

CIVILIAN DEFENSE MANUAL

on

**Legal Aspects of
Civilian Protection**

OCD Publication No. 2701



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Legal Aspects of Civilian Protection

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UNITED STATES OFFICE OF CIVILIAN DEFENSE

JAMES M. LANDIS, *Director*

Washington, D. C.

This Manual on Civilian Defense was compiled
and edited by

HENRY S. FRASER

under the supervision of the Special Civilian Defense Committee, a Divisional Committee of the Committee on Coordination and Direction of War Effort of the American Bar Association

AMERICAN BAR ASSOCIATION

Committee on Coordination and Direction of War Effort

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PHILIP J. WICKSER

Special Civilian Defense Committee

PHILIP J. WICKSER, *Chairman*

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FOREWORD

Government under our system is a resultant of the three forces of Federal, State, and local power. It is the sum total of these forces operating upon the individual that defines his rights and obligations with reference to his community, his state, and his nation. The ways in which these forces have been weighted as against each other have always presented fascinating and significant problems in government both in peace and war. Nowhere is that more true today than in the field of civilian defense, for civilian defense either in terms of protection or in its promotion of the essential civilian war services requires the interaction of all these forces.

Civilian defense presupposes that the initiating and operating unit must be the community. Nevertheless certain uniform patterns required by the need for efficient action have to be worked out over areas wider than those of the community and frequently over areas where there is no necessary coincidence between the area to be affected and an echelon of political authority. Difficult problems of government, of administration, of intercommunity and interstate cooperation, consequently exist. These in a true sense are the real problems of "law" in civilian defense, for it is their neglect that has made and will make for confusion and inefficiency.

This is why this contribution made by the membership of the Special Civilian Defense Committee of the American Bar Association has special significance. Its presentation of the problems that have been encountered, its collection of materials that are difficult to assemble, its analysis of issues that are essentially new, will, it is hoped, make this a text of lasting value to defense councils throughout the United States. They should thus be enabled more wisely to assume those responsibilities that must be vested in them of guiding and directing the contribution that each of America's thousands of communities must make to the prosecution of the war.

JAMES M. LANDIS,

United States Director of Civilian Defense.

WASHINGTON, D. C., March 1943.

INTRODUCTION

The Special Civilian Defense Committee of the American Bar Association was created by its House of Delegates in March 1942 for the purpose of developing ways for the organized bar to take an active part in the nation's civilian war work. It is a Divisional Committee of the Association's Committee on Coordination and Direction of War Effort, under whose direction the energies of the bar are being applied by many committees in many fields.

Upon conference with the United States Office of Civilian Defense, and with the approval of its Director, Mr. James M. Landis, the Special Civilian Defense Committee undertook to prepare this Manual of Civilian Defense, and commissioned Mr. Henry S. Fraser of the New York Bar, to compile and write it. Mr. Fraser has had the assistance of each member of the above named Committees, as well as of other members of the Association. The Manual also reflects generous cooperation received from the Office of Civilian Defense and particularly from its General Counsel, Mr. Harold W. Newman, Jr. The text was submitted to, and has had the approval of, the Office of Civilian Defense.

The direct scope of the Manual has been confined to the legal aspects of civilian effort as they relate to the protection and safety of the public, in terms, chiefly, of community values. Problems involving morale, as such, education, housing, health, rationing, and the like, in their practical or governmental aspects, have been left untouched—not from a disregard of their importance, but because of the necessity of orderly limitation.

At the outset the Committee discovered the need for a comprehensive compilation of the source material which must be examined in order to discover the authority and form of the many and often diverse federal, state, and local defense agencies. This is set forth in this Manual, and is not, so far as is known, available under one cover elsewhere.

The problem of coexisting civil and military authority, short of martial law, has arisen during this war in new and unprecedented forms. A chapter has been devoted to the discussion of military orders affecting civilians, and to the legal and constitutional considerations which bear on this important subject.

The texts of model statutes and of an ordinance for civilian defense organization have been included, in the hope that their availability

to legislative and administrative bodies may prove to be of value. For the same reason, and for the benefit of officials generally, the experience, experimental as well as confirmed, of the states and localities of the country, in the field of legislation and regulation, and in dealing with conflicting theories of civilian organization, has been reported.

Lastly, there have been included an analysis and discussion of the legal problems inherent in civilian defense activities and, as they affect status, springing from the impact of the war itself. In this field an attempt has been made to illuminate the background and general principles of the law, and then to report existing decisions and articles, with special reference to the greater experience of the English courts and text writers.

In fighting to preserve our governmental institutions and our ideals, we are also fighting to preserve *and to vindicate* the methods and skills which our forefathers developed and which embody our beliefs as to how a united people can and should live and function. We shall not save our ideals unless we demonstrate our capacity through united action to make our ways and our techniques surpass those of our enemies. The complete integration of civilian war effort does not demand the regimentation which the armed services demand, but it reaches down into the minutiae and detail of daily living, on an even wider scale. It was in the hope of contributing, in some measure, to forethought and breadth of vision in the organization of a national civilian war effort, in its larger, as well as its technical, aspects, that this Manual was prepared.

PHILIP J. WICKSER,

*Chairman, Special Civilian Defense Committee,
American Bar Association.*

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CHAPTER I

THE ORGANIZATION OF CIVILIAN DEFENSE

1. THE OFFICE OF CIVILIAN DEFENSE¹

Establishment

In May 1940, the State governments began in earnest to organize councils for the purpose of advising the Governors on problems arising out of civilian defense.² Cities, likewise, began in this period to set up local defense councils, and by April 1941 approximately 1,000 of these local groups had been appointed.³ Six months later there were nearly 6,000 local defense councils.⁴

In recognition of the necessity for coordinated effort among local, State, and Federal governments, the Advisory Commission of the Council of National Defense in August 1940 established the Division of State and Local Cooperation.⁵ This Division functioned as a channel of communication between the Council of National Defense and its Advisory Commission, on the one hand, and the State and local defense councils, on the other. The Division also encouraged and assisted in the creation of councils in various States and municipalities.⁶ In May 1941, when the Office of Civilian Defense was

¹ The term "Civilian Defense" is broad and might be said to include all activities of civilians whether directly or indirectly related to the war. This Manual is concerned primarily with the legal aspects of civilian protection against air raids and sabotage.

² As early as September 1939 the Governor of New Jersey appointed an emergency committee, which had its first meeting on October 26, 1939. (*The Book of the States 1941-42*, pp. 36-37.) Tennessee and Virginia organized State defense councils in May 1940. By the end of the next month similar councils had been created in Arizona, California, Connecticut, Georgia, Louisiana, and Maine. Every State now has such a council or its equivalent.

³ "National Defense and Municipal Legal Problems," Report No. 71 of National Institute of Municipal Law Officers, prepared by Charles S. Rhyne, April 1941, p. 2. *Defense*, Vol. 2, No. 17 (April 29, 1941), p. 22.

⁴ *Defense*, Vol. 2, No. 47 (Nov. 25, 1941), p. 31. Civilian defense activities were also encouraged by the presidential proclamation of October 22, 1941 (text in Appendix 32, p. 180) calling upon all persons "to give thought to their duties and responsibilities in the defense of this country."

⁵ *The Book of the States 1941-42*, p. 34. The Council of National Defense was established by Section 2 of the Act of August 29, 1916 (39 Stat. 649). On May 29, 1940, the Council had adopted, with the President's approval, rules and regulations (5 Fed. Reg. 2114) setting up an Advisory Commission of seven members as provided in the said statute.

⁶ Arnold Miles and Roy H. Owsley, "Cities and the National Defense Program," Report No. 146 of the American Municipal Association, May 1941, pp. 13, 16. See also Daniel W. Hoan, "States and Cities in the Defense Program," 30 *National Municipal Review* 141-146, 159 (March 1941); and *The Book of the States 1941-42*, pp. 34-41.

established, the Division of State and Local Cooperation was embodied therein.⁷

On May 20, 1941, the President, by an Executive order,⁸ established the Office of Civilian Defense, hereinafter referred to as OCD.⁹ This new Office was set up within the Office for Emergency Management of the Executive Office of the President.⁹ The Executive order creating the OCD has been amended three times by subsequent Executive orders;¹⁰ and by two other Executive orders certain additional duties have been imposed upon the OCD.¹¹

At the present time the OCD is headed by a Director appointed by the President under whose supervision the Director performs his responsibilities.^{11a} Advising and assisting the Director is the Civilian Defense Board, which was established within the OCD by Executive order of April 15, 1942.¹²

Functions

A primary function of the OCD is to serve as a planning and advisory body, and as a center for the coordination of Federal civilian defense activities which involve relationships between the Federal Government and State and local governments. The OCD is also charged with assisting State and local governments in the establishment of defense councils, and with taking steps to secure the coop-

⁷ The Division had, since January 7, 1941, been coordinated in and through the Office for Emergency Management. *Office for Emergency Management, Functions and Administration*, pp. 3, 52 (1941).

⁸ Executive Order No. 8757; 6 Fed. Reg. 2517. Text in Appendix 1, p. 103. The establishment of this central agency had been strongly urged and a prospectus of its activities outlined in a preliminary report prepared by Paul V. Betters, executive director of the United States Conference of Mayors, and transmitted to the President of the United States on January 31, 1941. The report is reprinted in 87 *Cong. Rec.*, February 10, 1941, pp. A599-601.

^{9a} Although the designation OCD is frequently used as to State and local civilian defense organizations, the Federal organization is confined to the Washington and Regional Offices. (See p. 4.)

⁹ The Office for Emergency Management was established in the Executive Office of the President by Administrative Order of May 25, 1940 (5 Fed. Reg. 2109). The Order recites that it is issued pursuant to Part I of Executive Order No. 8248 of September 8, 1939 (4 Fed. Reg. 3864), which provides, in part, that there shall be, "in the event of a national emergency, or threat of a national emergency, such office for emergency management as the President shall determine." (Executive Order No. 8248 established and defined the functions of the various divisions of the Executive Office which had been reorganized pursuant to the Reorganization Act of 1939 [53 Stat. 561].)

¹⁰ Executive Order No. 8799 of June 20, 1941; 6 Fed. Reg. 3049. Executive Order No. 8822 of July 16, 1941; 6 Fed. Reg. 3529. Executive Order No. 9134 of April 15, 1942; 7 Fed. Reg. 2887, 2962. The texts of these three orders are reprinted in Appendices 2, 3, and 4, respectively, pp. 105, 106.

¹¹ Executive Order No. 9088 of March 6, 1942; 7 Fed. Reg. 1775. Executive Order No. 9165 of May 19, 1942; 7 Fed. Reg. 3765. The texts of these two orders appear in Appendices 6 and 5, respectively, pp. 109, 107.

^{11a} The present Director, James M. Landis, was appointed February 10, 1942, to succeed F. H. LaGuardia.

¹² 7 Fed. Reg. 2887, 2962. See Appendix 4, p. 106. The Civilian Defense Board consists of the Director of the OCD as chairman, the Secretary of War, the Attorney General, the Secretary of the Navy, the Director of the Office of Defense Health and Welfare Services, and such other members as the President may designate. The President has designated representatives from the Council of State Governments, American Municipal Association, United States Conference of Mayors, and the American Red Cross.

eration of appropriate Federal agencies in dealing with State and local problems arising from the impact of the industrial and military efforts required by war. Another of the chief functions of the OCD is to "sponsor and carry out such civil defense programs as may be necessary to meet emergency needs, including the recruitment and training of civilian auxiliaries."¹³ The OCD is also directed to publicize information concerning civil defense measures, and to recommend to State and local defense agencies measures necessary to improve and implement civilian defense programs.^{13a} Related to these powers is the duty of the OCD to promote civilian volunteer participation in the war program, and to that end to assist State and local defense councils in the organization of volunteer service units.¹⁴

The Office of Civilian Defense has set up within its own organization two operating branches: (a) the Civilian Protection Branch, dealing with all protective phases of civilian defense, and including the Medical Division and the Facility Security Division, and (b) the Civilian War Services Branch, dealing with the nonprotective phases.

In carrying out its obligation to assist State and local defense councils the OCD, in conjunction with the War Department, has established civilian protection schools in a number of colleges and universities for the training of instructors, who thereafter become available to teach groups at regional, State, and local levels.¹⁵ On Novem-

¹³ Acting under this authority, contained in Executive Order No. 9134 (see Appendix 4, p. 106), the OCD has recruited and organized the Civil Air Patrol (*infra*, p. 14) and the Forest Fire Fighters Service (*infra*, p. 16). It has been sometimes questioned whether the OCD, created by Executive order, can validly support such recruitment under the war power. However, it has been answered that the Federal Government could constitutionally take over from the States and municipalities the civilian protection program in its entirety, "since adequate 'passive defense' is essential to the successful conduct of the war." Note in 55 *Harvard Law Review* 844, 848 (March 1942), citing *Hamilton v. Kentucky Distilleries Co.*, 251 U. S. 146 (1919); *Jacob Ruppert v. Coffey*, 251 U. S. 264 (1920); *Selective Draft Law Cases*, 245 U. S. 366 (1918); *Highland v. Russell Car Co.*, 279 U. S. 254 (1929); and *Ashwander v. Valley Authority*, 297 U. S. 288 (1936). For other cases on the exercise of the war power by Congress, see *Miller v. United States*, 11 Wall. 268, 305 (1870); *Hamilton v. Dillin*, 21 Wall. 73, 87, 88 (1874); *Ex parte Milligan*, 4 Wall. 2, 136-142 (1866); and *United States v. Mackintosh*, 283 U. S. 605, 622-623 (1931). As to the war power of the President, see *Fleming v. Page*, 9 How. 603, 615 (1850); *Ex parte Quirin*, 317 U. S.—(1942); Clarence A. Berdahl, *War Powers of the Executive in the United States* (1921); Edward S. Corwin, *The President: Office and Powers* (1940); Charles E. Hughes, "War Powers under the Constitution," 42 *Reports of American Bar Association* 232-248 (1917); Dennis O'Rourke, "War Powers," 8 *George Washington Law Review* 157-182 (1939); Raymond E. Hayes, "Emergencies and the Power of the United States Government to Meet Them," 16 *Temple University Law Quarterly* 173-186 (1942). On the other hand, it has been doubted that the war power of the President, broad as it is, includes the power to authorize the recruitment "of State officials and the conferring upon them the benefits of the protecting State law." (See Supplementary Report of the Committee on Blackouts of the Bar Association of the District of Columbia, published in the *Journal* of said Association, June 1942, pp. 265-267.)

^{13a} In connection with these informational activities the OCD issues periodically an "OCD News Letter", a "Statistical Bulletin", and a "Descriptive List of Principal Publications, Regulations, Posters and Forms" (OCD Publication 4202).

¹⁴ Executive Order No. 9134; 7 Fed. Reg. 2887, 2962. See Appendix 4, p. 106.

¹⁵ War Department Civilian Protection Schools have been opened and are now functioning at Stanford University, Loyola University, University of Washington, Purdue University,

ber 29, 1942, a series of specialized 5-day courses began in the schools on the subjects of protection against gas, plant protection, technique of protection, and the operation of local and State defense councils by staff members.¹⁶

Regional Offices

In order to decentralize the supervision of civilian defense in the United States, the Director of the OCD, as early as July 1941, established nine Regional Civilian Defense Areas¹⁷ coterminous in their boundaries with those of the War Department Service Commands, Services of Supply.¹⁸ In each of the nine areas there has been set up a Regional Office headed by a Regional Director who is appointed by the Director of the OCD in Washington with the President's approval. Advising and assisting the Regional Directors, who are supervised by the Washington Director, are the Regional Civilian Defense Boards. These Boards, which exist in each of the nine Regional Offices, are composed in each instance of the Regional Director as chairman, and a representative of each of the following Federal departments and agencies designated by the head thereof: U. S. Army, to represent the Commanding General, Service Command, Services of Supply; U. S. Army, to represent the Air Force Commander charged with the air defense of the area; U. S. Navy, to represent the Naval District Commandant; Department of Justice (FBI Division); Federal Security Agency; and a representative of each of the following: the Council of State Governments, the American Municipal Association, the United States Conference of Mayors, and the American Red Cross.¹⁹

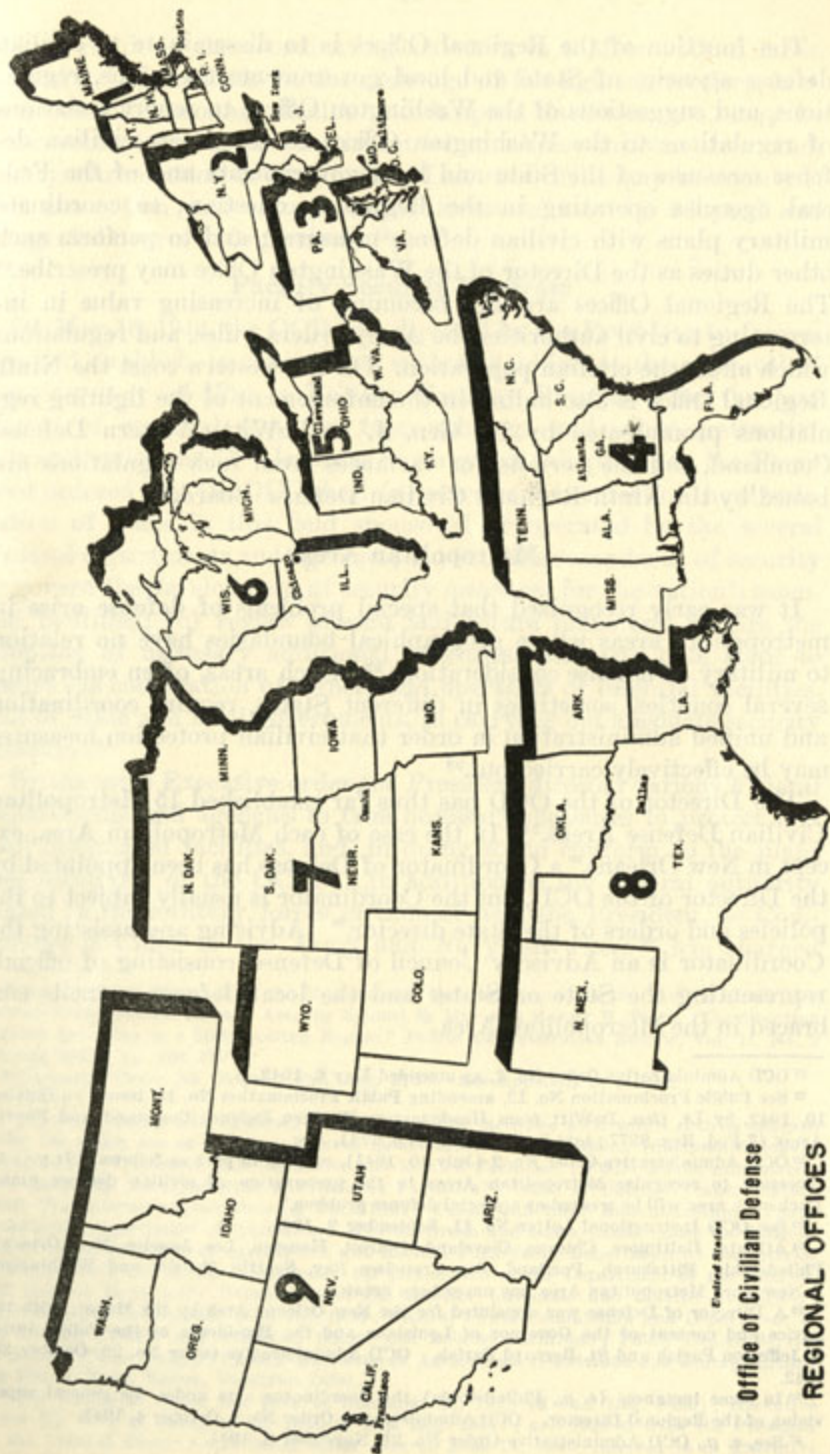
Amherst College, and Occidental College. The school at the University of Maryland, having been previously transferred from Edgewood Arsenal, was converted in August 1942 into a traveling demonstration school, touring the eastern United States.

¹⁶ OCD Operations Letter No. 89 (Supplement No. 3 to Operations Letter No. 30), November 14, 1942; and Supplement No. 4, December 16, 1942. See also, OCD Operations Letter No. 109, February 9, 1943, and Operations Letter No. 115, March 3, 1943.

¹⁷ These areas are now known as "Civilian Defense Regions." (OCD Operations Letter No. 38, May 6, 1942.)

¹⁸ OCD Administrative Order No. 1, July 10, 1941, as revised by order of May 6, 1942. The boundaries have been kept coterminous with the Service Commands by appropriate amendments to the said Administrative Order whenever States were regrouped by the War Department. See Amendment No. 1 (March 3, 1942) transferring Arizona from the 8th to the 9th Region, and Amendment No. 2 (April 29, 1942) transferring Colorado from the 8th to the 7th Region, Arkansas from the 7th to the 8th, and Louisiana from the 4th to the 8th. See illustration on p. 5. By Amendment No. 1 (February 25, 1943, effective three days later) to the aforesaid revision of May 6, 1942, the Washington Metropolitan Civilian Defense Area (*infra*, p. 6, note 24) was withdrawn from the 3rd Region and placed under the supervision of the Washington Office of the Office of Civilian Defense which also supervises directly the territories and possessions.

¹⁹ OCD Administrative Order No. 1, as amended May 6, 1942. This order, in its amended form, eliminated the former Regional Volunteer Participation Committees as a result of the elimination of the Volunteer Participation Committee by the President's Executive Order No. 9134 (see Appendix 4, p. 106). The same amended Administrative Order continued the Regional Boards for Civilian Protection but, to reflect the substitution by the said Executive Order No. 9134 of a Civilian Defense Board for the Board for Civilian Protection, the Regional Boards were designated as Regional Civilian Defense Boards.



United States

Office of Civilian Defense

REGIONAL OFFICES

The function of the Regional Offices is to disseminate to civilian defense agencies of State and local governments the plans, regulations, and suggestions of the Washington Office; to report violations of regulations to the Washington Office; to coordinate civilian defense measures of the State and local governments and of the Federal agencies operating in the Region in question; to coordinate military plans with civilian defense measures; and to perform such other duties as the Director of the Washington Office may prescribe.²⁰ The Regional Offices are also becoming of increasing value in interpreting to civil authorities the Army orders, rules, and regulations which affect the civilian population. On the western coast the Ninth Regional Office is also aiding in the enforcement of the lighting regulations promulgated by Lt. Gen. J. L. DeWitt, Western Defense Command, and the permits for variances from such regulations are issued by the Ninth Regional Civilian Defense Board.²¹

Metropolitan Areas

It was early recognized that special problems of defense arise in metropolitan areas where geographical boundaries have no relation to military or defense considerations.²² Such areas, often embracing several counties, sometimes in different States, require coordination and unified administration in order that civilian protection measures may be effectively carried out.²³

The Director of the OCD has thus far established 15 Metropolitan Civilian Defense Areas.²⁴ In the case of each Metropolitan Area, except in New Orleans,²⁵ a Coordinator of Defense has been appointed by the Director of the OCD, but the Coordinator is usually subject to the policies and orders of the State director.²⁶ Advising and assisting the Coordinator is an Advisory Council of Defense, consisting of officials representing the State or States and the local defense councils embraced in the Metropolitan Area.²⁷

²⁰ OCD Administrative Order No. 1, as amended May 6, 1942.

²¹ See Public Proclamation No. 12, amending Public Proclamation No. 10, issued on October 10, 1942, by Lt. Gen. DeWitt from Headquarters Western Defense Command and Fourth Army (7 Fed. Reg. 8377; text in Appendix 29, p. 174).

²² OCD Administrative Order No. 2 (July 10, 1941), reading in part as follows: "It may be necessary to recognize Metropolitan Areas in the preparation of civilian defense plans. Each such area will be treated as a special defense problem."

²³ See OCD Instructional Letter No. 11, September 2, 1941.

²⁴ Atlanta, Baltimore, Chicago, Cleveland, Detroit, Houston, Los Angeles, New Orleans, Philadelphia, Pittsburgh, Portland, San Francisco Bay, Seattle, Toledo, and Washington. A New York Metropolitan Area has never been created.

²⁵ A Director of Defense was appointed for the New Orleans Area by the Mayor, with the advice and consent of the Governor of Louisiana and the Presidents of the Police Juries of Jefferson Parish and St. Bernard Parish. OCD Administrative Order No. 29, October 20, 1942.

²⁶ In some instances (e. g., Philadelphia) the Coordinator acts under the general supervision of the Regional Director. OCD Administrative Order No. 4, October 4, 1941.

²⁷ See, e. g., OCD Administrative Order No. 21, November 8, 1941.

As a result of the coordinating activities in a Metropolitan Area, mutual aid agreements for the exchange of fire-fighting services, law-enforcement personnel, health and hospital facilities, etc., may be consummated among the constituent communities; uniform observance and synchronization of blackouts and air raid drills may be achieved; and evacuation and transportation measures may be adopted and integrated over a wide territory.²⁸

Facility Security Program

On May 19, 1942, the OCD was directed by the President to formulate and establish, in conjunction with and subject to the approval of the Secretary of War, a Facility Security Program "for the protection of essential facilities from sabotage and other destructive acts and omissions."²⁹ In order to carry out this program, the President ordered that the OCD shall (a) serve as the center for the coordination of plans in this field sponsored or operated by the several Federal departments and agencies; (b) establish standards of security to govern the development of security measures for the nation's essential facilities; (c) review present and future plans and require the adoption of necessary additional measures; and (d) take steps to secure the cooperation of owners and operators of essential facilities, and of State and local governments, in carrying out adequate security measures.³⁰

By the same Executive order the President directed various Federal departments and agencies to take necessary measures to protect certain designated facilities, and, in doing so, to conform to the plans and directives of the OCD.³¹ In addition to the general authority vested in the military forces in time of war, the President, as Commander-in-Chief of the Army and Navy, elsewhere³² has charged

²⁸ See article on the work of the Metropolitan Defense Council in the San Francisco Bay Metropolitan Civilian Defense Area by Samuel C. May and Robert E. Ward, "Coordinating Defense Activities in a Metropolitan Region," *Public Administration Review*, Vol. 11, No. 2 (Spring 1942), pp. 104-112.

²⁹ Executive Order No. 9165; 7 Fed. Reg. 3765. See Appendix 5, p. 107.

³⁰ *Idem*.

³¹ The departments and agencies, together with the facilities with which each is charged under the order, are as follows: Federal Communications Commission (Communications); Department of Commerce (Air Commerce and Related Facilities); Public Roads Administration (Highway Transportation and Related Facilities); Office of Defense Transportation (Rail Transportation and Related Facilities); Public Buildings Administration (Public Buildings); Department of Agriculture (Forest, Brush and Grass Lands under the jurisdiction of the Department of Agriculture, and Related Facilities); Department of the Interior (Forest, Brush and Grass Lands under the jurisdiction of the Department of the Interior, and Related Facilities); Department of the Interior (Minerals and Related Facilities); Federal Power Commission (Gas Utilities); Federal Power Commission and Department of the Interior (Power and Irrigation Water, and Related Facilities); Public Health Service (Domestic Water Supply); and Department of Agriculture (Foodstuffs and Storage including Fibers, Naval Stores, Vegetable Oils).

³² See Executive Order No. 8972 of December 12, 1941 (6 Fed. Reg. 6420); Executive Order No. 9074 of February 25, 1942 (7 Fed. Reg. 1587); and request from the President to the Federal Power Commission under date of June 14, 1940, referred to in Executive Order No. 9165 (7 Fed. Reg. 3765; text in Appendix 5, p. 107).

the Secretary of War, the Secretary of the Navy, and the Federal Power Commission with the specific responsibility of protecting vital facilities of war. Under this authority the military forces maintain limited war-plant protection and internal security programs.

The Facility Security Division of the OCD is responsible for effectuating a comprehensive program designed to organize, direct, and coordinate the operations of the participating Federal agencies, the protective instrumentalities of State and local governments, and of private facilities related to the war effort, for the establishment of standards of security, the development of adequate safeguards, and the execution of measures for the security of essential war facilities beyond direct military and Federal Power Commission control. The facilities falling within the scope of authority of the Federal participating agencies are grouped under communications, air commerce, highway transportation and related facilities, railroad transportation, public buildings, timber and forest areas, minerals and petroleum, gas utilities, power and irrigation water, domestic water supplies, foodstuffs and storage, and other essential facilities.

Under the Facility Security Program, action is direct from the Federal participating agency to the facility, or to the State or local authority controlling action at the facility, or to responsible owner-management. Coordination is maintained at the national, State, and local levels to obviate gaps and overlapping, and liaison is maintained with the military forces, the Federal Power Commission, and the Federal Bureau of Investigation.

The Facility Security Division is organized with technical and administrative services to discharge the responsibilities imposed upon it. The Program is effectuated in the field by regional, State, and district OCD facility security officers.³³

Supplementing the Facility Security Program, some States have legislation designed to guard against sabotage. For example, in New York every employer of a guard or watchman in or about any property used for the manufacture, storage, or transportation of war materials must deliver to the FBI the guard's name, address, fingerprints, date and place of birth, naturalization data, and such other information as may be required by the FBI.³⁴ In California it is a misdemeanor to enter, remain upon, or loiter near "posted property" without the written permission of the owner or occupant.³⁵ In New

³³ For further details as to the operation of the Facility Security Program, see address by Philip Bastedo, Deputy Director of the OCD, in Chicago, Illinois, November 9, 1942. (OCD Memorandum, M-3306.)

³⁴ L. 1942, c. 881.

³⁵ Stats. 1941, ch. 695. As to State legislation on sabotage see Sam Bass Warner, "The Model Sabotage Prevention Act," 54 *Harvard Law Review* 602-631 (1941). In Los Angeles, an ordinance has been passed authorizing the limitation or prohibition of parking in the neighborhood of defense plants. (Ordinance No. 85,901, approved February 3, 1942.)

York it is likewise a misdemeanor to enter wilfully, without permission, the premises of a defense plant or facility which has been posted by order of the State War Council upon petition of the owner.³⁶

Loan of Supplies and Equipment

In January 1942, Congress passed an Act authorizing the appropriation of not to exceed one hundred million dollars to be expended by the OCD, under presidential regulations, for facilities, supplies, and services required for the adequate protection of persons and property from bombing attacks, sabotage, or other war hazards.³⁷ These facilities, supplies, and services are to be provided, according to the statute, in such localities "as may be determined by the said Director [of the OCD] to be in need of, but unable to provide, such protection."

Pursuant to the statute the President promulgated regulations on March 6, 1942,³⁸ whereby the Director of the OCD is empowered to notify the War Department of the items of equipment desired for distribution to the localities requiring the same. The War Department in turn is directed to procure the equipment and deliver it to the OCD or upon its order. All such equipment is to remain the property of the United States and to be returned to the Federal government, upon demand, unless lost, destroyed, or consumed in the course of its use. The Director of Civilian Defense is required to render bimonthly reports to Congress concerning the progress of the procurement of the equipment and material provided by the appropriation.³⁹

On March 18, 1942, the Director of the OCD issued Regulations No. 1 relating to loans of equipment and supplies to civil authorities.⁴⁰ The supervision of the activities of such authorities in connection with the distribution, use, and return of these supplies is placed in the hands of the Regional Directors of the OCD. The regulations require, as a condition precedent to the issuance of supplies to a community in any State, the gubernatorial appointment of a State property officer and also the appointment of a local property officer by the duly authorized appointive authority of each borrow-

³⁶ L. 1942, c. 544, §§ 65-69, substantially reenacting L. 1941, c. 869.

³⁷ Public Law 415—77th Cong., Chap. 20, 2d Sess., approved January 27, 1942, 56 Stat. 19. Text in Appendix 22, p. 154. On February 21, 1942, the appropriation was made in the First Deficiency Appropriation Act, 56 Stat. 98. For text see Appendix 22, p. 154, note 96.

³⁸ Executive Order No. 9088; 7 Fed. Reg. 1775. See Appendix 6, p. 109.

³⁹ First Deficiency Appropriation Act, 1942, 56 Stat. 98.

⁴⁰ 7 Fed. Reg. 2172. These regulations were revised on August 11, 1942; 7 Fed. Reg. 6370. Text in Appendix 7, p. 112. The regulations were amended on October 9, 1942, and December 31, 1942; 7 Fed. Reg. 8239 and 8 Fed. Reg. 180. Texts in Appendices 8 and 9, pp. 120, 122.

OFFICIAL CIVILIAN DEFENSE INSIGNIA



U. S. CITIZENS SERVICE CORPS

BASIC INSIGNE
(Administrative Staff)

CIVIL AIR PATROL

UNITED STATES CITIZENS DEFENSE CORPS



STAFF



BOMB RECONNAISSANCE AGENT



AIR RAID WARDEN



AUXILIARY POLICE



AUXILIARY FIREMEN



FIRE WATCHERS



DEMOLITION AND CLEARANCE



ROAD REPAIR



RESCUE



DECONTAMINATION



MEDICAL



NURSES' AIDE



DRIVERS



MESSAGERS



EMERGENCY FOOD AND HOUSING



UTILITY REPAIR



INSTRUCTORS



CHAPLAINS (Ordinary)



CHAPLAINS (Naval)



TRAINEE



CITIZEN DEFENSE AUXILIARY GROUP



FOREST FIRE FIGHTERS SERVICE



CIVILIAN EVACUATION SERVICE

DESIGNS PATENTED BY U. S. OFFICE OF CIVILIAN DEFENSE. REPRODUCTION GOVERNED BY OGD REGULATION NO. 2

Each of the identifying devices is in red superimposed on a white equilateral triangle embossed on a circular field of blue, except that in the insignia for the Auxiliary Group the letters "CD" are in blue; in the Staff Unit insignia the star is in blue; and the Trainee "CD" insignia is red.

ing community.⁴⁰ Under some circumstances loans of property may be made directly to States.⁴¹

Insignia

The presidential regulations, issued under the Act of January 27, 1942,⁴² authorized the Director of the OCD to prescribe insignia to be worn by persons engaged in civilian defense activities.⁴³ On April 29, 1942, the Director accordingly issued Regulations No. 2, since revised on August 26, 1942, wherein are prescribed in detail the patented insignia for the Administrative Staff of the OCD, the U. S. Citizens Defense Corps, the U. S. Citizens Service Corps, the Civil Air Patrol, the Forest Fire Fighters Service, the Civilian Evacuation Service, and the Civilian Defense Auxiliary Group.⁴⁴

The insignia, which are protected by Letters Patent, are embodied in identifying articles known collectively as "official articles."⁴⁵

The statute, above referred to, provides that it shall be unlawful for any unauthorized person to wear any insignia of the OCD under penalty of fine of not more than \$100 or imprisonment for not more than thirty days, or both. Regulations No. 2 of the OCD confer the right to wear or use any "official article" only so long as the individual complies "with all rules, regulations, orders, and instructions made at any time by the Director with respect to the use or wearing of prescribed insignia, and the eligibility, training, qualifications, or duties of such persons, and such right shall be subject at all times to the terms and conditions of any such rules, regulations, orders, or instructions."⁴⁶

⁴⁰ A model statute authorizing acceptance of Federal equipment, supplies, materials, and funds has been prepared by the Council of State Governments (text in Appendix 39, p. 198). A Model Ordinance for Civilian Defense Organization, prepared by the OCD, authorizes local defense councils to accept grants and loans of property from the State or Federal Government (text in Appendix 40, p. 199). In New York State the Legislature has authorized the State or any municipal subdivision to accept the Federal funds or materials, with the approval of the State War Council. L. 1942, c. 544, § 38. Comparable statutes exist in Arizona (Laws 1942, ch. 21, § 4 [4]); Michigan (Acts 1942, First Extra Session, Public No. 12, § 1); Pennsylvania (Acts 1942, Special Session, Act No. 14, § 6); and Rhode Island (Laws 1942, Senate Bill No. 25, § 15).

⁴¹ Regulations No. 1, Amendment No. 3, December 31, 1942; 8 Fed. Reg. 180. Text in Appendix 9, p. 122.

⁴² *Supra*, p. 9. Text in Appendix 22, p. 154.

⁴³ Executive Order No. 9088; 7 Fed. Reg. 1775. See Appendix 6, p. 109.

⁴⁴ For Regulations No. 2, as revised on August 26, 1942, see 7 Fed. Reg. 6795. Text in Appendix 10, p. 123. See also Appendices 11-13, pp. 129-133. (Regulations No. 2, as originally issued on April 29, 1942, are available in 7 Fed. Reg. 3242.) An illustration showing the designs of the official insignia appears on p. 10.

⁴⁵ The "official articles" include arm bands; brassards; buttons; pins; collar and cap emblems; automobile stickers, plates, pennants, and headlamp masks; flags and banners; etc. Regulations No. 2, Supplementary Order No. 2 (Revised), and Amendment No. 1 thereto. (See Appendices 12-13, pp. 130-133.)

⁴⁶ Regulations No. 2, § 5 (b). See Appendix 10, p. 123. In this connection the Act of January 27, 1942 (*supra*, p. 9) provides that "nothing in this Act shall be construed as authorizing the Director of Civilian Defense, or any person or employee acting under him by authority of this Act, or in pursuance of the regulations prescribed thereunder to interfere with or usurp any of the rights or duties of any local district, municipal, county, or State official."

In the Eastern Military Area, Air Raid Protection Regulations No. 1, issued by the Commanding Generals of the Service Commands, incorporate a provision prohibiting the manufacture, sale, or use of insignia prescribed by the OCD, except in accordance with the rules and regulations of the OCD. Penalties of a fine up to \$5,000 or imprisonment up to one year or both are provided for violation of these regulations. Under paragraphs 41 and 42 of Section VI of these regulations, the Director of the OCD has issued an order prescribing arm bands, penants, and masks as official identification for emergency vehicles and for certain pedestrians during periods of air raid alarm.^{46a}

Citizens Defense Corps

On April 29, 1942, the Director of the OCD by order confirmed the establishment within his Office of the United States Citizens Defense Corps, the United States Citizens Service Corps, the Civil Air Patrol, and the Civilian Defense Auxiliary Group.⁴⁷

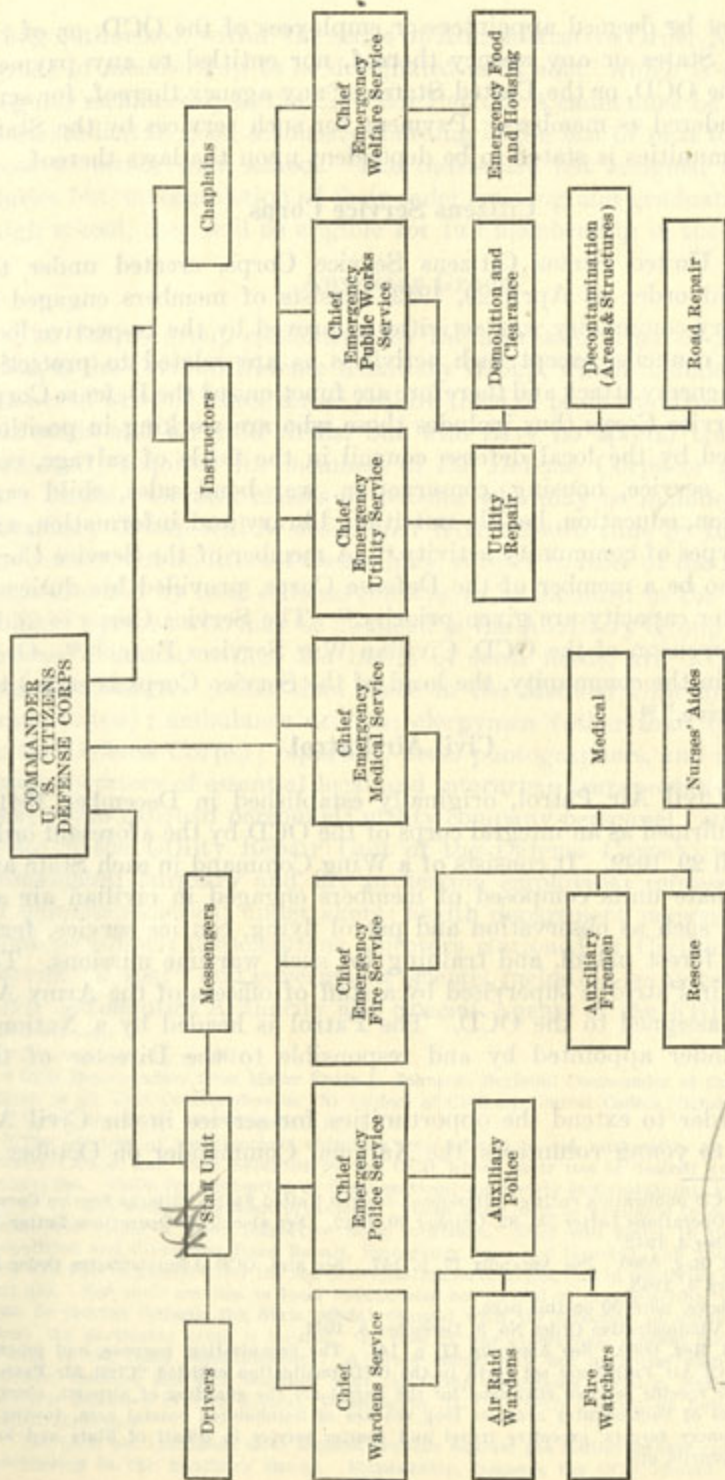
The Defense Corps is stated to consist of the enrolled members in the protective services engaged in civilian defense, such as the Staff Unit and the units known as Air Raid Wardens, Auxiliary Police, Auxiliary Firemen, Fire Watchers, Demolition and Clearance, Road Repair, Rescue, Decontamination, Medical, Nurses' Aides, Drivers, Messengers, Emergency Food and Housing, Utility Repair, and Instructors. Also included in the Defense Corps, but not in the protective services thereof, are Chaplains. The Defense Corps is under the supervision of the OCD, Protection Branch, headed by an Assistant Director appointed by and responsible to the Director of the OCD.⁴⁸ The method of appointment and the duties of the members of the Defense Corps are set forth in Regulations No. 3, originally issued on April 29, 1942, by the Director of the OCD.⁴⁹ These regulations specifically provide (Section 14) that members of the Corps

^{46a} See *infra*, pp. 51-52. Text of Air Raid Protection Regulations No. 1 in Appendix No. 27, p. 163. Section X relates to illegal use of insignia and Section XI to penalties. Text of Administrative Order No. 31, February 3, 1943 (8 Fed. Reg. 1651), relating to identification of vehicles and pedestrians in Appendix 21, p. 152.

⁴⁷ 7 Fed. Reg. 3784. This order was revised and amended on August 21, 1942 (Amendment No. 3, 7 Fed. Reg. 6660). Text in Appendix 17, p. 147.

⁴⁸ *Idem*.

⁴⁹ 7 Fed. Reg. 3244. Revised on August 28, 1942; 7 Fed. Reg. 6900. Text in Appendix 14, p. 133. The regulations were originally to take effect on June 1, 1942 (Section 17), but by a subsequent amendment they were made effective on July 1, 1942 (7 Fed. Reg. 4276). The revision of August 28, 1942, was effective on September 1, 1942. The OCD recognizes that any community, when authorized by State and local law, may establish its protective services along lines different from those prescribed in the official regulations. However, in any such case, the OCD points out, the local defense corps will not be an integral part of the United States Citizens Defense Corps of the OCD, and its members will not be entitled to wear or use the officially prescribed and patented insignia, or to receive or use supplies and equipment loaned pursuant to OCD Regulations No. 1. (OCD Operations Letter No. 34, April 29, 1942.) Moreover, it should be noted that the \$5,000,000 allocated by the President to provide medical care and benefits in cases of injury or death is intended to cover members of, or trainees for, the United States Citizens Defense Corps. (See *infra*, p. 73.) For an organizational plan for a local Citizens Defense Corps, as suggested by the OCD, see chart on p. 13.



ORGANIZATIONAL PLAN FOR LOCAL CITIZENS DEFENSE CORPS AS SUGGESTED BY THE OCD

shall not be deemed appointees or employees of the OCD, or of the United States or any agency thereof, nor entitled to any payment from the OCD, or the United States or any agency thereof, for services rendered as members. Payment for such services by the States or communities is stated to be dependent upon the laws thereof.

Citizens Service Corps

The United States Citizens Service Corps, created under the aforesaid order of April 29, 1942, consists of members engaged in voluntary community war activities approved by the respective local defense councils, except such activities as are related to protection against enemy attack and therefore are functions of the Defense Corps. The Service Corps thus includes those who are working in positions approved by the local defense council in the fields of salvage, consumers' service, housing, conservation, war bond sales, child care, recreation, education, health, nutrition, library and information, and other types of community activity.⁵⁰ A member of the Service Corps may also be a member of the Defense Corps, provided his duties in the latter capacity are given priority.⁵¹ The Service Corps is under the supervision of the OCD, Civilian War Services Branch.⁵² Ordinarily, in the community, the head of the Service Corps is styled the "Executive."⁵³

Civil Air Patrol

The Civil Air Patrol, originally established in December 1941,⁵⁴ was confirmed as an integral corps of the OCD by the aforesaid order of April 29, 1942. It consists of a Wing Command in each State and subordinate units composed of members engaged in civilian air activities, such as observation and patrol flying, courier service, ferry service, forest patrol, and training for such wartime missions. The Civil Air Patrol is supervised by a staff of officers of the Army Air Forces assigned to the OCD. The Patrol is headed by a National Commander appointed by and responsible to the Director of the OCD.⁵⁵

In order to extend the opportunities for service in the Civil Air Patrol to young volunteers, the National Commander on October 1,

⁵⁰ See OCD publication entitled "Handbook for the United States Citizens Service Corps."

⁵¹ OCD Operations Letter No. 82, October 29, 1942. See also, OCD Operations Letter No. 96, December 4, 1942.

⁵² 7 Fed. Reg. 6660. See Appendix 17, p. 147. See also, OCD Administrative Order No. 30, January 4, 1943.

⁵³ See above, note 50 on this page.

⁵⁴ OCD Administrative Order No. 9, December 8, 1941.

⁵⁵ 7 Fed. Reg. 6660. See Appendix 17, p. 147. The organization, purpose, and program of the Civil Air Patrol are set forth in the OCD publication entitled "Civil Air Patrol." Among the specific services envisaged for the Patrol are the guarding of airports, observation patrol of back-country area, or long reaches of uninhabited coastal area, towing of aerial gunnery targets, executive travel and courier service in behalf of State and local defense councils, etc.

1942, authorized, within the scope of Administrative Order No. 23,⁵⁶ a grade of membership to be designated as "Cadet" which is junior to regular membership in the Civil Air Patrol. A cadet must be a native-born student in good scholastic standing in the last or next to the last year of senior high school. The cadets are not assigned to flying duties but, on completion of their cadet training and graduation from high school, they will be eligible for full membership in the Patrol.⁵⁷

Auxiliary Group

The fourth group established by the aforesaid order of April 29, 1942, is the Civilian Defense Auxiliary Group, which includes certain classes of persons whose duties require them to be on the streets during air raids and air raid drills, but who have no special training as ordinarily required for members of the Defense Corps or the Civil Air Patrol. Certain classes of persons who may be included in the Auxiliary Group will be designated from time to time by the Director's order, but additional classes may, subject to rules of the Director, be authorized by local defense councils to be included in the Group.⁵⁸

Thus, persons who may be included in the Auxiliary Group by local defense councils, within the limits of local needs, are doctors and registered nurses (other than those in the Medical Unit of the Defense Corps); ambulance drivers; clergymen (other than Chaplains in the Defense Corps); reporters, press photographers, and news reel men; operators of essential local and interurban transportation facilities; steam railroad personnel; utility company personnel (other than those in the Utility Repair Unit of the Defense Corps); telegraph messengers; burglary and fire protection employees; representatives of humane societies; undertakers; health department personnel; hospital personnel; conscientious objectors stationed at Civilian Public Service Camps;⁵⁹ and government officials, including employees of the Civil Aeronautics Authority and Special Agents of the FBI.⁶⁰

⁵⁶ See Appendix 17, p. 147.

⁵⁷ OCD Memorandum from Major Earle L. Johnson, National Commander of the Civil Air Patrol, to all Unit Commanders on the subject of Civil Air Patrol Cadets, October 1, 1942.

⁵⁸ 7 Fed. Reg. 6660. See Appendix 17, p. 147.

⁵⁹ The services of conscientious objectors were offered by the authorities of the Public Service Camps, and were accepted by the OCD where their use is desired by the local authorities. Units for utilization of these services, completely self-sustaining, and consisting of 24 men each, have been organized. These units will be available to communities within 100 miles of their respective camp locations. They will assist in the work of Demolition and Clearance, Road Repair, Emergency Food and Housing, and Rescue Units; they will also be available for the use of evacuation authorities, and in rendering elementary first aid. For their services in local emergencies not caused by enemy action, the request must be cleared through the State official charged with the direction of civilian defense where the particular camp is located. In case of war emergency, request may be made directly to the camp superintendent. A State official will not authorize such use until approval therefor has been obtained from the Camp Operations Division, National Headquarters, Selective Service System, Washington, D. C. (OCD Operations Letter No. 63, August 11, 1942.)

⁶⁰ The OCD has cautioned local defense councils against the indiscriminate conferring of membership in the Auxiliary Group. Membership, counsels the OCD, should not be ex-

The OCD has pointed out that each community is entitled to prescribe for itself, when authorized by State and local law, the classes of persons in emergency service privileged to be on the streets during a blackout or air raid.⁶¹ However, each community is urged to adopt the standardized OCD insignia to be worn by members of the Auxiliary Group because uniformity in the means of identifying persons on the street during emergency is desirable, particularly where State or municipal boundaries must be crossed.⁶² Where the personnel of concerns or agencies operate interstate, the arm bands and identification cards for Auxiliary Group members are issued directly by the Insignia Unit of the OCD in Washington.⁶³

Forest Fire Fighters Service

The establishment within the OCD of the Forest Fire Fighters Service was confirmed on July 11, 1942, by an Administrative order of the Director of the OCD.⁶⁴ This Service was created in accordance with the policy of the Facility Security Program⁶⁵ to enroll and educate volunteer fire fighters needed in dealing with the hazard of forest fires, which danger has increased as a result of the war.⁶⁶ The OCD does not contemplate that the Forest Fire Fighters Service will be organized in every community—the adjacency to timber areas and the existence of a forest fire hazard being the controlling factors.⁶⁷ The Service is to cooperate with the forest fire protection agencies of the Departments of Interior and Agriculture, and with State forestry officials and private timber protective organizations. The OCD supervises the policy of the Service through the former's Facility Security Division; the Service is directed by the Timber and Related Facilities Committee, consisting of appropriate officials in the Departments of Interior and Agriculture, appointed by and responsible to the Director of the OCD. A National Coordinator, State and local coordinators, and squad leaders of individual Forest Fire Fighters complete the organization of the Service.⁶⁸

tended beyond the absolute needs of the community, "as it is obvious that a wholesale extension of the privilege would result in an excessive number of persons being on the streets in times of emergency." (OCD Operations Letter No. 37, April 29, 1942.)

⁶¹ See also Air Raid Protection Regulations No. 1, Section VI. Text in Appendix 27, p. 163.

⁶² OCD Operations Letter No. 37 (April 29, 1942); Supplement No. 1 (June 15, 1942); Supplement No. 2 (July 11, 1942); Supplement No. 3 (August 5, 1942); Supplement No. 4 (September 1, 1942); and Supplement No. 5 (revised) (October 13, 1942). See also, Operations Letter No. 36 (April 29, 1942), and No. 47 (June 12, 1942).

⁶³ OCD Operations Letter No. 37, Supplement No. 5 (revised), October 13, 1942.

⁶⁴ 7 Fed. Reg. 5463. Text in Appendix 18, p. 149; amended August 21, 1942 (7 Fed. Reg. 6061). Text in Appendix 19, p. 150. The Service had been established originally on June 12, 1942. See OCD Operations Letter No. 47, June 12, 1942.

⁶⁵ *Supra*, pp. 7-9. See also Executive Order No. 9165 of May 19, 1942. Text in Appendix 5, p. 107.

⁶⁶ OCD publication "Forest Fire Fighters Service," p. 1.

⁶⁷ OCD Operations Letter No. 47, June 12, 1942.

⁶⁸ *Supra*, note 64 on this page. Participating in the program will be the United States Forest Service, the Indian Service, the National Park Service, the Grazing Service, the

Civilian Evacuation Service

Another activity of the OCD is known as the Civilian Evacuation Service.⁶⁹ This Service comprises members of State and local evacuation authorities, and persons who are designated or assigned to function in executive or supervisory positions in respect of the planning or actual operation of an evacuation. To assist the members of the Service in such matters as registration of possible evacuees, the collection of survey data, the providing of information to evacuees, etc., volunteers are to be recruited by the Civilian Defense Volunteer Office of the local defense council. When trained, the volunteers may be appointed members of the Citizens Service Corps; they do not, however, become members of the Civilian Evacuation Service. Upon request of the State or local evacuation authorities, members of the Citizens Defense Corps may perform duties, as such members, in connection with an evacuation program.⁷⁰

The Civilian Evacuation Service operates under the supervision of the Regional Evacuation Officers or persons designated to discharge this duty by the Regional Directors of Civilian Defense where no Regional Evacuation Officers have been appointed. The Service is directed by the chief officer of State or local evacuation authorities.⁷¹ Important requisites of evacuation are transportation and traffic control, which are under the direction of the transport and traffic-control officers of the State and local defense councils, and are coordinated by the Regional Transport Officer. These officers are to cooperate closely with the Evacuation Officers.

Two Bulletins have been published by the OCD and the Office of Defense Health and Welfare Services on the civilian evacuation pro-

General Land Office, and the Fish and Wildlife Service. *Victory*, Vol. 3, No. 25 (June 23, 1942), p. 29.

⁶⁹ Establishment thereof within the OCD was confirmed on August 24, 1942, by Administrative Order No. 28 (7 Fed. Reg. 6745). Text in Appendix 20, p. 151. In August 1941, a Joint Committee on the Health and Welfare Aspects of the Evacuation of Civilians had been set up by the OCD and the Office of Defense Health and Welfare Services representing in its membership, in addition to the appointing agencies, the Children's Bureau of the Department of Labor, the United States Public Health Service, the United States Office of Education, and the Bureau of Public Assistance of the Social Security Board. On May 18, 1942, a formal agreement was made by the OCD and the Office of Defense Health and Welfare Services in respect of the organization and functions of the aforesaid Joint Committee. This Committee was accordingly reorganized in June 1942, with the Director of the OCD as chairman and a representative of the Office of Defense Health and Welfare Services as secretary. The Committee was at that time renamed the Joint Committee on Evacuation. (Joint Committee on Evacuation, OCD, Policy Memorandum No. 1, September 5, 1942.)

⁷⁰ In England, according to the former chairman of the London County Council, about 80% of the work of a municipality—preparation and execution—"was ultimately connected with evacuation, which is a tremendous job." A. Emil Davies, "Cities to the Fore in Wartime England," 31 *National Municipal Review* 21 (January 1942). See also, James L. Sundquist, "British Cities at War," Report for the American Municipal Association, Public Administration Service No. 76 (1941), pp. 38 *et seq.*; and R. Ernest Dupuy and Hodding Carter, *Civilian Defense of the United States*, Chap. X (1942). A wealth of material on the practical and legal questions involved in large-scale evacuations is available throughout the weekly war issues of *Justice of the Peace and Local Government Review*.

⁷¹ OCD Administrative Order No. 28 (7 Fed. Reg. 6745). See Appendix 20, p. 151.

gram.⁷² In addition, the War Department has prepared a pamphlet entitled "Evacuation of Civilian Population, 1941," which relates to mass evacuation under authority of the military commander in a military theater of operations.⁷³ The study of policies and procedures for the operation of evacuation plans, the development of standards of care to be maintained in evacuation and reception areas, and the devising of methods for meeting the cost of executing such plans have engaged the attention of the Joint Committee on Evacuation.⁷⁴ With the advice of this Committee, the Regional Evacuation Officer of the OCD, who is a member of the staff of the Regional Director, cooperates with both civil and military authorities in formulating interstate and interregional agreements covering evacuation procedures, and is responsible for the preparation of State evacuation plans. In turn the Regional Evacuation Officer is assisted by field consultants of the various Federal agencies represented on the Joint Committee.⁷⁵

In the formulating and execution of all evacuation plans the OCD, in cooperation with military authorities and pursuant to plans necessitated by military considerations, has the primary responsibility, while it is the function of the Office of Defense Health and Welfare Services to provide for the health, welfare, and education of evacuees.⁷⁶ It is expected that the evacuation authority of the State will be given responsibility for putting the State's evacuation plan into operation, but it would be under the general direction and special instructions of the Regional Evacuation Officer. Such special instructions would depend upon the military situation at the time when the evacuation order is given by the military authorities.⁷⁷

Little legislation exists as yet in the field of evacuation although the problems would be numerous.⁷⁸ Any large evacuation program

⁷² Bulletin No. 1 is entitled "Policies and Principles"; Bulletin No. 2 is entitled "Planning for Evacuation and Reception Care." In the first Bulletin (p. 1) evacuation is defined as "the removal of all or any part of the population from a densely populated area or areas containing important military objectives, to reception areas in safer regions on more than a temporary basis." The procedures for reception are considered the more complex, according to a statement in the second Bulletin (p. 1). The evacuation of civilians from a danger area is, of course, distinct from emergency rehousing within the same area of persons whose homes have been rendered uninhabitable or are in the vicinity of military targets. In the first of the above Bulletins (p. 1) it is stated that: "If carried no further, rehousing is a local responsibility both as regards planning and execution and will take place in the event of token bombings or limited damage resulting from fires or sabotage."

⁷³ This pamphlet is available to persons charged with the formulation of evacuation plans.

⁷⁴ *Supra*, p. 17, note 69. (Joint Committee on Evacuation, OCD, Policy Memorandum No. 1, September 5, 1942.)

⁷⁵ *Ibid.*

⁷⁶ Agreement between the OCD and the Office of Defense Health and Welfare Services, May 18, 1942.

⁷⁷ Joint Committee on Evacuation, OCD, Policy Memorandum No. 1, September 5, 1942.

⁷⁸ In New York the State Director of Civilian Protection is empowered by the statute to cooperate with State and local officials in planning evacuations, and during attack to direct all activities "with regard to evacuation of civilians from one county or city to or through other counties and cities." (L. 1942, c. 544, § 13.) In New Jersey the Governor may make regulations concerning the method of an evacuation and "the course of conduct of the civilian population during any necessary evacuation." (Laws 1942, ch. 251, § 13.) A like power

may be interstate in character and would, whether intrastate or interstate, necessarily require the operation of mutual aid technique.⁷⁹ Uniformity of standards and procedures is recognized by the Joint Committee on Evacuation as imperative.⁸⁰

The most fundamental legal question involved would appear to be the power to compel an evacuation.⁸¹ Congress has conferred such power upon the Commissioners of the District of Columbia "when in their judgment the public interest or the safety of such persons [civilians] creates the necessity therefor."⁸² There is opinion that this statute is not violative of the due-process clause, but is a valid exercise of the war power.⁸³ State enactments compelling evacuation would, of course, be based upon the police power and perhaps upon the State's inherent power of self-defense.⁸⁴

2. THE STATE DEFENSE COUNCILS

Establishment

All States now have defense or war councils or their equivalent.⁸⁵ From the organizational point of view these State councils have been created or have developed along two basic lines. In some jurisdictions (*e. g.*, New York, Massachusetts, New Jersey, and Pennsylvania) a direct line of control over the operational details of civilian protection has been established, beginning with the head of the State defense council and going down to the volunteers under the local defense coun-

rests in the Governor of Maine. (Laws 1942, ch. 305, § 1.) Similarly in Rhode Island, with the approval of the State Defense Council. (Laws 1942, Senate Bill No. 25, §§ 4, 11, and 11A.) In Louisiana (Acts 1942, Act No. 7, § 1 [e]) and in Michigan (Acts 1942, First Extra Session, Public No. 10, § 1) the Governor and the political subdivisions may issue regulations on the "evacuation of residents." In Pennsylvania such regulations may be issued and enforced by the State Council of Defense. (Acts 1942, Special Session, Act No. 14, § 3 [a] [6].) A model "Federal Grants in Aid of Evacuation Act" has been prepared by the Council of State Governments for the use of State legislatures when considering legislation to empower the State Defense Council and other State agencies to accept funds from the Federal Government to meet the costs of evacuation and care of evacuees. For text of this Model Act see *Suggested State War Legislation for 1943, Report #3*, The Council of State Governments, Chicago, Ill., pp. 5-6. (Jan., 1943.) See also Tennessee, Acts 1943, ch. 85.

⁷⁹ *Infra*, pp. 29-30.

⁸⁰ Bulletin No. 1, "The Civilian Evacuation Program, Policies and Principles," p. 3.

⁸¹ To date the only compulsory evacuation has been that of the Japanese on the West coast. See "The Story of Pacific Coast Japanese Evacuation," an address by Col. Karl R. Bendetsen in San Francisco, May 20, 1942; see also, Col. Joel F. Watson, "The Japanese Evacuation and Litigation Arising Therefrom," 22 *Oregon Law Review* 46-59 (1942); and *infra*, Ch. II.

⁸² The power is to be exercised subject to the approval of the Secretary of War. 55 Stat. 858, § 8. Text in Appendix 23, p. 155.

⁸³ 55 *Harvard Law Review* 844, 856 (March 1942), citing *Selective Draft Law Cases*, 245 U. S. 366 (1918); *U. S. v. Bethlehem Steel Corp.*, 315 U. S. 289 (1942); and *Schenck v. United States*, 249 U. S. 47 (1919).

⁸⁴ Francis X. Conway, "A State's Power of Defense under the Constitution," 11 *Fordham Law Review* 169-192 (May 1942).

⁸⁵ For Alaska see the President's Executive Order No. 9181 of June 11, 1942, establishing the Alaska War Council (7 Fed. Reg. 4467).

cils.⁸⁶ In other States the State council acts only in an advisory capacity.⁸⁷

The State councils in numerous cases have been created by statute, whereas in other instances they have been set up by gubernatorial order.⁸⁸ The members are nearly always appointed by the Governor, who not infrequently acts as chairman *ex officio*, but in some States the appointing power is shared with the Legislature.⁸⁹ In some instances the statute provides for specific officials to serve on the council, together with other persons to be appointed by the Governor, advice and consent of the Legislature being sometimes required.⁹⁰

Powers of Administrative Type of Council

Taking New York as an example of States with administrative councils, as distinguished from merely advisory councils, we find that the State War Council has very wide powers. It may adopt, and make effective, rules and orders, not inconsistent with those of the Army or Navy or of the Federal OCD, with respect to civilian protection, or with respect to any matter deemed by the Council essential to the war effort, such as practice or actual blackouts, air raid drills, aircraft warning services, the recruiting, conduct, and powers

⁸⁶ New York, L. 1942, c. 544; Massachusetts, St. 1942, c. 6 and 13; New Jersey, Laws 1942, ch. 251; Pennsylvania, Acts 1942, Special Session, Act No. 14. See also Arizona, Laws 1942, ch. 21; Louisiana, Acts 1942, Act No. 7; Maine, Laws 1942, ch. 305; Rhode Island, Laws 1942, Senate Bill No. 25; South Carolina, Laws 1942, No. 580; and Virginia, Laws 1942, ch. 10, 248, 249, 250, and 254.

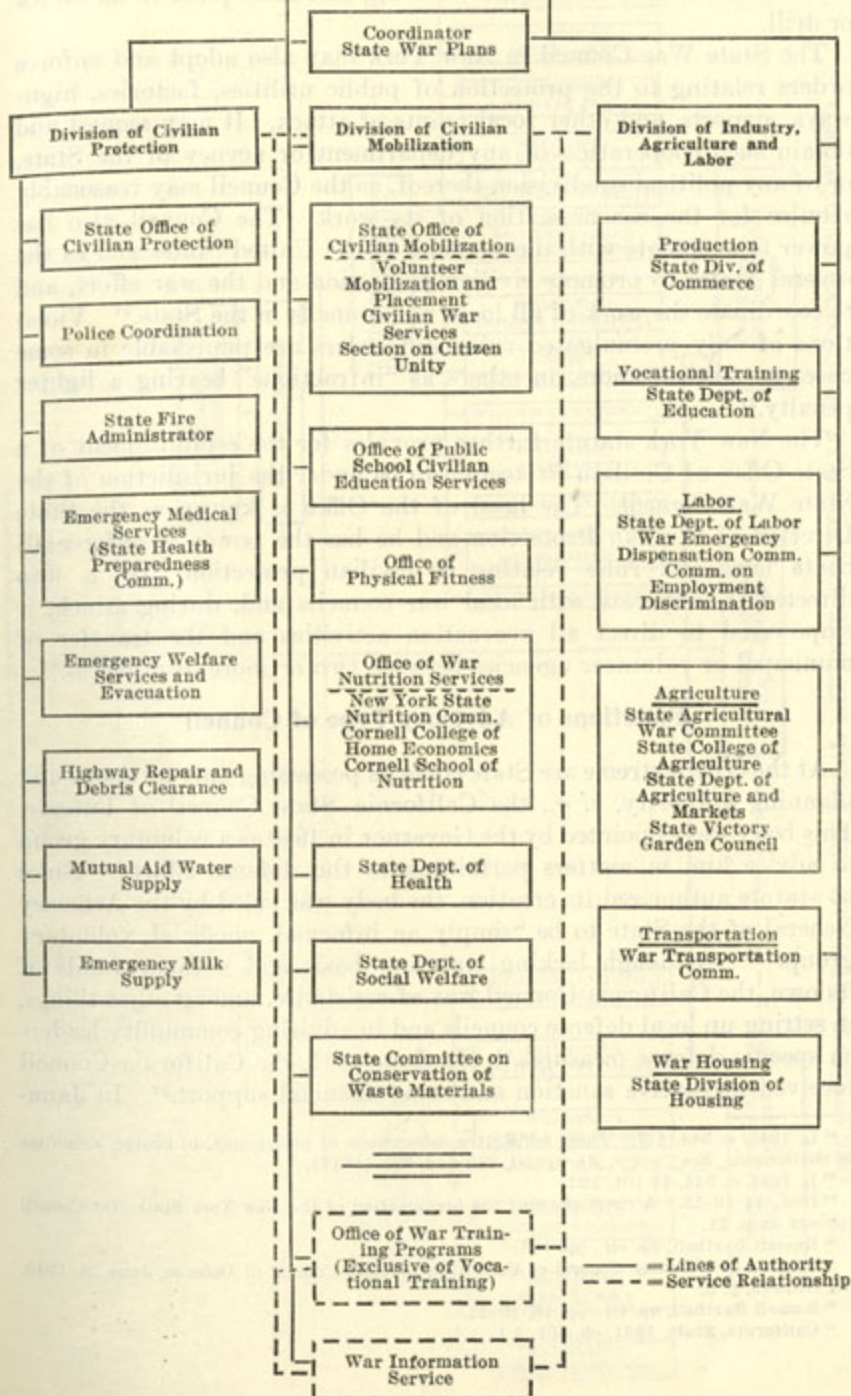
⁸⁷ In August 1940, the National Defense Advisory Commission (*supra*, p. 1) addressed a memorandum to the Governors of all States suggesting the formation of State councils which "should advise and not execute," and which in each State would advise the Governor on problems arising with respect to (a) the integration of governmental programs for defense, (b) arrangements necessary for the assimilation of such programs by the administrative establishment, and (c) proper coordination between governmental and private agencies cooperating in the defense effort.

⁸⁸ A statutory council is sometimes stated to be preferable because possible avenues of legal action are clarified by enumeration, greater prestige is enjoyed, and expenditures are legalized. 55 *Harvard Law Review* 844, 851 (March 1942). In August 1940, the Division of State and Local Cooperation of the National Defense Advisory Commission prepared and distributed a Model State Council of Defense Act which was adopted or borrowed from in many jurisdictions. The Model Act is reprinted in *The Book of the States 1941-1942*, pp. 41-42.

⁸⁹ See tables in booklet prepared for the Bureau of Public Administration, University of California, by Russell Barthell, *State Defense Councils*, 1941, pp. 8-10.

⁹⁰ California, Stats. 1943, ch. —, § 2; Idaho, Laws 1919, ch. 100, § 2; Illinois, Laws 1941, Vol. I, p. 1264, § 3 (a); Michigan, Acts 1941, Public No. 93, § 3; Mississippi, Laws 1942, ch. 206, § 3 (a); Montana, Laws 1941, ch. 142, § 1; New Jersey, Laws 1942, ch. 251, § 7; New York, L. 1942, c. 544, § 6; Ohio, Laws 1941, p. 333, § 3; South Carolina, Laws 1941, No. 151, § 3 (a); West Virginia, Laws 1941, ch. 61, § 2. In Kentucky the Governor appoints the council from certain State officials (Acts 1942, ch. 3, § 3). In Virginia the council, if established, is to consist of such State officers as shall be designated by the Governor (Acts 1942, c. 10, § 4). In New Hampshire the statute designates as council members certain State officials and the chairmen of county cooperating committees (Laws 1941, c. 45, § 2); the latter are to be appointed by the Governor with the advice and consent of the Executive Council (*ibid.*, § 6). In Pennsylvania the act designates certain State officials and three other citizens, one of whom is to be appointed by the Governor, one by the Speaker of the House of Representatives, and one by the President pro tempore of the Senate (Acts 1941, No. 3, § 2).

N. Y. STATE WAR COUNCIL



of volunteer agencies, the screening or extinguishment of all lights, and the conduct of civilians and the movement and cessation of pedestrian and vehicular traffic prior, during, and subsequent to an attack or drill.

The State War Council in New York may also adopt and enforce orders relating to the protection of public utilities, factories, highways, airports, and other focal points of attack. It may request and obtain such cooperation of any department or agency of the State, or of any political subdivision thereof, as the Council may reasonably require for the consummation of its work. The Council also has power to cooperate with the agencies of the United States and of the several States to promote civilian protection and the war effort, and to coordinate the work of all local war councils in the State.⁹¹ Violations of duly promulgated rules and orders are punishable in some cases as misdemeanors, in others as "infractions" bearing a lighter penalty.⁹²

The New York statute further provides for the establishment of a State Office of Civilian Protection to be under the jurisdiction of the State War Council. The head of the Office is known as the State Director of Civilian Protection and he has the power to enforce all State laws and rules relating to civilian protection. He is also directed to cooperate with local war councils and, during attack, is empowered to direct all evacuation activities and the transfer of municipal or volunteer agencies between two or more local offices.⁹³

Functions of Advisory Type of Council

At the other extreme are State councils possessing only advisory and planning authority, *e. g.*, the California State Council of Defense. This body was appointed by the Governor in 1940 as a voluntary group to advise him in matters pertaining to the defense effort.⁹⁴ Since no statute authorized its creation, the body was ruled by the Attorney General of the State to be "simply an informal, unofficial, voluntary group."⁹⁵ Although lacking statutory basis and without funds of its own, the California Council was of assistance, among other things, in setting up local defense councils and in advising community leaders on specific defense measures.⁹⁶ In June 1941, the California Council received legislative sanction and some financial support.⁹⁷ In Janu-

⁹¹ L. 1942, c. 544, § 7. These legislative delegations of power may, of course, sometime be challenged. See *Cook v. Burnquist*, 242 Fed. 321 (1917).

⁹² L. 1942, c. 544, §§ 101, 102.

⁹³ *Ibid.*, §§ 12-13. A chart showing the organization of the New York State War Council appears on p. 21.

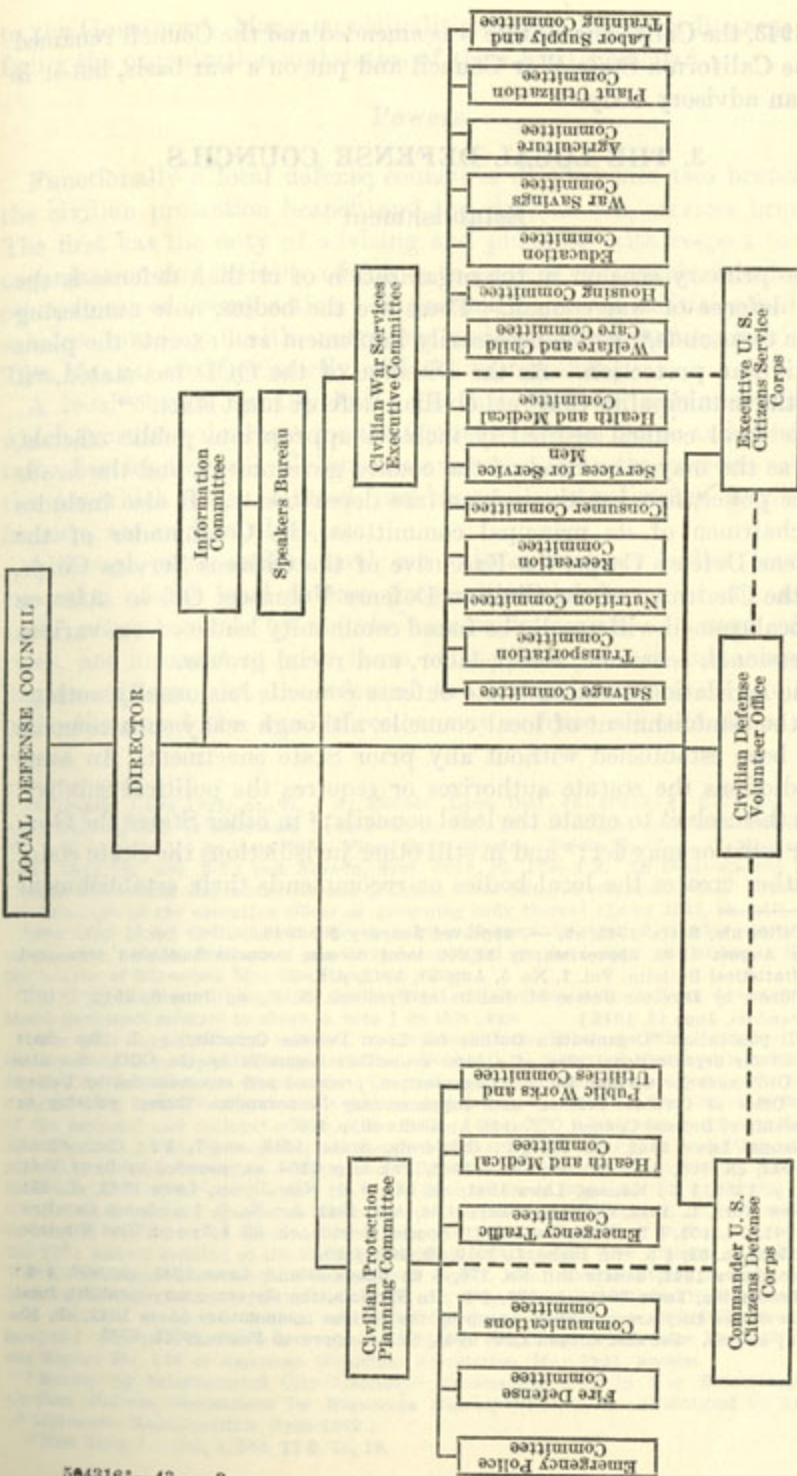
⁹⁴ Russell Barthell, *op. cit.*, pp. 4-5.

⁹⁵ Opinion of Attorney General of California to State Council of Defense, June 28, 1940. No. NS2749, p. 3.

⁹⁶ Russell Barthell, *op. cit.*, pp. 16, 19-21.

⁹⁷ California, Stats. 1941, ch. 561, § 1.

