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Defense Production Administration

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ORGANIZATION OF THE FEDERAL GOVERNMENT FOR THE CURRENT DEFENSE PRODUCTION PROGRAM

By CHARLES H. KENDALL*

THAT branch of administrative law which treats of the design and creation of the machinery of administrative action boasts few devotees. Just as the easier approach to the general subject of administrative law is through the relatively limited literature of the appellate courts, a respectable curiosity as to the source of a particular administrative authority is satisfied by reference to the basic legislation. To the question: "By what right does the Jones Company depreciate its new plant for tax purposes at 15% rather than 5% a year?" an adequate answer is: "New Section 124A of the Internal Revenue Code authorizes the accelerated write-off of construction necessary to the national defense."

Yet to the practitioner before Government boards and agencies, organization for administrative action is a recurrent problem of real importance and some difficulty. If his question is how a client gets the right to accelerate the amortization of a new facility for tax purposes, a reference to Section 124A is but the first signpost on a fairly long road. His next task (although not his last) is to find, in an unavoidably large and complex Government, the officer or agency authorized to approve his client's plant or machine for accelerated write-off as a defense facility. Such eminently reasonable guesses as the Bureau of Internal Revenue, because taxes are affected, or the Department of Defense, because national defense is involved, are commendable, but wrong.

Major source materials in the organization of the Federal Government are the United States Code and the Federal Register. The Federal Register is published every weekday except Monday and contains Presidential and other executive orders, regulations and notices, many of which are later codified in the Code of Federal Regulations. It is at least theoretically possible to locate in the statutes or the Register every legislative and executive action effecting or affecting organization. Much labor is saved, however, by other less authoritative publications, some the product of Government, some not.

The Federal Register Division of the National Archives and Records Service publishes at least annually a book of over 500 pages called United States Government Organization Manual. This volume contains a brief description of the function of each Government agency and of each major subdivision thereof, supplemented by some organization charts. It is carefully prepared and serves to summarize legislative and executive actions bearing upon organization up to a few weeks before publication. Used in conjunction with the Federal Register (which is indexed cumulatively each month and quarter) the Manual presents a good

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general picture of the organization of the Federal Government for administrative action.

In particular fields of interest, such as federal taxation, loose-leaf services are privately published which report in great detail each administrative step, organizational or otherwise, as soon as it is taken. And, of course, the newspapers and trade journals contribute much to public understanding of administrative purpose and method.

There is lacking in almost all of the material cited the important factor of rationalization. There is no attempt, generally, to relate organization for a particular job to an over-all plan of operation, to explain and justify the choice of a certain instrument for a certain purpose. Little is made of the distinction between form and design. Facts are often easy to come by, but they cannot long be retained in useful arrangement unless strung, like beads, on a thread of understanding.

To explain, rather than describe, the organization of the Federal Government for defense production, it is appropriate to begin with the nature of the job and the tools at hand, proceeding chronologically to the present structure.

It is common to think of the partial mobilization now in process as resulting from the Korean war. In truth the current effort has roots in a national policy of which resistance to aggression in Korea is a single demonstration. In the Stockpiling Act of 1946¹ and the National Security Act of 1947² the Congress expressed a determination to be prepared for war, a recognition that threats to peace in the world can effectively be met by strength alone. Admittedly the tempo of our preparedness has varied with our sense of urgency, to which Korea made a significant contribution.

The goal of the current program has been stated many times by the President and his lieutenants. In essence it is that we produce weapons and supplies needed for an immediate build-up of our military strength against a surprise attack at any time, that we enlarge our productive capacity sufficiently to produce weapons and supplies adequate to an all-out war if that should become necessary, and that we do both of these things without bringing on a ruinous inflation. The first essential to production of weapons is contracts for their purchase, and this aspect of the job is in the hands of the Defense Department. With the letting of the contracts the economic problems appear—the demands for materials and productive capacity in excess of their availability and the upward pressure of prices and wages. The major task of the Government then becomes the devotion of all that

1. 53 Stat. 811, 50 U. S. C. sec. 98 (1946)

2. 61 Stat. 496, 50 U. S. C. sec. 401 (1947)

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is available to the satisfaction of the most important demands, the protection of the defense program from the demands of civilian production and the protection of essential civilian production from the demands of the defense program.

