declaration of war or additional proclamation).

Neutrality

24. President may reciprocally prohibit importation of articles from a country during a war in which the United States is not engaged.

25. President may order withholding certain privileges from ships which discriminate against neutral Americans during a war in which the United States is not engaged.

Public Utilities and Natural Resources

28. Atomic Energy Commission may suspend licenses and recapture nuclear material. (Declaration of war or national emergency by Congress).

36. Leases of outer continental shelf must contain clause for suspension during war or national emergency declared after August 7, 1953.

Real Property

42. Withdrawals of more than 5000 acres of public land for defense purposes prohibited except in time of war or national emergency declared after February 1958.

Presidential auth.

October 14, 1966

MEMORANDUM FOR: Joseph A. Califano, Jr.

FROM: John E. Robson

Attached is a draft of a suggested message to the Acting Attorney General. I have the following comments:

1. I'm not sure it is what the President had in mind.

2. Ramsey, Gardner and Don Turner and I do not think that the issuance of the statement is a good idea because:

* There is probably little causal relationship between the present inflationary pressures and economic concentration.

* The food and clothing industries were looked at by Turner's people and little was found.

* Money and interest rate problems are probably not the result of bank mergers.

* Mention of the transportation industry may raise Penn-Central problems.

* Turner feels that present anti-merger policy is about as tough as it can get without embarking on some very novel theories.

* The proposal for new legislation is fine <u>if</u> the President is willing to follow it through. The thrust of new legislation would fall on the oligopoly and would be a long-range operation.

* The reaction on the business community (and stock market) to this kind of statement would probably be drastic.

Americans are enjoying a period of unprecedented economic prosperity.

My closest economic advisors have said publicly on several recent occasions that this prosperity will continue; and I fully share this conviction.

I have expressed many times my deep concern with any sign that this prosperity may be threatened and my determination to take the steps necessary to eliminate any economic unhealthiness.

In today's economy there can be no reason why the housewife should pay high prices to feed or clothe her family adequately or why the farmer or producer of other raw materials should not receive a fair price for what he sells. But I am concerned to see signs of rising costs to the American consumer for food, clothing, transportation, for borrowing money and for other necessities and essential services. In some cases, prices to the consumer have risen while the prices paid to producers for raw materials used in those products have declined.

There may be many causes which contribute to price increases and to the inequity of a low price paid to the producer and a high price charged to the consumer. However, I shall make certain that the failure of true business competition is not among these causes; so that neither collusion nor excessive concentration of economic power results in artificially high prices or interferes with passing along to the consumer the benefits of lower raw material costs. This Administration has been vigilant in using the federal antitrust laws against price fixing wherever found and against corporate mergers which may, by lessening competition, set the stage for higher prices. For the ordinary consumer is defenseless against price conspiracy and against the pricing policies of the business combination which does not have to reckon with competition.

I am, therefore, directing you:

1. to insure that the full resources of the Justice Department will be utilized to continue the vigorous enforcement of the antitrust laws; and

2. to analyze existing legislation and advise me whether it provides adequate tools to preserve free competition in all aspects of the economy.

August 30, 1966

MEMORANDUM FOR MR. JOSEPH A. CALIFANO, JR.

FROM : John E. Robson

SUBJECT: Presidential Authorities in the Economy

Summarized below is the substance of Justice Department memoranda on the President's present power respecting significant aspects of the national economy.

1. PRICES. No authority exists for direct across-the-board price controls. During World War II and Korea, price controls were imposed under specific statutory enactments which have expired.

2. WAGES. No authority exists for direct across-the-board wage controls. However, Government and defense procurement offer some limited opportunities for controls through contract provisions which would specify permitted wage levels for employees working for the government contractor. This device probably calls for Executive suspension (for the first time) of the prevailing wage requirements of the Davis-Bacon, Walsh-Healey and Service Contract Acts.

3. CONSUMER CREDIT. Since the National Emergency declared in 1950 is still in effect, direct across-the-board consumer credit controls can be imposed by Executive Order under authority of the Trading With The Enemy Act. President Roosevelt did so in August, 1941 and his Executive Order was the basis for consumer credit controls during 1948-49 and Korea. However, a new Executive Order would be required. Administration of the controls would be through the Federal Reserve Board or another agency designated by the President which could issue implementing regulations along the lines of old "Regulation W". Consumer credit controls usually require a certain amount of down payments and limit the length of time

over which installment payments may be made in consumer goods transactions.

