The original documents are located in Box 55, folder "9/14/76 HR3884 National Emergencies Act" of the White House Records Office: Legislation Case Files at the Gerald R. Ford Presidential Library.

APPROVED
SEP 14 1976

ls/ 9/14/76

Statement issued 9/14/76

Private ceremony once again 9/14/76

THE WHITE HOUSE

WASHINGTON

September 10, 1976

ACTION

LAST DAY: September 14

MEMORANDUM FOR THE PRESIDENT

FROM: JIM CANNON

SUBJECT: Enrolled Bill H.R. 3884
National Emergencies Act

This is to present for your action H.R. 3884, a bill which would terminate certain authorities with respect to national emergencies, and would provide for orderly implementation and termination of future national emergencies.

BACKGROUND

H.R. 3884 would reform the numerous existing statutes which have resulted from the numerous states of emergency declared during the past forty years. It would provide appropriate procedures related to future declarations of national emergencies.

The bill would generally terminate, two years after its enactment, all powers and authorities conferred on the President, any other government officer or employee, or any executive agency, which result from any declaration of national emergency now in force. The two-year delay would provide time to enact permanent law where needed to replace the authorities that are to terminate. The bill would also authorize the President to proclaim the existence of future national emergencies, with provision for congressional review.

Since early in the 92nd Congress, the Legislative Branch has been active in examining the emergency powers available to the executive. Congressional review led to the formation of a Senate Special Committee on National Emergencies and Delegated Emergency Powers in 1973. Numerous hearings were subsequently held, and a major study of this broad subject was undertaken. Significant Administration cooperation was extended to the congressional committees throughout this period. The enrolled bill represents the culmination of this extended consideration of emergency powers.

Additional information is provided in OMB's bill report at Tab A.

OMB, Max Friedersdorf, Counsel's Office (Lazarus), NSC and I recommend approval of the enrolled bill and the proposed signing statement which has been cleared by the White House Editorial Office (Smith).

RECOMMENDATION

That you sign H.R. 3884 at Tab B.

That you approve the signing statement at Tab C.

Approve MCF Disapprove _____

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

SEP 8 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 3884 - National Emergencies Act
Sponsors - Rep. Rodino (D) New Jersey and 6 others

Last Day for Action

September 14, 1976 - Tuesday

Purpose

Terminates certain authorities with respect to national emergencies still in effect, and provides for orderly implementation and termination of future national emergencies.

Agency Recommendations

Office of Management and Budget	Approval (Signing Statement attached)
Department of Justice	Approval
General Services Administration	Approval
National Security Council	Approval (Informally)
Department of Defense	No objection
Department of the Treasury	No objection
Department of State	No objection
Department of Commerce	No objection
Department of Health, Education and Welfare	No objection
Tennessee Valley Authority	No objection
Federal Reserve Board	No objection (Informally)
Central Intelligence Agency	Defers to agencies more directly involved

Discussion

Since early in the 92nd Congress, the Legislative Branch has been active in examining the emergency powers available to the Executive.

This congressional review led to the formulation of a Senate Special Committee on National Emergencies and Delegated Emergency Powers in 1973. Numerous hearings were subsequently held, and a major study of this broad subject was undertaken. Significant Administration cooperation was extended to the congressional committees throughout this period. The enrolled bill represents the culmination of this extended consideration of emergency powers.

Each title of H.R. 3884, the National Emergencies Act, is briefly described below.

Title I - Terminating existing declared emergencies

* Terminates, two years from the date of enactment, all powers and authorities of the President, any other government officer or employee, or any executive agency, which result because of the existence of any declaration of national emergency now in force. The two-year delay is designed to allow time to enact permanent law where needed.

Title II - Declarations of future national emergencies

* Authorizes the President to declare a national emergency and exercise such special or extraordinary powers as are authorized by Acts of Congress. Such declarations are to be transmitted immediately to the Congress and published in the Federal Register. To continue any national emergency, the President would have to publish a notice and advise the Congress, within 90 days of its anniversary date, stating that such emergency is to continue in effect.

* Provides for the termination of any national emergency declared by the President by (1) concurrent resolution of the Congress or (2) Presidential proclamation.

* Requires the Congress, at 6-month intervals during a declared national emergency, to consider a vote on a concurrent resolution to determine whether the emergency is to be terminated.

Title III - Exercise of emergency powers and authorities

* Provides that the statutory powers and authorities available for use during an emergency can be exercised only if the President specifies the provisions of law under which the Executive will act.

Title IV - Accountability and reporting requirements of the President

* Requires the President and all executive agencies to maintain and transmit to the Congress a file of all rules and regulations issued during a national emergency or war, and to report to the Congress periodically on the total expenditures attributable to declarations of a national emergency or war.

Title V - Repeal and continuation of certain emergency powers and other statutes

* Repeals upon enactment specific obsolete emergency powers and statutes (Attachment 1 enumerates these).

* Exempts from this Act, and thus continues in force, certain statutes deemed necessary for ongoing operations of the government (Attachment 2 enumerates these).

* Directs the appropriate congressional committees, within 270 days after enactment, to study and report on the provisions exempted under Title V, including their recommendations and proposed changes.

By early Fall of 1974, it became apparent that the Congress would enact some form of emergency powers legislation. Accordingly, representatives of this Office, the Department

of Justice, and other agencies of the Executive Branch worked with staff from the Special Committee in developing a compromise bill. As enrolled, H.R. 3884 is very similar to the compromise legislation, including the concurrent resolution provision in Title II.

Early in 1975, however, both this Office and the Department of Justice became concerned that the Executive should not openly support the concurrent resolution feature of the bill, even in its efforts to obtain acceptable emergency powers legislation. Subsequently, both agencies expressed their opposition to such an unconstitutional legislative encroachment measure in testimony and other communications with the Congress. More specifically, while testifying generally in favor of H.R. 3884 before a subcommittee of the House Judiciary Committee, Assistant Attorney General Scalia addressed the concurrent resolution feature of the bill as follows:

> "As this committee is no doubt aware, the Executive has repeatedly expressed the view that use of such a device to offset Executive powers is constitutionally objectionable. This position is grounded in article I, section 7, clauses 2 and 3 of the Constitution, which provide that every bill and every order, resolution or veto, to which the concurrence of the two Houses of Congress may be necessary, must be presented to the President. Ladies and gentlemen, this is an old controversy, and I have no desire to divert these hearings into that major field. I presume that in enacting this legislation, the Congress would want its other provisions to endure even if, by private suit or otherwise, the concurrent resolution feature should be stricken down."

Based upon both this Office's review and the agencies' enrolled bill letters, the only serious problem found in H.R. 3884 is the provision for congressional termination

of a Presidentially declared national emergency by concurrent resolution. In this regard, Justice's enrolled bill letter notes that current White House policy "has been to either veto bills with congressional review procedures of this type ... or to note objection if the bill is signed...." Furthermore, Justice urges the continuation of this practice, especially now that it is a party plaintiff in Clark v. Valeo, a suit testing a one-House veto provision in the Federal Election Campaign Act. Justice recommends that you approve the enrolled bill while issuing a signing statement noting that the concurrent resolution provision is unconstitutional but separable from the bill's other provisions.

We concur in Justice's approval recommendation, and accordingly, have prepared for your consideration a signing statement along the lines suggested by the Department.

Naomi R. Sweeney

Acting Assistant Director
for Legislative Reference

Enclosures

Attachment 1

NATIONAL EMERGENCIES ACT -- STATUTES REPEALED IMMEDIATELY

1. Provisions for the expatriation of persons remaining outside the jurisdiction of the United States in time of war or national emergency to avoid service in the military.

2. Provisions requiring that leases of nonexcess property of a military department must include a provision making the lease revocable during a national emergency. The change allows military departments the option to decide whether to include a provision making leases of nonexcess property revocable during a national emergency declared by the President.

3. Provisions enacted in 1947 which are now obsolete, since the President is empowered to authorize the Board of Governors of the Federal Reserve System to regulate extensions of credit.

4. Provisions which bar the sale of Tennessee Valley Authority products outside of the United States except to the Government for military use or to its allies in case of war or until six months after the termination of the Korean emergency.

5. Provisions for criminal penalties for persons entering, remaining in, leaving, or committing any act in a military area or military zone contrary to applicable restrictions prescribed by Executive Order or the Secretary of the Army where it appears that the individual knew of the restrictions and acted in violation thereof. This authority permits the President to establish defensive land areas, such as occurred when Americans of Japanese ancestry were interned during World War II.

6. Provisions dealing with the promotion of Public Health Service officers.

7. Provisions dealing with price adjustment for prior sales to citizens of the United States under the Merchant Ship Sales Act of 1946. The provisions have no current application.

Attachment 2

NATIONAL EMERGENCIES ACT -- STATUTES EXEMPTED AND CONTINUED

1. Provisions authorizing the administration and regulation of both transactions in foreign exchange of gold and silver and property transfers in which any foreign country or national thereof has an interest (Trading with the Enemy Act).

2. Provisions authorizing an exception to existing law concerning maximum leases payments in cases relating to vital leases during a war or national emergency.

3. Provisions authorizing an exception to a requirement of advertising purchases or contracts when it is determined to be in the public interest during a period of national emergency.

4. Provisions permitting claims for money due or to become due a contractor with the government to be assigned to a bank, trust company or other financial institution.

5. Provisions authorizing the amendment of military contracts and the suspension of normal bidding requirements.

6. Provisions allowing MIA's to be kept on active duty until their status is finally determined.

STATEMENT BY THE PRESIDENT

I am today signing H.R. 3884, the "National Emergencies Act."

The broad purpose of this bill is to reform the existing maze of statutes which has resulted from the states of emergency under which the country has been operating for over 40 years, and to provide appropriate procedures related to future declarations of national emergencies.

Accordingly, H.R. 3884 would generally terminate, two years after its enactment, all powers and authorities conferred on the President, any other government officer or employee, or any executive agency, which result because of the existence of any declaration of national emergency now in force. The two-year delay would provide time to enact permanent law, where needed, to replace the authorities that are to terminate. The bill would also authorize the President to proclaim the existence of future national emergencies, with provision for congressional review.

I support the purposes of the enrolled bill. One of its provisions, however, would purport to permit the Congress to terminate a national emergency by a concurrent resolution. This feature of the bill is unconstitutional.

As recently as August 13, 1976, in vetoing H.R. 12944, a bill "To extend the Federal Insecticide, Fungicide, and Rodenticide Act," I reiterated my position that provisions for disapproval of regulations and other action by concurrent resolution, or by resolutions of one House, are clearly unconstitutional. Such provisions are contrary to the general constitutional principle of separation of powers whereby Congress enacts laws but the President and the agencies of government execute them. In addition, they violate Article I, section 7 of the United States Constitution which requires that resolutions having the force of law be sent to the President for his signature or veto.

In recent years, the Congress has increasingly given consideration to these kinds of legislative encroachment measures. Accordingly, the Attorney General, at my direction, has become a party plaintiff in a lawsuit challenging the constitutionality of a comparable provision in the Federal Election Campaign Act. In the event that the court strikes down all legislative encroachment-type provisions now in law, I consider section 202(a)(1) of H.R. 3884 as separable from the rest of the bill, and would therefore expect the other provisions relating to emergency powers to remain in force.

THE WHITE HOUSE

WASHINGTON

September 13, 1976

MEETING WITH SENATOR CHARLES MCC. MATHIAS, JR.
Tuesday, September 14, 1976
10:45 a.m. (5 minutes)
The Oval Office

Thru: Max Friedersdorf MF
From: William T. Kendall WTK

I. PURPOSE

To witness the signing of H.R. 3884, The Emergency Powers Act.

II. BACKGROUND, PARTICIPANTS & PRESS PLAN

A. Background: Senator Mathias was Co-Chairman of the Special Committee on the Termination of the National Emergency. This committee was responsible for the legislation which the President will sign which will terminate 43 years of emergency powers dating back to 1933. Senator Mathias requested that he be allowed to witness the signing of the bill.

B. Participants: The President, Senator Mathias, sons Charles and Robert Mathias, William G. Miller, and William T. Kendall

C. Press Plan: White House photo only

III. TALKING POINTS

1. Mac, I am pleased to have you here for the signing of this bill which you had so much to do with formulating.

2. Routine courtesies.

To: J. Johnston 9:8:76 6:30 p.m.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
• WASHINGTON, D.C. 20503

SEP 8 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 3884 - National Emergencies Act
Sponsors - Rep. Rodino (D) New Jersey and 6 others

Last Day for Action

September 14, 1976 - Tuesday

Purpose

Terminates certain authorities with respect to national emergencies still in effect, and provides for orderly implementation and termination of future national emergencies.

Agency Recommendations

Office of Management and Budget	Approval (Signing Statement attached)
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General Services Administration	Approval
National Security Council	Approval (Informally)
Department of Defense	No objection
Department of the Treasury	No objection
Department of State	No objection
Department of Commerce	No objection
Department of Health, Education and Welfare	No objection
Tennessee Valley Authority	No objection
Federal Reserve Board	No objection (Informally)
Central Intelligence Agency	Defers to agencies more directly involved

Discussion

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of Justice, and other agencies of the Executive Branch worked with staff from the Special Committee in developing a compromise bill. As enrolled, H.R. 3884 is very similar to the compromise legislation, including the concurrent resolution provision in Title II.

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> "As this committee is no doubt aware, the Executive has repeatedly expressed the view that use of such a device to offset Executive powers is constitutionally objectionable. This position is grounded in article I, section 7, clauses 2 and 3 of the Constitution, which provide that every bill and every order, resolution or veto, to which the concurrence of the two Houses of Congress may be necessary, must be presented to the President. Ladies and gentlemen, this is an old controversy, and I have no desire to divert these hearings into that major field. I presume that in enacting this legislation, the Congress would want its other provisions to endure even if, by private suit or otherwise, the concurrent resolution feature should be stricken down."

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Acting Assistant Director
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STATEMENT BY THE PRESIDENT

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I fully support the purposes of the enrolled bill. One of its provisions, however, would permit the Congress to terminate a national emergency by a concurrent resolution. This feature of the bill is unconstitutional.

As recently as August 13, 1976, in vetoing H.R. 12944, a bill "To extend the Federal Insecticide, Fungicide, and Rodenticide Act," I reiterated my position that provisions

for disapproval of regulations and other action by concurrent resolution or by resolutions of one House are clearly unconstitutional. Such provisions are contrary to the general principle of separation of powers whereby Congress enacts laws but the President and the agencies of government execute them. In addition, they violate Article I, section 7 which requires that resolutions having the force of law be sent to the President for his signature or veto.

In recent years, the Congress has increasingly given consideration to these kinds of legislative encroachment measures. Accordingly, the Attorney General, at my direction, has become a party plaintiff in a lawsuit challenging the constitutionality of a comparable provision in the Federal Election Campaign Act. In the event that the court renders an opinion which strikes down all legislative encroachment type provisions now in law, I consider section 201(a)(1) of H.R. 3884 as fully separable from the rest of the bill, and thus would expect the other provisions relating to emergency powers to endure.

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.:

Date: September 8 Time: 630pm

FOR ACTION: ~~Dick Parsons~~ Brown cc (for information): Jack Marsh
Max Friedersdorf Jim McInnor
Ken Lazarus Lynn May Ed Schmults
Robert Hartmann
NSC/S
FROM THE STAFF SECRETARY

DUE: Date: September 9 Time: 300pm

SUBJECT:
H.R. 3880-National Emergencies Act

ACTION REQUESTED:

____ For Necessary Action ____ For Your Recommendations

____ Prepare Agenda and Brief ____ Draft Reply

x For Your Comments ____ Draft Remarks

REMARKS:

pleaae return to judy johnston, ground floor west wing

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

K. R. COLE, JR.
For the President

STATEMENT BY THE PRESIDENT

I am today signing H.R. 3884, the "National Emergencies Act."

The broad purpose of this bill is to reform the existing maze of statutes which has resulted from states of emergency under which the country has been operating for over 40 years, and to provide appropriate procedures related to future declarations of national emergencies.

Accordingly, H.R. 3884 would generally terminate, two years after its enactment, all powers and authorities conferred on the President, any other government officer or employee, or any executive agency, which result because of the existence of any declaration of national emergency now in force. The two-year delay would provide time to enact permanent law where needed to replace the authorities that are to terminate. The bill would also authorize the President to proclaim the existence of future national emergencies, with provision for congressional review.

I fully support the purposes of the enrolled bill. One of its provisions, however, would permit the Congress to terminate a national emergency by a concurrent resolution. This feature of the bill is unconstitutional.

As recently as August 13, 1976, in vetoing H.R. 12944, a bill "To extend the Federal Insecticide, Fungicide, and Rodenticide Act," I reiterated my position that provisions

for disapproval of regulations and other action by concurrent resolution or by resolutions of one House are clearly unconstitutional. Such provisions are contrary to the general principle of separation of powers whereby Congress enacts laws but the President and the agencies of government execute them. In addition, they violate Article I, section 7 which requires that resolutions having the force of law be sent to the President for his signature or veto.

In recent years, the Congress has increasingly given consideration to these kinds of legislative encroachment measures. Accordingly, the Attorney General, at my direction, has become a party plaintiff in a lawsuit challenging the constitutionality of a comparable provision in the Federal Election Campaign Act. In the event that the court renders an opinion which strikes down all legislative encroachment type provisions now in law, I consider section 201(a)(1) of H.R. 3884 as fully separable from the rest of the bill, and thus would expect the other provisions relating to emergency powers to endure.

ASSISTANT ATTORNEY GENERAL
LEGISLATIVE AFFAIRS

Department of Justice
Washington, D.C. 20530

September 3, 1976

James T. Lynn
Director, Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Lynn:

This is in response to your request for our views on enrolled bill, H.R. 3884, the National Emergencies Act.

The broad purpose of this bill is to provide a solution for the fact that this country has been in a declared state of national emergency since 1933. During this time the number of statutes dependent on a national emergency has grown. Emergency laws have often been relied on for ordinary, non-emergency functions.

The bill, in general, provides for a two year transition period during which non-emergency legislation can be passed prior to the termination of powers under declared national emergencies. Certain key statutes, such as the Trading with the Enemy Act, are exempted from the provisions of the Act. It also provides a procedure by which the President can declare new emergencies which would trigger the many laws providing powers to the Executive during periods of national emergency. Under the bill, the President must designate the laws he wishes to invoke and must file certain reports of actions taken pursuant to the declaration. The bill provides that a national emergency may be terminated either by concurrent resolution of Congress or by presidential proclamation. It also repeals certain obsolete laws.

In April 1975, Assistant Attorney General Scalia testified on H.R. 3884 before a subcommittee of the House Judiciary Committee and stated his "endorsement of the purposes and effect of this proposed legislation." He did, however, indicate one constitutional reservation regarding the provision for terminating emergencies by concurrent resolution:

> Termination of Presidentially declared emergencies by the Congress, provided for in section 202(a)(1) is an innovation. The congressional procedure specified is that of concurrent resolution--that is, a resolution passed separately by each House of Congress and not submitted to the President for his signature.
>
> As this committee is no doubt aware, the Executive has repeatedly expressed the view that use of such a device to offset Executive powers is constitutionally objectionable. This position is grounded in article I, section 7, clauses 2 and 3 of the Constitution, which provide that every bill and every order, resolution or veto, to which the concurrence of the two Houses of Congress may be necessary, must be presented to the President. Ladies and gentlemen, this is an old controversey, and I have no desire to divert these hearings into that major field. I presume that in enacting this legislation the Congress would want its other provisions to endure even if, by private suit or otherwise, the concurrent resolution feature should be stricken down.
> National Emergencies Act, Hearings before the Subcommittee on Administrative Law and Governmental Relations, House Judiciary Committee, on H.R. 3883, 94 Cong., 1st Sess. (1975), p. 92.

As the quotation indicates, Mr. Scalia also expressed the view which, as far as we know, is uncontradicted, that the concurrent resolution provision be considered separable from the rest of the bill if it should be struck down.

Current White House policy has been to either veto bills with congressional review procedures of this type (see, e.g., Message of August 13, 1976, on H.R. 12944, "To extend the Federal Insecticide, Fungicide, and Rodenticide Act) or to note objection if the bill is signed (see Statement of May 11, 1976 on S. 3065, the Federal Campaign Act Amendments of 1976). We believe that continuation of this practice is especially necessary now that the issue is before the courts. The United States is now a party plaintiff in Clark v. Valeo, (D.D.C., Civ. Act. No. 76-1227), a suit testing the validity of the provision in the election law which permits disapproval of Federal Election Commission regulations by resolution of one House.

The Justice Department recommends therefore that the President sign the enrolled bill while noting his belief that Section 202(a)(1) is unconstitutional but separable.

Sincerely,

Michael M. Uhlmann

Michael M. Uhlmann
Assistant Attorney General
Office of Legislative Affairs

UNITED STATES OF AMERICA
GENERAL SERVICES ADMINISTRATION
WASHINGTON, DC 20405

September 3, 1976

Honorable James T. Lynn
Director, Office of
Management and Budget
Washington, D.C. 20503

Dear Mr. Lynn:

By letter of September 1, 1976, you requested the views of the General Services Administration (GSA) on enrolled bill H.R. 3884, "To terminate certain authorities with respect to national emergencies still in effect, and to provide for orderly implementation and termination of future national emergencies."

GSA supports enactment of the enrolled bill.

Sincerely,

JACK ECKERD
Administrator

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
WASHINGTON, D. C. 20301

2 September 1976

Honorable James T. Lynn
Director, Office of Management
and Budget
Washington, D.C. 20503

Dear Mr. Lynn:

This is in response to your request for an expression of the views of the Department of Defense on enrolled enactment H. R. 3884, 94th Congress, An Act "To terminate certain authorities with respect to national emergencies still in effect and to provide for orderly implementation and termination of future national emergencies."