ORGANIZATIONAL PLAN FOR LOCAL DEFENSE COUNCILS AS SUGGESTED BY THE OCD



ary 1943, the California statute was amended and the Council renamed as the California State War Council and put on a war basis, but it is still an advisory body.^{97a}

3. THE LOCAL DEFENSE COUNCILS

Establishment

The primary echelon in the organization of civilian defense is the local defense or war council. These are the bodies, now numbering in the thousands,⁹⁸ which necessarily implement and execute the plans for civilian protection. As the Director of the OCD has stated, "it is in the municipality that real civilian defense must start."⁹⁹

The local council ordinarily includes appropriate public officials, such as the mayor or head of the county government, and the heads of the police, fire, health, and welfare departments. It also includes the chairmen of its principal committees, the Commander of the Citizens Defense Corps, the Executive of the Citizens Service Corps, and the Chairman of the Civilian Defense Volunteer Office. Also on the local council will usually be found community leaders from various professional, economic, social, labor, and racial groups.¹

The legislation creating State defense councils has usually authorized the establishment of local councils, although many such councils have been established without any prior State enactment. In some jurisdictions the statute authorizes or requires the political subdivisions themselves to create the local councils;² in other States the Governor must or may act;³ and in still other jurisdictions the State council either creates the local bodies or recommends their establishment

^{97a} California, Stats. 1943, ch. —, approved January 30, 1943.

⁹⁸ By August 1942, approximately 11,200 local defense councils had been organized. OCD Statistical Bulletin, Vol. 1, No. 5, Aug. 31, 1942, p. 1.

⁹⁹ Address by Director James M. Landis at Syracuse, N. Y., on June 9, 1942. (OCD Memorandum, June 13, 1942.)

¹ OCD publication "Organization Outline for Local Defense Councils," p. 1. See chart on p. 23 for organizational plan of a local council as suggested by the OCD. See also Model Ordinance for Civilian Defense Organization, prepared and recommended by United States Office of Civilian Defense, and Supplementary Memorandum thereto relating to membership of Defense Council. Text in Appendix 40, p. 199.

² Arizona, Laws 1942, ch. 21, § 7; California, Stats. 1943, ch. 7, § 2; Connecticut, Acts 1941, ch. 106, § 5; Illinois, Laws 1941, Vol. I, p. 1264, as amended by Laws 1941, Vol. I, p. 1253, § 5; Kansas, Laws 1941, ch. 347, § 6; New Jersey, Laws 1942, ch. 251, § 9; New York, L. 1942, c. 544; Pennsylvania, Acts 1941, Act No. 3, § 6; South Carolina, Acts 1941, No. 151, § 5; Utah, Laws 1941, Special Session, ch. 33, § 6; and West Virginia, Laws 1941, ch. 61, § 5. Cf. Idaho, L. 1919, ch. 100, § 10.

³ Ohio, Laws 1941, Senate Bill No. 178, § 6; Rhode Island, Laws 1941, ch. 990, § 6; and Washington, Laws 1941, ch. 177, § 5. In Virginia, the Governor may establish local councils unless they are promptly set up by the various communities (Acts 1942, ch. 10, §§ 3 [3] and 6). See also Oregon Laws 1943, ch. —, approved February 27, 1943.

to the Governor.⁴ Many municipalities have adopted ordinances defining the organization and duties of their local councils.⁵

Powers

Functionally a local defense council is divided into two branches, the civilian protection branch and the civilian war services branch. The first has the duty of advising and planning with respect to the organization and training of forces to protect against air attack and other forms of enemy action. The second promotes activities such as salvage, housing, health, nutrition, and other community services.⁶ This Manual deals primarily with the first branch.

A local council usually has a Civilian Defense Volunteer Office which recruits volunteers for the Citizens Defense Corps and the Citizens Service Corps.⁷ Volunteers are assigned to the various activities for which they are fitted, such as auxiliary policemen, auxiliary firemen, air raid wardens, etc.

Although many such councils act only as advisory bodies, leaving execution of the local defense program to the mayor or city manager,⁸ other councils by statute have wide powers and may adopt rules, not inconsistent with those of the State council, necessary to implement any plan or order of the latter in respect of civilian protection; and the local director may enforce all such laws and rules.⁹

⁴ Colorado, Laws 1941, ch. 97, § 4; Florida, Laws 1941, ch. 20213, §§ 6-7; Kentucky, Acts 1942, ch. 3, § 7; Maryland, Laws 1941, ch. 567, § 1; Michigan, Acts 1941, Public No. 93, § 6, as amended by Acts 1942, First Extra Session, Public No. 7, § 1; Mississippi, Laws 1942, ch. 206, § 7; and Nevada, Stat. 1919, ch. 173, § 2. In Delaware the State Council of Defense may authorize any political subdivision to establish a local council by proclamation of the executive officer or governing body thereof (Laws 1941, ch. 285, § 6).

⁵ See OCD Model Ordinance and accompanying Memoranda referred to above in note 1 on page 24. Model Ordinances also have been issued by the League of California Cities, the League of Minnesota Municipalities, and others.

⁶ OCD publication "Organization Outline for Local Defense Councils," pp. 3-4, and OCD Model Ordinance referred to above in note 1 on this page.

⁷ The OCD has published a bulletin, "A Civilian Defense Volunteer Office," descriptive of the functions of a typical Volunteer Office. We shall be concerned above with volunteers for the Citizens Defense Corps only. The volunteers for the Citizens Service Corps are directed by a local Executive who looks for guidance to the Civilian War Services Branch of the national and regional offices of the OCD. (See OCD Administrative Order No. 24, May 25, 1942.) The Service Corps is occupied with activities other than protection against air raids, such as recreation, welfare and child care, housing, education, health, consumer interests, and other social enterprises. A description of some of the numerous fields, other than protection against air raids, in which a local defense council may engage, may be read in the report of Edward J. Sullivan, Corporation Counsel of Buffalo, rendered to the 1941 annual meeting of the National Institute of Municipal Law Officers. The Buffalo War Council now has subcommittees on food supply, labor, discrimination in employment, housing, salvage, family security, recreation, etc. The report is published in *Municipalities and the Law in Action in 1941*, edited by Charles S. Rhyne, pp. 102-107. See also, pamphlet "Buffalo War Council, Powers and Plan of Organization," October 21, 1942. And see Report No. 146 of American Municipal Association, May 1941, *passim*.

⁸ Survey by International City Managers' Association, cited in *War Emergency and Civilian Defense Suggestions for Minnesota Municipalities*, p. 6. (Published by League of Minnesota Municipalities, June 1942.)

⁹ New York, L. 1942, c. 544, §§ 9, 14, 19.

In certain municipalities where a large measure of "home rule" obtains, various ordinances have frequently been adopted setting up elaborate civilian defense agencies.¹⁰ It will be helpful to examine the organization of a typical Citizens Defense Corps and the functions of the various units which it comprises.¹¹

Commander and Staff Unit of Citizens Defense Corps

According to the OCD recommendations, the Citizens Defense Corps in each municipality would be headed by a civilian Commander to be designated by the appropriate local authority.¹² The Commander is to be responsible for the organization, training, and equipment of the Defense Corps and will be charged with its proper functioning in emergency.¹³ During an emergency the OCD has urged that all protective services of the community should be under the "complete direction" of the Commander of the Defense Corps. "These include not only the volunteer services whose members constitute the Citizens Defense Corps but also the regularly established protective services of the community, including the fire department, police department, hospitals, health department, etc."¹⁴

The Commander is assisted by a Staff Unit which is expected to include, as chiefs of the various emergency services of the Corps, the heads of the appropriate municipal departments. Thus, the chief of police will command not only the regular police department but also the auxiliary police; and the fire chief will command not only the regular fire department but also the auxiliary firemen and the Rescue Unit of the Defense Corps.¹⁵

In addition to the chiefs of the police and fire departments, there will ordinarily be on the Staff of the Commander a Local Property Officer, responsible for supplies and equipment issued to Corps members;¹⁶ the Transport Officer, who will be responsible for local

¹⁰ Where the State defense council is purely an advisory body, it has been asserted that blackout or other civilian protection regulations have legal force only in the form of municipal ordinances, and that state-wide regulations lack legal foundation. (Opinion of Attorney General of West Virginia in letter to State Coordinator of Civilian Defense, June 24, 1942.)

¹¹ See, in this connection, Model Ordinance recommended by the OCD and the accompanying Memoranda. Text in Appendix 40, p. 199. As to functions, as a part of field training, of members in disasters not due to enemy action or in supplementing regular police, firemen, or hospital staffs, see OCD Operations Letter No. 117, March 13, 1943.

¹² In the OCD publication "Staff Manual—United States Citizens Defense Corps," detailed suggestions are set forth for the organization of Defense Corps in large cities and in cities under 25,000 population.

¹³ OCD publication "Staff Manual—United States Citizens Defense Corps," p. 2. See also OCD Regulations No. 3, § 16 (b), Appendix 14, p. 133; and OCD Operations Letter No. 69, August 19, 1942.

¹⁴ OCD publication "Organization Outline for Local Defense Councils," p. 11. See also address by Director James M. Landis at Los Angeles, California, on September 23, 1942. (OCD Memorandum, M-2716.) And see OCD Model Ordinance, Appendix 40, p. 199.

¹⁵ OCD publication "Organization Outline for Local Defense Councils," p. 12.

¹⁶ See above, p. 9.

transportation facilities and will have supervision of the volunteer Drivers Units;¹⁷ the Chief Air Raid Warden, who is responsible for the organization and training of the Wardens and the Fire Watchers; the Chief of Emergency Public Works Service, who is charged with the organization and training of Demolition and Clearance Units, Road Repair Units, and Decontamination Units; the Chief of Emergency Utilities Service, who is responsible for organizing and training volunteer auxiliaries to assist Repair Units for utilities services; the Chief of Emergency Welfare Service, who is responsible for the disposition of Emergency Food and Housing Units assigned to him, and for alleviating the economic and social distress consequent upon enemy action;¹⁸ and the Chief of Emergency Medical Service, who organizes and trains the Medical Field Units and Medical Auxiliaries, and who organizes the hospital and nursing personnel to serve community needs arising from enemy action. Also on or attached to the Staff Unit would ordinarily be an Executive Officer, who would be second in command after the Commander, a Billeting Officer, Personnel Officer, Incident Officers, Senior Gas Officer, Passive Plant Protection Officer, Water Works Officer, Chart Writer, Communications Officer, Panel Clerk, Radio Aide, Liaison Officers, Messengers, Drivers, and others.¹⁹

One of the highly important functions of the Staff Unit relates to bomb reconnaissance, carried out by Bomb Reconnaissance Agents. These individuals, although civilian members of the Defense Corps, are specially trained by the War Department in reconnaissance, reporting, and safety measures regarding unexploded and delayed action bombs. The actual disposal of such bombs is a responsibility of the Ordnance Department of the Army, but the OCD, working through State and local defense councils, is responsible in the continental United States for locating and reporting such bombs and for applying safety precautions at the site of the unexploded bomb. Upon receiving a report of the location of such a bomb, the Commander will dispatch a Bomb Reconnaissance Agent to the scene, and if his investigation confirms the report, the military bomb disposal units will be at once notified.²⁰

The headquarters of the Commander of the Defense Corps and his Staff is known as the Control Center. The object of such a place is to provide the Commander with the means of having a picture of the

¹⁷ See OCD publication "A Handbook for Drivers' Corps Members," pp. 83-84; OCD Operations Letter No. 86, November 9, 1942.

¹⁸ OCD Operations Letter No. 76, September 21, 1942.

¹⁹ OCD publication "Staff Manual—United States Citizens Defense Corps," pp. 3-5. See also Regulations No. 3, § 16; Appendix 14, p. 133; OCD Operations Letter No. 84, November 9, 1942; OCD Operations Letter No. 91, November 14, 1942.

²⁰ OCD publication "Bomb Reconnaissance," pp. 1-6. See also OCD Operations Letter No. 32, April 20, 1942; Supplement No. 1 thereto, May 29, 1942; Supplement No. 2, June 9, 1942; Supplement No. 3, June 17, 1942; and Operations Letter No. 62, August 5, 1942.

situation in the field, and to enable his orders, and those of his Staff officials, to be transmitted quickly to the scattered units throughout the area under the Commander's jurisdiction.²¹ The general characteristics of a Control Center are analogous to those of a military headquarters in a stabilized situation in the field.²² The Controller, who is on the Staff, is in immediate charge of the Control Center and its personnel.²³ A radio station installed at the Control Center under municipal authority is permitted to communicate with other stations in the war emergency radio service, with stations in the emergency radio service (police, forestry, special emergency, and marine fire stations), and with United States Government stations, in those cases which require cooperation or coordination of activities.^{23a}

Police Mobilization: Auxiliary Police

The Director of the OCD has pointed out that the local defense council does not supersede existing municipal agencies but is intended to integrate the normal activities of local government into the war effort, adding new ones where necessary.²⁴ Thus, in order to supplement certain functions of the police department, the OCD has recommended the recruitment of volunteer auxiliary police.²⁵

Auxiliary police, after a course of training, are expected to assist the local police chief in the enforcement of emergency restrictions on lighting and of prohibitions on trespassing; the guarding of docks, buildings, bridges, and factories to prevent sabotage; the control of traffic during blackouts and air raids; the prevention of looting; and, in general, the enforcement of law pertaining to air raid protection services before, during, and after a blackout or raid.²⁶

The technical training of these volunteers is a responsibility of the chief of police, and in a large number of cities schools have been

²¹ The organization of control systems in municipalities of all sizes is described in the OCD publication entitled "The Control System of the Citizens' Defense Corps."

²² OCD publication "Bomb Reconnaissance," p. 1.

²³ OCD publication "Staff Manual—United States Citizens Defense Corps," p. 2.

^{23a} Federal Communications Commission, Rules and Regulations Governing All Radio Stations in the War Emergency Radio Service, adopted May 26, 1942, effective June 12, 1942, and as amended November 6, 1942. 7 Fed. Reg. 4457, 9347, 9461. As to use of radio during periods of blackout or air raid alarm in the Eastern Military Area, see Air Raid Protection Regulations No. 1, Section VII. Text in Appendix 27, p. 163.

²⁴ Address of Director James M. Landis in Syracuse, N. Y., June 9, 1942. (OCD Memorandum, June 13, 1942.)

²⁵ The need for additional police was emphasized by the New York State Council of Defense in its report submitted to the Legislature in January 1942. (Legislative Document [1942] No. 26, p. 36.) It is therein stated that the numerical strength of all police forces in New York State is only something in excess of 30,000, of whom about 20,000 are within the City of New York. The remainder are maintained by about 1,600 other jurisdictions. "While certain of these forces are large, the small units are in the majority. Though these forces may be adequate to meet normal demands for police service, it was obvious that acting independently they would be unable to cope with grave emergencies."

²⁶ OCD Regulations No. 3, § 12 (b) (3). See Appendix 14, at p. 133. See also OCD publication "A Handbook for Auxiliary Police," *passim*.

conducted, under the auspices of the FBI, in the duties of auxiliary police.²⁷

Traffic control is one of the most important problems, particularly in an emergency, facing the municipal police authorities.²⁸ Before America entered the war, the International Association of Chiefs of Police, in conjunction with a number of national governmental groups and the War Department, had developed an Emergency Traffic Law Enforcement Program, designed to aid enforcement authorities in the control of traffic under normal, though highly intensified, conditions. Since the war, however, this program has been supplemented with another to handle traffic under extreme conditions. This new War Traffic Control Program was prepared for the OCD by the International Association of Chiefs of Police, working with the FBI, Office of Provost Marshal General of the War Department, United States Conference of Mayors, Public Roads Administration, Institute of Traffic Engineers, Automotive Safety Foundation, and the Society of Automotive Engineers.²⁹ The present program is set forth in a publication of the OCD entitled "War Traffic Control" and in the Air Raid Protection Regulations promulgated by the various Service Commands pursuant to Lieutenant General H. A. Drum's Public Proclamation No. 4.³⁰

Among the legal problems that arise from emergency situations of traffic control in wartime are those relating to mutual aid. Municipal police are responsible for control within the city but may frequently be called upon to assist State police outside of the city or county, and *vice versa*. Moreover, an area subject to special control may embrace two or more municipalities, or territory within two or more States.³¹ In New York State the Legislature has authorized the Governor, whenever public interest requires it, to direct State, county,

²⁷ OCD publication "Training Courses for Civilian Protection," p. 23. The FBI has likewise conducted 2-day courses for police executives and 6-day schools for subordinate officers, so that they in turn might instruct other members of the department in the subjects of traffic control, sabotage investigations, blackout enforcement, codes, enemy aircraft, balloon barrages, gas contamination, evacuation work, etc. (George A. Warp, *Municipal Police in Wartime Virginia*, Bureau of Public Administration, University, Virginia, April 1942, p. 8. See also OCD publication "A Handbook for Auxiliary Police," p. 2.)

²⁸ George A. Warp, *op. cit.*, p. 11. For text of a "Model Military Traffic Control Act," prepared by the Council of State Governments, see Appendix 38, p. 198.

²⁹ OCD publication "War Traffic Control," p. iv.

³⁰ Public Proclamation No. 4 (January 27, 1943) and Air Raid Protection Regulations No. 1 (January 27, 1943). Texts in Appendices 26 and 27, pp. 162, 163. And see OCD Operations Letter No. 107, January 28, 1943. See also OCD Operations Letter No. 40, May 14, 1942; Memorandum to Regional Directors, June 24, 1942; Transportation Bulletin No. 1, June 5, 1942; Memorandum to Regional Directors concerning said Bulletin, June 5, 1942; OCD Operations Letter No. 86, November 9, 1942.

³¹ In New Jersey an order of the Governor made on June 16, 1942, in pursuance of Chapter 251 of the Laws of 1942, established a Police War Plan for the coordination of the police of all jurisdictions in a state-wide system for the control of wartime emergencies, with special attention to traffic control. By a subsequent addendum (August 10, 1942) the Plan was extended to provide for definite cooperation with the police forces of bordering States and communities in respect of emergency traffic control.

and local police heads to assign all or any part of their forces to service in any part of the State where aid is requested.³² The same statute specifically confers upon such police, when serving outside of their ordinary jurisdictions, the same powers and immunities that exist when they serve in their normal capacity. By another New York statute it is provided that whenever during the present war emergency the sheriff of a county is unable to obtain sufficient deputies, he may request aid from the sheriffs of other counties, and the latter are empowered, although not required, to extend such aid. The requesting county bears all expenses.³³

Whenever any regular police forces of any city, town, or village in New York State are rendering outside aid, the mayor or chief executive officer of the community supplying the assistance may deputize substitute police on a temporary basis. The substitute police may be unpaid volunteers or may be compensated at not to exceed \$5 per day in the event volunteers are not obtainable to serve without pay.³⁴ The New York statute does not contain any provision relating to aid to be given to or received from another State.³⁵

Police, and auxiliary police supplied by the Citizens Defense Corps, have other important responsibilities incident to blackouts and air raids. Not only do blackouts involve special traffic regulations,³⁶ but they also give rise to the necessity of enforcing numerous rules relating to extinguishment or screening of lights, use of the

³² L. 1942, c. 544, § 30. See also, comparable statutes in California (Laws 1941, ch. 323); Maine (Laws 1942, ch. 305, § 3); Massachusetts (Laws 1941, ch. 719, § 5 [b]); Michigan (Acts 1942, First Extra Session, Public No. 7, § 1); Pennsylvania (Acts 1942, Special Session, Act No. 14, § 5); Rhode Island (Laws 1942, Senate Bill No. 25, § 9); and Virginia (Acts 1942, ch. 254).

³³ L. 1942, c. 568.

³⁴ L. 1942, c. 544, § 31.

³⁵ The New Jersey statute on civilian defense authorizes the Governor to make such reciprocal orders and regulations pertaining to any one or more States "as may be necessary in order to effectuate the purposes of this act." Laws 1942, Senate Bill No. 250, § 14.

³⁶ The OCD has published a set of recommended regulations governing the movement and control of motor vehicles and other vehicular traffic during air raids and/or blackouts, (OCD publication "War Traffic Control," pp. 13-15.) These regulations are intended for promulgation pursuant to a blackout ordinance authorizing their issuance. A model blackout ordinance containing such authority in its first section, has been prepared by the National Institute of Municipal Law Officers. (Report No. 80, January 1942, pp. 3 ff.) In the fourth section of this model ordinance, provision is made for the appointment of auxiliary police. The Institute has stated that it is not necessary for a State Legislature to act prior to the adoption of a blackout ordinance by a municipality, but that any immunity to be conferred upon civilian defense workers or upon the municipality itself may require a State measure. (*Ibid.*, p. 5.) In New York the State Director of Civilian Protection promulgated on June 17, 1942, state-wide regulations governing vehicular and pedestrian traffic during air raids and blackouts. (New York State War Council, *Official Bulletin*, Vol. I, No. 1 [July 25, 1942], pp. 7-8.) These regulations were issued pursuant to L. 1942, c. 544, § 13, subd. 5. They were amended on February 16, 1943, effective the next day, by Regulations No. 1 (1943). (*Ibid.*, Vol. II, No. 8 [February 20, 1943], pp. 93-95.) In the District of Columbia, Congress has enacted two Acts relating to blackouts (55 Stat. 858 and 56 Stat. 740, see Appendices 23 and 24, pp. 155, 157); pursuant thereto the Commissioners of the District promulgated on August 13, 1942, elaborate regulations. Michigan has enacted an elaborate statute regulating the movement of traffic and the use of highways during blackouts and air raids, and prescribing penalties (Acts 1942, First Extra Session, Public No. 13). Mississippi has empowered its political subdivisions to issue regulations on extinguishment

streets, prevention of burglary and other crimes, etc.³⁷ In New York State the wilful and intentional violation of any official order given by any member of a municipal or volunteer agency wearing a distinguishing brassard or other similar insignia, concerning (a) the screening or extinguishment of lights or (b) the conduct of civilians and the movement or cessation of pedestrian or vehicular traffic, is punishable as a misdemeanor.³⁸ A nonwilful violation is punishable as an infraction.³⁹ The statute further authorizes the local legislative body of any municipality to confer by resolution upon the auxiliary police the powers of regular peace officers in regard to arrest

of lights during blackouts, the violation of which is a felony (Laws 1942, ch. 175, § 1). In New Jersey the Governor, pursuant to Laws of 1942, Ch. 251, has promulgated state-wide Rules and Regulations No. 28 "for the operation of street and highway traffic, either by day or by night, from the time the official public air-raid signal is sounded until the all-clear signal is sounded." See also, Air Raid Protection Regulations No. 1 (January 27, 1943) issued in the Eastern Military Area. Text in Appendix 27, p. 163.

³⁷ Some of the many practical and legal difficulties encountered in blackout enforcement by the British police are described by Chief Inspector C. R. Hewitt of the City of London police in an article in the *Police Journal* (April-June 1940), quoted from by James L. Sundquist, "British Cities at War," Report No. 76 of Public Administration Service (American Municipal Association), pp. 43-45 (1941). Among such difficulties is the meaning of the word "occupier" of a building when it comes to the point of prosecution for a light in a corridor of a building housing many tenants. See also, "Fire Watching and Lighting: Doubtful Points," 191 *Law Times* 133, 134 (1941); and "Lighting and Liability," 90 *Law Journal* 195 (1940).

³⁸ Imprisonment for not more than one year, or by fine of not more than \$500, or both. N. Y. Penal Law, § 1937. See also, Louisiana, Acts 1942, Act No. 7, §§ 1 (a) and 4; Maine, Laws 1942, ch. 305, § 11; Massachusetts, Laws 1942, ch. 13, §§ 3 and 6A; New Jersey, Laws 1942, ch. 251, §§ 13 and 17; Pennsylvania, Acts 1942, Act No. 14, §§ 8 and 9; Rhode Island, Laws 1942, Senate Bill No. 25, §§ 8 and 19; South Carolina, Laws 1942, No. 580, §§ 1 (b) and 4; Virginia, Acts 1942, ch. 249, §§ 1, 3, and 4. It has been questioned whether a statute making a violation of an order of an auxiliary volunteer policeman a misdemeanor is a reasonable exercise of the police power under the constitution. In England, it is argued, the enforcement of light-screening is limited to police officers and not permitted to volunteers. 55 *Harvard Law Review* 844, 855 (March 1942). One of the most extreme statutes in the field in the United States was passed in 1942 in Mississippi. This act makes the violation of a blackout ordinance a felony punishable by imprisonment for not less than one year nor more than two years in the State penitentiary. The act also empowers the political subdivisions of the State "to appoint officers whose duty it shall be to see that the rules and regulations for blackouts are complied with; and who shall have the authority to arrest any person or persons who fail to comply with said rules and regulations. These officers to serve without pay." (Laws 1942, ch. 175, §§ 1-2.)

³⁹ Fine of not more than \$25, or 5 days in jail, or both. L. 1942, c. 544, §§ 101, 102. It is doubtful that an "infraction" is such a crime as would authorize an arrest by a private person if committed or attempted in his presence. See N. Y. Code of Criminal Procedure, § 183, and Penal Law, § 2. The penal sanctions of the N. Y. War Emergency Act have been strictly enforced against a landlord who had taken it for granted that the building superintendent would act to control the lights during a test blackout. "Had the superintendent assumed the obligation to landlord to control the lights during a blackout or test blackout whenever that occurred, he, too, would be guilty under the statute." — *Per Rothenberg, C. M.*, in *People v. Goldberg*, N. Y. City Magistrates' Court, Aug. 25, 1942. Similarly, in the case of a dimout ordinance, the Appellate Department of the Los Angeles Superior Court affirmed the conviction of the owner of an electric sign which had not been properly disconnected by an electrician hired by him for that purpose. (*People v. Miller*, Los Angeles Superior Court, Appellate Department, Fox, J., December 11, 1942.) Cf. *People v. Richmond*, New York Supreme Court, Special Term, Kings County, Steinbrink, J., 109 *New York Law Journal* 658 (February 17, 1943). Interesting questions have also arisen involving the duty of a landlord to furnish blackout curtains to a tenant where the lease provided for night use of the premises but required the tenant to comply with all governmental regulations. *Janco Holding Co., Inc. v. Morse Boulger Destructor Co., Inc.*, New York Supreme Court, Appellate Term, First Dept., 109 *New York Law Journal* 172 (January 14, 1943).

and the execution of criminal process—such powers of the auxiliary police, however, to be exercised only during actual or imminent air raids.⁴⁰ Of course, if a statute designates the violation of a regulation as a crime, an auxiliary policeman, like any private person at common law, may arrest if the crime was committed or attempted in his presence.

Where there is no State act defining the powers of auxiliary police during blackouts and air attacks, their power (aside from the power to arrest for a crime committed in their presence) must be found in local ordinances or resolutions.⁴¹ In the model blackout ordinance (Section 7), prepared by the National Institute of Municipal Law Officers, any unauthorized light is declared to be a public nuisance which may be abated summarily by the police, or auxiliary police, by the use of necessary and reasonable force.⁴² The validity of such ordinances will undoubtedly depend upon considerations similar to those arising in cases like *North American Storage Co. v. Chicago*, 211 U. S. 306 (destruction of unwholesome food). Moreover, constitutional considerations may come into play where the ordinance is not limited to enforcement during an actual or threatened attack, but includes enforcement by volunteers during blackout tests.⁴³ Still another constitutional consideration possibly to be reckoned with is that relating to unreasonable searches and seizures, although this guaranty may perhaps be subject to qualification where the violation of a blackout regulation by a householder constitutes a crime and occurs in the presence of, or is visible from the outside of the premises to, the regular or auxiliary policeman.⁴⁴

⁴⁰ L. 1942, c. 544, § 104.

⁴¹ A number of such ordinances have been collected by the National Institute of Municipal Law Officers in its Report No. 80, January 1942, entitled "Blackouts and Air Raids—Model Ordinance Annotated." The Model Ordinance for Civilian Defense Organization, prepared and recommended by the OCD, prohibits any member of the Defense Corps from arresting another person and from carrying firearms, unless on written order of the chief of police and in accordance with State law. See text in Appendix 40, p. 199.

⁴² *Supra*, p. 30, note 36. The blackout regulations (as amended August 13, 1942) in the District of Columbia (§ 5) authorize regular and auxiliary police to enter any room during a period of blackout or air-raid alarm for the purpose of extinguishing lights, using "such force as is necessary to gain entrance."

⁴³ In another connection the National Institute of Municipal Law Officers has stated that the distinction between practice blackouts and those occurring as a consequence of an actual attack, "seems to lack justification since the purpose in each case is protection of the civilian population." *Municipalities and the Law in Action*, "One Year's Experience of American Cities at War," p. 20; a report of the Institute's Committee on Wartime Legal Problems of Cities, presented to the Institute's War Conference, New York City, on December 2, 1942.

⁴⁴ *M'Bride v. United States*, 284 Fed. 416 (1922); *Schnorenberg v. United States*, 23 F. (2d) 38 (1927); *United States v. Feldman*, 104 F. 2d 255 (1939); *United States v. Sam Chin*, 24 F. Supp. 14 (1938); *United States v. Lerner*, 35 F. Supp. 271 (1940); *State v. Turner*, 302 Mo. 660 (1924). See also Asher L. Cornelius, *The Law of Search and Seizure*, pp. 91, 197-201 (1926); Nelson B. Lasson, *The History and Development of the Fourth Amendment to the United States Constitution*, pp. 124, 126 *et seq.* (1937).

Fire Defense: Auxiliary Firemen

As in the case of auxiliary police, the auxiliary firemen are ordinarily under the supervision of the chief of their regular department.⁴⁵ In this way the auxiliary firemen of the Citizens Defense Corps are integrated with the established fire department and in case of emergency can work in close cooperation with it.⁴⁶ The Washington office of the OCD outlines in a general way the training suitable for the development of an auxiliary fire force, but the direction and execution of this educational program is stated by the OCD to be "the direct responsibility of the Fire Chief of each municipality."⁴⁷

As in the exchange of police personnel, so in the case of fire-fighting services, one of the principal legal problems concerns the extraterritorial activities of firemen during emergencies.⁴⁸ As a general rule a municipality is under no obligation to supply personnel and equipment to fight fires beyond the corporate limits.⁴⁹ Even an intercity contract to do so has been held *ultra vires* in the absence of an enabling statute.⁵⁰ On the other hand, under certain of the various statutes creating State defense councils, it may be that the general power of the council to utilize the services and facilities of existing officers, institutions, and agencies of the political subdivisions, together with the council's general power to require cooperation and assistance of such agencies, is tantamount to a power to require the movement of any fire company, including volunteer companies, and their equipment to any part of the State, whenever needed.⁵¹

⁴⁵ See OCD publications entitled "Training Auxiliary Firemen"; "A Handbook for Auxiliary Firemen"; and "Fire Defense Organization."

⁴⁶ OCD publication "Organization Outline for Local Defense Councils," p. 14. See also OCD Regulations No. 3, § 12 (b) (4); Appendix 14, p. 133.

⁴⁷ OCD Operations Letter No. 55, July 20, 1942. The New York State Education Department has prepared two pamphlets for use by local fire chiefs in instructing civilian defense forces. The titles are "Organization and Training of Civilian Auxiliary Fire Fighting Forces," and "Industrial Plant Fire Prevention and Protection." For English experience in factories, see C. W. Glover, *Civil Defence*, 3rd ed., pp. 609-650 (1941).

⁴⁸ Problems may arise in suburban areas particularly. It is obvious that for defense purposes the artificial lines called "city limits" do not necessarily mark off the communities which might require centralized control. In California, where these problems have been considered, the defense council of Fresno County assumed the role of coordinator, and in that county some city defense councils extend their jurisdiction beyond the city limits. In the case of the city of Kingsburg, the council extends its authority into two other counties, namely, Tulare and Kings. Fresno County also found the Union or Joint Union School District a convenient unit for defense work.

⁴⁹ Report No. 63 (June 1940) of National Institute of Municipal Law Officers, entitled "Power of Municipalities to Send Fire Fighting Equipment Beyond Municipal Boundaries," p. 4. See also annotation entitled "Use beyond municipal limits of municipal equipment for extinguishment of fires" in 122 A. L. R. 1158.

⁵⁰ *Jefferson County Fiscal Court v. Jefferson County*, 278 Ky. 785 (1939). A recent enabling act was adopted in Michigan to permit a county with a population of not less than 230,000, where there are areas outside of incorporated cities for which adequate fire protection is not provided, to contract for fire protection with the legislative body of any township, city, or village located within such county (Acts 1942, Second Extra Session, Public No. 15, § 1). An analogous act was passed at the same session permitting a township to contract with another township, city, or village (*ibid.*, Public No. 19, § 1).

⁵¹ The Attorney General of Ohio has so ruled. Opinion No. 5428 to Executive Director of State Council of Defense, September 5, 1942. See also, Pennsylvania, Acts 1942,

A number of States have recently enacted statutes specifically authorizing cities to fight fires outside their limits.⁵² One of the most recent of such statutes was passed in New York.⁵³ Under this law a State Office of Fire Mobilization was established under the jurisdiction of the State Office of Civilian Protection. The head is appointed by the State War Council and is known as the State Fire Administrator. The statute directs the Fire Administrator to prepare and present to the State War Council for its approval a State Mutual Aid Fire Plan. Such a Plan was approved by the State War Council on December 1, 1942. Under the Plan the State Fire Administrator is empowered to direct the use of fire-fighting equipment and personnel from any part of the State to meet serious fire exigencies, whenever, during or subsequent to an attack, a municipality may request or the Governor may determine the public interest so requires.⁵⁴

Closely allied to mutual aid fire plans is mutual aid in connection with water supply. In October 1941, plans in this direction were laid in New York State as a part of the civilian defense program; and at the legislative session in 1942 an elaborate statute was passed authorizing the Governor, with the approval of the State War Council, to divide the State into water service zones and to appoint a State Coordinator of Water Supply to assist municipalities in the furtherance of plans for the supply of water in time of emergency.⁵⁵ The statute empowers any municipality which owns and operates a water system for domestic, commercial, or public uses to enter into agreements with other municipalities for the construction of interconnections and for the purchase or sale of water "delivered through any interconnection during an emergency whether or not there be an excess of water for the selling municipality."⁵⁶ Also related to fire protection in the winter

Special Session, Act No. 14, § 3 (a) (7), empowering the State defense council to make rules, regulations, and orders regarding the "mobilization and coordination of municipal and volunteer agencies and the use of the personnel and equipment of such agencies wherever needed in the Commonwealth."

⁵² Louis H. Burke and Robert H. Patton, "The Effect of an Emergency upon the Police Powers of a City," *Municipalities and the Law in Action in 1941*, pp. 183, 185. For text of a "Model Fire Defense Mobilization Act," prepared by the Council of State Governments, see Appendix 36, p. 195.

⁵³ L. 1942, c. 575 and c. 576. See also Louisiana, Acts 1942, Act No. 246; Maine, Laws 1942, ch. 305, § 3; Massachusetts, Laws 1941, ch. 719, § 5 (c); Michigan, Acts 1942, First Extra Session, Public No. 9; Mississippi, Laws 1942, ch. 199; Rhode Island, Laws 1942, Senate Bill No. 25, § 9; South Carolina, Laws 1942, No. 685; and Virginia, Acts 1942, chs. 250, 254. See also Oregon, Laws 1943, ch. —, approved February 27, 1943.

⁵⁴ Text of this "State Fire Mobilization and Mutual Aid Plan" appears in New York State War Council, *Official Bulletin*, Vol. I, No. 22 (December 12, 1942), pp. 347-348. Similar procedure was provided for in England by the Fire Services (Emergency Provisions) Act which was passed in May 1941 to bring about the coordination and unification of the various fire brigades throughout the country. Under the pertinent Regulations a National Fire Service was established by which personnel could be moved from place to place as required. (4 & 5 Geo. 6, c. 22.)

⁵⁵ L. 1942, c. 574, adding § 208-c to the General Municipal Law. See also OCD Circular, Medical Series No. 26, December 22, 1942.

⁵⁶ L. 1942, c. 574, adding § 208-c, subd. 3 (a) and (c) to General Municipal Law. According to the "Report on New York State Defense Program," submitted by the Governor to the

is mutual aid in snow removal. A state plan for this purpose was adopted by the New York State War Council on December 29, 1942.^{56a}

Supplementing the work of the auxiliary firemen and trained by the fire department, but actually functioning under the air raid wardens is the Fire Watchers Unit.⁵⁷ This Unit has two chief responsibilities. The first of these is to note all objects (whether incendiaries or not) which fall from hostile or unidentified aircraft. The second is to reach and deal with as many incendiaries as possible, or to see that someone capable of dealing with them is alerted to their presence.⁵⁸ It is the responsibility of each air raid warden to arrange with his Fire Watchers a means of communication so that he may be promptly apprised of the fall of incendiaries which the Fire Watchers cannot control themselves.⁵⁹ The warden is expected to report such fires to the fire department control office.⁶⁰

Air Raid Wardens

The Wardens Service of the Citizens Defense Corps includes the Air Raid Wardens and the Fire Watchers.⁶¹ The number of administrative links in the Wardens Service depends, of course, upon the size of the community, but the basic unit is a Post containing the homes of about 500 people. Approximately 10 Posts constitute a Sector, and 10 Sectors a Zone. In each Zone is a Precinct Warden; in each Sector a Senior Warden; and in each Post there will be a Post Warden, assisted by a number of wardens, messengers, and other personnel.⁶²

Legislature on January 12, 1942 (p. 40), about 100 interconnections between municipal water systems had at that time been installed and were in operation, but the Report said that "Several hundred more such interconnections should be made." By the end of 1942 there were in existence 221 such interconnections, with perhaps another 100 desirable. Earl Devendorf, State Water Coordinator, "Review of Progress Made During 1942 in Operation of the New York State Mutual Aid Plan for Water Service," New York State War Council, *Official Bulletin*, Vol. II, No. 1 (January 2, 1943), pp. 5-8, at p. 6.

^{56a} Text in New York State War Council, *Official Bulletin*, Vol. II, No. 2 (January 9, 1943), p. 9.

⁵⁷ See OCD publications "A Handbook for Fire Watchers," and "Fire Protection in Civilian Defense."

⁵⁸ OCD Operations Letter No. 53, July 15, 1942. See also OCD Regulations No. 3, § 12 (b) (5); Appendix 14, p. 133. For English experience see "Fire Watching and Lighting: Doubtful Points," 191 *Law Times* 133-134 (1941); "The Prevention of Fires in War Time," 85 *Solicitors' Journal* 51-52 (1941); "Fire Watching," 91 *Law Journal* 36-38 (1941); "Fire Watching—Exemption Tribunals," *ibid.*, pp. 98-99; Gerald Abrahams, "Some Problems of Fire Watching," 92 *Law Journal* 102 (1942); A. D. Hargreaves, "Some Fire-Watching Problems," *ibid.*, pp. 163-4 (1942); C. W. Glover, *Civil Defence*, 3rd ed., pp. 704-707 (1941).

⁵⁹ OCD Operations Letter No. 53, July 15, 1942. In an official press release on July 26, 1942, the Director of the OCD said: "It is of the utmost importance that we be prepared to meet this possible attack with an organization of Fire Watchers large enough to protect every building in every target area, trained and equipped to deal with fire bombs as soon as they have fallen." He also added that the British experience had shown that "prevention of fire is the most important single step which can be taken to reduce damage." *Victory*, Vol. 3, No. 30 (July 28, 1942), p. 30. To same effect see note in 105 *Justice of the Peace and Local Government Review* 17 (January 11, 1941).

⁶⁰ OCD publication "Fire Protection in Civilian Defense," p. 22.

⁶¹ The Fire Watchers Unit was discussed in the preceding section.

⁶² OCD publications "A Handbook for Air Raid Wardens," pp. 1-5; "Staff Manual—United States Citizens' Defense Corps," pp. 3, 6; "The United States Citizens Defense Corps," p. 13.

An Air Raid Warden is not a policeman nor a fireman nor a doctor, although his duties are related to theirs.⁶³ He is trained in first-aid work, fire and gas defense, blackout procedure, air raid warning system, etc.⁶⁴ This training is frequently given by volunteer instructors. Many such instructors, furnished by the American Legion, have been trained in turn at state-wide schools staffed by Legionnaires who have taken special courses at Federal civilian defense training schools, such as formerly at the Edgewood Arsenal.⁶⁵ Some States also conduct training schools.

Following an air raid warning the Warden's first duty is to clear the streets. He is required to warn any pedestrians or drivers of vehicles who do not observe blackout or air raid regulations, and to inform the police or auxiliary police if enforcement measures are necessary.⁶⁶ The Warden is also required to warn any householders or occupants of buildings in cases where unauthorized lights are showing; cases of disobedience are reported by the Warden to the police. During emergencies he also guides messengers, first-aid groups, fire patrols, and other parties whose duties require them to be on the streets. In the event explosive, gas, or incendiary bombs are dropped, the Warden makes the necessary reports and supervises the efforts of the Fire Watchers.⁶⁷

Emergency Public Works Service

This division of the Citizens Defense Corps embraces the Demolition and Clearance Unit, the Road Repair Unit, the Decontamination Unit, and sometimes the Rescue Unit where not separately established. Ordinarily the chief of this division is the head of the public works department of the municipality.⁶⁸ The functions of these units are, as their names indicate, the removal of debris; the blasting of unsafe structures; the opening and repairing of streets; the chemical neutralization and the cleaning of gassed areas; and the rescue of persons trapped in bombed buildings.⁶⁹

⁶³ OCD publication "A Handbook for Air Raid Wardens," p. 7.

⁶⁴ OCD publication "Training Courses for Civilian Protection," pp. 7-8, 24.

⁶⁵ OCD Operations Letter No. 20, February 7, 1942.

⁶⁶ See, e. g., New Jersey Rules and Regulations No. 8.

⁶⁷ OCD publication "A Handbook for Air Raid Wardens," pp. 13 *et seq.* See also OCD publication "Bomb Reconnaissance," p. 4; OCD Regulations No. 3, § 12 (b) (2); Appendix 14, p. 133. In New York State an Air Raid Warden may voluntarily undertake temporary duties other than his normal duties. Such additional duties must be supervised by the local war council and must be confined within the limits of the Warden's post. (Memorandum No. 14 of State Director of Civilian Protection, New York State War Council, *Official Bulletin*, Vol. I, No. 4 [August 15, 1942], p. 66.)

⁶⁸ OCD publication "Organization Outline for Local Defense Councils," p. 15.

⁶⁹ See OCD publications "A Handbook for Demolition and Clearance Crews"; "A Handbook for Road Repair Crews"; "A Handbook for Decontamination Squads." See also OCD Regulations No. 3, § 12 (b) (6) (7) (8) (9), and § 16 (c), note; Appendix 14, p. 133. The decontamination of persons is a responsibility of the Emergency Medical Service; the local health department is expected to decontaminate food and water supplies. (OCD Opera-

In New York State the Legislature has provided for a mutual aid plan for highway repairs and debris clearance.⁷⁰ The statute establishes under the jurisdiction of the State Office of Civilian Protection an agency known as the State Office of Highway Repair and Debris Clearance, the head of which is the Superintendent of Public Works. The Superintendent is directed by the Act to prepare and present to the State War Council for approval a State mutual aid plan so that one community may readily assist another in clearing up and repairing the roads and streets after an air raid. The Superintendent is empowered to direct municipal and State officials "to furnish such highway personnel, apparatus and equipment as he may deem essential, notwithstanding any other general or local law or ordinance." During the period of aid and assistance, all repair and clearance activities in the receiving municipality are to be subject to the direction of the State Superintendent, who, however, may deputize a local official to act in his stead.

Emergency Utility Service

Another vital division of the Citizens Defense Corps is the Emergency Utility Service which includes the Utility Repair Unit, composed of trained volunteers, and the regular maintenance and repair personnel of publicly and privately owned utilities, such as water, gas, electric, telephone, telegraph, steam, sewer, and other like services.⁷¹ The OCD advises that both the volunteers and the regular personnel be under the command of the chief of this Service in emergencies.⁷² The OCD assumes that utility employees in this Service are already familiar with their technical jobs; accordingly, no technical training has been planned for them. However, they are expected to receive certain instruction in gas and fire defense, and first-aid, and to take the general course given to members of the Citizens Defense Corps.⁷³ Both volunteers and regular personnel, upon qualification, are entitled to be enrolled as members of the Defense Corps.⁷⁴

Emergency Welfare Service

The OCD has recommended that each local defense council establish an Emergency Welfare Service as a branch of the Defense Corps. The primary object of this Service is to bring all existing emergency

tions Letter No. 41, May 19, 1942, as corrected on May 20, 1942; Operations Letter No. 42, May 20, 1942; and Supplement No. 1 thereto (June 15, 1942).

⁷⁰ L. 1942, c. 576.

⁷¹ OCD publication "Organization Outline for Local Defense Councils," p. 15. See also OCD Regulations No. 3, § 12 (b) (15); Appendix 14, p. 133. For a vivid description of English experience in repairing utilities, see Connery Chappell, "British Utilities Weather the Blitz," 31 *National Municipal Review* 202-206 (April 1942).

⁷² OCD publication "Organization Outline for Local Defense Councils," p. 15.

⁷³ OCD publication "Training Courses for Civilian Protection," pp. 27-28; see also OCD Operations Letter No. 29, April 10, 1942, and Supplement No. 1 thereto, April 24, 1942.

⁷⁴ OCD Operations Letter No. 29, April 10, 1942.

services of public welfare departments, Red Cross, private agencies, and others into the protection program so that all resources of the community can be brought to bear upon the total protection of the public in the event of enemy attack. The Chief of this Service should be, according to the OCD, "a recognized leader in the welfare field with broad experience and administrative ability," and should be responsible directly to the Commander of the Defense Corps.

In carrying out his responsibilities for the coordination of the emergency services of public and private agencies and volunteer groups, the Chief is urged to use the Welfare and Child Care Committee of the Civilian War Services Branch of the defense council as an advisory group.

The Emergency Welfare Service is stated to include in its functions provision for economic and social assistance required by civilians who have been rendered homeless by enemy attack or have become separated from their families. In cases of evacuation to other communities the Emergency Welfare Service is also to assist in carrying out feeding and shelter plans both in evacuation and reception areas and during transportation.

Specifically, the Service is expected to establish information centers for the purpose of extending advice to the survivors of an air raid; to set up temporary rest centers where food, shelter, and other forms of emergency aid would be available; to make provision for rehousing families whose homes have been destroyed; to give cash assistance to those who have lost all immediate resources; to arrange to remove furniture and other effects from damaged buildings, and to store it; to arrange for minor repairs to homes which can be made habitable; and to make provision for the replacement of tools and other working materials to return workers to productive status.⁷⁵

In those instances where an Emergency Food and Housing Unit of the Defense Corps has been created, it operates under the Emergency Welfare Service.⁷⁶

Emergency Medical Service

At the national level, the Medical Division of the OCD constitutes a unit of the Civilian Protection Branch, and has the over-all responsibility for the preparation of medical measures designed to care for civilians injured through enemy action. The Division is headed by the Chief Medical Officer assisted by a headquarters staff of commis-

⁷⁵ OCD Operations Letter No. 76, September 21, 1942; Operations Letter No. 101, December 23, 1942.

⁷⁶ Ordinarily the function of the Emergency Food and Housing Unit would be performed by the organized personnel certified by the American Red Cross to the Commander of the Defense Corps for emergency feeding, housing, and clothing services. The OCD advises that if this personnel is satisfactory no necessity would arise for creating this unit of the Defense Corps. (OCD Regulations No. 3, § 3, note; Appendix 14, p. 133.)

sioned officers and consultants of the U. S. Public Health Service detailed to the OCD.

At the regional level, likewise, the staff assigned to each of the nine Regional Offices of the OCD consists of physicians and sanitary engineers commissioned in the U. S. Public Health Service. The sanitary engineers propose plans for the maintenance of safe standards of community sanitation in the event of disaster, which plans consist of measures at both State and local levels for the continuance of the water supply, the protection of public health where sewer facilities have been damaged or refuse collection and disposal have been interrupted, or where precautions are necessary in respect of milk and food supplies. Sanitation planning is based on the framework of the regularly constituted agencies of the State and local governments, and the integration of such agencies in the civilian protection program as a whole.⁷⁷

At the State level, the State Chief of Emergency Medical Service and the State Hospital Officer are responsible for assisting the localities in the organization of their medical facilities in accordance with the recommendations of the Medical Division, under the auspices of the State defense councils. In exposed States,⁷⁸ the State Chief of Emergency Medical Service and the State Hospital Officer are commissioned or appointed in the U. S. Public Health Service so that they may serve in the dual capacity of State and Federal officials.

State authorities are advised and assisted by the Regional Medical Officer to the end that a common organizational pattern for civilian medical protection may be promoted.⁷⁹ The general adoption of such a pattern has been recommended by the OCD "so that adjacent communities may pool or exchange emergency resources in time of need" and because local administrative areas for defense purposes "will frequently extend beyond municipal or other political boundaries."⁸⁰

The Chief of Emergency Medical Service at the local level is a physician appointed by the mayor, or by the local defense council, or by the Commander of the Citizens Defense Corps. He is responsible for the organization and training of emergency medical field units composed of teams of physicians, nurses, and hospital-trained auxiliaries. He is also responsible for the designation of casualty stations,

⁷⁷ See OCD publication "The Medical Division of the Office of Civilian Defense." See also OCD Medical Division Sanitary Engineering Bulletins Nos. 1 and 2 entitled respectively "Protection and Maintenance of Public Water Supplies under War Conditions" and "Municipal Sanitation under War Conditions."

⁷⁸ As a "rule of thumb" for determining whether a State is "exposed," *i. e.*, lies within a target area, a 300-mile coastal strip has been used.

⁷⁹ OCD Memorandum to Regional Directors and Regional Medical Officers, November 24, 1941.

⁸⁰ OCD publication "Emergency Medical Services for Civilian Defense," Medical Division Bulletin No. 1.

the organization of medical and nursing personnel, the coordination of ambulance services, the assignment of Nurses' Aides for emergency service, the advising of employers concerning emergency medical protection within their factories, etc. He is also expected to collaborate with the State and local health departments in order to safeguard the community against emergency sanitary hazards.⁸¹ A further duty of the Chief of Emergency Medical Service is to train an organization in the medical aspects of gas defense in the community.⁸² The gas training of physicians and other technical personnel is done at War Department Civilian Protection Schools,⁸³ medical colleges, and polytechnic schools.

By agreement with the Red Cross, first-aid courses and the instruction of Nurses' Aides (one of the volunteer units of the Defense Corps) are conducted for the local defense council by the Red Cross chapter.⁸⁴ The Nurses' Aides receive the second half of their course in a hospital designated as a training center, where they work under the supervision of a graduate nurse and learn how to be of assistance in the non-professional aspects of patient care.⁸⁵ Moreover, as members of the Citizens Defense Corps, Nurses' Aides will normally be on call for emergency service in casualty stations as well as in hospitals.⁸⁶

In the event of enemy action, the Chief of Emergency Medical Service or one of his deputies is expected to serve as medical adjutant at the local Control Center. Under the general supervision of the Commander of the Defense Corps, he will, on report of casualties, order the dispatch of mobile teams of emergency medical field units. One or more of these mobile teams will then proceed to the reported incidents. Other teams will be dispatched to the sites predetermined as casualty stations, which will serve for the care of the slightly injured and as a depot or base of operations for the mobile medical teams at the incidents. Stretcher teams are also assembled at hospitals. The mobile medical teams consisting of one doctor, one nurse, and two or more auxiliaries, will cooperate with the members of the Rescue

⁸¹ The Council of State Governments has prepared a model State act authorizing the Governor to designate special emergency health and sanitation areas, and the local health agencies to make and enforce appropriate rules therein to prevent the introduction or spread of contagious or infectious disease. Text of Model Act in Appendix 37, p. 197.

⁸² The non-medical aspects of gas defense are under the Senior Gas Officer on the Staff of the Commander of the Citizens Defense Corps. See OCD Operations Letter No. 42, May 20, 1942; Supplement No. 1 thereto, June 15, 1942; Operations Letter No. 91, November 14, 1942; and Operations Letter No. 104, January 11, 1943.

⁸³ *Supra*, p. 3.

⁸⁴ OCD publication "Organization Outline for Local Defense Councils," p. 15. *Defense*, Vol. 2, No. 33 (August 19, 1941), p. 22; *ibid.*, No. 36 (September 9, 1941), p. 23; *ibid.*, No. 39 (September 30, 1941), pp. 22-23. *Victory*, Vol. 2, No. 52 (December 30, 1941), p. 31.

⁸⁵ OCD publication "Guide for the Training of Volunteer Nurses' Aides." See also, OCD Instructional Letter No. 28, March 17, 1942. One of the legal problems involved here is the liability of the hospital for injuries sustained by a Nurses' Aide. Another problem is the hospital's liability to a patient negligently injured by a Nurses' Aide.

⁸⁶ OCD Medical Division Memorandum No. 17, September 21, 1942.

Unit who extricate the injured from the debris of demolished buildings. The physician in charge will direct the minor cases to the casualty station and send the more serious by ambulance to the hospitals.⁸⁷ The bodies of those who are killed in an incident are not to be brought to a casualty station, but are to be removed, at convenience, to a morgue for subsequent identification and burial.⁸⁸

All hospitals in the Nation, voluntary and governmental, may serve as casualty receiving hospitals without prior authorization. Certain hospitals in more inland locations are designated as emergency base hospitals for the reception of casualties or other patients whom it may be necessary to evacuate from casualty receiving hospitals.

In order to supervise this base hospital program, an Emergency Medical Section has been established in the U. S. Public Health Service, and a Hospital Section in the Medical Division of the OCD. These Sections operate under a common chief who is responsible to the Surgeon General, Public Health Service, and to the Chief Medical Officer, OCD. Under the program certain hospitals and medical schools are forming affiliated units of physicians and dentists commissioned in the Public Health Service. These Sections also administer the funds provided through the Federal Security Agency to pay for the hospitalization of casualties. All hospitals are to be reimbursed by these Federal funds for the care of casualties at established rates. In addition, federally-owned medical equipment may be loaned to hospitals. Such Federal assistance, however, is not to affect the existing management and control of the hospitals by local, State, or voluntary authorities.⁸⁹

With money made available through the United States Public Health Service, 150 hospitals in target areas are being assisted by the Medical Division of the OCD in the establishment of blood and plasma banks with reserves of at least one unit of plasma per bed for the use of the Emergency Medical Service in the treatment of civilian casual-

⁸⁷ Difficult legal questions revolve about volunteer ambulance drivers and makeshift ambulances contributed by citizens in response to the appeals of hospitals and local defense councils. If the volunteer driver negligently injures a patient, or the driver of another vehicle, or a pedestrian, is the hospital liable; is the municipality liable; may recovery be had against an insurer? If the makeshift ambulance is damaged, must the insurer pay for the property damage?

⁸⁸ For details of the Mortuary Service, which constitutes part of the Emergency Medical Service, see OCD publication "Emergency Mortuary Services," Medical Division Bulletin No. 5. This Bulletin states (p. 4) that, pending appropriate legislation, the burial expenses for all persons deceased as a result of enemy action will be paid by the Federal Government at rates not to exceed \$100 in any one case for complete burial, including ground for interment. This payment is stated to be in lieu of, and not in addition to, payments made by the decedent's family or friends. It is payable out of the President's allocation for temporary assistance. See *infra*, p. 73.

⁸⁹ OCD Memorandum, March 13, 1942, containing agreement between the Federal Security Agency and the OCD, dated March 2, 1942, relating to the temporary hospitalization and medical care necessitated by enemy action to civilians. See also, *Victory*, Vol. 3, No. 11 (March 17, 1942), p. 31; *ibid.*, No. 37 (September 15, 1942), p. 29. See also *infra*, p. 73.

ties. In addition to about 65,000 units of plasma to be prepared in this manner, 29,500 units have been obtained through the Army and Navy from blood collected by the American Red Cross. This supply has been distributed throughout the country in addition to 37,500 units of plasma dried from blood collected by the Red Cross. The total plasma reserve will be more than 132,000 units, largely concentrated in the 300-mile coastal regions, with additional supplies in Alaska, Puerto Rico, and the Virgin Islands.

Related to the Emergency Medical Service is the comparable service in industrial plants, some of which are located many miles from a hospital. All plants are expected to provide medical services and first-aid equipment within their own walls,⁹⁰ but it is recognized that, in the event of enemy action, plant physicians, nurses, and first-aid detachments may be unable to care for all the seriously injured. Accordingly, the OCD has urged industrial plants to collaborate with the local Chief of Emergency Medical Service for ambulance service, the establishment of a nearby casualty station, and for supplementary medical services in emergency situations.⁹¹ The Army⁹² and the Navy⁹³ have also issued directions to the same effect to the plants under their ownership or inspection control.

In concluding this section it will not be inapposite to point out that the OCD has stated that the responsibility for the care of air raid casualties is for trained physicians with their nurse assistants and medical auxiliaries, and not for persons without professional training.⁹⁴

⁹⁰ Five percent of the personnel of all large groups of employees were early encouraged by the OCD to take the first-aid instruction given by the Red Cross, and to organize themselves into first-aid corps in their respective plants. OCD Instructional Letter No. 10, September 2, 1941. See also, OCD Memorandum, March 20, 1942.

⁹¹ OCD Medical Division Memorandum No. 14, July 15, 1942. See also OCD publication "Passive Protection for Industrial Plants" (No. 3031, October 1942), pp. 9-11.

⁹² By command of Lieutenant General B. B. Somervell, Headquarters, Services of Supply, Washington, D. C., June 24, 1942.

⁹³ By direction from the office of the Chief of Naval Operations, Washington, D. C., August 15, 1942.

⁹⁴ OCD publication "Central Control and Administration of Emergency Medical Service," Medical Division Bulletin No. 4, p. 8. For detailed descriptions of the organization and functioning of the Medical Division and the Emergency Medical Service, the reader is referred particularly to the six Medical Division Bulletins; the leaflet entitled "The Medical Division of the Office of Civilian Defense," published by the OCD; the joint memorandum, dated March 12, 1942, of the Surgeon General, U. S. Public Health Service, and of the Chief Medical Officer, OCD; an article by the latter, Dr. George Baehr, "The Doctor and the Hospital in Civilian Defense," 27 *Bulletin of the American College of Surgeons* 154-157 (April 1942); and OCD Circular, Medical Series No. 23, November 13, 1942. The OCD recommendations for the functioning of a local Emergency Medical Service have been embodied, and may be read to advantage, in an elaborate set of regulations promulgated by the Civilian Defense Director of New Jersey, who was assisted in their preparation by the Regional Medical Officer of the Second Civilian Defense Region. (N. J. Rules and Regulations No. 26.)

CHAPTER II

THE RELATION OF MILITARY AUTHORITY TO CIVILIAN DEFENSE

1. MILITARY ORDERS AFFECTING CIVILIANS

Serious problems of law arise inevitably from the impact of military authority upon civilian life in time of war. These problems promise to be particularly serious in the present struggle where the aeroplane has carried the war into the interior regions of the belligerent Powers. In a Federal Government, such as the United States, the areas of jurisdiction, delicately worked out in peacetime among Federal, State, and municipal governments, are now frequently entered by military authority. Dimout and blackout proclamations and orders, issued on the East, West, and Gulf coasts by the commanding generals, may conflict with State or local law. The exclusion of American citizens, according to ancestry, from certain parts of the country may be contrary to constitutional rights. The activities of members of the Citizens Defense Corps and of other civilian officials in their attempts to enforce military lighting or exclusion orders may be challenged by persons affected. The Army may grant a private industrial plant an exemption from the operation of Army blackout requirements, and the question may arise as to the extent of the exemption in view of pertinent State requirements.

This Manual will not attempt to answer these and kindred questions, nor to recommend particular conclusions. The present state of the law invites exposition of the questions involved rather than argument.

The Pacific Coast

On December 11, 1941, the War Department established the Western Defense Command, consisting of the States of Washington, Oregon, California, Montana, Idaho, Nevada, Utah, and Arizona, and the Territory of Alaska. At the same time the Western Defense Command was designated as a Theater of Operations under the command of Lieutenant General J. L. DeWitt.¹

On February 19, 1942, the President signed Executive Order No. 9066² which, among other things, directs the Secretary of War and

¹ See recital, Public Proclamation No. 1 of Lt. Gen. J. L. DeWitt, March 2, 1942. 7 Fed. Reg. 2320; text in Appendix 28, p. 172.

² 7 Fed. Reg. 1407.

the Military Commanders whom he may from time to time designate, whenever the Secretary or any such Commander "deems such action necessary or desirable," to prescribe military areas "from which any or all persons may be excluded, and with respect to which, the right of any person to enter, remain in, or leave shall be subject to whatever restrictions the Secretary of War or the appropriate Military Commander may impose in his discretion."³ The Executive order further directed the Secretary and the Commanders to take such steps as he or the appropriate Commander might deem advisable to enforce compliance with the restrictions, "including the use of Federal troops and other Federal Agencies, with authority to accept assistance of State and local agencies." The President also directed all Executive Departments, independent establishments, and other Federal Agencies to assist in carrying out the Executive order. On the following day, February 20, the Secretary of War designated Lieutenant General J. L. DeWitt as the Military Commander to carry out the duties imposed by the President's Executive order for that portion of the United States embraced in the Western Defense Command.⁴

General DeWitt issued Proclamation No. 1 under his new powers on March 2, 1942.⁵ This Proclamation declared that the situation required "as a matter of military necessity" the establishment within the Western Defense Command of Military Areas Nos. 1 and 2 and of Prohibited and Restricted Zones within the Areas. The Proclamation further stated that such persons or classes of persons as the situation might require would by subsequent proclamation be excluded from Military Area No. 1 (a coastal belt averaging about 60 miles deep) and also from certain Zones within Area No. 2 (an interior belt east of Area No. 1 and comprising the balance of Washington, Oregon, California, and Arizona). Any enemy alien or "any person of Japanese Ancestry" resident in Area No. 1 was required by the Proclamation to obtain a "Change of Residence Notice" before changing his place of habitual residence. On March 16, 1942, Proclamation No. 2 was issued by General DeWitt establishing four additional Military Areas, embracing the entire States of Idaho, Montana, Nevada, and Utah, with additional Prohibited and Restricted Zones.⁶

³ The Executive order recites that the successful prosecution of the war requires protection against espionage and sabotage to national-defense material, national-defense premises, and national-defense utilities as defined in Section 4, Act of April 20, 1918 (40 Stat. 533), as amended by Act of November 30, 1940 (54 Stat. 1220) and by Act of August 21, 1941 (55 Stat. 655). This statute was further amended by Public Law 844, approved December 24, 1942. The Executive order also declares that it is issued by virtue of the authority vested in its author as President of the United States and Commander in Chief of the Army and Navy.

⁴ See recital, Public Proclamation No. 1 of Lt. Gen. J. L. DeWitt, March 2, 1942. 7 Fed. Reg. 2320; text in Appendix 28, p. 172.

⁵ *Idem*.

⁶ 7 Fed. Reg. 2405.

Five days later, on March 21, the President approved an Act of Congress providing a penalty for violation of the military restrictions or orders applicable in any Military Area or Zone.⁷ On March 24, General DeWitt issued Public Proclamation No. 3 establishing hours of curfew for enemy aliens and persons of Japanese ancestry in Military Area No. 1 and in the Zones of the other Military Areas defined in the two previous proclamations.⁸ Proclamation No. 3 cited the Act of March 21, 1942, and warned any violator that he would be subject to immediate exclusion from the Military Areas and Zones and to the criminal penalties provided by the Act. On the same day that Proclamation No. 3 was issued, the first general Civilian Exclusion Order was posted by General DeWitt, to be followed in subsequent weeks by more than one hundred kindred orders as the Japanese evacuation program was carried out.

By letter dated August 19, 1942, General DeWitt authorized the Regional Director, Ninth Civilian Defense Region, through the agency of the several county or city civilian defense councils, to provide for the issuance of permits authorizing certain temporary exemptions from the travel limitations and hours of curfew provisions of Proclamation No. 3.⁹ The letter also directed that the Regional Office and the county or city defense councils would discharge their said duties as a part of the Wartime Civil Control Administration, an agency of the Western Defense Command and Fourth Army.¹⁰

Further responsibilities were given to the Ninth Regional Civilian Defense Board in August 1942, under General DeWitt's Public Proclamation No. 10 establishing a dimout in Military Areas Nos. 1 and

⁷ Public Law 503; 56 Stat. 173. The statute reads as follows: "*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That whoever shall enter, remain in, leave, or commit any act in any military area or military zone prescribed, under the authority of an Executive order of the President, by the Secretary of War, or by any military commander designated by the Secretary of War, contrary to the restrictions applicable to any such area or zone or contrary to the order of the Secretary of War or any such military commander, shall, if it appears that he knew or should have known of the existence and extent of the restrictions or order and that his act was in violation thereof, be guilty of a misdemeanor and upon conviction shall be liable to a fine of not to exceed \$5,000 or to imprisonment for not more than one year, or both, for each offense."

⁸ 7 Fed. Reg. 2543.

⁹ "Rules and Regulations Governing the Issuance of Permits Authorizing Certain Temporary Exemptions From the Travel Limitations and Hours of Curfew Provisions of Public Proclamation No. 3, Headquarters, Western Defense Command and Fourth Army, Dated March 24, 1942", (August 19, 1942), p. 22.

¹⁰ The Wartime Civil Control Administration was created on March 11, 1942, by order of General DeWitt as the operating agency of the Civil Affairs Division (likewise created on March 10, 1942) under command of the Assistant Chief of Staff for Civil Affairs to carry out the plans and directives relating to the Japanese evacuation. Col. Karl R. Bendetsen, "The Story of Pacific Coast Japanese Evacuation," an address delivered in San Francisco on May 20, 1942. See also, Col. Joel F. Watson, "The Japanese Evacuation and Litigation Arising Therefrom," 22 *Oregon Law Review* 46-59 (1942).

2.¹¹ This Board was made the "primary agency to aid in the enforcement" of the lighting restrictions set forth in the Proclamation. Civil law enforcement agencies and State and local governmental bodies within the affected areas were requested by the General to assist the said Civilian Defense Board in its enforcement duties.¹²

The Director of the Ninth Civilian Defense Region accordingly issued "regulations" to be followed by industrial and other applicants in obtaining variances from the general restrictions where such variances are necessary to "maintain maximum efficiency essential to the conduct of the war." The Director has also called upon State and local governmental bodies to pass "the necessary legislation enabling both State and local enforcement through local courts, thereby relieving the Federal courts of the burden of handling minor violations of the Proclamation."¹³ To this end the Director of the Ninth Region has supplied local governmental bodies with a draft of a uniform ordinance which prescribes for a violation of the lighting regulations contained in the Proclamation a fine of not to exceed \$300 or imprisonment for not to exceed three months, or by both such fine and imprisonment.¹⁴ The Director has instructed each State and local defense council within the Zone of Restricted Lighting to appoint a Chief Light Control Officer, "preferably the Chief Law Enforcement Officer of the state, county or city." This Officer is responsible for instructing members of the Citizens Defense Corps and other enforcing officers as to the method of reporting and prosecuting offenders. Each defense council is also instructed to send semi-monthly to the Ninth Regional Office a report containing the names and addresses of reported violators of the lighting restrictions and an account of all court cases.¹⁵

On October 19, 1942, in view of the Attorney General's order amending, with the President's approval, the Regulations Controlling Travel and Other Conduct of Enemy Nationalities, General DeWitt exempted Italians, certain stateless aliens, and aliens of enemy nationality serving in the armed forces of the United States, from the requirements set forth in prior Proclamations relating to change of residence within the Western Defense Command. At that time General DeWitt also

¹¹ Public Proclamation No. 10 was promulgated on August 5, 1942, effective August 20, 1942; 7 Fed. Reg. 6631. These duties were continued under Public Proclamation No. 12 (October 10, 1942), which amended Public Proclamation No. 10. 7 Fed. Reg. 8377; text in Appendix 29, p. 174.

¹² Public Proclamation No. 12. 7 Fed. Reg. 8377; text in Appendix 29, p. 174. In Alaska the Territorial Director, Civilian Defense, has been given like powers by Major General Simon Bolivar Buckner, Jr., Commanding General of the Alaska Defense Command. See text of proclamation, 8 Fed. Reg. 1874.

¹³ OCD Ninth Civilian Defense Region, Regional Regulations No. 5, October 10, 1942.

¹⁴ "Suggested Form of Ordinance for Adoption by Cities and Counties within the Zone of Restricted Lighting." OCD (Ninth Region) Mimeograph 532.

¹⁵ OCD Ninth Civilian Defense Region, Regional Regulations No. 5, October 10, 1942.

exempted the same persons from the curfew and travel regulations established in March, 1942.^{15a}

On December 23, 1942, General DeWitt abolished previously established Prohibited Zones and made Military Area No. 1 (described in Proclamation No. 1) in its entirety a Prohibited Zone, and on December 24 he lifted the curfew completely.^{15b}

The Atlantic Coast

On May 16, 1942, Lieutenant General H. A. Drum, the Military Commander in the Eastern Defense Command,¹⁶ issued Public Proclamation No. 1 establishing the Eastern Military Area, consisting of the States of Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia, and that part of Florida east of the Apalachicola River, and the District of Columbia.¹⁷

In the said Proclamation the four Corps Area Commanders¹⁸ within the Eastern Military Area are designated as the authorities to issue the orders necessary to control the dimming of lights along the coast "and for a reasonable distance in the rear thereof." Such Federal, State, municipal, and local agencies as the Commanding General, Eastern Defense Command, may "with the consent of such agencies" from time to time designate, are constituted agencies, together with the Corps Area Commanders, to enforce the lighting restrictions. The State and municipal police, and other officials and civilians within the Eastern Military Area, are requested in the Proclamation to assist the enforcement agencies by reporting violations.

The various Corps Area Commanders, pursuant to the authority granted in the above Proclamation, duly issued dimout regulations. Thus, for example, in the Second Corps Area, Major General T. A. Terry promulgated on June 1, 1942, detailed regulations for the dim-

^{15a} Public Proclamation No. 13. 7 Fed. Reg. 8565.

^{15b} Public Proclamations No. 14 and No. 15. 8 Fed. Reg. 282.

¹⁶ The Eastern Defense Command was established by virtue of orders issued by the War Department on December 20, 1941, and March 18, 1942, under the command of Lieutenant General Drum. On April 22, 1942, the Secretary of War designated General Drum as the Military Commander to carry out the duties imposed by the President's Executive Order No. 9066 (*supra*, p. 43) for that portion of the United States embraced in the Eastern Defense Command. (See recitals in Public Proclamation No. 1 of General Drum, 7 Fed. Reg. 3830; text in Appendix 25, p. 159.)

¹⁷ 7 Fed. Reg. 3830; text in Appendix 25, p. 159.

¹⁸ By a subsequent Proclamation (Public Proclamation No. 2, September 7, 1942; 7 Fed. Reg. 7335) the terms "Corps Areas" and "Corps Area Commanders" were ordered to be changed respectively to "Service Commands, Services of Supply" and "Commanding Generals, Service Commands, Services of Supply." These amendments were necessitated by the change of terminology ordered by the War Department. The said Proclamation No. 2 also amended Proclamation No. 1 so as to include the Commanding General of the Military District of Washington as the authority to promulgate and enforce, within his jurisdiction, the necessary restrictions and orders for the control of artificial lighting.

ming or shading of lights in a defined seacoast zone of the Second Corps Area. General Terry charged State and/or local authorities to enforce such of the regulations as pertain to private and public lighting, with the exception of military establishments and war plants under War Department supervision. In the latter cases the military authorities were charged with enforcement duties. On the following day (June 2, 1942) the New York State Director of Civilian Protection promulgated official Regulations No. 1 pursuant to his authority under the New York War Emergency Act.¹⁹ The State Regulations were virtually identical with those issued by General Terry.

On September 7, 1942, General Drum by Public Proclamation No. 2 designated 905 Prohibited Zones and 69 Restricted Zones within the Eastern Military Area from Maine to Florida, wherein the right of movement was subjected to the rules set forth in the Proclamation.²⁰ These rules prohibit any person from entering, remaining in, or leaving any Prohibited Zone except by special individual permit issued in accordance with instructions of the Commanding General of the appropriate Service Command.²¹ Nevertheless, normal traffic is permitted on railways, waterways, and highways within, passing through, or contiguous to any Prohibited Zone, but there must be no loitering.²² Applications for individual permits, when required, are to be made at the appropriate post, camp, or station, or civilian manufacturing plant or other installation. Moreover, no person not in the armed forces entering or remaining in a Prohibited Zone or in Restricted Zone B-2 may have in his possession without authorization by competent military authority any firearm, ammunition, short wave radio receiving set, radio transmitting set, signal device, camera, telescope, drawing or picture of a military or naval installation, etc.²³ In the Restricted Zones, which lie along the seacoast, no person not in the armed forces engaged in the performance of official duties, with certain exceptions, may enter or be found in the area seaward of a line 100 yards inland from the line of mean high tide during the period between sunset and sunrise.

In the case of civilian plants within Prohibited Zones the responsible officials of such plants are charged by the Proclamation with

¹⁹ L. 1942, c. 544, § 13, subd. 5. The Regulations were published in New York State War Council, *Official Bulletin*, Vol. I, No. 1 (July 25, 1942), pp. 5-6. Similarly in certain other of the States in the Eastern Military Area the State authorities issued equivalent regulations.

²⁰ 7 Fed. Reg. 7335. The Proclamation recites that it was issued under authority of the President's Executive Order No. 9066 (7 Fed. Reg. 1407); see also *supra*, p. 43.

²¹ Formerly styled "Corps Area Commanders." For change of terminology, see *supra*, p. 47, note 18.

²² Public Proclamation No. 2, paragraph 9 f and g. 7 Fed. Reg. 7335.

²³ This regulation has now been extended to apply in all Restricted Zones, both in an ocean-front area and inland. Public Proclamation No. 3 of General Drum, December 21, 1942. *Infra*, p. 50.

the immediate enforcement of the restrictions. As to military and naval installations, the Army or Navy, as the case may be, are to enforce the same. In the Restricted Zones the Service Command Commanders, assisted by Federal, State, municipal, and local law enforcement agencies, are given the responsibility of enforcement. Violations are stated to be punishable under the Act of March 21, 1942,²⁴ and conspiracies under Title 18, § 88, United States Code.²⁵ Prosecutions are to be conducted by the several United States Attorneys for the Federal judicial districts in the Eastern Military Area and by such other representatives of the Department of Justice as the Attorney General may from time to time designate, pursuant to the procedure, rules, and regulations of the Attorney General.

The coastal dimout regulations issued by the Commanding Generals of the four Service Commands in the Eastern Military Area, pursuant to General Drum's Public Proclamation No. 1,²⁶ were revised and made more stringent in November 1942.²⁷ They also warned specifically that any person who violates any regulation contained therein would be subject to the penalties provided by the Act of March 21, 1942,²⁸ "and to immediate exclusion from the Eastern Military Area." Conspirators are stated to be subject to the penal provisions of Title 18, § 88, United States Code.²⁹ In the case of any violator who is an alien enemy, "such person will, in addition, be subject to immediate apprehension and internment."

The revised dimout regulations designate the State and local civil authorities, "with their consent," as "the principal agencies to assist in the enforcement of these regulations." In the coastal dimout area³⁰ of the Fourth Service Command³¹ the "Civilian Defense organizations are requested to cooperate in the enforcement of these restrictions."

²⁴ 56 Stat. 173; text, *supra*, p. 45, note 7.

²⁵ This section of the Code (as amended March 4, 1909; 35 Stat. 1096) reads as follows: "If two or more persons conspire either to commit any offense against the United States, or to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be fined not more than \$10,000, or imprisoned not more than two years, or both."