4. CURTAILING EXPENDITURE OF APPROPRIATED FUNDS. The President has broad (but not unlimited) power to curtail or defer expenditures of appropriated funds. The power is broadest in matters relating to the armed services and foreign affairs and most limited in appropriations covering fixed obligations of the U.S. (e.g. debt, interest, retirement pay, etc.). The President probably has considerable discretion as to curtailment or deferral of expenditures for various domestic projects and public works. This power has been successfully used by prior Presidents.

5. INDIRECT PRICE CONTROL THROUGH AFFECTING SUPPLY AND DEMAND. A number of Presidential powers exist which can affect price levels indirectly by controlling supply or demand. The principal ones include:

- import and export controls;
- stockpile sales and purchases;
- agricultural price supports and acreage allotments;
- imposition of allocations and priorities of materials and services under the Defense Production Act.

The exercise of the powers enumerated above must in each case be examined with respect to the particular action desired because of the various statutes and regulations which cover specific commodities or situations.

6. VOLUNTARY PROGRAMS. The President has authority to enter into voluntary price and wage restraint agreements with business and labor under his power as Chief Executive. Careful implementation

would be required in the case of price restraint agreements to avoid entangling companies in antitrust problems.

Note: In my own opinion, the Trading With The Enemy Act empowers the President to fix rates of interest and impose credit rationing (i.e., by specifying the types and amounts of loans which could be made by banking institutions). No doubt the Treasury Department and the Federal Reserve Board would object to this approach to the problem.

JER/rg

Pres. auth.

AUG 27 1966

MEMORANDUM

Re: Legal authority available to the Executive for emergency economic stabilization actions.

This memorandum outlines existing legal authority for action by the Executive which can be expected to have a significant stabilizing impact upon the economy.

I. Across-the-board Authority.

The only statutory authority which appears suitable for establishing any economic controls across-the-board is section 5(b) of the Trading With the Enemy Act (50 U.S.C. App. 5(b)). This section authorizes the President, during a national emergency, to "investigate, regulate, or prohibit, transfers of credit or payments between, by, through or to, any banking institution * * *."

A. Control of Credit.

It was pursuant to this authority that President Roosevelt directed the Federal Reserve Board to impose consumer credit controls during World War II (Executive Order No. 8843 of August 9, 1941). The same authority was used during the Korean War to impose consumer credit controls. Congressional action, taken in the period 1947-1952, recognized the sufficiency of the authority of section 5(b) for this purpose and provided that such authority may be exercised during any national emergency declared by the President after 1947.

Thus, the President is empowered to exercise such authority over credit at the present time, since the state of national emergency proclaimed by President Truman on December 16, 1950, is still in effect. If he is to exercise such authority, he should issue a new Executive order, along the lines of Executive Order No. 8843, designating the agency (or agencies) to perform the functions involved, delegating appropriate authority, and prescribing general standards for the exercise of the authority delegated.

In this connection, it may be noted that Executive Order No. 8843 dealt only with the consumer credit field (basically, small loans or credit for time purchases of goods, and the financing of concerns offering such credit). When Executive Order No. 8843 was reinstated by the Defense

Production Act of 1950, Congress added separate statutory provisions authorizing the control of real estate construction credit. These provisions continued in effect until June 30, 1953, although the reinstatement of Executive Order No. 8843 and the consumer credit controls thereunder were terminated a year earlier. It appears that this form of legislation was a convenient way of dealing with consumer and real estate credit, rather than a congressional determination that section 5(b) would support only an Executive order dealing with consumer credit.

In summary, section 5(b) authorizes control of credit in all its aspects.

B. Other Controls.

The power authorized by section 5(b) is, in effect, the power to control the use of the banking system of the United States. It is arguable that wages, prices or other subjects not directly related to credit or banking transactions may be controlled through use of this power. For example, use of the banking system might be prohibited except pursuant to licenses which would be conditioned upon compliance with wage and price limits.

Obviously, this is a far-reaching suggestion. At its extreme, it would justify putting any aspect of the economy or business of the country under unlimited Presidential control, because all businesses have to utilize the banking system. The potential scope of the statute, however, appears more clearly in relation to its history.

The original Trading With the Enemy Act of 1917 was concerned exclusively with foreign property interests and international transactions. Immediately after taking office in 1933 in the midst of a severe national banking crisis, President Roosevelt drew upon these powers to close the banks and control dealings in gold. He claimed the requisite authority from the effect which domestic banking and dealings in gold had on international transactions. Within a matter of days, Congress amended the Act to ratify the President's emergency actions and to broaden section 5(b) to apply expressly to domestic banking transactions.