The enrolled enactment would terminate, two years after its enactment, any authority conferred on an executive or other federal agency by law or executive order as a result of the existence of a state of national emergency on the date of enactment. It would authorize the President to proclaim the existence of a future national emergency but would require the proclamation to be transmitted to Congress and published in the Federal Register. Such a future national emergency would terminate upon a concurrent resolution by Congress or by a proclamation by the President. Thus a future national emergency could be terminated by either Congress or the President.

Before exercising any powers or authorities provided for by statute for use in an emergency the President would be required to specify the provisions of law under which he or other officials of the Government propose to act. A list of the powers and authorities to be invoked would have to be sent to Congress and published in the Federal Register. Rules and regulations issued in future emergencies would have to be indexed and copies of implementing issuances would have to be transmitted to Congress.

The enrolled enactment does not preserve a number of personnel procedures and entitlements authorized by the existing state of national emergency which have become an accepted part of the current military structure. Included among these procedures which will be lost are

authority to make temporary appointments of chaplains, judge advocates and medical officers; authority to grant temporary appointments to exceptional officers; authority to appoint alien doctors as officers to meet critical shortages of military medical personnel; authority to suspend limitations on the number of three and four star officers of the Navy and Marine Corps; suspension of the statutory limit on early promotions; suspension of time-in-grade requirements for promotion to certain Navy and Marine Corps grades; authority to provide for temporary promotions in the Navy the lack of which will require 650 limited duty Navy officers in the grade of lieutenant commander to revert to the grade of lieutenant; and entitlement to disability retirement or separation benefits for members with less than eight years of service who have disabilities of 30% or more.

Although the Enrolled Enactment does not provide for continuation of these important personnel procedures and benefits, they have been incorporated in proposed permanent legislation, namely, the Defense Officer Personnel Management Act, which is now pending in the Congress. It is assumed that this measure will be acted upon during the two-year grace period provided for in the Enrolled Enactment.

In addition, a constitutional deficiency in the Enrolled Enactment should be noted. Section 202 provides for termination of future national emergencies by concurrent resolution of Congress or by Presidential proclamation. Unlike a bill, a concurrent resolution is not submitted to the President for his signature. In our view this procedure violates powers vested in the President by Clauses 2 and 3, Section 7, Article I of the Constitution which provide that every bill and every order, resolution or vote to which the concurrence of the two Houses of Congress may be necessary must be presented to the President for his signature. Thus the subject provision of the Enrolled Enactment appears to constitute a potential circumvention of a significant Presidential prerogative under the Constitution.

Subject to your evaluation of the importance of the cited constitutional defect and in the expectation that the personnel procedures and entitlements jeopardized by the Enactment will soon be embodied in permanent legislation, the Department of Defense does not object to the Enactment's becoming law.

Sincerely yours,

for Richard A. Wiley

THE GENERAL COUNSEL OF THE TREASURY
WASHINGTON, D.C. 20220

SEP 3 1976

Director, Office of Management and Budget
Executive Office of the President
Washington, D. C. 20503

Attention: Assistant Director for Legislative Reference

Sir:

Reference is made to your request for the views of this Department on the enrolled enactment of H.R. 3884, the "National Emergencies Act."

Title I of the enrolled bill provides for termination of all existing powers and authorities based on any general declaration of national emergency in effect on the date of enactment, to take effect 2 years from the date of enactment of the legislation. The provisions of titles II and IV are designed to insure congressional oversight of Presidential actions pursuant to declarations of a national emergency authorized by an act of Congress. This bill is not meant to supersede existing provisions of law which authorize declaration of emergency by the Congress. The legislation is directed solely to Presidential declarations of emergency.

This Department would have no objection to a recommendation that the enrolled bill be signed by the President.

Sincerely yours,

General Counsel
Richard R. Albrecht

DEPARTMENT OF STATE

Washington, D.C. 20520

SEP 3 1976

Dear Mr. Lynn:

Mr. Frey's Enrolled Bill Request of September 1, 1976, requested this Department's views and recommendations on H.R. 3884, a bill "To terminate certain authorities with respect to national emergencies still in effect, and to provide for orderly implementation and termination of future national emergencies."

Section 502(a) of H.R. 3884 exempts Section 5(b) of the Trading with the Enemy Act from the application of the provisions of the bill and thus preserves the authority for the asset and transaction control programs which are of most concern to this Department. Section 101(a) defers termination of existing declarations of national emergency for two years. Together with the authority in Section 201(a) for the President to declare a new national emergency, without the stringent criteria found in earlier versions of the bill, the delayed termination provides sufficient flexibility to obtain a new basis for controls under Section 215 of the Immigration and Nationality Act (8 U.S.C. 1185), which had also been a matter of concern to this Department. H.R. 3884 thus acceptably resolves those issues.

We note, however, that Section 202(a)(1) of H.R. 3884 is another example of congressional veto by concurrent resolution. This does concern us, and we understand that the report of the Department of Justice discusses this constitutional problem.

Sincerely yours,

Robert J. McCloskey
Assistant Secretary for
Congressional Relations

The Honorable
James T. Lynn, Director,
Office of Management and Budget.

GENERAL COUNSEL OF THE
UNITED STATES DEPARTMENT OF COMMERCE
Washington, D.C. 20230

SEP 3 1976

Honorable James T. Lynn
Director, Office of Management
and Budget
Washington, D. C. 20503

Attention: Assistant Director for Legislative Reference

Dear Mr. Lynn:

This is in reply to your request for the views of this Department concerning H. R. 3884, an enrolled enactment

> "To terminate certain authorities with respect to national emergencies still in effect, and to provide for orderly implementation and termination of future national emergencies,"

to be cited as the "National Emergencies Act".

The purpose of H. R. 3884 is to terminate all powers and authorities possessed by the President, any other officer or employee of the Federal Government, or any executive agency as a result of the existence of any declaration of national emergency in effect on the date of enactment, effective two years from the date of such enactment. It also establishes new procedures for Presidential proclamations of national emergency which will clearly define the powers of the President and provide for regular Congressional review. Title V of the bill allows several emergency provisions which have become the basic authority for federal programs to remain in effect as their termination would seriously disrupt Executive Branch operations. Title V also repeals a number of statutes, including section 9 of the Merchant Ship Sales Act of 1946, because they are obsolete or have no current application.

This Department would have no objection to approval by the President of H. R. 3884. However, we do have the following comments.

In November of 1973, the Senate Special Committee on the Termination of the National Emergency issued a report (Senate Report 93-549) on Emergency Power Statutes. It purported to list authorities which are dependent upon national emergencies. This report, by including the Export Administration Act, the Defense Production Act, and the Strategic and Critical Materials Stockpiling Act, implies that they are dependent upon the existence of proclaimed national emergencies. In fact, these three particular statutes and perhaps others that are included in the report, are not so dependent, and we understand they will not be affected by this enactment. We note that Senate Report 94-1168, which accompanied H. R. 3884, refers to approximately 470 statutes but does not list them.

If a signing statement is to be issued in connection with H. R. 3884, we believe it would be desirable that it note that not all of the statutes listed in the earlier 1973 Senate report will be repealed by H. R. 3884.

Enactment of this legislation will not involve the expenditure of any funds by this Department.

Sincerely,

General Counsel

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

The Honorable James T. Lynn
Director, Office of Management
and Budget
Washington, D. C. 20503

SEP 3 1976

Dear Mr. Lynn:

This is in response to your request for a report on H.R. 3884, an enrolled bill "To terminate certain authorities with respect to national emergencies still in effect, and to provide for orderly implementation and termination of future national emergencies."

In short, we have no objection to enactment of the enrolled bill.

Title I of the enrolled bill would terminate, effective two years from the date of enactment of the bill, all powers and authorities of the President, any other officer or employee of the Federal government, or any Executive agency which are based upon any existing state of national emergency. As a result, the Commissioned Corps of the Public Health Service would lose the authority (1) to make temporary promotions to a higher grade without regard to the existence of a vacancy in such grade (under 42 U.S.C. 211k), and (2) to retire for disability an officer with less than eight years of service on the basis of a "line of duty" determination rather than a "proximate result of service" determination (under 10 U.S.C. 1201).

Title II of the enrolled bill would specify procedures to govern future declarations and terminations of national emergencies.

Title III of the enrolled bill would govern the exercise of emergency powers and authorities. It would provide that no provisions of law conferring powers and authorities to be exercised during a national emergency or war shall become effective until the President specifies the provisions of law under which he or other officials propose to act.

Title IV of the enrolled bill would require the President to maintain certain records and submit to the Congress all Executive Orders, rules, and regulations issued to implement national emergency or wartime authorities.

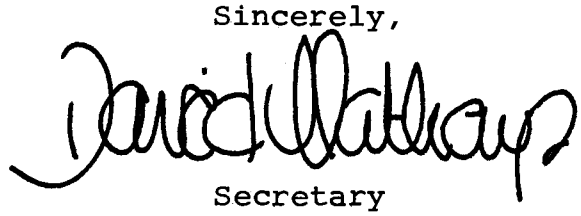
Title V of the enrolled bill would repeal a number of provisions of law, only one of which, 42 U.S.C. 211b, is of interest to this Department. That section contained one-time authority, to be exercised by July 1, 1948, for promotion, service credit, and seniority credit applicable to commissioned officers of the Public Health Service.

The loss of the "line of duty" disability retirement authority and the unrestricted temporary promotion authority is not a significant problem to the Public Health Service. Temporary promotion of commissioned officers will still be possible, but under the more stringent requirements of "vacancy-in-grade" to which promoted. Officers with less than eight years service will be eligible for disability retirement only if their disabilities are the "proximate result" of service; otherwise they will be eligible for disability severance pay. During declarations of emergency, disability retirement has been possible when the disability was incurred "in line of duty". The two year postponement of the effective date of the termination of the emergency permits adequate time for the indoctrination of disability retirement and temporary promotion boards and dissemination of information regarding new criteria to all of the officers who would be affected.

The repeal of 42 U.S.C. 211b will have no adverse effects on the Public Health Service. Any benefits that accrued to officers under 42 U.S.C. 211b who are still on active duty are fully protected because the repeal provides that any rights matured prior to repeal are not affected.

We therefore have no objection to enactment of the enrolled bill, and defer to the Departments of State and Justice on the other provisions of the bill.

Sincerely,



Secretary

TENNESSEE VALLEY AUTHORITY
KNOXVILLE, TENNESSEE 37902

September 2, 1976

Mr. James M. Frey
Assistant Director for
Legislative Reference
Office of Management and Budget
Washington, D. C. 20503

Dear Mr. Frey:

This is in reply to your request for TVA's views on enrolled bill H.R. 3884, a bill "To terminate certain authorities with respect to national emergencies still in effect, and to provide for orderly implementation and termination of future national emergencies."

The only provision of H.R. 3884 that would directly affect TVA is section 501(d), which would repeal Section 5(m) of the TVA Act of 1933. Repeal of this provision would have no significant effect on the TVA program.

We appreciate your requesting our views on this legislation.

Sincerely yours,

Aubrey J. Wagner
Chairman of the Board

CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

3 September 1976

Mr. James M. Frey
Assistant Director of Legislative Reference
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Frey:

This is in response to your request for our views and recommendations on enrolled bill H.R. 3884, the "National Emergencies Act." This Act would terminate certain authorities with respect to national emergencies now in effect, and establish procedures for the establishment, operation, and termination of future declared national emergencies.

The Central Intelligence Agency derives its responsibilities and authority from 50 U.S.C. 403, et seq. The Agency has no programs which depend on the existence of a national emergency, therefore, we defer on the merits of this bill to agencies more directly affected.

Sincerely,

E. H. Knoche

E. H. Knoche
Deputy Director

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.:

Date: September 8 Time: 630pm

FOR ACTION: Dick Parsons
Max Friedersdorf
Ken Lazarus ✓
Robert Hartmann
NSC/S

cc (for information): Jack Marsh
Jim Connor
Lynn May Ed Schmults

FROM THE STAFF SECRETARY

DUE: Date: September 9 Time: 300pm

SUBJECT:
H.R. 3884-National Emergencies Act

ACTION REQUESTED:

____ For Necessary Action ____ For Your Recommendations

____ Prepare Agenda and Brief ____ Draft Reply

x ____ For Your Comments ____ Draft Remarks

REMARKS:

please return to judy johnston, ground floor west wing

Recommend approval. Note minor change
to first page of draft signing statement.

_Ken Lazarus 9/9/76

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James M. Cannon
For the P[illegible]

STATEMENT BY THE PRESIDENT

I am today signing H.R. 3884, the "National Emergencies Act."

The broad purpose of this bill is to reform the existing maze of statutes which has resulted from states of emergency under which the country has been operating for over 40 years, and to provide appropriate procedures related to future declarations of national emergencies.

Accordingly, H.R. 3884 would generally terminate, two years after its enactment, all powers and authorities conferred on the President, any other government officer or employee, or any executive agency, which result because of the existence of any declaration of national emergency now in force. The two-year delay would provide time to enact permanent law where needed to replace the authorities that are to terminate. The bill would also authorize the President to proclaim the existence of future national emergencies, with provision for congressional review.

I fully support the purposes of the enrolled bill. One of its provisions, however, would purport to permit the Congress to terminate a national emergency by a concurrent resolution. This feature of the bill is unconstitutional.

As recently as August 13, 1976, in vetoing H.R. 12944, a bill "To extend the Federal Insecticide, Fungicide, and Rodenticide Act," I reiterated my position that provisions

for disapproval of regulations and other action by concurrent resolution or by resolutions of one House are clearly unconstitutional. Such provisions are contrary to the general principle of separation of powers whereby Congress enacts laws but the President and the agencies of government execute them. In addition, they violate Article I, section 7 which requires that resolutions having the force of law be sent to the President for his signature or veto.

In recent years, the Congress has increasingly given consideration to these kinds of legislative encroachment measures. Accordingly, the Attorney General, at my direction, has become a party plaintiff in a lawsuit challenging the constitutionality of a comparable provision in the Federal Election Campaign Act. In the event that the court renders an opinion which strikes down all legislative encroachment type provisions now in law, I consider section 201(a)(1) of H.R. 3884 as fully separable from the rest of the bill, and thus would expect the other provisions relating to emergency powers to endure.

THE WHITE HOUSE

WASHINGTON

September 10, 1976

MEMORANDUM FOR: JIM CAVANAUGH

FROM: MAX L. FRIEDERSDORF *MLF*

SUBJECT: HR 3884 - National Emergencies Act

The Office of Legislative Affairs concurs with the agencies that the subject bill be signed.

Attachments

[redacted]

Rec. 9/9/76 - 9:30 am

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.: 134

Date: September 8 Time: 630pm

FOR ACTION: Dick Parsons
Max Friedersdorf
Ken Lazarus
Robert Hartmann
NSC/S

cc (for information): Jack Marsh
Jim Connor
Lynn May Ed Schmults

FROM THE STAFF SECRETARY

to Res 9-9 10:53 GAm

OK JC

DUE: Date: September 9 Time: 300pm

SUBJECT:
H.R. 3884-National Emergencies Act

JC

to DJS 9-9 2:18 GAm

ACTION REQUESTED:

____ For Necessary Action ____ For Your Recommendations

____ Prepare Agenda and Brief ____ Draft Reply

x For Your Comments ____ Draft Remarks

REMARKS:

please return to judy johnston, ground floor west wing

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James M. Cannon
For the Pres

Rec. 9/9/76 - 9:30 am

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.:

Date: September 8 Time: 630pm

FOR ACTION: Dick Parsons
Max Friedersdorf
Ken Lazarus
Robert Hartmann
NSC/S

cc (for information): Jack Marsh
Jim Connor
Lynn May
Ed Schmults

FROM THE STAFF SECRETARY

DUE: Date: September 9 Time: 300pm

SUBJECT:
H.R. 3884-National Emergencies Act

ACTION REQUESTED:

____ For Necessary Action
____ For Your Recommendations
____ Prepare Agenda and Brief
____ Draft Reply
x For Your Comments
____ Draft Remarks

REMARKS:

please return to judy johnston, ground floor west wing

9/9/76 - copy sent for rescreening. nm

9/9/76 - Rescreened copy returned. nm (note correction on page 2 of statement.)

9/10/76

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James M. Cannon
For the Presid

[redacted]

4/20/76

STATEMENT BY THE PRESIDENT

I am today signing H.R. 3884, the "National Emergencies Act."

The broad purpose of this bill is to reform the existing maze of statutes which has resulted from states of emergency under which the country has been operating for over 40 years, and to provide appropriate procedures related to future declarations of national emergencies.

Accordingly, H.R. 3884 would generally terminate, two years after its enactment, all powers and authorities conferred on the President, any other government officer or employee, or any executive agency, which result because of the existence of any declaration of national emergency now in force. The two-year delay would provide time to enact permanent law where needed to replace the authorities that are to terminate. The bill would also authorize the President to proclaim the existence of future national emergencies, with provision for congressional review.

I fully support the purposes of the enrolled bill. One of its provisions, however, would permit the Congress to terminate a national emergency by a concurrent resolution. This feature of the bill is unconstitutional.

As recently as August 13, 1976, in vetoing H.R. 12944, a bill "To extend the Federal Insecticide, Fungicide, and Rodenticide Act," I reiterated my position that provisions

for disapproval of regulations and other action by concurrent resolution or by resolutions of one House are clearly unconstitutional. Such provisions are contrary to the general principle of separation of powers whereby Congress enacts laws but the President and the agencies of government execute them. In addition, they violate Article I, section 7 which requires that resolutions having the force of law be sent to the President for his signature or veto.

In recent years, the Congress has increasingly given consideration to these kinds of legislative encroachment measures. Accordingly, the Attorney General, at my direction, has become a party plaintiff in a lawsuit challenging the constitutionality of a comparable provision in the Federal Election Campaign Act. In the event that the court renders an opinion which strikes down all legislative encroachment type provisions now in law, I consider section 201(a)(1)* of H.R. 3884 as fully separable from the rest of the bill, and thus would expect the other provisions relating to emergency powers to endure.

Back-up material

Back-up material Dept. of State

X

* According to the draft of the Bill, there is no such section as 201 (a) (1). Dept. of State makes reference to 202 (a) (1).

See attached Bill

[redacted] Congress of the United States of America

AT THE SECOND SESSION

Begun and held at the City of Washington on Monday, the nineteenth day of January, one thousand nine hundred and seventy-six

An Act

To terminate certain authorities with respect to national emergencies still in effect, and to provide for orderly implementation and termination of future national emergencies.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Emergencies Act".

TITLE I—TERMINATING EXISTING DECLARED EMERGENCIES

SEC. 101. (a) All powers and authorities possessed by the President, any other officer or employee of the Federal Government, or any executive agency, as defined in section 105 of title 5, United States Code, as a result of the existence of any declaration of national emergency in effect on the date of enactment of this Act are terminated two years from the date of such enactment. Such termination shall not affect—

(1) any action taken or proceeding pending not finally concluded or determined on such date;

(2) any action or proceeding based on any act committed prior to such date; or

(3) any rights or duties that matured or penalties that were incurred prior to such date.

(b) For the purpose of this section, the words "any national emergency in effect" means a general declaration of emergency made by the President.

TITLE II—DECLARATIONS OF FUTURE NATIONAL EMERGENCIES

SEC. 201. (a) With respect to Acts of Congress authorizing the exercise, during the period of a national emergency, of any special or extraordinary power, the President is authorized to declare such national emergency. Such proclamation shall immediately be transmitted to the Congress and published in the Federal Register.

P MO

(b) Any provisions of law conferring powers and authorities to be exercised during a national emergency shall be effective and remain in effect (1) only when the President (in accordance with subsection (a) of this section), specifically declares a national emergency, and (2) only in accordance with this Act. No law enacted after the date of enactment of this Act shall supersede this title unless it does so in specific terms, referring to this title, and declaring that the new law supersedes the provisions of this title.

SEC. 202. (a) Any national emergency declared by the President in accordance with this title shall terminate if—

(1) Congress terminates the emergency by concurrent resolution; or

(2) the President issues a proclamation terminating the emergency.

[redacted]

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.:

Date: September 8 Time: 630pm

FOR ACTION: Dick Parsons
Max Friedersdorf
Ken Lazarus
Robert Hartmann
NSC/S

cc (for information): Jack Marsh
Jim Connor
Lynn May ✓ Ed Schmults

FROM THE STAFF SECRETARY

DUE: Date: September 9 Time: 300pm

SUBJECT:
H.R. 3884-National Emergencies Act

ACTION REQUESTED:

____ For Necessary Action ____ For Your Recommendations

____ Prepare Agenda and Brief ____ Draft Reply

x For Your Comments ____ Draft Remarks

REMARKS:

please return to judy johnston, ground floor west wing

Recommend
Approval

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James M. Cannon
For the President

090928

STATEMENT BY THE PRESIDENT

I am today signing H.R. 3884, the "National Emergencies Act."

The broad purpose of this bill is to reform the existing maze of statutes which has resulted from the states of emergency under which the country has been operating for over 40 years, and to provide appropriate procedures related to future declarations of national emergencies.

Accordingly, H.R. 3884 would generally terminate, two years after its enactment, all powers and authorities conferred on the President, any other government officer or employee, or any executive agency, which result because of the existence of any declaration of national emergency now in force. The two-year delay would provide time to enact permanent law, where needed, to replace the authorities that are to terminate. The bill would also authorize the President to proclaim the existence of future national emergencies, with provision for congressional review.

I support the purposes of the enrolled bill. One of its provisions, however, would purport to permit the Congress to terminate a national emergency by a concurrent resolution. This feature of the bill is unconstitutional.