²⁶ *Supra*, p. 47.

²⁷ The revised regulations became effective on November 20, 1942 in the coastal dimout area of the Second Service Command, which Command consists of the States of New York, New Jersey, and Delaware. Elsewhere on the coast of the Eastern Military Area the regulations became effective on November 30, 1942. As to Philadelphia and vicinity, see below, note 30 on this page.

²⁸ 56 Stat. 173; text, *supra*, p. 45, note 7.

²⁹ Text, *supra*, note 25 on this page.

³⁰ The term "coastal dimout area" was further defined and confirmed. Another term, namely, "dim down area", was employed by Major General Milton A. Reckord, Commanding General in the Third Service Command, in regulations applicable to Philadelphia and surrounding territory, effective December 21, 1942.

³¹ This Command consists of the States of North Carolina, South Carolina, Georgia, and Florida east of the Apalachicola River.

As at the time of the original dimout program,³² the New York State Director of Civilian Protection immediately promulgated State regulations identical with those of the Army, effective November 20, 1942.³³

A third Public Proclamation³⁴ was issued by General Drum on December 21, 1942, creating numerous Prohibited and Restricted Zones in the Eastern Military Area, in addition to those already established by Public Proclamation No. 2.³⁵ Proclamation No. 3 also changed the location and extent of a number of the Prohibited and Restricted Zones defined in Proclamation No. 2. Moreover, the right of any person to enter, remain in, or leave both the old and new Restricted Zones was limited by the terms of Proclamation No. 3 in certain respects previously set forth in Proclamation No. 2 and applicable to Zones created by that Proclamation. Proclamation No. 3 also subjects the right of any person to enter, remain in, or leave the Eastern Military Area, or any part or Zone thereof, to his not simulating, possessing, or damaging (unless authorized by competent military or civil authority) any sign or order that has been duly posted pursuant to military authority.

On January 27, 1943, General Drum issued his Proclamation No. 4 extending military control over certain phases of air raid protection throughout the Eastern Military Area.³⁶ Thereby the right of any person to enter, remain in, or leave such Area is made "subject to regulations governing air raid protection including coastal dimout, blackout, the control of lighting and radio, the movement of vehicles and other conveyances, and activities of persons during periods of blackout and air raid, and related matters."

In this Proclamation General Drum designated a single Coastal Dimout Area coinciding in location and extent with the four such areas previously designated by the Commanding Generals of the Service Commands in the Eastern Defense Command.

The same Proclamation further states that "the civilian defense organizations of the Federal Government and of the District of Columbia and of the several States within the Eastern Military Area are, with their consent, hereby designated as the principal agencies to assist commanding generals of service commands in the enforcement of restrictions imposed by this Proclamation and orders issued pursuant hereto, and these organizations and Federal, State and local law

³² *Supra*, p. 48.

³³ The New York State regulations (Regulations No. 10) were published in New York State War Council, *Official Bulletin*, Vol. I, No. 19 (November 21, 1942), pp. 299-301. See also, Executive Order No. 40 of the Governor of Massachusetts, November 27, 1942, effective on November 30, 1942; and Civilian Defense Executive Order No. 90 (amended) of the Governor of Virginia, December 21, 1942.

³⁴ Public Proclamation No. 3. 7 Fed. Reg. 11,107.

³⁵ *Supra*, p. 48.

³⁶ Public Proclamation No. 4. 8 Fed. Reg. 1331; text in Appendix 26, p. 162.

enforcement agencies are requested to render assistance in the enforcement of such restrictions and orders."

As on prior occasions the Proclamation calls attention to the pertinent penal statutes relating to violations.³⁷ Finally, the Proclamation makes provision for the posting of copies at certain described public places, and states that: "It will be the duty of every person found within the Eastern Military Area to familiarize himself with the terms of every proclamation and regulation with respect to air raid protection including coastal dimout, blackout, the control of lighting and radio, the movement of vehicles and other conveyances, and activities of persons during periods of blackout and air raid, and related matters, in the area or service command in which he is found."³⁸

In accordance with Proclamation No. 4 and on the same day that it was issued (January 27, 1943), regulations were promulgated by the four Service Command Headquarters at Boston, New York, Baltimore, and Atlanta, and by the Military District Headquarters in Washington, D. C.^{39a} The principal features of the new regulations were approved by the War Department and concurred in by the OCD. The regulations were made effective on February 17, 1943. They prescribe a uniform system of air raid signals to designate the possibility of air attack ("Yellow"), the probability of air attack ("Blue"), the proximity of air attack ("Red"), and the "all clear" ("White"), and prescribe the action to be taken in each case by the civilian defense forces and by the public generally. Specific rules are set forth pertaining to prohibited lighting; permitted lighting during periods of blackout and air raid; permitted lighting during periods of blackout but prohibited during periods of air raid; movement of vehicles and other conveyances; movement and conduct of pedestrians; radio; practice blackouts and practice air raids; false blackouts or air raids; illegal use of insignia prescribed by the Director of the OCD or for the aircraft warning service; and enforcement and penalties. The regulations further state that they do not in any way modify the dimout regulations prescribed for the Coastal Dimout Area.

The OCD has recommended the voluntary adoption of the new regulations by all States except those in the Western Defense Command which is operating under a system of regulations adapted to its needs and approved by the War Department. Among the reasons given by the OCD for adoption of the military regulations by the State governments are the avoidance of possible differences or conflicts

³⁷ *Supra*, p. 49.

³⁸ In this connection it should be noted that the Act of March 21, 1942 requires for a conviction a showing that the defendant "knew or should have known of the existence and extent" of the applicable military restrictions. For text of Act, see *supra*, p. 45, note 7.

^{39a} Texts of said Regulations in 8 Fed. Reg. 2723-2741. On January 29, 1943, Vice Admiral R. R. Waesche, Commandant, United States Coast Guard, issued under Executive Order No. 9074 (7 Fed. Reg. 1587) similar air raid and blackout regulations for vessels, harbors, ports, and waterfront facilities in the Eastern Military Area. For text see 8 Fed. Reg. 1397.

and the facilitation of enforcement by permitting the prosecution of violators in the State and local courts.³⁹ A number of States in the Eastern Military Area have thus far adopted, in substance, these new regulations.^{39a}

The Gulf Coast

On May 30, 1942, Lieutenant General Walter Krueger, commanding the Southern Defense Command,⁴⁰ issued a Proclamation⁴¹ corresponding closely to that promulgated by General Drum on May 16, 1942.⁴² In General Krueger's Proclamation he established Military Areas comprising the coastal counties of Florida west of the Apalachicola River and the coastal and certain neighboring counties in Alabama, Mississippi, Louisiana (parishes), and Texas, and the land frontier counties of Texas and New Mexico. The respective Corps Area Commanders⁴³ were designated by the Proclamation as the authorities to promulgate the necessary lighting restrictions along the southern boundaries of the Southern Defense Command.

Pursuant to this authority dimout restrictions were duly issued by Major General Richard Donovan for the coastal counties of Texas and Louisiana, and by Major General William Bryden for the coastal counties of Mississippi, Alabama, and of Florida west of the Apalachicola River.

The Interior States

In the States comprising the Central Defense Command⁴⁴ no proclamation has yet been issued establishing military areas.

³⁹ Air Raid Protection Regulations No. 1 (January 27, 1943). For text of the regulations promulgated by the Second Service Command Headquarters, see Appendix 27, p. 163. Identical regulations, *mutatis mutandis*, were issued in the other Service Commands and in the Washington Military District. See also, OCD Operations Letters No. 107 (January 28, 1943) and No. 112 (February 17, 1943); and the speech by James M. Landis, Director of the OCD, on January 27, 1943, at Governors Island, New York.

^{39a} These States are Delaware, Maine, Massachusetts, New Hampshire, Pennsylvania, Rhode Island, Vermont, and Virginia. The District of Columbia and Baltimore have taken similar action. In Florida, Georgia, North Carolina, and South Carolina the regulations are being followed although not as yet officially adopted by such States.

⁴⁰ Orders issued by the War Department on March 17, 1941, as amended by orders on December 20, 1941, on March 18, 1942, on March 31, 1942, and on April 19, 1942, had established the Southern Defense Command under Lieutenant General Walter Krueger. The Command covers that portion of the continental United States included in the States of Alabama, Arkansas, that part of Florida west of the Apalachicola River, Louisiana, Mississippi, New Mexico, Oklahoma, Tennessee, and Texas. The Secretary of War designated General Krueger on April 22, 1942, as the Military Commander to carry out the responsibilities imposed by the President's Executive Order No. 9066 for the Southern Defense Command. (See recitals in General Krueger's Public Proclamation No. 1, May 30, 1942. 7 Fed. Reg. 6754.) In February 1943, General Krueger, at the request of General MacArthur, was transferred to Australia to take command of a field Army. Lieutenant General Courtney H. Hodges succeeded General Krueger.

⁴¹ Public Proclamation No. 1, May 30, 1942. 7 Fed. Reg. 6754.

⁴² *Supra*, p. 47.

⁴³ This title has now been changed. See *supra*, p. 47, note 18.

⁴⁴ This Command, composed of the States of Colorado, Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, West Virginia, Wisconsin, and Wyoming, is under Lieutenant General Ben Lear.

Hawaii

On December 7, 1941, Ingram M. Stainback, Governor of the Territory of Hawaii, suspended by proclamation the privilege of the writ of habeas corpus, placed the Territory under martial law, and authorized and requested the Commanding General, Hawaiian Department, "during the present emergency and until the danger of invasion is removed, to exercise all the powers normally exercised by me as Governor."⁴⁵ The proclamation also authorized the Commanding General, and his subordinate military personnel as delegated by him, "to exercise the powers normally exercised by judicial officers and employees of this territory and of the counties and cities therein." In issuing the proclamation the Governor invoked his authority under Section 67 of the Organic Act⁴⁶ empowering him, "whenever it becomes necessary," to call upon the commanders of the military and naval forces of the United States "to prevent or suppress lawless violence, invasion, insurrection, or rebellion" and, "in case of rebellion or invasion, or imminent danger thereof, when the public safety requires it," to suspend the privilege of the writ of habeas corpus, or to place the Territory under martial law "until communication can be had with the President and his decision thereon made known."

Responding on the same day to the Governor's call, Lieutenant General W. C. Short announced by proclamation that he accordingly "assumed the position of military governor of Hawaii," and that he would "shortly publish ordinances governing the conduct of the people of the Territory with respect to the showing of lights, circulation, meetings, censorship, possession of arms, ammunition, and explosives, the sale of intoxicating liquors and other subjects."⁴⁷

The Governor's proclamation of martial law was communicated to the President as envisaged by the aforementioned section of the Organic Act, and on December 8, 1941, the President confirmed the Governor's action.⁴⁸ Subsequently, on December 20, 1941, the President in an Executive order establishing the "Honolulu Defensive Sea Area" expressly recognized the existence of martial law in the Territory as proclaimed by the Governor.⁴⁹ In the same Executive order the President called upon the Governor, the local municipal authorities, and the local civilian defense agencies to render the local Naval authorities "all possible assistance" in enforcing the regulations pertaining to the "Honolulu Defensive Sea Area."

On the day following the Governor's proclamation of martial law, the Territorial courts were closed by order of General Short, and

⁴⁵ Text of proclamation reprinted in 30 *California Law Review* 392 (1942).

⁴⁶ 31 Stat. 153.

⁴⁷ Text of proclamation reprinted in 30 *California Law Review* 393 (1942).

⁴⁸ See recital in proclamation by Governor of Hawaii, February 8, 1943.

⁴⁹ 6 Fed. Reg. 6675.

the Chief Justice of the Supreme Court of Hawaii accordingly signed and posted an order announcing that "all courts of the Territory of Hawaii will be closed until further notice."⁵⁰ On December 16, 1941, General Orders No. 29 of the Military Governor authorized the transaction of certain limited types of civil business in the ordinary courts,⁵¹ and on January 27, 1942, General Orders No. 57 reopened the courts generally "as agents of the Military Governor" so that they could exercise their normal functions except in certain important respects.⁵² Among the limitations were the denial of a right to a jury trial, the prohibition of all sessions of the grand jury, and the denial of all writs of habeas corpus.⁵³

In the meantime and promptly on December 7, 1941, the Military Governor erected military commissions and provost courts for the trial of civilians.⁵⁴ Other orders of the Military Governor related to many different matters such as headlights and night driving; possession of firearms; curfews; closing of schools; occupations of enemy aliens; censorship; sale of medical supplies, gasoline, tires, cloth, and liquor; prices of foods; wages and hours of work; etc.⁵⁵ To administer government during the period of martial law the Military Governor designated an Executive Officer under whom was placed a Director of Planning and Priorities. Under this Director came six department heads, namely, the directors of Civilian Defense, Food Control, Labor Control, Materials and Supplies, Cargo and Passenger Control, and Land Transportation Control. These department heads, working within the framework of military authority, constituted a board of administrators for the government of the Territory.⁵⁶

On February 8, 1943, Governor Stainback and the Military Governor (now Lt. Gen. D. C. Emmons who relieved Lt. Gen. Short on December 17, 1941) jointly acted by proclamations (effective thirty days there-

⁵⁰ Garner Anthony, "Martial Law in Hawaii," 30 *California Law Review* 371, 372 (1942). The writer of the article, a practicing attorney in Honolulu and now the Attorney General in the Territory, states (pp. 372-373) that: "No statute authorizes the Chief Justice to close the courts, nor is there any authority in the Organic Act for the complete delegation of power by the Governor and the appointment of a Military Governor." On the second point another writer has observed that: "If the situation were governed solely by Section 67 [of the Organic Act], construed nicely as a matter of agency, it might be questioned whether the Governor had not exceeded his powers. But so technical a view should not be taken of a provision meant to cover a multitude of dangers." Charles Fairman, "The Law of Martial Rule and the National Emergency," 55 *Harvard Law Review* 1253, 1290 (1942).

⁵¹ Text reprinted in 30 *California Law Review* 395 (1942).

⁵² Text reprinted, *ibid.*, p. 396.

⁵³ In *Zimmerman v. Walker*, the U. S. District Court for the Territory of Hawaii denied a petition, filed on February 19, 1942, for a writ of habeas corpus, on the sole ground that General Orders No. 57 had forbidden the issuance of the writ. This judgment was affirmed by the Circuit Court of Appeals, Ninth Circuit, on December 14, 1942, with Haney, C. J., dissenting.

⁵⁴ General Orders No. 4. Text reprinted in 30 *California Law Review* 394 (1942).

⁵⁵ Charles Fairman, "The Law of Martial Rule and the National Emergency," 55 *Harvard Law Review* 1253, 1291-1294 (1942).

⁵⁶ *Ibid.*, pp. 1291-1292.

after) to restore to the civil courts and to civilian authorities generally the administration of the major civilian activities in Hawaii. However, as recited in the Governor's proclamation, "a state of martial law remains in effect and the privilege of the writ of habeas corpus remains suspended." Civilian defense activities were also restored by these proclamations to civilian authorities, "except that the Commanding General shall have jurisdiction to prescribe the duties of the Civilian Defense Corps, and to regulate and inspect their training."

2. Legal and Constitutional Considerations

Since the date of the disaster at Pearl Harbor, there have developed, as we have seen, three broad types of situations where military authority has impinged upon civilian life and civilian defense activities.

Thus, in Hawaii, martial law of an absolute character controlled the residents of the Territory from the time of the outbreak of hostilities, and the civilian defense authorities have assisted directly in carrying out and enforcing the military orders.

Another type of situation prevails on the Pacific coast of the continental United States, where the military commander has ordered a dimout, made provision for curfew hours, and directed the exclusion of Japanese aliens and persons of Japanese ancestry from wide areas. In the Zone of Restricted Lighting in the Western Defense Command the civilian defense authorities were made the primary agency to aid in the enforcement of the dimout regulations; and throughout the Western Defense Command the civilian defense authorities were also constituted the agency for the issuance of permits authorizing exemptions from the travel and curfew provisions of the military proclamation. Indeed, the Ninth Civilian Defense Regional Office and the various local defense councils function in the latter respect as a definite part of the Wartime Civil Control Administration, a military agency.⁵⁷

A third type of control exists on the Atlantic and Gulf coasts where military regulations have thus far been chiefly related to matters of air-raid protection. In the Eastern Military Area the civilian defense organizations were specifically designated by the military as the principal agencies to assist in the enforcement of these restrictions.

The fundamental legal question that pervades the situations on the coasts of the United States is at what point martial law may be said to come into being and, if the present situations are deemed short of martial law, what weight may be given to the existing military regulations when applied against civilians and particularly citizens. This problem concerns all civilian defense authorities and the members of the Citizens Defense Corps because increasingly they are being called upon

⁵⁷ *Supra*, p. 45.

to administer and assist in the enforcement of military regulations relating not only to protection against air raids but also to other matters, such as, for example, the compulsory evacuation of the Japanese.

The first two public proclamations of General DeWitt rested entirely, when issued, on the President's Executive Order No. 9066⁵⁴ which, in turn, depends upon the President's war power as Commander in Chief of the Army and Navy, exercised in this instance ostensibly in aid of the statute prescribing penalties for the wilful destruction of "national-defense material," "national-defense premises," and "national-defense utilities", as defined therein.⁵⁵ It may be observed that this statute penalizes the destruction of, or an attempt to destroy the defined property, and hence the language of the Executive order, authorizing the military commanders to exclude persons from prescribed military areas, could be said to relate to persons who might reasonably be expected to destroy property contrary to the statute.

Between March 2, 1942, when General DeWitt issued his first proclamation,⁵⁶ and March 21, 1942, when the President approved an Act⁵⁷ to penalize any person entering, remaining in, leaving, or committing any act in any military area or zone prescribed by a military commander, the General had difficulty in taking effective steps to evacuate the Japanese. Prior to March 21 the only power that the General had was to remove a person from a prohibited or restricted zone, but, if the person returned, there was no penalty.⁵⁸ In order to remedy this situation the War Department recommended passage of the bill which was enacted on March 21, 1942.⁵⁹ It is interesting to note that in its original form the bill was limited to entering, remaining in, or leaving a military area or zone contrary to the military restrictions. However, the War Department urged an amendment to cover the commission of "any act" contrary to the regulations.⁶⁰

⁵⁴ 7 Fed. Reg. 1407. *Supra*, p. 43.

⁵⁵ 40 Stat. 533, as amended by 54 Stat. 1220 and 55 Stat. 655. *Supra*, p. 44, note 3.

⁵⁶ 7 Fed. Reg. 2320; text in Appendix 28, p. 172.

⁵⁷ 56 Stat. 173.

⁵⁸ In the debate in the House of Representatives on H. R. 6758 (later enacted as 56 Stat. 173), Mr. Sparkman, of Alabama, said that when the Committee on Military Affairs, of which he was a member, was out on the west coast studying the problem, "one of the first things General DeWitt called to our attention was the fact that even though he was given the authority to declare these to be restricted and prohibited areas, he had no way of enforcing the order by penalty if anyone violated it. All he could do was to move them off. If they came back, there was no penalty provided in the law." 88 *Cong. Rec.* 2812 (March 19, 1942).

⁵⁹ 56 Stat. 173. See correspondence from the Secretary of War to the Speaker of the House (March 9, 1942) and to the Chairman of the House Committee on Military Affairs (March 14, 1942), reprinted at the end of the said Committee's Report (No. 1906) on the measure.

⁶⁰ On March 14, 1942, the Secretary of War wrote as follows to the Chairman of the House Committee on Military Affairs: "General DeWitt is strongly of the opinion that the bill, when enacted, should be broad enough to enable the Secretary of War or the appropriate military commander to enforce curfews and other restrictions within military areas and zones. To that end, it is suggested that in line 3, page 1, of H. R. 6758 the word 'or' be stricken and that after the word 'leave' there be inserted the words ', or commit any act in.' " Copy of letter appended to the aforesaid Committee Report (No. 1906).

As a result, the statute is currently applied to a violation by any person of any regulation of the military in effect in a military area. Public proclamations and regulations issued by the military commanders, since the date of the enactment of the above Act, have uniformly referred to it and warned the public of the penal provisions thereof. Thus, at the present time, the military commanders proceed on the basis that any regulation publicly promulgated by them in military areas prescribed by them has the force of law, and that any violation thereof is punishable under the Act of March 21, 1942.^{64a}

If the theory be followed that the closing of the courts is the test of the existence of martial law, it could not be maintained that martial law prevails at present on the east or west coast. The rule that martial law can exist only when the courts are closed finds its chief American support in *Ex parte Milligan*, 4 Wall. 2 (1866). There the Supreme Court of the United States declared (p. 127): "Martial rule can never exist where the courts are open, and in the proper and unobstructed exercise of their jurisdiction. It is also confined to the locality of actual war."

This test has been criticized by some authorities and adhered to by others, ever since its formulation. In 1917, Charles Evans Hughes, later Chief Justice, maintained that, "Certainly the test should not be a mere physical one, nor should substance be sacrificed to form."⁶⁵ Another authority has been more outspoken. Charles Fairman in 1930 likened the rule to a "fiction which served well in the time of the Stuart kings, but may easily be too restrictive in time of modern war. The necessity for martial rule arises rather from the proximity of a danger than from the fact that the courts are closed."⁶⁶ An English writer has been equally vigorous, criticizing the rule as "an artificial rule which does not commend itself, apart from authority, to reason. The necessity for taking action which infringes on rights of property or liberty cannot depend on the fact that the courts continue or do not continue to sit; it depends on the necessity created by the presence of an enemy in the country."⁶⁷ Sir Frederick Pollock inclined to the same view.⁶⁸

On the other hand, the Supreme Court has never overruled the *Milligan* case, but has continued to cite it, the most recent instance being in *Ex parte Quirin*, 317 U. S. —, where, in view of the facts in the case at bar, the Court deemed it unnecessary to reexamine the

^{64a} Col. W. A. Graham, "Martial Law in California," 31 *California Law Review* 6-15 (1942).

⁶⁵ "War Powers under the Constitution," 42 *Reports of American Bar Association* 232, 245 (1917). See also, *In re McDonald*, 49 Mont. 454, 476 (1914).

⁶⁶ Charles Fairman, *The Law of Martial Rule*, p. 147 (1930).

⁶⁷ H. Erle Richards, "Martial Law," 18 *Law Quarterly Review* 133, 141 (1902).

⁶⁸ Frederick Pollock, "What is Martial Law?" 18 *Law Quarterly Review* 152, 155-156 (1902). See also William E. Birkhimer, *Military Government and Martial Law*, 3rd ed., pp. 381-382, 385, and Chap. XXI (1914).

broad doctrine of the *Milligan* case. However, the application of this doctrine under conditions of modern war has been explored in at least three recent opinions of Federal District Courts.

In *United States v. Hirabayashi*, 46 F. Supp. 657 (1942), the indictment charged the defendant, an American citizen of Japanese ancestry, with violating the curfew restrictions and Civilian Exclusion Order No. 57 issued by General DeWitt. The defendant demurred to the indictment and contended that the orders and proclamations violate the Federal Constitution (Fourth, Fifth, and Sixth Amendments, and Art. IV, Sec. 2, cl. 1) and are not authorized by Executive order of the President or by any valid Act of Congress. The Court (Black, J.) overruled the demurrer and held that the President's Executive Order No. 9066,⁶⁹ the Act of March 21, 1942,⁷⁰ the curfew Proclamations, and Civilian Exclusion Order No. 57 are valid. In his opinion the Judge found the *Milligan* case inapplicable both in the light of modern conditions of warfare and because the civil court, and not a military commission as in the *Milligan* case, was the tribunal of prosecution. Among the novel features of present warfare the Court mentioned dimouts, blackouts, infiltration tactics, and sabotage, and declined to question the wisdom of the military measures taken on the west coast. Moreover, said the Court (at p. 662), "our Constitution does permit Congress and our President, as Commander in Chief in time of war, to make and enforce necessary regulations to protect critical military areas desperately essential for national defense." The Court also quoted from the opinion of Duffy, J., in *Ex parte Lincoln Seiichi Kanai*, 46 F. Supp. 286 (1942), to the effect that the "court will not constitute itself as a board of strategy, and declare what is a necessary or proper military area. * * * Rights of the individual, under our federal Constitution and its amendments, are not absolute. When such rights come into conflict with other rights granted for the protection and safety and general welfare of the public, they must at times give way. * * * In re Schroeder Hotel Co., 7 Cir., 86 F. 2d 491; Hitchman Coal & Coke Co. v. Mitchell et al., 245 U. S. 229." An appeal is pending.

Judge Black, who rendered the opinion in the *Hirabayashi* case, had previously commented on the *Milligan* doctrine in *Ex parte Ventura*, 44 F. Supp. 520 (1942), a case involving the curfew restrictions as applied to an American-born citizen of Japanese ancestry. In the *Ventura* case the Court distinguished the *Milligan* case and made the following comments: "In the Civil War when Milligan was tried by military commission no invasion could have been expected into Indiana except after much prior notice and weary weeks of slow and tedious gains by a slowly advancing army. They then never imagined the

⁶⁹ 7 Fed. Reg. 1407. *Supra*, p. 43.

⁷⁰ 56 Stat. 173. For text see *supra*, p. 45, note 7.

possibility of flying lethal engines hurtling through the air several hundred miles within an hour. They never visioned the possibility of far distant forces dispatching an air armada that would rain destroying parachutists from the sky and invade and capture far distant territory over night. They never had to think then of fifth columnists far, far from the forces of the enemy successfully pretending loyalty to the land where they were born, who, in fact, would forthwith guide or join any such invaders. The past few months in the Philippines, of which the petitioning husband is a citizen, establish that apparently peaceful residents may become enemy soldiers over night. The orders and commands of our President and the military forces, as well as the laws of Congress, must, if we secure that victory that this country intends to win, be made and applied with realistic regard for the speed and hazards of lightning war."⁷¹

On the other hand, District Judge Fee in *United States v. Minoru Yasui*, 48 F. Supp. 40 (1942), analyzed the *Milligan* decision and applied its broad doctrine in a curfew case.⁷² Yasui, a native-born citizen of Japanese parentage, walked into the police station in Portland, Oregon, during the hours of curfew on March 28, 1942. Upon indictment, he pleaded not guilty on the ground that the curfew restrictions were as to him unconstitutional.

The Judge began his opinion by pointing out that the present perils confronting the nation "are not more dreadful than those which surrounded the people who fought the Revolution and at whose demand shortly thereafter, the ten amendments containing the very guarantees now in issue were written into the Federal Constitution; nor those perils which threatened the country in the War of 1812, when its soil was in the hands of the invader and the Capitol itself was violated; nor those perils which engulfed the belligerents in the war between the states, when each was faced with disaffection and disloyalty in the territory in its control. Yet each maintained the liberty of the individual."

The Court then found that the power of a military commander to issue regulations governing the future conduct of civilians was justifiable only where martial law prevailed. "But it is too clear for debate that martial law does not come into existence under constitutional government until utter necessity compels the investment of one man with the power of life and death over citizen and soldier alike in

⁷¹ *Ex parte Ventura*, 44 F. Supp. 520, 522-523 (1942); appeal pending.

⁷² The Court, however, held Yasui guilty on the theory that he was required upon attaining his majority to elect whether to be a Japanese or American citizen, and that by his conduct on certain occasions he had evidenced an election in favor of Japanese citizenship. Therefore, as an enemy alien, he was not in a position to challenge the curfew. An appeal by the defendant is pending. In the brief filed by the Government in the Circuit Court of Appeals, Ninth Circuit, it is stated that no contention will be made that the court below correctly held that Yasui elected to abandon his American citizenship and to become a Japanese subject. The Government seeks to sustain the conviction on the ground that the curfew is valid.

a given area. It is the law of self-defense among nations. Like self-defense, it is a use of elemental force sanctioned by common law, initiated solely by stark necessity and vanishing when the necessity no longer exists. If military necessity does not exist, neither the declaration of war nor the proclamation of martial law can justify acts contrary to ordinary law. On the other hand, where there is no declaration of martial law by Congress or the President or by the General in this area, and when there has not even been a suspension of the writ of habeas corpus, there is a strong implication that in the judgment of the political authorities no necessity justifying such action exists. * * *

"All this points to the vital inconsistency here developed between the action taken by the civil authorities in a federal court bound by and acting under the guarantees of the Constitution of the United States and its amendments, and the claim that a military necessity has arisen so vital that its exigencies demand that citizens of the United States be confined to their places of lodging at hours dictated by a military commander. If such an emergency exist, and it may well be that it does, the Congress of the United States or the Executive, in the months since Pearl Harbor, could have declared martial law or at least suspended the writ of habeas corpus in view of the situation. If the emergency exist, the military commander may be justified in seizing the body of Yasui and removing him from the military areas or zones. Of a certainty, if the military commander can allow a civil court to remain open to try violations of his orders, without support by force, military necessity cannot be so imperative that the fundamental safeguards must be abandoned. So long as the courts of the United States are open, these tribunals are bound by Constitution and treaties of the United States and legislation of Congress. The proclamations or regulations of a military commander cannot be enforced by such tribunals."

To the contention that Congress had by the Act of March 21, 1942, contemplated proclamations of the type issued by General DeWitt and had, in effect, adopted them in advance, the Court replied that, "Congress itself could not in loyal territory uninvaded make acts of citizens criminal simply because such acts were in violation of orders to be issued in the future by a military commander."

To the argument that control by curfew or detention or exile of civilians interferes with a lower order of rights than the right to life, the Court answered that "Such doctrine sounds strange in this country, with schoolbook memories of Jefferson's doctrine of revolution and Patrick Henry's preference for death."

Finally, to the contention that the regulations could be justified on the basis of "partial martial law," the Court condemned the doctrine

as "pernicious" and as developed only by ambitious governors "upon the flimsiest pretext" in industrial and social conflict "to satisfy a personal need for uncontrolled power in given situations, wherein the civil rights of individuals were swept away by legislation or fiat dictated by an individual, indicate that in these trying days of war, limits must be set to military authority exercised in the name of necessity, lest we lose the liberties for which we fight. * * * The doctrine that there can be a partial martial law, unproclaimed and unregulated except by the rule of the military commander, expressed in orders or regulations proclaimed by him and enforced in the civil courts in a territory within the continental limits of the United States and at the time not occupied by any foreign foe, belongs in the category of such perversions, and cannot be justified by any sound theory of civil, constitutional or military law. Its only justification lies in the doctrines of 'state of siege' proclaimed by military commanders, generally speaking, in the governments of Europe. For a state of the United States or any portion thereof to be placed, in any essential function, or for citizens of the United States to be placed with regard to their fundamental rights, subject to the will of the commander alone, however well designed for their protection, without any of the preliminaries above suggested, up to the time when utter necessity requires the abolition of all civil rule for the preservation of the government, would seem to be a complete surrender of the guarantees of individual liberties confirmed in the Constitution of the United States."

It is obvious that a wide disparity of views exists among writers and courts as to the scope and incidents of martial law. On the one hand are those who are ready to grant wide authority to the military almost for the asking, and on the other hand are those who in their zeal for the rights of the individual would perhaps be too late with their grant of military authority. A middle ground has been taken by some who view martial law as relative and qualified in the sense that its scope is limited by the extent of the necessity calling it forth.

Captain Frederick B. Wiener submits a definition of martial law as "the carrying on of government in domestic territory by military agencies, *in whole or in part*, with the consequent supersession of *some or all* civil agencies."⁷³ He argues that martial law is "not an alien invader into our legal domain" and that the extent of its exercise is eventually determined by the ordinary courts. "The basic principle of martial law," he says, "is nothing more than an ancient principle of common law, namely, that force to whatever extent is reasonably necessary may be used to repress unlawful force."⁷⁴

⁷³ Frederick Bernays Wiener, *A Practical Manual of Martial Law*, p. 10 (1940). The italics in the quotation are those of Captain Wiener.

⁷⁴ *Ibid.*, p. 15. Sir Frederick Pollock expressed a like view when he referred to martial law as "an unlucky name for the justification by the common law of acts done by necessity for the defence of the Commonwealth when there is war within the realm. Such acts are

Charles Fairman is of like opinion. He criticizes the statement in the *Milligan* case that "martial rule cannot arise from a threatened invasion" as an "inadequate definition of the extent of the war power of the United States."⁷⁵ He maintains that the power "to wage war successfully"⁷⁶ will vary "from Bataan to Hawaii, from San Francisco to Indianapolis."⁷⁷ Mr. Fairman concludes that if, under the given circumstances, the control exercised by the commander was appropriate to the situation, then it is the court's duty to concede that such measures, conceived in good faith, fall within the discretion of the executive government.⁷⁸

In any event, apart from considerations of martial law, it might be urged that the delegation by Congress and the President of power to military officers to issue orders enforceable by the civil courts is analogous to the familiar peacetime pattern whereby administrative agencies are clothed with authority to promulgate regulations implementing Congressional legislation.

not necessarily acts of personal force or constraint. They may be preventive as well as punitive. The justification of any particular act done in a state of war is ultimately examinable in the ordinary courts, and the prior question whether there was a state of war at a given time and place is a question of fact." Frederick Pollock, "What is Martial Law?" 18 *Law Quarterly Review* 152, 156-157 (1902). See also Pollock, *Expansion of the Common Law*, pp. 105-106 (1904). It is interesting in this connection to note the decision in a case arising in the first World War, *United States v. McDonald*, 265 Fed. 754, appeal dismissed per stipulation, 256 U. S. 705 (1920), where Judge Manton considered New York harbor as within the field of active operations, and held that the term "theater of war," as used in the *Milligan* case, should be expanded in the light of modern warfare.

⁷⁵ Charles Fairman, "The Law of Martial Rule and the National Emergency," 55 *Harvard Law Review* 1253, 1287 (1942).

⁷⁶ *Home Bldg. & L. Assn. v. Blaisdell*, 290 U. S. 398, 426 (1934).

⁷⁷ Charles Fairman, "The Law of Martial Rule and the National Emergency," 55 *Harvard Law Review* 1253, 1287 (1942).

⁷⁸ *Idem*.

CHAPTER III

LIABILITY PROBLEMS

1. GENERAL OBSERVATIONS

From the outset of the civilian defense program, government at all levels—Federal, State, and local—has been concerned, on grounds both of policy and of law, with questions of liability arising from the acts or omissions of members of the Citizens Defense Corps. The cognate problem of compensation to civilian defense volunteers, injured or killed in the course of duty either by enemy action or the negligence of third parties, has also been given serious consideration. Other problems arise from the taking or destruction of private property in time of emergency. A fourth set of difficult problems springs from blackout accidents with their questions of government responsibility, and the liability of one individual to another individual.

This Manual does not attempt to supply answers, either tentative or definitive, to these numerous problems, which will have to be worked out by legislatures and courts. It may, nevertheless, be helpful to explore certain of the principal questions of law.

Federal and State Immunity

In the case of Federal and State governments, it is elementary that as sovereigns they are immune from suit except upon consent or except in the limited situation where a State is a party in the Supreme Court by virtue of that Court's original jurisdiction under the Constitution.¹

Such consent has been given by the Federal Government, in the field of contract, by action in the Court of Claims.² In the field of tort, however, the Federal consent to submit to suit in a court has been forthcoming only on limited occasions³ and in special fields.⁴

¹ *Cunningham v. Macon & Brunswick R. R. Co.*, 109 U. S. 446, 451 (1883); *United States v. Sherwood*, 312 U. S. 584, 586 (1941); *Smith v. State of New York*, 227 N. Y. 405 (1920).

² Act of February 24, 1855 (10 Stat. 612), establishing Court of Claims, and Act of March 3, 1863 (12 Stat. 765), giving it authority to render judgments.

³ By Act of March 3, 1863 (12 Stat. 820), owners of property seized by Union troops were authorized to maintain an action in the Court of Claims upon showing that they had "never given any aid or comfort to the present rebellion." By Act of March 3, 1891 (26 Stat. 851), certain claims of citizens for property damage by Indians in amity with the United States were permitted to be presented in the Court of Claims. By the River and Harbor Act of 1935 (§ 13), Congress conferred jurisdiction upon the Court of Claims to determine actions for damages to oyster growers upon private or leased lands or bottoms arising from dredging operations of the Government (49 Stat. 1028). Only one action has

If Congress has thus far been hesitant to confer broad power upon the courts in the field of tort, it has been ready to authorize administrative bodies to handle minor claims of a tortious nature. Thus, a large number of cases are adjusted annually pursuant to the Federal Employees' Compensation Act by the U. S. Employees' Compensation Commission.⁵ This statute operates similarly to a State workmen's compensation act, no showing of negligence being required. Many other small claims sounding in tort are regularly adjusted by the heads of the various Federal departments where loss is occasioned by the negligence of an officer or employee acting within the scope of his employment.⁶

During the past 20 years sentiment has increased in favor of a Federal act which would confer upon the Court of Claims broad jurisdiction in tort comparable to its present jurisdiction in contract. A bill to this effect was introduced in the Seventy-seventh Congress, supported by the President, but was not enacted.⁷

The legislatures of three States have, like Congress, created a court of claims, but these States have gone further and included claims *ex delicto* as well as *ex contractu*.⁸ Twenty other States also permit suit in some form; 22 seem to be silent on the matter; and 4 by

been instituted under this statute. Alexander Holtzoff, "The Handling of Tort Claims against the Federal Government," 9 *Law and Contemporary Problems* 311-326, at p. 316 (1942).

⁵ Claims for patent infringement by Federal officers and employees may be brought in the same Court (Act of June 25, 1910 [36 Stat. 851], as amended on July 1, 1918 [40 Stat. 705]; *Crosier v. Krupp*, 224 U. S. 290 [1912]; *E. W. Bliss Co. v. United States*, 253 U. S. 187 [1920]). Since 1920, a libel in *personam* may be brought in admiralty in a Federal district court against the United States for a maritime tort committed by a merchant vessel or tugboat owned or operated by the Government (41 Stat. 525); and in 1925 the same jurisdiction was conferred in respect of a tort by a public vessel (43 Stat. 1112). Certain Government corporations, such as the Reconstruction Finance Corporation, are also subject to suit for their torts: see *Sloan Shipyards v. U. S. Fleet Corp.*, 258 U. S. 549 (1922); *Keifer & Keifer v. R. F. C.*, 306 U. S. 381 (1939); *R. F. C. v. Menihan Corp.*, 312 U. S. 81 (1941).

⁶ 39 Stat. 742 (1916). Other acts or provisions have extended the principle of compensation to employees of the government of the District of Columbia (41 Stat. 104); employees of the U. S. Shipping Board Emergency Fleet Corporation (41 Stat. 377); employees of the Panama Railroad Company (39 Stat. 750); employees of the Alaska Railroad (43 Stat. 1356); and persons employed on relief projects in the Civilian Conservation Corps and the Federal Civil Works Administration (50 Stat. 321; 48 Stat. 351). See Frederick F. Blachly and Miriam E. Oatman, "Approaches to Governmental Liability in Tort: A Comparative Survey," 9 *Law and Contemporary Problems* 181-213, at p. 189 (1942).

⁷ A description of the several statutes conferring this power may be read in the article by Alexander Holtzoff, *supra*, note 3 on this page.

⁸ On January 14, 1942, the President sent to the Senate a message endorsing the principle of a Federal Tort Claims Act (88 *Cong. Rec.*, January 14, 1942, p. 323). The bill is described in detail by Walter P. Armstrong and Howard Cockrill, "The Federal Tort Claims Bill," 9 *Law and Contemporary Problems* 327-334 (1942). It passed the Senate but did not reach a vote in the House. An analogous bill, differing, however, in important respects, was vetoed by the President in 1929 on the ground that it enabled the Comptroller General to be the judge of the merits of a claim and thereafter to defend the Government thereon in the Court of Claims. Edwin M. Borchard, "The Federal Tort Claims Bill," 23 *American Journal of International Law* 610-616 (1929). See also pending bills (H. R. 817 and 1356).

⁹ Illinois (Laws 1917, p. 325, § 6); Michigan (Laws 1939, No. 135, § 8, as amended by No. 59 of 1941); and New York (L. 1939, c. 860, § 9).

their constitutions prohibit suit.⁹ In the States where suit is permitted and special acts not prohibited, the waiver of immunity does not extend generally to tort claims.¹⁰ Nevertheless, a number of these jurisdictions have adopted Section 24 of the Uniform Operators' and Chauffeurs' License Act, making the State liable for the negligence of any operator or chauffeur employed by it "while driving a motor vehicle upon a highway in the course of his employment."¹¹

Municipal Liability

At the municipal level different legal concepts are encountered. Since a municipality is not considered a sovereign entity, it may be sued without its consent.¹² However, the courts have developed certain tests regarding municipal liability in tort, with the result that in many situations a plaintiff has no remedy. On the other hand, certain of these judicial rules have been superseded from time to time by acts of the legislature imposing liability in certain fields theretofore immune.¹³

The most general, but occasionally criticized,¹⁴ rule regarding municipal liability in tort rests upon the distinction between public and private functions, or, as often described, governmental and proprietary (or corporate) functions. When acting in a public or governmental capacity, the municipality generally enjoys immunity for the acts of its officers and agents; on the other hand, municipal liability attaches for the negligent act of the officer or agent when performing a proprietary or corporate function.¹⁵

A second distinction often made is that between nonfeasance and misfeasance. Where no mandatory duty to act exists, ground for re-

⁹ Edwin Borchard, "Proposed State and Local Statutes Imposing Public Liability in Tort," 9 *Law and Contemporary Problems* 282-310, at pp. 290-291 (1942). See also, Roger V. Shumate, "Tort Claims against State Governments," *ibid.*, 242-261, at pp. 249-255. In the case of Illinois the Constitution provides that the State "shall never be made defendant in any court of law or equity" (Art. IV, § 26). Accordingly, this State is counted above as one with a constitutional provision against suit. Since, however, Illinois has established a Court of Claims on the theory that its awards are to be regarded as recommendations to the Legislature, the State is also counted above as one having a Court of Claims. See Shumate, *op. cit.*, p. 254.

¹⁰ Borchard, *op. cit.*, p. 290.

¹¹ 11 U. L. A. 92.

¹² Eugene McQuillin, *Law of Municipal Corporations* (2nd ed.), §§ 2650, 2771 (1937).

¹³ Blachly and Oatman, *op. cit.*, pp. 189, 190; Borchard, *op. cit.*, p. 297.

¹⁴ *Fowler v. City of Cleveland*, 100 Ohio St. 158 (1919), overruled by *Aldrich v. Youngstown*, 106 Ohio St. 342 (1922); *Irvine v. Town of Greenwood*, 89 S. C. 511 (1911); *Kaufman v. City of Tallahassee*, 84 Fla. 634 (1922). Borchard, *op. cit.*, pp. 283, 296, 297; *Burdick, Torts* (4th ed.), pp. 137-139 (1926); *Harper, Torts*, § 295 (1933); John St. Francis Repko, "American Legal Commentary on the Doctrines of Municipal Tort Liability," 9 *Law and Contemporary Problems* 214-233, at pp. 214 ff. (1942); Murray Seasongood, "Municipal Corporations: Objections to the Governmental or Proprietary Test," 22 *Virginia Law Review* 910-944 (1936).

¹⁵ Charles W. Tooke, "The Extension of Municipal Liability in Tort," 19 *Virginia Law Review* 97-120, at p. 100 (1932); McQuillin, *op. cit.*, §§ 2774, 2792, 2793; *Wilcox v. City of Rochester*, 190 N. Y. 137 (1907).

covery is held not to be present,¹⁶ although it does not always follow that voluntarily assumed duties are proprietary.¹⁷

In determining what activities are proprietary in nature, the courts look to see whether the city reaps a pecuniary return for its services, or whether historically the function has or has not been deemed a concern of government.¹⁸ If, however, the activity is considered *ultra vires*, the plaintiff may not recover from the municipality.¹⁹

In a number of circumstances the foregoing rules do not apply in jurisdictions where the legislatures have acted to impose liability upon municipalities when, for example, school buses are carelessly driven, when property is damaged by mobs, and when fire trucks and police vehicles are negligently operated.²⁰

Although the municipality may escape liability, the plaintiff may, on a given occasion, perhaps recover against the guilty officer who inflicted the injury. But to sustain a civil action against a public officer, it must be demonstrated that he violated a duty to the plaintiff as an individual.²¹ To hold the officer personally liable the injured party must ordinarily show that the officer was guilty of wilful negligence in the performance of a ministerial duty or that he acted arbitrarily, either abusing his discretion or going outside of his lawful functions. In such a case, he is guilty of misfeasance, or his act may be *ultra vires*, and he is liable.²² Under certain conditions, moreover, an officer may be liable if acting under an unconstitutional statute.²³

The fact that a municipality or an officer thereof may in certain instances be held liable for tortious conduct has led some States to enact laws and to include provisions in municipal charters exempting either the municipality or the officer, or both, from liability. The validity of such statutes and charter provisions has sometimes been challenged as violating State constitutions guaranteeing to every person a remedy by due course of law for injury to his person or property. No difficulty has been had when such statutes merely confirm the existing immunity pertaining to governmental func-

¹⁶ Blachly and Oatman, *op. cit.*, p. 190, citing *Zyncicki v. Jos. R. Poard Co. of Baltimore City*, 206 Fed. 975 (1913), and *Levy v. City of New York*, 1 Sandf. 465 (1848). See also, McQuillin, *op. cit.*, § 2778; Thomas M. Cooley, *Torts* (4th ed.), § 450 (1932).

¹⁷ Repko, *op. cit.*, p. 221.

¹⁸ *Ibid.*, pp. 221-222, 224. See also, McQuillin, *op. cit.*, §§ 2792, 2793.

¹⁹ Repko, *op. cit.*, p. 229.

²⁰ Blachly and Oatman, *op. cit.*, p. 190; Borchard, *op. cit.*, pp. 297-298; and McQuillin, *op. cit.*, § 2821.

²¹ *People v. Hoag*, 54 Colo. 542 (1913).

²² McQuillin, *op. cit.*, §§ 556, 2791, and cases cited.

²³ For example, if the officer exacts a tax, paid under protest, pursuant to an invalid statute (Oliver P. Field, *The Effect of an Unconstitutional Statute*, pp. 129-130, 241-273 [1935]); or interferes with personal liberty on the sole justification of an invalid statute (*ibid.*, pp. 133-135, 141-144).

tions;²⁴ and usually such statutes have been upheld when applying to the care of streets or to various corporate functions.²⁵ In two jurisdictions, however, such legislation has been held unconstitutional when it sought to immunize the municipality from liability for all torts,²⁶ or to immunize both officers and municipality in respect of certain torts.²⁷

2. LIABILITY ARISING FROM ACT OR OMISSION OF MEMBER OF CITIZENS DEFENSE CORPS

If an air raid warden damages, wantonly or carelessly, the realty or personalty of a householder; if an auxiliary policeman arrests an innocent automobilist; if an auxiliary fireman blunders in his attempts to extinguish a fire; if a member of the Road Repair Unit carelessly fails to fill a bomb crater into which a pedestrian falls; if a baby dies from gas escaping from a sewer supposed to have been properly repaired by a member of the Utility Repair Unit; if the wounds of a woman are aggravated by the inept first-aid ministrations of a member of a Rescue Unit or stretcher team—is any legal remedy available to the injured party?

Status of Member of Defense Corps

One of the fundamental questions to determine in this connection is the status of the member of the Citizens Defense Corps. The OCD has expressly held that members of the Defense Corps are not appointees or employees of the OCD or of the United States.²⁸ While

²⁴ See annotation entitled "Rule of municipal immunity from liability for torts pertaining to governmental functions as affected by constitutional guaranty of remedy for all injuries and wrongs," 57 A. L. R. 419.

²⁵ *McCoy v. Kenosha County*, 195 Wis. 273 (1928); *Goddard v. City of Lincoln*, 69 Neb. 594 (1903). See also annotation entitled "Constitutionality of statute which relieves municipality from liability for torts," 124 A. L. R. 350.

²⁶ *City of Amarillo v. Tutor*, 267 S. W. 697 (Texas Commission of Appeals, 1924); *Hanks v. City of Port Arthur*, 121 Tex. 202 (1932).

²⁷ In Oregon, where the Constitution (Art. I, § 10) guarantees that "every man shall have remedy by due course of law for injury done him in person, property or reputation", the court in *Mattson v. Astoria*, 39 Or. 577 (1901), held that the Legislature may exempt the municipality, but not its officers, from liability arising from the defective condition of the streets. In *Batdorff v. Oregon City*, 53 Or. 402 (1909), the same court invalidated a charter provision which sought to exempt the city although allowing an action against an officer for wilful neglect in the care of the streets, but in effect denied a remedy for ordinary negligence of the officer. In *Noonan v. City of Portland*, 161 Or. 213 (1939), a charter provision was upheld which exempted the municipality in cases of injury arising from defects in the streets or sidewalks but left the remedy against the negligent officer. See further, Oregon, Laws 1943, ch. —, approved February 27, 1943.

²⁸ "Members shall not be deemed appointees or employees of the Office of Civilian Defense, or of the United States or any agency thereof, nor entitled to any payment from the Office of Civilian Defense, or the United States or any agency thereof, for services rendered as members. Payment for such services by the States or communities shall be dependent upon the laws thereof." (OCD Regulations No. 3, § 14; see Appendix 14, p. 133.)

this is not necessarily determinative of the question, it may be noted that members of the Defense Corps are volunteers and are not compensated by the Federal Government; that they are recruited by the local defense councils, which are created by or exist under State or municipal law; and that the local councils are advised by the OCD in most cases through the State defense councils.²⁹ Indeed, the Director of the OCD has stated that his office prefers in general to deal with local units through the State councils.³⁰

Whether a member of the Defense Corps may be deemed an agent of the State would depend upon the law of the particular jurisdiction. It is elementary that the relation of master and servant is created by contract, express or implied, and usually the critical element in such a relationship is not the payment of wages but the right to control and direct the activities of the servant.³¹ In New York, for example, it could be argued that the State in many respects has the power under its War Emergency Act³² to define the duties and direct the activities of members of the Defense Corps.³³ The State War Council may require a local war council to "perform such duties and services as it may direct,"³⁴ and may adopt and enforce rules and orders with respect to the recruiting, training, conduct, duties, and power of volunteer agencies.³⁵ The State Director of Civilian Protection has correspondingly broad powers.³⁶

On the other hand, a case might be made out in New York that the members of the Defense Corps are agents of the municipality, particularly when such groups as auxiliary police and auxiliary firemen are integrated in the regular police and fire departments. A Local Director of Civilian Protection has the statutory power to direct all municipal and volunteer agencies under his jurisdiction, and to remove any member of any volunteer agency for neglect of duty.³⁷ It might also be argued that the members of the Defense

²⁹ "In their relations with civilian defense agencies of the Federal Government, 78 per cent of the city defense councils report that they deal through a State defense council. This procedure conforms to the recommendations of the OCD and State councils generally. Only 5 per cent indicate a direct line of communication with Federal defense agencies. A county or regional organization serves as intermediary in 3 per cent of the cases." (Russell Barthell and Robert Ward, "Wartime Organization of Cities," *The Municipal Year Book* 1942, pp. 317-334, at p. 319 [1942].)

³⁰ Reply to question of Governor Holland at round table session of Governors' Conference, June 23, 1942. 15 *State Government* 158 (August 1942).

³¹ *Braxton v. Mendelson*, 233 N. Y. 122, 124 (1922); *McNamara v. Leipzig*, 227 N. Y. 291, 294 (1919); *Matter of Brown v. St. Vincent's Hospital*, 222 App. Div. 402, 403 (1928); *Baldwin v. Abraham*, 57 App. Div. 67, 74 (1901).

³² L. 1942, c. 544.

³³ It has been held that "the absolute test is not the exercise of power of control, but the right to exercise power of control." *Linnahan v. Rollins*, 137 Mass. 123, 125 (1884), cited in *Baldwin v. Abraham*, *supra*.

³⁴ L. 1942, c. 544, § 8, subd. 4.

³⁵ *Ibid.*, § 7, subd. 9.

³⁶ *Ibid.*, § 13.

³⁷ *Ibid.*, § 19, subds. 9 and 10.

Corps serve in a dual capacity, as agents both of State and municipality, either at all times or from time to time depending upon whether they are acting under a regulation of the State War Council or under a regulation of the Local War Council.³⁸

For many purposes, however, it would be academic to inquire as to the status of a member of the Defense Corps because a number of States, including New York, have passed legislation providing that neither the State, nor any municipality thereof, nor any member of a municipal or volunteer agency, nor any individual or person in good faith carrying out any law, regulation, or order relating to civilian protection, shall be liable in tort.³⁹

³⁸ Both the State Director and the Local Directors of Civilian Protection are charged with the duty of enforcing all rules and executing all orders of the State War Council. L. 1942, c. 544, § 13, subd. 2; § 19, subd. 2. A Local Director is also to enforce the rules and execute the orders of his Local War Council, and may promulgate and enforce regulations and issue orders of his own not inconsistent with the rules or orders of the State War Council or of the State Director or of the Army or Navy. *Ibid.*, § 19, subds. 2 and 8. It is not unknown in New York for an employee of a park commission to be a county employee or a State employee depending upon the nature of his work at a given moment. See *Malby v. County of Westchester*, 267 N. Y. 375 (1935).

³⁹ The New York War Emergency Act (§ 40, subd. 1) reads in part as follows: "Neither the state nor any municipality thereof, nor their agencies, agents or representatives, nor any member of a municipal or volunteer agency, nor any individual, partnership, corporation, association, trustee, receiver or any of the agents thereof, in good faith carrying out, complying with or attempting to comply with any law or duly promulgated rule, regulation or order as defined in subdivision 11 of section 2 of this act or any federal law or any order issued by federal or state military authorities relating to civilian protection, shall be liable for any injury or death to persons or damage to property as the result of such activity." [The aforesaid "subdivision 11 of section 2 of this act" reads as follows: "Duly promulgated rule, regulation or order" shall mean any rule or order adopted or issued by the state council or by a local council, or any regulation or order adopted or issued by the state director or a local director pursuant to law."] Substantially identical statutes have been passed in the States of Louisiana (Acts 1942, Act No. 7, § 3); New Jersey (Laws 1942, ch. 251, § 20); Pennsylvania (Acts 1942, Special Session, Act No. 14, § 7); Rhode Island (Laws 1942, Senate Bill No. 25, § 7); South Carolina (Laws 1942, No. 580, § 2); and by Congress, relating to the District of Columbia (56 Stat. 740; text in Appendix 24, p. 157). In Arizona the statute (Laws 1942, ch. 21, § 10) reads as follows: "No member of the civilian defense council [the State council] shall be liable in tort arising out of any act performed by him in the course of his duties assigned to him by constituted authority." In Maine the members of the Defense Corps, while engaged in carrying out and enforcing the rules prescribed by the Governor, "shall have the powers and immunities of constables throughout the state regardless of town or county boundaries" (Laws 1942, ch. 305, § 2); and "The state shall provide defense and indemnity for any claims and suits for alleged negligence or lack of permission instituted against any person by reason of his action in pursuance of authority granted hereunder, provided such person, within 14 days after written notice to him of such claim, gives written notice thereof to the attorney-general" (*ibid.*, § 10). In Massachusetts the Act (Laws 1942, ch. 13, § 7) reads thus: "No person shall be civilly liable for any act done in pursuance of any provision of this act or of any act, order or regulation issued or promulgated thereunder, notwithstanding that such provision, order or regulation shall subsequently be determined to be invalid or unconstitutional. No city or town shall be liable for any damage sustained to person or property as the result of an authorized blackout." In Virginia the statute (Acts 1942, ch. 249, § 2) provides that: "Neither the State nor any political subdivision of the State shall be liable for any damage to persons or property caused directly or indirectly by an authorized blackout, or any other air raid precaution or anything incidental thereto"; see also Virginia, Acts 1942, ch. 250, § 4, relating to immunity of paid and volunteer firemen, and ch. 254, adding new § 3032-c to the Code of Virginia, relating to immunity of policemen, firemen, and other officers and employees of counties, cities, and towns when engaged in duties beyond regular territorial limits. See also Tennessee, Acts 1943, ch. 85, § 3 (a) (b).

Nature of Duties

In States without statutes conferring immunity and where the volunteer could be deemed an agent of the municipality, the question would arise as to the nature of his functions, *i. e.*, whether the municipality was acting in a governmental or proprietary capacity. It is the general rule, except where waived by legislation, that the negligent act of a municipal officer, employee, or agent, if done in the course of a governmental duty, may not be made the basis of a recovery at law.⁴² It has been asserted broadly that all civilian protection activities are governmental in character, "because no one could seriously urge that defense of a civilian population in time of war is anything but a governmental function."⁴³ In support of this proposition are cited cases upholding the power of a city to purchase and donate to the Federal Government a site for an air corps technical school and bombing field;⁴⁴ the power to condemn land for the purpose of leasing it to the Federal Government for an airport in connection with the national defense program;⁴⁵ the power to establish a county air base authority with the object of aiding the United States by acquiring property for a naval air base;⁴⁶ the power to contribute funds to the United States for the acquisition of a national park within the city;⁴⁷ etc. Also relied upon is the implied or incidental power of a city to perform acts essential for its continued existence, such as the inherent power to provide fire protection⁴⁸ and to protect the public safety and health.⁴⁹

Irrespective of the broad proposition that all civilian protection activity is governmental in nature, it would seem clear that, in absence of contrary legislation, the municipality would be immune where members of the Citizens Defense Corps are integrated in the regular city departments whose functions are generally recognized as governmental in scope. Thus the acts and omissions of the auxiliary police, even perhaps to the point of gross negligence or wilful

⁴² *Supra*, pp. 65-67.

⁴³ George S. Harris, "Municipal Liability Under The Defense Program," 65 *New Jersey Law Journal* 73, 77 (February 12, 1942). To same effect, see Report of Committee on National Defense of the National Institute of Municipal Law Officers, *Municipalities and the Law in Action in 1941*, Charles S. Rhyne, Ed., pp. 53-111, at pp. 93, 94-95 (1942); Ambrose Fuller, "Legal Problems Involving Civilian Protection Workers," 7 *American Municipal Law Review* 110-120, at p. 113 (July 1942); Robert J. Cunningham, "Necessity for State Legislation Limiting Municipal Liability for Dangerous and Defective Conditions Due to the War Effort," *ibid.*, (October 1942), pp. 233-238, at p. 235; and Note in 55 *Harvard Law Review* 844, 858 (footnote 86).

⁴⁴ *McNichols v. City and County of Denver*, 101 Colo. 316 (1937).

⁴⁵ *Miles v. Lee*, 284 Ky. 39 (1940).

⁴⁶ *State v. Gordon*, 138 Fla. 312 (1939).

⁴⁷ *Vrooman v. City of St. Louis*, 337 Mo. 933 (1935).

⁴⁸ *West Bend v. West Bend H. & L. Co.*, 186 Wis. 184 (1925).

⁴⁹ *Taylor v. Roberts*, 84 Fla. 654 (1922); *Plumas v. Town of Cosmopolis*, 128 Wash. 697 (1924). See also *McQuillin*, *op. cit.*, § 373.

misconduct, would not serve to render the city liable.⁵⁰ The same would be true of the auxiliary firemen, and of the Fire Watchers when integrated in the regular fire department.⁵¹

Even where units of the Defense Corps are not actually integrated with preexisting municipal departments, if by ordinance such units are adopted as municipal agents or if from the statutory pattern they may be reasonably deemed municipal agents, it would seem to follow that the city would not be liable for the torts of the members of the Medical, Decontamination, and Rescue Units, because their duties relate to public health—uniformly considered a governmental concern.⁵² This would also be true in the case of the Utility Repair Unit when repairing a sewer in those jurisdictions which hold that the city in the maintenance of its sewers acts in a governmental capacity in protecting the public health.⁵³

In the case of the Utility Repair Unit when engaged in the restoration or repair of water, gas, electric, and like facilities, the general rule would apply that such duties are proprietary,⁵⁴ unless, of course, they are to be deemed governmental on the theory, above stated, that all civilian protection measures undertaken by a city are governmental.

As to the units of the Defense Corps which are charged with the opening and repairing of streets and roads, the general rule would be applicable, namely, that the city is subject to a duty of reasonable care, even in the absence of a statute imposing liability.⁵⁵ It should be observed, however, that if these duties in wartime are to be deemed of a governmental character, the municipality would be immune from suit in the absence of legislation imposing liability.

The duties of an Air Raid Warden⁵⁶ are unlike those of any peacetime municipal employee, and, although at times including first-aid and fire-protection activity, would appear to be *sui generis*. Of course, if all functions of the Defense Corps are to come within the category of governmental, then all duties of the Wardens would be so denominated. This classification would also be strengthened by the fact that the city derives no monetary return for the services of the Wardens—the traditional test of a corporate function.⁵⁷

⁵⁰ McQuillin, *op. cit.*, § 2837. See also John St. Francis Repko, "American Legal Commentary on the Doctrines of Municipal Tort Liability," 9 *Law and Contemporary Problems* 214-233, at pp. 224-225 (1942).

⁵¹ McQuillin, *op. cit.*, § 2593; Repko, *op. cit.*, p. 225; Orville C. Peterson, "Liability of Minnesota Municipalities Arising out of Civilian Defense," *War Emergency and Civilian Defense Suggestions for Minnesota Municipalities*, p. 25 (1942).

⁵² McQuillin, *op. cit.*, § 2840.

⁵³ *Ibid.*, § 2869. *Johnson's Admr. v. Com. Sewerage Louisville*, 160 Ky. 356 (1914).

⁵⁴ Repko, *op. cit.*, pp. 225-226; McQuillin, *op. cit.*, § 2852.

⁵⁵ Repko, *op. cit.*, pp. 226-227; McQuillin, *op. cit.*, §§ 2900-2921.

⁵⁶ *Supra*, pp. 35-36.

⁵⁷ *Supra*, p. 66; Peterson, *op. cit.*, p. 25.

The injured householder may, however, consider the possibility of a remedy directly against the careless volunteer member of the Defense Corps. As pointed out above, some States have specifically protected these volunteers when they act in good faith.⁵⁸ But when they do not act in good faith, or where there is no such statute, the ordinary rules governing the liability of an individual would obviously apply. On occasion, however, the defendant, who would otherwise be liable, may escape if the court holds him to be a municipal agent and he thereupon finds asylum within some applicable principle safeguarding such agents.⁵⁹

3. LIABILITY FOR INJURY TO MEMBER OF CITIZENS DEFENSE CORPS

A member of one of the units of the Citizens Defense Corps may be injured either by enemy action or in the course of his training or the discharge of his duties. His injuries may also arise either from accident or the negligence of another.

In England the volunteer's protection was accomplished by the Personal Injuries (Emergency Provisions) Act, 1939,⁶⁰ which provides for compensation for "war service injuries,"⁶¹ payable by the central government, and at the same time relieves municipalities and employers from workmen's compensation or employer's liability or damages at common law.⁶²

A similar proposal for civilian defense volunteers in the United States was made in Congress at the time the bill which became the

⁵⁸ *Supra*, p. 69.

⁵⁹ *Supra*, p. 66. The Committee on Blackouts of the Bar Association of the District of Columbia has stated that many citizens believe that an Air Raid Warden should be assimilated, so far as personal immunity is concerned, to a regularly constituted peace officer. "The argument is that if a community asks for the services of an air raid warden, it should back him up with its law. When as an unpaid individual actuated by patriotic duty to his community he undertakes to enter and force entry upon private property, as by the Commissioners' Regulations he is required or directed to do, he is entitled to some measure of protection beyond that which would accompany an officious intermeddling volunteer doing the same class of acts. Within the proper scope of his duties, his acts should be the acts of the law, he the mere instrument of the law." (9 *Journal of the Bar Association of the District of Columbia* 261, 263 [June 1942].) In California the civilian defense volunteers enjoy the same immunities as officers and employees of counties or cities performing similar work. Stats. 1943, ch. —, approved January 30, 1943.

⁶⁰ 2 & 3 Geo. 6, c. 82.

⁶¹ A "war service injury" is defined by the statute (§ 8) to be "any physical injury which the Minister certifies to have been shown to his satisfaction to have arisen out of and in the course of the performance by the volunteer of his duties as a member of the civil defense organisation to which he belonged at the time when the injury was sustained, and (except in the case of a war injury) not to have arisen out of and in the course of his employment in any other capacity."

⁶² Mary-Agnes Brown, "Relief for Civilian Victims of Air Attack," 9 *George Washington Law Review* 172-174 (1940); "Civil Defence Volunteers and War Service Injuries," 90 *Law Journal* 105 (1940); Gerald Abrahams, "Civil Defence Volunteers and Workmen's Compensation," 90 *Law Journal* 214, 226 (1940). For Australia, see 15 *Australian Law Journal* 258 (1942).

Second War Powers Act, 1942,⁶³ was under consideration;⁶⁴ but this portion of the bill was dropped because the House felt that the subject could best be covered by separate legislation.⁶⁵ Thereafter, on June 22, 1942, Senator Pepper introduced another measure (S. 2620) providing for medical care and disability benefits to any "civilian defense worker" injured while in the performance of his duty.⁶⁶ Other kindred bills were introduced at various times, but no bill on the subject was passed by the Seventy-seventh Congress. In the Seventy-eighth Congress Senator Pepper reintroduced his bill (S. 450).^{66a} In the meantime the President has allocated to the Federal Security Administrator \$5,000,000 from the "Emergency Fund for the President" contained in the Independent Offices Appropriation Act, 1942,⁶⁷ for providing temporary aid to civilians (and their dependents) who are injured as the result of enemy attack or of action to meet such attack or the danger thereof.⁶⁸ This allocation of funds is also stated to cover civilian defense workers injured while in the performance of their duties as such workers. The Personnel Officer, who is a member of the Staff Unit of the Citizens Defense Corps, is expected to keep current the list of duly enrolled members of the Defense Corps so that claims may be promptly handled.⁶⁹

So far as known, no State has amended its workmen's compensation act to include specifically civilian defense volunteers. But despite the absence of explicit State legislation extending compensation benefits to civilian defense workers, it is pertinent to inquire whether they may be deemed State or municipal "employees" and hence covered under compensation acts relating to such employees.⁷⁰ This question would necessarily have to be determined under each State's laws. In general, a mere volunteer, who does not receive remuneration and has no expectation thereof, is not protected under the workmen's compensation acts.⁷¹ And a mere response to an appeal for help in an emergency, without an agreement as to wages, has been held insufficient to make

⁶³ 56 Stat. 176.

⁶⁴ See note in 7 *Municipal Law Journal* 18 (February 1942).

⁶⁵ *Ibid.*, p. 37 (March 1942), and p. 50 (April 1942); Peterson, *op. cit.*, p. 25.

⁶⁶ OCD Memorandum to Regional Directors, June 29, 1942.

^{66a} S. 180, reported favorably by the Senate Committee on Education and Labor, includes provision for vocational training and rehabilitation of "civilian defense workers."

⁶⁷ 55 Stat. 92.

⁶⁸ Letter from President to Paul V. McNutt, Federal Security Administrator, February 6, 1942; letter from President to Secretary of the Treasury, February 6, 1942; letter from President to Secretary of the Treasury, October 5, 1942; OCD Operations Letter No. 95, December 1, 1942.

⁶⁹ OCD Operations Letter No. 95, December 1, 1942.

⁷⁰ For list of States having workmen's compensation acts relative to State employees, see William H. Schneider, *Workmen's Compensation Text* (3d ed.), § 378 (1942). For list of States with statutes applicable to municipal employees, see *ibid.*, § 381.

⁷¹ *Ibid.*, §§ 227, 231. *Matter of Farrington*, 228 N. Y. 564 (1920), reversing upon the dissenting opinion below in 190 App. Div. 920. See also Opinion of Attorney General of California to the Executive Director of the State Council of Defense, January 7, 1942. No. NS 3973.

one an employee,⁷² although some courts have permitted recovery.⁷³ Where a person is commandeered by an officer having authority so to do and is pressed into service in an emergency, recovery has been had.⁷⁴ Recovery has also been allowed where the volunteer's acts are subsequently ratified by the employer or the result of his labors is accepted by the latter.⁷⁵

Where a unit of the Defense Corps, such as the auxiliary police or auxiliary firemen, is integrated in the regular service, a stronger case could be made out for recovery of compensation benefits, although the claimant would still have to reckon with the fact that he receives no wages. Perhaps the auxiliary firemen, however, would have a favored status, because of their similarity to volunteer firemen, in those jurisdictions whose compensation acts either expressly or by implication include volunteer firemen.⁷⁶

Where members of the Citizens Defense Corps have not been integrated in a regular municipal department, it might nevertheless be contended that they should not be considered as ordinary volunteers, because the community actively solicits their services and receives the benefit thereof over a long period of time.⁷⁷

If the civilian defense worker is held not to be an employee within the meaning of a workmen's compensation act, he might, nevertheless,

⁷² *Harris v. Okla. Natural Gas Co.*, 91 Okl. 39 (1923).

⁷³ *Schneider, op. cit.*, § 234, and cases cited; see also, *State ex rel. Nienaber v. District Court*, 138 Minn. 416 (1917).

⁷⁴ *County of Monterey v. Industrial Acc. Com.*, 199 Cal. 221 (1926); *Matter of Babington v. Yellow Taxi Corp.*, 250 N. Y. 14 (1928).

⁷⁵ *Winwood v. Baltimore Life Ins. Co.*, 114 Pa. Super. 575 (1934); *Miner v. Franklin County Telephone Co.*, 83 Vt. 311 (1910).

⁷⁶ List of statutes in *Schneider, op. cit.*, § 392 (a). The author of a note in the *Harvard Law Review* believes that auxiliary civilian defense firemen "would probably" be covered by the said statutory provisions. 55 *Harvard Law Review* 844, 859 (1942). The Attorney General of Minnesota has held that such firemen are entitled to the benefits of the Workmen's Compensation Law of that State for injuries sustained in the course of their service. Opinion to Marshall B. Thornton, Village Attorney, Nashwauk, Minn., January 16, 1942. The Attorney General of Ohio has held likewise, where by ordinance or other official action of the council or board of trustees of a city, village, or township, the auxiliary firemen are made volunteer employees of their respective fire departments; the Attorney General further held that it would be immaterial under Ohio law whether the fireman was injured while engaged outside of his regular territorial limits. See his Opinion No. 5428 to Executive Director of the State Council of Defense, September 5, 1942. See also, Opinion No. 5302 of same Attorney General to the State Property Officer, July 11, 1942.

⁷⁷ Ambrose Fuller, "Legal Problems Involving Civilian Protection Workers," 7 *Municipal Law Review* 110-120, at p. 117 (July 1942). See also, Michael L. Rosinla, "Municipal Defense Legislation," 7 *American Municipal Law Review* 229-232, at p. 231 (October 1942), and see letter from Charles S. Rhyne, Executive Director of the National Institute of Municipal Law Officers, dated September 1, 1941, addressed to Christian M. Ozias, City Attorney of Fresno, California, attached to OCD Operations Letter No. 9, December 3, 1941. Nevertheless, the Attorney General of Illinois has given his opinion that "those persons who participate in the activities of such local defense councils, upon a voluntary and non-compensated basis, would not be entitled to compensation benefits under the Workmen's Compensation Act. No relationship of employment between such individuals and the municipality would exist. They would merely be associating themselves, through mutual agreement, for the purpose of attaining a common end in which they are interested." (Opinion, dated April 1, 1942, rendered to Illinois State Council of Defense.)

in some circumstances be deemed a municipal servant at common law. If he is such a servant, the municipality comes under a duty to provide him with a safe place for his training, and if he is injured by the city's failure in this respect he may recover.⁷⁸ On the other hand, if through him the city is considered as engaging in a governmental function, he would undoubtedly fail in his action.⁷⁹ Under still other circumstances, he might recover as an individual apart from any relationship of master and servant—for example, if injured because of a street defect such as would render the municipality liable to any person.⁸⁰

4. THE TAKING OR DESTRUCTION OF PRIVATE PROPERTY

If a group of persons is ordered by an air raid warden or auxiliary policeman to quit the street during an air raid drill and to go into a private building, may the owner rightfully forbid entry? If an air raid warden orders the driver of a motor vehicle, when the siren sounds for a test air raid, to enter a commercial garage, may the proprietor collect from the city a charge for parking? If a Demolition squad dynamites a private structure in an attempt to check a spreading fire, what remedy has the owner? If a mob looting during a blackout steals a householder's chattels, has he a cause of action against the municipality? These are a few of the troublesome questions which may confront the authorities when rights in private property are affected by the activities of civilian defense. Again we can do no more here than to explore these problems and indicate some of the legal principles that a future court would necessarily take into consideration.

Distinction Between Taking and Destruction

It has long been the established rule that the destruction by government of private property in the face of common peril arising from the approach of the enemy or from a spreading fire is *damnum absque injuria*. The safety of the public in the face of imminent disaster is held to override all considerations of private loss. Accordingly, the destruction of a railroad bridge by the military in order to impede the advance of hostile forces is not such a loss as to require compensation by the Federal Government.⁸¹ Similarly, the destruction of a building by the municipal fire department in an effort to arrest the progress of

⁷⁸ McQuillin, *op. cit.*, § 2790.

⁷⁹ *Idem.*

⁸⁰ *Ibid.*, § 2945.

⁸¹ *United States v. Pacific Railroad*, 120 U. S. 227 (1887).

a conflagration does not render the city liable.⁸² In these situations the courts hold that the property is not taken for a public use within the constitutional intendment but is destroyed to avert an imminent public peril.⁸³

On the other hand, when private property is taken or requisitioned for a public purpose, the Government must pay just compensation; and this holds true in wartime as in peace and despite any emergency which might excuse the disregarding of the ordinary procedures of condemnation.⁸⁴ Thus, when a steamboat is temporarily impressed into service for the transportation of troops in a war emergency, the Government of the United States is bound to make full compensation to the owner for the services rendered.⁸⁵ In one case in 1887 the Supreme Court seemed to cast some doubt on this principle insofar as emergency seizures are concerned. The Court stated that in such instances it had been the practice of the Federal Government to make compensation for the property taken, and that its obligation to do so is "supposed" to rest upon the justice of making such compensation, "although the seizure and appropriation of private property under such circumstances by the military authorities may not be within the terms of the constitutional clause."⁸⁶ Since that time, however, the Supreme Court has held more than once that war does not suspend the Fifth Amendment and that the full money equivalent of the property taken must be paid to the owner.⁸⁷

Temporary Use of Another's Property

May the owner or tenant of a building be required to harbor members of the public during a blackout or air raid drill? It would seem

⁸² *Bowditch v. Boston*, 101 U. S. 16 (1879). In that case Mr. Justice Swaine pointed out (p. 18) that at common law everyone had the right to destroy real and personal property, in cases of actual necessity, to prevent the spreading of a fire, "and there was no responsibility on the part of such destroyer, and no remedy for the owner."

⁸³ *Russell v. The Mayor, etc. of New York*, 2 Denio 461 (1845); *Aitken v. Village of Wells River*, 70 Vt. 308 (1898).

⁸⁴ *Mitchell v. Harmony*, 13 How. 115 (1851). In Massachusetts the Legislature at the Special Session in 1942 provided in its Emergency Act (Laws 1942, Ch. 13, § 9) that if any action under the statute or under any order or regulation "in itself constitutes an appropriation of property to the public use, compensation may be recovered therefor under chapter seventy-nine of the General Laws from the body politic or corporate appropriating such property." Maine (Laws 1942, ch. 305, §§ 7-8) and New Jersey (Laws 1942, ch. 251, § 19) have authorized emergency boards to award compensation to persons whose property may be taken or used by the State in securing its defense. See also Philip Marcus, "The Taking and Destruction of Property under a Defense and War Program," 27 *Cornell Law Quarterly* 317-346, 476-533 (1942).