In the late summer of 1950 the President signed into law the Defense Production Act,³ a tool chest of economic controls and devices to be used in developing and maintaining "whatever military and economic strength is found to be necessary" to promote peace and oppose aggression. The major authorities of the Act, and of certain supplementary legislation, may be grouped in three categories—materials and facilities controls, stabilization controls and industrial expansion devices.

The major materials and facilities controls are found in Title I of the Act and consist of the authority to require that preference be given to the performance of contracts appropriate to the national defense, and the authority to allocate materials and facilities to uses which will promote the national defense. To readers familiar with the Government's control pattern in World War II these authorities will be old friends. Together they form the basis of the great bulk of the regulations and orders which were issued by the War Production Board and which are now being issued by the National Production Authority.

The concept of preference in contract performance—"first things first"—is fundamental to economic control and is relatively simple in operation. When, however, materials shortages develop, the requirement of priority in performance must be supplemented by the allocation to the contractor of the means of performance, the supplies that go into the end product.

Priorities and allocations authority is supplemented by the provisions of Title II of the Defense Production Act which empower the President to requisition property, both real and personal, needed for defense purposes. So long as supplies are in the flow of commerce, held for sale or for business use, the priorities and allocations authority can assure their sale or use in the national interest. When property is not intended for the market but is held as an investment or for personal use, e.g., a private yacht, its devotion to national defense purposes may be assured by requisitioning and the payment to the owner of just compensation.

Stabilization controls are exemplified by Title IV of the Act giving the President authority to fix price and wage ceilings. By the extension of the Housing and Rent Act⁴ additional authority to restrain the rising cost of living is provided.

3. 64 Stat. 798, 50 U. S. C. App. sec. 2061 (1950)

4. Title II, Pub. L. 96, 82nd Cong., 1st Sess. (July 31, 1951)

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Another type of stabilization control is contained in Title VI of the Defense Production Act which authorizes limitations upon the extension of credit in connection with the purchase of commodities and new real estate construction.

Several industrial expansion devices were put in the hands of the President by Title III of the Defense Production Act empowering him to guarantee private bank loans which finance the performance of defense contracts, to make direct loans for the expansion of private enterprise in the interests of defense, to purchase materials for resale in order to increase supply and assure its availability for the national defense, and to install government-owned equipment in private plants to aid in production for defense. The Internal Revenue Code was amended at about the same time to permit the accelerated amortization for tax purposes of the cost of facilities and equipment certified to be necessary to the national defense.⁵

This grouping of the economic controls of major importance to the defense production program has organizational significance. It is to be expected that powers having a single purpose would best be used by a single agency, not only because of the skills required in their use, which is important to adequate but economic staffing, but also because a single policy in the use of related powers is best assured by a single administration.

In addition to the desirability of grouping similar powers for administration, a second important guide in the interest of economy and efficiency is the maximum use of existing administrative structures whose normal function is related to the function being assigned and whose personnel is, as a result, qualified for the job. Many permanent agencies of the Federal Government have normal functions related to economic controls such as were authorized by the Defense Production Act. The Bureaus of Reclamation and of Mines, the Geological Survey, the several electric power administrations and the Fish and Wild Life Service in the Department of the Interior, the Civil Aeronautics Administration, Maritime Administration, Bureau of the Census and Bureau of Foreign and Domestic Commerce in the Department of Commerce, and the Federal Supply Service of the General Services Administration are examples.

A third source of guidance in administrative organization is the legislation granting administrative authority, which frequently includes an indication in one form or another of the will of Congress with respect to organization. Generally, organization of the Government for this defense production program was left to the discretion of the President. A notable exception occurs in section 403 of the Defense Production Act which requires that price and wage controls be administered "through a new independent agency created for such purpose." Another

5. 64 Stat. 939, 20 U. S. C. sec. 124A (1950)

organizational decision is made in section 601 of the same Act in which the Board of Governors of the Federal Reserve System is specifically named as the agency to exercise credit controls in connection with the purchase of commodities. A less specific indication of Congressional intent occurs in section 301 of the Act which authorizes the guaranteeing of loans. There the Congress names the Army, Navy, Air Force and Department of Commerce as guaranteeing agencies before generalizing with the words "and such other agencies of the United States engaged in procurement for the national defense as [the President] may designate." A significant limitation on Presidential freedom of action occurs in section 703 which forbids the creation of new Government corporations to carry out the purposes of the Act. The corporate device was used extensively during World War II and its unavailability in the current program is thought by some students of Government to be a serious deficiency.