As recently as August 13, 1976, in vetoing H.R. 12944, a bill "To extend the Federal Insecticide, Fungicide, and Rodenticide Act," I reiterated my position that provisions

for disapproval of regulations and other action by concurrent resolution, or by resolutions of one House, are clearly unconstitutional. Such provisions are contrary to the general constitutional principle of separation of powers whereby Congress enacts laws but the President and the agencies of government execute them. In addition, they violate Article I, section 7 of the U.S. Constitution which requires that resolutions having the force of law be sent to the President for his signature or veto.

In recent years, the Congress has increasingly given consideration to these kinds of legislative encroachment measures. Accordingly, the Attorney General, at my direction, has become a party plaintiff in a lawsuit challenging the constitutionality of a comparable provision in the Federal Election Campaign Act. In the event that the court ~~renders an opinion which~~ strikes down all legislative encroachment type provisions now in law, I consider section ~~201~~ 202(a)(1) of H.R. 3884 as ~~fully~~ separable from the rest of the bill, and ~~that~~ would therefore expect the other provisions relating to emergency powers to ~~endure~~ remain in force.

STATEMENT BY THE PRESIDENT

I am today signing H.R. 3884, the "National Emergencies Act."

The broad purpose of this bill is to reform the existing maze of statutes which has resulted from the states of emergency under which the country has been operating for over 40 years, and to provide appropriate procedures related to future declarations of national emergencies.

Accordingly, H.R. 3884 would generally terminate, two years after its enactment, all powers and authorities conferred on the President, any other government officer or employee, or any executive agency, which result because of the existence of any declaration of national emergency now in force. The two-year delay would provide time to enact permanent law, where needed, to replace the authorities that are to terminate. The bill would also authorize the President to proclaim the existence of future national emergencies, with provision for congressional review.

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In recent years, the Congress has increasingly given consideration to these kinds of legislative encroachment measures. Accordingly, the Attorney General, at my direction, has become a party plaintiff in a lawsuit challenging the constitutionality of a comparable provision in the Federal Election Campaign Act. In the event that the court strikes down all legislative encroachment-type provisions now in law, I consider section 202(a)(1) of H.R. 3884 as separable from the rest of the bill, and would therefore expect the other provisions relating to emergency powers to remain in force.

94TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { No. 94-238

NATIONAL EMERGENCIES

MAY 21, 1975.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. FLOWERS, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H.R. 3884]

The Committee on the Judiciary, to whom was referred the bill (H.R. 3884) to terminate certain authorities with respect to national emergencies still in effect, and to provide for orderly implementation and termination of future national emergencies, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

The amendments are as follows:

Page 2, line 2: Strike "one year" and insert "two years".

Page 2, lines 13 and 14: Strike "pursuant to a statute authorizing him to declare a national emergency".

Page 3, line 21: After "clause (1)", insert "or on the date specified in a proclamation by the President terminating the emergency as provided in clause (2)".

Page 6: Strike all of lines 14, 15, 16, 17, 18, and 19.

Page 6, line 20: After "TITLE", strike "IV" and insert "III".

Page 6, line 22: After "SEC.", strike "401" and insert "301".

Page 7, line 6: After "TITLE", strike "V" and insert "IV".

Page 7, line 8: After "SEC.", strike "501" and insert "401".

Page 7, line 12: After "each", strike "such".

Page 7, line 22: After "within" strike "thirty" and insert "ninety", and after "each" strike "three-" and insert "six-".

Page 7, line 25: Strike "three-month" and insert "six-month".

Page 8, line 2: Strike "thirty" and insert "ninety".

Page 8, line 5: After "TITLE", strike "VI" and insert "V".

Page 8, line 8: After "SEC.", strike "601" and insert "501".

Page 8, line 24: After "Act of 1933" insert "as amended".

Page 9, line 18: After "SEC", strike "602" and insert "502".

Page 9, line 22: Strike "95(a)" and insert "95a".

Page 9: Strike all of line 23.

Page 9, line 24: Strike "(3)" and insert "(2)".
Page 9, line 25: Strike "(4)" and insert "(3)".
Page 10: line 1: Strike "(5)" and insert "(4)".
Page 10, line 3: Strike "(6)" and insert "(5)".
Page 10, line 4: At the end of the sentence, strike the period and insert a semi-colon.
Page 10, after line 4: Insert:

"(6) Public Law 85–804 (Act of Aug. 28, 1958, 72 Stat. 972; 50 U.S.C. 1431–1435);

"(7) Section 2304(a) (1) of Title 10, United States Code;

"(8) Sections 3313, 6386(c) and 8313 of Title 10, United States Code."

Page 10, line 7: Strike "(1) (6)".

Purpose

The purpose of the proposed legislation, as amended, is to terminate all powers and authorities under any national emergency existing on the date of enactment as of two years from that date.

As to future emergencies, the bill provides procedures and requirements concerning their declaration and termination and provides for powers and authority to be exercised in the case of future emergencies. It would also require that records be maintained of significant orders of the President and of agency rules and regulations issued during a war or national emergency, and that such orders and rules and regulations be transmitted to the Congress. A report of all expenditures directly attributable to the exercise of powers and authorities under a declaration of national emergency would have to be transmitted to the Congress within ninety days after each six month period under the declaration.

The bill provides for the repeal of certain obsolete statutes and for the continuance in effect of emergency powers and authority under listed statutes which are important to present functions of the Government.

Statement

This is a bill which provides for a statutory resolution and definition concerning the exercise of the powers and authorities in connection with national emergencies which may occur in the future. By providing for a termination of powers and authorities relating to existing emergencies, the bill will make it possible for our Government to function in accordance with regular and normal provisions of law rather than through special exceptions and procedures which were intended to be in effect for limited periods during specific emergency conditions.

Presently, the national emergency declared in December of 1950 by President Truman in connection with the Korean conflict is in effect. The even earlier emergency declared by President Roosevelt in March of 1933 to meet the pressing problems of the depression has not actually been terminated. Two other emergencies are still in effect. There was a national emergency proclaimed on March 23, 1970 because of a Post Office strike, and again on August 15, 1971, a national emergency was declared to deal with balance of payments

and other international problems. It can therefore be stated that there has been an emergency in one form or another for the last 43 years. This bill will have the positive effect of ending the practice of conducting governmental activity under authority of laws which derive force from emergencies declared years in the past to meet problems and situations which have long since disappeared or are now drastically changed. The history of continued and almost routine utilization of such emergency authorities for years after the original crisis has passed in the opinion of this committee serves only to emphasize the fact that there is an urgent need to provide adequate laws to meet our present day needs. Legislation intended for use in crisis situations is by its nature not well suited to normal, day-to-day government operations. It is also conceivable that the existence of emergency authority has actually discouraged legislative action. Routine statutory authorization may not have been sought by executive agencies or granted by the Congress because it was not then currently needed. One of the basic purposes of this bill is to provide a legislative basis for a return to a more rational and normal state of law in this phase of government operations and to eliminate unnecessary and undesirable emergency powers without, at the same time, upsetting dispositions that are routine and essential portions of our present legislative and administrative structure. In providing procedures to govern future emergencies, the bill will establish a system which will prevent such a continuing reliance on emergency statutes from recurring.

Prior to the consideration of legislation in the Senate, the Senate Special Committee on the Termination of the National Emergency conducted a two year study on the problems, application and scope of emergency statutes. An important aspect of that statute concerned the identification and analysis of emergency statutes. The bill S. 3957, which passed the Senate late in the last Congress, was to a large degree a product of the work of that special committee. The present bill H.R. 3884 incorporates the basic provisions of the earlier bill S. 3956 as it was finally passed by the Senate and referred to this Committee in the 93rd Congress. As is evidenced by the departmental reports received by this Committee on the earlier bill which are printed in this report and commented upon in connection with the provisions of the bill, the present bill and the recommendations of the Committee are a continuation of the work begun in the last Congress.

In the 93rd Congress, the bill H.R. 16668 on the subject of National Emergencies was introduced and referred to the Committee, and on October 7, 1974, as has been noted a similar bill, S. 3957, passed the Senate and was also referred to this Committee shortly before the end of the Congress. While it was not possible to complete consideration of those measures in that Congress, the departmental reports received late in the year indicated general support for the bill as passed by the Senate. The reports contained additional material and background information which were considered by the committee in connection with the current bill H.R. 3884. As introduced, H.R. 3884, with two changes, was identical to the bill passed by the Senate last fall. In addition to a technical change suggested by the Office of Management and Budget in its report on the earlier bill, the language of the bill was changed to provide that the termination of the powers and authorities relating to existing emergencies in section 101 of Title I of the

bill would affect those powers and authorities under emergencies in effect on the date of enactment rather than one year from date of enactment as in the earlier version.

The report of the Committee received from the Department of Defense recognized that world conditions and national conditions have changed since the state of national emergency was declared in 1950. That department stated that it recognized the desirability of terminating existing states of emergency and further stated that it has no objection to their termination. The Department of Defense referred to the fact that some of these emergency authorities had over the years come to be relied upon in the day to day operations of the Department and that these continuing needs would have to be met. The committee considered the effect of the bill on these functions and concluded that the two year period fixed in the amended bill would provide the Congress with a reasonable opportunity to consider permanent legislation to replace the authority provided under the specific emergency provisions that now provide statutory authority for such day to day functions. This period for orderly transition should preclude any undue disruption in government operations.

The report received from the Department of the Treasury on November 12, 1974, was considered by the committee with particular reference to statutory authority for the regulations applicable during periods of financial crisis to banks which are members of the Federal Reserve System and the limitations and restrictions on the activities of such banks during those periods. That report stated the position of that department concerning the authority providing for regulation during emergencies of banking transactions, gold and silver activities, transactions in foreign exchange, and the exercise of rights in property subject to American jurisdiction in which foreign nationals have an interest. Some of these matters are of current significance, and therefore the bill as reported by the committee contains the exception in section 502(a)(1) concerning section 5(b) of the Act of October 6, 1917, the Trading With the Enemy Act. The Treasury Department also referred to certain provisions of law concerning current practices in the warehousing of merchandise in bonded warehouses. It noted that American importers have been permitted to warehouse merchandise in excess of the periods in excess of statutory periods fixed in sections 491, 557, and 559 of the Tariff Act of 1930 as the result of regulations authorized in a Presidential Proclamation issued under the authority of an emergency statute, section 318 of the Tariff Act of 1930 (19 U.S.C. 1318). The two year period fixed in the amended bill will make it possible for the appropriate committees to consider matters like this where authority originally provided in connection with an emergency situation has come to be relied upon in normal Government procedure and under current business practice.

Title 1 of the bill provides that after two years, all powers and authorities possessed by the President or other officer or employee of the Federal Government, based upon any declaration of national emergency in effect on the date of enactment will be terminated. The provisions of Title 1 terminating powers and authorities possessed by the executive as the result of any prior declaration of national emergency are a basic part of the bill. It is recognized that an immediate termination without a period for transition in adjustment would undo

and confuse many dispositions which are necessary and functioning parts of our Government. After study and consideration, the Congress may or may not wish to change some of these practices and procedures based upon the emergency statutes. The bill meets this problem in two ways: First, a limited number of powers and authorities which have been identified as necessary on a continuing basis are exempted from termination by section 502 of the amended bill. Second, as discussed above the termination date for all other powers and authorities is set at two years from date of enactment. This will also serve to give government departments and agencies a period in which to identify and bring to the attention of the Congress provisions which in their estimation merit legislative consideration.

In reports on the earlier bills and in testimony before the committee, the executive departments and agencies have indicated that they have identified all of their operations which are dependent upon emergency powers and authority for their continuing validity. In view of the number and the complexity of the statutes involved, there is a possibility that several provisions may have been overlooked. The definite limit fixed in the bill will require that the agencies take prompt action to review their legislative authority and make prompt recommendations to the Congress for any needed action. After the two year period the Government agency should be freed from a dependence on emergencies authority and Government operation will proceed on the basis of procedures under permanent law and under new enactments drafted to meet current needs and operations.

Any emergency declared after the date of enactment of this legislation would not be terminated by Title I, but would instead be governed by the limiting scheme created by Title II. By definition, Title I would affect those statutes whose conferral of powers is expressly conditioned upon a Presidential declaration of national emergency. This is provided in Section 101(b), which defines "any national emergency in effect" to mean only "a general declaration of emergency made by the President". Accordingly, laws like the Defense Production Act of 1950, which do not require a Presidential declaration of emergency for their use, are not affected by this title—even though they may be referred to in a general sense as "emergency" statutes.

Title II of the bill concerns the declaration of future national emergencies. These provisions would require that in the future there shall be an improved definition and classification of the nature and effect of declarations of national emergencies. The provisions of this title of the bill, together with those of Titles III and IV of the amended bill, are included to insure that the Congress will exercise continuing and effective oversight in connection with any future emergencies. Section 201 concerns Presidential proclamations of a national emergency and authorizes such proclamations upon a finding that it is essential to the preservation, protection and defense of the Constitution or to the common defense, safety or well-being of the territory or people of the United States. This language of section 201(a) is not intended to grant any additional authority to the President. Rather it indicates the general nature of the circumstances in which a declaration might be issued. The proclamation would be immediately transmitted to the Congress and published in the Federal Register. Subsection (b) limits the effectiveness of provisions of law to be exercised during a national emer-

gency to periods when a President's declaration of national emergency is in effect and then only in accordance with the balance of the provisions of the bill. This latter provision has particular reference to the provisions of section 301 which requires that the President specify the provisions of law he will utilize or under which other officers of the Government will act. Subsection (b) also contains a provision stating that no subsequent enactment will supersede the title unless it does so in specific terms declaring that the new law supersedes the provisions of the title.

Section 202(a) provides for the termination of national emergencies declared by the President in accordance with Title II of the bill. They would be terminated by concurrent resolution of the Congress or by a proclamation by the President. The subsection contains an additional requirement that at the end of each year following the declaration of an emergency which is still in effect, the President shall publish in the Federal Register and transmit to the Congress a notice stating that the emergency is still in effect. This title of the bill provides, for the first time, explicit provision for the President to make the declaration of national emergency which certain statutes require. While it might be asserted that the Chief Executive has inherent constitutional power to proclaim to the citizens his determination that there exists a national emergency. Under this bill such a general proclamation would not have the effect of placing any new statutory powers in his hands. This clarifies an existing problem as to emergency statutes. At present this power can be implied with respect to some statutes—for example, those which state that certain laws are deemed to be in effect "during any * * * period of national emergency declared by the President, in so many words, may declare such an emergency; and some statutes dependent upon the existence of states of emergency do not specifically say who shall declare them. The committee has concluded that the bill will clarify the law in this report. When the Act fully takes effect, emergency provisions will only be implemented by the President in accordance with the terms of Title II and Title III of the amended bill. It should also be noted that when enacted into law the provisions of the bill would not supersede existing provisions of law which authorize congressional declarations of emergency; its focus is only on presidential declarations.

In providing for the termination of emergency powers as well as their commencement, the bill makes an important change in the law. The absence of such statutory requirements and procedures in the past has resulted in the failure to terminate emergency powers and this in turn has given rise to the present situation. Under present law, which does not contain explicit termination provisions, proposals for the use of emergency power often generate discussion as to whether existing emergencies have lapsed or grown stale due to passage of time and change of circumstances. Section 202 of the present bill will eliminate all uncertainty on that point, since it sets forth the prescribed means of termination and also requires the continuing existence of a state of emergency to be formally recorded each year.

As has been stated, the bill provides two methods for termination: a concurrent resolution by Congress, and a proclamation by the President. The second has been the traditional method for formally ending

emergencies. Presidents have terminated a number of separate emergencies in the recent past. In 1952 President Truman terminated emergencies declared by President Roosevelt in 1939 and 1941.[1] Recent invocations of emergency power by the President have relied on two emergency declarations: Proclamation No. 2914 of December 16, 1950, and Proclamation No. 4074 of August 15, 1971.[2]

Subsections (b) and (c) of Section 202 provide for procedures which will govern the consideration of the Congress of a concurrent resolution which would terminate a national emergency. These provisions are very similar to those set forth in section 7 of Public Law 93–148, the War Powers Act, of November 7, 1973. Subsection (b) provides that not later than six months after a national emergency is declared, and then after each following six-month period during the continuance of an emergency, each House of Congress shall meet to consider a vote on a concurrent resolution to determine whether that emergency shall be terminated. It is further provided that in either House a concurrent resolution to terminate a national emergency declared by the President shall be referred to the appropriate committee and a resolution is to be reported out by such committee together with its recommendations within fifteen calendar days, unless such House shall otherwise determine by the yeas and nays. Upon being reported, the concurrent resolution shall become the pending business of the House in question and shall be voted on within three calendar days, unless such House shall otherwise determine by yeas and nays. Upon passage by one House, the concurrent resolution is to be referred to the appropriate committee of the other House and it similarly would be required to be reported out in fifteen calendar days. It would become the pending business of that House and be voted upon within three calendar days unless otherwise determined by that House by vote of the yeas and nays.

In the event of disagreement between the two Houses on the concurrent resolution passed by both, the bill would require that conferees be promptly appointed and their report filed within six days and the House would be required to act within six calendar days thereafter. Should the conferees disagree within forty-eight hours they are to report back to their respective Houses in disagreement. These provisions of subsection 202(c) are stated to be an exercise of the rulemaking power of the House and Senate, and the constitutional power of either House to change its rules is specifically recognized in the bill.

Section 301 of the amended bill contains the provision referred to above providing that powers and authorities made available by statute for use during national emergencies are effective after a declaration of national emergency only after the President specifies the specific provisions of such laws which will be utilized. Under existing law, such a declaration would have the effect of reviving many emergency provisions throughout the United States Code, whether or not they are relevant to the emergency at hand. In many cases, the provisions are not self-executing, so that their mere availability does not bring them into force without specific implementing directives. In other cases, however, changes in law automatically take effect during times

[1] Proclamation No. 2974.
[2] E.g., E.O. 11810 of September 30, 1974, Continuing the Regulation of Exports.

of national emergency.[3] Section 301 of the amended bill would change this by establishing that no provision of law shall be triggered by a declaration of national emergency unless and until the President specifies that provision as one of those under which he or other officers will act. The specification may be made either in the declaration of national emergency or in subsequent Executive orders. This will enable the Executive to choose specific provisions needed to deal with the emergency at hand; and it will put Congress and the public on notice as to precisely what laws are going to be invoked.

Section 401 of the amended bill details the accountability and reporting requirements applicable to the President in connection with national emergencies. All significant orders of the President shall be filed and an index maintained of that file. Further, each Executive agency is to maintain a file and an index of all rules and regulations issued during an emergency of war. These orders, rules, and regulations are to be transmitted to the Congress. Subsection (c) requires that the President transmit to the Congress within ninety days of the end of each six month period after declaration of a national emergency or declaration of war a report of the total expenditures of the Government attributable to the exercise of powers and authorities brought into force by the declaration. A final report of all such expenditures is required within ninety days of the termination of the war or the emergency.

At the hearing on the bill, the Defense Department witness stated that the thirty day period provided in the bill as originally introduced might not be sufficient time to prepare a complete accounting of all expenditures directly attributable to an emergency declaration. The GSA representative at those hearings suggested that it may be more informative as well as less onerous to require a narrative description of how emergency powers have been used, rather than a list of figures. The committee concluded that the best practical solution would be to fix a ninety day period for such reports at the end of each sixth month period. It would be assumed that such reports would include explanations which would identify the nature, powers and authority for the expenditures identified in this manner.

Title V of the Amended Bill

Section 501 provides for the repeal of provisions of seven laws which have been found to be superseded or obsolete, and section 502 for the continuation in effect of other provisions of law which have been determined to be important to Governmental operation. The texts of laws referred to in these two sections are set out in the appendixes I and II of this report, and appendixes contain other relevant portions of the statutes involved to give a more complete understanding of the scope and purpose of the laws involved. The texts of laws or portions of laws repealed or stricken as provided in section 501 are set out in Appendix I, and the texts of laws continued in force under section 502(a) of the amended bill are set out in Appendix II.

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[3] Examples are found in 37 U.S.C. 202(e) having to do with pay of certain rear admirals, or in 37 U.S.C. 407(b) having to do with dislocation allowances for members of the uniformed services.

PROVISIONS TO BE REPEALED

Subsection (a) of section 501 of the amended bill strikes paragraph (1) of section 349(a) of the Immigration Act (8 U.S.C. 1481(a)). Section 349 concerns loss of nationality by nationals of the United States, and subsection (a)(10) provides that nationality shall be lost by persons who depart from or remain outside the jurisdiction of the United States during a war or national emergency for the purpose of evading or avoiding training and service in the Armed Forces of the United States. The Supreme Court in the case of *Kennedy* v. *Mendoza Martinez*, 372 U.S. 144 (1963) held section 349(a)(10) of the Immigration and Nationality Act to be unconstitutional because it employed the sanction of deprivation of nationality as a punishment for the offense of leaving or remaining outside the country to evade military service without affording the procedural safeguards guaranteed by the Fifth and Sixth Amendments. In this connection, the Court pointed out that this punishment cannot be imposed without a criminal trial with all its incidents and procedural safeguards including indictment, notice confrontation, jury trial, assistance of counsel, and compulsory process for obtaining witnesses. Since the subparagraph has been held invalid, the bill provides that it be stricken from section 349(a) of the Immigration and Nationality Act.

Subsection (b) of section 501 of the amended bill deletes Item 4 of section 2667(b) of Title 10. Item 4 provides that leases of non-excess property of a military department must contain a provision making the lease revocable by the section during a national emergency declared by the President. In the course of the hearings on the bill, the committee was advised that the deletion of this provision would give the departments concerned the option of either including or not including such a requirement in their leases. The change would, therefore, make it possible for the departments to determine whether the foreseeable needs of the department would require the inclusion of such a provision.