⁸⁵ *United States v. Russell*, 13 Wall. 623 (1871).

⁸⁶ *Per Mr. Justice Field in United States v. Pacific Railroad*, 120 U. S. 227, 239 (1887).

⁸⁷ *U. S. v. New River Collieries*, 262 U. S. 341, 343 (1923); *United States v. Cohen Grocery Co.*, 255 U. S. 81, 88 (1921). See also *United States v. McFarland*, 15 F. (2d) 823, 826 (1926), cert. granted, 273 U. S. 688, and revoked, 275 U. S. 485 (1927); *C. G. Blake Co. v. United States*, 275 Fed. 861, 867 (1921), aff., 279 Fed. 71 (1922); *National City Bank v. United States*, 275 Fed. 855, 859 (1921), aff., 281 Fed. 754 (1922), error dismissed, 263 U. S. 726 (1923).

that the owner's or tenant's rights would be the same whether or not an actual attack is in progress. Of course, the moral claim of the public would be higher during an attack than during a mere drill or test blackout, but from a legal point of view the owner's or tenant's constitutional rights would remain despite the emergency.⁸⁸ In this connection the Corporation Counsel of Boston, Massachusetts, has rendered an opinion that the owner or occupant of the premises may lawfully refuse admittance to a person who is ordered by the duly constituted authorities to quit the streets, and that this right exists during either a practice or a real air raid.⁸⁹

If, however, the public is admitted with the owner's consent, the question arises whether the Government must compensate him for the temporary use of his premises. In the absence of condemnation proceedings or an emergency requisition, it could be maintained that there had been no taking in the constitutional sense, and that any claim of the owner would have to be on the theory of an implied contract with the Government.⁹⁰ These questions would also arise if blackout regulations were to require the owner of a public garage or parking lot to accommodate without charge any automobiles driven on the premises after the sounding of an air raid alarm, and the garage owner thereafter sought recompense from the Government for such temporary storage.

Additional questions arise in respect of the duty of the owner or tenant to a member of the public who, with the former's express or implied consent, is admitted for shelter. It appears well settled that a person so admitted would be a licensee, since in the ordinary case the owner or occupant would derive no benefit from his presence. If, in a less common case, the person entered the premises as a customer of the owner, he would be an invitee, or, if he entered as a licensee (*e. g.*, entering a cafe for shelter) and thereafter became a customer,

⁸⁸ *Ex parte Milligan*, 4 Wall. 2 (1866).

⁸⁹ Opinion of Robert Cutler, rendered to the Executive Director of the City of Boston Committee on Public Safety under date of June 20, 1942. Opinion summarized in 7 *Municipal Law Journal* 104 (August 1942). On the other hand, in New York State the State Director of Civilian Protection has ordered all Local Directors of Civilian Protection to designate certain suitable buildings in congested areas as air raid shelters for pedestrians. (Memorandum No. 32, New York State War Council, *Official Bulletin*, Vol. 1, No. 17 (November 7, 1942), pp. 275-276.) The State Director has also promulgated Regulations No. 9 (November 2, 1942) relating to the conduct of civilians prior, during and subsequent to drills or attack. By these Regulations the custodians of buildings which have been designated as air raid shelters are directed to open the entrances to receive pedestrians at the first audible signal of an air raid, air raid drill, or a practice blackout. Pedestrians are directed to proceed to shelter immediately. "Civilian Protection personnel will man the air raid shelters and control the occupants." (§ 1.) Section 8 of the Regulations provides that within one-half hour after the "all clear" signal, "Civilian Protection personnel will clear the air raid shelters of emergency occupants and restore buildings to normal control of their custodians." (Text of Regulations in New York State War Council, *Official Bulletin*, Vol. 1, No. 17 (November 7, 1942), p. 271.)

⁹⁰ *United States v. Nitro Development Co.*, 11 F. (2d) 75, cert. den., 271 U. S. 678 (1926).

he would thereby become an invitee. In still another situation, he might enter as a licensee or invitee and thereafter become a trespasser if remaining after being ordered away.⁹¹

It is elementary that toward a licensee the occupier owes no affirmative duty of care, although perhaps required to give notice of any concealed dangers. A higher duty exists toward an invitee, in whose behalf the occupier must make the premises reasonably safe. Toward a trespasser no duty exists to keep the premises safe or to warn of any dangers.⁹²

These problems become even more acute in the case of "public air raid shelters."⁹³

The Attorney General of California has ruled (April 30, 1942) that cities are immune from suit based on the negligence of the local defense council in selecting or designating defective premises for use as a public air raid shelter. He grounds his holding on the view that such activity of the city is one of its governmental activities.⁹⁴

Not so fortunate may be the owner of the premises, who may find that his public liability insurance policy does not protect him in a suit by the injured invitee. If the owner has taken the initiative in establishing an air raid shelter and has voluntarily invited the public therein, he may discover that he has put his premises to a use not contemplated at the time the policy was written, with the result that the insurer will escape liability.

Destruction of Property by Mob

Any blackout gives an added opportunity for crime, as does an air raid which partially destroys dwellings and other structures, thereby exposing their contents to any group of persons who take it into their heads to loot or damage.

At common law a municipal corporation is not liable for damage to private property by mobs or rioters, since the duty to preserve

⁹¹ See opinion of Robert Cutler, Corporation Counsel of Boston, *supra*, p. 77, note 89.

⁹² Cooley, *Torts* (4th ed.), § 440; note entitled "Liability for Personal Injuries Arising from Air Raid Precautions," 7 *The Solicitor* 15-16 (January 1940); opinion of Robert Cutler, Corporation Counsel of Boston, *supra*; opinion of Attorney General of California, dated April 30, 1942, summarized in 7 *Municipal Law Journal* 67-68 (May 1942).

⁹³ In England the Civil Defence Act, 1939 (2 & 3 Geo. 6, c. 31) authorizes the public authorities to requisition any building or part thereof for public shelter purposes, upon payment of compensation. Likewise, factory occupiers and owners of mines and commercial buildings may in England be required to erect private shelters—the compensation, adjustment of rents, and apportionment of expense between landlord and tenant being elaborately worked out. (Lionel A. Blundell, "The Civil Defence Act, 1939," 4 *The Conveyancer and Property Lawyer* 6-25 (1939); "Civil Defence—Effect on Owners and Occupiers of Property," 88 *Law Journal* 111, 123 (1939); "The Cost of Air Raid Shelters," *ibid.*, 271, 283, 295 (1939); "The Provision of Air-Raid Shelters for Commercial Buildings," 189 *Law Times* 264-265 (1940); "Civil Defence Act Problems—I," 188 *Law Times* 347 (1939); "Civil Defence Act Problems—II," 189 *Law Times* 203 (1940).

⁹⁴ Opinion summarized in 7 *Municipal Law Journal* 67-68 (May 1942).

order is a governmental one.⁹⁵ However, a number of States have provided by statute that cities or counties shall be liable for such damage, where the owner's consent or negligence did not contribute to the loss and where the owner gave notice to the authorities, if possible, of any threat to his property.⁹⁶ Under such statutes it has generally been held that the terms "injury," "damage," and "destruction" include the asportation of property.⁹⁷ Of course, in order to recover under these statutes, the plaintiff must show that the depredation was occasioned by a "mob"—at least three persons would have to be involved and their purpose and conduct would have to come within the historical conception of a "mob."⁹⁸

It is interesting to note that at least one State has withdrawn this statutory liability during the period of the present war emergency.⁹⁹

5. BLACKOUT AND DIMOUT ACCIDENTS

If a pedestrian is injured by a motor vehicle whose screened lights did not give sufficient warning, or if he is injured by a vehicle operated in violation of blackout or dimout regulations; if two automobiles collide under comparable circumstances; if an automobile runs into an unlighted obstruction in the street during a blackout or dimout; what remedy, if any, has the injured party?

In the absence of pertinent American authorities it is necessary to turn to English precedents, of which there are a number both from the period of the First and the present World War. At the same time a word of caution should be mentioned that the English cases arose under circumstances in some respects different from those existing in the United States. The two countries differ in their form of government, in the expanse of territory, in their judicial precedents, in their legislation, and in other respects. Moreover, in England the blackout is in effect nightly, whereas in the United States blackouts occur only occasionally for a limited period, and only in coastal areas do dimout regulations prevail. On the other hand, the similarities are probably more striking than the differences, and hence it is believed that an analysis of the British blackout cases

⁹⁵ McQuillin, *op. cit.*, § 2821. See also note entitled "Communal Liability for Mob Violence," 49 *Harvard Law Review* 1362-1369 (1936), at p. 1362, n. 2; and Note entitled "Liability of the Municipality for Mob Violence," 6 *Fordham Law Review* 270-283 (1937), at p. 272.

⁹⁶ McQuillin, *op. cit.*, § 2821.

⁹⁷ *Spring Valley Coal Co. v. City of Spring Valley*, 65 Ill. App. 571, 590 (1896); *Charles v. Mayor, dc. of New York*, 47 Barb. 447 (1866); *Solomon v. City of Kingston*, 24 Hun 562 (1881).

⁹⁸ *Adamson v. City of New York*, 188 N. Y. 255 (1907); *Feinstein v. City of New York*, 157 Misc. 157 (1935); McQuillin, *op. cit.*, § 2822.

⁹⁹ New York, Laws 1942, c. 544, § 40, subd. 2, reading as follows: "The provisions of section seventy-one of the general municipal law [imposing liability upon cities and counties for depredations by mobs and riots] shall be inoperative and shall not apply with respect to property destroyed or injured by mobs or riots."

will prove of assistance in considering the questions likely to confront American courts.¹ In approaching the English decisions it will be well to have in mind the American peacetime principles relating to municipal and individual liability in respect of street travel. With these principles as a background it will be possible to weigh the merits of the reasoning of the English judges insofar as it may apply to the American scene.

Municipality as Defendant

(A) UNITED STATES

In the United States the rule in most jurisdictions is that at common law the municipality is liable for its negligence in the care of the streets. In some instances, statutes have confirmed the common-law rule. Moreover, in the majority of the few States where there is no common-law liability, statutes have imposed liability, and even in the minority without such a statute, liability exists under certain circumstances.²

From the general rule above it follows that obstructions in a street, where dangerous, may render the city liable if injury results, in the absence of contributory negligence on the part of the plaintiff. And it is uniformly held that the municipality must take proper precautions to warn against dangerous obstructions by lighting the same at night.³

There is a distinction between the duty to light an obstruction and the duty to light streets which are safe for travel. In the absence of statute or charter provision, a municipality is not required to light its streets, but, if it undertakes to do so, some courts have held that it is liable when the lights are insufficient. If the municipality is under a duty to light its streets, it must do so in a manner to make them reasonably safe for travel.⁴

(B) ENGLAND

Between the year 1917 and the outbreak of the present war, five principal cases considered the liability of English local authorities in connection with the maintenance of street lighting. During the current war, seven well-known cases have further considered this problem. In order to appreciate the present position of the courts it is necessary to examine the facts and holdings in each of these twelve cases.

¹ See Edward B. Cass, "The Blackout and its Relation to Civil Liabilities," 22 *Boston University Law Review* 287, 293 (1942); "Blackout Accidents in Their Relation to the Law of Negligence," 107 *New York Law Journal* 2720, 2730 (June 29 and 30, 1942).

² McQuillin, *op. cit.*, §§ 2900-2907.

³ *Ibid.*, §§ 2956, 2984.

⁴ *Ibid.*, § 2995, and cases cited.

Morrison v. Sheffield Corporation, [1917] 2 K. B. 866

Plaintiff's eye was injured, while he was walking at about 9 p. m., upon coming into contact with an iron spike on a guard around a tree in the public highway. All street lights had been extinguished 17 days before, pursuant to an order of defendant's chief constable made under authority of the Defence of the Realm Regulations for the Central Area. The tree was one of a number planted by the defendant under the provisions of the Public Health Acts Amendment Act, 1890.⁵

Two questions were answered affirmatively by the jury: (1) Was the guard dangerous in the circumstances of the darkness that existed? (2) Ought the defendant, if it had exercised reasonable foresight, to have neutralized the danger before the accident? The defendant appealed to the Court of Appeal.

Held, that although no nuisance existed before the lighting order, because the trees and guards had been erected under a statutory power, the defendant is under a continuing obligation to use reasonable care as long as they remain in the highway and to see that they do not become a danger under the altered conditions. Whether the facts indicated a want of reasonable care was for the jury to determine.

Appeal dismissed.

Baldock v. Westminster City Council, [1919] (88 L. J. K. B. 502)

In the evening, prior to 8:15 o'clock, the plaintiff's taxicab ran into a street refuge erected by defendant under a power conferred upon it by Section 108 of the Metropolis Management Act, 1855.⁶ At the time, the lamp on the refuge had gone out. Under Section 130 of the same Act the defendant was under a duty to light the streets "well and sufficiently."⁷

⁵ 53 & 54 Vict., c. 59, § 43: "Any urban authority may, if they see fit, cause trees to be planted in any highway repairable by the inhabitants at large within their district, and may erect guards or fences for the protection of the same, provided that this power shall not be exercised nor shall any trees so planted be continued so as to hinder the reasonable use of the highway by the public or any person entitled to use the same, or so as to become a nuisance or injurious to any adjacent owner or occupier."

⁶ 18 & 19 Vict., c. 120, § 108: "It shall be lawful for every Vestry and District Board from Time to Time to place any Posts, Fences, and Rails on the Sides of any Footways or Carriageways in their Parish or District, for the Purposes of Safety, and to prevent any Carriage or Cattle from going on the same, and also to place any Posts or other Erections in any Carriageways so as to make the Crossings thereof less dangerous for Foot Passengers, and also from Time to Time to repair and renew any such Posts, Rails, or Fences, or to remove the same, or any other Obstruction or Encroachment on any Carriageway or Footway."

⁷ *Ibid.*, § 130: "Every Vestry and District Board shall cause the several Streets within their Parish or District to be well and sufficiently lighted, and for that Purpose shall maintain, or set up and maintain, a sufficient Number of Lamps in every such Street, and shall cause the same to be lighted with Gas or otherwise, and to continue lighted at and during such Times as such Vestry or Board may think fit, necessary, or proper; and all public Lamps, and the Lamp Posts and Lamp Irons and Fittings thereof, to be provided by any Vestry or District Board, shall vest in such Vestry or Board."

Prior to the wartime regulations reducing the lighting of streets, the defendant had placed a lamp upon this refuge, among others, although the statute did not impose a special duty to light the refuge apart from the general duty to cause the streets to be lighted. Despite the regulations the defendant continued to light all the refuges to which lights were provided although the diminished pressure, owing to the restriction of the lighting system, caused some of the refuge lights to be erratic. There was evidence that the defendant had time to discover that the particular lamp was erratic because it was alight at 6:30 p. m., was out at 7:30, and was alight again at 8:15. The jury found for the plaintiff, and the defendant appealed to the Court of Appeal.

Held, that by undertaking to light the refuges the defendant imposed a duty upon itself. Bankes, L. J., described such duty in the following terms:

The local authority have no right to lay traps for people in their streets, and they would not contend for a moment that they had. If a local authority consistently lights all the shelters in its streets, it publicly indicates to the persons who are in the habit of traversing those streets that the shelters are still lighted, and if it comes to the knowledge of the local authority that the lights which they so provide are untrustworthy or erratic, and are sometimes out and sometimes in, the local authority, I think, are providing something which is in the nature of a trap to the traveling public, because the public are allowed to believe that the shelters are lighted, and to the knowledge of the local authority they are sometimes lighted and sometimes not.

Further held, that having taken upon itself this self-imposed duty, the defendant might have discharged it either by providing a safety lamp on each refuge, or a sufficient watch of its own men or of the lighting company's men, or of the police, to discover and give reasonable notice of the danger arising from an erratic lamp.

Appeal dismissed.

***Carpenter v. Finsbury Borough Council*, [1920] 2 K. B. 195**

The plaintiff's husband was killed on the night of March 7, 1918, at which time the city of London was under lighting restrictions. He was driving a post-office van down an unfamiliar street which narrowed and ran through an archway or tunnel. The driver's seat on the van was about 7 feet from the ground; the entrance to the tunnel was about 9 feet in height. He was crushed by contact with the top of the tunnel.

The street was in the same condition when the defendant took it over as it was on the date of the accident. For at least 20 years the defendant, or its predecessors, had lighted the street in the same way by a series of lamps, the nearest lamp to the archway being 70 feet

from the entrance. This lamp, owing to the wartime lighting restrictions, gave a reduced light because stippled in grey.

Held, that Section 130 of the Metropolis Management Act, 1855,⁸ imposed an obligation upon defendant to cause the several streets to be well and sufficiently lighted. Shearman, J., trying the action without a jury, expressed his view as follows:

I do not say that there is a breach of the statutory duty where all that is shown is that a street can be better lighted than it in fact is, and there may be some danger in the position at which I arrive in this case because expectant litigants may say when they have met with a street accident after dark that if the street had been better lighted the accident would not have happened. That is not the true position. For a plaintiff to succeed he must satisfy the tribunal of fact that in a place which the local authority is under an obligation to light there was not at the material time light sufficient for that particular place. As to the place where this accident happened, I think there should have been a light nearer than 70 ft. to the entrance of the archway.

Having thus concluded that the defendant had committed a breach of its statutory obligation, and that the deceased had not been guilty of contributory negligence, the court held the case to fall within the principle of *Geddis v. Bann Reservoir Proprietors*, (1878) 3 App. Cas. 430, "that an action lies against a public authority for having done negligently an act which the Legislature has authorized them to do."

Judgment for plaintiff.

Sheppard v. Glossop Corporation, [1921] 3 K. B. 132

When the defendant took over a certain road, there was at one point along it a high retaining wall resting on private property. Because of the danger that a pedestrian approaching the road might fall from the wall, the defendant had put a lamp thereon. The road, the wall, and the lamp had been in the same position for 43 years. On December 12, 1918, from motives of economy, the defendant's lighting committee resolved to extinguish the lights in the borough after 9 p. m.

At 11:30 o'clock on Christmas night, 1918, when the lamp was unlit in accordance with the said resolution, the plaintiff wandered on to the private land and fell from the wall into the road. The judge of the court of first instance, trying the case without a jury, found the plaintiff free from contributory negligence and that the accident would not have happened if the lamp had been lighted. He accordingly gave judgment for the plaintiff. The defendant appealed to the Court of Appeal.

⁸ Quoted *supra*, p. 81, note 7.

Held, that Section 161 of the Public Health Act, 1875,⁹ governs the duty of the defendant in respect of the lamp in question. This section confers authority to light the district but leaves it to the defendant's discretion whether it will light the same or any part thereof, and how long the lamps will be kept lighted in any portion of the district which the defendant elects to light. Thus, there is a strong contrast between the discretion given by this section and the obligation imposed by Section 130 of the Metropolis Management Act, 1855,¹⁰ upon local authorities in the metropolis to light the streets therein.

This case was held unlike *Morrison v. Sheffield Corporation*¹¹ where the defendant had placed an obstruction in the highway and was consequently under a continuing duty of care. Here the defendant was under no obligation to place a lamp at the particular spot where the plaintiff fell; having placed it the defendant was not bound to keep it there; and, if it were kept there, the defendant was not bound to supply it with gas and is not liable for extinguishing the light at any particular hour.

The Court of Appeal took occasion to explain the true intent of the words of Lord Blackburn in *Geddis v. Bann Reservoir Proprietors*, (1878) 3 App. Cas. 430, 456, referred to in *Carpenter v. Finsbury Borough Council*.¹² Lord Blackburn had stated that "An action does lie for doing that which the Legislature has authorized, if it be done negligently." This statement, however, is not to be taken to mean that an action also lies for abstaining from doing that which the Legislature has authorized, if the abstaining is negligent. "But it is not negligent," holds Scrutton, L. J., writing in the instant case (pp. 145-146), "to abstain from doing a thing unless there is some duty

⁹ 38 & 39 Vict., c. 55, § 161: "Any urban authority may contract with any person for the supply of gas, or other means of lighting the streets markets and public buildings in their district, and may provide such lamps lamp posts and other materials and apparatus as they may think necessary for lighting the same."

"Where there is not any company or person (other than the urban authority) authorised by or in pursuance of any Act of Parliament, or any order confirmed by Parliament, to supply gas for public and private purposes, supplying gas within any part of the district of such authority, such authority may themselves undertake to supply gas for such purposes or any of them throughout the whole or any part of their district; and if there is any such company or person so supplying gas, but the limits of supply of such company or person include part only of the district, then the urban authority may themselves undertake to supply gas throughout any part of the district not included within such limits of supply."

"Where an urban authority may under this Act themselves undertake to supply gas for the whole or any part of their district, a provisional order authorising a gas undertaking may be obtained by such authority under and subject to the provisions of the Gas and Water Works Facilities Act, 1870, and any Act amending the same; and in the construction of the said Act the term 'the undertakers' shall be deemed to include any such urban authority: Provided that for the purposes of this Act the Local Government Board shall throughout the said Act be deemed to be substituted for the Board of Trade."

¹⁰ Quoted *supra*, p. 81, note 7.

¹¹ *Supra*, p. 81.

¹² *Supra*, p. 82.

to do it Lord Blackburn's words are addressed to negligence in the direct operation of the powers conferred and undertaken; for instance if the appellants chose to light by electricity and laid defective wires near to the main gas pipes in their district and so caused an explosion, that would be a negligent exercise of their powers; or if they placed a refuge in a crowded street and omitted to light it properly, that might be doing negligently that which the Legislature authorized. But it is going far beyond Lord Blackburn's dictum to say that because, when an option is given by statute to an authority to do or not to do a thing and it elects to do the thing and does it negligently, it is liable, therefore it is liable if it elects not to do the thing, which by the statute it is not bound to do at all."

Appeal allowed.

Polkinghorn v. Lambeth Borough Council, (1938) 54 Times L. R. 345

The defendant under the authority of Section 108 of the Metropolis Management Act, 1855,¹³ had erected a street refuge, at each end of which was an illuminated bollard. The light on one of the bollards had for some unexplained reason gone out, and the plaintiff was injured in the early morning when the motor car in which he was riding as a guest was driven into the bollard. The plaintiff recovered in the county court, the deputy judge finding that the defendant failed to exercise reasonable care in regard to keeping alight the bollard which the defendant had erected. Upon the latter's appeal to the Court of Appeal, it was

Held, that under Section 130 of the Metropolis Management Act, 1855,¹⁴ "it was clearly the duty of the Lambeth Borough Council to maintain a light which would prevent one of the obstructions which they had properly erected under section 108 of the Act for the purpose of assisting foot passengers from being a danger to motor traffic in the road," but that "whether the case be regarded from the point of view of statutory duty, or from that of common law negligence, the failure to maintain the light was, in either case, all that it was necessary for the plaintiffs¹⁵ to prove to establish their right to damages, unless, after that evidence, the defendant council gave affirmative evidence to discharge the onus which was put on them of disproving their liability for the accident".¹⁶

Appeal dismissed.

¹³ Quoted *supra*, p. 81, note 6.

¹⁴ Quoted *supra*, p. 81, note 7.

¹⁵ The owner of the car had also sued for property damages.

¹⁶ *Per* Scott, L. J., at p. 347.

On October 7, 1939, at about 8 p. m., the plaintiff was a passenger in a taxicab owned by the defendant, Central Service Co., when the taxicab collided with an unlighted bollard on a street refuge, thereby causing personal injury to the plaintiff. The plaintiff brought action in the county court against the taxicab company which in turn brought in the Metropolitan Council of the Borough of St. Marylebone as a third party liable to contribution as a possible joint tortfeasor. The county court judge exonerated the borough council but held the company liable because of the rate of speed of the taxicab. The company thereupon appealed to the Court of Appeal from so much of the judgment as went in favor of the borough council. The plaintiff dropped out of the appellate proceedings.

Held, that the bollard had been erected on the island in the roadway pursuant to the power conferred upon the defendant council by Section 108 of the Metropolis Management Act, 1855.¹⁷ If the accident had occurred in time of peace, the provisions of Section 130 of the same Act¹⁸ would no doubt have imposed an obligation upon the council to light the street well and sufficiently. However, any duty under that section disappeared when the statutory order restricting lighting came into force on September 1, 1939.¹⁹

So far as material the said order provided (para. 1) that: "Subject as hereinafter provided, no person shall during the hours of darkness cause or permit . . . (b) any light . . . to be displayed," while by paragraph 4 the order provided that "Paragraph 1 of this Order shall not apply to the following lights for the guidance of traffic in roads:—(d) Lamps indicating obstructions upon or near the carriageway of any road provided they are of candle power not exceeding 1'0, and so screened as to prevent light being thrown upwards, and any appreciable glow being produced on the road surface."

The last provision relating to lamps on obstructions was held not to impose a statutory duty but merely to enable the strictness of the order to be departed from in special cases. Assuming that the council were under a common law duty to use reasonable diligence to render the obstacle safe, despite the restrictive lighting order, the Court of Appeal pointed out that the court below had found as a fact that such care had been used, since the council had placed on each bollard a hurricane lamp of one-candle power and had a lorry going round on patrol to attend to any extinguished light. Evidence was also given that it was impossible to get enough lamps to put two lamps on each

¹⁷ Quoted *supra*, p. 81, note 6.

¹⁸ Quoted *supra*, p. 81, note 7.

¹⁹ Lighting (Restrictions) Order, 1939 (St. R. & O. 1939, No. 1698).

bollard, and that it was a long task to install electric lamps on each refuge post.

*Appeal dismissed. Leave to appeal to the House of Lords.*²⁰

Wodehouse v. Levy, et al., [1940] 2 K. B. 561

The plaintiff, an infant, suing by his next friend, was injured on the night of September 1, 1939, when traveling in a taxicab owned by the defendant Levy. The cab collided with an unilluminated bollard at the end of a refuge in the middle of the road. The St. Marylebone borough council was added as a third party, the defendant Levy claiming a breach of statutory duty to light the streets. The council had never, previously to the accident, illuminated the obstruction in question beyond the general lighting of the street. In the court of first instance, the judge gave judgment for the plaintiff, and the borough council appealed to the Court of Appeal.

Held, that the questions raised are similar to those in the *Greenwood* case.²¹ There is no duty either by statute or at common law to light the bollard. The previous statutory obligation to light the streets was "temporarily repealed" by the lighting restrictions order;²² the latter, in its authorization of certain lights on obstructions, is permissive only; and since the council had been given by statute²³ the right to erect the obstruction in the highway, there was present no duty of any kind to light it. (Citing *Great Central Railway v. Hewlett*, [1916] 2 A. C. 511,²⁴ and *Baldock v. Westminster City Council*.²⁵)

Although Scott, L. J., in *Polkinghorn v. Lambeth Borough Council*²⁶ spoke of the liability to light a similar statutory obstruction as arising either under the Metropolis Management Act, 1855, or under the common law, such statement is contrary to the two precedents cited immediately above. However, the *Polkinghorn* decision, says Luxmoore, L. J. (p. 568), "is amply justified by the fact that the Lambeth Borough Council had become subject to a self-

²⁰ In commenting on the above case, the author of a note in the *Law Journal* says: "This decision may appear rather difficult to reconcile with *Morrison's* case and *Baldock's* case, but actually there is no real conflict between these cases so far as the law is concerned, for it seems to have been admitted that the local authority might in certain circumstances be liable for negligence. On the actual facts, however, the Court took the view that there was no negligence, although another court, as in *Baldock's* case, might have thought otherwise." "Local Authorities and Unlighted Obstructions in War-Time," 91 *Law Journal* 198, 199 (1941).

²¹ *Supra*, p. 86.

²² See *Greenwood v. Central Service Co., et al.*, *supra*, p. 86.

²³ 18 & 19 Vict., c. 120, § 108, quoted *supra*, p. 81, note 6.

²⁴ This case is discussed *infra*, p. 90, note 37.

²⁵ *Supra*, p. 81.

²⁶ *Supra*, p. 85.

imposed duty to illuminate the particular obstruction in the same way as the Westminster City Council had become liable in the *Baldock* case." In the present case the council had not become subject to any self-imposed duty.

Finally, the three justices of the Court of Appeal were of opinion that if the question of negligence were material, they could not agree with the judge below that negligence was present. Said MacKinnon, L. J. (p. 565): "It was the very first night of the blackout, and many of their servants had been working for twenty-four hours on end."

*Appeal allowed.*²⁷

Lyus v. Stepney Borough Council, [1941] 1 K. B. 134

On or about August 24, 1936, the defendant erected a sandbin on the sidewalk in one of the less-traveled streets of the borough. The sandbin was built under the powers conferred on the defendant by Section 33 of the London County Council (General Powers) Act, 1928.²⁸ Nothing in the said Act required that anything thus provided or maintained should be lighted or distinguished in any particular manner or at all, but the defendant was, of course, required by Section 130 of the Metropolis Management Act, 1855,²⁹ well and sufficiently to light the streets in the area under its jurisdiction. At the time the sandbin was erected the Commissioner of Police approved its dimensions and the site where it was located; no objection had ever been made to the defendant that the sandbin hindered the reasonable use of the street or that it constituted a nuisance.

²⁷ The author of the note in the *Law Journal* (cited *supra*, p. 87, note 20) makes the following comment on the *Wodehouse* case: "This case is particularly confusing, for the Court of Appeal appear to have gone further than they did in *Greenwood's* case. In *Greenwood's* case it seems to have been admitted that the common law duty to take care still continued in spite of the blackout, but in *Wodehouse v. Levy* the Court, without daring to be definite, doubted whether there really was any such duty, and then apparently, afraid that they had gone too far, went on to say that even if there were such a duty, they would have found as a fact that reasonable care had been taken. It seems clear that this last argument was added merely to prevent any appeal from the Court's view of the law, for it is difficult to understand how the Court could hold that reasonable care had been taken, when according to Luxmoore, L. J., the obstruction had never been illuminated by the Council at all. It is also most curious that neither in *Greenwood's* case nor in *Wodehouse's* case did the Court refer to *Morrison's* case (*supra*), although it was clearly most relevant to the question in issue."

²⁸ 18 & 19 Geo. 5, c. lxxvii, § 33. Subsection 1 of this section reads as follows: "A borough council may provide and maintain in upon or under any street vested in or repairable by them orderly bins or other receptacles for the collection and temporary deposit of street refuse and waste paper and the storage of sand grit shingle or cinders of such dimensions and in such positions as the borough council after consultation with the Commissioner of Police of the metropolis may from time to time determine." Subsection 2 provides: "Nothing in this section shall empower a borough council to hinder the reasonable use of a street by the public or any person entitled to use the same and a borough council shall not exercise their powers under this section in such a way as to create a nuisance to any adjacent owner or occupier."

²⁹ Quoted *supra*, p. 81, note 7.

On or about August 18, 1939, in compliance with a memorandum from the Home Secretary, the defendant undertook to paint with white marks the various obstructions, including sandbins, placed in the streets. The defendant began with the more important thoroughfares.

On September 1, 1939, the Lighting (Restrictions) Order³⁰ became effective, thus prohibiting the lighting of the streets as theretofore under Section 130 of the Metropolis Management Act, 1855.³¹

On September 15, 1939, the plaintiff at 9 p. m., when walking home (the night being very dark and the streets unlighted), collided with the sandbin and sustained injuries. Thereafter he issued a writ against the defendant, claiming negligence and breach of statutory duty. The action was tried without a jury. The judge (Humphreys, J.) absolved the defendant from any breach of statutory duty to light the streets, but held the defendant to be under a common law duty to see that pedestrians were not exposed to accidents by any carelessness on its part. The judge expressed the opinion that the precedents were in conflict, and he declined to follow *Greenwood v. Central Service Co.*³² and *Wodehouse v. Levy*,³³ but relied on *Morrison v. Sheffield Corporation*.³⁴ He then held the defendant guilty of negligence in not calling attention to the existence of the sandbin in question by putting a splash of white paint upon it.³⁵ The defendant appealed to the Court of Appeal.

Held (Luxmoore, L. J., writing for the Court), that the case is ruled by *Greenwood v. Central Service Co.* and *Wodehouse v. Levy*. The decision in *Morrison v. Sheffield Corporation* is distinguishable on the ground that the guards with iron spikes, which were reasonably safe while street lighting was maintained, were not, by reason of the existence of the spikes, such guards as were authorized by the statute in question.³⁶ However, if the *Morrison* case is not so dis-

³⁰ St. R. & O. 1939, No. 1098.

³¹ Quoted *supra*, p. 81, note 7.

³² *Supra*, p. 86.

³³ *Supra*, p. 87.

³⁴ *Supra*, p. 81.

³⁵ The opinion of the court of first instance is reported in [1940] 2 K. B. 662. The concluding language of the opinion (pp. 667-668) reads as follows: "The view which I take of the matter in the present case is that, if there were a duty—if I am wrong about that then my judgment is clearly wrong—cast on the defendants to take reasonable steps to prevent danger to persons passing along the highway in question, then, between August 18 and September 15 they had ample time to do something. I do not care what that something should be. If they had only put a great splash of paint or whitewash on the edge of the sandbin, which was a large obstruction taking up very nearly half the width of the pavement—and the splash of paint or whitewash would have taken no time and could have been done by a man covering miles every day—they would have prevented this accident. I cannot say in the circumstances of this case that they have taken reasonable care. I think that they were paying, not unnaturally, so much attention to the main roads that they took the chance of somebody running into an obstruction in one of these minor roads. For those reasons, I find that there was negligence on their part, and I think that the plaintiff is entitled to the damages which I have awarded."

³⁶ 53 & 54 Vict., c. 59, § 43; quoted *supra*, p. 81, note 5.

tinguishable and is in conflict with the later decisions aforesaid, the present Court nevertheless deemed itself bound by the decision of the House of Lords in *Great Central Railway v. Hewlett*, [1916] 2 A. C. 511, although a case not involving a local lighting authority.²⁷

Applying the reasoning of the *Hewlett* case to the instant appeal, the Court held that upon the erection of the sandbin it became an authorized obstruction and one which the defendant council was empowered to maintain. Whether its erection hindered the reasonable user of the street was a question to be considered as of the time it was erected, and if at that time there was no such hindrance, "it is difficult to see how at some later date it can be said that the sandbin has become a hindrance to the user of the street" (p. 146). The Act authorizing the sandbin did not impose any duty to light it, and the negative power to maintain it after its erection could not give rise to an affirmative duty to light or whiten it when the blackout conditions supervened.

Finally, the Court stated that, although not essential to decide the question of negligence, the judge below was in error in holding the defendant negligent because it failed to whiten obstructions in subsidiary streets until after those in the principal thoroughfares had been distinguished. "The time at the disposal of the council was in reality only fifteen days, for we do not think it can properly be said that, if the council was under a duty to distinguish obstructions so that they might be visible in the event of a black-out Order, the council ought to have started the work necessary for that purpose before the declaration of war" (p. 153).

*Appeal allowed.*²⁸

²⁷ In that case a statute empowered the Railway to maintain and replace certain posts, previously erected by it in the highway and previously pronounced by the courts to constitute an unlawful nuisance. A taxicab driver on a dark night in 1915 collided with one of the posts, which was virtually invisible owing to the darkening of the streets in compliance with the Reduction of Lighting Regulations then in force. The taxicab driver sued the Railway and failed, the House of Lords reversing the judgment of the Court of Appeal which had affirmed a judgment entered upon a jury verdict in the plaintiff's favor. Briefly, the basis of the holding in the House of Lords was that the statute had authorized the keeping of the posts where they existed; that no affirmative duty in respect of lighting them existed; and that it is impossible to be negligent in not doing anything where the duty or authority itself is simply not to do an act.

²⁸ The decision in this case has come in for some criticism. Professor Edwin M. Borchard has termed it "awkward." ("Community Liability for Civilian War Injuries," 7 *American Municipal Law Review* 101, 109 [1942].) See also Geoffrey Sawyer, "The Black-out Cases and Their Relation to Administrative Law," 15 *Australian Law Journal* 103-106 (1941). An English writer, in referring to this case as well as *Wodehouse v. Levy* (*supra*, p. 87) and *Jelley v. Ilford Borough Council* (*infra*, p. 91), has said: "Were it not for these last decisions, which we are bound to respect, we could not think that this is the true state of the law. As to mere non-feasance there is some foundation for it in the old rule that a citizen, in the days when the only liability for keeping up roads lay on the parishioners, could not sue them for doing nothing. The reasons for that decision have long since been effete; and we wish that our professional readers would conspire to go to the Law Courts, find every copy of 2 T. R. on which they could lay their hands, and tear out *Russell v. Men of Devon* from its pages. So long as it is respected there is no action for non-feasance." ("The Roads in War-Time," 105 *Justice of the Peace and*

Pursuant to the power contained in the Civil Defence Act, 1939,³⁹ the defendant had requisitioned for air raid shelter purposes the ground floor of certain premises in the district under its jurisdiction. The defendant had also requisitioned part of the footway of the highway along the front of the said premises and had erected thereon a barrier of sand-bags, called a "blast-stack."

On December 8, 1939, the plaintiff arrived at the premises adjoining the shelter, just before darkness fell, in order to keep an appointment with her hairdresser. When she emerged into complete darkness, after having been for 2 hours in a brightly lighted room, she failed to see the blast-stack and collided therewith to her injury. She thereupon brought action, claiming negligence and nuisance.

The court of first instance, following *Lyus v. Stepney Borough Council*,⁴⁰ held the defendant free from any obligation to light or whiten the obstruction, and also held the plaintiff guilty of contributory negligence in failing either to stand still or to walk slowly until her eyes became accustomed to the blackout. The plaintiff appealed to the Court of Appeal, which affirmed on the ground of contributory negligence.⁴¹

Local Government Review 205, 206 [1941].) The writer of the Note in the *Law Journal* (cited *supra*, p. 87, note 20) makes the following comment on the *Lyus* decision: "Humphreys, J., in the Court below thought *Greenwood's* case and *Wodehouse's* case conflicted with *Morrison's* case, and chose to follow *Morrison's* case. Luxmoore, L. J., however, thought, that unless *Greenwood's* case and *Wodehouse's* case were in conflict with a decision of the House of Lords they ought to be followed in preference to *Morrison's* case. He formed the opinion, moreover, that these two cases actually followed a decision of the House of Lords, namely *Hewlett's* case, which he thought, therefore, was binding upon him. On the other hand, in *Morrison's* case Viscount Reading, L. C. J., referred to *Hewlett's* case and stated expressly that the general principle of law laid down in that case was not in controversy, but that nevertheless the degree of care required from the Council was not exhausted by erecting the guards so as to be reasonably safe for the protection of the public at the time of their erection, and that the duty continued so to keep them as not to be dangerous to the public using the highway. Luxmoore, L. J., however, sought by means of an obviously artificial argument to distinguish *Morrison's* case from *Lyus's* case because the guards in *Morrison's* case had spikes, which he thought were not authorised by statute. The report of *Morrison's* case, however, refers to the guards throughout as if duly authorised by statute. Moreover, in following *Hewlett's* case Luxmoore, L. J., makes no reference to the fact that in that case the defendants—the Railway Company—were not the highway or lighting authority. This was specifically mentioned by Lord Sumner and Lord Wrenbury in *Hewlett's* case, and it is therefore submitted that the position of the defendants in that case was somewhat different from the position of local authorities." ("Local Authorities and Unlighted Obstructions in War-Time," 91 *Law Journal* 198, 199 [1941].)

³⁹ 2 & 3 Geo. 6, c. 31.

⁴⁰ [1941] 1 K. B. 134; *supra*, p. 88.

⁴¹ An English writer has the following to say with reference to the foregoing case: "This decision is yet another reminder to prospective plaintiffs contemplating litigation against local authorities for acts done by them in carrying out their Civil Defence functions, that the well established rules of contributory negligence are particularly relevant and deserving of their full consideration. The war and the resulting blackout regulations have created conditions or a state of affairs, particularly in our towns and cities, which the public have to accept as inevitable potential dangers both in fact and in law. Barriers and obstructions in streets, which in times of peace would have entitled persons injured by coming into

On September 26, 1940, the plaintiff, while riding a properly lighted bicycle on an unfamiliar street at about 9:15 p. m., during the blackout, ran into an air raid shelter which had just been erected by the defendant pursuant to the authority conferred by the Civil Defence Act, 1939.⁴² The plaintiff commenced proceedings in the county court in December 1940, claiming that his injuries were caused by the defendant's neglect to light the shelter or to paint it white. The construction of the shelter had been completed on the very day of the accident but the shelter had not yet been painted white because of wet weather. It was so painted on September 29, 1940.

The county court judge (Richardson, J.) held that while the *Greenwood*, *Wodehouse*, and *Lyns* cases,⁴³ following *Great Central Railway v. Hewlett*,⁴⁴ made it clear that no duty was thrown upon the defendant to light the shelter either under statute or at common law, the fact that the shelter could not at once be painted white made it essential that the defendant exercise its power to light it to the limited extent permitted for a street obstruction under the Lighting (Restrictions) Order, 1939,⁴⁵ especially as the shelter in question was in a street of some importance. Such failure to exercise this power, the judge stated, was to show a lack of reasonable care under the ordinary law of negligence. He accordingly gave judgment for the plaintiff. The defendant appealed to the Court of Appeal.

Held (MacKinnon and Luxmoore, L.J.J.; du Parcq, L.J., dissenting), that since under the precedents cited by the court below there was no statutory or common-law duty to light the obstruction, it was error to hold that the defendant's failure to light it to any extent was culpable under the ordinary law of negligence, which itself is part of the common law.

Further held, that the fact the shelter was erected after the effective date of the blackout order, whereas the decisions cited above concern obstructions erected before the lighting restrictions, was not a sufficient ground on which to distinguish the instant case. The present shelter had been erected pursuant to statute, and the statute contains no requirement as to the particular manner in which public air raid shelters might be erected. Moreover, the lighting of a shelter is not connected with the process of its erection.

forcible contact with them to maintain actions for damages against the responsible local authorities, do not, as a general rule, in themselves enable such actions to succeed in these days. The public must learn to accept in law, as most people do in fact, the hazards of our unlighted and obstructed streets and highways" ("Shelters as Obstructions in Highways," 105 *Justice of the Peace and Local Government Review* 397 [1941].)

⁴² 2 & 3 Geo. 6, c. 31.

⁴³ *Supra*, respectively, pp. 86, 87, and 88.

⁴⁴ [1916] 2 A. C. 511; digested *supra*, p. 90, note 37.

⁴⁵ St. R. & O. 1939, No. 1098.

du Parcq, L. J., however, dissented on three grounds, (a) that where, as here, a general power is given by statute to build air raid shelters (as distinct from legislative sanction to do an overt act as, e. g., in *Hewlett's case*⁴⁶), there is an implied condition to build the same so as to cause as little obstruction as possible to the highway; (b) that the rule of the *Greenwood*, *Wodehouse*, and *Lyus* cases⁴⁷ relates only to structures that were originally put up with reasonable care in the conditions prevailing at the time of erection, whereas the shelter in the present case was erected under conditions that would immediately render it a dangerous obstruction if unlighted or unpainted; and (c) that the shelter was in the nature of an uncompleted structure, not having been painted in order to make it safe, and hence was no different in principle from a heap of stones left in the street by the defendant in the process of building a shelter. The dissenting Lord Justice further argued as follows (pp. 131-132) :

I cannot think it wrong to say that Parliament must have intended, when it authorized the erection of "an air-raid shelter" on a highway, that a building should be erected which could safely be used as an air-raid shelter and which would not cause any unnecessary danger to the King's subjects when they were using the highway. I emphasize the word "unnecessary" because it may be that in the prevailing circumstances there must be some danger to people using the highway from an obstruction which cannot be very well lighted. If an air-raid shelter was so constructed that it was badly ventilated and caused the asphyxiation of a large number of people using it, nobody would say that its construction could be justified by the Act. Nobody would say if the architect thought it desirable to put ornamental spikes round it or to make some other addition to its architectural features which was dangerous to people using the highway, that because it could be called an air-raid shelter its construction in that form was authorized. I cannot see why regard should be had only to the people inside the shelter and not to those using the highway outside the shelter, and indeed I do not think that this would be suggested. Therefore it seems to me that the learned judge takes a perfectly reasonable view when he says that if a shelter is being constructed on a highway, which must go on existing during a time when there will be no light, so that the more visible it is the less dangerous it will be, it is a mere matter of reasonable common sense (so that Parliament need not say it in express terms) that it must be made as visible as possible.

*Appeal allowed. Leave to appeal to the House of Lords.*⁴⁸

⁴⁶ *Supra*, p. 90, note 37.

⁴⁷ *Supra*, respectively, pp. 86, 87, and 88.

⁴⁸ A writer of an article in the *Law Journal* (June 13 and 20, 1942) vigorously criticizes the majority in the *Fox* case, and agrees with the dissent. He says: "If it is the duty of an authority to display a light, or to paint white, or otherwise effectively to mark an obstruction in the carriage-way while the construction work is proceeding, how can it be said seriously that the authority, having completed the obstruction, can leave it in a position undistinguished by a light, white paint or other means, with the almost certain knowledge that an unfortunate road-user will, at no distant date, crash into it. It is, of course, a different matter, if the authority has neither a duty nor a power or right to light the obstruction, e. g., if it could not properly expend moneys in its hands in the maintenance of a light upon the obstruction." The author also points out that the blackout orders do not prohibit the display of certain lamps of a specified candle-power upon obstructions, and

A bomb having fallen in the road, the defendant erected a barrier to prevent persons from falling into the hole. The defendant placed a hurricane lamp on the barrier but it was extinguished by a high wind, and the employee whose duty it was to visit such lamps at intervals failed to do so. As the result of his failure, the plaintiff, cycling to work during the blackout before dawn, collided with the barrier, whereby he sustained personal injuries. The county court (Clements, J.) gave judgment for the plaintiff on the theory that the defendant, by placing on the barrier a light of permitted candle power, had come under a self-imposed duty and should have taken reasonable steps to restore the light. On appeal by the defendant, the Court of Appeal

Held, that the *Lys*⁴⁹ and *Fox*⁵⁰ cases differ essentially from the case at bar. In the former cases the local authority was empowered by statute to erect the specific obstructions in question, while here, although the Towns Improvement Clauses Act, 1847,⁵¹ required the defendant to enclose the dangerous hole, the defendant was not empowered to do so by erecting a barrier and negligently permitting it to become unlighted. Goddard, L. J., pointed out (p. 306) that in peacetime the defendant would unquestionably have been under a duty to light an obstruction of its own erection, and that its duty in this

hence he is of opinion that the local authorities "are under a legal obligation to display such lamps on all *existing and future* obstructions placed by them or lawfully placed by others in the carriage-ways, and to take all reasonable care to ensure that such lamps are kept lit during the hours of darkness. It is hoped that this proposition will at no distant date correctly state the law as interpreted by the Courts. It is regretted that it does not appear to state the law as at present laid down by the Court of Appeal." ("Collisions and the Black-out," 92 *Law Journal* 188, 189, 196 [1942].) The *Law Quarterly Review* also agrees with the dissenting opinion: "There is much to be said for this view as there seems to be no reason why public authorities should be protected against the consequences of their own negligence, even during the war. It is true that air-raid shelters must be built, and as rapidly as possible, but this does not mean that the work need be done in a negligent fashion. Leave to appeal to the House of Lords was granted, so this point may be further considered." (57 *Law Quarterly Review* 446 [1941].) Still another critic of the majority opinion is Mr. I. C. Matson. In a note reviewing the leading blackout cases involving local authorities, he voices his hope that if the *Fox* case reaches the House of Lords they will not regard local authorities as being so privileged. Mr. Matson believes that the ordinary man ought not to be expected to run the risk of unlighted obstructions erected in the highway since the outbreak of the war. (I. C. Matson, "Black-Out Restrictions; Duty of Local Authorities to Light Obstructions in the Highway," 5 *Modern Law Review* 248-251 [1942].) According to information received in January 1943, the plaintiff in this case apparently decided not to appeal to the House of Lords.

⁴⁹ *Supra*, p. 88.

⁵⁰ *Supra*, p. 92.

⁵¹ 10 & 11 Vict., c. 34, § 83: "If any Building or Hole or any other Place near any Street be, for Want of sufficient Repair, Protection, or Inclosure, dangerous to the Passengers along such Street, the Commissioners shall cause the same to be repaired, protected, or inclosed, so as to prevent Danger therefrom; and the Expenses of such Repair, Protection, or Inclosure shall be repaid to the Commissioners by the Owner of the Premises so repaired, protected, or inclosed, and shall be recoverable from him as Damages."

regard was unaffected by the present lighting regulations which allow certain lamps on street obstructions.

*Appeal dismissed.*⁵²

Knight v. Sheffield Corporation, [1942] 2 All E. R. 411

The defendant local highway authority constructed in May 1940 an entrance to an air-raid shelter under the enabling powers of the Civil Defence Act, 1939, § 7.^{52a} The entrance was formed by making an opening in the paved footwalk close to the building line. To cover the opening when not in use the defendant fitted it with a wooden flap even with the pavement. To open the entrance the flap was lifted outwards and kept up by a hinged strut. At that end of the hole where the top of the stairs reached the pavement, the space between the raised flap and the house front was completely open; the opposite side of the hole was protected only by a wooden arm not sufficiently high to prevent a pedestrian, walking in the dark, from tripping on it and falling headlong into the hole. On a bracket, which extended out from the wall and over the hole the defendant placed an illuminated sign showing the words "Air Raid Shelter." The defendant was in control of the lighting of the sign.

⁵² In commenting on this decision the *Law Quarterly Review* observed: "The result of the various cases is that if a person runs into an unlighted shelter he cannot recover, but if he falls over an unlighted fence then he can. It is hardly surprising, therefore, that Goddard L. J. felt that the law on this point may require modification, and we agree, with all respect, with his suggestion that 'the discussion in this case does, however, show that it is desirable that the cases decided during the present war relating to collisions with street refugees, sandbins, and the like during the hours of black-out should receive further consideration.'" (58 *Law Quarterly Review* 154, 155 [1942].) Professor Edwin M. Borchard has expressed the following view in respect of this case as compared with the air raid shelter cases: "The distinction thus made between shelters and fences seems unsubstantial; the fact is, that the point of view has changed, sustaining Justice Goddard's expression of opinion that the subject of blackout injury deserves reconsideration. It does. Tort might well be eliminated from the issue, which is one of appropriate assumption or distribution of risk. The distinction should be drawn between those direct and natural consequences of a blackout or emergency, which the community—probably the nation—should bear, and those of so indirect and consequential a character that they may, without injustice to the citizen or the community, be left where they fall." ("Community Liability for Civilian War Injuries," 7 *American Municipal Law Review* 101, 109 [1942].)

^{52a} 2 & 3 Geo. 6, c. 31. Section 7 reads, in part, as follows: "(1) Subject to the provisions of this section, the local authority may enter on any land, after giving not less than twenty-eight days' notice in writing to the occupier and, if and in so far as it is reasonably practicable so to do, to the persons having the fee simple or a lease of the land or any part thereof, and there construct—

"(a) an underground air-raid shelter or other underground premises required by the authority for use in the event of hostile attack in carrying out any of their civil defence functions;

"(b) entrances to, and shafts and other necessary works for ventilating, draining, lighting and heating the shelter or premises. * * *

"(3) The local authority may, in the exercise of their powers under this section, construct a shelter or other premises under any highway: * * *

"(4) Any shelter or premises constructed by the local authority under this section, together with the entrances to the shelter or premises and any shafts or other works executed in connection with the shelter or premises, shall, on completion, vest in the authority, and the authority shall be entitled to do anything reasonably necessary for the maintenance of any such shelter, premises, entrances, shafts or works and shall have such powers of entry as are necessary for that purpose."

At about 6:35 a. m. on December 23, 1940, while it was still dark, the plaintiff fell across the guard arm and into the hole. The sign, for some unexplained reason, was not illuminated at the time. The action was tried before Hilbery, J., without a jury, in the Kings Bench Division.

Held, the plaintiff was not guilty of contributory negligence, nor can the defendant escape liability under *Fox v. Newcastle-upon-Tyne Corporation*.^{52b} That decision expressly followed the *Greenwood*, *Wodehouse*, and *Lysus* cases^{52c} and "in no way detracted from the authority" of the *Polkinghorn* and *Baldock* decisions.^{52d} The principle applied in the two last-named cases governs here, namely, "that, where in the exercise of a statutory power an obstruction of the highway is erected and the person or body so exercising the statutory power gives warning of the obstruction by consistently lighting it, so that the public reasonably come to rely on the presence of the light to indicate the position of the obstruction, the person or body exercising that statutory power and so acting has placed itself under a self-imposed duty to continue to light the obstruction."

Further held, that in any event the defendant was not given a statutory power to construct this air-raid shelter in its precise form. "The defendant corporation was given a merely general power to construct air-raid shelters with the necessary entrances and exits." As it was, the defendant "selected a method of exercising that power which resulted in creating a thing which was essentially dangerous to pedestrians." The Court then cited and followed *Sheppard v. Glossop Corporation*.^{52e}

Judgment for plaintiff.

Until the House of Lords shall review the law of negligence in relation to local authorities and the blackout, it is impossible to speak with assurance as to the state of English law in this field. Perhaps, however, some hint of the attitude of the Lords may be gleaned from their decision on December 9, 1940, in *East Suffolk Rivers Catchment Board v. Kent*, [1941] A. C. 74.

In this case the Catchment Board had statutory power to come upon Kent's land for purposes of repairing a breach in his wall whereby a tidal river had overflowed his pasture. The Board, however, was not under any duty to do so which could be enforced by action. As a result of the Board's inept methods, the wall was not restored until a much

^{52b} [1941] 2 K. B. 120, *supra*, p. 92.

^{52c} *Supra*, respectively, pp. 86, 87, and 88.

^{52d} *Supra*, respectively, pp. 85 and 81.

^{52e} [1921] 3 K. B. 132, *supra*, p. 83.

longer period had elapsed than would have been the case if more efficient means had been used. During the whole period of operations the pasture necessarily remained under water, and Kent claimed damages for the loss of use of his land for that portion of time after the repairs should have been completed.

The House of Lords held (Lord Atkin being of contrary view) that, since the Board was not compelled by statute to make the repairs, the Board was under no duty in selecting the time within which, the extent to which, and the method by which it might choose to exercise its permissive authority conferred by the statute creating the Board.

It is thus apparent that the Lords agreed with the decision of the Court of Appeal in *Sheppard v. Glossop Corporation*,⁵³ which they discussed at some length. It will be recalled that the same reasoning adopted in the *Sheppard* case influenced the Court of Appeal in the *Greenwood*, *Wodehouse*, and *Lys* cases⁵⁴ where the blackout order removed the duty to light the streets. *A fortiori* that reasoning would be important in a situation where the local authority prior to the war possessed discretion to light or not to light the streets. Thus, in the present (Catchment Board) case, Lord Romer specifically stated that the *Sheppard* decision laid down a sound principle, namely, that where statutory authorities are entrusted with a mere power they cannot be made liable by their failure to exercise that power, and if they embark upon an execution of the power, "the only duty they owe to any member of the public is not thereby to add to the damages that he would have suffered had they done nothing . . . and they cannot be made liable, except to the extent that I have just mentioned, for any damage that would have been avoided had they exercised their discretion in a more reasonable way."⁵⁵

Individual or Private Corporation as Defendant

(A) UNITED STATES

The liability of an individual or private corporation for negligence on the highways is governed by the legislation and judicial holdings of the courts in each State. The general rules of negligence apply in the operation of motor and other vehicles, and the general rules as to freedom from contributory negligence apply both to drivers and pedestrians. It is obvious that in wartime, under blackout or dimout conditions, a greater duty of care is imposed upon both drivers and pedestrians.

⁵³ *Supra*, p. 83.

⁵⁴ *Supra*, respectively, pp. 86, 87, and 88.

⁵⁵ P. 102 of opinion.

Apart from varying statutes, one of the chief points of difference among the several jurisdictions is whether it is negligence *per se* to drive a vehicle in violation of a statute or ordinance. Some courts so hold, whereas in other States such violations are treated merely as some evidence of negligence.⁵⁶ Irrespective of which rule is applied however, difficult questions have already arisen during this war where blackout or dimout restrictions, ordered by military authority, may conflict with State law in respect of the lighting of vehicles.⁵⁷

(B) ENGLAND

In addition to the English cases already discussed—where in some instances an individual or private company was proceeded against in addition to the local authority—there are a few reported blackout decisions, handed down since the outbreak of the present hostilities, wherein the local authority was not a party. Since their facts could readily be duplicated in the United States, it will be useful to analyze them.

Franklin v. Bristol Tramways and Carriage Co., [1941] 1 K. B. 255

The plaintiff sought damages for the death of her husband. The latter, during the blackout in September 1939, was walking on the high road near Swindon, the night being very dark. He was wheeling a bicycle on the off side of the road, and was crossing to his proper side. His bicycle was not equipped with a red rear light as it should have been by statutory regulation, but he carried a reflector disc and his mudguard was painted white.

A Swindon Corporation omnibus came along the road behind him; the driver saw him just in time, and, by making a violent swerve, avoided him. Another omnibus, belonging to the defendant, was following the first omnibus at a considerable distance; the driver did not see the deceased, ran into, and killed him. This omnibus carried two sidelights, placed high up and not low enough to throw much light on the road. After escaping the first omnibus the deceased failed to look around to see if anything was coming, and remained in the roadway although he could have stepped off.

Hawke, J., gave judgment for the defendant on the ground of contributory negligence of the deceased. The plaintiff appealed to the Court of Appeal.

⁵⁶ Elliott, *Roads and Streets* (4th ed.), chs. 44-47 (1926); Berry, *Law of Automobiles* (7th ed.), chs. 10 and 11 (1935); Blashfield, *Cyclopedia of Automobile Law and Practice* (permanent ed.), chs. 71-72.

⁵⁷ *Besters, et al. v. Hearst Publications, Inc., et al.*, Superior Court of State of Washington, Pierce County, (Card, J.), January 5, 1943.

Held (per Scott, L. J.), that the position of a pedestrian in the road during a blackout is quite different from what it is in time of peace. "In blackout conditions there is imposed on a person in a road the new duty of bearing in mind the difficulty which the driver of an oncoming vehicle must have in seeing a person or a vehicle bearing no light, and of realizing that, as a person in the road, he must take all reasonable steps to minimize such difficulty."

The Court also stated that, although the defendant was negligent in having the sidelights high and not supplemented by the masked headlight which was permissible, and also because the driver did not keep as good a look-out as he might have done, nevertheless the deceased was guilty of contributory negligence in failing to look around after he had nearly been run into by the first omnibus. Therefore, apart from his failure lawfully to equip the bicycle with a red rear light, "he was guilty of common law contributory negligence which causally contributed to the accident."

*Appeal dismissed.*⁵⁵

***Griffiths v. W. Alexander & Sons, Ltd.*, 1941 S. L. T. 66**

A motorbus driven by a servant of the defender ran down and injured the pursuer who was walking on the highway with his back to the bus at 10:05 p. m. while the blackout restrictions were in force. The driver testified that his view was limited to 10 or 12 feet ahead, and that he was going at the rate of 20 miles an hour. When the driver saw the pursuer he swerved and stopped his bus in a distance of 27 feet.

Held (Lord Keith, at p. 67) that "if a driver is driving at a rate of speed which does not permit him to draw up within his range of vision an accident is inevitable. If a driver does not appreciate that and an accident consequently happens, then, in my opinion, that is sufficient to establish fault. . . . on the facts in this case that is my

⁵⁵ In reply to a letter from a correspondent, criticizing the above decision, the *Law Journal* agreed with the Court in the following terms: "We think the judgment of the Court is justified on the ground that the plaintiff's husband, who was killed, had the last opportunity of avoiding the accident, i. e., by looking round and seeing that a second motor-omnibus was coming after the first, which just managed to clear him. This is the 'last clear chance' rule which was often approved in cases like *Radley v. L. S. W. Ry.* (1876, 1 A. C. 754) and was only disregarded in *Squadling v. Cooper* (1931, A. C. 1) because the Lords found that there was no time for anybody to have a last clear chance. The decision in *Squadling* was, we may add, severely criticised by Lord Justice Scrutton in a case reported only in these columns (*Strauss v. Crocker*, 71 LAW JOURN. 254). We realize that though the common law duty to take care has not changed, the facts of the day call for extra precautions to discharge it. This, we think, is the moral to be drawn from the last decision, though we agree with our correspondent that the motorist's duty is to drive within the limits of his vision." (91 *Law Journal* 84 [1941].) For additional comment on the decision, see *infra*, p. 100, note 59.

view as to what the position is in law, and accordingly here I think the defenders were at fault in the matter of speed."⁵⁹

Miller v. Liverpool Co-operative Society, Ltd., et al., [1940] 4 All E. R. 367; affirmed without opinion, [1941] 1 All E. R. 379

The plaintiff was riding as a guest in a lorry, owned by defendant Hughes, as it was being driven in excess of 15 miles per hour along a main highway during the blackout at 5:20 a. m. on January 22, 1940. At that moment the articulated 30-foot lorry of the defendant Society came upon the highway from a side road and started to turn in order to proceed in the same direction as the lorry in which the plaintiff was riding. The latter vehicle collided with the former, whereby the plaintiff was injured. Neither driver saw the other lorry until too late to avoid the collision.

Stable, J., held (affirmed by the Court of Appeal) that both defendants were liable. The driver of the lorry in which the plaintiff was a guest was going at an excessive speed under blackout conditions. The driver of the other lorry, which because of its length necessarily occupied almost the whole width of the highway while turning into it, was negligent in debouching on a main road, under conditions of darkness, without getting his mate off the lorry for the purpose of giving warning of and to any oncoming traffic.

⁵⁹ A writer in the *Scottish Law Review* has contrasted this case with *Franklin v. Bristol Tramways and Carriage Co.* (*supra*, p. 98), and also describes another and later decision by Lord Keith (*Malcolm v. Rolland*, December 20, 1940, not reported) wherein Lord Keith expressed himself more strongly than in the *Griffiths* case. In the *Malcolm* case he laid down affirmatively the rule that a driver of a car in blackout conditions owes a duty to be able to stop within the limits of his visibility. The driver in the *Malcolm* case alleged that he had not seen the pedestrian until the latter stepped into the beam of the car headlight two feet from the bonnet, an allegation rejected by the Court on the ground that the pedestrian was entitled to presume that the car's lights were such as to enable the driver to see a reasonable distance ahead an object, and particularly an object that was crossing the center of the road. The writer of the article goes on to remark: "No doubt the pedestrian has a higher duty under the black-out where it is easier for him to see the car than for the car driver to see him (and he is constantly advised to wear something white in his own interests), but the driver is not justified in proceeding along a road even at a moderate speed, leaving it to the walker to get out of the way. His obligation to keep a proper lookout remains and is indeed higher than ever." ("Some Black-out Problems," 57 *Scottish Law Review* 105, 107 [1941].) The same view in favor of the *Griffiths* decision is taken by another Scotsman, writing in the *Scots Law Times*, on the ground that the case "provides a criterion or 'yard-stick' by which responsibility can be measured. On the other hand, the 'new duty' imposed by the English Court [the new duty imposed on a person in the road of bearing in mind the difficulty of a driver in seeing a person bearing no light], vague as it is, represents a rather startling development of the law of contributory negligence." (D. G. Fraser, "Contributory Negligence in the Black-out," 1941 *Scots Law Times* 77 [May 24, 1941].) A contrary view is taken by an Australian writer who believes that a rule requiring a speed at which the driver could pull up within the range of vision would in some circumstances "enforce immobility and that it cannot be applied absolutely to blackout cases." (Rupert Ollerenshaw, "Highway Duties in Blackouts," 15 *Australian Law Journal* 79, 81 [1941].) See also, 89 *Law Journal* 81 (1941). And see 89 *Law Journal* 2 (1940) and 19 *Canadian Bar Review* 384, 385 (1941).

On December 28, 1940, at about 7:30 p. m. in the blackout the plaintiff was proceeding on a pedestrian crossing when run down by the defendant's automobile. The case was tried without a jury before Croom-Johnson, J. The material question was whether the imposition of the blackout had altered the duty of a motorcar driver when approaching a pedestrian crossing, as laid down in *Bailey v. Geddis*, [1938] 1 K. B. 156.

The Pedestrian Crossing Places Regulations, 1935, reg. 3 provides that: "The driver of every vehicle approaching a crossing, shall, unless he can see that there is no passenger thereon, proceed at such a speed as to be able if necessary to stop before reaching such crossing." In *Bailey v. Geddis*, *supra*, it was held that this regulation is positive in its command, and that contributory negligence is not a defense in such circumstances. In the present case the defendant urged that the blackout restrictions resulted in an implied repeal or modification of the quoted regulation, or, alternatively, that the regulation does not apply during the blackout.

The judge, as a court of first instance, declined to so hold. The case of *Franklin v. Bristol Tramways and Carriage Co.*⁶⁰ was distinguished on the ground that there the pedestrian was not upon a pedestrian crossing, but was walking along a road 30 feet wide, wheeling a bicycle.

⁶⁰ *Supra*, p. 98.

APPENDIX 1

[Executive Order No. 8757 (May 20, 1941) establishing the Office of Civilian Defense in the Office for Emergency Management of the Executive Office of the President. 6 Fed. Reg. 2517.]

By virtue of the authority vested in me by the Constitution and statutes, and in order to define further the functions and duties of the Office for Emergency Management of the Executive Office of the President in respect to the national emergency as declared by the President on September 8, 1939,¹ to assure effective coordination of Federal relations with State and local governments engaged in defense activities, to provide for necessary cooperation with State and local governments in respect to measures for adequate protection of the civilian population in emergency periods, to facilitate constructive civilian participation in the defense program, and to sustain national morale, it is hereby ordered as follows:

1. There is established within the Office for Emergency Management of the Executive Office of the President the Office of Civilian Defense, at the head of which shall be a Director appointed by the President. The Director shall discharge and perform his responsibilities and duties under the direction and supervision of the President. The Director shall receive no salary or other remuneration for his services, but shall be entitled to actual and necessary transportation, subsistence, and other expenses incidental to the performance of his duties.

2. Subject to such policies, directions, and regulations as the President may from time to time prescribe, and with such advice and assistance as may be necessary from the other departments and agencies of the Federal Government, and utilizing the operating services and facilities of such departments and agencies as far as possible, the Director shall perform and discharge the following described duties and responsibilities:

a. Serve as the center for the coordination of Federal civilian defense activities which involve relationships between the Federal Government and State and local governments, territories, insular possessions, and the District of Columbia (as hereinafter used in this Order the term "State and local" shall include territories, insular possessions, and the District of Columbia); establish and maintain contact with State and local governments and their defense agencies; and facilitate relationships between such units of government and the agencies of the Federal Government in respect to defense problems.

b. Keep informed of problems which arise from the impact of the industrial and military defense effort upon local communities, and take necessary steps to secure the cooperation of appropriate Federal departments and agencies in dealing with such problems and in meeting the emergency needs of such communities.

c. Assist State and local governments in the establishment of State and local defense councils or other agencies designed to coordinate civilian defense activities.

d. With the assistance of the Board for Civilian Protection, described in paragraph 4 of this Order, study and plan measures designed to afford adequate protection of life and property in the event of emergency; and sponsor and carry

¹ 54 Stat. 2643. Text in Appendix 30, *infra*, p. 178.

out such civil defense programs, including the recruitment and training of civilian auxiliaries, and disseminate to appropriate officials of the Federal Government and State and local governments such information concerning civil defense measures as may be necessary to meet emergency needs.

e. With the assistance of the Volunteer Participation Committee, described in paragraph 5 of this Order, consider proposals, suggest plans, and promote activities designed to sustain the national morale and to provide opportunities for constructive civilian participation in the defense program; review and approve all civilian defense programs of Federal departments and agencies involving the use of volunteer services in order to assure unity and balance in the application of such programs; and assist State and local defense councils or other agencies in the organization of volunteer service units and in the development of their activities.

f. Maintain a clearing house of information on State and local defense activities in cooperation with appropriate Federal departments and agencies.

g. Review existing or proposed measures relating to or affecting State and local defense activities, and recommend such additional measures as may be necessary or desirable to assure adequate civilian defense.

h. Perform such other duties relating to participation in the defense program by State and local agencies as the President may from time to time prescribe.

3. The Director may provide for the internal organization and management of the Office of Civilian Defense. He shall obtain the President's approval for the establishment of the principal subdivisions of the Office and the appointment of the heads thereof.

4. There shall be in the Office of Civilian Defense a Board for Civilian Protection (hereinafter referred to as the Board) to be composed of the Director as Chairman and a representative of each of the following departments and agencies of the Federal Government to be designated by the heads thereof: Department of War, Department of the Navy, Department of Justice, Federal Security Agency, and such others as the President may from time to time determine. In addition, each of the following organizations shall be invited to designate a representative to serve as a member of the Board:

- a. The Council of State Governments
- b. The American Municipal Association
- c. The United States Conference of Mayors

The Board shall advise and assist in the formulation of civil defense programs and measures, appropriate to the varying needs of each part of the Nation, designed to afford adequate protection of life and property in the event of emergency. The members of this Board shall serve as such without compensation, but shall be entitled to actual and necessary transportation, subsistence, and other expenses incidental to the performance of their duties.

5. There shall be in the Office of Civilian Defense a Volunteer Participation Committee (hereinafter referred to as the Committee) consisting of the Director as Chairman and not more than twenty members, representative of the various regions and interests of the Nation, to be appointed by the President. The Committee shall serve as an advisory and planning body in considering proposals and developing programs designed to sustain national morale and to provide opportunities for constructive civilian participation in the defense effort. The members of the Committee shall serve as such without compensation, but shall be entitled to actual and necessary transportation, subsistence, and other expenses incidental to the performance of their duties.

6. The Director is authorized, with the approval of the President, to appoint such additional advisory committees and sub-committees, with respect to State and local cooperation, national morale, civil defense planning, civilian participation, and related defense activities, as he may find necessary or desirable to assist him in the performance of his duties. Such advisory committees may include representatives from Federal departments and agencies, State and local governments, private organizations, and the public at large. The members of advisory committees shall serve as such without compensation, but shall be entitled to actual and necessary transportation, subsistence, and other expenses incidental to the performance of their duties.

7. Within the limitation of such funds as may be appropriated to the Office of Civilian Defense, or as may be allocated to it by the President through the Bureau of the Budget, the Director may employ necessary personnel and make provision for the necessary supplies, facilities, and services. However, the Office of Civilian Defense shall use such statistical, informational, fiscal, personnel, and other general business services and facilities as may be made available to it through the Office for Emergency Management or other agencies of the Government.

FRANKLIN D. ROOSEVELT

THE WHITE HOUSE, May 20, 1941.

APPENDIX 2

[Executive Order No. 8799 (June 20, 1941) amending Executive Order No. 8757 of May 20, 1941, establishing the Office of Civilian Defense. 6 Fed. Reg. 3049.]

By virtue of the authority vested in me by the Constitution and statutes, and in order to provide for a wider and more effective functioning of the Volunteer Participation Committee of not more than twenty members established in the Office of Civilian Defense within the Office for Emergency Management of the Executive Office of the President by paragraph 5 of Executive Order No. 8757² of May 20, 1941, the said paragraph is hereby amended to provide that the Volunteer Participation Committee shall consist of not more than forty-five members.

FRANKLIN D. ROOSEVELT

THE WHITE HOUSE, June 20, 1941.

APPENDIX 3

[Executive Order No. 8822 (July 16, 1941) amending Executive Order No. 8757 of May 20, 1941, establishing the Office of Civilian Defense. 6 Fed. Reg. 3529.]

By virtue of the authority vested in me by the Constitution and statutes of the United States, Executive Order No. 8757² of May 20, 1941, establishing the office of Civilian Defense in the Office for Emergency Management of the Executive Office of the President, is hereby amended to include the American Red Cross among the organizations invited to designate a representative to serve as a member of the Board for Civilian Protection in the Office of Civilian Defense.

FRANKLIN D. ROOSEVELT

THE WHITE HOUSE, July 16, 1941.

² See Appendix 1, *supra*, p. 103.

³ *Idem*.

APPENDIX 4

[Executive Order No. 9134 (April 15, 1942) amending Executive Order No. 8757 of May 20, 1941, establishing the Office of Civilian Defense. 7 Fed. Reg. 2887, 2962.]

Executive Order No. 8757⁴ of May 20, 1941, as amended by Executive Orders No. 8799⁵ of June 20, 1941 and No. 8822⁶ of July 16, 1941, is hereby amended to read as follows:

By virtue of the authority vested in me by the Constitution and statutes of the United States, and in order to define further the functions and duties of the Office for Emergency Management of the Executive Office of the President, with respect to the state of war declared to exist by Joint Resolutions of Congress, approved December 8, 1941,⁷ and December 11, 1941,⁸ respectively, to assure effective coordination of Federal relations with State and local governments engaged in the furtherance of the war program, to provide for necessary cooperation with State and local governments with respect to measures for adequate protection of the civilian population in emergency periods, and to facilitate constructive participation in the war program, it is hereby ordered as follows:

1. There is established within the Office for Emergency Management of the Executive Office of the President the Office of Civilian Defense, at the head of which shall be a Director appointed by the President. The Director shall discharge and perform his responsibilities and duties under the direction and supervision of the President.

2. There is established within the Office of Civilian Defense a Civilian Defense Board consisting of the Director, who shall serve as Chairman, the Secretary of War, the Attorney General, the Secretary of the Navy, the Director of the Office of Defense Health and Welfare Services, and such other members as the President may designate.

3. The Director, with the advice and assistance of the Board, shall:

a. Serve as the center for the coordination of Federal civilian defense activities which involve relationships between the Federal Government and State and local governments; establish and maintain contact with State and local governments and their defense agencies; and facilitate relationships between such units of government and the agencies of the Federal Government in respect to defense problems.

b. Keep informed of problems which arise in states and local communities from the impact of the industrial and military efforts required by war, and take steps to secure the cooperation of appropriate Federal agencies in dealing with such problems and in meeting the emergency needs of such states and communities in such a manner as to promote the war effort.

c. Assist State and local governments in the establishment of State and local defense councils or other agencies designed to coordinate civilian defense activities.

d. Study and plan programs designed to afford adequate protection of life and property against war hazards; sponsor and carry out such civil defense programs as may be necessary to meet emergency needs, including the recruitment and training of civilian auxiliaries; and disseminate to the public and to appropriate officials of the Federal Government and State and local governments information concerning civil defense measures.

⁴ See Appendix 1, *supra*, p. 103.

⁵ See Appendix 2, *supra*, p. 105.

⁶ See Appendix 3, *supra*, p. 105.

⁷ 55 Stat. 795.

⁸ 55 Stat. 796, 797.

e. Consider proposals, suggest plans, and promote activities designed to mobilize a maximum civilian effort in the prosecution of the war, and provide opportunities for constructive civilian participation in the war program; assist other Federal agencies in carrying out their war programs by mobilizing and making available to such agencies the services of the civilian population; review and approve all civilian defense programs of Federal agencies involving the use of volunteer services so as to assure unity and balance in the application of such programs; and assist State and local defense councils or other agencies in the organization of volunteer service units and in the mobilization of community resources for the purpose of dealing with community problems arising from the war.

f. Review existing or proposed measures relating to State and local defense activities, and recommend to the appropriate agencies such additional measures as may be necessary or desirable to assure adequate civilian defense.

g. Perform such other duties relating to participation in the war program by State and local agencies as the President may from time to time prescribe.

4. The Director may provide for the internal organization and management of the Office of Civilian Defense. He shall obtain the President's approval for the establishment of the principal subdivisions of the Office and the appointment of the heads thereof. The Director may delegate authority to carry out his powers and duties to such agencies, officials or personnel as he may designate.