Again in 1940-41, as the war approached, President Roosevelt relied on section 5(b) to "freeze" foreign assets, as well as to impose consumer credit controls.

Again, Congress responded with a ratification of his actions and another broadening amendment. The section has not been amended since.

Consumer credit control under Executive Order No. 8843 was not challenged in court, but both the 1940 "freeze" and President Roosevelt's 1933 actions under section 5(b) were sustained by the courts.

However, President Roosevelt did not resort to section 5(b) for the authority to impose price, wage or rent controls in World War II, nor did President Truman in the Korean War. Both obtained specific statutory authority for such purposes.

This history suggests that very broad applications of section 5(b), if justified by the severity of the emergency, will be accepted by Congress and the courts. However, under less urgent circumstances such broad applications would risk being overturned.

II. Specific Areas of Executive Authority.

The legal authority outlined below relates to actions which, depending on circumstances and quantitative effect, may significantly affect important areas of the economy in the direction of stabilization.

1. Voluntary Agreements.

Although the provisions of section 708 of the Defense Production Act no longer provide authority for voluntary agreements between the President and private businesses designed to stabilize prices, such agreements may be negotiated by the President pursuant to the constitutional authority vested in him as the Chief Executive.

2. Imports.

It might be possible to increase imports of articles with respect to which prices have increased too steeply.

For example, by Proclamation No. 3709 of March 31, 1966, the President took emergency action pursuant to section 22 of the Agricultural Adjustment Act to increase the amount of cheddar cheese that could be imported into the United States during the remainder of the quota year ending June 30, 1966.

Similarly, the President is authorized to suspend all or part of Title II of the Sugar Act of 1948, as amended, so as to eliminate all or a part of the quota system imposed on domestic production and importations of sugar.

During a recent crisis involving a shortage of plywood for home construction, it was discovered that Japan had voluntarily restricted exports of plywood to the United States at the behest of our Government. If voluntary arrangements of this type exist as to other scarce or unreasonably priced articles, it might be possible to get the countries involved to suspend those voluntary restrictions temporarily.

If petroleum prices become exorbitant, the President can revise the import quotas imposed by Proclamation No. 3279, as amended.

3. Exports.

The Export Control Act authorizes the use of export controls to protect the domestic economy from excessive drain of scarce materials and to reduce inflationary impact of abnormal foreign demand.

Pursuant to this authority, restrictions have been placed on exports of copper and certain classes of hides.

4. Stockpiles.

Releases of materials from the National Stockpile pursuant to section 5 of the Strategic and Critical Materials Stockpiling Act, or sales from that stockpile pursuant to section 3(e) of that Act, might serve as a restraint on inflationary prices in certain materials -- as in the cases of copper and aluminum.

Similar actions are possible with respect to the Supplemental Stockpile under the Agricultural Act of 1949, and with respect to the Defense Production Act Inventory.

5. Priorities and Allocations.

Section 101 of the Defense Production Act of 1950, as amended, authorizes the President to require that defense contracts or orders be accepted and given priority. It also authorizes allocation of materials and facilities to promote the national defense. This authority may be used to control the general distribution of any material in the civilian market, however, only if the President finds (1) that the material is scarce and critical to the national defense, and (2) that without such control the requirements of the national defense for such material cannot be met without creating dislocations in distribution sufficient to cause hardship.

Where commodities are being set aside for future Government use, reduction of the "set-asides," to the extent permitted by defense needs, may temporarily alleviate shortages of the commodity, and thus ease price pressures.

6. Wage Disputes.

The services of various statutory boards and the Mediation Service may be utilized in the effort to stabilize wages in the settlement of labor contract disputes. In addition, the President may, under his authority as Chief Executive, create special bodies to investigate or conciliate such disputes.

7. Procurement and Construction Contracts.

The President may require that Federal procurement and construction contracts contain a provision restricting the amount by which wages may be increased with respect to persons performing employment in connection with those contracts. This would be somewhat comparable to the program which has been instituted with respect to Wage Board employees.

Such action with respect to employees of contractors would probably necessitate a suspension of the Walsh-Healey and Davis-Bacon Acts pursuant to their provisions. Similarly, the Secretary of Labor may exempt certain Government contractors from prevailing-wage and 8-hour-day restrictions, to avoid serious impairment of the conduct of Government business.

There is also statutory authority (50 U.S.C. 1431) to depart from the requirements of the Government-contract statutes in any defense contracts, but the Executive Order No. 10789 issued thereunder does not presently lift the prevailing-wage type of restriction.