Subparagraph (c) of section 501 repeals a joint resolution approved August 8, 1947 concerned the regulation of consumer credit. This Act ended consumer credit control under a war time executive order as of November 1, 1947. The exception contained in the Act provided that the authority could be exercised during war or national emergency after the effective date of the act. The provisions of the act are obsolete. Section 1904 of Title 12 presently empowers the President to authorize the Board of Governors of the Federal Reserve System to regulate extensions of credit.

Subsection (d) of section 501 repeals section 5(m) of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831d(m). Subsection (m) bars the sale of products except ferrophosphorus outside the United States and possessions except as to the United States Government for military use or to its allies in the case of war or until six months after the termination of the Korean emergency. The committee has been advised that the provisions of this subsection have no present application.

Subsection (e) of section 501 of the amended bill repeals section 1383 of title 18 of the United States Code. This is a section which pro-

vides criminal penalties for "Whoever, contrary to the restrictions applicable thereto, enters, remains in, leaves, or commits any act in any military area or military zone prescribed under the authority of an Executive Order of the President, by the Secretary of the Army . . ." when it appears that the individual knew of the restrictions or order and that his act was in violation thereof. This section was originally enacted as a wartime measure on March 21, 1942. In the case of *Hirabayashi* v. *United States*, 320 U.S. 81, 92 (1943), the Court held that the Act ratified and confirmed Executive Order No. 9066, 7 Fed. Reg. 1407, which was promulgated during time of war on February 14, 1942, for the declared purpose of persecuting the war by protecting national defense resources from sabotage and espionage. This was the Executive Order which formed the basis for the relocation and detention of persons of Japanese ancestry in that period. This relationship to the evacuation was even more directly discussed in the case of *Ex Parte Mitsuge Endo* 323 U.S. 283, 298 when it was pointed out that Congress had made the orders regarding the evacuation program subject to the civil penalties provided in the Act of March 21, 1942, the act upon which the codified provisions of section 1383 of Title 18 are based. Clearly, the Act was not intended to apply in normal peacetime situations. Further, by the Act of September 25, 1971, Public Law 92–128 repealed the provision of Title II of the Internal Security Act of 1950 (50 U.S.C. 811–826) the "Emergency Detention Act." The report of the Committee which accompanied that legislation (H. Rept. 92–116, 92nd Congress, 1st Session) stated:

> . . . the Committee is of the view that the Emergency Detention Act serves no useful purpose, but, on the contrary, only engenders fears and resentment on the part of many of our fellow citizens . . .

The repeal of section 1383 of Title 18 is consistent with the previous action of the Congress with reference to the above law. Since the provisions of section 1383 of Title 18 have no current purpose, they are, as a practical matter, obsolete.

Subsection (f) of section 501 strikes subsections (b), (c), (d), (e) and (f) of section 6 of the Act of February 28, 1948. An amendment to the Public Health Service Act concerning promotion of commissioned officers of the Public Health Service. The committee has been advised that these provisions now are obsolete.

Subsection (g) of section 601 repeals section 9 of the 1946 Merchant Ship Sales Act. 50 U.S.C. 1742. This section of the Sales Act concerns price adjustment for prior sales to citizens of the United States. The committee has been advised that the section is now a nullity and no future proclamation of a national emergency could provide any authority under it. The letter from the Department of Commerce dated April 1, 1975 discussing this point is set out at the end of this report.

Continuing Authority Provided for in the Bill

As has been discussed in this report, a basic problem with emergency legislation derives from the fact that much which is authorized and much which has been done under it is really not of merely an "emergency" nature. Simply to abolish all emergency powers and disposi-

tions on a specified date would not actually solve this problem but would ignore that in some instances this authority is vital to retain governmental functions. The committee has been advised that the greatest part of the effort which the Executive and Legislative branches have devoted to this bill and earlier bills in the past several years has been directed toward identifying those powers and dispositions which should be preserved while the rest are abandoned. As is provided in section 502(b), it is intended that within a short time those provisions of law can be converted from the "emergency" portions of the Code in which they now appear to standard, non-emergency sections. Until that is achieved, however, the technical conditions which enable them to remain effective must be preserved. This is achieved in section 502 of the amended bill, by preserving the effect of previously issued declarations of national emergency only with respect to those specified provisions. The texts of laws referred to in section 502(a) are set forth in Appendix II of this report together with a brief explanation of the provisions involved.

Section 502(a) of the amended bill provides that the provisions of the Act will not apply to provisions of law and related powers, authority, and actions thereunder which are listed in that section. Clause 1 of the subsection lists section 5(b) of the Act of Oct. 6, 1917, the Trading With The Enemy Act. The provisions of 5(b) are presently set out in the United States Code as section 95a of Title 12 and section 5(b) of Title 50. This section concerns the regulation of transactions in foreign exchange of gold and silver, property transfers in which any foreign country or national thereof has an interest and provides for the administration of such assets or property. At the hearings on the bill and indepartmental reports made to the committee, the importance of this section as a continuing measure was emphasized. The Treasury Department pointed out that this law is important to the United States with regard to existing controls which regulate transactions with several foreign countries and their nationals. It is also important to the continuing validity of certain blockings of assets of foreign countries which are presently in effect. The State Department witness before the committee indicated that the Department of State is concerned with the continuance of this section because it provides the basic legal authority for a number of programs of major foreign policy importance.

Clause 2 of section 602(a) of the bill as originally introduced would have continued in effect the provisions of section 673 of Title 10, which concerns the call up of members of the Ready Reserve. Since this section by its express terms could be invoked by any future emergency or where otherwise authorized by law, there would be no requirement of its continuance under the provisions of this section. Accordingly, the committee has recommended that it be stricken and the number of the clauses in the bill be adjusted accordingly. The balance of the discussion will relate to the numbers of the clauses as are contained in the amended bill in renumbered section 502(a).

Clause 2 of 502(a) of the amended bill continues in effect the provisions of the Act of April 28, 1942, which is contained in the United States Code as section 278(b) of Title 40. This Act provides for an exception to the existing provisions of law concerning maximum rental of leases in cases relating to vital leases during a war or national

emergency. At the hearings on the bill, the witness representing the GSA stated that the continuing availability of the national emergency authority contained in this section has been found to be essential to the regular functioning of the Government and pointed out that this type of authority had proven to be of value where situations arose where the normal limitations on expenditures for rentals, alterations and improvements had to be waived in the national interest. The Department further indicated that it would favor the enactment of permanent legislation granting similar alternative authority.

Clause 3 continues in effect the provisions of the Act of June 30, 1949 presently found in section 252 of Title 41 of the United States Code. This Act provides for authority to make purchases and to make contracts for property and services. Subsection (c)(1) contains an exception to a requirement of advertising such purchases or contracts where it is determined in the public interest during a period of national emergency declared by the President or by the Congress. The General Services Administration has advised the committee that this emergency authority is presently relied upon for the award of contracts involving unilateral set asides for small business concerns. The committee was also advised that this authority is also relied upon for partial set asides of contracts intended for labor surplus areas. It has also been used to limit certain contracts of domestic end products in the interest of improving the United States balance of payments. Presently, there is no other negotiation authority available. If this authority were terminated, awards for these purposes would have to be discontinued. For these reasons, this section has been listed among those provisions of law to be given continuing effect.

Clauses 4 and 5 of section 502(a) of the amended bill continue the authority contained in two sections of the revised statutes concerning the assignment of claims. Clause 4 lists section 3477 of the revised statutes which is set out in the Code as section 203 of Title 31. This section refers to the assignment of claims upon the United States and continues a provision that in time of war or national emergency, contracts may contain a provision that assignment of money due under a contract may not be subject to reduction or setoff for liability of the assignor as specified in the section. Clause 5 continues in effect the provisions of section 3737 of the revised statutes which is set out as Section 15 of Title 41 of the Code. This section also has to do with the assignment of claims and setoffs against the assignee and contains language similar to that found in the section referred to in Clause 4.

During the hearings, the General Services Administration witness referred to these provisions and stated that they permit claims for money due or to become due a contractor with the Government to be assigned to a bank, trust company or other financial institution. This has proven to be important in the financing of Government contracts but its usefulness may be impaired if the assignments are deemed to be subject to reductions or set off by the Government. As has been noted, under emergency authority, it is possible to provide that such assignments will not be subject to such setoffs. The continuance of this authority will make it possible for the appropriate committees to consider whether similar authority should be provided or modified by new legislation.

Clause 6 of section 502(a) of the amended bill continues the authority provided in Public Law 85–804 as enacted on August 28, 1958. (50 U.S.C. 1431–1435.) This law permits departments or agencies exercising functions in connection with the national defense to deal with unusual contract situations. This permits the correction of mistakes in contracts, the formalization of informal commitments by the Government, and the indemnification of contractors for unusually hazardous risks and other extraordinary contractual relief. At the hearings on the bill, it was pointed out that the Commission on Government Procurement recommended to the Congress in 1972 that the authority in Public Law 85–804 be made available under permanent and generally applicable law rather than being dependent upon the existence of a state of war or national emergencies. On page 9 of Vol. 4 of the Report of that Commission, the Commission summarized its recommendations in connection with this Public Law and indicated that it concluded that the authority should be extended to all executive agencies subject to the statutory controls now contained in the Act and to controls and criteria specified in the regulations established by the President. The report of the Commission in chapter 4 discussed in some detail the subject of equitable and special management powers under Public Law 85–804. The continuance of the authority as provided in this section of the bill will permit the appropriate committees of Congress to consider this aspect of the recommendations of the Procurement Commission.

Item 7 continues the authority provided in section 2304(a)(1) of Title 10 providing for an exception to the requirement for formal advertising in connection with certain contracts. This is identical language presently contained in the Armed Services Procurement Act to that contained in Clause 1 of subsection (c) of section 302 of the Act of June 30, 1949, which is also listed in this subsection of the bill in Clause 3. The testimony at the hearing was that this authority is important in that it is used to provide for contracts for small businesses and to place contracts for labor surplus areas and disaster areas.

Item 8 extends the emergency authority provided in sections 3313, 6386(c) and 8313 of Title 10, which provide authority for the suspension of provisions of law requiring mandatory retirement or separation of officers. In reports to the committee and testimony in connection with this bill, the committee was advised that this authority makes it possible to suspend such requirements as they relate to some 690 members of the Armed Forces missing in action in Southeast Asia. The emergency authority permits the Armed Services to retain them in the Armed Services until they are returned or are accounted for.

Committee Vote

On May 21, 1975, the Full Committee on the Judiciary approved the bill H.R. 3884 by voice vote.

Cost

(Rule XIII (7)(a)(1) of the House Rules)

The bill does not provide for any specific new programs. As has been outlined in the report, after a transition period of two years it would terminate all powers and authorities under existing emergencies, and then also define procedures and restrictions which would apply in the

event of the declaration of future emergencies. Thus the bill contemplates governmental operations under regular law except as is otherwise provided in the bill relating to emergency statutes. Under these circumstances it is not possible to predict what future cost impact the provisions of this bill would have on the Government.

Conclusion

The committee has concluded that the facts developed in the hearings on the bill and as outlined in this report demonstrate the need for legislative action. The testimony by representatives of departments in connection with this subject, and the reports received from those departments have shown that there is general agreement that the time has come for positive and constructive legislative action in the manner provided for in this bill. It is recommended that the amended bill be considered favorably.

Analysis of the Bill

TITLE I—TERMINATION OF EXISTING EMERGENCIES

Sec. 101 terminates powers and authorities under existing emergencies. The subcommittee amendment provides a two year delay in effective date in lieu of the one year date originally stated in the bill. The Congress would have this period to enact permanent law where needed. The section defines "any national emergency in effect" as one declared by the President. The committee amendment would strike the words "pursuant to a statute authorizing him to declare a national emergency". Apparently, not all previous emergencies were declared pursuant to a specific statute.

TITLE II—FUTURE NATIONAL EMERGENCIES

Sec. 201 authorizes the President to proclaim a national emergency and requires the proclamation to be transmitted to the Congress and published in the Federal Register. Powers and authorities to be exercised under the emergency are to be effective only when the President declares such an emergency and only in accordance with the provisions of this bill.

Sec. 202 provides for termination of such emergencies either by the Congress by concurrent resolution or by Presidential proclamation. This section spells out in some detail the procedures to be followed by the Congress to consider such concurrent resolutions. The resolutions would be considered at six month intervals. These procedures of the section are to be deemed a part of the rules of each House.

TITLE III—DECLARATIONS OF WAR

The single section 301 contained in this title of the bill as originally introduced would provide that when Congress declares war, provisions of law providing for the exercise of powers and authorities in time of war are to be effective from the date of that declaration. The subcommittee amendment is to strike title III and renumber subsequent titles

and sections. It was concluded that the language of the title was unnecessary.

TITLE IV—EXERCISE OF EMERGENCY POWERS

Title IV is re-numbered as Title III, and Sec. 401 becomes Sec. 301. This section provides that upon the declaration of the national emergency, the President will be required to specify which emergency statutes are to be utilized.

TITLE V—AMENDED TITLE (IV)—ACCOUNTABILITY AND REPORTING

SEC. 501 (401) When the President declares a national emergency or the Congress declares war, the President shall maintain a file and index of all Presidential orders and each executive agency shall maintain a file of all rules and regulations issued during the emergency or war. These orders, rules and regulations are to be transmitted to the Congress. The section requires that after the declaration of a national emergency or declaration of war, the President shall transmit to the Congress 90 days after each six month period a report of total expenditures which are attributable to powers and authorities exercised under such declarations. A final report is required 90 days after the termination of the emergency or war.

TITLE VI (TITLE V)—REPEALS AND CONTINUATION OF STATUTES

[REPEALS]

SEC. 601 (501) repeals the following statutes:

1. Paragraph 10 of section 349(a) of the Immigration and Nationality Act providing for the expatriation of persons remaining outside the jurisdiction of the United States in time of war or national emergency to avoid service in the military.

2. Clause 4 of section 2667(b) of Title 10 of the United States Code requiring that leases of non-excess property of a military department must include a provision making the lease revocable during a national emergency.

3. A joint resolution approved August 8, 1947 concerning the regulation of consumer credit which contins an exception that the authorities concerning such regulation could be exercised during war or national emergency.

4. Subsection (m) of Section 5 of the Tennessee Valley Authority Act of 1933 which bars the sale of Tennessee Valley Authority products outside of the United States except to the Government for military use orits allies in case of war or until six months after the termination of the Korean emergency.

5. Section 1383 of Title 18 providing criminal penalties for persons entering, remaining in, leaving or committing any act in a military area or military zone.

6. Subsections (b), (c), (d), (e) and (f) of Section 6 of the Act of February 28, 1948, an amendment to the Public Health Service Act concerning the promotion of Public Health Service officers, now deemed obsolete.

[CONTINUATION]

Section 602 (502) provides that the provisions of the Act will not apply to listed provisions of law and related powers and authorities and actions thereunder, as follows:

1. Section 5(b) of the Act of October 6, 1917, the Trading With the Enemy Act. The section concerns the regulation of transactions in foreign exchange in gold and silver, property transfers in which any foreign country or national thereof has an interest and provides for the liquidation of assets or property.

2. The bill would have continued the effect of the provisions of Section 673 of Title 10 concerning the call-up of the Ready Reserve. The subcommittee amendment is to strike this and to re-number the balance of the clauses in the subsection.

3. (Clause 2) continues in effect the provisions of the Act of October 28, 1942, making an exception to existing provisions of law fixing maximum rental in leases deemed vital during a war or national emergency.

4. (Clause 3) The provisions oft he Act of June 30, 1949, providing authority to make purchases and make contracts for property and services with an exception for the requirement for advertising and provision for negotiated contracts where it is determined in the public interest during a period of national emergency declared by the President or by the Congress. This is thep resent authority for set-asides for small business and for contracts in labor surplus areas. It also has been utilized to limit certain contracts to domestic end products to improve balance of payments.

5. (Clause 4) The provisions of section 3477 of the Revised Statutes concerning the assignment of claims during war or national emergency. Contracts may contain a provision that assignments of claims will *not* be subject to set-off for assignor liability. This section is important in obtaining bank financing.

6. (Clause 5) The provisions of section 3737 of the Revised Statutes. This section also has to do with the assignment of claims and set-offs for assignor liability and contains language similar to that found in the foregoing section.

(The subcommittee amendment adds three references.)

6. New Clause 6 continues in effect the provisions of Public Law 85–804 permitting departments or agencies exercising functions in connection with the national defense to deal with unusual contract situations subject to standard regulations. This includes correction of mistakes in contracts, formalization of informal commitments, indemnification of contractors for unusually hazardous risks and other extraordinary relief.

7. New Clause 7 would continue in effect the provisions of section 2304(a)(1) of Title 10 which is a parallel provision to that referred to in this section in original clause 4. It is similarly used to provide for contracts for small business and to place contracts in labor surplus areas and disaster areas.

8. New Clause 8 continues in effect the provisions of sections 3313, 6386(c) and 8313 of Title 10, making exceptions to the mandatory separation or retirement of officers during an emergency. These sections may have application to approximately 691 officers now listed as missing in action.

Statement Under Clause 2(1)(3), and Clause 2(1)(4) of Rule XI of the Rules of the House of Representatives

A.

Oversight Statement

This report embodies the findings and recommendations of the Subcommittee on Administrative Law and Governmental Relations pursuant to its oversight responsibility over National Emergencies and procedures relating thereto under Rule VI(b) of the Rules of the Committee on the Judiciary, and the committee determined that legislation should be enacted as set forth in the amended bill.

B.

Budget Statement

Clause 2(1)(3)(B) of Rule XI is not yet applicable because as is stated in the report of the Committee on the Budget (House Report No. 94–25, 94th Cong., 1st Sess.) section 308(a) of the Congressional Budget Act of 1974 will not be implemented during the current session.

C.

Estimate of the Congressional Budget Office

No estimate or comparison was received from the Director of the Congressional Budget Office as referred to in subdivision (C) of Clause 2(1)(3) of House Rule XI.

D.

Oversight Findings and Recommendations of the Committee on Government Operations

No findings or recommendations of the Committee on Government Operations were received as referred to in subdivision (D) of clause 2(1)(3) of House Rule XI.

Inflationary Impact

In compliance with clause 2(1)(4) of House Rule XI it is stated that this legislation will have no inflationary impact on prices and costs in the operation of the national economy. The bill provides for termination of Governmental dependence upon emergency statutes and for procedures to be followed in the event of future emergencies. It does not provide for any new programs.

Text of Statute To Be Repealed

In compliance with paragraph 1 of clause 3 of rule XIII of the Rules of the House of Representatives, the text of the statute which is proposed to be repealed by the bill is shown as follows:

Paragraph (10) of section 349(a) of the Immigration and Nationality Act (Act of June 27, 1952, ch. 477, 66 Stat. 163; 8 U.S.C. 1481 (10)) * * * ; or

(10) departing from or remaining outside of the jurisdiction of the United States in time of war or during a period declared by the President to be a period of national emergency for the purpose of evading or avoiding training and service in the military, air, or naval forces of the United States. For the purposes of this paragraph failure to comply with any provision of any compulsory service laws of the United States shall raise the presumption that the departure from or absence from the United States was for the purpose of evading or avoiding training and service in the military, air, or naval forces of the United States.

Paragraph (4) of section 2667 (b) of title 10, United States Code

* * * * * * *

(4) must be revocable by the Secretary during a national emergency declared by the President; and

* * * * * * *

The Joint Resolution approved August 8, 1947 entitled "Joint Resolution to authorize the temporary continuation of regulation of consumer credit" (Act of Aug. 8, 1947, ch. 517, 61 Stat. 921; 12 U.S.C. 249).

JOINT RESOLUTION To authorize the temporary continuation of regulation of consumer credit

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That after November 1, 1947, the Board of Governors of the Federal Reserve System shall not exercise consumer credit controls pursuant to Executive Order Numbered 8843, and no such consumer credit controls shall be exercised after such date except during the time of war beginning after the date of enactment of this joint resolution or any national emergency declared by the President after the date of enactment of this joint resolution.

Section 5(m) of the Tennessee Valley Authority Act of 1933, as amended (Act of May 18, 1933, ch. 32, § 5m, 48 Stat. 61, as amended; 16 U.S.C. 831d(m))

* * * * * * *

(m) No products of the Corporation except ferrophosphorus shall be sold for use outside of the United States, its Territories and possessions, except to the United States Government for the use of its Army and Navy, or to its allies in case of war or, until six months after the termination of the national emergency proclaimed by the President on December 16, 1950, or until such earlier date or dates as the Congress by concurrent resolution or the President may provide but in no event after April 1, 1953, to nations associated with the United States in defense activities.

Section 1383 of title 18, United States Code.

§ 1383. Restrictions in military areas and zones.

Whoever, contrary to the restrictions applicable thereto, enters, remains in, leaves, or commits any act in any military area or military zone prescribed under the authority of an Executive order of the

President, by the Secretary of the Army, or by any military commander designated by the Secretary of the Army, 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 fined not more than $5,000 or imprisoned not more than one year, or both.

Subsections (b), (c), (d), (e), and (f) of Section 6 of the Act entitled "An Act to amend the Public Health Service Act in regard to certain matters of personnel and administraiton and for other purposes", (Act of February 28, 1948, ch. 83, 62 Stat. 45; 42 U.S.C. 211b)

* * * * * * *

(b) Except as provided in subsection (d) of this section, no promotion shall be made under section 210 of the Public Health Service Act, as amended by this Act, prior to July 1, 1948. Until that date officers of the Regular Corps may receive temporary promotions to higher grades with the pay and allowances thereof pursuant to section 210 (a) (1) of the Public Health Service Act, in force prior to the enactment of this Act, notwithstanding the termination, prior to such date, of the war and of the national emergencies proclaimed by the President. Any officer holding, on June 30, 1948, an appointment pursuant to such section to a higher temporary grade shall continue in such grade until such appointment is terminated, as the President may direct.