5. Within the limitation of such funds as may be appropriated or allocated to the Office of Civilian Defense, the Director may employ necessary personnel, maintain the necessary fiscal and property records, and make provision for the necessary supplies, facilities, and services.

6. As used in this order, the term "State and local" shall include Territories, insular possessions, and the District of Columbia.

FRANKLIN D. ROOSEVELT

THE WHITE HOUSE, April 15, 1942.

APPENDIX 5

[Executive Order No. 9165 (May 19, 1942) providing for the protection of essential facilities from sabotage and other destructive acts. 7 Fed. Reg. 3765.]

Whereas Executive Order No. 8972^{*} of December 12, 1941 authorized and directed the Secretary of War and the Secretary of the Navy to establish and maintain military guards and patrols and take other appropriate measures to protect from injury or destruction national-defense materials, premises and utilities; and

Whereas Executive Order No. 9074^{**} of February 25, 1942, made the Secretary of the Navy primarily responsible, and directed him to take such action as might be necessary, for the safeguarding against destruction, loss, or injury, from sabotage or other subversive acts, accident, or other causes of similar nature, of vessels, harbors, ports and waterfront facilities; and

Whereas I requested the Federal Power Commission, under date of June 14, 1940, to work out plans for the protection of electric power supply from hostile acts; and

Whereas it is desirable that supplementary protective measures be developed and executed by other Federal departments and agencies, and integrated with

^{*}6 Fed. Reg. 6420.

^{**}7 Fed. Reg. 1587.

the protective programs of the Army, Navy, and Federal Power Commission; Now, Therefore, by the authority vested in me by the Constitution and statutes of the United States, as President of the United States and Commander in Chief of the Army and Navy, and in order to provide protective measures supplementary to and integrated with the protective programs of the Army, Navy, and Federal Power Commission, it is hereby ordered as follows:

1. In addition to the functions, powers, and duties conferred upon it by Executive Order No. 8757¹¹ of May 20, 1941, as amended by Executive Order No. 9134¹² of April 15, 1942, the Office of Civilian Defense shall, in conjunction with and subject to the approval of the Secretary of War, formulate and establish a Facility Security Program of the Office of Civilian Defense, designed to assure the development and execution of measures for the protection of essential facilities from sabotage and other destructive acts and omissions, which Program shall be supplementary to and correlated with the protective programs of the Army, Navy, and Federal Power Commission. Whenever the Army or Navy shall extend protection to any essential facilities, the Office of Civilian Defense shall modify its security measures accordingly to the extent determined by the Secretary of War or the Secretary of the Navy, as the case may be.

2. In order to carry out such Facility Security Program, the Office of Civilian Defense shall:

a. Serve as the center for the coordination of plans sponsored or operated by the several Federal departments and agencies.

b. Establish standards of security to govern the development of security measures for the Nation's essential facilities.

c. Review existing and proposed security plans and measures, and require the adoption of such additional measures as may be deemed necessary.

d. Take steps to secure the cooperation of owners and operators of essential facilities and of State and local governments in developing and carrying out adequate security measures.

3. Subject to and in conformity with the policies, standards, plans, directives and procedures of the Office of Civilian Defense, the following Federal departments and agencies shall effect the development and execution of said Facility Security Program with respect to the facility groups indicated:

Federal Communications Commission.....	Communications.
Department of Commerce.....	Air Commerce and Related Facilities.
Public Roads Administration.....	Highway Transportation and Related Facilities.
Office of Defense Transportation.....	Rail Transportation and Related Facilities.
Public Buildings Administration.....	Public Buildings.
Department of Agriculture.....	Forest, Brush and Grass Lands under the jurisdiction of the Department of Agriculture, and Related Facilities.
Department of the Interior.....	Forest, Brush and Grass Lands under the jurisdiction of the Department of the Interior, and Related Facilities.
Department of the Interior.....	Minerals and Related Facilities.

¹¹ See Appendix 1, *supra*, p. 103.

¹² See Appendix 4, *supra*, p. 106.

Federal Power Commission.....	Gas Utilities.
Federal Power Commission.....	{ Power and Irrigation Water, and Related Facilities.
Department of the Interior.....	
Public Health Service.....	Domestic Water Supply.
Department of Agriculture.....	Foodstuffs and Storage including Fibers, Naval Stores, Vegetable Oils.

4. In order to effect the development and execution of security plans for the essential facility groups herein assigned to it, each of the above named Federal departments and agencies shall:

- a. Conduct surveys to ascertain security status;
- b. Determine security deficiencies;
- c. Make recommendations for security action by owners and operators, by State and local governments, and by Federal departments and agencies;
- d. Make recurring inspections to determine that adequate standards of security against sabotage and other destructive acts or omissions are maintained;
- e. Take all other necessary steps within the scope of its authority for the protection of essential facilities against sabotage and other destructive acts or omissions.

5. Nothing in this order shall:

a. Relieve any owner or operator or any local, State or Federal agency from primary responsibility to guard and protect essential facilities from sabotage and other destructive acts and omissions;

b. Be construed to limit or modify the duty and responsibility of the Federal Bureau of Investigation, Department of Justice, with respect to the investigation of alleged acts of sabotage, espionage, and other types of subversive activities, or affect existing arrangements, instructions or regulations with respect to such matters.

6. The directive to the Federal Works Agency to take steps to protect public buildings, as contained in my letter of January 12, 1942, is hereby modified so far as may be required by the provisions of this order.

FRANKLIN D. ROOSEVELT

THE WHITE HOUSE, May 19, 1942.

APPENDIX 6

[Executive Order No. 9088 (March 6, 1942) prescribing Regulations concerning Civilian Defense. 7 Fed. Reg. 1775.]

By virtue of the authority vested in me by the act entitled "An Act to provide protection of persons and property from bombing attacks in the United States, and for other purposes," approved January 27, 1942,²³ and as President of the United States and Commander in Chief of the Army and Navy, I hereby prescribe the following regulations concerning civilian defense:

1. Such funds as may be available to enable the Director of Civilian Defense to carry out the provisions of the aforementioned act of January 27, 1942, shall be used only for acquiring facilities, equipment and supplies necessary to provide for the adequate protection of persons and property from bombing attacks, sabotage and other war hazards in the United States, its territories and pos-

²³ Public Law 415—77th Cong., Ch. 20, 2d Sess., 56 Stat. 19. Text in Appendix 22, *infra*, p. 154.

sessions; for providing services necessary to facilitate effective use of all such facilities, equipment and supplies; for defraying expenses of procurement (including research and development), inspection, transportation, storage, maintenance, protection, distribution, recovery and return of facilities, equipment and supplies; and for accounting and administration with respect to such facilities, equipment and supplies, services and expenses.

2. The Director of Civilian Defense from time to time within the limitations of such funds as may be available to the Office of Civilian Defense shall determine the general types and respective quantities of equipment which he shall deem necessary and desirable to be purchased. In making such determinations, the Director shall be afforded the advice and assistance of the War Department and may make use of any other technical assistance, studies, reports or information which may be available to him.

3. The Director of Civilian Defense shall notify the Secretary of War, or such chiefs of services, bureaus or divisions of the War Department as the Secretary may direct, of each determination by the Director of the necessity of and desirability for the purchase of equipment in accordance with paragraph 2 of this order. The War Department shall thereupon undertake all steps necessary for the procurement as promptly as possible of equipment of the type and in the quantity specified by the Director of Civilian Defense.

4. In connection with the procurement of items of equipment for the Office of Civilian Defense the War Department shall undertake all necessary research, development and standardization of such equipment; shall contract for the purchase of such equipment; shall conduct all necessary inspections during and upon completion of manufacture or assembly; and shall see that all equipment conforms to specifications prior to acceptance.

5. The War Department shall keep the Director of Civilian Defense informed of specific items of equipment being procured and of the approximate or probable dates for delivery thereof, and the Director of Civilian Defense shall furnish to the War Department timely instructions as to the place or places at which such equipment shall be delivered to the Office of Civilian Defense or upon its order. The War Department shall make all necessary and appropriate arrangements for the shipment of such equipment to the place or places so designated and shall be responsible for such equipment until delivery at such place or places. Thereafter the Office of Civilian Defense shall be responsible for such equipment, including its storage, maintenance, protection, issue and distribution.

6. There shall be made available to the War Department, from time to time, within the limitations of such funds as may be available to the Office of Civilian Defense, sufficient funds to cover all proper expenses incurred by the War Department in pursuance of this order, including costs of research, development, procurement, inspection, transportation, and furnishing of facilities and services. The War Department shall have authority to pay all such expenses out of the funds so made available to it. The War Department shall keep the Office of Civilian Defense informed from time to time of all expenditures made from, and obligations incurred against, the funds so made available to it.

7. In addition to facilities, equipment and supplies provided for the Office of Civilian Defense through the War Department as hereinbefore authorized, the Director of Civilian Defense may accept equipment or supplies transferred from any other department or agency of the Federal Government in conformity with applicable law, and may accept donations of, or may borrow or lease facilities, equipment or supplies from states, municipalities or other political subdivisions, or from private individuals or corporations. The Office of Civilian Defense shall maintain at all times full and accurate records of all property

received by it and of the disposition thereof. The Director of Civilian Defense shall make adequate arrangements for the storage, maintenance and protection of all equipment, facilities and supplies of the Office of Civilian Defense in its possession.

8. Within the limitations of such funds as may be available to the Office of Civilian Defense, the Director may arrange with other public or private agencies for such research or development work, in addition to that of the War Department in connection with the procurement of equipment, as he may deem advisable in order better to provide for the adequate protection of persons and property from bombing attacks, sabotage or other war hazards.

9. The Director of Civilian Defense shall make available the facilities, supplies, and services of the Office of Civilian Defense in such localities in the United States, its territories and possessions as he shall determine to be in need of, but unable to provide, adequate protection of persons and property from bombing attacks, sabotage or other war hazards. The Director shall have full discretionary authority from time to time (a) to define localities on the basis of existing political subdivisions or on such other bases as he may deem appropriate in view of areas of population density, the location of vital war activities, or other factors giving rise to particular risks from bombing attacks, sabotage or other war hazards, (b) to allocate, under such priorities as he may establish facilities, supplies and services to or among localities in need of, but unable to provide, adequate protection of persons and property from bombing attacks, sabotage or other war hazards, and (c) to recall any facilities or supplies, or discontinue any services so allocated to any locality. In allocating facilities, supplies or services to any particular locality the Director may rely upon certificates of duly constituted civil authorities of any state, territory, municipality or other political subdivision comprising or situated within such locality, setting forth the particular facilities, supplies or services which such state, territory, municipality or other political subdivision is unable to provide for the protection of persons and property from bombing attacks, sabotage, or other war hazards.

10. All equipment, facilities and supplies which shall at any time be provided by the Director of Civilian Defense or any locality shall be at the disposition of the United States Government, and the United States Government shall retain in full its rights in such property as owner, lessee or borrower, as the case may be. To such extent as may be practicable, all such property shall be clearly and distinctly marked as the property of, or property under the control of, the United States Government, Office of Civilian Defense. It shall be the duty of the Director of Civilian Defense to report to the Attorney General for appropriate prosecution under the applicable provisions of the Federal Criminal Code any theft, unlawful use, injury to or depredation committed against any such property.

11. The equipment, facilities and supplies of, or under the control of, the Office of Civilian Defense shall be made available in any locality only by loan to duly constituted civil authorities of any state, territory, municipality or other political subdivision comprising or situated within such locality, and any such authority may distribute the same to responsible and qualified individuals or organizations, in accordance with regulations issued by the Director of Civilian Defense; provided that it shall be a condition of all such loans that the civil authority to which each loan is made shall give assurance to the Director that the property loaned shall be adequately protected and maintained, that it shall not be used otherwise than for the protection of persons

or property from bombing attacks, sabotage or other war hazards or for training or instruction incidental to such use, and that such property unless lost, destroyed or consumed in the course of such use shall be returned to the United States Government at any time upon order of, or pursuant to rules or regulations prescribed by, the Director of Civilian Defense.

12. The Director of Civilian Defense may prescribe insignia, arm bands and other distinctive articles which may be worn by persons engaged in civilian defense activities and may establish rules and regulations for the wearing thereof. The wearing of any such insignia, arm band or other distinctive article otherwise than in accordance with such rules or regulations by any person having knowledge thereof shall subject such person to the penalties provided in section 2 of the act of January 27, 1942.¹⁴

13. The Director of Civilian Defense may make and issue such rules, regulations and orders, may prescribe and adopt such forms, and may make and enter into such agreements, leases and arrangements, not inconsistent with the act of January 27, 1942, the terms of any appropriations thereunder, and the regulations prescribed in this order, as he may deem necessary or desirable to carry out the purposes of such act. The Director may exercise any of the powers or duties conferred upon him by this order or by the act of January 27, 1942, through any responsible person in the employ of the Office of Civilian Defense that he may designate.

14. All purchases and contracts for supplies or services made pursuant to this order shall be exempt from the requirements of section 3709 of the Revised Statutes¹⁵ to the extent permitted by law.

FRANKLIN D. ROOSEVELT

THE WHITE HOUSE, March 6, 1942.

APPENDIX 7

[OCD Regulations No. 1 (August 11, 1942). 7 Fed. Reg. 6370.]

LOANS OF EQUIPMENT AND SUPPLIES TO CIVIL AUTHORITIES

By virtue of the authority vested in me by Executive Order No. 8757¹⁶ dated May 20, 1941, as amended by Executive Order No. 9134¹⁷ dated April 15, 1942, and Executive Order No. 9088¹⁸ dated March 6, 1942, and pursuant to Section 1 of the Act approved January 27, 1942,¹⁹ and in accordance with Article 13 of Executive Order No. 9088 dated March 6, 1942, authorizing the Director of Civilian Defense to make and issue such rules, regulations, and orders as he may

¹⁴ See Appendix 22, *infra*, p. 154.

¹⁵ 36 Stat. 861. This Act reads as follows: "Except as otherwise provided by law all purchases and contracts for supplies or services in any of the departments of the Government and purchases of Indian supplies, except for personal services, shall be made by advertising a sufficient time previously for proposals respecting the same, when the public exigencies do not require the immediate delivery of the articles, or performance of the service. When immediate delivery or performance is required by the public exigency, the articles or service required may be procured by open purchase or contract, at the places and in the manner in which such articles are usually bought and sold, or such services engaged, between individuals."

¹⁶ See Appendix 1, *supra*, p. 103.

¹⁷ See Appendix 4, *supra*, p. 106.

¹⁸ See Appendix 6, *supra*, p. 109.

¹⁹ See Appendix 22, *infra*, p. 154.

deem necessary or desirable to carry out the purposes of the aforementioned Act of January 27, 1942, the following regulations are hereby made and issued:

1. General Program.

(a) The Director of Civilian Defense will from time to time make available to localities of the United States, its territories and possessions, equipment and supplies for the protection of persons and property from bombing attacks, sabotage, and other war hazards.

(b) Such equipment and supplies will be made available by loans to communities within the States, which communities may in turn distribute, under the direction of the Commander of the United States Citizens Defense Corps in the community, the equipment and supplies to responsible and qualified individuals or organizations, all in accordance with regulations issued by the Director of Civilian Defense.

(c) Each borrowing community will designate a Local Property Officer who will act as custodian of the property pending its distribution and will be responsible therefor to the Office of Civilian Defense. State Property Officers are to be appointed to maintain records with respect to all property loaned in their respective States, and property may, in certain instances, be delivered to the communities through such State Property Officers. State Property Officers and Local Property Officers will deal with and distribute the property only in the manner prescribed by the Director of Civilian Defense.

(d) Regional Directors of the Office of Civilian Defense are to supervise the activities of State Property Officers and Local Property Officers.

(e) The equipment and supplies shall at all times be at the disposition of the United States Government, and the United States Government shall retain its full rights as owner, lessee, or borrower, as the case may be, of such property. To such extent as may be practicable, all such supplies and equipment shall at all times be clearly and distinctly marked as the property of, or under the control of, the United States Government, Office of Civilian Defense.

(f) These Regulations relating to such loans are part of the agreement of each community receiving such a loan, and in addition govern State and Local Property Officers in the performance of their duties.

2. Definitions.

(a) *Civil Authority* means any State or community, as hereinafter defined, or any duly elected or appointed official, agent, board, commission, or other body of persons duly authorized to act on behalf of any State or community.

(b) *State* means any State or territory or possession of the United States.

(c) *Community* means any municipality, town, or village, or any other political subdivision of any State, or any area designated by the Director of Civilian Defense as a community for purposes of these Regulations.

(d) *Locality* means any territory within which a community is situated and which is described or specified in OCD Form No. 501 executed by the community, which territory may include all or part of the county in which the community is situated or of any other county or counties.

(e) *Chief Executive Officer* means the mayor of a community or other person or body exercising paramount local executive power.

(f) *Local Defense Council* means the body duly appointed by the duly authorized appointive authority to be responsible for civilian defense in the community.

(g) *Director* means the Director of the Office of Civilian Defense appointed by the President of the United States.

(h) *Federal Law* means the "Act to provide protection of persons and property from bombing attacks in the United States, and for other purposes"

approved January 27, 1942,²⁰ and acts supplemental thereto relating to the Office of Civilian Defense, and Executive Orders issued pursuant to such acts or relating to the Office of Civilian Defense.

(i) *Commander* means the Commander duly appointed by the duly authorized appointive authority to be in command of the United States Citizens Defense Corps organized in the community pursuant to Regulations No. 3,²¹ as amended, of the Office of Civilian Defense.²²

(j) *Property* means equipment and supplies belonging to, or under the control of, the Office of Civilian Defense.

(k) *Accountability* devolves upon any person who is required to maintain records and a property account with respect to property, whether or not in the custody of such person, and is discharged by the maintenance of proper records and accounts and by the production of proper receipts for all property received by such person but no longer in his custody.

(l) *Responsibility* devolves upon any person who has custody of property or the duty to supervise others having such custody, and is discharged by the exercise of good faith and due care in the performance of all specified duties.

(m) *Custody* means actual possession of property by a person or his agents.

(n) *Essential Facility* means (1) any public utility, privately or publicly owned, determined by the Commander to be essential to the national war effort or civilian defense, including railroads or other transportation systems, telegraph, telephone, or other communication companies, and public utilities furnishing or distributing electricity, water, gas, or steam, or (2) any hospital, infirmary, sanitarium or other institution, publicly or privately owned, designated as a casualty receiving hospital or emergency base hospital by the Chief of the Emergency Medical Service of the local United States Citizens Defense Corps, or (3) any other organization designated as such by the Director.

3. Certificate and Agreement of Civil Authority of Borrowing Community.

Each community to which a loan of property is to be made by the Director, shall, prior to the making of such loan, furnish to the Office of Civilian Defense a Certificate and Agreement, on OCD Form No. 501, duly executed by its chief executive officer, as the civil authority of the community duly authorized to act in such respect, which Certificate and Agreement shall include, among other things, a certification that the community is in need of, but unable to provide, the property therein specified, an agreement on behalf of the community as to the maintenance, use, distribution, and return of the property, and a certification as to the appointment, by the duly authorized appointive authority, of a designated Local Property Officer as the agent of the community authorized to receive the property on behalf of the community and to perform the duties prescribed with respect thereto by the Director. Such certification that the community is in need of, but unable to provide, the property specified in its Certificate and Agreement shall be deemed to relate to the locality within which the community is situated; and any such property loaned to the community may be distributed by it throughout such locality, subject to the provisions of Section 7 of

²⁰ See Appendix 22, *infra*, p. 154.

²¹ See Appendix 14, *infra*, p. 133.

²² "The term 'Commander' relates to the person who, whether or not designated 'Commander,' performs the functions of such office, including supervising the organization, training, operation and direction of the Citizens Defense Corps. It is recommended that the title 'Commander' be adopted generally. If the Local Property Officer has any doubt whether the local official not designated as 'Commander' should be regarded as such for purposes of Regulations No. 1, the Regional Director should determine the question and make an appropriate designation." (OCD Instructional Letter No. 29, as revised on September 18, 1942.)

these Regulations. The community to which such property is loaned and which is responsible for such property may make any mutually satisfactory arrangements with other communities or individuals or organizations, within the locality in which the property is distributed, with respect to the maintenance and protection thereof. Each Local Property Officer shall agree, on OCD Form No. 501, to comply with all rules, regulations, orders, and instructions of the Director.

4. Duties of Regional Directors.

Regional Directors of the Office of Civilian Defense, appointed by the Director, will supervise the activities of State Property Officers and Local Property Officers with the view of assuring compliance with rules, regulations, orders, and instructions of the Director. Regional Directors are authorized to take such steps as may be deemed by them to be desirable to supervise the arrangements made by State Property Officers and Local Property Officers with respect to the storage, handling, maintaining, protecting, delivering, and returning of all property and the maintaining and filing of proper reports, records, and accounts with respect thereto, and in particular with respect to the distribution of property in the communities in accordance with the provisions of Section 7 of these Regulations; and they shall from time to time make inspections for such purpose.²³

5. Appointment and Tenure of State and Local Property Officers.

(a) As a condition precedent to the making of any loan to a community in any State, the Governor of such State shall duly appoint a State Property Officer. The duties and obligations of each State Property Officer shall be as set forth in these Regulations or as otherwise prescribed by the Director. Each State Property Officer shall hold office during the pleasure of the appointing Governor. Appointments of State Property Officers shall be on OCD Form No. 500; each State Property Officer shall agree thereon to comply with all rules, regulations, orders, and instructions of the Director.

(b) As a condition precedent to the making of any loan to a community, the duly authorized appointive authority of such community shall duly appoint, on OCD Form No. 501, a Local Property Officer to serve as the duly authorized agent of the community to receive such loan upon such terms and conditions as shall be prescribed by the Director. The duties and obligations of each Local Property Officer shall be as set forth in these Regulations or as otherwise prescribed by the Director. Each Local Property Officer shall hold office during the pleasure of the local appointive authority.

(c) If the office of State Property Officer or Local Property Officer shall become vacant by resignation, death, removal, or other cause, a successor Property Officer shall be duly appointed, on OCD Form No. 512, by the Governor of the State or the chief executive officer of the community, as the case may be, and shall agree thereon to comply with all rules, regulations, orders, and instructions of the Director.

6. Bonding of Property Officers.

(a) The Office of Civilian Defense, Washington, D. C., requires State Property Officers to be bonded in the amount of \$10,000 to the Federal Government, and the obligation for the premium thereon shall be assumed by the State Property Officer or by the State designating any such State Property Officer.

(b) The Office of Civilian Defense, Washington, D. C., requires Local Property Officers to be bonded to the Federal Government, in the amount of \$10,000 in communities whose population is 200,000 or more, and \$5,000 in other communi-

²³ This section was stricken out and a new section substituted by Amendment No. 2 to Regulations No. 1. Text in Appendix 8, *infra*, p. 120.

ties, and the obligation for the premium thereon shall be assumed by the Local Property Officer or by the community for which the Local Property Officer has been designated.

(c) Each such bond shall be executed on OCD Form No. 502 and by such corporate surety as shall be acceptable to the Director.

7. Distribution and Use of Civilian Defense Property.

(a) Each Local Property Officer shall distribute the property received by him, as the authorized agent of his community, to responsible and qualified (i) individuals or (ii) organizations which are essential facilities, in, or having an office in, his community or the territory adjacent thereto or, if the Director shall order distribution outside of the community, then in the locality within which the community is situated;²⁴ such distribution shall be in such amounts and in such manner, and to such persons and organizations (subject to paragraph (c) of this Section 7) as shall be deemed advisable by the Commander of the community in which distribution is to be made (or, in the absence of a Commander, by such person as shall be designated by the Regional Director) in order to comply with the requirements of Federal law, including the requirement that such property shall be distributed for the adequate protection of persons and property from bombing attacks, sabotage, or other war hazards: *Provided, however,* That such distribution shall at all times be subject to and in accordance with such rules, regulations, orders, and instructions as the Director may make with respect thereto.²⁵ Each Local Property Officer shall obtain from each individual or organization to whom any property is distributed by him, whether for further distribution or for their own use, a duly executed receipt for the property.

(b) Each individual or organization to whom property is distributed by the Local Property Officer, and any subsequent transferee thereof, shall exercise due care in the storage, handling, maintenance, protection, and use thereof; shall use such property only for the protection of persons and property from bombing attacks, sabotage, and other war hazards, or for training and instruction incidental to such use; shall return such property, unless lost, destroyed, or consumed in the course of such use, forthwith to the United States Government at any time upon order of or pursuant to rules and regulations prescribed by the Director; shall comply with all rules, regulations, orders, and instructions

²⁴ "Local Property Officers may regard as responsible and qualified any individual or organization designated by the local Commander of the Citizens Defense Corps or other persons authorized by Regulations No. 1 to direct the distribution of property, provided such individual or organization is eligible to receive such property in accordance with the provisions of Regulations No. 1." (OCD Instructional Letter No. 29, as revised on September 18, 1942.) In the San Francisco Metropolitan Civilian Defense Area, the Coordinator appointed by the Director of the OCD has charge of the distribution of all protective equipment allocated and loaned under these Regulations, and this Coordinator is authorized, in lieu of the Commanders of the Defense Corps in the Area, to issue orders to Local Property Officers as to the manner of such distribution. OCD Administrative Order No. 20, Amendment No. 1, February 1, 1943. The same is true in the Washington, D. C., Metropolitan Area. OCD Administrative Order No. 33, February 25, 1943.

²⁵ "Local Property Officers shall in no event distribute property in their own discretion, but only in accordance with proper instructions from a duly authorized person." (OCD Instructional Letter No. 29, as revised on September 18, 1942.) In the same Instructional Letter the Director of the OCD stated that: "It is essential that arm bands loaned to communities under Regulations No. 1 should not be distributed in such manner as would impair the supervision and control of the State Defense Council with respect to arm bands generally. Therefore, whenever arm bands are included in any loaned property, instructions will be issued to the Local Property Officer that distribution shall not be made except upon the approval and authorization of the State Defense Council, which will be in addition to the authorization for distribution from the Commander of the local Citizens Defense Corps."

issued by the Director with respect to said property or the use thereof; and shall not transfer or redistribute any such property except with the approval of the Commander in the community or as otherwise ordered by the Director. Each such distributee shall obtain from any transferee and retain in his own files a duly executed receipt for the property so transferred by him.

(c) Property (except medical equipment and supplies) loaned to communities shall, unless otherwise ordered by the Director, be distributed directly or indirectly only to essential facilities or to members of or, subject to Section 7 (c) of Regulations No. 3²⁸ of the Office of Civilian Defense, trainees for the United States Citizens Defense Corps (hereinafter called the "Defense Corps")²⁹ or to members of the local police department or fire department, all in accordance with the instructions of the Commander. All loaned property, including fire-fighting pumping units, but excluding medical equipment and supplies, received by any community and distributed otherwise than to an essential facility, shall, unless otherwise ordered by the Director, be used only by members of or (subject to Section 7 (d) of said Regulations No. 3) trainees for the Defense Corps or by members of the local police department and fire department. Unless otherwise ordered by the Director, any community which distributes any such loaned property (except such as is distributed to an essential facility) to any person not a member of or trainee for the Defense Corps, or a member of the local police department or fire department, or not in accordance with the instructions of the Commander, or which permits any person not a member of or, to the extent provided in Section 7 (c) of said Regulations No. 3, a trainee for the Defense Corps or a member of the local police department or fire department, to use or wear any such loaned property, or which fails promptly to recall any such loaned property from any person whose membership or training status in the Defense Corps has been suspended or terminated, shall be deemed to have violated its agreement (OCD Form No. 501) with the Director pursuant to which such property was loaned; and in such event the Director may proceed to recall all or any part of the property of any character loaned to such community.

(d) Any loaned property heretofore or hereafter distributed by a Local Property Officer may be recalled by the Commander in the community in which the property is distributed from the distributee or any transferee and such property may be redistributed, subject to the provisions of this Section 7, in such manner as shall be deemed advisable by such Commander.

8. Duties of State Property Officers.

The duties of each State Property Officer are to:

(a) Receive all property shipped to him by the Office of Civilian Defense for communities within his State, and cause such property to be delivered forthwith and without delay to the Local Property Officers of the respective

²⁸ See Appendix 14, *infra*, p. 133.

²⁹ The effect of this provision, in conjunction with the said Section 7 (c) of Regulations No. 3, is, as stated by the Director of the OCD, that "loaned property may not be distributed to trainees for the Defense Corps except trainees who, in the event of an air raid or other disaster or emergency, are expressly authorized to perform the duties of members. Local Property Officers may rely upon the certification of the Commander or any Chief of Service of the Citizens Defense Corps as to whether persons to whom loaned property is to be distributed are duly enrolled members of the Citizens Defense Corps or are trainees entitled to receive the property in accordance with the foregoing provisions." Loaned property, other than official articles (i. e., arm bands embodying prescribed insignia), may be used by all trainees, while so engaged, to the extent deemed necessary and proper by the instructor. (OCD Instructional Letter No. 29, as revised on September 18, 1942.)

communities, in such amounts and manner as shall be specified in any order or instruction issued by the Office of Civilian Defense, Washington, D. C.²⁸

(b) Maintain an adequate record of all property shipped to him and all property delivered to Local Property Officers within his State, and preserve all receipts for property shipped to and redelivered by him.

(c) Prepare and submit to the Office of Civilian Defense, Washington, D. C., and to his Regional Director, reports and information in such form and manner as required by them, respectively, as to the location, condition, and status of all property in his custody.

(d) Supervise the examination and checking of all property shipped to or by him.

(e) Supervise the storage and handling of all property in his custody, and make arrangements so that such property may be inspected at any time by the representatives of the Office of Civilian Defense.

(f) Make arrangements, satisfactory to the Office of Civilian Defense, Washington, D. C., adequately to store, handle, maintain, protect, deliver, and return all property in his custody, and provide suitable facilities, at the expense of his State, for the proper storage, handling, protection, delivery, and return of all such property: *Provided, however*, That he is not required to obtain fire, burglary, or other insurance with respect to any property.

(g) Make arrangements, satisfactory to the Office of Civilian Defense, Washington, D. C., for the prompt return of any property received by him (unless lost, destroyed, or consumed in the course of its use in accordance herewith and proper Report of Loss or Damage with respect thereto has been filed with and approved by the Office of Civilian Defense) and in his custody if and when recalled for any reason whatsoever by the Office of Civilian Defense, Washington, D. C., and cause such property forthwith and without delay to be expeditiously transported and delivered to or upon the order of the Office of Civilian Defense, Washington, D. C.: *Provided, however*, That any reasonable expense incident to the return of such property will be borne by the Office of Civilian Defense upon the presentation of duly verified vouchers.

(h) Be accountable to the Office of Civilian Defense for all property within his State and of which he has received due notification.

(i) Be responsible to the Office of Civilian Defense for the performance of his duties, including the storing, handling, maintaining, protecting, delivering, and returning of all property received by him or his agents until such property shall have been delivered by him to and received by Local Property Officers in accordance with rules, regulations, orders, and instructions of the Director.

(j) Perform such other duties as may be necessary in administering his office, or as shall be prescribed by the Director.

State Property Officers may appoint agents to assist in the performance of their duties, but shall be responsible for the acts or omissions of such agents.

9. Duties of Local Property Officers.

The duties of each Local Property Officer are to:

(a) Receive all property loaned to his community by the Office of Civilian Defense and shipped to him, as the agent of his community, by the Office of Civilian Defense, or by or on behalf of the State Property Officer, and cause such property to be distributed forthwith and without delay in accordance

²⁸ "State Property Officers are not granted any discretion with respect to the shipment of property, but shall redeliver any property shipped to them in accordance with the instructions of the Director of Civilian Defense." (OCD Instructional Letter No. 29, as revised on September 18, 1942.)

with Section 7 of these Regulations and any other rules, regulations, orders, and instructions of the Director.

(b) Maintain an adequate record of all property delivered to him or for his account, and of all property distributed by him, and preserve all receipts for such property.

(c) Prepare and submit reports and information, in such form and manner as required by his State Property Officer or the Office of Civilian Defense, Washington, D. C., or his Regional Director, as to the location, custody, condition, and status of all property loaned to his community.

(d) Supervise the examination and checking of all property shipped to or by him.

(e) Supervise the storage and handling of all property in his custody, and make arrangements so that such property may be inspected at any time by representatives of the Office of Civilian Defense.

(f) Pursuant to the agreement of his community contained in OCD Form No. 501, make arrangements satisfactory to the Office of Civilian Defense, Washington, D. C., adequately to store, handle, maintain, protect, deliver, and return all property in his custody, and supervise the furnishing of suitable facilities and the making of suitable arrangements for the proper storage, handling, maintenance, protection, distribution, and return of all property loaned to his community but in the custody of others: *Provided, however*, That he is not required to obtain fire, burglary, or other insurance with respect to any property.

(g) Ascertain, as a condition precedent to the distribution by him of any property, that the individuals or organizations to whom the property is to be distributed by him have arranged for and provided suitable facilities as specified in paragraph (f) of this Section 9.

(h) Ascertain, before distributing any fire-fighting pumping units, that the community, pursuant to its agreement contained in OCD Form No. 501, has provided an appropriate vehicle on which said pumps and equipment will be mounted at the expense of the community, to assure the mobility of such equipment.

(i) Obtain from all individuals or organizations to whom any property is distributed by him, whether for further distribution or for their own use, a receipt as provided in Section 7 (a) of these Regulations.

(j) Make arrangements satisfactory to the Office of Civilian Defense, Washington, D. C., for the prompt return of all property loaned to his community (unless lost, destroyed, or consumed in the course of its use in accordance herewith and proper Report of Loss or Damage with respect thereto has been filed with and approved by the Office of Civilian Defense) if and when recalled for any reason whatsoever by the Office of Civilian Defense, Washington, D. C., and cause such property forthwith and without delay to be expeditiously transported and delivered to or upon the order of the Office of Civilian Defense, Washington, D. C.: *Provided, however*, That any reasonable expense incident to the return of such property will be borne by the Office of Civilian Defense upon the presentation of duly verified vouchers.

(k) Be responsible to the Office of Civilian Defense for the performance of his duties, including the storing, handling, maintaining, protecting, delivering, and returning of all property received by him or his agents until such property shall have been distributed by him to and received by individuals or organizations in accordance with rules, regulations, orders, and instructions of the Director.

(l) Initiate and transmit Reports of Loss or Damage as and when required by rules, regulations, orders, or instructions of the Director.

(m) Perform such other duties as may be necessary in administering his office, or as shall be prescribed by the Director with respect thereto.

Local Property Officers may appoint agents to assist in the performance of their duties, but shall be responsible for the acts or omissions of such agents.

10. Operating Instructions.

The Office of Civilian Defense, Washington, D. C., will from time to time issue instructions to State and Local Property Officers relating to procedures and forms for use in performance of their duties.

11. Effective Date.

These Regulations shall become effective immediately.²⁰

JAMES M. LANDIS,

Director of Civilian Defense.

APPENDIX 8

[OCD Regulations No. 1, Amendment No. 2 (October 9, 1942). 7 Fed. Reg. 8239.]

By virtue of the authority vested in me by Executive Order No. 8757,²⁰ dated May 20, 1941, as amended by Executive Order No. 9134,²¹ dated April 15, 1942, and Executive Order No. 9088,²² dated March 6, 1942, and pursuant to Section 1 of the Act approved January 27, 1942,²³ and in accordance with Article 13 of Executive Order No. 9088 dated March 6, 1942, authorizing the Director of Civilian Defense to make and issue such rules, regulations, and orders as he may deem necessary or desirable to carry out the purposes of the aforementioned Act of January 27, 1942, it is hereby ordered that Regulations No. 1²⁴ of the Office of Civilian Defense, as heretofore issued and amended, be further amended as follows:

1. By striking out Section 4 thereof and substituting the following:

"4. Duties and Authority of Regional Directors.

"(a) Regional Directors of the Office of Civilian Defense, appointed by the Director, will supervise the activities of State Property Officers and Local Property Officers with the view of assuring compliance with rules, regulations, orders, and instructions of the Director. Regional Directors are authorized to take such steps as may be deemed by them to be desirable to supervise the arrangements

²⁰ Regulations No. 1, issued March 18, 1942, became effective immediately. Amended as above on August 11, 1942. Further amended on October 9, 1942, substituting a new Section 4, relating to the duties and authority of Regional Directors, and adding a new Section 12, relating to Forest Fire Fighters Service Arm Bands. (Text in Appendix 8, *infra*, this page.) At the end of these regulations, as printed by the Government Printing Office, the attention of all persons dealing with government property is called to the provisions of Section 35 (C) of the United States Criminal Code (U. S. C. A., Title 18, Section 82), relating to purloining, stealing, or injuring property of the United States or property manufactured under contract for the War or Navy Departments. Regulations No. 1 were further amended on December 31, 1942, so as to authorize loans of property directly to the states. (Text in Appendix 9, *infra*, p. 122.)

²¹ See Appendix 1, *supra*, p. 103.

²² See Appendix 4, *supra*, p. 106.

²³ See Appendix 6, *supra*, p. 109.

²⁴ See Appendix 22, *infra*, p. 154.

²⁵ See Appendix 7, *supra*, p. 112.

made by State Property Officers and Local Property Officers with respect to the storage, handling, maintaining, protecting, delivering, and returning of all property and the maintaining and filing of proper reports, records, and accounts with respect thereto, and in particular with respect to the distribution of property in the communities in accordance with the provisions of Section 7 of these Regulations; and they shall from time to time make inspections for such purpose.

"(b) Each Regional Director is authorized, to the extent deemed by him to be necessary in his Region for the protection of persons and property in the event of actual or imminently threatened enemy attack, or in the event of an act of sabotage, to recall any property loaned to any community (whether in the custody of a State Property Officer, a Local Property Officer, or any distributee), to transfer and loan any of such property, as well as any property in any Office of Civilian Defense warehouse or in transit within his Region, to any other community deemed by him to be in need of, but unable to provide, such property, and to direct the manner of distribution of such property in accordance with Section 7 of these Regulations or otherwise. In making any such loan of property, the Regional Director may dispense with, or accept any modification of, OCD Form No. 501 if deemed advisable by him under the circumstances. State Property Officers and Local Property Officers are authorized and directed to act in accordance with any instructions of any Regional Director with respect to the recall, transfer, and loan of property."

2. By adding a new Section 12, as follows:

"12. Forest Fire Fighters Service Arm Bands.

"(a) The Forest Fire Fighters Service has been established by the Director to assist in safeguarding forest lands and other timber facilities and resources, to aid in prevention and suppression of fires which might endanger such facilities and resources, and to minimize the effects of any such fires. Its members (herein called the "Members") are required to perform duties in localities which embrace national, State and private forest lands, national and State parks, rural areas and sparsely settled areas in the public domain. Members require arm bands embodying the prescribed insignia of the Forest Fire Fighters Service as a means of identification in order that they may be permitted to move on the public ways during an air raid or other emergency. The aforesaid localities in which the Members are to operate are in need of such arm bands so that the Members may adequately perform their duties, including the protection of persons and property from fire resulting from bombing attacks, sabotage, or other war hazards; and such localities are unable satisfactorily to provide such arm bands. Accordingly, the Director will make such arm bands available to such localities by loans to the State Foresters, or other State officials responsible for administering affairs relative to forest lands and timber resources (herein referred to as the "Foresters"), as the duly constituted civil authorities of the States comprising or situated within such localities.

"(b) Each borrowing Forester may distribute the arm bands only to duly enrolled Members located within his State and shall promptly recall any arm band from any person ceasing to be a Member. Distribution in every case shall be as directed by the State Coordinator of the Forest Fire Fighters Service. Whenever ordered by the Regional Director, Foresters shall distribute any such arm bands only with the approval of the State Defense Council.

"(c) Each Forester shall agree, as a condition of such loans, that the arm bands so loaned shall be adequately protected and maintained, that they shall not be used otherwise than for the protection of persons or property from bombing attacks, sabotage, or other war hazards, or for training or instructions incidental to such use, that such arm bands, unless lost, destroyed, or consumed

in the course of such use, shall be returned to the United States Government at any time upon order of, or pursuant to rules and regulations prescribed by, the Director, and that he shall comply with all rules, regulations, orders, and instructions issued by the Director with respect to said arm bands.

"(d) The duties and responsibilities of each Forester with respect to borrowed arm bands shall be, to the extent applicable, the same as set forth in Section 9 of these Regulations with respect to Local Property Officers. Foresters may appoint agents to assist in the performance of their duties, and may delegate all or any of their powers to such agents, but shall be responsible for the acts and omissions of such agents.

"(e) Arm bands will be shipped directly to the Foresters, who shall be responsible and accountable therefor. The State Property Officers and Local Property Officers shall have no duties, obligations, or responsibility with respect to such arm bands."

JAMES M. LANDIS, *Director.*

APPENDIX 9

[OCD Regulations No. 1, Amendment No. 3 (December 31, 1942). 8 Fed Reg. 180.]

By virtue of the authority vested in me by Executive Order No. 8757,²⁶ dated May 20, 1941, as amended by Executive Order No. 9134,²⁷ dated April 15, 1942, and Executive Order No. 9088,²⁸ dated March 6, 1942, and pursuant to Section 1 of the Act approved January 27, 1942,²⁹ and in accordance with Article 13 of the Executive Order No. 9088 dated March 6, 1942, authorizing the Director of Civilian Defense to make and issue such rules, regulations, and orders as he may deem necessary or desirable to carry out the purposes of the aforementioned Act of January 27, 1942, it is hereby ordered that Regulations No. 1³⁰ of the Office of Civilian Defense, as heretofore issued and amended, be further amended by adding a new Section 13, as follows:

"13. Loans to States.

"(a) Anything in these Regulations to the contrary notwithstanding, loans of property may be made to any State determined by the Director to be in need of, but unable to provide, such property for the adequate protection of persons and property from bombing attacks, sabotage or other war hazards. Prior to making any such loan, the State shall furnish to the Office of Civilian Defense (in addition to OCD Form No. 500, which appoints a State Property Officer, and a bond for such State Property Officer on OCD Form No. 502) an agreement on OCD Form No. 528, duly executed by its Governor, as the Civil authority of the State duly authorized to act in such respect, which agreement shall, among other things, confirm that the undertakings of the State on OCD Form No. 500 shall apply to all property loaned to the State, and that such property shall not be used otherwise than for the protection of persons or property from bombing attacks, sabotage or other war hazards, or for training or instruction incidental to such use.

"(b) Each State Property Officer shall distribute property received by him, as the authorized agent of his State, only to such responsible and qualified individuals or organizations, and in such amounts and manner, as shall be

²⁶ See Appendix 1, *supra*, p. 103.

²⁷ See Appendix 4, *supra*, p. 106.

²⁸ See Appendix 6, *supra*, p. 109.

²⁹ 56 Stat. 19; see Appendix 22, *infra*, p. 154.

³⁰ See Appendix 7, *supra*, p. 112.

directed or authorized by the Director. Each State Property Officer shall obtain from each individual or organization to whom any property is distributed by him, whether for further distribution or for their own use, a duly executed receipt for the property.

"(c) Each individual or organization to whom property is distributed by a State Property Officer, and any subsequent transferee thereof, shall comply with the provisions of Section 7 (b) of these Regulations.

"(d) The applicable provisions of Section 8 hereof shall apply to all property loaned to any State and received by the State Property Officer thereof.

"(e) Property loaned to any State and to be distributed in any community thereof may be shipped, by the Office of Civilian Defense or by the State Property Officer, to the Local Property Officer of such community, in which case such Local Property Officer shall be responsible and accountable for such property to the same extent as property loaned directly to his community; provided, however, that he shall deal with such property only in accordance with the instructions of the State Property Officer, except as otherwise directed or authorized by the Director or, in case of emergency, as provided in Section 4 (b), by the Regional Director."

JAMES M. LANDIS, *Director*.

APPENDIX 10

[OCD Regulations No. 2 (August 26, 1942). 7 Fed. Reg. 6795.]

INSIGNIA

By virtue of the authority vested in me by Executive Order No. 8757⁴⁷ dated May 20, 1941, as amended by Executive Order No. 9134⁴⁸ dated April 15, 1942, and Executive Order No. 9088,⁴⁹ dated March 6, 1942, and pursuant to the Act of June 29, 1932,⁵⁰ as amended by the Act of May 22, 1939,⁵¹ and Section 2 of the Act of January 27, 1942,⁵² and in accordance with Articles 12 and 13 of Executive Order No. 9088, dated March 6, 1942, authorizing the Director of Civilian Defense to make and issue such rules, regulations, and orders as he may deem necessary or desirable relating to the wearing of official insignia and to carry out the purposes of the aforementioned Act of January 27, 1942, the following regulations are hereby made and issued:

1. Prescribed Insignia.

(a) *Basic Insigne*.—The prescribed basic insigne of the Office of Civilian Defense shall be a design, in the form of an applique emblem granted by

⁴⁷ See Appendix 1, *supra*, p. 103.

⁴⁸ See Appendix 4, *supra*, p. 106.

⁴⁹ See Appendix 6, *supra*, p. 109.

⁵⁰ 47 Stat. 342.

⁵¹ 53 Stat. 752. In its amended form the statute reads as follows: "Hereafter the manufacture, sale, or possession of any badge, identification card, or other insignia, of the design prescribed by the head of any department or independent office of the United States for use by any officer or subordinate thereof, or of any colorable imitation thereof, or the photographing, printing, or in any other manner making or executing any engraving, photograph, print, or impression in the likeness of any such badge, identification card, or other insignia, or of any colorable imitation thereof, is prohibited, except when and as authorized under such regulations as may be prescribed by the head of the department or independent office of which such insignia indicates the wearer is an officer or subordinate."

⁵² 56 Stat. 19. See Appendix 22, *infra*, p. 154.

Letters Patent No. D-129797 of October 7, 1941, and shall consist of the letters "CD" in red centered in a white equilateral triangle, embossed on a circular field of blue.

(b) *Insignia of Administrative Staff.*—The prescribed insignia for the Administrative Staff shall consist of the basic insignie of the Office of Civilian Defense, which, when used by persons employed or appointed in any capacity in the Washington office and Regional Offices of the Office of Civilian Defense, may be superimposed on the letters "US" (in the form of an applique emblem granted by Letters Patent No. D-129812 of October 7, 1941), and when used by members of State Defense Councils or Local Defense Councils, or Committees thereof, including the local Civilian Defense Volunteer Office, or persons who are employed or appointed by such Councils or Committees as staff members or employees, may be used together with the name, or abbreviation of the name, of the particular State or community.⁴⁶

(c) *Insignia of Defense Corps, Service Corps, Civil Air Patrol, Forest Fire Fighters Service, Evacuation Service, and Auxiliary Group.*—The prescribed insignia for units of the United States Citizens Defense Corps (hereinafter referred to as "Defense Corps"), the United States Citizens Service Corps (hereinafter referred to as "Service Corps"), the Civil Air Patrol, the Forest Fire Fighters Service, the Civilian Evacuation Service (hereinafter referred to as "Evacuation Service"), and the Civilian Defense Auxiliary Group (hereinafter referred to as "Auxiliary Group"), shall consist of a white equilateral triangle embossed on a circular field of blue similar to the basic insignie of the Office of Civilian Defense, but with an identifying device (in red or blue, as hereinafter indicated), described below for the respective units, substituted in lieu of the letters "CD" appearing in the basic insignie. The identifying devices for the prescribed insignia of the present units of the Defense Corps, the Service Corps, the Civil Air Patrol, the Forest Fire Fighters Service, the Evacuation Service, and the Auxiliary Group, and the Letters Patent covering such insignia, are as follows:

⁴⁶ The Director has described the intent of this section in the following terms: "Section 1 (b) of OCD Regulations No. 2 prescribes insignia for the Administrative Staff. (This should be distinguished from the "Staff Unit" of the U. S. Citizens Defense Corps, which has its own insignie—the blue five pointed star above the letters CDC in red on the usual white triangle superimposed on the circular blue field—used by the Commander and Chiefs of Service of the U. S. Citizens Defense Corps and other members on the staff of the Commander (see OCD Regulations No. 3, Section 16), except Bomb Reconnaissance Agents, Messengers and Drivers who have their own prescribed insignia.) The Administrative Staff includes all persons employed or appointed in any capacity by the Washington Office and Regional Offices of the Office of Civilian Defense, and also all members of State Defense Councils or Local Defense Councils, or Committees thereof, including the local Civilian Defense Volunteer Office, or persons who are employed or appointed by such Councils or Committees as staff members or employees (exclusive of the Staff Unit of the U. S. Citizens Defense Corps). The Administrative Staff uses the basic insignie (the letters "CD" in red on the usual white triangle and blue field). Members of the U. S. Administrative Staff (Washington and Regional Offices) use the basic emblem which may be superimposed upon the letters "U.S." State and Local Administrative Staff members use the basic emblem with or without the name of the State or community below the insignie. Arm bands may not be used by all members of the Administrative Staff, but only those designated, pursuant to Supplementary Order No. 1 to Office of Civilian Defense Regulations No. 2, as persons whose duties reasonably require them to be entitled to be on the streets in an emergency." (OCD Operations Letter No. 72, September 12, 1942.)

United States Citizens Defense Corps:

Unit	Letters Patent	Identifying Device (red, except Staff Unit)
Staff	D-132589	Blue five-pointed star centered above letters "CDC" in red.
-Bomb Reconnaissance Agent	D-129799	Diving Bomber.
Air Raid Wardens	D-129801	Seven diagonal stripes, alternately red and white.
Auxiliary Police	D-129803	Shield in the form of an inverted triangle, with sides slightly curved outward.
Auxiliary Firemen	D-129802	Cross pattée.
Fire Watchers	D-129807	Flame.
Demolition and Clearance	D-129804	Pick, handle upward.
Road Repair	D-129805	Shovel, spade downward.
Rescue	D-129800	Ladder.
Decontamination	D-129810	Chemical retort.
Medical	D-129811	Caduceus.
Nurses' Aides	D-129798	Red cross.
Drivers	D-129808	Steering wheel.
Messengers	D-129806	Lightning flash.
Emergency Food and Housing	D-129809	Cup, handle to right.
Utility Repair	D-132588	Pliers, jaws closed, handles downward.
Instructors. (Instructors who have graduated from a War Department Civilian Protection School may wear Instructors' insignia placed above a silver ribbon on which are the letters "WDCPS.")	D-132590	Inverted equilateral triangle, centered above which is falling bomb, to the left of which is a chemical retort, and to the right of which is a flame.
Chaplains	Patent pending.	Christian: Latin cross. Jewish: Six-pointed star centered above Tablets of the Law in silhouette.

United States Citizens Service Corps:

Unit	Letters Patent	Identifying Device (red)
Basic Insigne	Patent pending	Large block V with a C half the size and to the left of the V, and a D half the size and to the right of the V.*

* When locally desired, an encircling white border may be added to the insignie of a member of the Citizens Service Corps, to denote the field within which such volunteer is working, namely, "Child Care," "Consumer Services," etc. (OCD Operations Letter No. 75, September 21, 1942.)

Civil Air Patrol:

Unit	Letters Patent	Identifying Device (red)
Basic Insigne	D-132352	Propeller.
Pilot Wings	D-132353	Propeller, with a silver eagle, wings outstretched, gripping the upper periphery of the basic circle.
Observer Wings	D-132354	Propeller, with a silver spread eagle wing extending to right of basic circle.

Forest Fire Fighters Service:

Unit	Letters patent	Identifying device (red)
Basic Insigne	Patent pending	Pine tree.

Civilian Evacuation Service:

Unit	Letters Patent	Identifying Device
Basic Insigne	Patent pending	Large block E in white on red disk.

Civilian Defense Auxiliary Group:

Unit	Letters Patent	Identifying Device (blue)
Basic Insigne.....	D-129797.....	Letters "CD."

(d) *Modifications of Prescribed Insignia.*—Prescribed insignia may not be altered or modified in any manner, and no additional words or devices may be superimposed on prescribed insignia, except the letters "US" on the basic insignie of the Civil Air Patrol within the segment of the circle below the triangle. However, the name of a State or community or the designation of the occupation or profession of the wearer may be placed on official articles in addition to the prescribed insignie.

(e) *Additional Insignia.*—The Director of the Office of Civilian Defense (hereinafter referred to as the "Director") may from time to time prescribe, by order, other designs as insignia for additional units of the Defense Corps, or for any other group established or designated by order of the Director.

(f) *"CD."* The use of the letters "CD" alone, and not in connection with prescribed insignia of the Office of Civilian Defense or any branch or unit thereof, is restricted to arm bands for registered trainees for the Defense Corps.

2. Official Articles.

Any prescribed insignia may be embodied in arm bands, brassards, buttons, pins, automobile plates, decalcomania, certificates of membership, and other articles of identification (hereinafter referred to as "official articles")⁴⁷ which shall be worn or used only by persons specified in Section 5 of these regulations and which shall constitute the official identification of such persons. Official articles shall conform to the specifications established by order or instruction of the Director,⁴⁸ and may be worn or used only in the manner specified by order or instruction of the Director.

3. Licenses to Manufacture and Sell.

The Director may enter into License Agreements authorizing the manufacture, sale, and distribution of official articles. Official articles (except certificates of membership and identification cards) shall not be manufactured, sold, or distributed except pursuant to and in accordance with the terms of such License Agreements unless otherwise permitted by the Director. Each Licensee shall comply with all the terms and conditions prescribed in the License Agreement. Official articles shall not be sold or distributed by licensed manufacturers until production samples have been approved by the Director. The Licensee or any other person or corporation shall not sell any official articles at a price in excess of the price set forth in the License Agreement pursuant to which such articles were manufactured, and shall not sell or distribute official articles except as prescribed in such License Agreement and in accordance with rules, regulations, orders, and instructions of the Director.⁴⁹

⁴⁷ For list of official articles see OCD Operations Letter No. 72, September 12, 1942.

⁴⁸ Specifications for official articles have been prescribed by Supplementary Order No. 2, dated May 28, 1942, as amended by orders dated July 9, 1942; July 28, 1942; and August 25, 1942. [This footnote is in the original. The said Supplementary Order was revised on October 23, 1942; text in Appendix 12, *infra*, p. 130.]

⁴⁹ A license to manufacture official articles is revocable, non-exclusive, and non-transferable. Licenses covering Nurses' Aides insignie will be issued only to manufacturers selected by the American Red Cross. (OCD Operations Letter No. 72, September 12, 1942.)

4. Sale and Distribution.

Official articles embodying the prescribed insignia of the Defense Corps, the Service Corps, the Evacuation Service, the Auxiliary Group, or any other group designated by order of the Director, shall not be sold or distributed by a manufacturer unless such sale or distribution is approved by the appropriate Regional Director of the Office of Civilian Defense, or by the State Defense Council of the State of sale or distribution in the event that the appropriate Regional Director of the Office of Civilian Defense has delegated such power of approval to the State Defense Council, or otherwise in accordance with orders of the Director; provided, however, that the foregoing shall not apply to official articles embodying Nurses' Aides insignie, which shall not be sold or distributed by a manufacturer except to or with the approval of the American Red Cross.⁵⁰ Official articles for wear or use by enrolled members of the Civil Air Patrol shall not be sold or distributed by a manufacturer unless such sale or distribution is approved by the National Commander or a Wing (State) Commander of the Civil Air Patrol, or otherwise in accordance with orders of the Director. Official articles for wear or use by enrolled members of the Forest Fire Fighters Service shall not be sold or distributed by a manufacturer unless such sale or distribution is approved by the National Coordinator or a State Coordinator of the Forest Fire Fighters Service, or otherwise in accordance with orders of the Director. Records shall be kept by the approving authority of all approved sales or distributions and shall be held available for examination by the Office of Civilian Defense.

5. Wear and Use of Official Articles.

(a) It shall be unlawful for any person to wear or use any official article except:

(1) Persons who are employed or appointed in any capacity in the Washington Office or any Regional Office of the Office of Civilian Defense, which persons are authorized to wear and use the United States insignie of the Administrative Staff.

(2) Members of any State Defense Council or Local Defense Council or Committees thereof, including the Civilian Defense Volunteer Office, or persons who are employed or appointed by such Councils or Committees as staff members or employees, which persons are authorized to wear or use the State insignie of the Administrative Staff.

(3) Persons who are members, after having successfully completed prescribed courses of training or instruction, or meeting any other requirements prescribed at any time by rules, regulations, orders, or instructions of the Director, of the Defense Corps, the Service Corps, the Civil Air Patrol, the Forest Fire Fighters Service, the Evacuation Service, the Auxiliary Group, or any other group designated by rules, regulations, or orders of the Director; provided, however, that the organized personnel certified by the American Red Cross to a Commander of the Defense Corps for emergency feeding, housing, and clothing services, if such personnel is satisfactory to the Commander and is placed

⁵⁰ OCD Medical Division Memorandum No. 17, September 21, 1942, reads in part as follows: "Official articles embodying the Nurses' Aides insignie shall not be sold or distributed by such a licensed manufacturer except to the American National Red Cross. Such articles shall be issued by the appropriate Chapter of the Red Cross only to persons certified by the Red Cross Chapter as having completed the prescribed course of training and qualified for membership, and who have been certified by the Local Defense Council as being duly enrolled members of the United States Citizens Defense Corps in accordance with Office of Civilian Defense Regulations No. 3." See also, OCD Operations Letter No. 72, September 12, 1942, paragraph 5 (a).

under his command in an emergency, may be authorized by the Commander to wear and use official articles embodying the prescribed insignie of the Emergency Food and Housing Unit of the Defense Corps, notwithstanding the fact that such persons are not members of the Defense Corps.

(4) Persons who have been duly enrolled for a course of training or instruction, approved by the Office of Civilian Defense, in the Defense Corps, the Service Corps, the Civil Air Patrol, or any other group designated by rules, regulations, or orders of the Director, provided, however, that the right of any such persons to wear or use any official article, with or without any prescribed additional designation to indicate the training status of such persons, and the conditions upon which such official articles may be so worn or used, shall have been specifically authorized by rules, regulations, orders, or instructions of the Director. Trainees for the Nurses' Aides Unit of the Defense Corps may wear the prescribed insignie on uniform sleeves while engaged in practice work in hospitals.

(b) The right of any such authorized person to wear or use any official article shall exist only so long as he shall comply with all rules, regulations, orders, and instructions made at any time by the Director with respect to the use or wearing of prescribed insignia, and the eligibility, training, qualifications, or duties of such persons, and such right shall be subject at all times to the terms and conditions of any such rules, regulations, orders, or instructions.

(c) Any person so authorized to wear or use official articles may wear or use only articles bearing the insignie prescribed by the Director for the particular office or council of which such person is an official, member, or worker, or for the group or unit of which such person is a member or trainee.

6. Wear and Use of Arm Bands or Brassards.

The wear and use of arm bands or brassards, embodying prescribed insignia, shall constitute a substitute for a uniform, and shall be restricted to members of, or trainees (subject to the limitations of Section 5 (a) (4) of these Regulations) for, the Defense Corps (except the Instructors unit), the Civil Air Patrol, the Forest Fire Fighters Service, the Auxillary Group or any other group designated by order of the Director,⁵¹ as well as persons certified by the American Red Cross and authorized as provided in Section 5 (a) (3) of these Regulations, while actively engaged in the performance of duties or while in transit to or from their places of duty.

7. Prohibitions on Use of Insignia.

(a) The Director may prohibit or restrict, in his discretion, the manufacture, sale, distribution, wearing, or use of articles embodying the prescribed insignia, or the reproduction or imitation of any prescribed insignia, or the photographing, printing, or in any other manner making or executing any engraving, printing, or impression in the likeness of any prescribed insignia.

(b) Accurate reproduction of prescribed insignia for advertising, display, or any other commercial purposes, other than in connection with official articles, is authorized, subject to paragraph (a) of this section, except where such reproduction, in the opinion of the Director, would tend to bring discredit on

⁵¹ Essential personnel of the Administrative Staff (formerly known as the Staff Corps of the Office of Civilian Defense) in the Washington Office and Regional Offices and the State and Local Defense Councils have been so designated by Supplementary Order No. 1 dated May 12, 1942. [This footnote is in the original. The said Supplementary Order is set forth in text in Appendix 11, *infra*, p. 129.]

the Office of Civilian Defense, any State Defense Council or any Local Defense Council, or to mislead, confuse, misrepresent or defraud.²³

(c) The reproduction of prescribed insignia in connection with any publication or article used for political purposes is prohibited.

8. Violations.

Any person found guilty of violating the above-prescribed regulations respecting the manufacture, sale, distribution, wear, and use of prescribed insignia, shall, upon conviction, be subject to the penalties provided in Section 2 of the Act of January 27, 1942,²⁴ and Section 2 of the Act of June 29, 1932, as amended on May 22, 1939.²⁵

9. Effective Date.

These Regulations shall become effective immediately.²⁶

JAMES M. LANDIS,

Director of Civilian Defense.

APPENDIX 11

[OCD Regulations No. 2, Supplementary Order No. 1 (May 12, 1942). 7 Fed. Reg. 3785.]

ARM BANDS AND BRASSARDS FOR STAFF CORPS OF THE OFFICE OF CIVILIAN DEFENSE

By virtue of authority vested in me as Director of Civilian Defense, and pursuant to Section 6 of Regulations No. 2²⁷ of the Office of Civilian Defense, providing for designation by the Director of Civilian Defense (hereinafter referred to as the "Director") of additional groups which may wear and use arm bands or brassards embodying the prescribed insignia of the Office of Civilian Defense, it is hereby ordered that:

The Staff Corps of the Office of Civilian Defense, to the extent hereinafter specified, is designated as a group entitled to wear and use, in accordance

²³ The Director of the OCD has further indicated the official policy in this connection as follows: "The patented and prescribed insignia may not be used on covers, title pages, etc., of books or pamphlets of instruction or of unofficial newspapers, magazines or other publications, unless consented to by the Public Advice and Counsel Division of the Office of Civilian Defense, Washington, D. C., after it has reviewed the text. This does not preclude use of insignia in connection with articles or advertisements in newspapers, magazines or other publications, provided that such use is not contrary to the spirit and intent of Section 7 (b) of OCD Regulations No. 2, and that the copy does not improperly indicate official approval of the product advertised or improperly describe an OCD activity. The Nurses' Aides' insignia, embodying the Red Cross emblem, may not be used without consent of the National American Red Cross. * * * Pursuant to said Section 7 (b), manufacturers will be permitted, without obtaining Licenses, to manufacture and sell, direct to the public, such articles as cigarette cases and vanity cases bearing prescribed insignia, provided no critical materials are used. However, insignia may not be used on articles which, although not Official Articles, might be taken to indicate official status; for example, neckties and personal or business stationery. Regional Offices should report the sale of any such articles to the Insignia Unit of the Office of Civilian Defense, Washington, D. C." (OCD Operations Letter No. 72, September 12, 1942.)

²⁴ Fine of not exceeding \$100 or imprisonment not exceeding 30 days, or both. [This footnote is in the original. The said Act is set forth in Appendix 22, *infra*, p. 154.]

²⁵ Fine of not exceeding \$250 or imprisonment not exceeding 6 months, or both. [This footnote is in the original. The said Act of June 29, 1932 appears in 47 Stat. 342, and the Act of May 22, 1939 is printed *supra*, p. 123, note 44.]

²⁶ Regulations No. 2, issued April 29, 1942, became effective immediately. Section 7 (c) added by Amendment No. 1 dated August 18, 1942. Regulations generally revised as printed herein by Amendment No. 2 dated August 26, 1942. [This footnote is in the original.]

²⁷ See Appendix 10, *supra*, p. 123.

with such Section 6, arm bands or brassards embodying the prescribed insignia of such Staff Corps, subject, however, to the following conditions:

(1) The Director shall designate which members of such Staff Corps in the Washington Office of the Office of Civilian Defense shall be entitled to wear and use arm bands or brassards.

(2) The Regional Directors of the Office of Civilian Defense shall designate which members of such Staff Corps in the respective Regional Offices of the Office of Civilian Defense shall be entitled to wear and use arm bands or brassards.

(3) The respective State Defense Councils and Local Defense Councils shall designate which members of such Staff Corps who are members of such State Defense Councils or Local Defense Councils shall be entitled to wear and use arm bands or brassards.

(4) The Director, the Regional Directors, and the State and Local Defense Councils shall designate only such persons on said Staff Corps as entitled to wear and use such arm bands or brassards as shall be deemed by them to be persons whose duties reasonably require them to be entitled to be on the streets during an air raid, blackout, practice blackout, or other emergency, which persons may include officials required to direct, supervise or inspect activities during such periods and a limited number of essential office personnel, including telephone and elevator operators.

May 12, 1942.

JAMES M. LANDIS,
Director of Civilian Defense.

APPENDIX 12

[OCD Regulations No. 2, Supplementary Order No. 2 (Revised), (October 23, 1942). 7 Fed. Reg. 8637.]

SPECIFICATIONS FOR OFFICIAL ARTICLES

By virtue of the authority vested in me as Director of Civilian Defense by Executive Order No. 8757,⁸⁷ dated May 20, 1941, as amended by Executive Order No. 9134,⁸⁸ dated April 15, 1942, and pursuant to Section 2 of Office of Civilian Defense Regulations No. 2,⁸⁹ it is hereby ordered that Supplementary Order No. 2, dated May 28, 1942 (as heretofore amended by Amendments Nos. 1, 2, 3 and 4 thereto), to Office of Civilian Defense Regulations No. 2 is hereby cancelled and rescinded, and the following substituted therefor:

1. The following are prescribed as articles of identification for official use, called "Official Articles," which may embody the appropriate prescribed Civilian Defense insignia, together with the specifications for and prescribed manner of use of such articles:

(a) *Arm Bands* (Administrative Staff, U. S. Citizens Defense Corps—except Instructors, Civil Air Patrol, Forest Fire Fighters Service, Civilian Defense Auxiliary Group):

(1) May be manufactured of suitable material approved by the Office of Civilian Defense and shall be from 10 inches to 18 inches in length and 4 inches in width. The width may be up to 4½ inches when necessary to accommodate permitted lettering. The prescribed insignia must be 3½ inches in diameter.

⁸⁷ See Appendix 1, *supra*, p. 103.

⁸⁸ See Appendix 4, *supra*, p. 106.

⁸⁹ See Appendix 10, *supra*, p. 123.

(2) May be manufactured in accordance with specifications issued at any time by the United States Army Quartermaster Corps. Such Army specifications for Civilian Defense arm bands are to be considered a part of this Supplementary Order.

(b) *Lapel Emblems*

(1) (Administrative Staff, U. S. Citizens Defense Corps, U. S. Citizens Service Corps, Civil Air Patrol, Forest Fire Fighters Service, Civilian Evacuation Service): The prescribed insignia, $\frac{1}{2}$ to 1 inch in diameter, may be used on pins, buttons and other emblems, for wear on lapels or dress, made of metal or acceptable substitute therefor. (Metal emblems shall be finished in hard fired enamel.) Such emblems may embody a border with appropriate permissible lettering.

(2) (Civil Air Patrol): The basic Civil Air Patrol insignia may be used on lapel emblems with spread eagle wings on each side of, and the letters "CAP" above the insignia. Such emblem shall be $1\frac{1}{4}$ inches in length.

(c) *Sleeve Emblems for Uniforms* (Administrative Staff, U. S. Citizens Defense Corps, U. S. Citizens Service Corps, Civil Air Patrol, Forest Fire Fighters Service, Civilian Evacuation Service): The prescribed insignia may be used on suitable materials as sleeve emblems, $2\frac{1}{4}$ inches in diameter (except Civil Air Patrol must be 3 inches in diameter). Sleeve emblems may embody a tab or border with appropriate permissible lettering. Such emblems should be worn on the left sleeve, $\frac{1}{2}$ inch below the shoulder seam.

(d) *Collar and Cap Emblems for Uniforms* (Administrative Staff, U. S. Citizens Defense Corps, U. S. Citizens Service Corps, Civil Air Patrol, Forest Fire Fighters Service, Civilian Evacuation Service): The prescribed insignia may be used on suitable material as collar and cap emblems, $1\frac{1}{4}$ inches in diameter.

(e) *Helmet Emblems* (U. S. Citizens Defense Corps): The prescribed insignia may be used as helmet emblems from $1\frac{3}{4}$ inches to $2\frac{1}{4}$ inches in diameter.

(f) *Automobile Emblems* (Administrative Staff, U. S. Citizens Defense Corps, U. S. Citizens Service Corps, Civil Air Patrol, Forest Fire Fighters Service, Civilian Evacuation Service, Civilian Defense Auxiliary Group): The prescribed insignia may be included, with or without appropriate lettering, on automobile emblems. Such emblems may be in a circular shape from 4 inches to 12 inches in diameter, or in a rectangular shape with a maximum size of 6 inches by 12 inches. (Such emblems may be used only subject to compliance with applicable laws, ordinances and regulations.)

(g) *Emergency Vehicle Pennants* (Administrative Staff, U. S. Citizens Defense Corps, Civil Air Patrol, Forest Fire Fighters Service, Civilian Defense Auxiliary Group): The basic insignia only, entirely in red, 6 inches in diameter, may be embodied in a pennant in the shape of an equilateral triangle with sides 18 inches in length. Such pennants may be used only pursuant to applicable orders of the Director of Civilian Defense.^{50a}

(h) *Certificates of Membership* (U. S. Citizens Defense Corps, OCD Form 103; U. S. Citizens Service Corps, OCD Form 703; Forest Fire Fighters Service, OCD Form 704.)

(i) *Identification Cards* (U. S. Citizens Defense Corps, OCD Form 702; U. S. Citizens Service Corps, OCD Form 706; Forest Fire Fighters Service, OCD Form 705; Civilian Evacuation Service, OCD Form 707; Civilian Defense Auxiliary Group, OCD Form 701; Civil Air Patrol, OCD Form 642.)

^{50a} A description of these pennants and the advantages of their use are set forth in OCD Operations Letter No. 97, December 8, 1942. See also, OCD Operations Letter No. 111, February 11, 1943.

(j) *Identification Signs* (U. S. Citizens Defense Corps, U. S. Citizens Service Corps, Forest Fire Fighters Service): The prescribed insignia may be used on signs to indicate the station, location or post of enrolled members. Such signs may embody, in addition to the prescribed insignia, material relative to the unit of which the person is a member and any other matter considered to be appropriate by the defense council. (Such signs may be used only subject to compliance with applicable laws, ordinances and regulations.)

(k) *Flags and Banners* (Administrative Staff, U. S. Citizens Defense Corps, U. S. Citizens Service Corps, Civil Air Patrol, Forest Fire Fighters Service): The prescribed insignia may be embodied, together with appropriate permissible lettering, on flags and banners.

(l) *Buttons for Uniforms* (Civil Air Patrol): The basic Civil Air Patrol insignie only may be used; sizes 24 ligne and 36 ligne.

(m) *Pilot and Observer Wings* (Civil Air Patrol): May be metal or embroidered, 2¼ inches and 1¼ inches respectively in length. They are to be worn above the upper blouse pocket of the uniform.

(n) *Aircraft Emblems* (Civil Air Patrol): The basic Civil Air Patrol insignie may be used, by painting or decalcomania, on the fuselage and wings of aircraft engaged in official Civil Air Patrol missions. The basic insignie shall be centered on the top side of the left wing and on the bottom side of the right wing at a point ⅓ of the distance from the wing tip to the fuselage, and the diameter of the insignie shall not exceed ⅓ of the wing chord at the point of application. The insignie on the fuselage shall be centered on both sides of the fuselage at a point ⅓ of the distance from the leading edge of the horizontal stabilizer to the trailing edge of the wing, and the diameter of the insignie shall not exceed ⅓ of the depth of the fuselage at the point of application.

(o) *Badges* (Civilian Evacuation Service): May embody the prescribed insignie, 3 inches in diameter. They are to be worn on the upper left side of the garment.^{20b}

2. Summary Chart—setting forth the Official Articles that may be worn and used subject to the provisions set forth in Office of Civilian Defense Regulations No. 2

	Administrative Staff	U. S. Citizens Defense Corps	U. S. Citizens Service Corps	Civil Air Patrol	Forest Fire Fighters Service	Civilian Evacuation Service	C. D. Auxiliary Group
Arm Bands.....	X	X*		X	X		X
Lapel Emblems.....	X	X	X	X	X	X	X
Sleeve Emblems for Uniforms.....	X	X	X	X	X	X	X
Collar and Cap Emblems for Uniforms.....	X	X	X	X	X	X	X
Helmet Emblems.....		X					
Automobile Emblems.....	X		X	X	X	X	X
Emergency Vehicle Pennants.....	X	X	X	X	X	X	X
Certificates of Membership.....		X	X	X	X	X	X
Identification Cards.....		X	X	X	X	X	X
Identification Signs.....		X	X	X	X	X	X
Flags and Banners.....	X	X	X	X	X		
Buttons for Uniforms.....				X			
Pilot and Observer Wings.....				X			
Aircraft Emblems.....				X			
Badges.....						X	

* Except instructors. [This footnote is in the original.]

JAMES M. LANDIS, *Director.*

^{20b} Section 1 (p) relating to Emergency Vehicle Identification Headlamp Masks was added by Amendment No. 1 to Supplementary Order No. 2 (Revised) to OCD Regulations No. 2. See Appendix 13, *infra*, p. 133.

APPENDIX 13

[OCD Regulations No. 2, Supplementary Order No. 2 (Revised), Amendment No. 1 (February 4, 1943). 8 Fed. Reg. 1331.]

SPECIFICATIONS FOR OFFICIAL ARTICLES

By virtue of the authority vested in me as Director of Civilian Defense by Executive Order No. 8757,^{sup} dated May 20, 1941, as amended by Executive Order No. 9134,^{sup} dated April 15, 1942, and pursuant to Section 2 of Office of Civilian Defense Regulations No. 2,^{sup} it is hereby ordered that Supplementary Order No. 2, (Revised),^{sup} dated October 23, 1942, to Office of Civilian Defense Regulations No. 2 is hereby amended by adding Section 1 (p) as follows and by amending Section 2 (Summary Chart) accordingly:

1 (p) *Emergency Vehicle Identification Headlamp Masks*

The Civilian Defense basic insignia, 2½ to 3 inches in diameter, may be embodied on the lower half of a removable opaque headlamp mask. The letters "CD" and the three segments of the surrounding circular field shall be translucent green, the triangle on which the letters "CD" are superimposed shall be opaque. All opaque portions are to be black. This mask may be made of any suitable material which can be easily, quickly, and securely fastened to the right front headlight.

JAMES M. LANDIS, *Director*.

APPENDIX 14

[OCD Regulations No. 3 (effective September 1, 1942). 7 Fed. Reg. 6900.]

UNITED STATES CITIZENS DEFENSE CORPS

By virtue of the authority vested in me by Executive Order No. 8757^{sup} dated May 20, 1941, as amended by Executive Order No. 9134^{sup} dated April 15, 1942, and Executive Order No. 9088^{sup} dated March 6, 1942, and pursuant to the Act approved January 27, 1942,^{sup} and in accordance with Article 13 of Executive Order No. 9088 dated March 6, 1942, authorizing the Director of Civilian Defense to make and issue such rules, regulations, and orders as he may deem necessary or desirable to carry out the purposes of the aforementioned Act of January 27, 1942, the following regulations are hereby made and issued:

1. Statutory and Executive Authority.

(a) The Act approved January 27, 1942 (Public Law 415, 77th Cong.), provides in Section 2 thereof:

"It shall be unlawful for any person to wear any insignia, arm band, or other distinctive article prescribed by the Director of Civilian Defense except in accordance with the regulations promulgated under the authority of Section 1 hereof."

^{sup} See Appendix 1, *supra*, p. 103.

^{sup} See Appendix 4, *supra*, p. 106.