Having in mind the three guides mentioned—functional grouping, utilization of pre-existing organization and legislative requirements—the initial delegation of the economic controls in September 1950 are readily understandable.

The President assigned the materials and facilities controls

"(a) To the Secretary of the Interior with respect to petroleum, gas, solid fuels, and electric power.

"(b) To the Secretary of Agriculture with respect to food, and with respect to the domestic distribution of farm equipment and commercial fertilizer.

"(c) To that commissioner of the Interstate Commerce Commission who is responsible for the supervision of the Bureau of Service of the Commission, with respect to domestic transportation, storage, and port facilities, or the use thereof, but excluding air transport, coastwise, intercoastal and overseas shipping.

"(d) To the Secretary of Commerce with respect to all materials and facilities except as provided in paragraphs (a), (b), and (c)."⁶

The stabilization controls in Title IV of the Act were delegated to a newly created Economic Stabilization Agency with the stipulation that there should be created within the agency an Office of Price Stabilization and a Wage Stabilization Board, the latter made up of representatives of the public, of labor and of business and industry. Those credit controls not vested in the Board of Governors of the Federal Reserve System were assigned to the Housing and Home Finance Agency.

The industrial expansion devices authorized by Title III of the Act were assigned generally in accord with the delegation of materials and facilities controls except that the General Services Administration and the Reconstruction Finance Corporation were named to do the actual procurement and financing pursuant to instructions from the agencies having policy responsibility.

6. Exec. Order 10161, 15 Fed. Reg. 6105 (1950)

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The President's delegations were soon supplemented by delegation from the Secretary of Commerce to the Secretary of the Interior of the materials and facilities controls with respect to mining and the smelting of non-ferrous metals.⁷ That delegation completed an alignment of substantive responsibility for the various parts of the industrial economy that remained almost unchanged for the first year the economic controls were in existence. To the date of this writing responsibility for inland transportation remains with the Interstate Commerce Commissioner, the production of food is controlled by the Secretary of Agriculture, the petroleum, natural gas, coal and electric power industries deal with the Secretary of the Interior and the very large residual area of responsibility is still that of the Secretary of Commerce. As we shall see, responsibility for the supervision and co-ordination of these functions has been less fixed.

The bulk of actions affecting "the man on the street" are taken, of course, by the operating agencies, and the emergency organizations set up to do the job have become familiar names. The largest of such offices is the National Production Authority in the Department of Commerce which is made up of a half dozen bureaus and not less than 30 industry divisions. Also in the Department of Commerce appropriate operations are carried on by the Civil Aeronautics Administration and the Maritime Administration. In the Department of the Interior the work is done by a Defense Electric Power Administration, a Defense Solid Fuels Administration and a Petroleum Administration for Defense. The defense production functions of the Interstate Commerce Commission are performed by a Defense Transport Administration and the Department of Agriculture uses for the purpose the Production and Marketing Administration.

It is not always possible to give full weight to each of the organizational guides referred to above. The President's assignment of responsibilities by industrial areas may even seem to honor in the breach the concept of functional grouping, because four different agencies of Government are delegated the same powers. This departure from one principle was in fact necessitated by adherence to another, the maximum utilization of existing organization. The obvious rightness of putting responsibility for food production in the Department of Agriculture, for example, where trained personnel, useful records and an extensive field service already existed, overcame the genuine advantages which would flow from the exercise of the priorities power over both cotton and cellulose, both turpentine and benzene, both meat and hides by the same agency.