(c) Effective as of the date enactment of this Act, each officer of the Regular Corps on such date, in addition to the credit he has under preexisting legislation for purposes of promotion, shall be credited with three years of service.

(d) (1) Officers of the Regular Corps who have, or who on or before July 1, 1948, will have, the years of service prescribed in pargraph (2) of section 210(d) of the Public Health Service Act, as amended by this Act, for promotion to the senior assistant, full, or senior grade, shall be recommended to the President for such promotion, to be effective as of July 1, 1948, whether or not vacancies exist in such grade. Such promotions shall be made without examination, except that no promotions shall be made to the senior grade or any grade immediately below a restricted grade until the officer is found qualified for promotion pursuant to subsection (c) of section 210 of the Public Health Service Act, as amended by this Act. No promotion shall be made pursuant to this paragraph to any grade in any professional category if such grade has been made a restricted grade pursuant to subsection (b) of section 210 of the Public Health Service Act, as amended by this Act. For purposes of seniority an officer promoted under this paragraph shall be credited with the years of service in the grade to which promoted equal to the excess of his years of service on the date of promotion over the years of service required for promotion to such grade under paragraph (2) of section 210(d) of the Public Health Service Act, as amended by this Act.

(2) Officers in the junior assistant grade in the Regular Corps who have, or who on or before July 1, 1948, will have four or more years of service in the junior assistant grade, shall be recommended to the President for promotion to the assistant grade, to be effective as of July 1, 1948, without examination and whether or not vacancies exist in such grade. For purposes of promotion and seniority in grade, an

officer promoted under this paragraph shall be credited with the years of service equal to the excess of his years of service on the date of promotion over four years.

(e) For purposes of seniority, any officer of the Regular Corps of the Public Health Service on the date of enactment of this Act shall be considered as having had service in the grade which he holds on such date equal to the excess of the service credited to him for promotion purposes over the length of service required under section 210(d)(2), as amended by this Act, for promotion to such grade.

(f) Except as provided in subsection (d) of this section, the provisions of this section shall not, prior to July 1, 1948, affect the term or tenure of office (including any office held under temporary promotion) of any commissioned officer of the Service in office upon the date of the enactment of this Act.

Section 9 of the Merchant Marine Sales Act of 1946 (Act of Mar. 8, 1946, ch. 82, 60 Stat. 45; 50 App. U.S.C. 1741).

ADJUSTMENT FOR PRIOR SALES TO CITIZENS

SEC. 9. (a) A citizen of the United States who on the date of the enactment of this Act—

(1) owns a vessel which he purchased from the Commission prior to such date, and which was delivered by its builder after December 31, 1940; or

(2) is party to a contract with the Commission to purchase from the Commission a vessel, which has not yet been delivered to him; or

(3) owns a vessel on account of which a construction-differential subsidy was paid, or agreed to be paid, by the Commission under section 504 of the Merchant Marine Act, 1936, as amended, and which was delivered by its builder after December 31, 1940; or

(4) is party to a contract with a shipbuilder for the construction for him of a vessel, which has not yet been delivered to him, and on account of which a construction-differential subsidy was agreed, prior to such date, to be paid by the Commission under section 504 of the Merchant Marine Act, 1936, as amended;

shall, except as hereinafter provided, be entitled to an adjustment in the price of such vessel under this section if he makes application therefor, in such form and manner as the Commission may prescribe, within sixty days after the date of publication of the applicable prewar domestic costs in the Federal Register under section 3 (c) of this Act. No adjustment shall be made under this section in respect of any vessel the contract for the construction of which was made after September 2, 1945, under the provisions of title V (including section 504) or title VII of the Merchant Marine Act, 1936, as amended.

(b) Such adjustment shall be made, as hereinafter provided, by treating the vessel as if it were being sold to the applicant on the date of the enactment of this Act, and not before that time. The amount of such adjustment shall be determined as follows:

(1) The Commission shall credit the applicant with the excess of the cash payments made upon the original purchase price of the vessel over 25 per centum of the statutory sales price of the vessel as of such date of enactment. If such payment was less

than 25 per centum of the statutory sales price of the vessel, the applicant shall pay the difference to the Commission.

(2) The applicant's indebtedness under any mortgage to the United States with respect to the vessel shall be adjusted.

(3) The adjusted mortgage indebtedness shall be in an amount equal to the excess of the statutory sales price of the vessel as of the date of the enactment of this Act over the sum of the cash payment retained by the United States under paragraph (1) plus the readjusted trade-in allowance (determined under paragraph (7)) with respect to any vessel exchanged by the applicant on the original purchase. The adjusted mortgage indebtedness shall be payable in equal annual installments thereafter during the remaining life of such mortgage with interest on the portion of the statutory sales price remaining unpaid at the rate of 3½ per centum per annum.

(4) The Commission shall credit the applicant with the excess, if any, of the sum of the cash payments made by the applicant upon the original purchase price of the vessel plus the readjusted trade-in allowance (determined under paragraph (7)) over the statutory sales price of the vessel as of the date of the enactment of this Act to the extent not credited under paragraph (1).

(5) The Commission shall also credit the applicant with an amount equal to interest at the rate of 3½ per centum per annum (for the period beginning with the date of the original delivery of the vessel to the applicant and ending with the date of the enactment of this Act) on the excess of the original purchase price of the vessel over the amount of any allowance allowed by the Commission on the exchange of any vessel on such purchase; the amount of such credit first being reduced by any interest on the original mortgage indebtedness accrued up to such date of enactment and unpaid. Interest so accrued and unpaid shall be canceled.

(6) The applicant shall credit the Commission with all amounts paid by the United States to him as charter hire for use of the vessel (exclusive of service, if any, required under the terms of the charter) under any charter party made prior to the date of the enactment of this Act, and any charter hire for such use accrued up to such date of enactment and unpaid shall be canceled; and the Commission shall credit the applicant with the amount that would have been paid by the United States to the applicant as charter hire bare-boat use of vessels exchanged by the applicant on the original purchase (for the period beginning with date on which the vessels so exchanged were delivered to the Commission and ending with the date of the enactment of this Act).

(7) The allowance made to the applicant on any vessel exchanged by him on the original purchase shall be readjusted so as to limit such allowance to the amount provided for under section 8.

(8) There shall be subtracted from the sum of the credits in favor of the Commission under the foregoing provisions of this subsection the amount of any overpayments of Federal taxes by the applicant resulting from the application of subsection (c) (1), and there shall be subtracted from the sum of the credits in favor of the applicant under the foregoing provisions of this subsection the amount of any deficiencies in Federal taxes of the applicant resulting from the application of subsection (c) (1). If, after

making such subtractions, the sum of the credits in favor of the applicant exceeds the sum of the credits in favor of the Commission, such excess shall be paid by the Commission to the applicant. If, after making such subtractions, the sum of the credits in favor of the Commission exceeds the sum of the credits in favor of the applicant, such excess shall be paid by the applicant to the Commission. Upon such payment by the Commission or the applicant, such overpayments shall be treated as having been refunded and such deficiencies as having been paid.

For the purposes of this subsection, the purchase price of a vessel on account of which a construction-differential subsidy was paid or agreed to be paid under section 504 of the Merchant Marine Act, 1936, as amended, shall be the net cost of the vessel to the owner.

(c) An adjustment shall be made under this section only if the applicant enters into an agreement with the Commission binding upon the citizen applicant and any affiliated interest to the effect that—

(1) depreciation and amortization allowed or allowable with respect to the vessel up to the date of enactment of this Act for Federal tax purposes shall be treated as not having been allowable; amounts credited to the Commission under subsection (b) (6) shall be treated for Federal tax purposes as not having been received or accrued as income; amounts credited to the applicant under subsection (b) (5) and (6) shall be treated for Federal tax purposes as having been received and accrued as income in the taxable year in which falls the date of the enactment of this Act;

(2) the liability of the United States for use (exclusive of service, if any, required under the terms of the charter) of the vessel on or after the date of the enactment of this Act under any charter party shall not exceed 15 per centum per annum of the statutory sales price of the vessel as of such date of enactment; and the liability of the United States under any such charter party for loss of the vessel shall be determined on the basis of the statutory sales price as of the date of the enactment of this Act, depreciated to the date of loss at the rate of 5 per centum per annum; and

(3) in the event the United States, prior to the termination of the existing national emergency declared by the President on May 27, 1941, uses such vessel pursuant to a taking, or pursuant to a bare-boat charter made, on or after the date of the enactment of this Act, the compensation to be paid to the purchaser, his receivers, and trustees, shall in no event be greater than 15 per centum per annum of the statutory sales price as of such date.

(d) Section 506 of the Merchant Marine Act, 1936, as amended, shall not apply with respect to (1) any vessel which is eligible for an adjustment under this section, or (2) any vessel described in clause (1), (2), (3), or (4) of subsection (a) of this section, the contract for the construction of which is made after September 2, 1945, and prior to the date of enactment of this Act.

Changes in Existing Law

In compliance with paragraph 2 of clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made

by the bill are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

Section 349(a) of the Immigration and Nationality Act (Act of June 27, 1952, ch. 477, 66 Stat 163; 8 U.S.C. 1481.

* * * * * * *

CHAPTER 3—LOSS OF NATIONALITY

LOSS OF NATIONALITY BY NATIVE-BORN OR NATURALIZED CITIZEN

SEC. 349. (a) From and after the effective date of this Act a person who is a national of the United States whether by birth or naturalization, shall lose his nationality by—

(1) obtaining naturalization in a foreign state upon his own application, upon an application filed in his behalf by a parent, guardian, or duly authorized agent, or through the naturalization of a parent having legal custody of such person: *Provided*, That nationality shall not be lost by any person under this section as the result of the naturalization of a parent or parents while such person is under the age of twenty-one years, or as the result of a naturalization obtained on behalf of a person under twenty-one years of age by a parent, guardian, or duly authorized agent, unless such person shall fail to enter the United States to establish a permanent residence prior to his twenty-fifth birthday: *And provided further*, That a person who shall have lost nationality prior to January 1, 1948, through the naturalization in a foreign state of a parent or parents, may, within one year from the effective date of this Act, apply for a visa and for admission to the United States as a nonquota immigrant under the provisions of section 101(a)(27)(E); or

(2) taking an oath or making an affirmation or other formal declaration of allegiance to a foreign state or a political subdivision thereof; or

(3) entering, or serving in, the armed forces of a foreign state unless, prior to such entry or service, such entry or service is specifically authorized in writing by the Secretary of State and the Secretary of Defense: *Provided*, That the entry into such service by a person prior to the attainment of his eighteenth birthday shall serve to expatriate such person only if there exists an option to secure a release from such service and such person fails to exercise such option at the attainment of his eighteenth birthday; or

(4)(A) accepting, serving in, or performing the duties of any office, post, or employment under the government of a foreign state or a political subdivision thereof, if he has or acquires the nationality of such foreign state; or (B) accepting, serving in, or performing the duties of any office, post, or employment under the government of a foreign state or a political subdivision thereof, for which office, post, or employment an oath, affirmation, or declaration of allegiance is required; or

(5) voting in a political election in a foreign state or participating in an election or plebiscite to determine the sovereignty over foreign territory; or

(6) making a formal renunciation of nationality before a diplomatic or consular officer of the United States in a foreign state, in such form as may be prescribed by the Secretary of State; or

(7) making in the United States a formal written renunciation of nationality in such form as may be prescribed by, and before such officer as may be designated by, the Attorney General, whenever the United States shall be in a state of war and the Attorney General shall approve such renunciation as not contrary to the interests of national defense; or

(8) deserting the military, air, or naval forces of the United States in time of war, if and when he is convicted thereof by court martial and as the result of such conviction is dismissed or dishonorably discharged from the service of such military, air, or naval forces: *Provided*, That, notwithstanding loss of nationality or citizenship under the terms of this or previous laws by reason of desertion committed in time of war, restoration to active duty with such military, air, or naval forces in time of war or the reenlistment or induction of such a person in time of war with permission of competent military, air, or naval authority shall be deemed to have the immediate effect of restoring such nationality or citizenship heretofore or hereafter so lost; or

(9) committing any act of treason against, or attempting by force to overthrow, or bearing arms against, the United States, violating or conspiring to violate any of the provisions of section 2383 of Title 18, or willfully performing any act in violation of section 2385 of Title 18, or violating section 2384 of Title 18 by engaging in a conspiracy to overthrow, put down, or to destroy by force the Government of the United States, or to levy war against them, if and when he is convicted thereof by a court martial or by a court of competent jurisdiction [; or].

[(10) departing from or remaining outside of the jurisdiction of the United States in time of war or during a period declared by the President to be a period of national emergency for the purpose of evading or avoiding training and service in the military, air, or naval forces of the United States. For the purposes of this paragraph failure to comply with any provision of any compulsory service laws of the United States shall raise the presumption that the departure from or absence from the United States was for the purpose of evading or avoiding training and service in the military, air, or naval forces of the United States.]

Section 2667(b) of title 10, United States Code.

§ 2667. Leases: non-excess property

* * * * * * *

(b) A lease under subsection (a)— * * * *

(3) must permit the Secretary to revoke the lease at any time, unless he determines that the omission of such a provision will promote the national defense or be in the public interest; *and*

[(4) must be revocable by the Secretary during a national emergency declared by the President; and]

[(5)](*4*) may provide, notwithstanding section 303b of title 40 or any other provision of law, for the maintenance, protection, repair, or restoration, by the lessee, of the property leased, or of the entire unit

or installation where a substantial part of it is leased, as part or all of the consideration for the lease.

* * * * * * *

Section 6 of the Act entitled "An Act to amend the Public Health Service Act in regard to certain matters of personnel and administration and for other purposes", (Act of Feb. 28, 1948 ch. 83, 62 Stat. 45: 42 U.S.C. 211b)

SEC. 6. (a) Section 210 of such Act is amended to read:

* * * * * * *

[(b) Except as provided in subsection (d) of this section, no promotion shall be made under section 210 of the Public Health Service Act, as amended by this Act, prior to July 1, 1948. Until that date officers of the Regular Corps may receive temporary promotions to higher grades with the pay and allowances thereof pursuant to section 210 (a) (1) of the Public Health Service Act, in force prior to the enactment of this Act, notwithstanding the termination, prior to such date, of the war and of the national emergencies proclaimed by the President. Any officer holding, on June 30, 1948, an appointment pursuant to such section to a higher temporary grade shall continue in such grade until such appointment is terminated, as the President may direct.]

[(c) Effective as of the date of the enactment of this Act, each officer of the Regular Corps on such date, in addition to the credit he has under preexisting legislation for purposes of promotion, shall be credited with three years of service.]

[(d) (1) Officers of the Regular Corps who have, or who on or before July 1, 1948, will have, the years of service prescribed in paragraph (2) of section 210(d) of the Public Health Service Act, as amended by this Act, for promotion to the senior assistant, full, or senior grade, shall be recommended to the President for such promotion, to be effective as of July 1, 1948, whether or not vacancies exist in such grade. Such promotions shall be made without examination, except that no promotions shall be made to the senior grade or any grade immediately below a restricted grade until the officer is found qualified for promotion pursuant to subsection (c) of section 210 of the Public Health Service Act, as amended by this Act. No promotion shall be made pursuant to this paragraph to any grade in any professional category if such grade has been made a restricted grade pursuant to subsection (b) of section 210 of the Public Health Service Act, as amended by this Act. For purposes of seniority an officer promoted under this paragraph shall be credited with the years of service in the grade to which promoted equal to the excess of his years of service on the date of promotion over the years of service required for promotion to such grade under paragraph (2) of section 210(d) of the Public Health Service Act, as amended by this Act.

(2) Officers in the junior assistant grade in the Regular Corps who have, or who on or before July 1, 1948, will have four or more years of service in the junior assistant grade, shall be recommended to the President for promotion to the assistant grade, to be effective as of July 1, 1948, without examination and whether or not vacancies exist in such grade. For purposes of promotion and seniority in grade, an officer promoted under this paragraph shall be credited with the years

of service equal to the excess of his years of service on the date of promotion over four years.]

[(e) For purposes of seniority, any officer of the Regular Corps of the Public Health Service on the date of enactment of this Act shall be considered as having had service in the grade which he holds on such date equal to the excess of the service credited to him for promotion purposes over the length of service required under section 210(d)(2), as amended by this Act, for promotion to such grade.]

[(f) Except as provided in subsection (d) of this section, the provisions of this section shall not, prior to July 1, 1948, affect the term or tenure of office (including any office held under temporary promotion) of any commissioned officer of the Service in office upon the date of the enactment of this Act.]

Comments of Executive Departments and Agencies

Executive Office of the President,
Office of Management and Budget,
Washington, D.C., December 12, 1974.

Hon. Peter W. Rodino, Jr.,
Chairman, Committee on the Judiciary, House of Representatives,
Washington, D.C.

Dear Mr. Chairman: This is in reply to your letter of October 17, 1974 to me requesting an expression of my views concerning S. 3957, entitled "To terminate certain authorities with respect to national emergencies still in effect, and to provide for orderly implementation and termination of future national emergencies." It also responds to a similar letter of September 27, 1974, concerning H.R. 16668 and H.R. 16743, two related bills.

S. 3957 was introduced in the Senate as a result of the studies conducted by the Senate Select Committee on National Emergencies and Delegated Emergency Powers. It was reported by the Chairman of the Senate Committee on Government Operations, without amendment and without hearings.

Subsequently, representatives of this Office, the Department of Justice, and other agencies of the Executive Branch worked with staff members of the Senate in the preparation of an amendment in the form of a substitute for S. 3957, as reported. That substitute, with one unacceptable provision, was passed by the Senate and is now before your Committee.

Section 202(a) and (b) clearly contemplate that any of the national emergencies declared by the President will continue until terminated by him or by concurrent resolution of the Congress. This accurately reflects the approach agreed upon in discussions with the Senate staff, as described above. However, Section 202(c) injects, presumably as a technical error, the concept that a concurrent resolution could be considered to continue as well as terminate a national emergency. We strongly urge that this subsection be modified by deleting any reference to continuation of national emergencies by concurrent resolution. Such a change, along with any other necessary related technical changes in the subsection, would provide the essential clarification required to make these provisions consistent with those agreed

upon and reflected in Section 202(a) and (b). If modified in the foregoing manner, S. 3957 would be acceptable to the Administration.

The provisions of H.R. 16668 and H.R. 16743 are quite similar to the provisions of S. 3957, as reported in the Senate. Many of the provisions of those bills are objectionable. Those provisions are identified and discussed in the report which the General Counsel of the Department of the Treasury sent you on November 12, 1974. We associate ourselves with the views expressed in that report and recommend against the enactment of either H.R. 16668 or H.R. 16745, as introduced.

Sincerely,

ROY L. ASH, *Director.*

THE GENERAL COUNSEL OF THE TREASURY,
Washington, D.C., November 12, 1974.

Hon. PETER W. RODINO, JR.,
Chairman, Committee on the Judiciary,
House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: Reference is made to your requests for the views of this Department on H.R. 16668, H.R. 16743, and S. 3957, similar bills, "National Emergencies Act."

H.R. 16668 would terminate all national emergencies in effect at the time of its enactment. H.R. 16743 and S. 3957 would both terminate all powers and authorities bestowed upon governmental bodies due to past national emergencies, although S. 3957 would exempt certain statutes from the application of its provisions. All three bills would establish procedures for Presidential declarations of future national emergencies. H.R. 16668 and H.R. 16743 would provide for the automatic termination of such emergencies after 180 days, absent Congressional action, while S. 3957 would require Congress to meet within six months after the declaration of such an emergency to determine whether such emergency should be terminated by concurrent resolution.

H.R. 16668, H.R. 16743, and S. 3957 are variations of the "National Emergencies Act" prepared by the Senate Special Committee on the Termination of the National Emergency following hearings pertaining to the desirability of repealing existing national emergencies. No hearings have been held, however, on any version of the "National Emergencies Act."

The provisions of both H.R. 16668 and H.R. 16743 are of serious concern to this Department. S. 3957, on the other hand, would present few problems. The major objections of the Department relate to those provisions in section 8 of H.R. 16668 and in section 601 of H.R. 16743 which would repeal 12 U.S.C. 95 and 12 U.S.C. 95a (section 5(b) of the Trading with the Enemy Act). The Department opposed the repeal of these statutes in its report to the Senate Special Committee on the Termination of the National Emergency and continues to be opposed.

12 U.S.C. 95 relates to limitations and restrictions on the business of members of the Federal Reserve System "during such emergency period as the President ... may prescribe". The section was enacted

March 9, 1933, and had specific reference to declaration of the "bank holiday" proclaimed by the President on March 6, 1933. The statute, although passed to ratify the action of the President in closing the banks, is not obsolete. The language of the section invests the Executive with the authority to regulate or suspend the activities of all banks that are members of the Federal Reserve System—which would include all national banks—during an emergency. The Department is of the opinion that the authority to so act in times of financial crisis is necessary. Thus, 12 U.S.C. 95 should be retained as an emergency statute, as would be allowed by S. 3957.

12 U.S.C. 95a, which embodies section 5(d) of the Trading with the Enemy Act, provides for the regulation by the President during periods of war or national emergency of banking transactions, gold and silver activities, transactions in foreign exchange, and the exercise of rights in property subject to American jurisdiction in which foreign nationals have an interest. Section 5(b) of the Trading with the Enemy Act is also codified in 50 U.S.C. App. 5(b). Under the authority of section 5(b), regulations have been issued under which controls are maintained in implementation of existing policies with respect to North Korea, North Vietnam, and Cuba, and some $80 million of Chinese assets have been frozen in order to be available in the settlement of claims of American citizens for the expropriation of their property in mainland China.

The Department believes that section 5(b) of the Trading with the Enemy Act is not obsolete and not only should not be repealed, but should be excluded from the provisions of the bills as a whole, as is provided by S. 3957. Section 5(b) should be available to deal with financial emergencies which may arise in the future.