^{sup} See Appendix 10, *supra*, p. 123.

^{sup} See Appendix 12, *supra*, p. 130.

^{sup} See Appendix 1, *supra*, p. 103.

^{sup} See Appendix 4, *supra*, p. 106.

^{sup} See Appendix 6, *supra*, p. 109.

^{sup} See Appendix 22, *infra*, p. 154.

The regulations referred to have been promulgated in Executive Order No. 9088, dated March 6, 1942, which provide, in Article 12 thereof:

"The Director of Civilian Defense may prescribe insignia, arm bands, and other distinctive articles which may be worn by persons engaged in civilian defense activities and may establish rules and regulations for the wearing thereof."

Pursuant to Executive Order No. 9088, the Director of Civilian Defense has issued Regulations No. 2⁴ of the Office of Civilian Defense governing insignia, which regulations provide that it shall be unlawful for any person to use or wear certain official articles embodying prescribed insignia except certain designated groups, including the United States Citizens Defense Corps.

(b) The Act approved January 27, 1942 (Public Law 415, 77th Cong.), authorizes, in Section 1 thereof, the Director of Civilian Defense, under such regulations as the President may prescribe, to provide to certain localities, by loans, supplies and equipment for the adequate protection of persons and property from bombing attacks, sabotage, or other war hazards. Executive Order No. 9088, dated March 6, 1942, sets forth the regulations prescribed by the President pursuant to said Section 1, and Article 13 thereof authorizes the Director of Civilian Defense to make and issue such rules, regulations, and orders as he may deem necessary or desirable to carry out the purposes of the Act approved January 27, 1942.

Pursuant to Executive Order No. 9088, the Director has issued Regulations No. 1⁴⁵ of the Office of Civilian Defense, governing loans of equipment and supplies to civil authorities, which regulations provide, in Section 7 thereof, that the property shall be distributed by the borrowing communities in such manner as the Commander of the local United States Citizens Defense Corps shall deem advisable in order to comply with the requirements of law,

"Provided, however, That such distribution shall at all times be subject to and in accordance with such rules, regulations, orders, and instructions as the Director of Civilian Defense may make with respect thereto."

Regulations No. 1 also provide that each borrowing community shall execute an agreement with the Director of Civilian Defense, on OCD Form No. 501, which agreement includes a covenant on behalf of the borrowing community as follows:

"That all rules, regulations, and orders heretofore or hereafter issued by the Director of Civilian Defense with respect to said supplies and equipment are a part of this agreement between the community and the Director of Civilian Defense, and that the community will comply with all rules, regulations and orders issued by the Director of Civilian Defense with respect to the aforesaid supplies and equipment as well as with respect to procedure and practices affecting the use of such supplies or equipment for civilian defense in the community."

The Director of Civilian Defense, for the purpose of attaining maximum efficiency in the use and preservation of supplies and equipment of, or under the control of, the Office of Civilian Defense, which are loaned to communities pursuant to Executive Order No. 9088 and Regulations No. 1, has ordered, subject to rules, regulations, and orders to be issued by him, that, subject to certain exceptions, including members of the local fire departments and police departments, the distribution of such supplies and equipment by borrowing communities shall be confined to members of and trainees for the United States

⁴⁴ See Appendix 10, *supra*, p. 123.

⁴⁵ See Appendix 7, *supra*, p. 112.

Citizens Defense Corps, in accordance with instructions of the Commander of the local United States Citizens Defense Corps, and loaned supplies and equipment shall be used only by such members and trainees.

(c) Regulations No. 3 of the Office of Civilian Defense, herein set forth, are issued, pursuant to Executive Order No. 9088, to prescribe the eligibility, training, method of appointment, character of oath, and duties of persons who, as members of or trainees for the United States Citizens Defense Corps, are exclusively, except as provided in Section 4 (h) of these Regulations, entitled to wear or use official articles embodying prescribed insignia of the United States Citizens Defense Corps, in accordance with the provisions of Regulations No. 2, and are entitled to receive, wear, or use supplies and equipment loaned to communities, in accordance with Regulations No. 1.

2. Definitions.

(a) *Director* means the Director of Civilian Defense appointed by the President of the United States pursuant to Executive Order No. 8757,⁶⁶ dated May 20, 1941, or any amendment thereto.

(b) *Defense Corps* means the United States Citizens Defense Corps established, within the Office of Civilian Defense, by Administrative Order of the Director, and consists of units composed of enrolled members in the protective services engaged in civilian defense, or in services related thereto.

(c) *Protective Services engaged in Civilian Defense* means the services engaged in taking precautionary measures against air raids or other forms of attack and minimizing losses to persons and property resulting therefrom, which protective services shall include those specified in Section 3 (a) of these Regulations now established and such additional protective services as shall hereafter be established as units of the Defense Corps by order of the Director.

(d) *Member* means a person eligible for membership in the Defense Corps, who has registered for training, has satisfactorily completed prescribed and approved courses of training or instruction, has been appointed to membership, has taken the prescribed oath, and has been enrolled as a member of the Defense Corps by the Local Defense Council, all in accordance with these Regulations, and whose membership has not been suspended or terminated as provided in these Regulations.

(e) *Trainee* means a person eligible for membership in the Defense Corps who has registered for training in accordance with these Regulations, and who is engaged in taking prescribed and approved courses of training or instruction prior to becoming appointed and enrolled as a member.

(f) *Prescribed Insignia* means insignia prescribed by the Director, by regulation or order, for any unit of the Defense Corps or for any rank of members, whether or not Letters Patent with respect to such insignia have been applied for, granted, or denied.

(g) *Official Articles* mean arm bands, brassards, buttons, pins, automobile plates, decalcomania, Certificates of Membership, and other articles of identification embodying prescribed insignia, which official articles may be worn or used, except as provided in Section 4 (h) of these Regulations, only by members or, subject to Section 7 (c) of these Regulations, by trainees, and shall constitute the official identification of persons wearing or using such official articles.

(h) *Loaned Equipment* means equipment and supplies (other than medical equipment and supplies) belonging to, or under the control of, the Office of

⁶⁶ See Appendix 1, *supra*, p. 103.

Civilian Defense and loaned by the Director to communities pursuant to Executive Order No. 9088, dated March 6, 1942, and Regulations No. 1 of the Office of Civilian Defense governing loans of equipment and supplies to civil authorities.

(i) *State* means any State, territory, or possession of the United States and the District of Columbia.

(j) *Community* means any municipality, town or village, or any other political subdivision of any State or any area designated by the Director as a community for purposes of these Regulations.

(k) *Local Defense Council* means the body duly appointed by the duly authorized appointive authority to be responsible for civilian defense in a community.

3. Units.

(a) The Defense Corps consists of units composed of enrolled members in (1) the protective services engaged in civilian defense now established and hereinafter specified; (2) additional protective services engaged in civilian defense, from time to time established as units of the Defense Corps by order of the Director; and (3) related services now established or hereafter established by order of the Director, including Chaplains. The protective services engaged in civilian defense now established are as follows:

Staff	Decontamination
Air Raid Wardens	Medical
Auxiliary Police	Nurses' Aides
Auxiliary Firemen	Drivers
Fire Watchers	Emergency Food and Housing ⁶⁷
Demolition and Clearance	Messengers
Road Repair	Utility Repair
Rescue	Instructors

(b) The number of members in each unit of the protective services engaged in civilian defense in any community shall not exceed such number as may be prescribed from time to time by order of the Director in the event that he deems such maximum limitation to be desirable.⁶⁸

4. Insignia.

(a) The insignia of the units of the Defense Corps shall be designs related to the basic insignie of the Office of Civilian Defense, which basic insignie is a design, in the form of an applique emblem granted by Letters Patent No. D-129797 of October 7, 1941, consisting of the letters "CD" in red, centered in a white equilateral triangle embossed on a circular field of blue. Insignia have been prescribed by order of the Director for the units of the Defense Corps designated in Section 3 (a) of these Regulations, consisting of a white equilateral triangle embossed on a circular field of blue similar to the basic in-

⁶⁷ Ordinarily the organized personnel certified by the American Red Cross to the Commander for emergency feeding, housing, and clothing services will perform the function of the Emergency Food and Housing Unit. The Commander should avoid duplication of these facilities. Accordingly, if personnel satisfactory to the Commander is so certified and is placed under his command in an emergency, this unit of the Defense Corps should not be established. In such event, such certified personnel, although not members of the Defense Corps, may be authorized by the Commander to wear and use arm bands and other official articles embodying the prescribed insignie of the Emergency Food and Housing Unit. [This footnote is in the original.]

⁶⁸ No maximum number has yet been prescribed. [This footnote is in the original.]

signe of the Office of Civilian Defense, but with an identifying device, described below for the respective units, substituted in lieu of the letters "CD" appearing in the basic insignie. The identifying devices for the prescribed insignia of the present units of the Defense Corps, and the Letters Patent covering such insignia, are as follows:

Unit	Letters Patent	Identifying device (Red, except staff unit)
Staff.....	D-132589	Blue five-pointed star centered above letters "CDC" in red.
— Bomb Reconnaissance Agent.....	D-129799	Diving bomber.
Air Raid Wardens.....	D-129801	Seven diagonal stripes, alternately red and white.
Auxiliary Police.....	D-129803	Shield in the form of an inverted triangle, with sides slightly curved outward.
Auxiliary Firemen.....	D-129802	Cross pattée.
Fire Watchers.....	D-129807	Flame.
Demolition and Clearance.....	D-129804	Pick, handle upward.
Road Repair.....	D-129805	Shovel, spade downward.
Rescue.....	D-129800	Ladder.
Decontamination.....	D-129810	Chemical retort.
Medical.....	D-129811	Caduceus.
Nurses' Aides.....	D-129798	Red cross.
Drivers.....	D-129808	Steering wheel.
Messengers.....	D-129806	Lightning flash.
Emergency Food and Housing.....	D-129809	Cup, handle to right.
Utility Repair.....	D-132588	Pliers, jaws closed, handles downward.
Instructors (Instructors who have graduated from a War Department Civilian Protection School may wear Instructors insignie placed above a silver ribbon on which are the letters "WDCPS".)	D-132590	Inverted equilateral triangle centered above which is a falling bomb, to the left of which is a chemical retort and to the right of which is a flame.
Chaplains.....	Patent pending.	Christian: Latin cross. Jewish: Six-pointed star centered above Tables of the Law in silhouette.

(b) The Director may from time to time prescribe, by regulations or orders, other designs as insignia for additional units of the Defense Corps.

(c) Prescribed insignia of the Defense Corps may be embodied in official articles which any member or, subject to Section 7 (c) of these Regulations, any trainee is authorized to use or wear so long as he complies with all rules, regulations, orders, and instructions made at any time by the Director, including those with respect to the use or wearing of prescribed insignia and with respect to the eligibility, training, or duties of members. Such right to wear or use official articles shall be subject at all times to the terms and conditions of any such rules, regulations, orders, or instructions.

(d) Any member or trainee authorized to wear or use official articles may wear or use only official articles bearing the insignia prescribed by the Director for the particular unit of the Defense Corps of which such person is a member or trainee.

(e) Arm bands or brassards embodying prescribed insignia shall constitute a substitute for a uniform. The wear or use of arm bands or brassards embodying prescribed insignia of the Defense Corps is restricted to members of or trainees, subject to Section 7 (c) of these Regulations, for the Defense Corps (except the Instructors Unit) and to persons authorized pursuant to paragraph (h) of this section, while actively engaged in the performance of duties or while in transit to or from their places of duty.

(f) It shall be unlawful for any person to use or wear any prescribed insignia except in accordance with rules, regulations, orders, and instructions issued by the Director. The Director may prohibit or restrict, in his discretion, the wearing or use of any articles embodying prescribed insignia.

(g) Prescribed insignia may not be altered or modified in any manner, and no additional words or devices may be superimposed on prescribed insignia. However, the name of a State or community or the designation of the occupation

or profession of the wearer may be placed on official articles in addition to the prescribed insigne.

(h) Such organized personnel as is certified by the American Red Cross to the Commander for emergency feeding, housing and clothing services, if such personnel is satisfactory to the Commander and is placed under his command in an emergency, may be authorized by the Commander to use and wear official articles embodying the prescribed insigne of the Emergency Food and Housing Unit, notwithstanding the fact that such persons are not members of the Defense Corps.

5. Eligibility.

(a) All citizens of the United States, without distinction as to race, color, sex, or religion, shall be eligible for membership in the Defense Corps.

(b) All aliens residing in the United States, its territories or possessions, who are not of enemy nationality, and without distinction as to race, color, sex, or religion, shall be eligible for membership in the Defense Corps: *Provided, however,* That, subject to further order of the Director, any alien not of enemy nationality may be declared ineligible for membership by the Local Defense Council of the community where such alien resides, and any alien of enemy nationality may be declared eligible for membership by the State Defense Council, acting upon the favorable recommendation of the Local Defense Council of the community where such alien resides. The decision of such Local Defense Council as to an alien not of enemy nationality, and of such State Defense Council as to an alien of enemy nationality, shall be final and shall be based upon its determination as to whether a declaration of eligibility or ineligibility would best serve the interests of the United States after considering all facts bearing on the loyalty of any such alien to the United States; such decision shall be reached after such hearings as the Defense Council shall deem proper before a Board of Inquiry designated by the Defense Council or established by it to make findings of fact and recommendations to the Defense Council. The term "alien of enemy nationality," as used in this paragraph (b), means a citizen of Germany, Italy, or Japan, or such other country as shall be designated by order of the Director.⁶⁹

(c) Membership in any other organization of any character shall not be a condition to eligibility for membership in the Defense Corps, and no person shall become a member, or eligible for membership, solely by virtue of membership in any other organization.

(d) No person may become a member of the Defense Corps who advocates or has advocated the overthrow of the constitutional form of government in the United States by force or violence, or who has been convicted of or is under indictment or information charging any subversive act against the United States.

(e) No fees of any kind shall be required to be paid as a condition to enrollment or continued membership in the Defense Corps.

(f) Any State or community may impose further restrictions (not predicated upon race, color, sex, or religion) upon eligibility, but no community shall, contrary to these Regulations or subsequent rules, regulations, or orders issued by the Director, admit any person to membership in the Defense Corps.

6. Registration for Training.

Each person eligible for membership in the Defense Corps shall register for training, furnishing such information and data as shall be specified in the

⁶⁹ This last sentence was modified by Amendment No. 4 to Regulations No. 3. Text in Appendix 15, *infra*, p. 146.

registration card (including registrant's full name, age, nationality, and residence and business addresses and telephone numbers), which card shall be in such form as shall be prescribed by order of the Director.⁷⁰ Such registration card shall be filed with the Local Defense Council, and held by it available for inspection by the Office of Civilian Defense.

7. Training.

(a) Before becoming a member of the Defense Corps, a registrant for training shall complete, in a manner satisfactory to the Commander of his local Defense Corps, and not below such standards as may be prescribed by order of the Director, courses of training or instruction prescribed and approved by order of the Director for the particular unit of the Defense Corps. Enrolled members shall take such additional courses of training and instruction and shall participate in such air raid drills and group or field training as shall be prescribed by order of the Director or such Commander.

(b) The minimum number of hours of training or instruction required to be satisfactorily completed (prior or subsequent to the effective date of these Regulations) before a person may become a member of the Defense Corps (except in individual cases where the Commander of the local Defense Corps, or the Chief of Service, shall certify that the registrant has in a less number of hours satisfactorily completed required courses of training or instruction), and the subjects in which such training or instruction shall be completed for the respective units, are as follows:

Unit	First Aid	Fire Defense	Gas Defense	General
Staff.....	10 ¹	3	2	5
Air Raid Wardens.....	10	3	5	5
Auxiliary Police.....	10	3	5	5
Auxiliary Firemen.....	10	10	2	5
Fire Watchers.....	0	3	2	5
Demolition and Clearance.....	0	3	2	5
Road Repair.....	0	3	2	5
Rescue.....	20	10	5	5
Decontamination.....	10	0	5	5
Medical:				
Doctors.....	0 ²	0	0 ³	0
Registered Nurses.....	10	0	0 ³	0
Attendants (such as stretcher teams and orderlies).....	20	0	0 ³	0
Nurses' Aides.....	0 ⁴	0	0	0
Drivers ⁵	10	0	5	5
Messengers.....	10	3	2	5
Emergency Food and Housing.....	0	0	2	5
Utility Repair ⁶	0	0	3	5
Chaplains.....	0	0	0	0
Instructors.....	Must attend Instructors Training Schools as prescribed by the Office of Civilian Defense.			

¹ The requirement of 10 hours of First Aid training or instruction was reduced to 0 by Amendment No. 4 to Regulations No. 3. Text in Appendix 15, *infra*, p. 146.

² Formal first-aid training not required, but review course of 10 hours desirable. [This footnote is in the original.]

³ After enrollment, training and instruction in gas defense (2 hours) is recommended. [This footnote is in the original.]

⁴ Basic 80 hours special American Red Cross training given in connection with hospitals designated as training centers. Within 1 year after enrollment, 20 hours first-aid training and 150 hours hospital practice are required. [This footnote is in the original.]

⁵ Also the following courses: Night driving and convoy driving, 5 hours; blackout driving, 3 hours; map reading, 2 hours; minor roadside repairs, 5 hours; test and review, 3 hours. [This footnote is in the original.]

⁶ Applicants for Utility Repair Units who are employed to do repair work for publicly or privately owned water, gas, electric, or other utilities, or communication companies, may omit all training and instruction courses, but fire defense and gas defense training is recommended. [This footnote is in the original.]

⁷⁰ No form has yet been prescribed, and Local Defense Councils may approve any form providing for such data as they deem advisable, including photograph and/or fingerprints. [This footnote is in the original.]

(c) Trainees for membership in the Defense Corps may be authorized by order of the Director or the Commander, in the event of an air raid or other disaster or emergency, to perform the duties of members of the Defense Corps during such period as shall be specified in such order. The effect of any such order shall be, whether or not stated therein, to dispense with the requirements, during the period specified therein, of completion of courses of training or instruction, oath, Certificate of Membership, and enrollment. Trainees appointed as members, pursuant to such order, in the manner prescribed in Section 8 of these Regulations, and engaged in performing duties of members, or in transit to or from their places of duty, shall be members of the Defense Corps during the period specified in such order, and as such shall be entitled to wear or use official articles (but not to receive a Certificate of Membership), to receive, use, and wear loaned equipment, and to all other rights and privileges of members. Prior to any such order trainees may, subject to Section 4 (e), wear arm bands bearing only the letters "CD." Trainees for the Nurses' Aides Unit may wear the prescribed insignia on uniform sleeves while engaged in practice work in hospitals.

(d) Trainees for membership in the Defense Corps may use or wear loaned equipment, other than official articles, while engaged in training or instruction, to the extent deemed necessary and proper by the person conducting the course of training or instruction, or as otherwise ordered by the Director.

8. Method of Appointment.

Eligible persons who have registered for training in the Defense Corps and have satisfactorily completed prescribed and approved courses of training or instruction may be appointed to the various units of the Defense Corps on the basis of ability to perform prescribed duties, by the legally authorized appointive authority of any State or community, subject to any further rules, regulations, or orders issued by the Director as to the manner of appointment of such persons.

9. Oath.

(a) Each appointee to membership in the Defense Corps shall, prior to being enrolled as a member of the Defense Corps, take an oath, orally, before any person approved by the Commander of the local Defense Corps, or in writing, which oath shall be substantially as follows:

"I, _____, solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; that I will well and faithfully discharge my duties as a member of the United States Citizens Defense Corps; and that I do not advocate, and have not advocated, the overthrow of our constitutional form of government in the United States by force or violence."

Such oath may include allegiance to the particular State and such other matter as shall not be inconsistent with the foregoing.^{70a}

(b) If such oath is in writing and signed, it shall be filed with the Local Defense Council. If such oath is taken orally, there shall be filed with the Local Defense Council an affidavit of the Commander of the local Defense Corps, or the Chief of Service of the service in which the member is enrolled, or of the person administering the oath, specifying the name of the person

^{70a} This paragraph was amended on January 7, 1943, by Amendment No. 5. Text in Appendix 16, *infra*, p. 146. See also OCD Operations Letter No. 108, January 30, 1943.

taking the oath, the date on which the oath was taken, and the form of the oath so taken. Such oaths, written or oral, may be taken before or after the effective date of these Regulations.

10. Certificate of Membership.

Each eligible registrant for training in the Defense Corps, upon satisfactorily completing prescribed and approved courses of training or instruction, being duly appointed to membership and taking the prescribed oath, may be furnished by the Local Defense Council with a Certificate of Membership, in form prescribed by order of the Director¹¹ and signed by such person or persons as shall be authorized by the Local Defense Council, certifying that such registrant has satisfactorily completed the required courses of training or instruction and demonstrated the necessary knowledge and ability to carry out his duties, and is a member of the Defense Corps entitled to use or wear the prescribed insignia of the particular unit of the Defense Corps for which he is appointed and trained.

11. Enrollment.

Each person entitled to a Certificate of Membership shall be enrolled by the Local Defense Council as a member of the Defense Corps, in the unit specified in such Certificate. Local Defense Councils shall furnish the Office of Civilian Defense, from time to time upon request, information regarding enrolled members, including the number in the various units of the Defense Corps.

12. Duties.

(a) The duties of each member of the Defense Corps shall be as prescribed by regulations of the Director, and as additionally prescribed, to the extent permitted by law and not inconsistent with the duties prescribed by the Director, by the Governor or the State Defense Council of his State, or by the chief executive officer or other designated authority or the Local Defense Council of his community. Specific duties shall be prescribed by the Commander of the local Defense Corps or by the Chief of Service.

(b) The general duties of the members of the Defense Corps shall include the following:

(1) *Staff*. Commanding or directing the units of the local Defense Corps in the protective services engaged in civilian defense; assisting the Commander, including technical, administrative and clerical assistance.

(2) *Air Raid Wardens*. Observing lights showing during a blackout and warning occupants of buildings; calling attention of law enforcement authorities to failures to comply with blackout rules and regulations, and requesting their cooperation in obtaining such compliance; directing persons in the streets to shelter; reporting to the Control Center any fallen bombs or fires; assisting in fighting incendiary bombs; detecting and reporting to the Control Center the presence of gas; administering elementary first aid; assisting victims in damaged buildings; training residents for emergencies and becoming acquainted with physical features and residents of assigned territory.

(3) *Auxiliary Police*. Enforcing emergency restrictions on lighting and prohibitions on trespassing; guarding of docks, buildings, bridges, and factories; performing traffic duty to facilitate movements of essential vehicles; preventing looting of partially demolished buildings, shops, and homes; assisting air raid

¹¹ OCD Form No. 103 has been prescribed by Supplementary Order No. 1, dated May 18, 1942; the name of the particular State and/or community may be added in the heading. [This footnote is in the original.]

protection services before, during, and after a raid; and generally assisting the regular police force.

(4) *Auxiliary Firemen.* Assisting regular fire-fighting forces, including laying hose relays and operating small pumpers; rescuing persons from burning buildings.

(5) *Fire Watchers.* Standing guard on posts in doorways, on roofs, and at other vantage points in order to spot, reach, and extinguish fallen bombs.

(6) *Demolition and Clearance Unit.* Removing rubble and debris from streets after air raids; destroying partially demolished or unsafe walls and buildings; filling bomb craters in streets; assisting the local public works department.

(7) *Road Repair Unit.* Repairing roads after air raids to restore normal flow of traffic as rapidly as possible, including smoothing road surfaces, repaving with available material, restoring road markings, filling holes and applying top dressing; assisting street departments and public works departments following rough clearance by Demolition and Clearance Units.

(8) *Rescue Unit.* Rescuing persons trapped in debris; shutting off broken gas, electric, and water lines; shoring up, tunneling, and minor demolition work; rendering emergency first aid; assisting local public works, fire, and other municipal departments.

(9) *Decontamination Unit.* Effecting chemical neutralization or removal of gases contaminating streets, walls, and buildings; assisting health departments in connection with decontamination work.

(10) *Medical Unit.* Proceeding to scene of air raids or other disasters and occupying casualty stations; establishing advance first aid posts so as to render emergency care to the injured; manning stations for decontamination of persons; assisting hospitals and health departments.

(11) *Nurses' Aides Unit.* Assisting nurses in wards and out-patient clinics of hospitals; serving in emergency medical field units in casualty stations and first aid posts.

(12) *Drivers Unit.* Driving vehicles to assist other units of the Defense Corps.

(13) *Messengers Unit.* Performing messenger service for air raid warden posts, control and message centers, hospitals, casualty stations and first aid posts, fire stations and police stations, and other units of the Defense Corps.

(14) *Emergency Food and Housing Unit.* Providing food and shelter for persons whose homes have been destroyed or damaged by air raid or other disaster; assisting local welfare departments.

(15) *Utility Repair Unit.* Repairing water, gas, electric, telephone, telegraph, steam, sewer, and other utility services damaged by air raid or other disaster.

(16) *Instructors.* Giving courses of training and instruction to units of the Defense Corps as prescribed from time to time by orders or instructions of the Director.

(17) *Chaplains.* Administering to the religious and spiritual needs of persons suffering from the effects of air raids or other disaster.

13. Termination or Suspension of Membership in United States Citizens Defense Corps.

(a) Any member of or trainee for the Defense Corps who:

- (1) Fails or refuses to comply with all applicable rules, regulations, and orders made or issued by his State or community or any agency thereof;

- (2) Fails or refuses faithfully to perform his duties;
- (3) Fails or refuses to comply with Regulations No. 1¹² of the Office of Civilian Defense as to the protection, maintenance, use, or return of loaned equipment;
- (4) Was not at the date of enrollment, or would not be at any subsequent date, eligible for membership in the Defense Corps or was not trained, appointed, sworn, or enrolled as a member or trainee in accordance with these Regulations, or any subsequent rules, regulations, or orders of the Director; or
- (5) Has not adequate knowledge, ability, or other qualification properly to perform his duties;

may have his membership or training status suspended or terminated by order of his Local Defense Council or of the Director, after notice to such person and to the official or body which appointed such person, which notice shall specify all charges against such person, and after an opportunity for such person to be heard in his defense.

(b) Unless and until such order is vacated by order of the removing authority for good cause shown, it shall be unlawful for any person whose membership or training status in the Defense Corps has been so suspended or terminated to use or wear any official article or to receive, use, or wear any loaned equipment, and such person shall be deprived of all other rights and privileges as a member or trainee: *Provided, however,* That such suspension or termination shall not affect the status under State or local law of any person appointed by a State or community appointive authority to perform such duties as may be required by such State or local law. Nothing in these Regulations shall be construed to interfere with or usurp any of the rights or duties of any local district, municipal, county, or State official.

(c) Hearings in any proceeding ordered by a Local Defense Council or the Director for suspension or termination of membership or training status shall be held at such time and place, and before such examiner, and in accordance with such procedure as shall be prescribed by the order of the Local Defense Council or the Director, as the case may be.

14. Status and Compensation of Members.

Members shall not be deemed appointees or employees of the Office of Civilian Defense, or of the United States or any agency thereof, nor entitled to any payments from the Office of Civilian Defense, or the United States or any agency thereof, for services rendered as members. Payment for such services by the States or communities shall be dependent upon the laws thereof.

15. Loaned Equipment.

(a) Loaned equipment received by communities from the Office of Civilian Defense pursuant to Regulations No. 1¹³ of the Office of Civilian Defense, shall, unless otherwise ordered by the Director or authorized by said Regulations No. 1, be distributed by such communities, directly or indirectly, only to members of, or (subject to section 7 (c) of these Regulations) trainees for, the Defense Corps or to members of local police departments or fire departments, all in accordance with instructions of the Commander of the local Defense Corps.

(b) All loaned equipment received by any community, including fire-fighting pumping units, shall, unless otherwise ordered by the Director or authorized

¹² See Appendix 7, *supra*, p. 112.

¹³ *Ibid.*

by said Regulations No. 1, be used only by members of, or (subject to section 7 (d) of these Regulations) trainees for, the Defense Corps or by members of local police departments or fire departments.

(c) Unless otherwise ordered by the Director or authorized by said Regulations No. 1, any community which distributes any such loaned equipment to any person not a member of or trainee for the Defense Corps or a member of the local police department or fire department, or not in accordance with the instructions of the Commander of the local Defense Corps, or which permits any person not a member of or, to the extent provided in section 7 (c) of these Regulations, a trainee for the Defense Corps or a member of the local police department or fire department to use or wear any loaned equipment, or which fails promptly to recall any loaned equipment from any person whose membership or training status has been suspended or terminated, shall be deemed to have violated its Agreement (OCD Form No. 501) with the Director pursuant to which such equipment was loaned; and in such event the Director may proceed to recall all or any part of the equipment and supplies of any character loaned to such community.

16. Organization and Command of Local Defense Corps.

(a) The Defense Corps in each community shall consist of a Staff Unit and such other units, established pursuant to Section 3 hereof, as shall be deemed necessary for the community in the opinion of the Commander.

(b) The Commander of each local Defense Corps shall be designated or appointed in accordance with the provisions of State and local law. He shall have complete authority during an air raid, blackout or other emergency, as well as during periods of air raid drills, practice black-outs or otherwise in connection with training, to command and direct the Defense Corps and to coordinate and direct, to the extent permitted by local law, the local fire and police departments and other municipal services. He shall have responsibility and authority for the organization, training, and operation of the Defense Corps.

(c) The units of the Defense Corps may be organized into services as hereinafter specified, each of which shall be under the direction and command of a Chief of Service as indicated, to-wit:

Service	Units	Chief
(1) Fire Service.....	Auxiliary Firemen; Rescue*	Chief of Emergency Fire Service (ordinarily Chief of local Fire Department).
(2) Police Service.....	Auxiliary Police.....	Chief of Emergency Police Service (ordinarily Chief of local Police Department).
(3) Air Raid Warden Service..	Air Raid Wardens; Fire Watchers; Emergency Food and Housing.	Chief Air Raid Warden.
(4) Emergency Medical Service.	Medical; Nurses' Aides.....	Chief of Emergency Medical Service.
(5) Emergency Public Works Service.	Demolition and Clearance; Road Repair; Decontamination.	Chief of the Emergency Public Works Service.
(6) Emergency Utilities Service.	Utility Repair.....	Chief of the Emergency Utilities Service.
(7) Staff.....	Staff; Drivers; Messengers..	Commander.

* Rescue Units, responsible primarily for rescue work in bombed buildings (as distinguished from rescue work in burning buildings, the function of the regular and emergency fire service), may be established as a separate service or as a part of the Emergency Public Works Service. [This footnote is in the original.]

(d) The Staff Unit shall include the Commander and the Chiefs of the respective Services, and in addition may include the following:

(1) Executive Officer, who shall be responsible for plans and training and who shall be second in command after the Commander. He may be assisted by Incident Officers and a Chief of Training.

(2) Controller, who shall be responsible for the establishment, maintenance, protection, and operation of the control center and who shall be next in command after the Executive Officer. He may be assisted by a Plotting Officer, Chart Writer, Communications Officer, Panel Clerk, Records Clerk, Radio Aide, and other necessary personnel, including telephone operators, messengers, radio operators, police guards, and office personnel.

(3) Personnel Officer, who shall be responsible for the personnel and enrollment records of all members of the Defense Corps, as well as all records with respect to casualties and evacuation.

(4) Property Officer, who shall be accountable for all property issued to members of the Defense Corps.

(5) Transportation Officer, who shall be responsible for local transportation facilities.

(6) Billeting Officer, who shall be responsible for emergency housing facilities.

(7) Bomb Reconnaissance Agents, who shall investigate reports of unexploded bombs, determine their category, and report thereon.

(8) Senior Gas Officer (ordinarily from the local Health Department), who shall supply technical direction on identification of chemical agents in food, milk, water, and air, and shall determine action to be taken by other services and agencies before, during, and after gas attacks. He may be assisted by specialists such as Gas Detection Officers and Laundry Officers.

(9) Chief Technical Intelligence Officer, who shall be in charge of obtaining information as to the effect upon civilians and property of enemy attack. He may be assisted by Technical Intelligence Aides, who shall act as squad leaders, Medical Intelligence Officers, and Structural Intelligence Officers.

(10) Water Works Officer (representing local water works organization), who shall supply technical assistance with respect to water supply problems to the Commander and the Chiefs of Emergency Utilities Service and Emergency Fire Service.

(11) Health Officer, who shall advise the Commander regarding emergency measures for disease prevention. He may be assisted by his deputies, division chiefs, and sanitary inspectors.

The functions and duties of any of the above-mentioned members of the Staff Unit may be combined in one person by order of the Commander.

17. Effective Date.

These Regulations shall become effective July 1, 1942.¹⁴

JAMES M. LANDIS,

Director of Civilian Defense.

¹⁴ Regulations No. 3 issued April 29, 1942. Original effective date, June 1, 1942, extended to July 1, 1942, by Amendment No. 1 dated May 28, 1942. Section 9 revised by Amendment No. 2 dated June 20, 1942. Regulations generally revised as printed herein, effective September 1, 1942, by Amendment No. 3, dated August 28, 1942. [This footnote is in the original.]

(1) Main Unit.

(2) Air Raid Wardens Unit.

(10) Auxiliary Police Unit.

(14) Auxiliary Firemen Unit.

¹⁵ See Regulations 1, supra, p. 102.

¹⁶ 7 Fed. Reg. 5704.

APPENDIX 15

[OCD Regulations No. 3, Amendment No. 4 (October 16, 1942). 7 Fed. Reg. 8434.]

By virtue of the authority vested in me by Executive Order No. 8757⁷⁵ dated May 20, 1941, as amended by Executive Order No. 9134⁷⁶ dated April 15, 1942, and Executive Order No. 9088⁷⁷ dated March 6, 1942, and pursuant to the Act approved January 27, 1942,⁷⁸ it is hereby ordered that Regulations No. 3⁷⁹ of the Office of Civilian Defense, as heretofore issued and amended, be further amended, effective October 19, 1942, as follows:

1. By striking out the last sentence of Section 5 (b) thereof and substituting therefor the following:

"The term 'alien of enemy nationality,' as used in this paragraph (b), means a citizen of Germany or Japan, or such other country as shall be designated by order of the Director."

2. By amending Section 7 (b) thereof so as to reduce the minimum number of hours of First Aid training or instruction required for members of the Staff Unit from 10 to 0.

JAMES M. LANDIS,
Director of Civilian Defense.

APPENDIX 16

[OCD Regulations No. 3, Amendment No. 5 (January 7, 1943). 8 Fed. Reg. 376.]

By virtue of the authority vested in me by Executive Order No. 8757⁷⁵ dated May 20, 1941, as amended by Executive Order No. 9134⁷⁶ dated April 15, 1942, and Executive Order No. 9088⁷⁷ dated March 6, 1942, and pursuant to the Act approved January 27, 1942,⁷⁸ it is hereby ordered that Regulations No. 3⁷⁹ of the Office of Civilian Defense, as heretofore issued and amended, be further amended, effective immediately, by adding to Section 9 (a) thereof the following:

"The oath taken by each alien appointed to membership in the Defense Corps may omit the first two clauses of the form hereinbefore set forth."

JAMES M. LANDIS,
Director of Civilian Defense.

⁷⁵ See Appendix 1, *supra*, p. 103.

⁷⁶ See Appendix 4, *supra*, p. 106.

⁷⁷ See Appendix 6, *supra*, p. 109.

⁷⁸ See Appendix 22, *infra*, p. 154.

⁷⁹ See Appendix 14, *supra*, p. 133.

^{79a} See Appendix 1, *supra*, p. 103.

^{79b} See Appendix 4, *supra*, p. 106.

^{79c} See Appendix 6, *supra*, p. 109.

^{79d} See Appendix 22, *infra*, p. 154.

^{79e} See Appendix 14, *supra*, p. 133.

APPENDIX 17

[OCD Administrative Order No. 23, Amendment No. 3 (August 21, 1942). 7 Fed. Reg. 6660.]

ESTABLISHMENT OF:

UNITED STATES CITIZENS DEFENSE CORPS

UNITED STATES CITIZENS SERVICE CORPS

CIVIL AIR PATROL

CIVILIAN DEFENSE AUXILIARY GROUP

Pursuant to authority granted by Executive Order No. 8757⁸⁰ dated May 20, 1941, as amended, creating the Office of Civilian Defense, the Director of Civilian Defense (hereinafter referred to as the "Director") hereby orders that Administrative Order No. 23⁸¹ dated April 29, 1942, which confirmed the establishment, within the Office of Civilian Defense, of: United States Citizens Defense Corps; United States Citizens Service Corps; Civil Air Patrol; Civilian Defense Auxiliary Group; be further amended by striking out Section VI thereof, and by substituting for Sections I to V, inclusive, thereof, as heretofore amended, the following:

I. Insignia of Office of Civilian Defense and Administrative Staff.

A. *Basic Insigne.* The basic insigne prescribed for the Office of Civilian Defense shall consist of the letters "CD" in red centered in a white equilateral triangle embossed on a circular field of blue.

B. *Insignia of Administrative Staff.* The prescribed insignia for the Administrative Staff shall consist of the basic insigne of the Office of Civilian Defense, which, when used by persons employed or appointed in any capacity in the Washington office and Regional Offices of the Office of Civilian Defense, may be superimposed on the letters "US," and when used by members of State Defense Councils or Local Defense Councils, or Committees thereof, including the local Civilian Defense Volunteer Office, or persons who are employed or appointed by such Committees as staff members or employees, may be used together with the name, or abbreviation of the name, of the particular State or community.

C. *"CD" Insignia.* The use of the letters "CD" alone and not in connection with prescribed insignia of the Office of Civilian Defense or any branch or unit thereof is restricted to arm bands for registered trainees for the United States Citizens Defense Corps.

II. United States Citizens Defense Corps.

A. *Units.* The United States Citizens Defense Corps (hereinafter referred to as the "Defense Corps") consists of units composed of enrolled members in (1) the protective services engaged in civilian defense now established and hereinafter specified, (2) additional protective services engaged in civilian defense from time to time established as units of the Defense Corps pursuant to order of the Director, (3) services related to the protective services engaged in civilian defense now or hereafter established as such by order of the Director, including Chaplains. The protective services engaged in civilian defense now established are:

- | | |
|----------------------------|-----------------------------|
| (1) Staff Unit. | (3) Auxiliary Police Unit. |
| (2) Air Raid Wardens Unit. | (4) Auxiliary Firemen Unit. |

⁸⁰ See Appendix 1, *supra*, p. 103.

⁸¹ 7 Fed. Reg. 3784.

- | | |
|------------------------------------|---------------------------------------|
| (5) Fire Watchers Unit. | (12) Drivers Unit. |
| (6) Demolition and Clearance Unit. | (13) Messengers Unit. |
| (7) Road Repair Unit. | (14) Emergency Food and Housing Unit. |
| (8) Rescue Unit. | (15) Utility Repair Unit. |
| (9) Decontamination Unit. | (16) Instructors Unit. |
| (10) Medical Unit. | |
| (11) Nurses' Aides Unit. | |

B. Insignia. The insignia for the aforesaid units of the Defense Corps are prescribed in Section 1 (c) of Office of Civilian Defense Regulations No. 2,²² and the use and wear of prescribed insignia shall be governed by the aforementioned Regulations and all other rules, regulations, orders, and instructions of the Director.

C. Supervision. The Defense Corps is under the supervision of the Office of Civilian Defense, Protection Branch, which is headed by an Assistant Director appointed by and responsible to the Director.

III. United States Citizens Service Corps.

A. Membership and Organization. The United States Citizens Service Corps (hereinafter referred to as the "Service Corps") shall consist of members engaged in voluntary community war activities approved by the respective Local Defense Councils, except such as are related to protection against enemy attack and therefore are activities of the Defense Corps.

B. Insigne. The insigne for the Service Corps is prescribed in Section 1 (c) of Office of Civilian Defense Regulations No. 2, and the use and wear of the prescribed insigne shall be governed by the aforementioned Regulations and all other rules, regulations, orders, and instructions of the Director.

C. Supervision. The Service Corps shall be under the supervision of the Office of Civilian Defense, Mobilization Branch, which shall be headed by an Assistant Director appointed by and responsible to the Director.

IV. Civil Air Patrol.

A. Units. The Civil Air Patrol consists of units composed of volunteer members engaged in civilian air activities, including the performance of such missions as shall be requested by the United States Army or Navy or other departments or agencies of the United States Government, such as observation and patrol flying, courier service, ferry service, forest patrol, and other types of activity prescribed by the Director and appropriate to be performed by the Civil Air Patrol.

B. Insignia. The insignia for the Civil Air Patrol are prescribed in Section 1 (c) of Office of Civilian Defense Regulations No. 2, and the use and wear of the prescribed insignia shall be governed by the aforementioned Regulations and all other rules, regulations, orders, and instructions of the Director.

C. Supervision. The Civil Air Patrol is under the supervision of the Office of Civilian Defense and is headed by the National Commander of the Civil Air Patrol appointed by and responsible to the Director.

V. Civilian Defense Auxiliary Group.

A. Personnel. The Civilian Defense Auxiliary Group (hereinafter referred to as the "Auxiliary Group") includes certain classes of persons whose duties require them to be on the streets during air raids and air raid drills, but who have no special civilian defense training as required for members of the Defense Corps or the Civil Air Patrol. Certain classes of persons who may be included

²² See Appendix 10, *supra*, p. 123.

in the Auxiliary Group will be designated from time to time by order of the Director; but additional classes of persons may, subject to rules, regulations, or orders to be issued by the Director, be authorized by Local Defense Councils to be included in the Auxiliary Group, entitled to use and wear its insignie.

B. Insignie. The insignie for the Auxiliary Group is prescribed in Section 1 (c) of Office of Civilian Defense Regulations No. 2, and the use and wear of the prescribed insignie shall be governed by the aforementioned Regulations and all other rules, regulations, orders, and instructions of the Director.

Use and wear of such prescribed insignie shall be governed by regulations to be issued by the Director. It shall be unlawful for any person to wear such insignie except in accordance with the rules, regulations, orders, and instructions of the Director. Persons in the Auxiliary Group shall not wear or use pins or lapel buttons embodying the prescribed insignie, but may use automobile plates or stickers, and during blackouts, practice blackouts, air raids, or air raid drills, while actively engaged in the performance of duties, or while in transit to or from their places of duty, may wear arm bands or brassards.

C. Supervision. Persons in the Auxiliary Group shall be under the supervision and direction of the Local Defense Councils, subject to further order of the Director.

JAMES M. LANDIS, *Director.*

APPENDIX 18

[OCD Administrative Order No. 27 (July 11, 1942). 7 Fed. Reg. 5463.]

ESTABLISHMENT OF:

FOREST FIRE FIGHTERS SERVICE

Pursuant to authority granted by Executive Order No. 8757²³ dated May 20, 1941, as amended by Executive Order No. 9134²⁴ of April 15, 1942, Executive Order No. 9165²⁵ of May 19, 1942, the Director of Civilian Defense hereby confirms the establishment, within the Office of Civilian Defense, of the Forest Fire Fighters Service.

1. Purpose.

The Forest Fire Fighters Service has been established, in accordance with the policy of the Facility Security Program of the Office of Civilian Defense, to safeguard forest lands and other timber facilities and resources, to prevent and control fires which might endanger such facilities and resources, and to minimize the effects of any such fires. It shall cooperate with the forest fire protection agencies of the Department of Interior and Department of Agriculture, with State Forestry officials and private forest fire protective organizations.

2. Insignie.

The basic insignie prescribed for the Forest Fire Fighters Service shall consist of a pine tree, in red, placed in the center of a white equilateral triangle embossed on a circular field of blue. The basic insignie may be included in arm bands and brassards, lapel pins and buttons, sleeve insignie for uniforms, collar and cap emblems for uniforms, automobile stickers and plates, and Certificates of Membership. The use and wear of all official articles embodying the pre-

²³ See Appendix 1, *supra*, p. 103.

²⁴ See Appendix 4, *supra*, p. 106.

²⁵ See Appendix 5, *supra*, p. 107.

scribed insignia shall be governed by Office of Civilian Defense Regulations No. 2⁴⁴ and any other rules, regulations, orders, or instructions issued by the Director.

3. Organization and Supervision.

(a) The Forest Fire Fighters Service shall operate under the supervision of the Office of Civilian Defense, Facility Security Branch, and shall be directed by the Timber and Related Facilities Committee which shall consist of appropriate officials in the Department of Interior and the Department of Agriculture, appointed by and responsible to the Director of Civilian Defense.

(b) The Director of Civilian Defense shall appoint, upon the recommendation of the Timber and Related Facilities Committee, a National Coordinator of the Forest Fire Fighters Service to direct its operations subject to the Timber and Related Facilities Committee, and such National Coordinator shall appoint, with the approval of the Director of Civilian Defense, State Coordinators from Federal, State or private forest fire protection agencies.

(c) The State Coordinators shall appoint Local Coordinators from Federal, State or private forest fire protection agencies.

(d) The Local Coordinators shall appoint from the enrolled membership of the Forest Fire Fighters Service, within each locality, a Squad Leader who will have under his control a working unit of from 8 to 10 Forest Fire Fighters.

JAMES M. LANDIS, *Director*.

APPENDIX 19

[OCD Administrative Order No. 27, Amendment No. 1 (August 21, 1942). 7 Fed. Reg. 6661.]

Pursuant to authority granted by Executive Order No. 8757⁴⁵ dated May 20, 1941, as amended by Executive Order No. 9134⁴⁶ dated April 15, 1942, and Executive Order No. 9165⁴⁷ dated May 19, 1942, the Director of Civilian Defense hereby orders that Administrative Order No. 27,⁴⁸ confirming the establishment of the Forest Fire Fighters Service, be amended by striking out Section 1 thereof and substituting therefor the following:

1. Purpose.

The Forest Fire Fighters Service has been established in accordance with the policy of the Facility Security Program of the Office of Civilian Defense, to assist in safeguarding forest lands and other timber facilities and resources, to aid in prevention and suppression of fires which might endanger such facilities and resources, and to minimize the effects of any such fires. Its functions shall be to aid in nation-wide forest fire prevention education and to enroll volunteer fire fighters for service in forest and rural areas. It shall cooperate with the forest fire protection agencies of the Department of the Interior and the Department of Agriculture, with State forestry officials and private forest fire protective organizations.

JAMES M. LANDIS, *Director*.

⁴⁴ See Appendix 10, *supra*, p. 123.

⁴⁵ See Appendix 1, *supra*, p. 103.

⁴⁶ See Appendix 4, *supra*, p. 106.

⁴⁷ See Appendix 5, *supra*, p. 107.

⁴⁸ See Appendix 18, *supra*, p. 149.

APPENDIX 20

[OCD Administrative Order No. 28 (August 24, 1942). 7 Fed. Reg. 6745.]

ESTABLISHMENT OF:

CIVILIAN EVACUATION SERVICE

Pursuant to authority granted by Executive Order No. 8757⁸¹ dated May 20, 1941, as amended by Executive Order No. 9134⁸² dated April 15, 1942, the Director of Civilian Defense hereby establishes, within the Office of Civilian Defense, the Civilian Evacuation Service.

1. Purpose.

The Civilian Evacuation Service is established in accordance with the policy of the Joint Committee on Evacuation representing the Office of Civilian Defense, the Office of Defense Health and Welfare Services, the United States Public Health Service, the Children's Bureau of the United States Department of Labor, the United States Office of Education, and the Bureau of Public Assistance of the Social Security Board. Members of the Civilian Evacuation Service shall assist in planning and preparing for a possible evacuation of civilians and in effecting an actual evacuation and reception of civilians, in accordance with the policies developed by the Committee.

2. Organization, Supervision and Membership.

The Civilian Evacuation Service shall operate under the supervision of the Regional Evacuation Officers, or persons designated to discharge this duty by the Regional Directors of Civilian Defense where no Regional Evacuation Officers have been appointed, and shall be directed by the chief officer of State or local evacuation authorities.

The membership of the Civilian Evacuation Service shall comprise members of State and local evacuation authorities, and persons who are designated or assigned to function in executive or supervisory positions with respect to the planning or actual operation of an evacuation, including persons who are designated as Party Leaders in the event of an actual evacuation. Such persons may be certified to the State or Local Defense Council for appointment to membership in the Civilian Evacuation Service and may, upon taking an oath of the character and in the manner prescribed in Regulations No. 3⁸³ of the Office of Civilian Defense with respect to the United States Citizens Defense Corps, be appointed members of the Civilian Evacuation Service by the State or Local Defense Council.

3. Insigne for Civilian Evacuation Service.

The basic insignie prescribed for the Civilian Evacuation Service shall consist of a large block letter "E" in white, placed in the center of a red disc within a white equilateral triangle embossed on a circular field of blue. The basic insignie may be included in lapel pins and buttons, sleeve insignia for uniforms, collar and cap emblems for uniforms, automobile stickers and plates, and certificates of membership, but not arm bands or brassards. The basic insignie may also be included on badges three inches in diameter to identify evacuation leaders of parties and designated assistants in the event of an actual evacuation. The use and wear of all official articles embodying the prescribed insignie shall be governed by Office of Civilian Defense Regulations No. 2⁸⁴ and any other

⁸¹ See Appendix 1, *supra*, p. 103.

⁸² See Appendix 4, *supra*, p. 106.

⁸³ See Appendix 14, *supra*, p. 133.

⁸⁴ See Appendix 10, *supra*, p. 123.

rules, regulations, orders or instructions issued by the Director. Local Defense Councils shall issue official articles embodying prescribed insignia to the members of the Civilian Evacuation Service, with the approval of the Regional Directors of the Office of Civilian Defense or of the State Defense Councils, where power of approval has been delegated to them, as provided in Section 4 of Office of Civilian Defense Regulations No. 2.

4. Assisting Personnel for the Civilian Evacuation Service.

Volunteers shall be recruited by the Civilian Defense Volunteer Office of the Local Defense Council for Governmental agencies engaged in the evacuation program, such as health, educational and welfare agencies, and for the State or local evacuation authority, to assist in such matters as registration of possible evacuees, the collection or compilation of survey data, the providing of information to evacuees, and the providing of social, health and educational service. When requested by such agencies or authorities, they shall be assigned to and trained by them, and shall perform required duties. When trained to the satisfaction of such agencies or authorities, they may be certified to the Local Defense Council for appointment to membership in the United States Citizens Service Corps; they do not become members of the Civilian Evacuation Service.

Members of the United States Citizens Defense Corps may, upon request of State or local evacuation authorities, be assigned by the Commander or Chief of Service to perform duties, as such members, in connection with the evacuation program; such persons do not become members of the Civilian Evacuation Service.

JAMES M. LANDIS, *Director.*

APPENDIX 21

[OCD Administrative Order No. 31 (February 3, 1943). 8 Fed. Reg. 1651.]

PREScribing INSIGNIA TO IDENTIFY PERSONS AND EMERGENCY VEHICLES ENTITLED TO MOVE ON PUBLIC WAYS DURING PERIODS OF AIR RAID ALARM IN THE EASTERN MILITARY AREA.

WHEREAS, by virtue of Executive Order No. 9066,^{94a} dated February 19, 1942, Air Raid Protection Regulations No. 1^{94b} have been issued by the Commanding Generals of the First, Second, Third and Fourth Service Commands and of the Military District of Washington, pursuant to Public Proclamation No. 4,^{94c} dated January 27, 1943, of the Commanding General of the Eastern Defense Command and First Army, applicable to the Eastern Military Area prescribed in Public Proclamation No. 1^{94d} dated May 16, 1942, by the Commanding General of the Eastern Defense Command and First Army; and

WHEREAS said regulations provide that the term "emergency vehicles" shall include, among others, "vehicles in emergency service identified by insignia prescribed by the Director of Civilian Defense", and that among the persons who are not required to take shelter during periods of air raid alarm are those who, as authorized by civilian defense authorities, wear arm bands or carry identification cards with insignia prescribed by the Director of Civilian Defense;

^{94a} 7 Fed. Reg. 1407.

^{94b} See Appendix 27, *infra*, p. 163.

^{94c} See Appendix 26, *infra*, p. 162.

^{94d} See Appendix 25, *infra*, p. 159.

It is hereby ordered by the Director of Civilian Defense as follows:

1. Vehicles of the class which may move on public ways in the Eastern Military Area during periods of air raid alarm if identified by insignia prescribed by the Director of Civilian Defense shall be identified as follows:

(a) A pennant, as hereinafter described, shall be mounted in an upright position at the forward left side of the vehicle, and located so as to be visible from both sides without obscuring the vision of the driver. Such pennants shall be of white material in the shape of an equilateral triangle with sides 18" in length, and shall have in the center thereof the prescribed basic insignie, entirely in red and 6" in diameter, of the Office of Civilian Defense. Such insignie shall consist of the letters "CD" centered in a white equilateral triangle, embossed on a circular field, in the form of the applique emblem granted by Letters Patent No. D-129797 of October 7, 1941.

(b) A mask, as hereinafter described, for use during hours of darkness, shall be fastened securely over the lighted right front headlight of any automobile, truck or other vehicle, or over an auxillary headlight of a motorcycle. Such masks shall be removable opaque masks, made of any suitable material which can be easily and quickly secured to the headlight, and shall embody the above-described basic insignie of the Office of Civilian Defense, 2½ to 3 inches in diameter; the letters "CD" and the three segments of the surrounding circular field of the basic insignie shall be translucent green, and the triangle on which the letters "CD" are superimposed shall be opaque.

2. Vehicles entitled to use such pennants and masks shall be only those designated by, or pursuant to, regulations prescribed by State Defense [War] Councils or designated pursuant to authority granted by the Director of Civilian Defense.

3. Persons in the Eastern Military Area engaged, during periods of air raid alarm, in the performance of emergency duties who, as a result of wearing arm bands with insignia prescribed by the Director of Civilian Defense, are not required to take shelter, shall be limited to persons properly wearing official arm bands in accordance with Regulations No. 2⁴⁴ of the Office of Civilian Defense and orders issued pursuant thereto. Such arm bands may embody only the officially prescribed insignia of the Administrative Staff, the United States Citizens Defense Corps (except instructors), the Civil Air Patrol, the Forest Fire Fighters Service, or the Civilian Defense Auxillary Group, all as described and set forth in the aforesaid Regulations No. 2. Persons entitled to wear such arm bands shall be only those designated by, or pursuant to, regulations prescribed by the State Defense [War] Councils in accordance with the aforesaid Regulations No. 2, or designated pursuant to authority granted by the Director of Civilian Defense.

4. The above-described pennants, masks and arm bands are official articles of the Office of Civilian Defense, and their manufacture, sale, distribution and use is governed by Office of Civilian Defense Regulations No. 2. The pennants, masks and arm bands may be manufactured and sold only by licensed manufacturers; they shall not be sold, offered for sale, worn, exhibited, displayed or used except with the approval of the State Defense [War] Council having jurisdiction or of the United States Office of Civilian Defense. The aforesaid regulations of Service Commanders restrict the right of any person to wear, exhibit, display, use, manufacture, sell or offer for sale, any such pennants, masks or arm bands, or simulation or adaptation thereof, except in accordance with rules and regulations of the Director of Civilian Defense.

JAMES M. LANDIS,

Director of Civilian Defense.

⁴⁴ See Appendix 10, *supra*, p. 123.

APPENDIX 22

[Public Law 415—77th Cong., Chap 20, 2d Sess., approved January 27, 1942.
56 Stat. 19.]

AN ACT

To provide protection of persons and property from bombing attacks in the United States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there is hereby authorized to be appropriated such sums, not exceeding \$100,000,000, as may be necessary to enable the Director of Civilian Defense, appointed under authority of Executive Order Numbered 8757,⁹⁵ dated May 20, 1941, to provide, under such regulations as the President may prescribe, facilities, supplies, and services to include research and development for the adequate protection of persons and property from bombing attacks, sabotage or other war hazards in such localities in the United States, its Territories and possessions, as may be determined by the said Director to be in need of, but unable to provide, such protection: *Provided*, That such facilities and supplies may be loaned to civil authorities in accordance with said regulations: *Provided further*, That any department or agency of the Federal Government having equipment or supplies not required for its use may, subject to the approval of the Division of Procurement, Treasury Department, transfer the same without charge (notwithstanding the provisions of the Act of December 20, 1928, 45 Stat. 1030) to the Director of Civilian Defense for the purpose herein authorized.⁹⁶

Sec. 2. It shall be unlawful for any person to wear an insignia, arm band, or other distinctive article prescribed by the Director of Civilian Defense except in accordance with the regulations promulgated under the authority of section 1 hereof: *Provided*, That nothing in this Act shall be construed as authorizing

⁹⁵ See Appendix 1, *supra*, p. 103.

⁹⁶ On February 21, 1942, the First Deficiency Appropriation Act (56 Stat. 98) was approved, wherein Congress made the appropriation above referred to. The provision in the Deficiency Act, relating to civilian defense, reads as follows: "Civilian Defense: To enable the Director of Civilian Defense, under such regulations as the President may prescribe (which regulations may provide exemption from the requirements of section 3709 of the Revised Statutes), to carry out the provisions of the Act entitled 'An Act to provide protection of persons and property from bombing attacks in the United States, and for other purposes', approved January 27, 1942 (Public Law 415), fiscal year 1942, \$100,000,000, to remain available until June 30, 1943, of which not to exceed \$3,000,000 shall be available for all administrative expenses, including printing and binding and personal services in the District of Columbia: *Provided*, That no part of this appropriation shall be used to pay any person in the Office of Civilian Defense unless such person is directly employed in the administration of such Act of January 27, 1942: *Provided further*, That no part of the funds appropriated herein may be used for the employment of persons, the rent of facilities or the purchase of equipment and supplies to promote, produce or carry on instruction or to direct instruction in physical fitness by dancers, fan dancing, street shows, theatrical performances or other public entertainments: *Provided further*, That no part of this appropriation shall be available to pay the salary of any person at the rate of \$4,500 per annum or more unless such person is appointed by the President, by and with the advice and consent of the Senate: *Provided further*, That the Director of Civilian Defense shall transmit to the Chairman of the Committee on Appropriations of the Senate and the Chairman of the Committee on Appropriations of the House of Representatives every sixty days following the date of the enactment of this Act, a report in summary and by categories of the progress of the procurement of equipment and material provided by this appropriation: *Provided further*, That no funds herein appropriated shall be used for the payment of any person especially employed by a contractor to solicit or secure a contract upon any agreement for a commission, percentage, brokerage, or contingent fee."

the Director of Civilian Defense, or any person or employee acting under him by authority of this Act, or in pursuance of the regulations prescribed thereunder to interfere with or usurp any of the rights or duties of any local district, municipal, county, or State official.

Any person found guilty of violating the provisions of this section shall, upon conviction, be fined not more than \$100 or imprisoned for not more than thirty days, or both.

Approved, January 27, 1942.

APPENDIX 23

[Public Law 373—77th Cong., Chap. 625, 1st Sess., approved December 26, 1941.
55 Stat. 858.]

AN ACT

To authorize black-outs in the District of Columbia, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, the Commissioners of the District of Columbia are authorized and directed, whenever a state of war exists between the United States and any foreign country or nation, to order black-outs in the District of Columbia at such times and for such periods of time as they may deem desirable, subject to the approval of the Secretary of War, to regulate and prohibit the movement of vehicular traffic on the highways during such periods and to make such regulations as they may deem necessary to insure the success of the black-outs and to protect life and property during said periods.

SEC. 2. The Commissioners are authorized to negotiate with the proper authorities of the States of Maryland and Virginia with a view to effecting a synchronization of black-outs in the District of Columbia and such parts of those States as may be necessary to carry out the intent and purpose of this Act.

SEC. 3. The Secretary of War is authorized to assist and cooperate with the Commissioners of the District of Columbia in the execution of black-outs in the District of Columbia and the metropolitan area.

SEC. 4. The municipality of the District of Columbia shall not be liable for any damages sustained to person or property during, or as the result of, an authorized black-out.

SEC. 5. The statutory penalty upon conviction of any crime, other than those punishable by life imprisonment or death, committed during any authorized black-out shall be doubled.

SEC. 6. During the existence of a state of war between the United States and any foreign country or nation, the Commissioners may appoint, for specified times, as many special police, without pay, from among residents of the District of Columbia as they may deem advisable. During the terms of service of such special police they shall possess all the powers and perform all the duties of privates of the standing police force of the District of Columbia, and such special police shall wear an emblem to be provided by the Commissioners.

SEC. 7. During the existence of a state of war between the United States and any foreign country or nation, the Commissioners of the District of Columbia are authorized to accept volunteer service for the government of the District of Columbia.

SEC. 8. During the existence of a state of war between the United States and any foreign country or nation, the Commissioners of the District of Columbia, subject to the approval of the Secretary of War, are authorized to prepare for the evacuation from the District of Columbia or from any part thereof of all such persons as they shall determine, and for this purpose shall negotiate with the proper authorities of any State of the United States or of any subdivision thereof to provide for the reception, housing, maintenance, and care of evacuees, shall prepare all necessary plans for the conduct of such evacuation, and may when in their judgment the public interest or the safety of such persons creates the necessity therefor order and compel, subject to the approval of the Secretary of War, the evacuation from the District of Columbia of any such persons to such place or places as they may designate. The Commissioners of the District of Columbia are authorized and empowered to obligate the District of Columbia for the payment of all necessary costs and to make such regulations as they may deem necessary to carry out the provisions of this section, and, for the purpose of compelling evacuation, may authorize custody by the regular or special police of any person or persons, which custody shall be effective until the point of destination has been reached, and the powers of such police for such purpose are hereby declared to extend to any point within the United States that the Commissioners of the District of Columbia may designate. There are hereby authorized to be appropriated, out of any money in the Treasury to the credit of the United States not otherwise appropriated, such sums as may be necessary to carry out the provisions of this section.

SEC. 9. The Commissioners of the District of Columbia are authorized and empowered, without regard to the provisions of any other law, and for defense purposes, to borrow money from the Treasury of the United States, to expend the same, to obligate the District of Columbia for the payment of equipment, materials, and supplies of all kinds, and to employ personnel as the Commissioners in their discretion may deem necessary, not exceeding \$1,000,000, and the said Commissioners are further authorized and empowered to use such regular employees of the Government of the District of Columbia as they deem necessary.⁶⁷

The Secretary of the Treasury is hereby authorized to loan to the Commissioners of the District of Columbia such sum or sums as are authorized by this section, and there is hereby appropriated for this purpose \$1,000,000 out of any money in the Treasury of the United States to the credit of the United States not otherwise appropriated.

SEC. 10. The Commissioners shall have the power to prescribe reasonable penalties for violation of any regulation promulgated pursuant to this Act, not exceeding a fine of \$300 or ninety days' imprisonment, or both. Prosecution for such violations shall be on information in the police court by the corporation counsel or his assistants.

Approved, December 26, 1941.

⁶⁷ This paragraph was amended by Public Law 699 (56 Stat. 740), approved August 6, 1942. Text in Appendix 24, *infra*, p. 157.

APPENDIX 24

[Public Law 699—77th Cong., Chap. 548, 2d Sess., approved August 6, 1942.
56 Stat. 740.]

AN ACT

To amend the Act entitled "An Act to authorize black-outs in the District of Columbia, and for other purposes," approved December 26, 1941, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the first paragraph of section 9 of the Act entitled "An Act to authorize black-outs in the District of Columbia, and for other purposes," approved December 26, 1941,⁵⁵ be amended to read as follows:

"SEC. 9. During the existence of a state of war between the United States and any foreign country or nation, the Commissioners of the District of Columbia are authorized and empowered, without regard to the provisions of any other law, to take such measures as they may deem necessary for the adequate protection of persons and property in the District of Columbia and to make such orders, rules, and regulations as they may deem necessary to carry out the foregoing authority. The power hereby granted shall include but not be limited to the following:

"(a) To establish, in the government of the District of Columbia, units and organizations for civilian defense, and to utilize any or all existing voluntary units or organizations together with their personnel or any part or parts thereof; to vest members thereof with authority to carry out such functions as may be necessary to effectuate the purposes of this Act including such powers and duties of the standing police force of the District of Columbia as the Commissioners may designate; and to make such orders and regulations as they may deem necessary to govern the establishment, maintenance, and operation of such units and organizations and the discipline of the members thereof.

"(b) To use, for the purposes of this Act, such regular employees of the government of the District of Columbia as they deem necessary.

"(c) To temporarily requisition, enter upon, take possession of, and use private property of every kind and nature and any rights therein as may in their opinion be necessary for the location, installation, maintenance, and operation of facilities and devices suitable for defense purposes, and to ascertain and pay just compensation for such use of private property, and if the amount of compensation so determined be not satisfactory to the person entitled to receive the same, such property may nevertheless be used immediately and such person shall be paid 50 per centum of the amount so determined and shall be entitled to sue the District of Columbia to recover such further sum as, added to said 50 per centum, will make up such amount as will be just compensation for such use.

"(d) To accept from the United States and from any officer or agency thereof all facilities, supplies, and funds that may from time to time be offered to the District of Columbia, and to agree to such terms, conditions, rules, and regulations as may be imposed in connection with such offer.

"(e) To borrow money from the Treasury of the United States, not exceeding \$2,000,000, and to expend the same for defense purposes. In addition thereto, in the event of an emergency, to obligate the District of Columbia

⁵⁵ 55 Stat. 858. See Appendix 23, *supra*, p. 155.

for the payment of any and all supplies, equipment, materials, food, and whatever else may be necessary for the purpose of preventing and alleviating suffering to persons and preventing the spread of disease in said District.

"(f) Within the limits of money borrowed as herein provided, and of money appropriated, to store, maintain, operate, use, purchase and rent equipment, materials, and supplies of all kinds and to employ such personnel as the Commissioners may deem necessary.

"(g) From the money herein authorized to be borrowed, to expend in the discretion of the Commissioners for hospital and other medical expenses for the treatment of members of civilian defense units and organizations injured in line of duty not to exceed \$100,000.

"(h) To accept the use of private property, and during such periods of time that any privately owned motor vehicle is used by the District of Columbia under the authority of this section the operator thereof shall not be deemed or held to be the agent of the owner of such vehicle within the meaning of the Act entitled 'An Act to promote safety on the public highways of the District of Columbia by providing for the financial responsibility of owners and operators of motor vehicles for damages caused by motor vehicles on the public highways in the District of Columbia; to prescribe penalties for the violation of the provisions of this Act, and for other purposes,' approved May 3, 1935." "

SEC. 2. That the Act entitled "An Act to authorize black-outs in the District of Columbia, and for other purposes," approved December 26, 1941, be further amended by adding thereto the following new sections:

"Sec. 11. Neither the District of Columbia nor any officer, agent, or employee of said District shall be liable to any person who has heretofore or who may hereafter volunteer for service with said District or with any agency for civilian defense in the District of Columbia or elsewhere for any damage sustained by such person in the course of or arising out of any such volunteer service.

"Sec. 12. Neither the District of Columbia nor any officer, agent, employee, or regularly appointed volunteer worker in the service of said District, nor any individual, receiver, firm, partnership, corporation, association, or trustee, or any of the agents thereof, in good faith and without willful or gross negligence carrying out, complying with, enforcing or attempting to carry out, comply with, or enforce this Act or any order, rule, or regulation issued or promulgated pursuant to this Act, shall be liable for any damage sustained to any persons or property as the result of such activity.

"Sec. 13. The power and duties conferred upon the Commissioners of the District of Columbia by this or any other Act shall not affect, impair, limit, or interfere with the powers of the military or naval authorities with respect to the control and disposition of military or naval personnel or of civilians, or with respect to any other military or naval activity or duty."

SEC. 3. The Secretary of the Treasury is hereby authorized to loan to the Commissioners of the District of Columbia such sum or sums as are authorized by the first paragraph of said section 9, as amended, and in addition to amounts heretofore appropriated there is hereby appropriated for this purpose the further sum of \$1,000,000, out of any money in the Treasury of the United States to the credit of the United States not otherwise appropriated.

SEC. 4. The Secretary of the Treasury shall be repaid moneys loaned under authority of section 9 of the Act of December 26, 1941, as amended by this Act, in annual installments over a period of not to exceed ten years, with interest thereon beginning July 1, 1943, for the period of amortization: *Provided,*

That such interest shall be at such rate as would, in the opinion of the Secretary of the Treasury, be the lowest interest rate available to the District of Columbia on the date of the approval of this Act were said District authorized by law to issue and sell obligations to the public, at the par value thereof, in a sum equal to the repayable amounts of such advances, maturing serially over a period of ten years in approximately equal annual installments, including both principal and interest, and secured by a first pledge of and lien upon all the general-fund revenues of said District: *Provided further*, That such sums as may be necessary for the reimbursement herein required of the District of Columbia, and for the payment of interest, shall be included in the annual estimates of the Commissioners, the first reimbursement to be made on July 1, 1944.

Approved, August 6, 1942.

APPENDIX 25

[Public Proclamation No. 1 of Lt. Gen. H. A. Drum establishing the Eastern Military Area (May 16, 1942). 7 Fed. Reg. 3830.]

TO: THE PEOPLE WITHIN THE STATES OF MAINE, NEW HAMPSHIRE, VERMONT, MASSACHUSETTS, RHODE ISLAND, CONNECTICUT, NEW YORK, NEW JERSEY, DELAWARE, PENNSYLVANIA, MARYLAND, VIRGINIA, NORTH CAROLINA, SOUTH CAROLINA, GEORGIA, PART OF THE STATE OF FLORIDA, AND THE DISTRICT OF COLUMBIA.

WHEREAS, by virtue of orders issued by the War Department on December 20, 1941, and March 18, 1942, that portion of the continental United States east of the following line: The OHIO-PENNSYLVANIA boundary, the WEST VIRGINIA-PENNSYLVANIA boundary, the WEST VIRGINIA-MARYLAND boundary, the WEST VIRGINIA-VIRGINIA boundary, the KENTUCKY-VIRGINIA boundary, the TENNESSEE-VIRGINIA boundary, the TENNESSEE-NORTH CAROLINA boundary, the TENNESSEE-GEORGIA boundary, the ALABAMA-GEORGIA boundary to its junction with FLORIDA thence south along the APALACHICOLA RIVER, has been established as the Eastern Defense Command under my command; and

WHEREAS, by Executive Order 9066,¹ dated February 19, 1942, the President of the United States authorized and directed the Secretary of War and the Military Commanders whom he may from time to time designate, whenever he or any such designated commander deems such action necessary or desirable, to prescribe military areas in such places and of such extent as he or the appropriate Military Commander may determine, with authority over such military areas as in such Executive Order prescribed; and

WHEREAS, the Secretary of War on April 22, 1942, designated the undersigned as Military Commander to carry out the duties and responsibilities imposed by said Executive Order for that portion of the United States embraced in the Eastern Defense Command; and

WHEREAS, the Eastern Defense Command embraces fifteen States, part of another State, and the District of Columbia, inhabited by millions of loyal citizens of the United States and hundreds of thousands of persons not yet citizens of the United States, but equally loyal; and

WHEREAS, the economic life of this large portion of the population of our country, dwelling within the Eastern Defense Command, should be disturbed

¹ 7 Fed. Reg. 1407.

as little as may be consistent with requirements of adequate National Defense and internal security; and

WHEREAS, the Eastern Defense Command embraces the entire Atlantic Coast and a portion of the Gulf Coast of the United States and by its geographical location is particularly subject to attack, and, in connection therewith, is subject to espionage and acts of sabotage, thereby requiring the adoption of military measures necessary to establish safeguards against such hostile operations;

NOW, THEREFORE, I, HUGH A. DRUM, LIEUTENANT GENERAL, U. S. ARMY, by virtue of the authority vested in me by the President of the United States and by the Secretary of War and my powers and prerogatives as Commanding General of the Eastern Defense Command and First Army, charged with the defense of the Eastern seaboard, do hereby declare and proclaim that:

1. The present situation requires as a matter of military necessity the establishment, in the territory embraced in the Eastern Defense Command within the continental United States, of Military Areas, and for that purpose, I do hereby prescribe all of the territory in the several States of the United States lying east and northeast of the westerly boundary line of the Eastern Defense Command, including the States of Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia, part of the State of Florida, and the District of Columbia, to be a Military Area and to be designated as the Eastern Military Area, as the same is shown on the map.

2. The functional subdivisions of the Eastern Military Area for purposes of enforcement of restrictions and orders issued from this Headquarters are the existing Corps Areas, namely, the First Corps Area, with Headquarters at Boston, Massachusetts; the Second Corps Area, with Headquarters at Governors Island, New York; the Third Corps Area, with Headquarters at Baltimore, Maryland; and the Fourth Corps Area, with Headquarters at Atlanta, Georgia. The Commanders of said Corps Areas are charged with responsibility for the enforcement of the restrictions and orders pertaining to their respective Corps Areas.²

3. The protection of American commerce and that of the United Nations from damage or destruction by enemy attack, and the prevention of enemy action against our shores, along the Atlantic and Gulf Seaboards, involve the effective control of artificial lighting along these coasts and for a reasonable distance in the rear thereof. For the purpose of such control, the existing restrictions and orders of the Commanding Generals of the four Corps Areas of the Eastern Military Area are hereby adopted and declared to be a part of this Proclamation. Corps Area Commanders are designated as the authorities to promulgate the necessary restrictions and orders for control.³

4. Wilful violation of any such restriction or order by an alien enemy, or repeated careless violations, even if not wilful, are cause for expulsion, intern-

² This paragraph was amended by Proclamation No. 2, September 7, 1942 (7 Fed. Reg. 7335) so as to include the Military District of Washington, with Headquarters at Washington, D. C.

³ This paragraph was amended by Proclamation No. 2, September 7, 1942 (7 Fed. Reg. 7335) so as to include the Commanding General of the Military District of Washington as the authority to promulgate and enforce, within his jurisdiction, the necessary restrictions and orders for control of artificial lighting. The same Proclamation also amended Proclamation No. 1 by substituting throughout for the terms "Corps Areas" and "Corps Area Commanders" the terms "Service Commands, Services of Supply" and "Commanding Generals, Service Commands, Services of Supply," respectively.

ment or prosecution; similar violations by persons other than alien enemies are cause for expulsion or prosecution.⁴

5. Nothing contained herein shall be construed as limiting or modifying the duty and responsibility of the Department of Justice under the Proclamations of the President of December 7⁵ and 8,⁶ 1941, insofar as the enforcement of rules and regulations for the conduct and control of alien enemies is concerned, or otherwise.

6. The Corps Areas in the Eastern Military Area, each within its respective sphere of activities, and such federal, state, municipal and local agencies, as the Commanding General, Eastern Defense Command, with the consent of such agencies, may from time to time deem advisable specifically to designate, are hereby designated as the agencies to enforce the provisions of these restrictions and orders and such restrictions and orders as may subsequently be issued by him; and these agencies, under the coordination of the Commanding General, Eastern Defense Command, have jurisdiction to conduct the investigations necessary to their respective enforcement thereof.

7. In accordance with representations made to the Governors of the States within the Eastern Military Area and the Commissioners of the District of Columbia, it is specifically requested that state and municipal police, and other officials and civilians within the States affected by this Proclamation, assist the agencies charged with enforcing restrictions by reporting to them the names and addresses of all persons believed to have violated restrictions, and such other information as may be called for by these agencies.

8. A copy of this Proclamation shall be displayed for public inspection at every Selective Service Local Board; at every Post Office; at every Court House; and at every Town Hall within the Eastern Military Area. Additional proclamations, announcements, restrictions, and orders will be issued from this Headquarters as occasion demands. Copies of such additional proclamations, announcements, restrictions, and orders will be available for inspection at every Selective Service Local Board; at every Post Office; at every Court House; and at every Town Hall within the Eastern Military Area. It shall be the duty of every person found within the Eastern Military Area to familiarize himself with the terms of every proclamation, announcement, restriction, or order issued by this Headquarters.