Sharing of the economic controls among the various Government agencies best qualified by experience to exercise them made it necessary to provide for

7. N. P. A. Delegation 5, 16 Fed. Reg. 4907 (1951)

central co-ordination of the total use of the powers. Since our production of steel is not unlimited, one agency could not be left to decide the total allotment of steel to railroad cars, tracks and locomotives while another made final determination of the steel needed for tanks and guns and seagoing vessels and yet another fixed the requirements for housing, schools and automobiles. For this co-ordination function the President first selected the National Security Resources Board, an agency created by the National Security Act of 1947 "to advise the President concerning the co-ordination of military, industrial and civilian mobilization." Also assigned to the Resources Board was the certification of new facilities as necessary to the national defense for the purposes of accelerated tax amortization under Section 124A of the Internal Revenue Code.⁸

The problem of coordinating the uses of the emergency controls had two fairly dissimilar aspects. There was firstly the necessity for formulating and transmitting general policy concerning the defense program as a whole. Single leadership towards a single goal was essential to avoid imbalance, discrimination and confusion in the exercise of the various controls over the various segments of the economy. In addition to what might be called policy coordination, however, there was need for relatively detailed program planning, as in the case of the distribution of steel. This latter type of coordination or programming may be thought of as lying between the formulation of policy and the conduct of operations. As a working assignment it requires more people and more specialized skills than the formulation of basic policy. It is connected with the production rather than the stabilization side of mobilization. The original assignment to the National Security Resources Board combined these aspects of coordination, and the major change in organization which took place at the end of last year accomplished their separation.

In mid December 1950 the President created the Office of Defense Mobilization under a Director authorized to "direct, control, and coordinate all mobilization activities of the Executive Branch of the Government including but not limited to production, procurement, manpower, stabilization, and transport activities."⁹ This was followed in early January by the creation of the Defense Production Administration, the Administrator of which was authorized to "perform the central programming functions incident to the determination of the production programs required to meet defense needs."¹⁰ The earlier delegations both of materials and facilities controls and of industrial expansion devices were withdrawn and authority in those respects was given the Defense Production Administrator for delegation

8. It seems clear that these assignments were intended to be temporary, since The President had expressed himself as early as 1948 as considering The Resources Board an advisory body not to be burdened with administrative responsibilities

9. Exec. Order 10193, 15 Fed. Reg. 9031 (1950)

10. Exec. Order 10200, 16 Fed. Reg. 61 (1951)

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by him to the operating agencies. By the same order the Defense Production Administrator was made the certifying authority for accelerated tax amortization purposes.

These organizational changes accomplished a balance in the mobilization structure, with the head office freed of programming detail and a new agency on the production side of the effort corresponding very closely with the Economic Stabilization Agency on the stabilization side. In the Defense Production Administration total goals could be broken down into specific production plans, total requirements compared with available supply and a balance struck in terms of relative essentiality. With programs determined, the operating agencies could proceed to the orderly distribution of materials without the danger of hopeless conflict and imbalance.

As a by-product of determining production programs in terms of essentiality and the availability of materials, shortages in materials and in industrial capacity are clearly demonstrated and action for their alleviation can be taken by procurement, subsidy, capital loans, materials substitution and conservation, tax relief and other measures. Responsibility for estimating the materials requirements, both defense and civilian, and including export programs, was assigned to various agencies of the Government, generally in conformance with the responsibility assigned for materials and facilities controls. The same agencies were made responsible for the development of plans for industrial expansion in their areas. These requirements estimates and expansion plans, submitted to the Defense Production Administration, are the raw materials from which definitive programs are constructed.

The most recent important organizational change in the defense production program was the creation by the President last summer of a Defense Materials Procurement Agency¹¹ to which was transferred, from the General Services Administration, general responsibility for carrying into effect industrial expansion programs certified to it by the Defense Production Administration. Also transferred to the new agency has been the substance of authority with respect to metals and minerals which was delegated by the Secretary of Commerce to the Secretary of the Interior the year before.

This, then, is the present structure for putting into effect the Congressional

11. Exec. Order 10281, 16 Fed. Reg. 8789 (1951)

direction to create such military and economic strength as is necessary to preserve peace—the Defense Department carries out a tremendous military procurement program, the Office of Defense Mobilization formulates the broad policies which will assure the accomplishment of the military build-up without economic upset, the Economic Stabilization Agency determines, and through its subordinates accomplishes, the anti-inflation measures which must be taken, the Defense Production Administration determines, and through its delegate agencies accomplishes, the use of materials and industrial capacity which will meet production goals. There is little question but that in time of total war the production organization would have to be both increased in size and decreased in complexity. Other control mechanisms over such elements of strength as manpower and information, which exist now only in rudimentary form, would have to be added. But for the present effort the machinery we have is working creditably and in all probability will not be radically altered.