Furthermore, inclusion of section 5(b) under section 2 of H.R. 16668 and under section 101 of H.R. 16743 would seriously affect the negotiating position of the United States with regard to the existing controls, discussed previously, which regulate transactions with several foreign countries and their nationals and which freeze significant amounts of Chinese and Cuban assets to be held for an eventual settlement of the claims of United States citizens whose property in Communist China and Cuba has been seized without compensation. In this regard, it also appears that constitutional problems might arise with respect of the validity of continued blockings of assets of foreign countries when all national emergencies or authorities thereunder have been terminated, as the bills contemplate. We believe that no definitive Congressional action should be effected with respect to section 5(b) through the vehicle of any of these bills. It is essential that before any action is taken the appropriate committees closely study its potential impact on section 5(b) of the Trading with the Enemy Act. S. 3957 would exempt section 5(b) from its provisions and would enable such a study to be made, thus satisfying our objections.

There are several other problems with H.R. 16668 and H.R. 16743 which also seriously concern the Department. Section 2 of H.R. 16668 would terminate all national emergencies in effect on the date of enactment, which we understand to be four in number, 270 days after enactment, and section 101 of H.R. 16743 would terminate all powers and authorities possessed by the Executive branch due to such emergencies within the same period. This nine month period was intended

to give the Committees of the Congress an opportunity to enact into permanent legislation those existing programs which the Congress decides should be preserved. S. 3957 provides for a one year period to be used for the same purpose.

The Department feels that nine months, or even one year, is much too brief a time for the Congress to deal with the significant problems which might arise with respect to those statutes appropriately covered by the bills. For example, American importers have relied extensively on the practice of warehousing merchandise in Customs bonded warehouses for periods in excess of the initial statutory periods afforded by sections 491, 557, and 559 of the Tariff Act of 1930. Such extensions have been made possible by Customs regulations authorized by Proclamation 2948 which President Truman issued under the authority of section 318 on the Tariff Act of 1930 (19 U.S.C. 1318), an emergency statute. Due to the extensive reliance on these Customs regulations in the past, a statutory replacement for the existing authority conferred on this Department by Proclamation 2948 will be recommended. However, given the nature of the legislative process and the multitude of other legislative programs of current importance, it is unlikely that the grace periods provided by these bills would be sufficiently long for the enactment of such legislation. Consequently, the Department recommends that the grace periods in all three bills be substantially lengthened.

Section 5 of H.R. 16668 and section 402 of H.R. 16743, dealing with future national emergencies, would provide that such emergencies are automatically terminated six months after declaration unless continued to a specified date by concurrent resolutions. Section 5 of H.R. 16668 would further provide that no concurrent resolution extending the termination date of a national emergency shall be valid if agreed to more than ten days before the original expiration date. The Department believes that these termination provisions are undesirable. Instead, it would be preferable to adopt the termination procedure of S. 3957, which provides that future emergencies proclaimed by the President to deal with the highly significant national and international problems justifying such a declaration of national emergency should continue unless declared terminated by a concurrent resolution of the Congress or by a Presidential proclamation.

Section 6 of H.R. 16668 would provide for the recordation of rules and regulations promulgated during a national emergency by the Executive and for the transmission of such rules and regulations to the Congress at the end of such emergency. Section 501 of H.R. 16743 would provide that orders as well as rules and regulations should be transmitted to the Congress as soon as practicable after issuance. Section 501 of S. 3957 would provide that only significant orders as well as rules and regulations be transmitted to Congress promptly. The Department agrees with the principle of these sections; indeed, virtually all such documents of general applicability are in fact published in the Federal Register. However, as drafted, section 501 of H.R. 16743 is so broad as to require every minute action taken under emergency powers to be reported in this fashion, including those with no policy significance whatsoever. This would impose an unworkable burden without commensurate benefit on the Executive branch.

In addition to the above, the Department would like to make the following technical comments: (1) It would appear that the word "if" should be deleted from the fifth line of section 403(a) of H.R. 16743 as superfluous. (2) Section 8 of H.R. 16668 and section 601 of H.R. 16743 list as being repealed 50 U.S.C. 9(e), which does not seem to exist. (3) Although all three bills refer to "12 U.S.C. 95(a)", the correct citation for the section is "12 U.S.C. 95a". (4) H.R. 16668 and H.R. 16743 would repeal certain sections of the United States Code which have not been codified into statutory law and are merely prima facie evidence of such law. To the extent that the law in these fields should be repealed, it would be preferable for the language of the bills to refer to the basic statutes which are involved.

As a result of the above, the Department has strong objections to H.R. 16668 and H.R. 16743 as drafted. S. 3957, however, would satisfactorily deal with all the aforementioned problems which this Department has with the other two bills. Consequently, the Department recommends favorable consideration of S. 3957 in lieu of action on H.R. 16668 or H.R. 16743.

The Department has been advised by the Office of Management and Budget that there is no objection from the standpoint of the Administration's program to the submission of this report to the Committee.

Sincerely yours,

RICHARD R. ALBRECHT,
General Counsel.

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE,
Washington, D.C., December 24, 1974.

Hon. PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary,
House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to your request for an expression of the views of the Department of Defense on S. 3957, 93rd Congress, an Act "To terminate certain authorities with respect to national emergencies still in effect, and to provide for orderly implementation and termination of future national emergencies."

Although the Department of Defense participated in comprehensive studies of legislation relating to existing emergencies, no formal hearings were held in the Senate on S. 3957, and the Department of Defense did not have an opportunity to make known its views on the bill itself before action by the Senate. For this reason it is hoped that the comments expressed herein will be carefully considered by your Committee. In the event you plan to hold hearings and desire the appearance of a representative of this Department, I would be pleased to make one available.

S. 3957 would terminate, one year after its enactment, any authority conferred on an executive or other federal agency by law or executive order as a result of the existence of a state of national emergency on the day before the termination date. The bill would authorize the President, upon certain findings, to proclaim the existence of a future national emergency but would require the proclamation to be transmitted to Congress and published in the Federal Register. Such a future national emergency would terminate upon a concurrent resolu-

tion by Congress or by a proclamation of the President. Thus a future national emergency could be terminated by either Congress or the President.

As a prerequisite to the exercise of any powers or authorities made available by statute for use in the event of an emergency, the bill would require the President to specify the provisions of law under which he or other officials of the Government propose to act.

Enumeration of such powers and authorities would be required to be transmitted to Congress and published in the Federal Register. Further, the President would be required to maintain a file and index of all significant presidential orders and proclamations and each federal agency would be required to maintain a file or index of all rules and regulations issued during future national emergencies. Copies of all such presidential and federal agency issuances would be required to be transmitted to Congress promptly.

World and national conditions have changed since President Truman officially proclaimed the state of national emergency in 1950 incident to the commencement of hostilities in Korea. Many authorities which were used then for the first time were regarded as extraordinary. Since then, experience has demonstrated a need for these authorities in the regular conduct of the day-to-day operations of the Department of Defense. The desirability of terminating existing states of emergency is recognized and no objection to their termination is entertained by the Department of Defense. However, there are certain continuing needs, outlined below, which are accommodated by the existing national emergency proclaimed by President Truman in 1950 but which are not specifically provided for in S. 3957 as passed in the Senate.

First, there are 981 members of the armed forces who are still missing as a result of their participation in the recent hostilities in Southeast Asia. Although the Department of Defense is making every effort to resolve the uncertain status of these men, several factors have hampered this effort so that it is not possible to predict the exact date by which their status will be finally determined. One of these factors is the decree of a federal courts in a case styled *McDonald* v. *McLucas*, U.S.D.C., S.D.N.Y., 73 Civ. 3190, which precludes the Secretaries of the military departments from changing the status of those now classified as missing in action to killed in action until the primary next of kin are afforded an opportunity to attend a hearing with counsel to present whatever evidence they deem relevant and to examine service files. Petition for review of this decision is now pending before the U.S. Supreme Court. In the meantime only the emergency authority of 10 U.S. Code 3313, 6386(c) and 8313 authorizes the suspension of mandatory separation and retirement requirements which would otherwise be applicable to allow some of these members to remain in the armed forces until they return or are accounted for.

Whether or not their situation is viewed as warranting continuation of a national emergency, it would be inequitable to force their separation or retirement while they are in a missing status.

In the field of personnel administration, the emergency authority of 10 U.S.C. 3444 and 8444 has been used to grant relief, by way of temporary appointments, to officers in the chaplain, judge advocate and medical fields who, because of constructive service credit in their

specialties, are considered for permanent promotion earlier than their line officer counterparts and whose separation for failure of promotion might become mandatory under conditions inconsistent with the needs of the armed forces or fairness to the officers. Legislation which would, among other things, provide a solution in permanent law for this problem has been introduced at the request of the Department of Defense in the House of Representatives (H.R. 12405 and H.R. 12505) and hearings have begun on both of the bills involved. However, the legislative changes which these bills would effect are so extensive that it would not be realistic to expect enactment in this Congress or early in the next.

In addition to these problems which would result from allowing the emergency authority now provided by 10 U.S.C. 3444 and 8444 to lapse, the President, as commander in chief of the armed forces, would have no authority to grant temporary appointments to truly exceptional officers of the Army or Air Force. For example, the President used this authority to extend a temporary appointment to the next higher grade to the Air Force astronauts who successfully completed suborbital or orbital flights. Continuation of this latitude is needed so that exceptional individual contributions can still be recognized through temporary appointments.

Termination of emergency authority under 10 U.S.C. 3444 and 8444 would also deny to the Army and Air Force the only authority available in some cases to appoint alien doctors as officers to meet increasingly critical shortages of military medical personnel.

Termination of the 1950 national emergency would also terminate entitlement to disability retirement or separation benefits under 10 U.S.C. 1201 and 1203 for members with less than 8 years of service whose disability, although incurred in line of duty while on active duty, was not the proximate result of the performance of active duty. Imposition of this limitation—which would affect only the junior officers and enlisted men—is particularly untimely when the armed forces are endeavoring to meet their manpower needs through voluntary means. Continuation of the authority to retire or separate military personnel with less than 8 years of service who become unfit for further service by reason of a disability incurred while in line of duty, is needed as part of the military disability system.

Termination of the national emergency would also terminate the authority of the Department of Defense (and certain other agencies) under Public Law 85–804 (50 U.S.C. 1431–1435) to correct mistakes in contracts, to formalize informal commitments, to indemnify contractors against losses or claims resulting from unusually hazardous risks to which they might be exposed during the performance of a contract and for which insurance, even if available, would be prohibitively expensive, and to grant other extraordinary contractual relief. The Commission on Government Procurement, established by Public Law 91–129, has recommended that the authorizations of P.L. 85–804 be made available generally rather than being dependent upon the existence of a state of war or national emergency. But, here also, enactment of the Commission's recommendation in the near future does not appear likely.

S. 3957 would adversely affect defense contracting in another way, that is, in denying the emergency exception to the requirement for

advertising procurements not otherwise authorized to be negotiated. Cf. 10 U.S.C. 2304(a)(1). This exception is now narrowly limited in its application by the pertinent Armed Services Procurement Regulation (32 CFR 3.201), but its application affects major social and economic policies—the policies to favor labor surplus and disaster areas and small business and to achieve a balance of payments favorable to the United States.

Continuation of several emergency authorities governing personnel administration in the naval service is also needed. These authorities include 10 U.S.C. 5231(c), which suspends existing limitations on the number of admirals and vice admirals of the Navy. If this authority is not continued, the Navy would lose approximately one half of its three- and four-star admirals. Similarly, 10 U.S.C. 5232(b) suspends existing limitations on lieutenant generals of the Marine Corps. If this authority is not continued, the Marine Corps would lose five of the currently authorized seven lieutenant generals. Section 5711(b) of title 10 authorizes the suspension of the statutory limit of 5% below-the-zone selections specified in section 5707(c). Continuation of the authority provided in 10 U.S.C. 5785(b) is needed to suspend time-in-grade Navy and Marine Corps requirements for promotion to all grades except lieutenant and lieutenant commander. The statute is also the authority for suspension of the mandatory line fraction for promotion of staff corps officers. Section 5787 of title 10 provides for temporary promotions in the Navy. Failure to retain this authority would require approximately 650 limited duty officers in the grade of lieutenant commander to revert to the grade of lieutenant. Discontinuance of this authority would also require Senate confirmation of all promotions to lieutenant (junior grade).

In view of the need for continuation of the authorities referred to above, the Department of Defense recommends that any legislation terminating emergency powers except the cited statutes from its effect to preserve the substantive provisions which are now needed but which would be lost by termination of the 1950 national emergency.

In general, the Department of Defense is in accord with the S. 3957 goal of repealing obsolete or unnecessary emergency laws. Therefore, subject to the foregoing reservations and recommendations, this Department does not object to enactment of S. 3957.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the submission of this letter for the consideration of the Committee.

Sincerely,

MARTIN R. HOFFMANN.

DEPARTMENT OF STATE,
Washington, D.C., November 27, 1974.

Hon. PETER W. RODINO, Jr.,
Chairman on the Judiciary,
House of Representatives.

DEAR MR. CHAIRMAN: I have been asked to reply to your letter of October 17 to the Secretary of State requesting views on S. 3957, a bill "To terminate certain authorities with respect to national emergencies still in effect, and to provide for orderly implementation and termination of future national emergencies."

The Department of State has no objection to S. 3957 as passed by the Senate following amendments to the bill reported out of Senate Committee.

The Office of Management and Budget advises that from the standpoint of the Administration's program there is no objection to the submission of this report.

Cordially,

LINWOOD HOLTON,
Assistant Secretary, for Congressional Relations.

UNITED STATES OF AMERICA,
GENERAL SERVICES ADMINISTRATION,
Washington, D.C., November 12, 1974.

Hon. PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Your letter of October 2, 1974, requested the views of the General Services Administration on H.R. 16668 and H.R. 16743, bills concerning the termination of national emergencies and certain authorities with respect thereto.

We attach a copy of a letter dated March 11, 1974, to Hon. Sam J. Ervin, Jr., Chairman of the Senate Committee on Government Operations, reviewing statutory authorities that would be affected by a termination of the current state of national emergency. Of particular concern to us are the authorities described under the heading "II. Statutes That Should be Designated as Essential to the Regular Functioning of the Government."

We continue to support fully the views expressed in our letter to Senator Ervin.

By letter dated October 17, 1974, you requested our views on S. 3957, a similar bill which, as passed by the Senate on October 7, 1974, includes a section 602 stating that the provisions of the Act shall not apply to certain listed provisions of law and the powers and authorities conferred thereby. This section preserves the authorities which are of primary concern to GSA. Accordingly, we support the Senate-passed bill in principle, and we strongly urge that your Committee take similar action respecting any bill on the subject which it may report.

We note with some concern, however, that section 202(c)(1) of S. 3957, by referring to a concurrent resolution "to continue" a national emergency, could be interpreted to require Congressional approval in order for a national emergency to continue beyond six months. We believe that section 202 should be revised to permit the continuance of a national emergency beyond six months if the Congress has not approved a resolution discontinuing it. Otherwise, if the Congress failed to take action one way or the other under the existing provisions within six months, the status of the national emergency and the statutory authorities activated by it would be placed in doubt and could result in unnecessary, lengthy, and burdensome litigation.

The Office of Management and Budget has advised that, from the standpoint of the Administration's program, there is no objection to the submission of this report to your Committee.

Sincerely,

LARRY F. ROUSH,
Acting Assistant Administrator.

Enclosure.

UNITED STATES DEPARTMENT OF COMMERCE,
THE ASSISTANT SECRETARY FOR MARITIME AFFAIRS,
Washington, D.C., April 1, 1975.

Hon. PETER W. RODINO,
Chairman, Committee on the Judiciary,
House of Representatives,
Washington, D.C.

Attention Mr. William P. Shattuck.

DEAR MR. CHAIRMAN: This is in reply to your oral request for information with respect to section 9 of the Merchant Ship Sales Act of 1946 (50 U.S.C. App. 1742) which would be repealed by section 601(g) of H.R. 3884.

The purpose of the Merchant Ship Sales Act of 1946 (50 U.S.C. App. 1735 et seq.) was to authorize the sale of several thousand merchant ships of various types which had been built by or for the account of the United States Government during the period January 1, 1941 and September 2, 1945 to provide logistical support to the Armed Forces during World War II. It was a surplus property disposal statute. Sales were authorized under the statute both to citizens of the United States and to aliens. The statute provided a formula by which he fixed sales prices of each type of vessel was to be ascertained. The fixed prices at which each vessel was to be sold was 50 percent of the "prewar domestic cost" was designed as the amount, as determined by the United States Maritime Commission, for which a vessel of that type could have been constructed on or about January 1, 1941. The sales authority under the Act expired on January 15, 1951.

Between January 1, 1941 and March 8, 1946 (the date of enactment of the Act), the United States Maritime Commission had sold, under other legislation, certain vessels built during the same period to citizens of the United States and had contracted to sell other vessels to such citizens the building of which was contracted for during this same period at prices considerably in excess of the prices at which the same vessels would be sold under the Act. These vessels that were sold prior to the date of enactment of the Act, nevertheless, would operate in competition with vessels sold under that statute. As a matter of fairness, and to equalize the competitive position of these vessels sold prior to the date of enactment of the Act with that of vessels sold under that statute, section 9 provided for an adjustment of the price of such vessels sold before is enactment so that the cost of such vessels to their owners would be the same as though the vessel had been purchased under the Merchant Ship Sales Act of 1946.

To qualify for the adjustment, however, the owners of such vessels were required by section 9 to apply within 60 days after the date on

which the United States Maritime Commission published in the Federal Register the applicable "prewar domestic costs" under the Act. Such costs were published within a few months after the date of enactment of the statute. The time within which to apply for an adjustment has long since expired. All such applications have long ago been processed and there is no litigation outstanding with respect to any of them.

One of the conditions that any applicant for an adjustment had to agree to was that if the United States requisitioned the use of his vessel during the national emergency declared by President Roosevelt on May 27, 1941, the compensation to be paid for such use would not exceed 15 percent per annum of the fixed price at which the vessel would have been sold under the Merchant Ship Sales Act of 1946. This emergency was terminated by the Act of July 25, 1947 (P.L. 239, 80th Congress; 61 Stat. 449).

Section 9 of the Merchant Ship Sales Act of 1946 is now a nullity. It does not now provide authority to do anything and no future proclamation of a national emergency would provide any authority under it. Repeal of the section, therefore, is unrelated to the purpose of H.R. 3884.

Sincerely,

ROBERT J. BLACKWELL,
Assistant Secretary for Maritime Affairs.

APPENDIX

I

Provisions of law deleted or repealed by section 601(a) (renumbered by committee amendment as section 501(a)) of the bill.

1. Paragraph 10 of section 349(a) of the Immigration and Nationality Act (8 U.S.C. 1481(a)).

Paragraph 10 provides for expatriation for persons remaining outside the jurisdiction of the United States in time of war or national emergency to evade service in the military, Air or Naval Forces of the United States. Paragraph 10 is shown below in italics, with the other relevant portions of section 349, as set out as section 1481 of Title 8, United States Code:

§ 1481. LOSS OF NATIONALITY BY NATIVE-BORN OR NATURALIZED CITIZEN; VOLUNTARY ACTION; BURDEN OF PROOF; PRESUMPTIONS.

(a) From and after the effective date of this chapter a person who is a national of the United States whether by birth or naturalization, shall lose his nationality by—

* * * * * * *

(10) departing from or remaining outside of the jurisdiction of the United States in time of war or during a period declared by the President to be a period of national emergency for the purpose of evading or avoiding training and service in the military, air, or naval forces of the United States. For the purposes of this paragraph failure to comply with any provision of any compulsory service laws of the United States shall raise the presumption that the departure from or absence from the United States was for the purpose of evading or avoiding training and service in the military, air, or naval forces of the United States.

(b) Any person who commits or performs any act specified in subsection (a) of this section shall be conclusively presumed to have done so voluntarily and without having been subjected to duress of any kind, if such person at the time of the act was a national of the state in which the act was performed and had been physically present in such state for a period or periods totaling ten years or more immediately prior to such act.

(c) Whenever the loss of United States nationality is put in issue in any action or proceeding commenced on or after September 26, 1961 under, or by virtue of, the provisions of this chapter or any other Act, the burden shall be upon the person or party claiming that such loss occurred, to establish such claim by a preponderance of the evidence. Except as otherwise provided in subsection (b) of this section, any person who commits or performs, or who has committed or performed, any act of expatriation under the provisions of this chapter or any

other Act shall be presumed to have done so voluntarily, but such presumption may be rebutted upon a showing, by a preponderance of the evidence, that the act or acts committed or performed were not done voluntarily.

2. Subsection 601(b) of the bill deletes paragraph 4 of section 2667 (b) of Title 10.

Paragraph 4 provides that leases of non-excess property of a military department must contain a provision making the lease revocable by the Secretary during a national emergency declared by the President. That paragraph shown in italics, together with relevant portions of section 2667 of Title 10, is as follows:

§ 2667. LEASES: NON-EXCESS PROPERTY.

(a) Whenever the Secretary of a military department considers it advantageous to the United States, he may lease to such lessee and upon such terms as he considers will promote the national defense or be in the public interest, real or personal property that is—

(1) under the control of that department;
(2) not for the time needed for public use; and
(3) not excess property, as defined by section 472 of title 40.

(b) A lease under subsection (a)—

(1) may not be for more than five years, unless the Secretary concerned determines that a lease for a longer period will promote the national defense or be in the public interest;

(2) may give the lessee the first right to buy the property if the lease is revoked to allow the United States to sell the property ununder any other provision of law;

(3) must permit the Secretary to revoke the lease at any time, unless he determines that the omission of such a provision will promote the national defense or be in the public interest;

(4) must be revocable by the Secretary during a national emergency declared by the President; and

(5) may provide, notwithstanding section 303b of title 40 or any other provision of law, for the maintenance, protection, repair, or restoration, by the lessee, of the property leased, or of the entire unit or installation where a substantial part of it is leased, as part or all of the consideration for the lease.