The assistance of public-spirited and patriotic newspapers, periodicals, radio and other media of public information within the Eastern Military Area is earnestly solicited and it is confidently expected that they will publish in full in a prominent position this Proclamation and every proclamation, announcement, restriction, or order issued by this Headquarters pursuant to this Proclamation.

May 16, 1942.

H. A. DRUM,
Lieutenant General, U. S. Army,
Commanding.

⁴ This paragraph relates to the Act of March 21, 1942 (Public No. 503; 56 Stat. 173). For text, *supra*, p. 45, note 7.

⁵ 55 Stat. 1700.

⁶ 55 Stat. 1705, 1707.

APPENDIX 26

[Public Proclamation No. 4 of Lt. Gen. H. A. Drum authorizing air raid protection regulations (January 27, 1943). 8 Fed. Reg. 1331.]

TO: THE PEOPLE WITHIN THE STATES OF MAINE, NEW HAMPSHIRE, VERMONT, MASSACHUSETTS, RHODE ISLAND, CONNECTICUT, NEW YORK, NEW JERSEY, PENNSYLVANIA, DELAWARE, MARYLAND, VIRGINIA, NORTH CAROLINA, SOUTH CAROLINA, GEORGIA, FLORIDA EAST OF THE APALACHICOLA RIVER, AND THE DISTRICT OF COLUMBIA.

WHEREAS, the Eastern Military Area was prescribed by Public Proclamation No. 1,^{6a} this Headquarters, dated May 16, 1942, under authority contained in Executive Order of the President, No. 9066,^{6b} dated February 19, 1942; and

WHEREAS, military necessity then requiring such action, certain restrictions for the control of lighting in coastal areas of the Eastern Military Area (Coastal Dimout Restrictions) were imposed by Public Proclamation No. 1 for the protection of United Nations shipping from enemy attack, and the prevention of enemy action against the Atlantic Seaboard; and

WHEREAS, the present situation requires as a matter of military necessity, for the protection of inhabitants of the Eastern Military Area and National Defense activities, utilities, and installations therein against enemy attack, the extension of military control over certain phases of air raid protection in the Area;

NOW, THEREFORE, I, HUGH A. DRUM, LIEUTENANT GENERAL, U. S. ARMY, by virtue of the authority vested in me by the President of the United States and by the Secretary of War and my powers and prerogatives as Commanding General of the Eastern Defense Command and First Army, charged with the defense of the Eastern Seaboard, do hereby declare, order and proclaim that:

1. The right of any person to enter, remain in, or leave the Eastern Military Area, or any part or Zone thereof, shall hereafter be subject to regulations governing air raid protection including coastal dimout, blackout, the control of lighting and radio, the movement of vehicles and other conveyances, and activities of persons during periods of blackout and air raid, and related matters, issued by commanding generals of service commands and the Commanding General of the Military District of Washington, each for his appropriate jurisdiction, pursuant to orders of this Headquarters. Such regulations are hereby adopted as restrictions.

2. In all parts of the Eastern Military Area, a blackout shall be effected as soon as the authorized signal therefor has been given and shall continue until the authorized signal to terminate the blackout.

3. Within the Eastern Military Area, there is hereby designated a Coastal Dimout Area. This Coastal Dimout Area, in each of the four service commands of the Eastern Military Area, coincides in location and extent with the areas designated by commanding generals of service commands, each for his appropriate jurisdiction, as Coastal Dimout Areas.

4. Throughout the Coastal Dimout Area, nightly dimouts, in accordance with regulations of commanding generals of service commands, each for his appropriate jurisdiction, will be observed. This dimout is a preparatory step for periods of

^{6a} See Appendix 25, *supra*, p. 159.

^{6b} 7 Fed. Reg. 1407.

blackout throughout the Coastal Dimout Area. The regulations governing air raid protection provide that a blackout must be effected more quickly in the Coastal Dimout Area than in those parts of the Eastern Military Area not included in the Coastal Dimout Area.

5. In accordance with paragraphs 6 and 7 of Public Proclamation No. 1, the civilian defense organizations of the Federal Government and of the District of Columbia and of the several States within the Eastern Military Area are, with their consent, hereby designated as the principal agencies to assist commanding generals of service commands in the enforcement of restrictions imposed by this Proclamation and orders issued pursuant hereto, and these organizations and Federal, State and local law enforcement agencies are requested to render assistance in the enforcement of such restrictions and orders.

6. Any person who violates any restriction or order issued, required to be issued, or adopted by the Commanding General, Eastern Defense Command and First Army, pursuant to the authority cited in the preamble of this Proclamation, applicable to the whole or any part of the Eastern Military Area, is subject to immediate exclusion from the Eastern Military Area, or any part or Zone thereof, and to the penalties provided by Title 18, Section 97A, United States Code. In addition, if two or more persons conspire to violate this Section and one or more do any act to effect the object of such conspiracy, each of the parties will be subject to the penalties provided by Title 18, Section 88, United States Code. In the case of an alien enemy, such person will, in addition, be subject to immediate apprehension and internment.

7. A copy of this Proclamation shall be displayed for public inspection at every Selective Service Local Board; at every Post Office; at every Court House; and at every Town Hall within the Eastern Military Area. Copies of regulations issued pursuant to this Proclamation shall be displayed for public inspection at every Selective Service Local Board; at every Post Office; at every Court House; and at every Town Hall within the area affected by such regulations. It will be the duty of every person found within the Eastern Military Area to familiarize himself with the terms of every proclamation and regulation with respect to air raid protection including coastal dimout, blackout, the control of lighting and radio, the movement of vehicles and other conveyances, and activities of persons during periods of blackout and air raid, and related matters, in the area or service command in which he is found.

January 27, 1943.

H. A. DRUM,
Lieutenant General, U. S. Army,
Commanding.

APPENDIX 27

[Air Raid Protection Regulations No. 1, Eastern Defense Command, Second Service Command. 8 Fed. Reg. 2730.]

**TO: THE PEOPLE WITHIN THE STATES OF NEW YORK, NEW JERSEY,
AND DELAWARE**

Pursuant to an order of Lieutenant General Hugh A. Drum, Commanding General, Eastern Defense Command and First Army, dated January 9, 1943, the attached regulations are hereby promulgated, effective February 17, 1943, and all persons entering or remaining in the States of New York, New Jersey, and Delaware must comply herewith.

Pursuant to said order, enforcement of these regulations is under the direction and control of the undersigned.

January 27, 1943

T. A. TERRY,

Major General, U. S. Army,

Commanding the Second Service Command.

AIR RAID PROTECTION REGULATIONS NO. 1

Governing Blackout, the Control of Lighting and Radio, the Movement of Vehicles and Other Conveyances, and Activities of Persons During Periods of Blackout and Air Raid, and Related Matters, Within the Second Service Command.

SECTION I—DEFINITIONS

1. *Period of Blackout.* The period of time beginning with the blackout (BLUE) signal, (or the air raid (RED) signal if there has been no preceding blackout (BLUE) signal) and continuing during hours of darkness or until the all clear (WHITE) signal. (See also pars. 19, 20 and 21.)

2. *Period of Air Raid.* The period of time beginning with the air raid (RED) signal and ending with the blackout (BLUE) signal, following the air raid (RED) signal. (See also pars. 19 and 20.)

3. *Warning District.* The basic territorial division of an air defense region for the issuance of air warning signals.

4. *Area of Blackout or Air Raid Alarm.* The warning district or districts in and for which a period of blackout (BLUE) signal or air raid (RED) signal is in effect.

5. *Hours of Darkness.* The time from a half-hour after sunset to a half-hour before sunrise the following morning between October 1 and April 30, inclusive, and from one hour after sunset until one-half hour before sunrise the following morning between May 1 and September 30, inclusive.

6. *Civilian Defense Authorities.* Officials or bodies of a State or political subdivision thereof or of the District of Columbia authorized by legislation, regulation or order to administer matters pertinent to the subject matter of these regulations.

7. *Service Command.* The Commanding General of the Service Command, SOS, in which the affected area is located, or of the Military District of Washington, or his authorized representative.

8. *Director of Civilian Defense.* The Director of Civilian Defense appointed by the President of the United States pursuant to Executive Order No. 8757, dated May 20, 1941, or any amendment thereof, or his authorized representative.

9. *Persons.* Individuals (including officials and employees of the United States, or of any State or Territory, or of any political subdivision thereof), partnerships, associations, corporations (municipal, public or private), or any organized groups of individuals whether incorporated or not.

10. *Persons in Control of Lighting.*

a. With respect to light sources attached to publicly or privately owned real property of any character, the persons entitled, as owners or tenants, to occupy or enter such property or parts thereof;

b. With respect to light sources attached to road vehicles,* boats,* railroad trains,* street cars,* and aircraft, the persons in control of the operation of such conveyances;

* See pars. 12 to 16, incl. [This footnote is in the original.]

c. With respect to light sources not attached to real property or to the conveyances described in the foregoing paragraph b, the persons in possession or entitled to possession thereof;

d. With respect to all light sources, individuals who, by reason of relationship as licensee or guest, may light or extinguish lights; and

e. Employees, agents and representatives of the persons described in the foregoing paragraphs a to d, inclusive, whose duties include the lighting or extinguishing of lights, and all persons having authority to supervise or direct such employees, agents or representatives.

11. *Public Way.* Streets, highways, avenues, boulevards, alleys, and other public thoroughfares, but not including sidewalks or other ways for use primarily by pedestrians.

12. *Road Vehicle.* Every device in, upon, or by which any person or property is or may be transported or drawn upon a public way, not operated on rails, including all such devices motivated by mechanical means, or by animal or human power.

13. *Motor Vehicle.* Any road vehicle which is self-propelled.

14. *Boat.* Any means of transportation by water.

15. *Railroad Train.* Any means of transportation by rail, except street cars.

16. *Street Car.* Any vehicle or train of vehicles operating on rails at or above ground level (including elevated trains and subway trains while operating in the open), primarily for the purpose of transporting persons, principally on or over public ways lying within one municipality or metropolitan area as defined by the United States Bureau of Census.

SECTION II—AIR WARNING SIGNAL SYSTEM^b

17. *Transmission of Signals.* The air warning signals described in paragraphs 18, 19, 20 and 21 shall be issued, sounded, or announced only upon the order or the authorization of the fighter command to the district warning center which is operated by civilian defense authorities. The fighter command is responsible only that the district warning center receives the order or authorization for the giving of such signals. Civilian defense authorities are responsible for the transmission of such signals from the district warning center through their alarm warning systems to the public.^c In the case of practice blackouts or practice air raids, such air warning signals shall be issued, sounded, or announced only upon the order or authorization of the service command to civilian defense authorities.

18. *Yellow Signal.* This is a confidential preliminary caution signal not to be given by audible public alarm. It indicates the POSSIBILITY of an air raid in the warning district so warned. This signal shall be transmitted by civilian defense authorities only to such key persons, essential industries, railroads, and places within such warning district as such authorities deem essential to initiate proper steps to insure timely blackout or air raid precautions.

19. *Mobilization and Blackout (BLUE) Signal.* This is an audible warning signal indicating the PROBABILITY of an air raid in the warning district so warned. This signal will be a long note (approximately two minutes) at steady pitch of sirens, horns, or whistles. Upon the sounding of this signal, within such warning district, civilian defense forces will mobilize or remain mobilized;

^b Section II hereof supersedes certain provisions of O. C. D. pamphlet, "Air Raid Warning System." [This footnote is in the original.]

^c Local civilian defense authorities should maintain records of the time of beginning and ending of sounding of all audible air warning signals. [This footnote is in the original.]

if during hours of darkness, lighting will be extinguished or obscured except as permitted by paragraphs 24 to 37, inclusive, and pedestrians and traffic may continue or resume movement.

20. *Air Raid (RED) Signal.* This is an audible public warning signal indicating the PROXIMITY of enemy aircraft and the IMMINENCE of an air raid in the warning district so warned. This signal (approximately two minutes) will be a series of short blasts of horns or whistles or a warbling or fluctuating sound of varying pitch of a siren. Upon the sounding of this signal, in addition to the actions required by the mobilization and blackout (BLUE) signal, as contained in paragraph 19 above, within such warning district blackout shall be completed by extinguishing or obscuring all lights, except as permitted by paragraphs 24 to 35, inclusive, and pedestrians, vehicles and other conveyances shall comply with the requirements of paragraphs 38 to 42, inclusive.

21. *All Clear (WHITE) Signal.* This signal is a public signal indicating ALL CLEAR in the district so warned. This signal may be transmitted by radio, telephone, police, by turning on street lights which have been extinguished on the BLUE signal, or other available means. This signal may also be given by horns, whistles, or sirens, as specified by local civilian defense authorities, provided, however, that such audible signal shall not be the same as the mobilization and blackout (BLUE) signal and the air raid (RED) signal, as provided in paragraphs 19 and 20 above, and shall not resemble said signals so as to be confused therewith. Where such audible signal is used, as provided above, in a metropolitan area, embodying two or more municipalities, such signal shall be first coordinated by the service command or service commands within which such area is located. When an ALL CLEAR (WHITE) signal follows a YELLOW signal without an intervening mobilization and blackout (BLUE) or air raid (RED) signal, it shall not be an audible signal but shall be transmitted only in the manner provided for the YELLOW signal, as in paragraph 18 above.

NOTE: Ordinarily, a Yellow Signal shall precede a Blue Signal and a Blue Signal shall precede a Red Signal. However, if sufficient time is not available for these signals to be separated by at least five (5) minutes, the Yellow Signal and/or the Blue Signal may be omitted, so that a Blue Signal may be given without a prior Yellow Signal and a Red Signal may be given without a prior Yellow and/or Blue Signal. A Blue Signal shall follow every Red Signal, after an interval of not less than five (5) minutes and may in turn be followed by a White Signal or by another Red Signal. Upon the sounding of a Blue Signal, pedestrians and vehicles should give consideration to movement to places of safety in anticipation of an air raid (Red) Signal. The same action shall be required upon a Blue Signal whether it precedes or follows a Red Signal, that is, a return to a status of blackout rather than a condition of air raid; this will permit traffic and pedestrians to resume movement but maintains the blackout condition indicating that raiders have passed the area so warned but that a condition of blackout is still required in anticipation of another Red Signal upon the approach of a new wave of raiders or a return of the original raiders. The sequence of signals in such case would be Blue, Red, Blue, Red, Blue. A White Signal may follow a Yellow Signal or a Blue Signal, but will not follow a Red Signal without an intermediate Blue Signal. A White Signal shall not be given within ten (10) minutes of a preceding Blue Signal. The All Clear (White) Signal will not be given until the probability of attack no longer exists. [This note is in the original.]

SECTION III—PROHIBITED LIGHTING

22. *Prohibited Lighting.* During the period and in the area of blackout occurring during hours of darkness, persons in control of lighting shall cause all lights⁴ visible from the outside to be extinguished or blacked-out as promptly as possible, except as permitted in paragraphs 24 to 37, inclusive.

⁴ This prohibition applies to lights of every description, electrical, gas, oil, or any other source, including matches, cigarette lighters, etc. It prohibits lights that are blue or any other color except as specifically permitted. [This footnote is in the original.]

a. In Coastal Dimout Areas designated as such, the goal or time objective for the completion of all blackout measures shall be five (5) minutes.

b. In all other parts of the Second Service Command of the Eastern Military Area, all blackout measures shall be completed as near five (5) minutes as possible but in any event not to exceed fifteen (15) minutes.*

23. *Unattended Lighting.* At all times during hours of darkness, occupants of premises and operators of road vehicles and other conveyances shall not have any unattended lighting, except as permitted in paragraphs 24 to 35. Lighting shall be considered unattended unless a competent individual, who is a member, employee, or guest of the household or business establishment of the occupier, or who is the operator or occupant of a road vehicle or other conveyance, or who, by arrangement with any such individual has undertaken responsibility for said lighting, can blackout as provided in paragraph 22 above.†

SECTION IV—LIGHTING PERMITTED DURING PERIODS OF BLACKOUT AND DURING PERIODS OF AIR RAID

24. *General.* During the periods and in the areas of blackout or air raid, during hours of darkness, whether attended or not, lighting is permitted as provided in paragraphs 25 to 35, inclusive.

25. *Lights in Buildings and Residences.*

a. In building interiors a small amount of controlled illumination, sufficient to permit reasonable facility of movement without necessitating complete obscuration of doors and windows, is permitted only when the indoor incandescent lamps or lighting units are installed in accordance with the directions contained in subparagraph b below and which—

(1) Are marked "Indoor Blackout—War Department Standard"

(See W. D. Specifications—Blackout of Buildings) or

(2) Conform to the following requirements:

(a) Watts—not more than fifteen (15);

(b) Bulb coating—opaque except for circular aperture on bulb end;

(c) Circular aperture—maximum diameter of one (1) inch;

(d) Color of aperture—orange or orange-red;‡ or

(3) Conform to the following requirements:

(a) Watts—not more than twenty-five (25).

(b) Circuit—230 volt bulb used on 115 volt circuit.

(c) Bulb coating—opaque except for circular aperture on end of bulb.

(d) Circular aperture—maximum diameter of one (1) inch.

(e) Color of aperture—clear or frosted.

b. All indoor blackout lights, permitted as above, shall be installed in accordance with the following directions:

(1) In any one room, only one unit is permitted to each two hundred square feet of floor area or a fraction thereof.

(2) Units shall be spaced not less than ten feet apart in any direction.

* Although fifteen minutes are allowed outside of the Coastal Dimout Area (due to the fact that lighting is not already substantially reduced), five minutes is the ultimate goal to be attained in all areas. It should be recognized that it may not always be possible to give fifteen minutes' warning and in fact a Red Signal may at times be required without a prior Blue Signal; hence an effort should be made to blackout in as short a period as possible. [This footnote is in the original.]

† It is to be noted that the provisions of this paragraph, requiring that lighting be attended, apply every night whether or not there is a period of air raid or a period of blackout. [This footnote is in the original.]

‡ Blue is prohibited for blackout lights. [This footnote is in the original.]

- (3) In corridors, one row of units is permitted at a spacing of not less than fifteen feet.
- (4) Units shall be placed at least three feet from any window, exterior door, or other opening.
- (5) Units shall not be pointed toward any window, exterior door, or other opening.
- (6) Units may be installed at any height when openings are covered in the usual manner with drawn window shades, drapes, blinds, or one thickness of newspaper, or whenever each unit has a shade which screens the unit from outside observation above the horizontal.
- (7) Units shall be located above the tops of such openings, when exterior openings are not covered and when units are not otherwise shaded from outside observation above the horizontal.

c. Interior red exit lights are permitted in all public buildings, with the restriction that each exit light shall be so located or shielded as to screen direct light from falling on windows or doors, and that it shall be equipped with one lamp of not more than 15 watts.

26. *Emergency Motor Vehicles.* Emergency motor vehicles, as defined in paragraph 41, may move during periods stated in paragraph 24 above, using only headlights (on low or depressed beam) and normal tail lights and license plate lights.³

27. *Traffic Signals and Traffic Signs.* Traffic signals, traffic signs, fire and police box markers and other illuminated signal devices, complying with War Department Specifications "Traffic Control During Blackouts," are permitted during periods stated in paragraph 24 above.¹

28. *Street Lighting Luminaires.* Street lighting luminaires complying with War Department Specification "Street Lighting During Blackouts," are permitted during periods stated in paragraph 24 above.¹

29. *Flashlights, Lanterns and Flares.* Flashlights, lanterns and flares complying with War Department Specification "Flashlights, Lanterns and Flares," are permitted during periods stated in paragraph 24 above. Pending the availability of specified filters or automatic cut-offs, flashlights not so equipped may be used provided the light is filtered through (a) three thicknesses of newspaper, or (b) one thickness of newspaper and one sheet of red cellophane. Flashlights shall not be pointed above the horizontal. Pending the availability of lanterns complying with the above specification, lanterns equipped with red or orange globes may be used to mark excavations or other dangerous obstructions.

30. *Water Navigation Lights.* During the periods "as stated in paragraph 24, the following water navigation lights are permitted:

a. Lights on fixed or floating structures except such as are specified by the United States Navy as not essential to indicate safe channels of navigation.

b. Lights on boats to the extent required by the United States Navy.

³ It is anticipated that the provisions of this paragraph will be superseded when standard blackout lighting equipment meeting War Department Specifications or substitute equipment as approved by proper military authority is available and is provided for all the emergency motor vehicles in any specified city or metropolitan area. In Coastal Dimout Areas, headlights must also comply with Dimout Regulations. [This footnote is in the original.]

¹ See also War Department Specification "Luminescent Materials." [This footnote is in the original.]

² See also paragraph 36 for street lighting permitted during periods of blackout (BLUE) but prohibited during periods of air raid (RED). [This footnote is in the original.]

31. Aeronautical Lights. During the periods as stated in paragraph 24, the following aeronautical lights are permitted:

a. Floodlights and runway approach lights only at those fields and only to the extent necessary to expedite clearing the air of flights.

b. Position lights on aircraft in flight as required by the Civil Aeronautics Administration.

c. Obstruction lights, except such as are specified by the service command as not essential.

d. Beacon lights as specifically authorized by the service command. (Otherwise beacon lights shall comply with the provisions of paragraph 22.)

32. Thermal Processes. During the periods specified in paragraph 24, light emitted from industrial processes, such as furnace glow in glass, pottery and cement works, iron foundries, steel mills, and coke works, is permitted, provided however, that such light shall be shielded, obscured, reduced in intensity or otherwise treated to as great an extent as may be practicable in order to reduce to a minimum the light visible from the outside. Steam or smoke shall be reduced to the minimum.

33. Railroad Lights. During the periods as specified in paragraph 24 above, all railroad lights on rolling stock and fixed installations are permitted provided they comply with "Rules and Regulations for Railroads During Blackout or Air Raid Alarms within the Eastern Defense Command," approved by the War Department September 3, 1942.

34. Lighting of Military Necessity. All lights of the armed forces necessarily used in active defense measures are permitted during the periods stated in paragraph 24.

35. Specially Authorized Lights. Any lights specifically authorized by the service command are permitted during such period and to such extent as he may deem appropriate.

SECTION V—LIGHTING PERMITTED DURING PERIODS OF BLACKOUT BUT PROHIBITED DURING PERIODS OF AIR RAID

36. Special Permitted Lights. During the period and in the area of blackout (BLUE), but not during the period of air raid (RED), (1) street lights and traffic signals, (2) lights in military and naval installations and manufacturing plants or other facilities essential to the war effort, and (3) lights in railroad classification yards, are permitted, provided such three classes of lights comply with the following conditions:

a. That such lights comply with dimout regulations in effect in such area, or, in the absence of such regulations, if they do not contribute materially to skyglow; and

b. That such lights shall be extinguished or blacked out within one (1) minute from the sounding of the air raid (RED) signal when such signal follows a blackout (BLUE) signal.

37. Lights on Road Vehicles and Other Conveyances.* During the period and in the area of blackout (BLUE), but not during the period of air raid (RED):

a. All moving motor vehicles are permitted to use headlights (on low or depressed beam) and normal tail lights and license plate lights.

b. Street cars, elevated trains and subway trains operating above ground level are permitted to use normal exterior and interior lights.

c. Road vehicles other than motor vehicles are permitted to use normal lights.

* In Coastal Dimout Areas, such lights must also comply with Dimout Regulations. [This footnote is in the original.]

SECTION VI—MOVEMENT OF VEHICLES AND OTHER CONVEYANCES; PEDESTRIANS

38. *General.* During the period and in the area of air raid (RED) alarm:

a. All road vehicles, except emergency vehicles as defined in paragraph 41, shall be immediately stopped (except as provided in paragraphs 39 and 40) and parked so that roadway space shall be left for the passage of traffic, and all lights shall be extinguished. Occupants shall leave said vehicles as soon as parked and shall take shelter, except that occupants of road vehicles carrying property which must be guarded may remain in said parked vehicles.

b. Street cars shall be stopped at loading points or other safe and convenient locations, and passengers shall be discharged and take shelter. All exterior and interior lights shall be extinguished.

c. Ridden or herded animals shall clear the public way for the passage of traffic.

d. Boats shall comply with regulations issued by the United States Navy.

e. Movement of railroad trains and personnel shall be in accordance with the provisions of "Rules and Regulations for Railroads During Blackout or Air Raid Alarms within the Eastern Defense Command," approved by the War Department September 3, 1942.

39. *Bridges and Tunnels.* During the period and in the area of air raid (RED) alarm, road vehicles, other than emergency vehicles, and street cars shall not enter bridges, viaducts, or tunnels and, if already there, shall proceed to the end or exit thereof and as far beyond as necessary to park in accordance with the preceding paragraph 38 a.

40. *Vehicles Transporting Dangerous Materials.* Vehicles transporting explosives, gasoline, or other dangerous combustibles shall, upon the signal for an air raid (RED) proceed forthwith, where possible, to a place more than one hundred (100) feet from the nearest habitation or business premises and there park as provided in paragraph 38 a. Vehicles so proceeding may use headlights (low or depressed beam), normal tail lights, and license plate lights.

41. *Emergency Vehicles.* The term "Emergency Vehicles" shall mean the following road vehicles:

a. Vehicles of, or acting under orders of, or traveling with the express permission of, the armed forces of the United States and her allies;

b. Vehicles of fire departments and governmental police agencies;

c. Ambulances and official rescue cars and other vehicles converted to such use in emergency service;

d. Public utility repair vehicles operating in emergency service;

e. Vehicles in emergency service identified by insignia prescribed by the director of civilian defense. In exceptional cases vehicles without such identifying insignia will be permitted to move as emergency vehicles provided the appropriate civilian defense authorities are satisfied that the use of such vehicles is necessary in the performance of emergency duties.

42. *Pedestrians.* Upon the signal for an air raid (RED), all persons shall immediately take shelter in the nearest building in which they are legally permitted to enter or in the designated shelter area most convenient to them, except those required for the performance of their official duties as follows:

a. Uniformed members of the armed forces of the United States and her allies, and of the State Guards.

b. Members of fire departments and governmental police agencies.

c. Persons as authorized by civilian defense authorities who wear arm bands or carry identification cards with insignia prescribed by the director of civilian defense, or persons wearing arm bands authorized for the Aircraft Warning

Service; provided all such persons are required to move in the performance of their emergency duties.

SECTION VII—RADIO

43. *Radio Stations* will be silenced at such time and for such periods as may be ordered by fighter command¹ as follows:

a. Radio stations operating on frequencies between three thousand (3,000) and thirty thousand (30,000) kilocycles will not be silenced.

b. Radio stations operating on frequencies below three thousand (3,000) and above thirty thousand (30,000) kilocycles will be ordered silenced when the tactical situation warrants, except as follows:

(1) During periods of blackout and air raid, special broadcast messages on selected frequencies may be made under the specific direction and control of the service command.^m

(2) Army and Navy stations may operate to a necessary minimum when necessity dictates as determined by the local commander.

(3) Police, fire and other special emergency radio stations may remain in operation upon the following basis:

(a) Each transmission will not exceed (30) seconds.

(b) Transmissions will be at intervals of not less than two (2) minutes.

(c) The normal call letter will be omitted.

(d) The intelligence transmitted will not disclose identity or location of station.

SECTION VIII—PRACTICE BLACKOUTS AND PRACTICE AIR RAIDS

44. *Practice Blackouts and Practice Air Raids* may be conducted by Federal, State and local authorities in such area, at such times, and to such extent as may be authorized by the service command in which the area is located. The service command may excuse from such practice blackouts or practice air raids, for such periods and to such extent as he may determine, any military or naval installation, manufacturing plant or other facility essential to the war effort, provided the said service command has ascertained that such installation, plant, or facility is prepared to and is proficient in blackout, or for such other reasons as he may deem appropriate.

SECTION IX—FALSE BLACKOUTS OR AIR RAIDS

45. *False Blackouts or Air Raids.* No person shall order, utter, publish, sound, or otherwise simulate or cause to be ordered, uttered, published, sounded, or otherwise simulated, any air warning signal unless ordered or authorized to do so by the fighter command or, in the case of practice blackouts or practice air raids, as authorized by the service command, or for the testing of air warning equipment on Saturdays between twelve (12) o'clock noon and five (5) minutes following, as authorized by the civilian defense authorities.

¹ Consideration is given to visibility prior to imposing radio silences. [This footnote is in the original.]

^m The selected frequencies will be announced by the service command. Persons having radio receivers should keep them tuned to one of the selected frequencies during periods of blackout or air raid. No broadcasts on any frequency are authorized during periods of blackout or air raid except as authorized by the service command on the selected frequencies. [This footnote is in the original.]

SECTION X—ILLEGAL USE OF INSIGNIA

46. *Illegal Use of Insignia.* No person shall wear, exhibit, display, use, manufacture, sell, or offer for sale for any purpose, or cause to be worn, exhibited, displayed, used, manufactured, sold, or offered for sale for any purpose, any arm band, badge, emblem, uniform, pennant, card, or other identification or credential embodying the insignia prescribed by the director of civilian defense or prescribed for the Aircraft Warning Service, or any simulation or adaptation of such insignia, except in accordance with rules and regulations of the director of civilian defense or the Aircraft Warning Service.

SECTION XI—ENFORCEMENT AND PENALTIES

47. Any person who violates any regulation contained herein is subject to the penalties provided by Title 18, Section 97A, United States Code,^a and to immediate exclusion from the Eastern Military Area by the Commanding General, Eastern Defense Command and First Army. In addition, if two or more persons conspire to violate said Section 97A, United States Code, and one or more persons do any act to effect the object of such conspiracy, each of said parties will be subject to the penalties provided by Title 18, Section 88, United States Code.^a In the case of an alien enemy, such person will, in addition, be subject to immediate apprehension and internment.

48. The Second Regional Office of the Office of Civilian Defense and civilian defense authorities within the States of New York, New Jersey, and Delaware, with their consent, are designated as the principal agencies to assist in the enforcement of these regulations.

49. These regulations shall not in any way modify the Dimout Regulations heretofore or hereafter prescribed for the Coastal Dimout Area of the Second Service Command.

50. These regulations shall apply to persons in, or performing or permitting acts in the Second Service Command, which embraces the States of New York, New Jersey, and Delaware, and shall become effective on February 17, 1943.

T. A. TERRY,

Major General, U. S. A.,

Commanding the Second Service Command.

APPENDIX 28

[Public Proclamation No. 1 of Lt. Gen. J. L. DeWitt establishing Military Areas Nos. 1 and 2, Western Defense Command (March 2, 1942). 7 Fed. Reg. 2320.]

TO: THE PEOPLE WITHIN THE STATES OF ARIZONA, CALIFORNIA, OREGON, AND WASHINGTON, AND THE PUBLIC GENERALLY.

WHEREAS, by virtue of orders issued by the War Department on December 11, 1941, that portion of the United States lying within the States of Washington, Oregon, California, Montana, Idaho, Nevada, Utah and Arizona and the Territory of Alaska has been established as the Western Defense Command and designated as a Theatre of Operations under my command; and

^a This section provides a penalty of a fine not to exceed \$5,000, or imprisonment for not more than one (1) year, or both, for each offense. [This footnote is in the original.]

^a This section provides a penalty of a fine not to exceed \$10,000, or imprisonment for not more than two (2) years, or both, for each offense. [This footnote is in the original.]

WHEREAS, by Executive Order No. 9066,⁷ dated February 19, 1942, the President of the United States authorized and directed the Secretary of War and the Military Commanders whom he may from time to time designate, whenever he or any such designated commander deems such action necessary or desirable, to prescribe military areas in such places and of such extent as he or the appropriate Military Commander may determine, from which any or all persons may be excluded, and with respect to which the right of any person to enter, remain in, or leave shall be subject to whatever restrictions the Secretary of War or the appropriate Military Commander may impose in his discretion; and

WHEREAS, the Secretary of War on February 20, 1942, designated the undersigned as the Military Commander to carry out the duties and responsibilities imposed by said Executive Order for that portion of the United States embraced in the Western Defense Command; and

WHEREAS, the Western Defense Command embraces the entire Pacific Coast of the United States which by its geographical location is particularly subject to attack, to attempted invasion by the armed forces of nations with which the United States is now at war, and, in connection therewith, is subject to espionage and acts of sabotage, thereby requiring the adoption of military measures necessary to establish safeguards against such enemy operations:

NOW THEREFORE, I, J. L. DeWITT, Lieutenant General, U. S. Army, by virtue of the authority vested in me by the President of the United States and by the Secretary of War and my powers and prerogatives as Commanding General of the Western Defense Command, do hereby declare that:

1. The present situation requires as a matter of military necessity the establishment in the territory embraced by the Western Defense Command of Military Areas and Zones thereof as defined in Exhibit 1, hereto attached, and as generally shown on the map attached hereto and marked Exhibit 2.

2. Military Areas Nos. 1 and 2, as particularly described and generally shown hereinafter and in Exhibits 1 and 2 hereto, are hereby designated and established.

3. Within Military Areas Nos. 1 and 2 there are established Zone A-1, lying wholly within Military Area No. 1; Zones A-2 to A-99, inclusive, some of which are in Military Area No. 1, and the others in Military Area No. 2; and Zone B, comprising all that part of Military Area No. 1 not included within Zones A-1 to A-99, inclusive; all as more particularly described and defined and generally shown hereinafter and in Exhibits 1 and 2.⁸

Military Area No. 2 comprises all that part of the States of Washington, Oregon, California and Arizona which is not included within Military Area No. 1, and is shown on the map (Exhibit 2) as an unshaded area.

4. Such persons or classes of persons as the situation may require will by subsequent proclamation be excluded from all of Military Area No. 1 and also from such of those zones herein described as Zones A-2 to A-99, inclusive, as are within Military Area No. 2.

Certain persons or classes of persons who are by subsequent proclamation excluded from the zones last above mentioned may be permitted, under certain regulations and restrictions to be hereafter prescribed, to enter upon or remain within Zone B.

The designation of Military Area No. 2 as such does not contemplate any prohibition or regulation or restriction except with respect to the zones established therein.

⁷ 7 Fed. Reg. 1407.

⁸ The above Zones were abolished and Military Area No. 1 in its entirety was made a Prohibited Zone by Public Proclamation No. 14, December 23, 1942. 8 Fed. Reg. 282. Military Area No. 1 was reduced on March 4, 1943 by modifying its boundaries in Arizona. (Public Proclamation No. 16, 8 Fed. Reg. 3256.)

5. Any Japanese, German or Italian alien, or any person of Japanese Ancestry now resident in Military Area No. 1 who changes his place of habitual residence is hereby required to obtain and execute a "Change of Residence Notice" at any United States Post Office within the States of Washington, Oregon, California and Arizona. Such notice must be executed at any such Post Office not more than five nor less than one day prior to any such change of residence. Nothing contained herein shall be construed to affect the existing regulations of the U. S. Attorney General which require aliens of enemy nationalities to obtain travel permits from U. S. Attorneys and to notify the Federal Bureau of Investigation and the Commissioner of Immigration of any change in permanent address.⁹

6. The designation of prohibited and restricted areas within the Western Defense Command by the Attorney General of the United States under the Proclamations of December 7 and 8, 1941, and the instructions, rules and regulations prescribed by him with respect to such prohibited and restricted areas, are hereby adopted and continued in full force and effect.¹⁰

The duty and responsibility of the Federal Bureau of Investigation with respect to the investigation of alleged acts of espionage and sabotage are not altered by this proclamation.

J. L. DEWITT

*Lieutenant General, U. S. Army,
Commanding.*

APPENDIX 29

[Public Proclamation No. 12, amending Public Proclamation No. 10, of Lt. Gen. J. L. DeWitt prescribing lighting restrictions (October 10, 1942). 7 Fed. Reg. 8377.]

TO: THE PEOPLE WITHIN THE STATES OF WASHINGTON, OREGON AND CALIFORNIA, AND TO THE PUBLIC GENERALLY.

WHEREAS, current developments and further investigations indicate the military necessity for certain changes in and additions to the provisions of Public Proclamation No. 10, dated August 5, 1942, this Headquarters:

NOW, THEREFORE, I, J. L. DEWITT, Lieutenant General, U. S. Army, by virtue of the authority vested in me by the President of the United States and by the Secretary of War and my powers and prerogatives as Commanding General of the Western Defense Command, do hereby declare that:

A. The present situation requires as a matter of military necessity that Sections 2, 3 and 5 of said Public Proclamation No. 10 be, and they are hereby

⁹ By Public Proclamation No. 13, October 19, 1942, General DeWitt exempted from the provisions of this paragraph all subjects of Italy; certain stateless aliens; and aliens of enemy nationalities serving in the armed forces of the United States. (7 Fed. Reg. 8565.)

¹⁰ This paragraph was rescinded on June 27, 1942, by Public Proclamation No. 9. The rescinding paragraph reads as follows: "Paragraph 6 of Proclamation No. 1, this headquarters, is hereby rescinded, and the prohibited and restricted areas within the Western Defense Command designated by the Attorney General of the United States under the Presidential Proclamations of December 7 and 8, 1941, and the instructions, rules and regulations prescribed by him with respect to such prohibited and restricted areas are hereby superseded and eliminated, and said prohibited and restricted areas are hereby declared henceforth to be in the same status as the respective portions of the Western Defense Command within which they lie and as if this supersession and elimination had been made effective prior to or concurrently with the publication of Proclamation No. 1."

amended, as of the effective dates hereinafter provided, so that said Public Proclamation No. 10, from Section 1 to Section 5, inclusive, will read as follows:

1. The present situation requires as a matter of military necessity that a Zone of Restricted Lighting be established within Military Areas Nos. 1 and 2, and that illumination within said Zone of Restricted Lighting be extinguished or controlled in such manner and to such extent as may be necessary to prevent such illumination from aiding the operations of the enemy.

2. Pursuant to the determination and statement of military necessity in Paragraph 1 hereof, a Zone of Restricted Lighting, as particularly described in Exhibit A hereof, and as generally shown on the map made a part hereof and marked Exhibit B, is hereby designated and established. Illumination within the entire area of said Zone of Restricted Lighting shall be extinguished or controlled at all times at night from sunset to sunrise, as follows:

(a) *Signs, Floodlighting, Display and Interior Lighting.* Illuminated signs and ornamental lighting of every description which are located out-of-doors, and floodlighting which illuminates buildings or signs (including but not limited to all exterior advertising signs, billboards, display lighting, theatre marquee signs, illuminated poster panels, and building outline lighting), and all interior light sources (as hereinafter defined) which emit direct rays above the horizontal out-of-doors, shall be extinguished. The words, "light sources," as used herein are intended and shall be construed to mean and include any light generating elements and the bright portion of any reflector, lens, luminaire, transparency, or other equipment associated herewith for the control or diffusion of light. This Section 2 (a) shall not apply to illumination for industrial or protective purposes except to the extent provided for in Section 2 (b) hereof.

(b) *Illumination of Outdoor Areas; Street and Highway Lights.* Illumination of outdoor areas and industrial and protective illumination, shall be controlled as follows:

(1) Except as provided in Section 2 (b) (2) hereof, illumination on all outdoor areas (including but not limited to automobile service station yards, outdoor parking areas, recreation areas and outdoor structures and roofs) shall not exceed one foot candle at any point when measured on a horizontal plane at any level of such outdoor areas, and all outdoor light sources shall be shielded so that no direct rays from the light source are emitted above the horizontal. All interior lighting of every description shall be reduced or controlled so that it does not contribute more than one foot candle of illumination upon any outdoor area. All street and highway lights shall also be shielded so that each light source emits no more than ten per cent of its total lamp lumens at angles above the horizontal. Provided the foregoing requirements are met, any further reduction or extinguishment of street or highway illumination which would unnecessarily aggravate traffic hazards is not required.

(2) Variations from the foregoing requirements shall be permitted in the case of illumination for industrial and protective purposes, and from industrial processes, whether interior or exterior, but not including street or highway lights, only when and to the extent that it is necessary to vary from such requirements in order to achieve and maintain maximum efficiency; but only with the written approval of the Ninth Regional Civilian Defense Board, obtained in advance.

(c) *Traffic Signs and Signals.* Illuminated signs and signals which are authorized or maintained by governmental authority for the purpose of controlling or directing street or highway traffic shall be shielded so that no direct rays from the light source are emitted above the horizontal in respect to lights

mounted ten feet or more above the ground, or above an angle of more than six degrees above the horizontal in respect to lights mounted less than ten but more than three feet above the ground, or above an angle of more than twelve degrees above the horizontal in respect to lights mounted less than three feet above the ground. Relative variations in the upward limit of light are permissible to compensate for grades.

(d) *Navigation and Railroad Lights.* Authorized lights necessary to facilitate air or water navigation, authorized railroad signal lights, and headlights of railroad locomotives when in motion, are hereby excepted from all the provisions of this Proclamation.

3. In addition to the restrictions hereinbefore imposed, illumination within that part of the Zone of Restricted Lighting which is visible from the sea, as hereinafter defined, shall be further diminished or obscured at all times at night from sunset to sunrise, as follows:

(a) *Street, Highway and Traffic Lights.* Street and highway lights, and illuminated signs (but not signals) which are authorized or maintained by governmental authority for the purpose of controlling or directing street or highway traffic and which are visible from the sea, shall be so shielded that they are not visible from the sea at night and so that no direct rays from the light source are emitted above the horizontal.

(b) *Residential, Commercial and Industrial Windows.* No lighting shall be permitted behind windows or glazed doors visible from the sea unless they are covered by drapes or shades.

(c) *Street and Highway Traffic.* Within areas visible from the sea, but subject to the exceptions hereinafter stated, vehicles shall operate at night with no more than two lighted driving lamps, regardless of the direction of travel, and each such lamp shall provide a maximum of not more than 250 beam candlepower. Normal rear lights, license plate lights and clearance lights (where required by law) are permitted. Vehicles which are classified as authorized emergency vehicles under the applicable Federal, State or local law, when operated by authorized personnel, and when displaying an illuminated red spotlight, and when responding to a fire alarm, or when in the immediate pursuit of an actual or suspected violator of the law, or when going to or transporting a person who is in apparent need of immediate emergency medical or surgical care, or when responding to some other emergency involving the protection of life or property, shall be excepted from the foregoing provision.

(d) *Industrial and Protective Illumination.* Light sources for industrial purposes and light from industrial processes within areas visible from the sea, shall comply with the requirements of Section 2 (b) hereof, and shall also be shielded so that they are not visible from the sea at night; provided, that variations from these requirements may be permitted in the case of illumination for industrial and protective purposes, and from industrial processes, whether interior or exterior (but not including street or highway lights), only when and to the extent that it is necessary to vary from such requirements in order to achieve and maintain maximum efficiency; but only with the written approval of the Ninth Regional Civilian Defense Board, obtained in advance.

(e) *Other Illumination.* Except as hereinabove provided in this Section 3, all other lights visible from the sea are prohibited at night, including but not limited to light from fires, bonfires, parked cars, flashlights and lanterns.

(f) *Definition of "Visible From the Sea."* The phrase "visible from the sea," as used herein, is intended and shall be construed to mean and include the following:

Visible at any time from the waters of the Pacific Ocean, or from the waters of the Straits of Juan de Fuca lying south of a line extending due east from the most southerly point of Vancouver Island and west of a line running due north and south through the easternmost point of the easterly boundary line of the City of Port Townsend, Washington, or visible from any of those bodies of water located on the shore line of the State of California generally known and described as follows: Santa Monica Bay; Santa Barbara Channel; San Luis Obispo Bay; Estero Bay; and Monterey Bay;

Provided, however, that the waters of San Francisco Bay, lying easterly of a line extending from Point Bonita through Mile Rock, is not intended and shall not be construed to be a part of the sea; and solely for the purposes of Section 3 (c) hereof, concerning street and highway traffic, the phrase, "areas visible from the sea," is also intended and shall be construed to mean and include that portion of streets or highways which may not in fact be visible from the sea but which is within areas generally visible from the sea.

4. Any person violating any of the provisions of this Proclamation, or orders issued pursuant thereto, is subject to immediate exclusion from the territory of the Western Defense Command, and to the criminal penalties provided in Public Law No. 503, 77th Congress, approved March 21, 1942, entitled "An Act to provide a penalty for the violation of restrictions or orders with respect to persons entering, remaining in, leaving, or committing any act in military areas or zones."¹¹

5. The Ninth Regional Civilian Defense Board is hereby designated as the primary agency to aid in the enforcement of the foregoing provisions. It is requested that the civil law enforcement agencies and State and local governmental bodies within the areas affected by this Proclamation assist the Ninth Regional Civilian Defense Board in the enforcement hereof.

B. This proclamation shall become effective October 25, 1942, except those provisions of Subsection 2 (b) (1) hereof, concerning street and highway lights, which shall become effective November 12, 1942.

C. The recitals set forth in the first three paragraphs of said Public Proclamation No. 10 are hereby reaffirmed.¹² Except as hereinbefore expressly amended, all the provisions and determinations expressed in said Public Proclamation No. 10 shall remain in full force and effect.¹³

J. L. DEWITT

Lieutenant General, U. S. Army,
Commanding.

¹¹ 56 Stat. 173; for text see *supra*, p. 45, note 7.

¹² These three paragraphs read as follows:

"WHEREAS, by Public Proclamation No. 1, dated March 2, 1942, this Headquarters, there were designated and established Military Areas Nos. 1 and 2; and

"WHEREAS, the armed forces of the enemy have made attacks upon vessels of the United States traveling along the Pacific Coastal waters and upon land installations within said Military Areas, and it is expected that such attacks will continue; and

"WHEREAS, it is necessary to provide maximum protection for war utilities, war materials and war premises located within the States of Washington, Oregon and California against enemy attacks by sea and by air;"

¹³ Public Proclamation No. 10 consists of the three paragraphs, quoted in the preceding footnote; one paragraph identical with the second paragraph of the above Public Proclamation No. 12; and six sections, the first five of which were amended as above by Public Proclamation No. 12. The sixth paragraph of Public Proclamation No. 10 relates to the effective date thereof; it reads as follows: "6. This Proclamation shall become effective August 20, 1942."

APPENDIX 30

[Proclamation of the President No. 2352 (September 8, 1939). 54 Stat. 2643.]

**PROCLAIMING A NATIONAL EMERGENCY IN CONNECTION WITH
THE OBSERVANCE, SAFEGUARDING, AND ENFORCEMENT OF NEU-
TRALITY AND THE STRENGTHENING OF THE NATIONAL DEFENSE
WITHIN THE LIMITS OF PEACE-TIME AUTHORIZATIONS**

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

WHEREAS a proclamation issued by me on September 5, 1939,²⁴ proclaimed the neutrality of the United States in the war now unhappily existing between certain nations; and

WHEREAS this state of war imposes on the United States certain duties with respect to the proper observance, safeguarding, and enforcement of such neutrality, and the strengthening of the national defense within the limits of peace-time authorizations; and

WHEREAS measures required at this time call for the exercise of only a limited number of the powers granted in a national emergency:

NOW, THEREFORE, I, FRANKLIN D. ROOSEVELT, President of the United States of America, do proclaim that a national emergency exists in connection with and to the extent necessary for the proper observance, safeguarding, and enforcing of the neutrality of the United States and the strengthening of our national defense within the limits of peace-time authorizations. Specific directions and authorizations will be given from time to time for carrying out these two purposes.

IN WITNESS WHEREOF I have hereunto set my hand and caused the seal of the United States of America to be affixed.

DONE at the City of Washington this eighth day of September, in the year of
[SEAL] our Lord nineteen hundred and thirty-nine, and of the Independence
of the United States of America the one hundred and sixty-fifth.

FRANKLIN D. ROOSEVELT

By the President:

CORDELL HULL

Secretary of State.

²⁴ 54 Stat. 2629.

APPENDIX 31

[Proclamation of the President No. 2487 (May 27, 1941). 55 Stat. 1647.]

PROCLAIMING THAT AN UNLIMITED NATIONAL EMERGENCY CONFRONTS THIS COUNTRY, WHICH REQUIRES THAT ITS MILITARY, NAVAL, AIR AND CIVILIAN DEFENSES BE PUT ON THE BASIS OF READINESS TO REPEL ANY AND ALL ACTS OR THREATS OF AGGRESSION DIRECTED TOWARD ANY PART OF THE WESTERN HEMISPHERE

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

WHEREAS on September 8, 1939 because of the outbreak of war in Europe a proclamation was issued declaring a limited national emergency and directing measures "for the purpose of strengthening our national defense within the limits of peace-time authorizations",¹³

WHEREAS a succession of events makes plain that the objectives of the Axis belligerents in such war are not confined to those avowed at its commencement, but include overthrow throughout the world of existing democratic order, and a worldwide domination of peoples and economies through the destruction of all resistance on land and sea and in the air, AND

WHEREAS indifference on the part of the United States to the increasing menace would be perilous, and common prudence requires that for the security of this nation and of this hemisphere we should pass from peacetime authorizations of military strength to such a basis as will enable us to cope instantly and decisively with any attempt at hostile encirclement of this hemisphere, or the establishment of any base for aggression against it, as well as to repel the threat of predatory incursion by foreign agents into our territory and society,

NOW, THEREFORE, I, FRANKLIN D. ROOSEVELT, President of the United States of America, do proclaim that an unlimited national emergency confronts this country, which requires that its military, naval, air and civilian defenses be put on the basis of readiness to repel any and all acts or threats of aggression directed toward any part of the Western Hemisphere.

I call upon all the loyal citizens engaged in production for defense to give precedence to the needs of the nation to the end that a system of government that makes private enterprise possible may survive.

I call upon all our loyal workmen as well as employers to merge their lesser differences in the larger effort to insure the survival of the only kind of government which recognizes the rights of labor or of capital.

I call upon loyal state and local leaders and officials to cooperate with the civilian defense agencies of the United States to assure our internal security against foreign directed subversion and to put every community in order for maximum productive effort and minimum of waste and unnecessary frictions.

I call upon all loyal citizens to place the nation's needs first in mind and in action to the end that we may mobilize and have ready for instant defensive use all of the physical powers, all of the moral strength and all of the material resources of this nation.

¹³ 54 Stat. 2643. See Appendix 30, *supra*, p. 178.

IN WITNESS WHEREOF I have hereunto set my hand and caused the seal of the United States of America to be affixed.

DONE at the City of Washington this twenty-seventh day of May, in the year of our Lord nineteen hundred and forty-one, and of the Independence [SEAL] of the United States of America the one hundred and sixty-fifth.

FRANKLIN D. ROOSEVELT

By the President:

CORDELL HULL

Secretary of State.

APPENDIX 32

[Proclamation of the President No. 2519 (October 22, 1941). 55 Stat. 1693.]

CIVILIAN DEFENSE

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

WHEREAS on May 20, 1941, with a view to ensuring the most effective correlation and use of the instruments of civilian defense, I established by Executive order the Office of Civilian Defense;¹⁶ and

WHEREAS by my proclamation of May 27, 1941,¹⁷ I declared that an unlimited national emergency confronts this country, which requires that its military, naval, air, and civilian defenses be put on a basis of readiness to repel any and all acts or threats of aggression directed toward any part of the Western Hemisphere; and

WHEREAS it is the manifest duty and desire of every person in the United States to participate in measures essential to civilian defense:

NOW, THEREFORE, I, FRANKLIN D. ROOSEVELT, President of the United States of America, do hereby designate the period commencing on Armistice Day, Tuesday, November 11, 1941, and continuing through Sunday, November 16, as a time for all persons throughout the Nation to give thought to their duties and responsibilities in the defense of this country, and to become better informed of the many vital phases of the civilian defense program and of the opportunities which it offers for the participation of every individual American in the defense of our priceless heritage, and I request the Governors of the several States, Territories, and possessions of the United States to issue similar proclamations.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the United States of America to be affixed.

DONE at the City of Washington this 22nd day of October in the year of our Lord nineteen hundred and forty-one, and of the Independence [SEAL] of the United States of America the one hundred and sixty-sixth.

FRANKLIN D. ROOSEVELT

By the President:

CORDELL HULL

Secretary of State.

¹⁶ See Appendix 1, *supra*, p. 103.

¹⁷ See Appendix 31, *supra*, p. 179.

APPENDIX 33

[Model State Emergency War Powers Act. Prepared by Council of State Governments.]

AN ACT relating to the defense of the State, granting emergency war powers to the governor and the political subdivisions of the State and otherwise prescribing the incidents thereof

*Be it enacted * * **

SECTION 1. *Short Title.*—This Act may be cited as the "State Emergency War Powers Act of 194—."

SECTION 2. *Findings; Purposes; Policy.*—It is hereby found and declared that it is necessary, because of the war in which the United States of America is engaged, to grant to the Governor and the political subdivisions of the State the emergency war powers and the incidents thereof enumerated herein. It is further declared to be the purpose of this Act and the policy of the State thereby to assist the President of the United States of America, as Commander-in-Chief of the Army and Navy, in the successful prosecution of the war; to cooperate with the Federal Government and other States in matters relating to the war effort; to meet the extraordinary conditions and problems resulting in this State from the war by establishing such organizations and taking such steps as are necessary and appropriate to carry out the provisions of this Act; and, generally, to defend the State, protect the public peace, health, and safety, and preserve the lives and property of the people of the State.

SECTION 3. *General Emergency War Powers of the Governor.*—The Governor is authorized and empowered:

(a) *Cooperation with the President and Others.* To cooperate with the President of the United States of America, the Army, the Navy, and all military forces under his command, with other Federal departments, agencies, and independent establishments, and with the officers and agencies of other States in matters pertaining to the war and the common defense of the State and Nation and the incidents thereof; and in connection therewith, to take any measures which he may deem proper to carry into effect any request of the President, the Secretary of War, the Secretary of the Navy, the Federal Director of Civilian Defense, and such other Federal officers and agencies as may be charged with responsibilities related to the war effort, for any action looking to the National or State defense, the conduct of the war, the protection of the public peace, health, and safety, or the preservation of life or property within the State;

(b) *Use of Property, Services, and Resources.* To use and employ within the State, from time to time, and as he may deem expedient, any of the property, services, and resources of the State, for the purposes set forth in this Act;

(c) *Compliance.* To employ such measures and give such directions to State and local law enforcement officers and agencies as may be reasonable and necessary for the purpose of securing compliance with the provisions of this Act and with the orders, rules, and regulations made pursuant thereto;

(d) *Organization.* (1) To utilize the services and facilities of existing officers, offices, departments, commissions, boards, bureaus, institutions and other agencies of the State and of the political subdivisions thereof; and all such officers and agencies shall cooperate with and extend their services and facilities to the Governor as he may request;

(2) To establish agencies and offices and to appoint executive, technical, clerical and other personnel to carry out the provisions of this Act.

(e) *Extent of General Powers.* The general powers provided for in this section shall not be limited by any specific powers granted to the Governor by the provisions of this Act.²⁸

SECTION 4. *Investigations and Surveys Regarding Foods, Necessities of Life and Defense, Industries, Resources, and Facilities.*—The Governor is authorized and empowered to ascertain the amount of food and other necessities of life or defense within this State, the amount of land and labor available for the production and processing of food and clothing, the means of obtaining without the State food, clothing and other necessities of life and the distribution of the same; to make such other surveys of the industries, resources, and facilities of the State as are necessary to carry out the purposes of this Act; and, in making such investigations and surveys, to compel by subpoena the attendance of witnesses, and the production of books, papers, records, and documents of individuals, firms, associations, and corporations; and all officers, boards, commissions, and departments of the State, and the political subdivisions thereof, having information with respect thereto, shall cooperate with and assist him in making such investigations and surveys.

SECTION 5. *Blackouts and Other Precautionary Measures Against Air Raids and Other Forms of Attack.*—The Governor is authorized and empowered: (a) *Precautionary Measures.* To carry out throughout the State or in any area thereof, precautionary measures against air raids and other forms of attack, including practice blackouts, blackouts, radio silences, and such other measures as will suppress any activity which may assist an enemy; and such other precautionary measures as will prevent or minimize the loss of life or injury to persons and property which might result from such attacks; Provided, that no such action shall be inconsistent with any order, rule, regulation, or action of the armed forces of the United States, or their duly designated agency, or of the Federal Director of Civilian Defense. Blackouts and radio silences shall be carried out only in such areas, at such times, and for such periods, as shall be designated by air raid warnings or orders with respect thereto issued by the United States Army, or its duly designated agency,²⁹ and only under such conditions and in such manner as shall be consistent with any such warning or order; and practice blackouts shall be held only when and as authorized by the United States Army or its duly designated agency.³⁰

(b) *Cooperation with other States.* Subject to such limitations, to act in concert with the authorities of other States to effect such synchronization and uniformity of blackouts and other precautionary measures as may be necessary to carry out the intent and purposes of this Act.

SECTION 6. *Traffic Control.*—The Governor may formulate and execute plans and regulations for the control of traffic in order to provide for the rapid and safe movement over public highways and streets of troops, vehicles of a military nature, materials for national defense and war or for use in any war industry, and may coordinate the activities of the departments or agencies of the State and of the political subdivisions thereof concerned directly or indirectly with public highways and streets, in a manner which will best effectuate such plans.

²⁸ It is contemplated that separate provisions for insertion in this Act, or separate bills, may be prepared expressly to authorize the Governor, or the Governor with the consent of the State Council of Defense, in specific situations, to suspend or modify laws and ordinances in effect within the State. [This footnote is in the original.]

²⁹ It is contemplated that the Army will designate an agency to issue such warnings and orders, and will arrange so that the State officials are kept informed as to the agency so designated. [This footnote is in the original.]

SECTION 7. *Lease or Loan of State Property; Transfer of State Personnel.*—Notwithstanding any inconsistent provision of law, general, special or local:

(a) *Action by Governor.* Whenever he deems it to be in the public interest, the Governor may:

(1) Authorize any department or agency of the State to lease or lend, on such terms and conditions as he may deem necessary to promote the public welfare and protect the interests of the State, any real or personal property of the State, or authorize the temporary transfer or employment of personnel of the State to or by the Army, Navy, or any other branch of the armed forces of the United States of America;

(2) Enter into a contract on behalf of the State for the lease or loan, on such terms and conditions as he may deem necessary to promote the public welfare and protect the interests of the State, of any real or personal property of the State, or the temporary transfer or employment of personnel of the State to or by any political subdivision of the State.

(b) *Action by Political Subdivision.* The [chief executive] of each political subdivision of the State may:

(1) Enter into such contract, and execute any such lease, or accept any such loan, or employ such personnel, and such political subdivision may equip, maintain, utilize and operate any such property and employ necessary personnel therefor in accordance with the purposes for which such contract is executed;

(2) Do all things and perform any and all acts, which he may deem necessary to effectuate the purposes for which such contract was entered into.

(c) *Time Limitations.* Any lease, loan, or contract entered into pursuant to this section shall be for a period not longer than the effective period of this Act.

SECTION 8. *Emergency Health and Sanitation Areas.*—(a) *Designation of Areas.* Upon the recommendation of the [State Board of Health], the Governor may designate as a special emergency health and sanitation area, any area or areas within the State which have been seriously damaged by air raids or other catastrophe, or in which, in the Governor's opinion the existence of any military or naval establishment of the United States, or of any industrial establishment constructed or enlarged for purposes of national defense, has caused an increase in the population of such area to such an extent as to produce unusual problems of health and sanitation.

(b) *Rules and Regulations by Local Health Boards.* Whenever a special emergency health and sanitation area is established, it shall be the duty of the local health board or boards of the territory within such area to make and enforce rules and regulations designed to prevent the introduction or spreading of any contagious or infectious disease and to safeguard the public health within the area.

(c) *Rules and Regulations by [State Board of Health].* In the event that any local health board of the territory within such area is unable or fails to make or enforce adequate rules and regulations for the protection of the public health within special emergency health and sanitation areas established within its jurisdiction as herein provided, the [State Board of Health] is hereby authorized, empowered and directed to make and enforce such rules and regulations for the protection of the public health within such area as may be necessary, and for this purpose shall have all of the powers and authority of local health boards.

(d) *Request for Protection.* Any local health board having jurisdiction in the territory within which such special emergency health and sanitation area

has been established, or the chief executive of any political subdivision therein, may, by application in writing, request the [State Board of Health] to undertake the protection of such area and in such event the [State Board of Health] may make and enforce reasonable rules and regulations respecting health and sanitation in such area, and shall have all the powers and authority of the local health boards.

(e) *Cooperation with Federal and Other Health Agencies.* The [State Board of Health] is hereby directed to cooperate with health agencies of this and other States and the Federal health agencies in carrying out the provisions of State and Federal health and sanitation programs in conformity with the purposes of this section.

SECTION 9. *Taking of Property and Compensation Therefor.*—(a) *Appropriation of Property.* For the better prosecution of the war, and whenever in his opinion and that of the [State Council of Defense] the consequence of an actual or imminent attack makes such action necessary for the protection of the public, or whenever requested by the Army, Navy, or other branch of the armed forces of the United States, the Governor may, with the approval of the [State Council of Defense], take possession of:

(1) horses, vehicles, motor vehicles, aeroplanes, ships, boats or any other means of conveyance;

(2) cattle, poultry, provisions for man or beast, clothing, bedding, medicines and medical supplies;

(3) fuel;

(4) gasoline or other means of propulsion.

(b) *Use and Employment of Same.* Without limiting the foregoing, he may use and employ for such purposes all property so possessed for such times and in such manner as he shall deem best to accomplish such purposes, and he may, when in his opinion the public exigency so requires, sell or distribute gratuitously to or among any or all of the inhabitants of the State anything taken under clauses (2) and (3) of this section, and may fix minimum and maximum prices therefor. All monies derived from the sale of any such property shall be paid to the [State treasurer] and deposited in the [general fund] of the State.

(c) *Compensation therefor.* The owner of any property so taken shall receive just compensation therefor as follows:

(1) In case property is taken for temporary use, the Governor, within ten days of the taking, shall fix the amount of compensation to be paid therefor; and in case such property shall be returned to the owner in a damaged condition or shall not be returned to the owner, the Governor shall fix forthwith the amount of compensation to be paid for such damage or failure to return. Whenever the Governor shall deem it advisable for the State to become the owner of the property taken under this section, he shall forthwith cause the owner of such property to be notified thereof in writing by registered mail, postage prepaid, and forthwith cause to be filed a copy of said notice with the [Secretary of State].

(2) [Insert procedural provisions for determination of amount payable if owner refuses to accept the amount of compensation fixed by the Governor.]

SECTION 10. *Emergency War Powers of Political Subdivisions.*—To protect life and property, the [chief executive]²⁰ [governing body] of each political subdivision of the State is hereby authorized to carry out in [his] [its] jurisdiction such precautionary measures as may be ordered by the Governor and

²⁰ Adapt to local practice. [This footnote is in the original.]

such additional precautionary measures as such [chief executive] [governing body] may deem necessary, subject to the limitations and provisions of this Act; Provided, that no such action shall be inconsistent with any order, rule, regulations, or action of the Governor or of the armed forces of the United States or their duly designated agency or of the Federal Director of Civilian Defense.

SECTION 11. *Fields of Operation.*—Without limiting the generality of the foregoing provisions, the orders, rules, and regulations authorized by this Act, may include provisions respecting uniform air raid signals, the control of vehicular and pedestrian traffic, evacuation of persons, congregation of persons in public places or buildings, lighting and noises of all kinds; and provisions as to the recruitment, qualifications, training, equipment, powers, rights, duties, privileges, and immunities of persons authorized to be appointed pursuant to section 13 of this Act.

SECTION 12. *Enforcement.*—The law enforcing authorities of the State and of the political subdivisions thereof shall enforce the orders, rules, and regulations issued pursuant to this Act.

SECTION 13. *Auxiliary Defense Agencies.*—The [chief executive] [governing body] of each political subdivision of the State [or local defense council] may appoint and remove, or provide for the appointment and removal of, air raid wardens, auxiliary fire and police personnel and other civilian defense workers; but no such appointment or removal shall be made to or from positions under the appointive authority of the armed forces of the United States or the Federal Director of Civilian Defense.

SECTION 14. *Mobilization for Fire Defense.*—(a) *Outside Service by Paid Volunteer and Auxiliary Firemen.* At the request of the [chief executive] of any county, city, town, village, or fire district, the head of any fire department of any other political subdivision may, or if so ordered by the Governor, shall assign and make available for duty and use in such county, city, town, village, or fire district, under the direction and command of such officer as may be designated for the purpose, any part of the fire-fighting forces and equipment under his control; Provided, that any equipment made available by loan, or otherwise, to any county, city, town, village, or fire district in the State, by the United States Government, or any agency thereof, shall at all times be subject to the order of the United States Government, or such agency, in accordance with the terms and conditions upon which such equipment shall have been made available.

(b) *Powers, Duties, Rights, Privileges, and Immunities.* Whenever the fire-fighting forces of any county, city, town, village, or fire district are rendering outside aid pursuant to this section, the officers and members of such fire-fighting forces shall have the same powers, duties, rights, privileges, and immunities as if they were performing their duties in the political subdivision in which they are normally employed.

(c) *Loss, Damage or Expense.* The county, city, town, village, or fire district in which any equipment is used pursuant to this section shall be liable for any loss or damage thereto and shall pay any expense incurred in the operation and maintenance thereof. No claim for such loss, damage or expense shall be allowed unless, within sixty days after the same is sustained or incurred, an itemized notice of such claim, under oath, is served by mail or otherwise upon [the chief fiscal officer] of such county, city, town, village, or fire district where the equipment was used.

(d) *Liability for Acts or Omissions.* Neither the State nor the political subdivision of the State, whose fire-fighting forces are rendering outside aid pur-

suant to this section, shall be liable on account of any act or omission on the part of such forces while so engaged, or on account of the maintenance or use of any equipment or supplies in connection therewith; nor shall any commissioner, chief or other superior officer of a fire department, acting pursuant to this section, be liable on account of any act or omission on the part of any of his subordinates while such subordinates are rendering outside aid pursuant to this section under the command of an officer other than himself.

(e) *Reimbursement for Salaries and Expenses.* The political subdivision which is aided pursuant to this section shall reimburse the political subdivision furnishing such aid for the compensation paid to employees furnished under this section during the time the rendition of such aid prevents them from performing their duties in the political subdivision by which they are employed and shall defray the actual traveling and maintenance expenses of such employees while they are rendering such aid. The term "employee" as used herein shall mean and the provisions of this section shall apply with equal effect to paid, volunteer, and auxiliary firemen.

(f) *Temporary Substitute Fire-Fighting Forces.* Substitute firemen²¹ not exceeding the number of regular firemen may be appointed by the same persons authorized by law to appoint regular firemen; Provided, that such appointments shall not be subject to the requirements of the Civil Service Law or Rules and that such substitute firemen shall not be entitled to any pension or retirement rights or privileges. The substitute firemen appointed under this section shall have the powers, functions, and duties of regular firemen. The compensation of such substitute firemen shall not be greater than the lowest rate of pay for regular firemen. Persons appointed as substitute firemen shall exercise their powers, functions, and duties only when called upon, during the period all, or any part, of the regular fire-fighting forces of any county, city, village, or fire district are rendering outside aid pursuant to this section; and for no longer than two days after the return to duty of the part of the regular fire-fighting forces for which they are substituting. The compensation of such substitute firemen and any allowable expense necessarily incurred by them in the performance of their duties shall be charged against the county, city, town, village, or fire district for which they were appointed and shall be audited, allowed, and paid as other charges against it are audited, allowed and paid.

SECTION 15. *Orders, Rules and Regulations.*—(a) *By the Governor.* The Governor may make, amend, and rescind such orders, rules, and regulations as he may deem advisable to carry out the provisions of this Act.

(b) *Supplementary Orders, Rules, and Regulations by Political Subdivisions and Other Agencies.* The political subdivisions of the State and other agencies designated or appointed by the Governor are authorized and empowered to make, amend, and rescind such orders, rules, and regulations as may be necessary to supplement the carrying out of the provisions of this Act, but not inconsistent with any orders, rules, or regulations promulgated by the Governor or by any State agency exercising a power delegated to it by him.

(c) *Effect of Orders, Rules, and Regulations.* All orders, rules, and regulations promulgated by the Governor, or by any political subdivision or other agency authorized by this Act to make orders, rules, and regulations, shall have the full force and effect of law, when, in the event of issuance by the

²¹ In those States in which there is not power for the local fire organizations to enroll and train volunteer firemen, such power should be given them as, obviously, temporary firemen appointed without training would be of little value. In any State where it is deemed advisable, provision should be made for workmen's compensation, disability and death benefits for substitute firemen. [This footnote is in the original.]

Governor, or any State agency, a copy thereof is filed in the Office of the Secretary of State, or, if promulgated by a political subdivision of the State or agency thereof, when filed in the Office of the Clerk of the political subdivision or agency promulgating the same. All existing laws, ordinances, rules, and regulations inconsistent with the provisions of this Act, or of any order, rule, or regulation issued under the authority of this Act, shall be suspended during the period of time and to the extent that such conflict exists.

(d) *Not Inconsistent with Federal Action.* In order to attain uniformity so far as practicable throughout the country in measures taken to aid the prosecution of the war and civilian defense, all action taken under this Act and all orders, rules, and regulations made pursuant thereto, where not already specifically provided for herein, shall be taken or made with due consideration to the orders, rules, regulations, actions, recommendations, and requests of Federal authorities relevant thereto and, to the extent permitted by law, shall be consistent with such orders, rules, regulations, actions, recommendations and requests.

SECTION 16. *Immunity.*—(a) Neither the State or any political subdivision of the State, nor the agents or representatives of the State or any political subdivision thereof, shall be liable for personal injury or property damage sustained by any person appointed or acting as a civilian defense worker, or member of any agency engaged in civilian defense activity. The foregoing shall not affect the right of any person to receive benefits or compensation to which he might otherwise be entitled under the Workmen's Compensation Law or any pension law or any Act of Congress.

(b) Neither the State or any political subdivision of the State nor, except in cases of wilful misconduct, the agents or representatives of the State or any political subdivision thereof, nor any civilian defense worker or member of any agency engaged in any civilian defense activity, complying with or attempting to comply with this Act, or any order, rule, or regulation promulgated pursuant to the provisions of this Act, or pursuant to any ordinance relating to blackout or other precautionary measures enacted by any political subdivision of the State, shall be liable for the death of or injury to persons, or for damage to property, as a result of any such activity.

SECTION 17. *Penalties.*—Any person violating any provision of this Act or any rule, order, or regulation made pursuant to this Act shall, upon conviction thereof, be punishable by a fine not exceeding \$100.00 or imprisonment for not exceeding 30 days or both.

SECTION 18. *Coordination with Federal Bureau of Investigation.*—Nothing in this Act shall be construed to authorize the establishment of, or action by or over, any intelligence or law enforcement agency of the State or any of its political subdivisions, which would interfere with any program whereby the Federal Bureau of Investigation of the Department of Justice coordinates within the State the handling of intelligence and internal security matters by law enforcement officers and law enforcement agencies.

SECTION 19. *Coordination with Armed Forces of The United States.*—Anything in this Act to the contrary notwithstanding, no action shall be taken under this Act, and no order, rule, or regulation made pursuant thereto which is inconsistent with any relevant order, rule, or regulation of the Armed forces of the United States.

SECTION 20. *Liberality of Construction.*—This Act shall be construed liberally in order to effectuate its purposes.

SECTION 21. *Severability.*—If any provision of this Act, or the application thereof to any person or circumstances, is held invalid, such invalidity shall not

affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

SECTION 22. *Effective Date; Termination.*—This Act shall take effect immediately and shall remain in force until ———, 194—.

[SECTION] ²² *State and Local Councils of Defense.*—(a) *Establishment of State Council of Defense:* The Governor may, in his discretion, create by proclamation a State Council of Defense, hereinafter designated as the "Council" and by proclamation dissolve or suspend such Council or reestablish it after any such dissolution or suspension.

(b) *Organization of Council.* (1) The Council shall consist of — members who shall be appointed by and hold office during the pleasure of the Governor. The Governor shall serve as chairman of the Council. He shall designate one of the members of the Council as vice-chairman. Appointment of members shall be made without reference to political affiliation. Consideration shall be given to their special knowledge of civilian defense, industry, agriculture, consumer protection, labor, education, health, welfare, or other subjects relating to National or State defense.

(2) The members of the Council shall serve without compensation, but may be reimbursed for their actual and necessary traveling and other expenses incurred in the performance of their duties.

(3) The Council shall be provided with appropriate office space, furniture, equipment, supplies, stationery, and printing in the same manner as other State agencies are supplied.

(c) *Powers and Duties.* The Council shall have such powers and duties other than discretionary or policy making powers as shall be delegated to it by the Governor from time to time.

(d) *Local Councils of Defense.* Each county, city, town, or village of the State may establish a local council of defense by ordinance, resolution, or proclamation of the [executive officer] or [governing body] thereof. Each such council shall consist of — members who shall be appointed by and hold office during the pleasure of the [executive officer] or [governing body]. Local councils of defense, if and when established, shall cooperate with and assist the Council, and shall perform such services as may be requested by it [and the members of any local council which fails to do so, may be removed by the Governor, who may establish another local council in its place and stead.] Local councils may act jointly with other such councils [and shall so act when directed by the Council.] Except as limited by the Council, local councils shall have the same power and duties within their respective jurisdictions as are vested in the Council. Such local councils shall terminate or cease activity whenever the Council is dissolved or suspended.

(e) *District Councils of Defense.* In cooperation with local officials the Council is authorized to establish district councils of defense in critical areas of the State of especial importance in defense activities. Such district councils shall act as coordinating agencies under the supervision and direction of the Council, and in cooperation with local governmental agencies.

(f) *[Authorization for Appropriation.]*

²² This Section is for use in those States which have not established a State and local defense council organization by statute; or for optional use in a State which desires to repeal its present State Council of Defense Act and reestablish State or local defense councils under the provisions of this Act. If this Section is utilized, it may be numbered and inserted as a separate section of this act following the sections dealing with the powers of the Governor and the subsequent sections should be renumbered accordingly. [This footnote is in the original.]

APPENDIX 34

[Model Civilian Defense Act. Prepared by Council of State Governments.]

AN ACT relating to National and State defense, granting emergency war powers to the Governor and the political subdivisions of the State, authorizing the creation of State and local defense agencies, and making an appropriation therefor

Be it enacted * * *

SECTION 1. *Short Title.*—This Act may be cited as the "Civilian Defense Act of 194—."

SECTION 2. *Findings; Purposes; Policy.*—It is hereby found and declared that it is necessary, because of the war in which the United States of America is engaged, to grant to the Governor emergency war powers; to provide for the creation of State and local defense agencies, and to confer upon the Governor and the political subdivisions of the State the emergency war powers and the incidents thereof enumerated herein. It is further declared to be the purpose of this Act and the policy of the State thereby to assist the President of the United States of America, as Commander-in-Chief of the Army and Navy, in the successful prosecution of the war; to cooperate with the Federal Government and other States in matters relating to the war effort; to meet the extraordinary conditions and problems resulting in this State from the war by establishing such organizations and taking such steps as are necessary and appropriate to carry out the provisions of this Act; and, generally, to defend the State, protect the public peace, health, and safety, and preserve the lives and property of the people of the State.

SECTION 3. *Powers, Functions and Duties of the Governor.*—The Governor shall have the following powers, functions and duties:

(a) To create and establish, in his discretion, a State Council of Defense,²³ hereinafter designated as the "Council," for the purpose of assisting in the coordination of the State and local activities related to National and State defense;

(b) To delegate any of his powers, functions or duties to the Council, the Administrator or any other agency or person;²⁴

(c) To cooperate with any and all Federal departments, agencies and independent establishments and the officers and employees thereof charged with responsibilities relating to the war effort or the defense of the Nation; the officers and agencies of other States in matters pertaining to the war and the common defense of the State and Nation; the political subdivisions and local defense councils and agencies of this State; and private agencies engaged in activities essential to civilian defense.