8. Curtailment of Federal Expenditures.

Congress v. Execut. & practical limits

The President is authorized, within limits, to withhold expenditures of appropriated funds. This possibility was mentioned by the President at the signing of the N.A.S.A. Authorization Act, 1967.

9. Banks.

It appears that the Federal Deposit Insurance Corporation, the Federal Reserve Board, and the Comptroller of the Currency could, by joint action, declare that the payment of interest rates in excess of a specified figure by banks constitutes an unsound business practice, and thus compel the banks to discontinue such rates. Similar action might also be necessary in the savings-and-loan field. Although each agency has individual authority in this regard, we are informed that separate action by any of them would be ineffective because it would cover an inadequate segment of the field. Moreover, we know of no precedent for imposing a ceiling on bank interest rates through an unsound-practice determination.

10. Antitrust and Related Laws.

Neither the antitrust laws, the Federal Trade Commission Act, or the comparable provisions of our agricultural laws provide significant promise of producing results in the immediate effort to stabilize prices. These statutes are designed to achieve long-range results based upon intensive investigations and involved legal proceedings.

11. Other Laws.

Based on a review of likely areas of the U.S. Code and informal inquiries to the Departments of the Treasury, Agriculture and Commerce, it does not appear that statutes other than those referred to herein afford significant tools for Executive action that would have significant effect on economic stabilization.

MAR 2 3 1966

MEMORANDUM FOR HONORABLE JOSEPH A. CALIFANO, JR.
Special Assistant to the President

Re: Contract stipulation against pay raises in excess of wage guidelines

This is in response to a request for advice as to whether the President is authorized to require departments and agencies to insert a clause in each contract requiring contractors and subcontractors to agree to comply with the Administration's wage guidelines.

I feel that the President can impose such a requirement with respect to most Government contracts but it would require the waiver of a number of statutory wage provisions such as the Davis-Bacon Act (construction contracts) 40 U.S.C. 276a, Section 1(b) of the Walsh-Healey Public Contracts Act (supply contracts) 41 U.S.C. 35(b), and the Service Contract Act of 1965, P.L. 89-286. Each of those Acts, in effect, requires contractors and subcontractors to pay wages at a rate equal to the prevailing rate in the locality concerned as determined by the Secretary of Labor.*/ It would probably be possible, either by employing only a partial waiver of those statutes or by the inclusion of appropriate substitute language in the Presidential stipulation, to continue those prevailing wage requirements in effect to the extent that they are consistent with the wage guidelines.

The Senate Report (S. Rept. 798, 89th Cong.) that accompanied the Service Contracts Act of 1965 stated that the purpose of that Act was to

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*/ The three Acts employ somewhat different formulas: Davis-Bacon Act (minimum wage based upon prevailing wage); Walsh-Healey Act (minimum wage based upon prevailing minimum wage); Service Contract Act (prevailing rate).

provide labor standards for the protection of employees of contractors and subcontractors furnishing services to or performing maintenance service for Federal agencies since service contracts were the only remaining category of Federal contracts to which no labor standards of protection applied. This indicates that practically all Government contracts are now subject to some statutory prevailing wage provision.

Section 6 of the Davis-Bacon Act (40 U.S.C. 276a-5) expressly provides that "In the event of a national emergency the President is authorized to suspend the provisions of this Act." The national emergency proclaimed by President Truman by Proclamation No. 2914 of December 16, 1950, is still in existence. Consequently, the President may suspend the provisions of that Act.

The proviso at the end of the last sentence of Section 6 of the Walsh-Healey Public Contract Act (41 U.S.C. 40) provides: "That whenever in his judgment such course is in the public interest, the President is authorized to suspend any or all of the representations and stipulations contained in Section 1 of this Act."

The Service Contract Act of 1965 does not contain a provision expressly authorizing the President to suspend its provisions. However, Section 4(b) of that Act authorizes the Secretary of Labor to "provide such reasonable limitations and may make such rules and regulations allowing reasonable variations, tolerances, and exemptions to and from any or all provisions of this Act as he may find necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business." This means that the Secretary could, under that authority, take into account the wage guidelines, and it appears that stipulations could be inserted in such contracts prohibiting the payment of wages in excess of those prescribed by the Secretary.

Aside from the foregoing, Section 1 of the Act of August 28, 1958, 72 Stat. 972, 50 U.S.C. 1431, permits the President to authorize any department or agency of the Government, which exercises functions in connection with the national defense, to enter into contracts without regard to other provisions of law relating to the making, performance, amendment, or modification of contracts, whenever he deems that such action would facilitate the national defense.