(c) This section does not apply to oil, mineral, or phosphate lands.

(d) Money rentals received by the United States directly from a lease under this section shall be covered into the Treasury as miscellaneous receipts. Payments for utilities or services furnished to the lessee under such a lease by the department concerned may be covered into the Treasury to the credit of the appropriation from which the cost of furnishing them was paid.

(e) The interest of a lessee of property leased under this section may be taxed by State or local governments. A lease under this section shall provide that, if and to the extent that the leased property is later made taxable by State or local governments under an act of Congress, the lease shall be renegotiated.

3. Subparagraph (c) of Section 601 repeals a joint resolution approved August 8, 1947 (12 U.S.C. 249) concerning the regulation of consumer credit. This act ended consumer credit control under a

war time executive order as of November 1, 1947, with an exception that the authority could be exercised during war or national emergency after the effective date of the act. The act set out as Section 249 of Title 12, United States Code, is as follows:

§ 249. REGULATION OF CONSUMER CREDIT.

After November 1, 1947, the Board of Governors of the Federal Reserve System shall not exercise consumer credit controls pursuant to Executive Order Numbered 8843, and no such consumer credit controls shall be exercised after such date except during the time of war beginning after August 8, 1947, or any national emergency declared by the President after August 8, 1947.

4. Subsection (d) of Section 601 repeals Section 5(m) of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831d(m).

Subsection (m) bars the sale of products except Ferrophosphorus outside the United States and possessions except as to the United States Government for military use or to its allies in the case of war or until six months after termination of the Korean emergency, with further restrictions. That section as set out as subsection (m) of Section 831d of Title 16, United States Code, is as follows:

§ 831d. DIRECTORS; MAINTENANCE AND OPERATION OF PLANT FOR PRODUCTION, SALE, AND DISTRIBUTION OF FERTILIZER AND POWER.

* * * * * * *

(m) No products of the Corporation except ferrophosphorus shall be sold for use outside of the United States, its Territories and possessions, except to the United States Government for the use of its Army and Navy, or to its allies in case of war or, until six months after the termination of the national emergency proclaimed by the President on December 16, 1950, or until such earlier date or dates as the Congress by concurrent resolution or the President may provide but in no event after April 1, 1953, to nations associated with the United Sates in defense activities.

5. Subsection (e) of Section 601 repeals the provisions of Section 1383 of Title 18 concerning restrictions on military areas and zones.

This is a criminal statue providing penalties for persons entering, remaining in, leaving or commiting any act in a military area or military zone. Section 1383 of Title 18, United States Code is as follows:

§ 1383. RESTRICTIONS IN MILITARY AREAS AND ZONES.

Whoever, contrary to the restrictions applicable thereto, enters, remains in, leaves, or commits any act in any military area or military zone prescribed under the authority of an Executive order of the President, by the Secretary of the Army, or by any military commander designated by the Secretary of the Army, 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 fined not more than $5,000 or imprisoned not more than one year, or both.

6. Subsection (f) of Section 601 strikes subsections (b) (c) (d) (e) and (f) of Section 6 of the Act of February 28, 1948, an amendment to the Public Health Service Act concerning the promotion of commissioned officers of the Public Health Service. (Feb. 28, 1948, ch. 83, § 6(b-f), 62 Stat. 45, 42 U.S.C. 211b).

The provisions repealed by the bill are obsolete.

The subsections, set out as section 211b of Title 42 are as follows:

§ 211b. PROMOTION OF COMMISSIONED OFFICERS.

(a) *Temporary promotions prior to July 1, 1948.*—Except as provided in the third and fourth paragraphs of this section, no promotion shall be made under section 211 of this title, prior to July 1, 1948. Until that date officers of the Regular Corps may receive temporary promotions to higher grades with the pay and allowances thereof pursuant to section 211(a)(1) of this title, in force prior to February 28, 1948, notwithstanding the termination, prior to such date, of the war and of the national emergencies proclaimed by the President. Any officer holding, on June 30, 1948, an appointment pursuant to such section to a higher temporary grade shall continue in such grade until such appointment is terminated, as the President may direct.

(b) *Service credit.*—Effective as of February 28, 1948, each officer of the Regular Corps on such date, in addition to the credit he has under preexisting legislation for purposes of promotion, shall be credited with three years of service.

(c) *Promotion based on years of service; effective date; examination; service credit.*—Officers of the Regular Corps who have, or who on or before July 1, 1948, will have, the years of service prescribed in paragraph (2) of section 211(d) of this title, for promotion to the senior assistant, full, or senior grade, shall be recommended to the President for such promotion, to be effective as of July 1, 1948, whether or not vacancies exist in such grade. Such promotions shall be made without examination, except that no promotions shall be made to the senior grade or any grade immediately below a restricted grade until the officer is found qualified for promotion pursuant to subsection (c) of section 211 of this title. No promotion shall be made pursuant to this paragraph to any grade in any professional category if such grade has been made a restricted grade pursuant to subsection (b) of section 211 of this title. For purposes of seniority an officer promoted under this paragraph shall be credited with the years of service in the grade to which promoted equal to the excess of his years of service on the date of promotion over the years of service required for promotion to such grade under paragraph (2) of section 211(d) of this title.

Officers in the junior assistant grade in the Regular Corps who have, or who on or before July 1, 1948, will have four or more years of service in the junior assistant grade, shall be recommended to the President for promotion to the assistant grade, to be effective as of July 1, 1948, without examination and whether or not vacancies exist in such grade. For purposes of promotion and seniority in grade, an officer promoted under this paragraph shall be credited with the years of servic qual to the excess of his years of service on the date of promotion over four years.

(d) *Service for purpose of seniority.*—For purposes of seniority, any officer of the Regular Corps of the Public Health Service on February 28, 1948, shall be considered as having had service in the grade which he holds on such date equal to the excess of the service credited to him for promotion purposes over the length of service required under section 211(d)(2) of this title, for promotion to such grade.

(e) *Term or tenure of office unaffected prior to July 1, 1948.*—Except as provided in the third and fourth paragraphs of this section, the provisions of this section shall not, prior to July 1, 1948, affect the term or tenure of office (including any office held under temporary promotion) of any commissioned officer of the Service in office upon February 28, 1948.

7. Subsection (g) of Section 601 repeals Section 9 of the 1946 Merchant Ship Sales Act (50 App. U.S.C. 1742). This section of the sales act concerns price adjustment to prior sales to citizens. The committee has been advised that the section is now a nullity, and that it does not now provide authority to do anything and no future proclamation of a national emergency would provide any authority under it. The provisions of that section as set out as Section 1742 of Title 50, United States Code, are as follows:

§.1742. PRICE ADJUSTMENT ON PRIOR SALES TO CITIZENS.

(a) *Form, manner, and time of application.*—A citizen of the United States who on the date of the enactment of this Act [March 8, 1946]—

(1) owns a vessel which he purchased from the Commission prior to such date, and which was delivered by its builder after December 31, 1940; or

(2) is party to a contract with the Commission to purchase from the Commission a vessel, which has not yet been delivered to him; or

(3) owns a vessel on account of which a construction-differential subsidy was paid, or agreed to be paid, by the Commission under section 504 of the Merchant Marine Act, 1936, as amended [section 1154 of Title 46], and which was delivered by its builder after December 31, 1940; or

(4) is party to a contract with a shipbuilder for the construction for him of a vessel, which has not yet been delivered to him, and on account of which a construction-differential subsidy was agreed, prior to such date, to be paid by the Commission under section 504 of the Merchant Marine Act, 1936, as amended [section 1154 of Title 46],

shall, except as hereinafter provided, be entitled to an adjustment in the price of such vessel under this section if he makes application therefor, in such form and manner as the Commission may prescribe, within sixty days after the date of publication of the applicable prewar domestic costs in the Federal Register under section 3(c) of this Act [section 1736(c) of this Appendix]. No adjustment shall be made under this section in respect of any vessel the contract for the construction of which was made after September 2, 1945, under the provisions of title V [subchapter V of chapter 27 of Title 46] (including section 504 [section 1154 of Title 46]) or title VII of the Merchant Marine Act, 1936, as amended [subchapter VII of chapter 27 of Title 46].

(b) *Determination of amount.*—Such adjustment shall be made, as hereinafter provided, by treating the vessel as if it were being sold to the applicant on the date of the enactment of this Act [March 8, 1946], and not before that time. The amount of such adjustment shall be determined as follows:

(1) The Commission shall credit the applicant with the excess of the cash payments made upon the original purchase price of the vessel over 25 per centum of the statutory sales price of the vessel as of such date of enactment [March 8, 1946]. If such payment was less than 25 per centum of the statutory sales price of the vessel, the applicant shall pay the difference to the Commission.

(2) The applicant's indebtedness under any mortgage to the United States with respect to the vessel shall be adjusted.

(3) The adjusted mortgage indebtedness shall be in an amount equal to the excess of the statutory sales price of the vessel as of the date of the enactment of this Act [March 8, 1946] over the sum of the cash payment retained by the United States under paragraph (1) plus the readjusted trade-in allowance (determined under paragraph (7)) with respect to any vessel exchanged by the applicant on the original purchase. The adjusted mortgage indebtedness shall be payable in equal annual installments thereafter during the remaining life of such mortgage with interest on the portion of the statutory sales price remaining unpaid at the rate of 3½ per centum per annum.

(4) The Commission shall credit the applicant with the excess, if any, of the sum of the cash payments made by the applicant upon the original purchase price of the vessel plus the readjusted trade-in allowance (determined under paragraph (7)) over the statutory sales price of the vessel as of the date of the enactment of this Act [March 8, 1946] to the extent not credited under paragraph (1).

(5) The Commission shall also credit the applicant with an amount equal to interest at the rate of 3½ per centum per annum (for the period beginning with the date of the original delivery of the vessel to the applicant and ending with the date of the enactment of this Act [March 8, 1946]) on the excess of the original purchase price of the vessel over the amount of any allowance allowed by the Commission on the exchange of any vessel on such purchase; the amount of such credit first being reduced by any interest on the original mortgage indebtedness accrued up to such date of enactment and unpaid. Interest so accrued and unpaid shall be canceled.

(6) The applicant shall credit the Commission with all amounts paid by the United States to him as charter hire for use of the vessel (exclusive of service, if any, required under the terms of the charter) under any charter party made prior to the date of the enactment of this Act [March 8, 1946], and any charter hire for such use accrued up to such date of enactment and unpaid shall be canceled; and the Commission shall credit the applicant with the amount that would have been paid by the United States to the applicant as charter hire for bare-boat use of vessels exchanged by the applicant on the original purchase (for the period beginning with date on which the vessels so exchanged were delivered to the Commission and ending with the date of the enactment of this Act [March 8, 1946]).

(7) The allowance made to the applicant on any vessel exchanged by him on the original purchase shall be readjusted so

as to limit such allowance to the amount provided for under section 8 [section 1741 of this Appendix].

(8) There shall be subtracted from the sum of the credits in favor of the Commission under the foregoing provisions of this subsection the amount of any overpayments of Federal taxes by the applicant resulting from the application of subsection (c) (1) of this section, and there shall be subtracted from the sum of the credits in favor of the applicant under the foregoing provisions of this subsection the amount of any deficiencies in Federal taxes of the applicant resulting from the application of subsection (c) (1) of this section. If, after making such subtractions, the sum of the credits in favor of the applicant exceeds the sum of the credits in favor of the Commission, such excess shall be paid by the Commission to the applicant. If, after making such subtractions, the sum of the credits in favor of the Commission exceeds the sum of the credits in favor of the applicant, such excess shall be paid by the applicant to the Commission. Upon such payment by the Commission or the applicant, such overpayments shall be treated as having been refunded and such deficiencies as having been paid. For the purposes of this subsection, the purchase price of a vessel on account of which a construction-differential subsidy was paid or agreed to be paid under section 504 of the Merchant Marine Act, 1936, as amended [section 1154 of Title 46], shall be the net cost of the vessel to the owner.

(c) *Conditions binding on applicant.*—An adjustment shall be made under this section only if the applicant enters into an agreement with the Commission binding upon the citizen applicant and any affiliated interest to the effect that—

(1) depreciation and amortization allowed or allowable with respect to the vessel up to the date of the enactment of this Act [March 8, 1946] for Federal tax purposes shall be treated as not having been allowable; amounts credited to the Commission under subsection (b) (6) of this section shall be treated for Federal tax purposes as not having been received or accrued as income; amounts credited to the applicant under subsection (b) (5) and (6) of this section shall be treated for Federal tax purposes as having been received and accrued as income in the taxable year in which falls the date of the enactment of this Act (March 8, 1946);

(2) the liability of the United States for use (exclusively of service, if any, required under the terms of the charter) of the vessel on or after the date of the enactment of this Act [March 8, 1946] under any charter party shall not exceed 15 per centum per annum of the statutory sales price of the vessel as of such date of enactment [March 8, 1946] and the liability of the United States under any such charter party for loss of the vessel shall be determined on the basis of the statutory sales price as of the date of the enactment of this Act [March 8, 1946], depreciated to the date of loss at the rate of 5 per centum per annum: *Provided*, That the provisions of this subsection (c) (2) [of this section] shall not apply to any such charter party executed on or after the date of enactment of this amendatory provision [August 6, 1956]; and the Secretary of Commerce is directed to modify any adjustment

agreement to the extent necessary to conform to the provisions of this amendatory proviso; and

(3) in the event the United States, prior to the termination of the existing national emergency declared by the President on May 27, 1941, uses such vessel pursuant to a taking, or pursuant to a bare-boat charter made, on or after the date of the enactment of this Act [March 8, 1946], the compensation to be paid to the purchaser, his receivers, and trustees, shall in no event be greater than 15 per centum per annum of the statutory sales price as of such date.

(d) *Applicability of other law.*—Section 506 of the Merchant Marine Act, 1936, as amended [section 1156 of Title 46], shall not apply with respect to (1) any vessel which is eligible for an adjustment under this section, or (2) any vessel described in clause (1), (2), (3), or (4) of subsection (a) of this section, the contract for the construction of which is made after September 2, 1945, and prior to the date of enactment of this Act [March 8, 1946].

II

Section 602(a) of the bill H.R. 3884 (renumbered by committee amendment as section 501(a)) provides that the provisions of the Act will not apply to the listed provisions of law and related powers, authorities and actions thereunder.

1. Clause 1 cites Section 5(b) of the Act of October 6, 1917, The Trading With the Enemy Act, presently set out as 12 U.S.C. 95a and 50 U.S.C. App. 5 (b).

This section concerns the regulation of transactions in foreign exchange of gold and silver, property transfers in which any foreign country or national thereof has an interest and provides for the administration of assets or property. The section as classified to title 12 as section 95a is as follows:

§ 95a. REGULATION OF TRANSACTIONS IN FOREIGN EXCHANGE OF GOLD AND SILVER; PROPERTY TRANSFERS; VESTED INTERESTS, ENFORCEMENT AND PENALTIES.

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

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

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

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

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

(3) As used in this section the term "United States" means the United States and any place subject to the jurisdiction thereof: *Provided, however*, That the foregoing shall not be construed as a limitation upon the power of the President, which is conferred, to prescribe from time to time, definitions, not inconsistent with the purposes of this section, for any or all of the terms used in this section. Whoever willfully violates any of the provisions of this section or of any license, order, rule or regulation issued thereunder, shall, upon conviction, be fined not more than $10,000, or, if a natural person, may be imprisoned for not more than ten years, or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment, or both. As used in this section the term "person" means an individual, partnership, association, or corporation.

2. Clause 2 continues in effect the provisions of Section 673 of Title 10 concerning the call up of the Ready Reserve. The committee amendment would delete this clause from the bill.

§ 673. READY RESERVE.

(a) In time of national emergency declared by the President after January 1, 1953, or when otherwise authorized by law, an authority designated by the Secretary concerned may, without the consent of the persons concerned, order any unit, and any member not assigned to a unit organized to serve as a unit, in the Ready Reserve under the jurisdiction of that Secretary to active duty (other than for training) for not more than 24 consecutive months.

(b) To achieve fair treatment as between members in the Ready Reserve who are being considered for recall to duty without their consent, consideration shall be given to—

(1) the length and nature of previous service, to assure such sharing of exposure to hazards as the national security and military requirements will reasonably allow;

(2) family responsibilities; and

(3) employment necessary to maintain the national health, safety, or interest.

The Secretary of Defense shall prescribe such policies and procedures as he considers necessary to carry out this subsection. He shall report on those policies and procedures at least once a year to the Committees on Armed Services of the Senate and the House of Representatives.

(c) Not more than 1,000,000 members of the Ready Reserve may be on active duty (other than for training), without their consent, under this section at any one time.

3. Clause 3 continues in effect the provisions of the Act of April 28, 1942, set out as 40 U.S.C. 278b. This Act made an exception to the existing provisions of law concerning maximum rental of leases in cases relating to vital leases during a war or national emergency. The Act as set out in section 278b of Title 40, United States Code, is as follows:

§ 278b. SAME; EXCEPTION OF CERTAIN VITAL LEASES DURING WAR OR EMERGENCY.

The provisions of section 278a of this title shall not apply during war or a national emergency declared by Congress or by the President to such leases or renewals of existing leases of privately or publicly owned property as are certified by the Secretary of the Army or the Secretary of the Navy, or by such person or persons as he may designate, as covering premises for military, naval, or civilian purposes necessary for the prosecution of the war or vital in the national emergency.

4. Clause 4 continues in effect the provisions of the Act of June 30, 1949, set out as 41 U.S.C. 252. (Act of June 30, 1949, ch. 288, Title II, § 302, 63 Stat. 393, as amended). The Act provides authority to make purchases, and to make contracts for property and services, and in subsection (c)(1) contains an exception to a requirement of advertising such purchases or contracts where it is determined in the public interest during a period of national emergency declared by the President or by the Congress.

§ 252. PURCHASES AND CONTRACTS FOR PROPERTY.

(a) *Applicability of chapter; delegation of authority.*—Executive agencies shall make purchases and contracts for property and services

in accordance with the provisions of this chapter and implementing regulations of the Administrator; but this chapter does not apply—

(1) to the Department of Defense, the Coast Guard, and the National Aeronautics and Space Administration; or

(2) when this chapter is made inapplicable pursuant to section 474 of Title 40 or any other law, but when this chapter is made inapplicable by any such provision of law, sections 5 and 8 of this title shall be applicable in the absence of authority conferred by statute to procure without advertising or without regard to said section 5 of this title.

(b) *Small business concerns; share of business; advance publicity on negotiated purchases and contracts for property.*—It is the declared policy of the Congress that a fair proportion of the total purchases and contracts for property and services for the Government shall be placed with small business concerns. Whenever it is proposed to make a contract or purchase in excess of $10,000 by negotiation and without advertising, pursuant to the authority of paragraph (7) or (8) of subsection (c) of this section, suitable advance publicity, as determined by the agency head with due regard to the type of property involved and other relevant considerations, shall be given for a period of at least fifteen days, wherever practicable, as determined by the agency head.

(c) *Negotiated purchases and contracts for property; conditions.*—All purchases and contracts for property and services shall be made by advertising, as provided in section 253 of this title, except that such purchases and contracts may be negotiated by the agency head without advertising if—

(1) determined to be necessary in the public interest during the period of a national emergency declared by the President or by the Congress;

(2) the public exigency will not admit of the delay incident to advertising;

(3) the aggregate amount involved does not exceed $2,500;

(4) for personal or professional services;

(5) for any service to be rendered by any university, college, or other educational institutions;

(6) the property or services are to be procured and used outside the limits of the United States and its possessions;

(7) for medicines or medical property;

(8) for property purchased for authorized resale;

(9) for perishable or nonperishable subsistence supplies;

(10) for property or services for which it is impracticable to secure competition;

(11) the agency head determines that the purchase or contract is for experimental, developmental, or research work, or for the manufacture or furnishing of property for experimentation, development, research, or test;

(12) for property or services as to which the agency head determines that the character, ingredients, or components thereof are such that the purchase or contract should not be publicly disclosed;

(13) for equipment which the agency head determines to be technical equipment, and as to which he determines that the pro-

curement thereof without advertising is necessary in special situations or in particular localities in order to assure standardization of equipment and interchangeability of parts and that such standardization and interchangeability is necessary in the public interest;

(14) for property or services as to which the agency head determines that bid prices after advertising therefor are not reasonable (either as to all or as to some part of the requirements) or have not been independently arrived at in open competition: *Provided*, That no negotiated purchase or contract may be entered into under this paragraph after the rejection of all or some of the bids received unless (A) notification of the intention to negotiate and reasonable opportunity to negotiate shall have been given by the agency head to each responsible bidder and (B) the negotiated price is the lowest negotiated price offered by any responsible supplier; or

(15) otherwise authorized by law, except that section 254 of this title shall apply to purchases and contracts made without advertising under this paragraph.

(d) *Bids in violation of antitrust laws.*—If in the opinion of the agency head bids received after advertising evidence any violation of the antitrust laws he shall refer such bids to the Attorney General for appropriate action.

(e) *Exceptions to section.*—This section shall not be construed to (A) authorize the erection, repair, or furnishing of any public building or public improvement, but such authorization shall be required in the same manner as heretofore, or (B) permit any contract for the construction or repair of buildings, roads, sidewalks, sewers, mains, or similar items to be negotiated without advertising as required by section 253 of this title, unless such contract is to be performed outside the continental United States or unless negotiation of such contract is authorized by the provisions of paragraphs (1)–(3), (10)–(12), or (14) of subsection (c) of this section.