(d) To ascertain the amount of food and other necessities of life or defense within this State, the amount of land and labor available for the production and processing of food and clothing, the means of obtaining without the State, food, clothing and other necessities of life and the distribution of the same; to make such other surveys of the industries, resources, and facilities of the State as are necessary to carry out the purposes of this Act; and, in making such investigation and surveys, to compel by subpoena the attendance

²³ The term "War Council" may be used in lieu of "State Council of Defense." [This footnote is in the original.]

²⁴ If there is doubt concerning the Governor's power to delegate the authority to issue orders, rules and regulations, provisions should be made for the Governor's approval of all orders, rules and regulations promulgated by the Council or other State agency. [This footnote is in the original.]

of witnesses, and the production of books, papers, records, and documents of individuals, firms, associations, and corporations; and all officers, boards, commissions, and departments of the State, and the political subdivisions thereof, having information with respect thereto, shall cooperate with and assist the Governor in making such investigations and surveys;

(e) To carry out throughout the State or in any area thereof, precautionary measures against air raids and other forms of attack, including practice blackouts, blackouts, radio silences, and such other measures as will suppress any activity which may assist an enemy; and such other precautionary measures as will prevent or minimize the loss of life or injury to persons and property which might result from such attacks;

(f) To prescribe uniform air raid signals, designate places for use as air raid shelters and the equipment and use thereof, provide for the evacuation of persons and for the control of vehicular and pedestrian traffic, congregation of persons in public places or buildings, and lighting and noises of all kinds;

(g) To prescribe and direct activities, to the extent related to the war effort, in connection with the following: Salvage and prevention of waste of strategic materials; conservation of transportation facilities; training and supply of labor; utilization of individual plants; health and medical care; nutrition; housing, including the use of existing public and private facilities; rehabilitation; education; welfare; child care; recreation for industrial workers and members of the armed forces; promotion of the rationing and price control programs; sale of war bonds and stamps; and other civilian programs in furtherance of the war effort;

(h) To establish, in cooperation with local officials, district councils of defense in critical areas of the State of especial importance in defense activities, which district councils shall act as coordinating agencies under the supervision and direction of the Governor, and in cooperation with local governmental agencies;

(i) To establish regional offices, to prescribe the powers, functions and duties thereof, and to appoint and remove, or provide for the appointment and removal of, the personnel of such regional offices;

(j) To provide for the recruitment, qualifications, training, equipment, powers and duties of all persons engaged in civilian defense activities;

(k) To require and direct the cooperation and assistance of State and local governmental agencies and officials;

(l) To make, amend and rescind such orders, rules and regulations as he may deem advisable in order to carry out the provisions of this Act; and

(m) To do all acts and things, not inconsistent with law, for the furtherance of the civilian defense of the State.

SECTION 4. Organization of Council.—(a) The Governor may appoint the members of the Council, who shall hold office during the pleasure of the Governor. The Governor shall serve as Chairman of the Council. Appointment of all persons as members of the Council shall be made without reference to political affiliation and with reference to their special knowledge of industry, agriculture, consumer protection, labor, education, health, welfare, or other subjects relating to National and State defense.

(b) The [Governor] [Council] may appoint an Administrator of the Council, hereinafter designated as the "Administrator", who shall hold office during the pleasure of the Governor. He shall receive a salary of _____ Dollars (\$_____) per annum for his services. In the absence of the Governor the Administrator shall preside over the meetings of the Council. He shall coordinate the activities and execute the program and orders of the Council, maintain liaison

with and utilize the services of Federal and State agencies and exercise such further powers, functions and duties as the Council may prescribe.

(c) The [Governor] [Council] may employ such technical, clerical, stenographic, and other personnel, [and fix their compensation,] and may make such expenditures within the appropriation therefor, or other funds made available to [him] [it], as are necessary to carry out the purposes of this Act.

(d) The members of the Council shall serve without compensation, but may be reimbursed for their actual and necessary traveling and other expenses incurred in connection with attendance upon meetings of the Council.

(e) The Council shall be provided with appropriate office space, furniture, equipment, supplies, stationery and printing in the same manner as other State agencies.

SECTION 5. *Civilian Defense Powers of Political Subdivisions.*—(a) In order to protect life and property and develop programs designed to stimulate civilian participation in the war effort the [chief executive] [governing body] of each political subdivision of the State is hereby authorized, subject to the limitations and provisions of this Act, to carry out in [his] [its] jurisdiction such civilian defense activities as may be ordered by the Governor and such additional civilian defense activities as such [chief executive] [governing body] may deem necessary, provided that such action shall not be inconsistent with any order, rule, regulation or action of the Governor. In carrying out such civilian defense activities each political subdivision of the State is hereby authorized and empowered to create, by [proclamation of the chief executive] [ordinance or resolution of the governing body], a local defense council and such other agencies as it shall deem necessary for said purpose and to confer upon such council and agencies and the members thereof such powers, functions and duties, including the power to make, amend and rescind orders, rules and regulations, as may be necessary in order to carry out the provisions of this Act.

(b) The [chief executive] [governing body] of each political subdivision of the State [or local defense council] may appoint and remove, or provide for the appointment and removal of, air raid wardens, auxiliary fire and police personnel, and such other civilian defense workers as may be found necessary for conducting the activities of any agency created pursuant to this Section. Such appointments shall not be subject to the requirements of the [Civil Service Law or Rules] and the persons appointed shall not be entitled to any pension or retirement rights or privileges.

(c) Local councils of defense, if and when established, shall cooperate with and assist the Governor, and shall perform such services as may be requested by the Governor [and the members of any local council which fails to do so, may be removed by the Governor, who may either appoint new members as successors of those removed or establish another local council in its place and stead.] Local councils may act jointly with other such councils [and shall so act when directed by the Governor.] Except as limited by the Governor, local councils shall have such powers, functions and duties as may be conferred by the [chief executive] [governing body] which established them.

(d) In order to achieve the most effective use of the services and equipment of all political subdivisions of the State, throughout the State, each political subdivision is hereby authorized and empowered to negotiate reciprocal aid agreements with other political subdivisions of the State with respect to the furnishing of services, equipment, supplies and facilities for the purpose of rendering aid in cases of disaster, including any occasioned by air raid or other form of enemy attack.

SECTION 6. Utilization of Existing Services and Facilities.—In order to avoid duplication of services and facilities the Governor, Council and the local and district councils of defense if established under the authority of this Act are directed to utilize the services and facilities of existing officers, offices, departments, commissions, boards, bureaus, institutions and other agencies of the State and of the political subdivisions thereof, and all such officers and agencies shall cooperate with and extend such services and facilities to the Governor, Council and to the local and district councils of defense as may be requested.

SECTION 7. Powers Herein Conferred to be Exercised in Conformity with Federal Action.—In order to attain uniformity so far as practicable throughout the country in measures taken to aid the prosecution of the war and civilian defense, all action taken under this Act, and all orders, rules and regulations made pursuant thereto, shall be taken or made with due consideration to the orders, rules, regulations, recommendations and requests of Federal authorities relevant thereto and, to the extent permitted by law, shall be consistent with such orders, rules, regulations, recommendations and requests.

SECTION 8. Coordination with Armed Forces of the United States.—Anything in this Act to the contrary notwithstanding, no action shall be taken under this Act, and no order, rule or regulation shall be made under this Act, which is inconsistent with any relevant order, rule or regulation of the Armed forces of the United States.

SECTION 9. Effect of Orders, Rules and Regulations.—All orders, rules and regulations promulgated pursuant to this Act shall have the full force and effect of law, when, in the event of issuance by the Governor, Council or other agency of the State, a copy thereof is filed in the Office of the Secretary of State, or if promulgated by a political subdivision of the State or agency thereof, when filed in the Office of the Clerk of the political subdivision for which the same has been promulgated. All existing laws, ordinances, rules and regulations inconsistent with the provisions of this Act, or of any order, rule or regulation issued under the authority of this Act, shall be suspended during the period of time and to the extent that such conflict exists.

SECTION 10. Immunity.—(a) Neither the State nor any political subdivision of the State, nor the agents or representatives of the State or any political subdivision thereof, shall be liable for personal injury or property damage sustained by any person appointed or acting as a civilian defense worker, or member of any agency engaged in civilian defense activity. The foregoing shall not affect the right of any person to receive benefits or compensation to which he might otherwise be entitled under the Workmen's Compensation Law or any pension law or any Act of Congress of the United States.

(b) Neither the State nor any political subdivision of the State nor, except in cases of wilful misconduct, the agents or representatives of the State or any political subdivision thereof, or any civilian defense worker or member of any agency engaged in any civilian defense activity, complying with or attempting to comply with this Act, or any order, rule or regulation promulgated pursuant to the provisions of this Act, or pursuant to any ordinance relating to blackout or other precautionary measures enacted by any political subdivision of the State, shall be liable for the death of or injury to persons, or for damage to property, as a result of any such activity.

SECTION 11. Authorization for Appropriation.—The sum of _____ Dollars (\$ _____), or so much thereof as may be necessary is hereby appropriated for the payment of expenses necessary to effectuate the purposes of this Act.

Payments out of such appropriation shall be made by the State Treasurer upon requisition of the Governor or Administrator of the Council.

SECTION 12. Penalties.—Any person violating any order, rule, or regulation promulgated pursuant to this Act shall, upon conviction thereof, be punished by fine not exceeding (\$....) or imprisonment for not exceeding (— days) or both.

SECTION 13. Severability.—If any provision of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

SECTION 14. Effective Date; Termination.—[See Section 8 of Executive Statutory Suspension Act.]²²

APPENDIX 35

[Model Air Raid Precautions Act. Prepared by Council of State Governments.]

AN ACT relating to blackouts and other precautionary measures against air raids and other forms of attack during the existing state of war

Be it enacted * * *

SECTION 1. Blackouts and Other Precautionary Measures Against Air Raids and Other Forms of Attack.—(a) To protect life and property, the Governor is hereby authorized and empowered to carry out, throughout the State or in any area thereof, precautionary measures against air raids and other forms of attack, including practice blackouts, blackouts, radio silences, and such other measures as will suppress any activity which may assist an enemy and such other precautionary measures as will prevent or minimize the loss of life or injury to persons and property which might result from such attacks, and to make, amend, or rescind such orders, rules, and regulations as may be deemed necessary in connection therewith; provided, that no such action, order, rule or regulation shall be inconsistent with any action, order, rule, or regulation of the Armed Forces of the United States or of the Federal Director of Civilian Defense. Blackouts and radio silences shall be carried out only in such areas, at such

²² Section 8 of the Executive Statutory Suspension Act, another model statute drafted by the Council of State Governments but not reproduced here, reads as follows:

SECTION 8. Effective Date; Expiration; Termination. [There should be a declaration of emergency in those States wherein it is necessary or customary precedent to immediate or premature effectiveness. The emergency and temporary character of the legislation should be definitely fixed by this section or in some other explicit manner. Just what form the provision for automatic or premature expiration should take is, of course, a matter for determination in each State. The following are by way of suggestion merely:

"SECTION —. *Effective Date; Expiration; Termination.* An emergency exists and this act is in effect immediately upon its passage, and it shall remain in force until the ----- day of -----, 194--."

or

"SECTION —. *Effective Date; Expiration; Termination.* An emergency exists and this act is in effect immediately upon its passage, and it shall remain in force for the duration of the existing war and for ----- months after termination thereof by the signing of a definitive treaty of peace, or by the proclamation of the President of the United States that hostilities have ceased or that the emergency in justification of extraordinary war-time powers no longer exists."

The declaration of emergency may be omitted or amplified according to local requirements or practice and the blank may be filled and the expiration provisions varied according to judgment. The principle apparently involved is that there should be, wherever reasonably possible, *immediate effectiveness* and provision for *automatic expiration*, or *premature termination*, of the extraordinary war-time measures embraced in the legislation].

times, and for such periods, as shall be designated by air raid warnings or orders with respect thereto issued by the United States Army, or its duly designated agency,²⁶ and only under such conditions and in such manner as shall be consistent with any such warning or order; and practice blackouts shall be held only when and as authorized by the United States Army or its duly designated agency.

(b) The Governor is authorized to delegate in writing, whenever he determines the circumstances warrant, the authority granted by this Act to carry out precautionary measures to such agencies or persons as he may designate or appoint for such purpose, or as may be designated or appointed for such purpose pursuant to orders, rules, or regulations promulgated pursuant to this Act, and to modify or revoke such authority at any time.

(c) The Governor is further authorized to act in concert with the authorities of other states to effect such synchronization and uniformity of blackouts and other precautionary measures as may be necessary to carry out the intent and purpose of this Act.

(d) To protect life and property, the [chief executive] [governing body] of each political subdivision of the State is hereby authorized to carry out in [his] [its] jurisdiction such precautionary measures as may be ordered by the Governor and such additional precautionary measures as such [chief executive] [governing body] may deem necessary, and to make, amend, or rescind such orders, rules, and regulations as may be deemed necessary in connection therewith, subject, however, to the limitations and provisions of paragraph (a) of this section; provided, however, that no such action, order, rule, or regulation shall be inconsistent with any action, order, rule, or regulation taken or promulgated by the Governor or by the Armed Forces of the United States or their duly designated agency, or by the Federal Director of Civilian Defense.

(e) Without limiting the generality of the foregoing provisions, the orders, rules, and regulations authorized in paragraphs (a) and (d) hereof may include provisions respecting uniform air raid signals, the control of vehicular and pedestrian traffic, evacuation of persons, congregation of persons in public places or buildings, lighting and noises of all kinds; and provisions as to the recruitment, qualifications, training, equipment, powers, rights, duties, privileges and immunities of persons authorized to be appointed pursuant to Section 2 hereof.

(f) The law enforcing authorities of the State and of the political subdivisions thereof shall enforce the orders, rules, and regulations issued pursuant to this Act.

SECTION 2. Auxiliary Defense Agencies.—The [chief executive] [governing body] of each political subdivision of the State [or local defense council] may appoint and remove, or provide for the appointment and removal of, auxiliary fire and police personnel and other civilian defense workers; but no such appointment or removal shall be made to or from positions under the appointive authority of the Armed Forces of the United States or the Federal Director of Civilian Defense.

SECTION 3. Immunity from Liability.—(a) Neither the State nor any political subdivision of the State, nor the agents or representatives of the State or any political subdivision thereof, shall be liable for personal injury or property damage sustained by any person appointed or acting as a civilian defense worker, or member of any agency engaged in civilian defense activity. The foregoing shall not affect the right of any person to receive benefits or compensation to

²⁶ It is contemplated that the Army will designate an agency to issue such warnings and orders, and will arrange so that the State officials are kept informed as to the agency so designated. [This footnote is in the original]

which he might otherwise be entitled under the Workmen's Compensation Law or any pension law or any Act of Congress.

(b) Neither the State nor any political subdivision of the State, nor, except in cases of willful misconduct, the agents or representatives of the State nor any political subdivision thereof, nor any civilian defense worker nor member of any agency engaged in any civilian defense activity, complying with, or attempting to comply with this Act, or any order, rule, or regulation promulgated pursuant to the provisions of this Act or pursuant to any ordinance relating to blackouts or other precautionary measures enacted by any political subdivision of the State shall be liable for the death of or injury to persons or for damage to property as a result of such activity.

SECTION 4. *Penalties.*—Any person violating any order, rule, or regulation promulgated pursuant to this Act shall, upon conviction thereof, be punishable by fine not exceeding [\$-----] or imprisonment for not exceeding [----- days] or both.

SECTION 5. *Short Title.*—This Act may be cited as the "Air Raid Precautions Act."

SECTION 6. *Effective Date and Termination.*—[See Section 8 of the Executive Statutory Suspension Act.]²⁷

APPENDIX 36

[Model Fire Defense Mobilization Act. Prepared by Council of State Governments.]

AN ACT in relation to the wartime mobilization of paid, volunteer and auxiliary firemen and prescribing the powers, duties, and responsibilities of the Governor and other public officials in connection therewith

*Be it enacted * * **

SECTION 1. *Outside Service by Paid, Volunteer, and Auxiliary Firemen.*—At the request of the [chief executive] of any county, city, town, village or fire district, the head of any fire department of any other political subdivision may, or if so ordered by the Governor, shall assign and make available for duty and use in such county, city, town, village or fire district, under the direction and command of such officer as may be designated for the purpose, any part of the fire-fighting forces and equipment under his control; provided that any equipment made available by loan, or otherwise, to any county, city, town, village or fire district in the State, by the United States Government or any agency thereof, shall at all times be subject to the order of the United States Government or such agency in accordance with the terms and conditions upon which such equipment shall have been made available.

SECTION 2. *Powers, Duties, Rights, Privileges and Immunities.*—Whenever the fire-fighting forces of any county, city, town, village or fire district are rendering outside aid pursuant to this Act, the officers and members of such fire-fighting forces shall have the same powers, duties, rights, privileges, and immunities as if they were performing their duties in the political subdivision in which they are normally employed.

SECTION 3. *Loss, Damage or Expense.*—The county, city, town, village or fire district in which any equipment is used pursuant to this Act shall be liable for any loss or damage thereto and shall pay any expense incurred in the operation and maintenance thereof. No claim for any such loss, damage or expense shall

²⁷ For text of the said Section 8, see above p. 193, note 25.

be allowed unless, within sixty days after the same is sustained or incurred, an itemized notice of such claim, under oath, is served by mail or otherwise upon [the chief fiscal officer] of such county, city, town, village or fire district where the equipment was used.

SECTION 4. *Liability for Acts or Omissions.*—Neither the State nor the political subdivision of the State whose fire-fighting forces are rendering outside aid pursuant to this Act shall be liable on account of any act or omission on the part of such forces while so engaged, or on account of the maintenance or use of any equipment or supplies in connection therewith; nor shall any commissioner, chief or other superior officer of a fire department, fire company or other fire-fighting forces, acting pursuant to this Act, be liable on account of any act or omission on the part of any of his subordinates while such subordinates are rendering outside aid pursuant to this Act under the command of an officer other than himself.

SECTION 5. *Reimbursement for Salaries and Expenses.*—The political subdivision which is aided pursuant to this Act shall reimburse the political subdivision furnishing such aid for the compensation paid to employees furnished under this Act during the time the rendition of such aid prevents them from performing their duties in the political subdivision by which they are employed and shall defray the actual traveling and maintenance expenses of such employees while they are rendering such aid. The term "employee" as used herein shall mean and the provisions of this Act shall apply with equal effect to paid, volunteer and auxiliary firemen.

SECTION 6. *Temporary Substitute Fire-Fighting Forces.*—Substitute firemen,²⁸ not exceeding the number of regular firemen, may be appointed by the same persons authorized by law to appoint regular firemen; provided that such appointments shall not be subject to the requirements of the Civil Service Law or Rules and that such substitute firemen shall not be entitled to any pension or retirement rights or privileges. The substitute firemen appointed under this Act shall have the powers, functions and duties of regular firemen. The compensation of such substitute firemen shall not be greater than the lowest rate of pay for regular firemen. Persons appointed as substitute firemen shall exercise their powers, functions and duties only when called upon, during the period all, or any part, of the regular fire-fighting forces of any county, city, town, village or fire district are rendering outside aid pursuant to this Act, and for no longer than two days after the return to duty of the part of the regular fire-fighting forces for which they are substituting. The compensation of such substitute firemen and any allowable expense necessarily incurred by them in the performance of their duties shall be charged against the county, city, town, village or fire district for which they were appointed and shall be audited, allowed and paid as other charges against it are audited, allowed and paid.

SECTION 7. *Rules and Regulations.*—The Governor may make, amend and rescind such orders, rules and regulations as he may deem advisable to carry out the provisions of this Act.

SECTION 8. *Short Title.*—This Act may be cited as the "Fire Defense Mobilization Act of 194—."

SECTION 9. *Effective Date; Termination.*—[See Section 8 of the Executive Statutory Suspension Act.]²⁹

²⁸ In those States in which there is not power for the local fire organizations to enroll and train volunteer firemen, such power should be given them as, obviously, temporary firemen appointed without training would be of little value. In any State where it is deemed advisable, provision should be made for workmen's compensation, disability and death benefits for substitute firemen. [This footnote is in the original.]

²⁹ For text of the said Section 8, see above p. 193, note 25.

APPENDIX 37

[Model Health and Sanitation Areas Act. Prepared by Council of State Governments.]

AN ACT providing for the establishment of special emergency health and sanitation areas for the protection of public health during the existing state of war

Be it enacted * * *

SECTION 1. *Establishment of Emergency Health and Sanitation Areas.*—Upon the recommendation of the [State Board of Health], the Governor may designate as a special emergency health and sanitation area, any area or areas within this State which have been seriously damaged by air raids or other catastrophe, or in which, in the Governor's opinion, the existence of any military or naval establishment of the United States, or of any industrial establishment constructed or enlarged for purposes of national defense has caused an increase in the population of such area to such an extent as to produce unusual problems of health and sanitation.

SECTION 2. *Rules and Regulations by Local Health Boards.*—Whenever a special emergency health and sanitation area is established, it shall be the duty of the local health board or boards of the territory within such area to make and enforce rules and regulations designed to prevent the introduction or spreading of any contagious or infectious disease and to safeguard the public health within the area.

SECTION 3. *Rules and Regulations by [State Board of Health].*—In the event that the local health board of the territory within such area is unable or fails to make or enforce adequate rules and regulations for the protection of the public health within special emergency health and sanitation areas established within its jurisdiction, as herein provided, the [State Board of Health] is hereby authorized, empowered and directed to make and enforce such rules and regulations for the protection of the public health within such area as may be necessary, and for this purpose it may assume all of the powers and authority of local health boards.

SECTION 4. *Request for Protection.*—Any local health board having jurisdiction in the territory within which such special emergency health and sanitation area has been established, or the chief executive of any political subdivision therein, may, by application in writing, request the [State Board of Health] to undertake the protection of such area and in such event the [State Board of Health] may make and enforce reasonable rules and regulations respecting health and sanitation in such area, and shall have all the powers and authority of the local health boards.

SECTION 5. *Cooperation with Federal and other Health Agencies.*—The [State Board of Health] is hereby directed to cooperate with health agencies of this and other States and the Federal health agencies in carrying out the provisions of State and Federal health and sanitation programs in conformity with the purposes of this Act.

SECTION 6. *Effective Date; Termination.*—[See Section 8 of Executive Statutory Suspension Act.]³⁰

³⁰ For text of the said Section 8, see above p. 193, note 25.

APPENDIX 38

[Model Military Traffic Control Act. Prepared by Council of State Governments.]

AN ACT to facilitate the movement of troops, military vehicles and materials for national defense and war and prescribing the powers, duties, and responsibilities of the Governor and other officials and agencies with respect thereto

Be it enacted * * *

SECTION 1. *Powers of the Governor Respecting Traffic Control.*—The Governor is authorized and empowered to formulate and execute plans and adopt and promulgate orders, rules and regulations for the rapid and safe movement over public highways and streets of troops, vehicles of a military nature, materials for national defense and war, or for use in any war industry, and to coordinate the activities of the departments or agencies of this State and of the political subdivisions thereof concerned directly or indirectly with public highways and streets in a manner which will best effectuate such plans, orders, rules and regulations.

SECTION 2. *Powers and Duties of Officers and Public Bodies of Political Subdivisions.*—The [chief executive] [governing body] of each political subdivision of this State shall have power and it shall be [his] [their] duty to cooperate with the Governor and any State department or agency designated by him in executing and enforcing the plans, orders, rules and regulations made pursuant to this Act.

SECTION 3. *Effective Date; Termination.*—[See Section 8 of the Executive Statutory Suspension Act.]²¹

APPENDIX 39

[Model Acceptance and Use of Federal Grants and Loans Act. Prepared by Council of State Governments.]

AN ACT relating to federal grants of funds and federal grants and loans of equipment, supplies, materials, and other property for war and defense purposes

Be it enacted * * *

SECTION 1. In order to facilitate cooperation with the United States of America in carrying on war and defense activities, all public bodies, political subdivisions, and public instrumentalities of this State, and the State and the agencies thereof, are hereby authorized: (a) to accept from the United States of America, or any department, agency, or independent establishment thereof, subject to the terms and conditions appertaining thereto, grants of funds, and grants and loans of equipment, supplies, material, and other property; (b) to hold, use, expend, deal with, employ, distribute, and dispose of such funds, equipment, supplies, materials, and other property; and (c) to engage in such activities, to enter into such contracts, and to do such other acts and things, as may be necessary or convenient to carry out the powers given by this Act.

SECTION 2. The powers conferred by this Act shall be in addition and supplemental to the powers conferred by any other law, and shall not be subject to any limitation contained in any other law nor shall the limitations of this Act affect the powers conferred by any other law.

SECTION 3. This Act shall be liberally construed to effectuate its purpose.

SECTION 4. If any provision of this Act, or the application of such provision to any person, body or circumstance, shall be held invalid, the remainder of this

²¹ For text of the said Section 8, see above, p. 193, note 25.

Act, or the application of such provision to persons, bodies or circumstances other than those with respect to which it shall have been held invalid, shall not be affected thereby.

SECTION 5. The authority hereby conferred to accept grants and loans shall continue in effect only so long as a state of war exists between the United States and any foreign country and for a period of six months thereafter.

SECTION 6. This Act shall take effect immediately upon its passage and approval as required by law, the public welfare requiring it.²²

APPENDIX 40

[Model Ordinance for Civilian Defense Organization. Prepared and recommended by the United States Office of Civilian Defense.]

EXPLANATORY MEMORANDUM

The United States Office of Civilian Defense has received many requests for a suggested form of ordinance which will enable a municipality to conduct a sound program of civilian defense. In response to these requests and in recognition of the desirability that each city should take steps to place civilian defense on a sound legal basis, we have prepared the attached form of ordinance for consideration by municipalities. It is hoped that a widespread adoption of the general plan embraced in the ordinance will promote uniformity in civilian defense throughout the Nation. Such uniformity will aid the various municipalities in expeditiously cooperating in National programs. While it would be desirable, from an administrative standpoint, for all localities to carry out substantially identical civilian defense programs, we realize that each municipality has legal and factual problems which are peculiar to it alone and, consequently, any suggested program must be adjusted to meet local conditions. The proposed ordinance should be considered in this light and modified to meet local requirements before being adopted.

In some States legislation has been enacted specifically conferring upon municipalities the power to adopt a civilian defense ordinance of this nature. It is hoped that all States will soon adopt such legislation. However, without specific legislation all municipalities are authorized under the police power to take such steps as are necessary to preserve the public peace, health, and safety. There can be no doubt that steps taken to protect persons and property from air raids and other forms of enemy attack constitute action designed to preserve the public peace, health, and safety.

The objective of the ordinance is to give legal status to the Defense [War] Council, the Citizens Defense Corps, and the Citizens Service Corps and to integrate such agencies as a functional part of the City Government. To this end these agencies are clothed by this ordinance with sufficient authority to permit them and the members thereof, together with existing municipal agencies and private organizations, to provide the necessary nonmilitary services and activities, both protective and otherwise, for the city and its inhabitants to aid in the successful promotion of the war effort.

²² The Council of State Governments has also prepared a Model "Federal Grants in Aid of Evacuation Act" (text in *Suggested State War Legislation for 1943*, Report #3, The Council of State Governments, Chicago, Illinois, pp. 5-6), but has stated (*ibid.*, p. 5) that the enactment of the general bill for the acceptance of Federal grants, reproduced above, would make it unnecessary to consider the Evacuation bill.

Under the plan of the ordinance, the Defense [War] Council directs the activities of the Citizens Service Corps and the Civilian Defense Volunteer Office. The function of the Civilian Defense Volunteer Office is to recruit the necessary personnel for the Citizens Service Corps and the Citizens Defense Corps. The Defense [War] Council also acts in an advisory capacity with respect to the protective services which are rendered by the Citizens Defense Corps. A detailed description of the activities of these agencies is set forth in the publication of the United States Office of Civilian Defense entitled "Organization Outline for Local Defense Councils."

With respect to the protective services, the ordinance contemplates the coordination of volunteer services with existing municipal services. In order to achieve such unification of effort, it is contemplated that existing municipal officers will be appointed as the heads of certain of the Services comprising the Citizens Defense Corps. The Chief of Police and Fire Chief of the City are specifically designated as the heads of the Emergency Police and Fire Services, respectively. Existing departments and the employees thereof are not, by the provisions of the ordinance brought within the framework of the civilian defense agencies. Only during the time of an emergency do such departments act under the command of the Commander, but even then the employees of such departments continue to act under the immediate direction of the existing heads thereof. A detailed statement of the organization of the Citizens Defense Corps is set forth in Regulations No. 3, as amended, issued by the United States Office of Civilian Defense.

The activities of the city and its inhabitants designed to promote the furtherance of the war effort in fields other than the protective services, such as salvage campaigns, sale of War Bonds, child care, and the like, are under the provisions of this ordinance, to be the function of the Defense [War] Council and the Service Corps (see Sections 4 (a) and 4 (c)). For a detailed description of the activities of the Service Corps see the publication of the United States Office of Civilian Defense entitled "Handbook for the United States Citizens Service Corps."

Thus, as will be seen, the ordinance provides a comprehensive plan for the full participation of the city and its inhabitants in the war program. This plan is an outgrowth of the experience of the United States Office of Civilian Defense. Many communities are now functioning in accordance with this plan and the ordinance would give legal sanction to such present activities without disrupting the existing framework. The ordinance is of sufficient scope to embrace both the planning of necessary programs and the execution thereof.

Attached to the proposed ordinance is an Appendix, containing alternate Sections 2 (b) and 4 (b) for consideration. Cities wishing to prescribe by ordinance a detailed organization for the Citizens Defense Corps should insert these sections in lieu of Sections 2 (b) and 4 (b) of the model ordinance. Where the short form of ordinance is more desirable, the material contained in the Appendix should form the basis and pattern for regulations governing the Citizens Defense Corps.

It will be noted that the ordinance does not purport to regulate lighting during periods of black-out and dim-out, to make traffic regulations, or otherwise legislate on specific problems. The ordinance is intended primarily to establish a sound organization with sufficient flexibility to permit these matters to be covered by regulations which may be readily adopted and changed as conditions require.

Notwithstanding a city's broad general power to adopt an ordinance of this nature, there are certain provisions of the ordinance which might conflict with constitutional, statutory, or charter provisions applicable to a particular munic-

pality. Before adopting the ordinance, careful consideration should be given the following matters:

(1) *Immunity from Liability.*—Section 11 of the ordinance provides certain immunities from liability for damage or injury occasioned by civilian defense activities. Inasmuch as the Civilian Defense program is in the main being executed by volunteer workers who are devoting their time and energies without compensation, it is highly desirable that all necessary steps be taken to protect them from liability growing out of acts which they would not otherwise be undertaking. In some States the law may not permit the inclusion of this section in the ordinance, inasmuch as the determination of liability in such cases rests with the State legislature. Some States have adopted legislation specifically covering this subject, others have not. Before including such provision, State constitutional and statutory and local charter provisions should be carefully examined to ascertain whether they permit such inclusion. However, even in States where this Section cannot be incorporated into the ordinance volunteer civilian defense workers may be entitled to the same immunities as existing city employees inasmuch as they are members of legalized city agencies.

(2) *Reciprocal Aid Agreements.*—Bombing attacks may result in conditions requiring the use of fire personnel and equipment in excess of any one city's ability to provide. In most States existing legislation will permit cities to enter into agreements with one another providing for reciprocal aid in time of emergency. In order that a city may be assured of such assistance in time of emergency, it should specifically authorize the execution and performance of such agreements. This is supplementary to any emergency power that the Legislature may grant to the Governor to order the movement of fire personnel and equipment.

(3) *Appropriation of Funds.*—Section 13, dealing with the appropriation of funds to carry out the purposes of the ordinance, must be conformed to local requirements. All that a model ordinance can hope to accomplish in this respect is to call to the attention of local officials the fact that funds will be necessary to conduct a Civilian Defense program and that the most desirable method of financing is by appropriation, with attendant accounting, rather than by solicitations.

(4) *Workmen's Compensation.*—Each State has its own provisions with respect to workmen's compensation. Some permit compensation to be paid to persons, such as these auxiliary workers, who are injured in the course of duty, and others do not. Inasmuch as these persons are rendering a valuable service in the defense of the Nation as a whole, assuming extraordinary risks and devoting their time and energy without remuneration, it is hoped that Congress will establish a system of Federal compensation for injury or death sustained in the performance of duty. Each city must, however, consider the problem, and particularly the extent to which existing legislation may automatically apply to auxiliary Civilian Defense workers.

(5) *Civil Service.*—Persons performing voluntary uncompensated services without pension or other rights and privileges of regular municipal employees are probably not required to be appointed pursuant to the provisions of Civil Service laws or rules. Specific exceptions with respect to temporary employment are often provided. However, the Civil Service laws or rules should be given careful consideration and the ordinance adjusted to dispense with their provisions.

(6) *SPECIAL NOTE: Cities Having City Managers or Commission Form of Government.*—Particular care should be exercised in the adaptation of the proposed ordinance for use in cities having the above types of government.

(a) In most, if not all, City Manager Cities the administrative authority is centralized in the City Manager and he is also charged with supervision of paid personnel.

In such instances appropriate changes should be made in the text of the ordinance with respect to the functions, appointment, compensation, and supervision of the persons to be selected to fill the posts created by the ordinance and also with respect to the composition and powers of the Council. Other provisions that may be required to conform to this form of city government will suggest themselves.

(b) In Commission Government cities, adaptation may be required to provide that the Commission acting as a body designate one of their members to administer the Civilian Defense program.

No set form for such alternatives is here presented inasmuch as the local charters and statutes pertaining to these types of city government vary from city to city. However, it is highly desirable that, in making any changes necessitated by the above circumstances, the general plan of organization for Civilian Defense outlined in the ordinance should be preserved.

SUPPLEMENTARY MEMORANDUM RELATING TO MEMBERSHIP OF DEFENSE COUNCIL

It will be noted that Section 2(a) of the Model Ordinance for Civilian Defense Organization provides for the membership of the Defense [War] Council. Persons holding designated offices are ex-officio made members of the Council and, in addition thereto, the Council is to contain persons engaged in non-governmental activities who possess qualifications and a knowledge of problems related to the Civilian Defense program. This latter group is, by the terms of the Model Ordinance, appointed by the Mayor or by the Mayor with the approval of the City Council.

It is highly desirable that the Local Defense Council include, besides designated public officials, representatives of all phases of community life. These should be persons possessing a recognized knowledge of, and currently active in, the fields of industry, labor, consumer protection, minority groups, education, health, welfare and other phases of community life related to Civilian Defense and civilian mobilization for the war effort.

Thus the Council will be a representative cross-section of the community, alert to the locality's present-day problems and aware of the sources of strength it can muster for civilian defense and the war program. If this end can be accomplished the community, as a whole, will have a vital sense of participation in civilian defense and this will help to achieve unified action.

Further, the varied backgrounds of members so selected will furnish the Defense Council with a fund of detailed knowledge in a number of special fields pertinent to Council activities. The Council likewise will thus be provided with an effective barometer of local attitudes toward various defense and civilian mobilization operations and may be guided accordingly.

For the purpose of assuring the appointment of such persons as members of the Council, Section 2(a) of the Model Ordinance may be amended to read as follows:

"A Defense [War] Council, to be known as the "_____ Defense
(Name of City)

[War] Council" to be composed of the Mayor, as Chairman thereof, the Civilian Defense Director, as Administrative Officer thereof, the Chief of Police, the Fire Chief, the Commissioner of Health, the Commissioner of Public Works, the Commissioner of Public Welfare, the City Attorney, the Superintendent of Schools, the Commander of the Defense Corps, the Execu-

tive of the Service Corps, and the Director of the Civilian Defense Volunteer Office, all of whom shall ex-officio be members of the Council, and _____ (_____) persons engaged in non-governmental activities and with recognized knowledge of, and currently active in, the fields of industry, labor, consumer protection, minority groups, education, health, welfare and other phases of community life related to civilian defense and civilian mobilization for the war effort."

ORDINANCE NO. —

AN ORDINANCE ESTABLISHING A DEFENSE [WAR] COUNCIL AND OTHER AGENCIES FOR THE PURPOSE OF PROVIDING PROTECTION OF PERSONS AND PROPERTY AGAINST AIR RAIDS AND OTHER FORMS OF ENEMY ATTACK AND TO STIMULATE CIVILIAN ACTIVITIES IN FURTHERANCE OF THE WAR EFFORT; TO DEFINE THE POWERS, FUNCTIONS, AND DUTIES OF SUCH AGENCIES AND TO PROVIDE FOR THE EXERCISE OF SUCH POWERS, INCLUDING THE ACQUISITION OF PROPERTY; TO MAKE AN APPROPRIATION THEREFOR; AND TO DECLARE AN EMERGENCY

Be it ordained by the _____ of the city of _____, as follows:

SECTION 1. *Declaration of Policy.*—In view of the emergency created by the present state of war, and in order that the city of _____ (herein called the "City") may best provide for the common defense and promote the general welfare of its inhabitants, it is hereby declared to be the policy of the City that every effort be made to coordinate and supplement the ordinary peacetime services of the City Government with the services of those who will be directly engaged in taking measures against, or in preparation for, air raids and other war hazards and who will also be engaged in such activities as will stimulate the civilian participation in the war effort. To that end all persons mentioned herein shall perform the duties authorized or prescribed herein and shall cooperate to the fullest extent permitted by law with the State, any of its agencies or instrumentalities and the officers or employees thereof, and with the Federal Government, or any agency or instrumentality thereof, authorized to act with respect to any such measures or activities. It is hereby declared to be the intent of the City that all possible steps be taken to coordinate the war activities of the City with the war activities of the State and Federal Governments in order to promote uniformity in policy and action.

SECTION 2. *Creation of Civilian Defense Agencies and Appointment, Qualifications, Tenure, and Remuneration of Persons Appointed Pursuant to This Ordinance.*—The following Civilian Defense agencies of the City are hereby created and established:

(a) A Defense [War] Council, to be known as the "_____ Defense [War] Council," to be composed of the Mayor, as Chairman thereof, the Civilian Defense Director, as Administrative Officer thereof, the Chief of Police, the Fire Chief, the Commissioner of Health, the Commissioner of Public Works, the Commissioner of Public Welfare, the City Attorney, the Superintendent of Schools, the Commander of the Defense Corps, the Executive of the Service Corps, and the Director of the Civilian Defense Volunteer Office, all of whom shall ex officio be members of the Council, and _____ (_____) persons engaged in non-governmental activities and possessing qualifications and a knowledge of problems related to the Civilian Defense program;²²

²² See Supplementary Memorandum relating to the subject matter of this section, *supra*, p. 202.

(b) A United States Citizens Defense Corps (herein called the "Defense Corps"), to be composed of the Commander thereof, Chiefs of Service, and persons who have been appointed and enrolled, as herein provided, as members of the Defense Corps. The Defense Corps shall be organized into an Emergency Police Service, an Emergency Fire Service and such other Services as the Commander may deem necessary, which Services may be composed of such operating units as he shall determine;

(c) A United States Citizens Service Corps (herein called the "Service Corps"), to be composed of the Executive thereof and persons engaged in community activities in furtherance of the war effort, other than the services provided for in (b) above, who have been enrolled as members as hereinafter provided.

The [Mayor] [Mayor with the approval of the City Council]²⁴ shall appoint _____ (_____) persons as members of the Defense [War] Council, the Civilian Defense Director, the Commander of the Defense Corps, the Executive of the Service Corps, the Director of the Civilian Defense Volunteer Office, and the Local Property Officer.

The Commander shall appoint a Chief of Service for each Service established pursuant to the provisions of this Ordinance, provided, that the Chief of Police shall ex officio be the Chief of the Emergency Police Service and the Fire Chief shall ex officio be the Chief of the Emergency Fire Service. The Chiefs of the respective Services established pursuant to this Ordinance shall appoint eligible and qualified persons (such number as they shall deem necessary but not in excess of the maximum number designated by the Defense [War] Council) as members of the Services, or any Unit thereof, under their supervision. No person shall be appointed as a member of the Defense Corps except in accordance with the provisions of regulations issued by the Director of the United States Office of Civilian Defense, appointed by the President (hereinafter called the "Federal Director of Civilian Defense").

The Executive of the Service Corps shall appoint as members of the Service Corps all persons who qualify for membership in accordance with rules, regulations, or orders of the Federal Director of Civilian Defense and any requirements, not inconsistent therewith, of the Defense [War] Council.

The Civilian Defense Director, the Commander, the Executive of the Service Corps, and the Director of the Civilian Defense Volunteer Office shall be full-time appointments.²⁵ The Civilian Defense Director²⁶ shall receive, for his services, a salary of _____ dollars (\$_____) per annum; the Commander²⁶ shall receive, for his services, a salary of _____ dollars (\$_____) per annum; the Executive of the Service Corps²⁶ shall receive, for his services, a salary of _____ dollars (\$_____) per annum; and the Director of the Civilian Defense Volunteer Office²⁶ shall receive, for his services, a salary of _____ dollars (\$_____) per annum. The salaries of the Civilian Defense Director, the Commander, the Executive of the Service Corps, and the Director of the Civilian Defense Volunteer Office shall be payable semimonthly on the 15th and last day of each month.

²⁴ Insert name of governing body in lieu of "[City Council]." [This footnote is in the original.]

²⁵ In some communities it may be preferable to appoint outstanding citizens to any or all of these positions to serve without compensation. In such event, if deemed advisable, provision may be made pursuant to Section 4 (a) (8) hereof, for the employment of paid deputies or assistants. An information specialist may also be included as a paid employee. [This footnote is in the original.]

²⁶ Since these persons are paid employees consideration should be given to Civil Service requirements and Workmen's Compensation. [This footnote is in the original.]

The Commander, or his deputy, shall, as soon as possible and in any event within six (6) months after the date of his appointment, satisfactorily complete the course of instruction prescribed by a War Department Civilian Protection School or if, at such time, there be no such course so prescribed then he shall satisfactorily complete such other course of instruction as may be recommended by the Federal Director of Civilian Defense.

All persons appointed pursuant to this Ordinance shall, before exercising any of the powers, functions, or duties prescribed for the position to which they are appointed, take the Oath of Office prescribed in Section 7 of this Ordinance. Except as herein provided, no person appointed pursuant to this Ordinance shall receive compensation for his services as such, whether in form of salary, per diem allowances, or otherwise.

SECTION 3. Removal of Persons Appointed Pursuant to this Ordinance.—For inefficiency, neglect of duty, or misconduct in office, any person appointed pursuant to the provisions of this Ordinance may be removed by the appointing authority, provided, that no person shall be removed until he shall have been given a copy of the charges at least five (5) days prior to the hearing thereon and had an opportunity to be heard in person. Members of the Defense Corps may be suspended or removed for any reason which is made a cause for such action by regulations of the Federal Director of Civilian Defense.

Any person resigning or removed from the position to which he has been appointed pursuant to this Ordinance or ceasing to act for any reason, shall immediately upon demand surrender to the person or agency from which the same was received any armband, card, or other means of identification prescribed for persons appointed pursuant to this Ordinance, and all equipment, materials, or supplies entrusted to him by or on behalf of the City or the Federal Director of Civilian Defense.

SECTION 4. Powers, Functions, and Duties of Civilian Defense Agencies.—(a) *Defense [War] Council.*—In order to promote unity of effort and efficiency of accomplishment in the work of official agencies, private organizations and groups, and individuals in all undertakings which relate to the war effort, the Defense [War] Council shall study the problems arising out of air raids and other war hazards as well as ways and means of stimulating civilian and community participation in furthering the war effort, and shall develop an effective plan of community organization. The powers, functions, and duties of the Defense [War] Council shall, subject to orders, rules, regulations, and directions of the [Governor] [State Defense Council], include, but not be limited to, the following:

(1) To appoint committees and, except for the powers set forth in Section 4 (a) (5) hereof, to delegate any of its powers, functions, and duties thereto; to direct and supervise the activities of the Civilian Defense Director, the Executive of the Service Corps, and the Director of the Civilian Defense Volunteer Office, and to delegate specific powers, functions, and duties thereto; and to prescribe courses of training and instruction for eligible persons who have registered for membership and have been assigned for training in the Defense Corps or the Service Corps;

(2) To operate, under the direction and supervision of the Director thereof, a Civilian Defense Volunteer Office, which is authorized and directed to (a) recruit volunteers, through canvass or otherwise, from among all civilians, (b) register volunteers, recording information concerning their interests and abilities, and (c) refer volunteers to the Defense Corps or the Service Corps or to other organizations engaged in war activities approved by the Defense [War] Council;

(3) To prescribe and direct activities, to the extent related to the war effort, in connection with the following: Salvage and prevention of waste of strategic

materials; conservation of transportation facilities; training and supply of labor; utilization of individual plants; health and medical care; nutrition; housing, both temporary and permanent, including the use of existing public and private facilities; rehabilitation; education; welfare; child care; recreation for industrial workers and members of the armed forces; promotion of the rationing and price control programs; sale of war bonds and stamps; other civilian programs in furtherance of the war effort;

(4) To prepare and disseminate information designed to instruct the inhabitants of the City with respect to their obligations in connection with the civilian defense program of the City;

(5) To issue rules, regulations, and orders governing the operation of the Civilian Defense Volunteer Office and the Service Corps and the training and instruction of members thereof, not inconsistent with the provisions of (a) this Ordinance, (b) rules, regulations, and orders promulgated by the [Governor] [State Defense Council], and (c) the rules, regulations, and orders issued by the Federal Director of Civilian Defense;

(6) To act in an advisory capacity for the purpose of aiding the Commander and the Chiefs of Service of the Defense Corps in the performance of their duties;

(7) To consider air raid warning methods; to direct the installation of an air-raid warning system, to prescribe, not inconsistent with any rule, regulation, or order of any proper Military authority, the Federal Director of Civilian Defense or the [Governor] [State Defense Council], a system of official air-raid warning signals for the purpose of informing the inhabitants of the City of an air-raid attack, air-raid drill, or other air-raid precautionary measure, and the cessation thereof; and to authorize designated persons to give such signals at such times as the Military or other proper authority shall order or authorize;

(8) To make such expenditures (out of funds appropriated by the [City Council]²⁷ or contributions received from private sources or the State or Federal Governments) as are necessary to carry out its powers, functions, and duties under this Ordinance, including the employment of executive, administrative, technical, clerical, stenographic, and other personnel, and the purchase, leasing, or acquisition in any other manner of property, both real and personal; and

(9) To recommend to the [City Council]²⁷ necessary modifications of this Ordinance and additional enactments for furthering the effective program of Civilian Defense in the City.

(b) *Defense Corps.*—The Defense Corps shall be under the direction and supervision of the Commander and, except as herein otherwise provided, all Services and Units of the Defense Corps shall act under the direction and supervision of such persons as the Commander may from time to time designate. During the period of actual or imminent enemy attack, air-raid alarm, or drill, the Police Department, Fire Department, and other regularly established departments and municipal services of the City shall, under direction of the regularly appointed heads of such departments or municipal services, act under the supervision and command of the Commander.

The Defense Corps is hereby authorized and directed to engage in any and all activities and exercise such powers, functions, and duties as may be necessary to protect persons and property against, and minimize losses resulting from, air raids or other forms of enemy attack, provided, however, that, except on written order of the Chief of Police and in accordance with State law, no member of the Defense Corps shall carry any firearm while on duty or exercise the power of arrest exercised by the regular Police force of the City.

²⁷ See footnote 34 on page 204. [This footnote is in the original.]

Subject to the approval of the [City Council] ³⁸ the Commander may: (1) Purchase, lease, or otherwise acquire and establish, equip, and maintain, a control center and such divisional control centers, wardens' posts, medical stations, warehouses, depots, and such other facilities as shall be necessary or desirable for the efficient operation of the Defense Corps; (2) purchase, lease, or otherwise acquire such equipment and supplies as shall be necessary for use by the Defense Corps; and (3) employ such personnel as he may deem necessary or desirable in connection with the foregoing.

The Commander or, with the approval of the Commander, the Chief of any Service established pursuant to this Ordinance, shall designate the powers, functions, and duties of members of the Defense Corps under their immediate supervision. Eligible persons who have registered for membership and have been assigned for training by the Commander shall, pending their satisfactory completion of the course of training or instruction prescribed by the Defense [War] Council, be designated as Trainees. When such persons have, to the satisfaction of the Commander, or such person or persons as he may designate, completed the course of training or instruction and taken the Oath of Office prescribed in Section 7 hereof, they shall be appointed and enrolled as members of the Defense Corps. All additional courses of training or instruction for persons who have been enrolled as members of the Defense Corps shall be prescribed by the Commander. No person shall exercise any of the powers, functions, or duties of a member of the Defense Corps until he has been appointed and enrolled as herein authorized, provided, that while in the course of actual training and when called into active duty by the Commander, during a period of emergency, a Trainee shall possess all the powers, functions, rights, privileges, and immunities of members of the Defense Corps.

The Commander is hereby authorized and directed to issue such rules, regulations, orders, and instructions (not inconsistent with the provisions of (1) this Ordinance, (2) rules, regulations, and orders promulgated by the [Governor] [State Defense Council], and (3) rules, regulations, and orders issued by any proper Military authority or the Federal Director of Civilian Defense) governing: (i) The exercise of the powers and functions of all Services of the Defense Corps and the duties for the personnel of the Defense Corps; (ii) the conduct of all persons and property during the period of actual or imminent enemy attack, air-raid alarm, air-raid drill, black-out, practice black-out, dim-out, or other air-raid protection measures, including, but not limited to, control of lighting and noises, traffic movement of vehicles and pedestrians, evacuation of inhabitants and congregation of persons in public places or buildings; (iii) the classes of persons which shall be permitted to remain on the public ways during any such period, the designation of, and means of identification of, persons in such classes.

(c) *Service Corps*.—The Service Corps, including the Executive thereof, shall operate under the direction and supervision of the Defense [War] Council and its duly established committees. The Defense [War] Council shall prescribe the powers, functions, and duties of members of the Service Corps. When eligible persons who have registered for membership have (i) been assigned for training and have, to the satisfaction of the Executive or such person or persons as he may designate, completed the course of training or instruction, or (ii) have performed the required number of hours of service, and, in either case, taken the Oath of Office prescribed in Section 7 hereof, they shall be appointed and enrolled as members of the Service Corps.

In order to carry out the powers, functions, and duties herein conferred, any of the Civilian Defense Agencies herein created may request existing municipal

³⁸ See footnote 34 on page 204. [This footnote is in the original.]

departments or agencies to make their personnel or property available to such Civilian Defense Agency. All existing municipal departments and agencies and the officers thereof having jurisdiction over any officer or employee of the City are hereby authorized to comply with such request.

SECTION 5. Local Property Officer.—The Local Property Officer is authorized and directed to receive, account for, maintain, store, protect, and distribute personal property loaned to or acquired by or on behalf of the City for protection of persons and property against air raids and other war hazards. In handling and distributing such property he shall comply with the terms of any agreement under which the property was loaned to or acquired by the City. To insure the faithful performance of his duties he shall post a surety bond, in such amount as the Commander may designate, and the premium thereon shall be paid by the City.

SECTION 6. Identification.—Members and employees of the Defense [War] Council, and members and trainees of the Defense Corps and the Service Corps are hereby authorized to wear and use the form of insignia and such other form of identification as the Federal Director of Civilian Defense shall prescribe. The Defense [War] Council shall provide and issue to such persons as are entitled thereto, pursuant to regulations of the Federal Director of Civilian Defense, armbands, identification cards, and such other forms of identification as may be approved by the Federal Director of Civilian Defense. No other person shall be entitled to wear or use such form of identification nor shall any other person represent himself to be a member of any of the aforementioned groups. No member of the Defense Corps shall exercise any authority over the persons or property of others without having on his person the armband, identification card, and any other official means of identification prescribed by order of the Defense [War] Council.

SECTION 7. Oath of Office.—All persons appointed pursuant to Section 2 hereof shall, before entering upon their duties, take an Oath of Office substantially as follows (except that aliens may omit the first two clauses):

I, _____, solemnly swear (or affirm) that I will support and defend the Constitution of the United States and of the State of _____ against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; that I will well and faithfully discharge my duties as a member of (*here insert Defense [War] Council, Defense Corps, or Service Corps, as the case may be*); and that I do not advocate, and have not advocated, the overthrow of our constitutional form of government in the United States by force or violence.

SECTION 8. Additional Powers, Functions, and Duties of the Civilian Defense Agencies.—In addition to the powers, functions, and duties herein conferred upon the Defense [War] Council, the Defense Corps, and the Service Corps, and the officers and members thereof, said agencies and the officers and members thereof shall also possess such powers, functions, and duties as may be delegated by the Governor or any officer or agency of the State.

Neither the Defense [War] Council, the Defense Corps, the Service Corps, or the officers or members of any of said agencies shall exercise any powers or functions, or issue any orders, rules, or regulations inconsistent with orders, rules, and regulations promulgated by any proper Military authority, or by the [Governor] [State Defense Council], or [his] [its] duly authorized agent or agents, or by the Federal Director of Civilian Defense.

SECTION 9. *All Officers and Employees of the City Under Direction of Commander During Certain Periods.*—In order to carry out more effectively the functions of the Defense Corps the Commander shall, with the consent and under the direction of the person in charge of any department,³⁹ board, bureau, commission, or agency of the City, have power to require any such department,³⁹ board, bureau, commission, agency, or the officers or employees thereof, to render such services and make available such equipment, supplies, and facilities as the Commander may deem necessary, provided, however, that during the period of actual or imminent enemy attack, air raid alarm, or drill, and until such time as the emergency created thereby shall be declared ended either by the Commander or the [City Council],⁴⁰ all property of the City and all officers or employees of the City, whether engaged in Civilian Defense activities or otherwise, shall be subject to the direction, supervision, and command of the Commander and all such officers and employees shall, to the best of their ability, carry out his orders and directions whether or not the duties imposed thereby fall within the regular duties of such officers or employees. Failure to comply with the orders or directions of the Commander during any of the aforementioned periods shall constitute misconduct in office and shall be sufficient cause for the immediate removal of such person from his position as an officer or employee of the City.

SECTION 10. *Ratification of Prior Actions in Connection with Civilian Defense.*—All prior appointments, actions, and things done in furtherance of the Civilian Defense of the City by officers or employees of the City and by inhabitants of the City who have volunteered their services are hereby ratified, confirmed, and approved in all respects; provided, however, that such ratification, confirmation, and approval shall not apply to undertakings committing or obligating the City to expend funds unless such undertakings have been previously authorized by the [City Council].⁴⁰ All such persons previously appointed and now performing duties falling within the functions, powers, and duties of the Defense [War] Council or the Defense Corps, as herein prescribed, shall, without the necessity of being reappointed, upon taking the Oath of Office prescribed in Section 7 hereof (unless such oath shall have previously been taken) continue to perform such powers, functions, and duties the same as if appointed pursuant thereto; provided, however, if such persons shall not have been trained as herein required they shall complete such training within three (3) months of the effective date hereof.

SECTION 11. *Immunities Conferred by This Ordinance.*—Neither the City, nor any officer, agent, or employee thereof, shall be liable for personal injury or property damage sustained by any person appointed or acting as a Civilian Defense worker or member of any agency engaged in Civilian Defense activity. The foregoing shall not affect the right of any person to receive benefits or compensation to which he might otherwise be entitled under the Workmen's Compensation Law or any pension law or any Act of Congress.

Neither the City nor, except in cases of wilful misconduct, any officer, employee, or agent of the City, or member of any agency engaged in any Civilian Defense activity, complying with or attempting to comply with this Ordinance or any State statute or any order, rule, or regulation promulgated pursuant to the provisions of this Ordinance, or such statute, or by proper military authority, shall be liable for the death of or injury to persons, or for damage to property, as a result of any such activity.

³⁹ The enumeration of city agencies should be conformed to local practices. [This footnote is in the original.]

⁴⁰ See footnote 34 on page 204. [This footnote is in the original.]

SECTION 12.⁴¹ *Reciprocal Aid Agreements with Other Political Subdivisions of the State.*—In order to secure and assure the aid and cooperation of other political subdivisions of the State in protecting persons and property against, and minimizing losses resulting from, air raids or other forms of enemy attack, the Mayor shall negotiate, subject to approval by the [City Council],⁴² reciprocal aid agreements with other political subdivisions of the State with respect to the furnishing of services, equipment, supplies, and facilities in cases of disaster, of such magnitude as to require the services, equipment, supplies, and facilities of other political subdivisions of the State in addition to those of the political subdivision affected by such act of the enemy.

SECTION 13. *Appropriation.*⁴³—The sum of _____ dollars (\$_____), or so much thereof as may be necessary, is hereby appropriated annually, out of any money in the general fund of the City Treasury not otherwise appropriated, for the purpose of paying any and all expenses which may be incurred by the Defense [War] Council, the Defense Corps, or the Service Corps in carrying out and administering the provisions of this Ordinance.

SECTION 14. *Aid from State or Federal Governments or Other Sources.*—In addition to other powers herein granted the Defense [War] Council, except in cases requiring a pledge of the City's credit or the expenditure of City funds in which event the prior approval of the [City Council]⁴⁴ shall be obtained, is authorized: To accept from the State or Federal Governments, grants or other financial assistance and loans or donations of property, both real and personal, and to this end to comply with such conditions and enter into such leases or agreements as may be necessary, convenient, or desirable; and to accept contributions in the form of cash, and loans or donations of property, both real and personal, from individuals, firms, partnerships, corporations, associations, and organizations. It is the purpose and intent of this Ordinance to authorize the Defense [War] Council to do any and all things necessary or desirable to secure the financial or other aid and cooperation of the State Government, the Federal Government, and private individuals and organizations for the purpose of carrying out the provisions of this Ordinance.

SECTION 15. *Effective Date of Rules and Regulations Issued Pursuant to This Ordinance.*—All rules and regulations issued pursuant to this Ordinance governing the conduct of persons or property shall be filed with the City Clerk who shall immediately post copies thereof in the City Hall and such other public places as he shall deem necessary, and upon such posting by the City Clerk such rule or regulation shall be in full force and effect.

SECTION 16. *Penalty.*—It shall be a misdemeanor, punishable by fine of not to exceed _____ dollars (\$_____), or by imprisonment of not to exceed _____[days] [months], or both, for any person to do any act forbidden by this Ordinance or by any lawful rule or regulation issued pursuant to this Ordinance, if such act is of such a nature as to give, or to be likely to give, assistance to the enemy, or to imperil the life or property of any other inhabitant of the City, or to prevent, hinder, or delay the defense or protection thereof.

SECTION 17. *Severability.*—Notwithstanding any other evidence of intent, it is hereby declared to be the controlling intent of the [City Council]⁴⁵ that if any provision of this Ordinance, or the application thereof to any person or circumstances, is held invalid, the remainder of the Ordinance and the application of such

⁴¹ In States where cities are not authorized by statute or charter to send fire-fighting equipment and personnel outside their territorial boundaries, this section should be deleted. [This footnote is in the original.]

⁴² The provisions of this Section must be adapted to local requirements governing the appropriation of funds. [This footnote is in the original.]

provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

SECTION 18. Ordinance Controlling.—Insofar as the provisions of this Ordinance are inconsistent with the provisions of any other Ordinance or Resolution of the [City Council] ⁴² the provisions of this Ordinance shall be controlling.

SECTION 19. Termination of Ordinance.—This Ordinance shall remain in full force and effect during the period the United States is engaged in the present war with any foreign government.

SECTION 20. Emergency.—To preserve the public peace, health, and safety, and to promote the defense of the City and aid in the promotion of the defense of the State and Nation it is necessary that this Ordinance shall become immediately operative. It is therefore declared to be an emergency measure and shall take effect immediately upon its passage and approval by the Mayor.

OPTIONAL PROVISIONS

Cities desiring more detailed provisions concerning the powers, functions, and duties of the respective Services and Units of the Defense Corps should insert the following in lieu of Sections 2 (b) and 4 (b) :

SECTION 2.

(b) A United States Citizens Defense Corps (herein called the "Defense Corps"), to be composed of the Commander thereof, Chiefs of Service, and persons who have been appointed and enrolled, as herein provided, as members of the Defense Corps. Subject to being supplemented or revised by the Commander through either the creation of additional Services or Units or the revision of existing Services or Units, if in his opinion the more efficient execution of the protective services requires such action, the Defense Corps shall consist of Units organized into Services as follows :

(1) Staff of the Commander, to be composed of the Staff Unit, which is to be assisted by the Drivers Unit, the Messengers Unit, ⁴³ the Instructors Unit, and Chaplains Unit;

(2) Emergency Fire Service, to be composed of the Auxiliary Firemen Unit;

(3) Emergency Police Service, to be composed of the Auxiliary Police Unit;

(4) Air Raid Wardens Service, to be composed of the Air Raid Wardens Unit and the Fire Watchers Unit;

(5) Emergency Medical Service, to be composed of the Medical Unit and Nurses' Aides Unit;

(6) Emergency Public Works Service, to be composed of the Demolition and Clearance Unit, the Road Repair Unit, the Decontamination Unit, and the Rescue Unit; ⁴⁴

(7) Emergency Utilities Service, to be composed of the Utility Repair Unit; and

(8) Emergency Welfare Service, to be composed of an Emergency Food and Housing Unit and such other Units as the Commander may from time to time

⁴² See footnote 34 on page 204. [This footnote is in the original.]

⁴³ It may be found desirable to organize all communications services, such as messengers, telephone, telegraph, and radio, into a Communications Unit. [This footnote is in the original.]

⁴⁴ Rescue Units, responsible primarily for rescue work in bombed buildings (as distinguished from rescue work in burning buildings, the function of the regular and Emergency Fire Service), may be established as a separate Service or as a part of the Emergency Public Works Service. [This footnote is in the original.]

prescribe, provided, that if, in the opinion of the Commander, the organized personnel certified by the American Red Cross for emergency feeding, housing, and clothing services is adequate to provide the protective services required of an Emergency Food and Housing Unit and if such personnel so certified to the Commander is placed under his command during the period of an air raid or other period of emergency occasioned by enemy attack, the Commander shall not establish an Emergency Food and Housing Unit.

SECTION 4.

(b) *Defense Corps.*—The Defense Corps shall be under the direction and supervision of the Commander and, except as herein otherwise provided, all Services and Units of the Defense Corps shall act under the direction and supervision of such persons as the Commander may from time to time designate. During the period of actual or imminent attack, air raid alarm, or drill, the Police Department, Fire Department, and other regularly established departments and municipal services of the City shall, under direction of the regularly appointed heads of such departments or municipal services, act under the supervision and command of the Commander.

The Commander or, with the approval of the Commander, the Chief of any Service established pursuant to this ordinance, shall designate the powers, functions, and duties of members of the Defense Corps under their immediate supervision. Eligible persons who have registered for membership and have been assigned for training by the Commander shall, pending their satisfactory completion of the course of training or instruction prescribed by the Defense [War] Council, be designated as Trainees. When such persons have, to the satisfaction of the Commander, or such person or persons as he may designate, completed the course of training or instruction and taken the Oath of Office prescribed in Section 7 hereof, they shall be appointed and enrolled as members of the Defense Corps. All additional courses of training or instruction for persons who have been enrolled as members of the Defense Corps shall be prescribed by the Commander. No person shall exercise any of the powers, functions, or duties of a member of the Defense Corps until he has been appointed and enrolled as herein authorized, provided, that while in the course of actual training and, when called into active duty by the Commander, during a period of emergency, a Trainee shall possess all the powers, functions, rights, privileges, and immunities of members of the Defense Corps.

The respective officers and Services of the Defense Corps shall have the following powers, functions, and duties:

(1) *Commander.*—The Commander shall:

(a) Conduct meetings of the Chiefs of the several Services for the purpose of correlating the powers, functions, and duties of said Services into a unified protective service;

(b) Require periodic reports from the Chiefs of the several Services, setting forth the progress and status of all activities in such Services as well as the location and condition of all equipment, supplies, and facilities thereof;

(c) Issue rules, regulations, orders, and instructions (not inconsistent with the provisions of (1) this Ordinance, (2) rules, regulations, and orders promulgated by the [Governor] [State Defense Council], and (3) rules, regulations, and orders issued by any proper military authority or the Federal Director of Civilian Defense) governing: (1) The exercise of the powers and functions of all Services of the Defense Corps and prescribing duties for the personnel of the Defense Corps in addition to the duties specified in subsections (2), (3), (4), (5), (6), and (7) of this Section 4 (b); (2) the conduct of all persons and

property during the period of actual or imminent enemy attack, air-raid alarm, air-raid drill, black-out, practice black-out, dim-out, or other air-raid protection measure, including, but not limited to, control of lighting and noises, traffic movements of vehicles and pedestrians, evacuation of inhabitants, and congregation of persons in public places or buildings; and (3) the classes of persons which shall be permitted to remain on the public ways during any such period, the designation of, and means of identification of, persons in such classes;

(d) Appoint a Staff, including technical, administrative, and clerical assistants for the purpose of assisting him in directing the activities of the Defense Corps;

(e) Subject to the approval of the [City Council]: "Purchase, lease, or otherwise acquire and establish, equip, and maintain a Control Center and such Divisional Control Centers, wardens' posts, medical stations, warehouses, depots, and such other facilities as shall be necessary or desirable for the efficient operation of the Defense Corps; purchase, lease, or otherwise acquire such equipment and supplies as shall be necessary or desirable for use by the Defense Corps or any Service or Unit thereof in the proper performance of the duties conferred thereon; store, maintain, and protect such equipment, materials, and supplies; and employ such personnel as he may deem necessary or desirable in connection with the foregoing;

(f) Carry out blackouts, practice blackouts, dimouts, air raid drills, and other air raid precautionary measures in the City at such times and for such periods as are duly authorized or ordered by the Army;

(g) Make periodic reports to the Mayor and [City Council] " (not less than once every three (3) months) of the status and activities of the Defense Corps; and

(h) Recommend to the Mayor and [City Council] " for consideration, such modifications or amendments of this Ordinance as he shall deem necessary to better coordinate the protective services of the City with the program of the United States Office of Civilian Defense.

(2) *Emergency Fire Service.*—The Emergency Fire Service shall act under the direction and supervision of the Fire Chief of the City or such person or persons as he may from time to time designate. The duties of the Emergency Fire Service shall include, but not be limited to, assisting the regular fire-fighting forces of the City in the performance of such duties as may be prescribed by the Fire Chief.

(3) *Emergency Police Service.*—The Emergency Police Service shall act under the direction and supervision of the Chief of Police of the City or such person or persons as he may from time to time designate. The duties of the Emergency Police Service shall include, but not be limited to, the following: Enforcement of emergency restrictions on lighting and prohibition against trespassing; guarding of docks, buildings, bridges, and factories; performing traffic duties for the purpose of facilitating the movement of essential vehicles; preventing looting of partially demolished buildings, shops, and homes; assisting persons engaged in the various air-raid protection services before, during, and after an air raid; enforcing orders, rules, and regulations issued pursuant to this Ordinance and any other applicable regulations relating to the control of lighting, vehicles, or pedestrians; and rendering such additional services as the Chief of Police shall order.

When and as authorized by the Chief of Police, and in accordance with State Law, the members of the Auxilliary Police Unit may, for the purpose of carrying out the duties authorized by this Ordinance, carry firearms while on duty and

⁶⁶ Insert name of governing body in lieu of "City Council." [This footnote is in the original.]

exercise the same power of arrest that is exercised by the regular police force of the City.

(4) *Air Raid Warden Service.*—The Air Raid Warden Service, composed of the Air Raid Wardens Unit and the Fire Watchers Unit, shall act under the direction and supervision of the Chief Air Raid Warden or such person or persons as he may from time to time designate. The duties of the Air Raid Warden Service shall include, but not be limited to, the following: (a) The Air Raid Wardens Unit shall: Observe lights showing during a blackout, practice blackout or drill, dimout, or other air-raid precautionary measure and order the same to be extinguished, obscured, or shielded so as to comply with applicable regulations; call attention of the law enforcement authorities to the failure of any inhabitant of the City to comply with air raid, blackout, or dimout rules and regulations and request the cooperation of the law enforcement authorities in obtaining compliance with such rules and regulations; direct persons on the public ways to shelter areas during the period of an air raid or air raid drill; report to the Control Center the presence of gas, fallen bombs, and fires; assist in fighting incendiary bombs; administer elementary first aid; assist victims in damaged buildings; and train inhabitants of the City in proper conduct during emergencies; and (b) the Fire Watchers Unit shall stand guard on assigned posts in doorways, on roofs, and at such other vantage points as may be assigned by the Commander for the purpose of locating, reporting the location of, reaching, and extinguishing fallen fire bombs.

(5) *Emergency Medical Service.*—The Emergency Medical Service, composed of a Medical Unit and a Nurses' Aides Unit, shall act under the direction and supervision of the Chief of the Emergency Medical Service or such person or persons as he may from time to time designate. The duties of the Emergency Medical Service shall include, but not be limited to, the following: (a) The Medical Unit shall proceed to and occupy casualty stations at the scene of air raid or other disaster, establish advance first aid posts for the purpose of rendering emergency care for the injured, man stations for the decontamination of gassed persons, and assist hospitals and the Health Department of the City in the performance of their respective duties; and (b) the Nurses' Aides Unit shall assist nurses in wards and out-patient clinics of hospitals and shall serve in emergency medical field units in established casualty stations and first aid posts.

(6) *Emergency Public Works Service.*—The Emergency Public Works Service, composed of a Demolition and Clearance Unit, a Road Repair Unit, a Decontamination Unit, and a Rescue Unit, shall act under the direction and supervision of the Chief of the Emergency Public Works Service or such person or persons as he may from time to time designate. The duties of the Emergency Public Works Service shall include, but not be limited to, the following: (a) The Demolition and Clearance Unit shall remove rubble and debris from streets after air raids, destroy partially demolished or unsafe walls and buildings, fill bomb craters in streets, and assist the Department of Public Works of the City in the performance of such duties as may be prescribed by the Chief of the Emergency Public Works Service; (b) the Road Repair Unit shall repair roads after air raids (including smoothing of road surfaces, repairing with available materials, restoring road markings, filling holes, and applying a top dressing to roads) for the purpose of restoring the normal flow of traffic as rapidly as possible, and shall assist the Street and Public Works Departments of the City, following the temporary clearance performed by the Demolition and Clearance Unit in the performance of such duties as may be prescribed by the Chief of the Emergency Public Works Service; (c) the Decontamination Unit shall effect a chemical neutralization of streets, walls, and buildings contaminated by gasses and shall assist the City Department

of Health in the performance of such decontamination activities as may be prescribed by the Chief of the Emergency Public Works Service; and (d) the Rescue Unit shall rescue persons trapped in debris, shut off broken gas, electric, and water lines, engage in shoring up, tunneling, and minor demolition work, render emergency first aid, and assist the Fire, Public Works, and other Departments of the City in the performance of such duties as may be prescribed by the Chief of the Emergency Public Works Service.

(7) *Emergency Utilities Service.*—The Emergency Utilities Service shall act under the direction and supervision of the Chief of the Emergency Utilities Service or such person or persons as he may from time to time designate. The Emergency Utilities Service shall, in cooperation with officers and employees of publicly or privately owned utilities, repair water, gas, electric, telephone, telegraph, steam, sewer, and other utility services damaged by air raid or other form of disaster.

(8) *Emergency Welfare Service.*—The Emergency Welfare Service, composed of such Units, including the Emergency Food and Housing Unit or the organized personnel for emergency feeding, housing, and clothing services certified to the Commander by the American Red Cross, as the Commander may from time to time prescribe, shall act under the direction and supervision of the Chief of the Emergency Welfare Service or such person or persons as he may from time to time designate. The Emergency Welfare Service shall, in cooperation with officers and employees of public or private welfare agencies, cause provision to be made for: Information and registration centers for the purpose of facilitating the reuniting of families, extending advice and counsel, and answering inquiries; temporary rest centers where food, shelter, and other forms of emergency aid may be made immediately available; arrangements for rehousing families who have been rendered homeless; assistance in the form of cash, or otherwise, for persons who have lost or otherwise been deprived of all their immediate resources; removal and storage of furniture and other effects from damaged buildings; minor repairs to homes which can be rendered habitable; and replacement of tools and other working materials for the purpose of returning workers to their productive status.

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ADDENDUM

The following information was received too late for incorporation in the text of the Manual:

On March 22, 1943, Lt. Gen. Ben Lear, Commanding General of the Central Defense Command (*supra*, p. 52), issued Public Proclamation No. 1 creating the Sault Ste. Marie Military Area, consisting of the counties of Chippewa and Mackinac in the State of Michigan, and their contiguous waters. The proclamation also established within the military area two prohibited zones. The other provisions of the proclamation are similar to those contained in a series of four proclamations issued by Lt. Gen. H. A. Drum in the Eastern Defense Command (*supra*, pp. 47-52, 159-163). Accompanying General Lear's proclamation and also promulgated by him on March 22, 1943, were Air Raid Protection Regulations applicable within the aforesaid military area. These regulations are substantially the same as those issued on January 27, 1943, by the four Service Command Headquarters in the Eastern Defense Command (*supra*, pp. 51-52, 163-172).

On March 30, 1943, Maj. Gen. William Bryden, commanding the Fourth Service Command, Southern Defense Command (*supra*, p. 52), issued Air Raid Protection Regulations No. 2 applicable to military areas composed of the coastal counties of Mississippi, of Alabama, and of Florida west of the Appalachicola River. These regulations are substantially the same as those issued in the Eastern Defense Command (*supra*, pp. 51-52, 163-172). On the same day General Bryden issued a document entitled "Air Raid Protection Regulations No. 3" which is textually the same as his Air Raid Protection Regulations No. 2; the notice prefixed to this document indicates that it is a recommendation for adoption by State and local authorities in Tennessee and in those portions of Alabama, Florida, and Mississippi outside of the military areas affected by his Air Raid Protection Regulations No. 2.

On March 30, 1943, Maj. Gen. Richard Donovan, commanding the Eighth Service Command in the Southern Defense Command, issued Air Raid Protection Regulations No. 1 for the military areas in New Mexico, Texas, and Louisiana as described in Public Proclamation No. 1, issued by General Kreuger, May 30, 1942 (*supra*, p. 52). These regulations are substantially the same as those issued in the Eastern Defense Command.

On March 27, 1943, the Circuit Court of Appeals, Ninth Circuit, certified to the Supreme Court of the United States the questions of law involved in *United States v. Minoru Yasui* (*supra*, p. 59) and *United States v. Hirabayashi* (*supra*, p. 58). Denman, C. J., filed a dissenting opinion.

OCD Regulations No. 3 (*supra*, pp. 12-14, 133-146) were amended (Amendment No. 6) on March 24, 1943, by the addition of a new § 18 relating to State and community sections of the Citizens Defense Corps. Thus, the members of the corps in any local community may be designated collectively by the name of the community, and the State may similarly organize under state law a section to operate on a State-wide basis. Together, the State and the local sections therein may be designated as the [name of State] Division of the United States Citizens Defense Corps.

OCD Regulations No. 2, Supplementary Order No. 2 (Revised) (for text see *supra*, pp. 130-132) were amended (Amendment No. 2) on March 18, 1943 (8 Fed. Reg. 3422), by authorizing a ribbon identification badge.

Many of the State legislatures held sessions in 1943. Civilian Defense legislation was considered by numerous of these. According to information received up to the time of printing, among the State legislatures which, at these sessions, enacted laws affecting some phase of Civilian Defense were: California, Connecticut, Delaware, Indiana, Iowa, Kansas, New York, North Carolina, Oklahoma, Oregon, South Dakota, Tennessee, and Vermont.