Under that provision the President could direct the disregard of the Davis-Bacon Act and other wage provisions in connection with national defense contracts.

In this regard, it should be noted that the suspension provisions of the Davis-Bacon and the Walsh-Healey Acts were available during World War II. Although President Roosevelt issued Executive Order No. 9001 of December 27, 1941, authorizing the War and Navy Departments and the United States Maritime Commission to disregard numerous statutory restrictions with respect to contracts, Section 8 of that order expressly provided that no contract would be exempt from the Davis-Bacon and Walsh-Healey Acts. In 1958, President Eisenhower, in effect, replaced Executive Order No. 9001 with Executive Order No. 10789. Section 13 of that order expressly continued those two Acts in effect with respect to national defense contracts. To the best of my knowledge neither of those Acts has ever been suspended.

If the President suspends those Acts and the Secretary of Labor takes appropriate action under the Service Contract Act of 1965, the President will be able to require the inclusion of a wage guideline stipulation in most contracts since it is a well-settled rule that, in the absence of legislation to the contrary, the Executive Branch of the Government has discretion to contract in such manner and on such terms as it considers appropriate to the discharge of its constitutional and statutory responsibilities. E.g., United States v. Tingey, 5 Pet. 115, 127 (1831); United States v. Linn, 15 Pet. 290, 315-6 (1841); United States v. Hodson, 10 Wall. 395, 406-8 (1870); Jessup v. United

States, 106 U.S. 147, 151-2 (1882); Muschany v. United States, 324 U.S. 49, 63 (1945); Kern-Limerick, Inc. v. Scurlock, 347 U.S. 110, 116 (1954).

In 1905 President Theodore Roosevelt issued Executive Order No. 325A which requires that all Government contracts involving the employment of labor shall contain a stipulation forbidding the use of State and local convict labor.

Presidents Franklin Roosevelt, Truman, Eisenhower, Kennedy, and Johnson (E.O. No. 11246) issued Executive orders directing that Government contracts contain a non-discrimination clause. In another case, Executive Order No. 9001 of December 27, 1941, required the inclusion in contracts of a stipulation against contingent fees. The latter action was sustained by the courts. E.g.. United States v. Paddock, 178 F.2d 394, 180 F.2d 121 (C.A. 5, 1949, 1950); Mitchell v. Flintkote Co., 185 F.2d 1008 (C.A. 2, 1951); J.D. Streett & Co. v. United States, 256 F.2d 557 (C.A. 8, 1958).

There may be a limited number of contracts with respect to which the President would be unauthorized to act. For example, Section 3 of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831b) directs that contracts of the Tennessee Valley Authority contain a prevailing wage clause and that Act, unlike the Davis-Bacon Act, contains no provision for suspension of that requirement. There may be other isolated provisions of this type, but it would appear that they would affect only a small protion of Federal contracts.

Finally, even if the prevailing wage type provisions were suspended, any wage guideline stipulation would have to take into account other statutes relating to wages. At the present time consideration is being given to legislation to amend the Fair Labor Standards Act of 1938 (29 U.S.C. 201, et seq.) so as to raise minimum wages and to cover new classes of workers. The new wage scales, especially as applied to newly covered employees, might possibly require wage increases in excess of the guidelines. In addition, the Equal Pay Act of 1963 (72 Stat. 56) requires that women be paid equal pay for equal work. Adjustments under that Act might also require pay increases in excess of the guidelines. Those requirements could be suspended with respect to national defense contracts under Section 1 of the Act of August 28, 1958 (50 U.S.C. 1431), but it is doubtful that they could be suspended with respect to other Government contracts. Accordingly, any wage guideline stipulation would have to make provision for wage increases in excess of the guidelines if those increases are required by the amendments of the Fair Labor Standards Act and the Equal Pay Act with respect to nondefense contracts.

In conclusion, while it appears possible, from a legal standpoint, for the President to direct that a wage stipulation be included in most Government contracts, he cannot do so without suspending, in whole or in part, a number of statutory provisions requiring the payment of prevailing wages. In addition, there may be a few contracts (such as T.V.A. contracts) that cannot be subjected to such a stipulation and certain wage increases in excess of the guidelines that cannot be curtailed (increases in compliance with the Fair Labor Standards Act and the Equal Pay Act of 1963).

Finally, this is a highly complicated matter and the only practical way in which it can be properly considered is by canvassing the various departments and agencies, particularly the Department of Labor and the General Services Administration, concerning its impact and possible scope.

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