(f) *Carriage of cargo; specification of container size.*—No contract for the carriage of Government property in other than Government-owned cargo containers shall require carriage of such property in cargo containers of any stated length, height, or width.

5. Clause 5 continues in force the provisions of Section 3477 of the Revised Statutes, set out in the Code as Section 203 of Title 31. This section concerns the assignment of claims upon the United States and contains a provision that in time of war or national emergency, contracts may contain a provision that assignments of money due under a contract may not be subject to reduction or set-off for liability of the assignor as specified in the section.

§ 203. ASSIGNMENTS OF CLAIMS; SET-OFF AGAINST ASSIGNEE.

All transfers and assignments made of any claim upon the United States, or of any part or share thereof, or interest therein, whether absolute or conditional, and whatever may be the consideration therefor, and all powers of attorney, orders, or other authorities for receiving payment of any such claim, or of any part or share thereof, except as hereinafter provided, shall be absolutely null and void, unless they are freely made and executed in the presence of at least two attesting witnesses, after the allowance of such a claim, the ascertainment of the

amount due, and the issuing of a warrant for the payment thereof. Such transfers, assignments, and powers of attorney, must recite the warrant for payment, and must be acknowledged by the person making them, before an officer having authority to take acknowledgments of deeds, and shall be certified by the officer; and it must appear by the certificate that the officer, at the time of the acknowledgment, read and fully explained the transfer, assignment, or warrant of attorney to the person acknowledging the same. The provisions of this section shall not apply to payments for rent of postoffice quarters made by postmasters to duly authorized agents of the lessors.

The provisions of the preceding paragraph shall not apply in any case in which the moneys due or to become due from the United States or from any agency or department thereof, under a contract providing for payments aggregating $1,000 or more, are assigned to a bank, trust company, or other financing institution, including any Federal lending agency: *Provided*,

1. That in the case of any contract entered into prior to October 9, 1940, no claim shall be assigned without the consent of the head of the department or agency concerned;

2. That in the case of any contract entered into after October 9, 1940, no claim shall be assigned if it arises under a contract which forbids such assignment;

3. That unless otherwise expressly permitted by such contract any such assignment shall cover all amounts payable under such contract and not already paid, shall not be made to more than one party, and shall not be subject to further assignment, except that any such assignment may be made to one party as agent or trustee for two or more parties participating in such financing;

4. That in the event of any such assignment, the assignee thereof shall file written notice of the assignment together with a true copy of the instrument of assignment with (a) the contracting officer or the head of his department or agency; (b) the surety or sureties upon the bond or bonds, if any, in connection with such contract; and (c) the disbursing officer, if any, designated in such contract to make payment.

Notwithstanding any law to the contrary governing the validity of assignments, any assignment pursuant to this section, shall constitute a valid assignment for all purposes.

In any case in which moneys due or to become due under any contract are or have been assigned pursuant to this section, no liability of any nature of the assignor to the United States or any department or agency thereof, whether arising from or independently of such contract, shall create or impose any liability on the part of the assignee to make restitution, refund, or repayment to the United States of any amount heretofore since July 1, 1950, or hereafter received under the assignment.

Any contract of the Department of Defense, the General Services Administration, the Atomic Energy Commission, or any other department or agency of the United States designated by the President, except any such contract under which full payment has been made, may, in time of war or national emergency proclaimed by the President (including the national emergency proclaimed December 16, 1950) or by Act or joint resolution of the Congress and until such war or national emergency has been terminated in such manner, provide or be

amended without consideration to provide that payments to be made to the assignee of any moneys due or to become due under such contract shall not be subject to reduction or set-off, and if such provision or one to the same general effect has been at any time heretofore or is hereafter included or inserted in any such contract, payments to be made thereafter to an assignee of any moneys due or to become due under such contract, whether during or after such war or emergency, shall not be subject to reduction or set-off for any liability of any nature of the assignor to the United States or any department or agency thereof which arises independently of such contract, or hereafter for any liability of the assignor on account of (1) renegotiation under any renegotiation statute or under any statutory renegotiation article in the contract, (2) fines, (3) penalties (which term does not include amounts which may be collected or withheld from the assignor in accordance with or for failure to comply with the terms of the contract), or (4) taxes, social security contributions, or the withholding or nonwithholding of taxes or social security contributions, whether arising from or independently of such contract.

Except as herein otherwise provided, nothing in this section shall be deemed to affect or impair rights or obligations heretofore accrued.

6. Clause 6 continues in effect the provisions of Section 3737 of the Revised Statutes, also set out as Section 15 of Title 41 of the United States Code. This section also has to do with the assignment of claims and set-off against the assignee, and contains language similar to that found in the section referred to in Clause 5.

§ 15 TRANSFERS OF CONTRACTS; ASSIGNMENTS OF CLAIMS; SET-OFF AGAINST ASSIGNEE

No contract or order, or any interest therein, shall be transferred by the party to whom such contract or order is given to any other party, and any such transfer shall cause the annulment of the contract or order transferred, so far as the United States are concerned. All rights of action, however, for any breach of such contract by the contracting parties, are reserved to the United States.

The provisions of the preceding paragraph shall not apply in any case in which the moneys due or to become due from the United States or from any agency or department thereof, under a contract providing for payments aggregating $1,000 or more, are assigned to a bank, trust company, or other financial institution, including any Federal lending agency: *Provided*, 1. That in the case of any contract entered into prior to October 9, 1940, no claim shall be assigned without the consent of the head of the department or agency concerned; 2. That in the case of any contract entered into after October 9, 1940, no claim shall be assigned if it arises under a contract which forbids such assignment; 3. That unless otherwise expressly permitted by such contract any such assignment shall cover all amounts payable under such contract and not already paid, shall not be made to more than one party, and shall not be subject to further assignment, except that any such assignment may be made to one party as agent or trustee for two or more parties participating in such financing; 4. That in the event of any such assignment, the assignee thereof shall file written notice of the assignment together with a true copy of the instrument of assignment with (a) the contracting officer or the head of his department or agency; (b) the surety or sureties upon the bond or bonds, if any, in

connection with such contract; and (c) the disbursing officer, if any, designated in such contract to make payment.

Notwithstanding any law to the contrary governing the validity of assignments, any assignment pursuant to this section, shall constitute a valid assignment for all purposes.

In any case in which moneys due or to become due under any contract are or have been assigned pursuant to this section, no liability of any nature of the assignor to the United States or any department or agency thereof, whether arising from or independently of such contract, shall create or impose any liability on the part of the assignee to make restitution, refund, or repayment to the United States of any amount heretofore since July 1, 1950, or hereafter received under the assignment.

Any contract of the Department of Defense, the General Services Administration, the Atomic Energy Commission, or any other department or agency of the United States designated by the President, except any such contract under which full payment has been made, may, in time of war or national emergency proclaimed by the President (including the national emergency proclaimed December 16, 1950) or by Act or joint resolution of the Congress and until such war or national emergency has been terminated in such manner, provide or be amended without consideration to provide that payments to be made to the assignee of any moneys due or to become due under such contract shall not be subject to reduction or set-off, and if such provision or one to the same general effect has been at any time heretofore or is hereafter included or inserted in any such contract, payments to be made thereafter to an assignee of any moneys due or to become due under such contract, whether during or after such war or emergency, shall not be subject to reduction or set-off for any liability of any nature of the assignor to the United States or any department or agency thereof which arises independently of such contract, or hereafter for any liability of the assignor on account of (1) renegotiation under any renegotiation statute or under any statutory renegotiation article in the contract, (2) fines, (3) penalties (which term does not include amounts which may be collected or withheld from the assignor in accordance with or for failure to comply with the terms of the contract), or (4) taxes, social security contributions, or the withholding or nonwithholding of taxes or social security contributions, whether aising from or independently of such contract.

Except as herein otherwise provided, nothing in this section, shall be deemed to affect or impair rights or obligations heretofore accrued.

The committee amendment would add the three following references to section 602(a) which would be renumbered as section 502(a), and they would be designated as clauses 6, 7, and 8.

6. Public Law 85–804 (72 Stat. 972; 50 U.S.C. 1431–1435). The law permits departments or agencies exercising functions in connection with the national defense to deal with unusual contract situations. This includes correction of mistakes in contracts, formalization of informal commitments, indemnification of contractors for unusually hazardous risks, and other extraordinary contractual relief. In 1972, the Commission on Government Procurement recommended that this authority be made permanent. The law is as follows:

AN ACT To authorize the making, amendment, and modification of contracts to facilitate the national defense

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President may authorize any department or agency of the Government which exercises functions in connection with the national defense, acting in accordance with regulations prescribed by the President for the protection of the Government, to enter into contracts or into amendments or modifications of contracts heretofore or hereafter made and to make advance payments thereon, without regard to other provisions of law relating to the making, performance, amendment, or modification of contracts, whenever he deems that such action would facilitate the national defense. The authority conferred by this section shall not be utilized to obligate the United States in an amount in excess of $50,000 without approval by an official at or above the level of an Assistant Secretary or his Deputy, or an assistant head or his deputy, of such department or agency, or by a Contract Adjustment Board established therein.

SEC. 2. Nothing in this Act shall be construed to constitute authorization hereunder for—

(a) the use of the cost-plus-a-percentage-of-cost system of contracting;

(b) any contract in violation of existing law relating to limitation of profits;

(c) the negotiation of purchases of or contracts for property or services required by law to be procured by formal advertising and competitive bidding;

(d) the waiver of any bid, payment, performance, or other bond required by law;

(e) the amendment of a contract negotiated under section 2304 (a) (15), title 10, United States Code, or under section 302(c) (13) of the Federal Property and Administrative Services Act of 1949, as amended (63 Stat. 377, 394), to increase the contract price to an amount higher than the lowest rejected bid of any responsible bidder; or

(f) the formalization of an informal commitment, unless it is found that at the time the commitment was made it was impracticable to use normal procurement procedures.

SEC. 3. (a) All actions under the authority of this Act shall be made a matter of public record under regulations prescribed by the President and when deemed by him not to be detrimental to the national security.

(b) All contracts entered into, amended, or modified pursuant to authority contained in this Act shall include a clause to the effect that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of three years after final payment, have access to and the right to examine any directly pertinent books, documents, papers, and records of the contractor or any of his subcontractors engaged in the performance of and involving transactions related to such contracts or subcontracts.

SEC. 4. (a) Every department and agency acting under authority of this Act shall, by March 15 of each year, report to Congress all such actions taken by that department or agency during the preceding

calendar year. With respect to actions which involve actual or potential cost to the United States in excess of $50,000, the report shall—

(1) name the contractor;

(2) state the actual cost or estimated potential cost involved;

(3) describe the property or services involved; and

(4) state further the circumstances justifying the action taken.

With respect to (1), (2), (3), and (4), above, and under regulations prescribed by the President, there may be omitted any information the disclosure of which would be detrimental to the national security.

(b) The Clerk of the House and the Secretary of the Senate shall cause to be published in the Congressional Record all reports submitted pursuant to this section.

SEC. 5. This Act shall be effective only during a national emergency declared by Congress or the President and for six months after the termination thereof or until such earlier time as Congress, by concurrent resolution, may designate.

7. Section 2304(a)(1) of Title 10, U.S.C. Clause (1) of subsection (a) of section 2304 provides an exception to the requirement for formal advertising. (This is identical language to that in clause (1) of subsection (c) of section 302 of the Act of June 30, 1949, referred to in section 602(a)(4) of H.R. 3884.) The testimony at the hearing was that this authority is used to provide for contracts for small business, and to place contracts in labor surplus areas and disaster areas. The full section 2304 is as follows with clause (1) shown in italics:

§ 2304. PURCHASES AND CONTRACTS: FORMAL ADVERTISING; EXCEPTIONS.

(a) Purchases of and contracts for property or services covered by this chapter shall be made by formal advertising in all cases in which the use of such method is feasible and practicable under the existing conditions and circumstances. If use of such method is not feasible and practicable, the head of an agency, subject to the requirements for determinations and findings in section 2310, may negotiate such a purchase or contract, if—

(1) it is determined that such action is necessary in the public interest during a national emergency declare by Congress or the President;

(2) the public exigency will not permit the delay incident to advertising;

(3) the aggregate amount involved is not more than $2,500;

(4) the purchase or contract is for personal or professional services;

(5) the purchase or contract is for any service by a university, college, or other educational institution;

(6) the purchase or contract is for property or services to be procured and used outside the United States and the Territories, Commonwealths, and possessions;

(7) the purchase or contract is for medicine or medical supplies;

(8) the purchase or contract is for porperty for authorized resale;

(9) the purchase or contract is for perishable or nonperishable subsistence supplies;

(10) the purchase or contract is for property or services for which it is impracticable to obtain competition;

(11) the purchase or contract is for property or services that he determines to be for experimental, developmental, or research work, or for making or furnishing property for experiment, test, development, or research;

(12) the purchase or contract is for property or services whose procurement he determines should not be publicly disclosed because of their character, ingredients, or components;

(13) the purchase or contract is for equipment that he determines to be technical equipment whose standardization and the interchangeability of whose parts are necessary in the public interest and whose procurement by negotiation is necessary to assure that standardization and interchangeability;

(14) the purchase or contract is for technical or special property that he determines to require a substantial initial investment or an extended period of preparation for manufacture, and for which he determines that formal advertising would be likely to result in additional cost to the Government by reason of duplication of investment or would result in duplication of necessary preparation which would unduly delay the procurement of the property;

(15) the purchase or contract is for property or services for which he determines that the bid prices received after formal advertising are unreasonable as to all or part of the requirements, or were not independently reached in open competition, and for which (A) he has notified each responsible bidder of intention to negotiate and given him reasonable opportunity to negotiate; (B) the negotiated price is lower than the lowest rejected bid of any responsible bidder, as determined by the head of the agency; and (C) the negotiated price is the lowest negotiated price offered by any responsible supplier;

(16) he determines that (A) it is in the interest of national defense to have a plant, mine, or other facility, or a producer, manufacturer, or other supplier, available for furnishing property or services in case of a national emergency; or (B) the interest of industrial mobilization in case of such an emergency, or the interest of industrial mobilization in case of such an emergency, or the interest of national defense in maintaining active engineering, research, and development, would otherwise be subserved; or

(17) negotiation of the purchase or contract is otherwise authorized by law.

(b) The data respecting the negotiation of each purchase or contract under clauses (1) and (7)—(17) of subsection (a) shall be kept by the contracting agency for six years after the date of final payment on the contract.

(c) This section does not authorize—

(1) the negotiation of a contract to construct or repair any building, road, sidewalk, sewer main, or similar item, unless—

(A) it is made under clauses (1)—(3), (10)—(12), or (15) of subsection (a); or

(B) it is to be performed outside the United States; or

(2 the erection, repair, or furnishing of any public building or public improvement.

(d) Whenever the head of the agency determines it to be practicable, such advance publicity as he considers suitable with regard to the property involved and other relevant considerations shall be given for a period of at least 15 days before making a purchase of or contract for property, or a service, under clause (7) or (8) of subsection (a) involving more than $10,000.

(e) A report shall be made to Congress, on May 19 and November 19 of each year, of the purchases and contracts made under clauses (11) and (16) of subsection (a) during the period since the date of the last report. The report shall—

(1) name each contractor;

(2) state the amount of each contract; and

(3) describe, with consideration of the national security, the property and services covered by each contract.

(f) For the purposes of the following laws, purchases or contracts negotiated under this section shall be treated as if they were made with formal advertising:

(1) Sections 35—45 of title 41.

(2) Sections 276a—276a–5 of title 40.

(3) Sections 324 and 325a of title 40.

(g) In all negotiated procurements in excess of $2,500 in which rates or prices are not fixed by law or regulation and in which time of delivery will permit, proposals, including price, shall be solicited from the maximum number of qualified sources consistent with the nature and requirements of the supplies or services to be procured, and written or oral discussions shall be conducted with all responsible offerors who submit proposals with a competitive range, price, and other factors considered: *Provided, however*, That the requirements of this subsection with respect to written or oral discussions need not be applied to procurements in implementation of authorized set-aside programs or to procurements where it can be clearly demonstrated from the existence of adequate competition or accurate prior cost experience with the product, that acceptance of an initial proposal without discussion would result in fair and reasonable prices and where the request for proposals notifies all offerors of the possibility that award may be made without discussion.

(h) Except in a case where the Secretary of Defense determines that military requirements necessitate specification of container sizes, no contract for the carriage of Government property in other than Government-owned cargo containers shall require carriage of such property in cargo containers of any stated length, height, or width. (Aug. 10, 1956, ch. 1041, 70A Stat. 128; Aug. 28, 1958, Pub. L. 85–800, § 7, 72 Stat. 967; Sept. 2, 1958, Pub. L. 85–861, § 33(a)(12), 72 Stat. 1565; Sept. 10, 1962, Pub. L. 87–653, § 1(a)–(c), 76 Stat. 528; Mar. 16, 1968, Pub. L. 90–286, § 5, 82 Stat. 50; Sept. 20, 1968, Pub. L. 90–500, title IV, § 405, 82 Stat. 851.)

8. Sections 3313, 6386(c) and 8313 of Title 10. These provisions provide authority to suspend laws for mandatory retirement or separation during war or national emergency. The committee was advised that this authority makes it possible to suspend such requirements as to some of the 913 armed forces members missing in action in Southeast Asia. The provisions presently permit them to remain in the

Armed Services until they return or are accounted for. The three sections are as follows:

§ 3313. SUSPENSION OF LAWS FOR PROMOTION OR MANDATORY RETIREMENT OR SEPARATION DURING WAR OR EMERGENCY.

In time of war, or of emergency declared by Congress or the President, the President may suspend the operation of any provision of law relating to promotion, or mandatory retirement or separation, of commissioned officers of the Regular Army. (Aug. 10, 1956, ch. 1041, 70A Stat. 193.)

§ 8313. SUSPENSION OF LAWS FOR PROMOTION OR MANDATORY RETIREMENT OR SEPARATION DURING WAR OR EMERGENCY.

In time of war, or of emergency declared by Congress or the President, the President may suspend the operation of any provision of law relating to promotion, or mandatory retirement or separation, of commissioned officers of the Regular Air Force. (Aug. 10, 1956, ch. 1041, 70A Stat. 519.)

§ 6386 SUSPENSION: PRECEDING SECTIONS

(a) The President may suspend any provision of the preceding sections of this chapter relating to officers serving in the grades of lieutenant and lieutenant (junior grade) in the Navy, other than women officers appointed under section 5590 of this title, or relating to male officers serving in the grades of captain and first lieutenant in the Marine Corps during any period when—

(1) the number of male officers serving on active duty in the grade of ensign and above in the line of the Navy exceeds the number of male officers on the active list in the line of the Navy; and

(2) he determines that the needs of the service so require.

(b) Officers in the following categories are not counted as officers serving on active duty for the purpose of clause (1) of subsection (a):

(1) Retired officers.

(2) Officers of the Naval Reserve assigned to active duty for training.

(3) Officers of the Naval Reserve ordered to active duty in connection with organizing, administering, recruiting, instructing, training, or drilling the Naval Reserve.

(4) Officers of the Naval Reserve ordered to temporary active duty to prosecute special work.

(c) During a war or national emergency, the President may suspend any provision of the preceding sections of this chapter. Such a suspension may not continue beyond June 30 of the fiscal year following that in which the war or national emergency ends. (Aug. 10, 1956, ch. 1041, 70A Stat. 408.)

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Calendar No. 1102

94TH CONGRESS
2d Session

SENATE

REPORT
No. 94-1168

NATIONAL EMERGENCIES ACT

REPORT

OF THE

COMMITTEE ON GOVERNMENT OPERATIONS
UNITED STATES SENATE

TO ACCOMPANY

H.R. 3884, TERMINATING CERTAIN AUTHORITIES WITH RESPECT TO NATIONAL EMERGENCIES STILL IN EFFECT, AND TO PROVIDE FOR ORDERLY IMPLEMENTATION AND TERMINATION OF FUTURE NATIONAL EMERGENCIES

AUGUST 26, 1976—Ordered to be printed

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94TH CONGRESS 2d Session } SENATE { REPORT No. 94-1168

NATIONAL EMERGENCIES ACT

AUGUST 26, 1976.—Ordered to be printed

Mr. RIBICOFF, from the Committee on Government Operations, submitted the following

REPORT

[To accompany H.R. 3884]

The Committee on Government Operations, to which was referred the bill (H.R. 3884) to terminate certain authorities with respect to national emergencies still in effect, and to provide for orderly implementation and termination of future national emergencies, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

The amendments are as follows:

On page 2, strike out lines 16 through 23, and insert in lieu thereof the following:

> SEC. 201(a) With respect to Acts of Congress authorizing the exercise, during the period of a national emergency, of any special or extraordinary power, the President is authorized to declare such national emergency. Such proclamation shall immediately be transmitted to the Congress and published in the Federal Register.

On page 3, line 18, after "subsection," insert "whichever date is earlier,".

On page 4, line 14, strike the word "days," and insert "days after the day on which such resolution is referred to such committee,".

On page 4, line 20, strike the word "thereafter," and insert in lieu thereof "after the day on which such resolution is reported,".

On page 4, line 25, after the word "days" insert "after the day on which such resolution is referred to such committee".

On page 5, line 2, strike the word "days," and insert "days after the day on which such resolution is reported,".

On page 5, lines 9 and 10, strike out "after the legislation is referred to the committee of conference." and insert in lieu thereof "after the

day on which managers on the part of the Senate and the House have been appointed.".

On page 5, lines 11 and 12, strike out "in the Record".

On page 5, line 15, strike the word "filed." and insert "filed in the House in which such report is filed first.".

On page 5, line 19, strike out "602(b)" and insert in lieu thereof "502(b)".

On page 6, line 15, strike out "the emergency is still in effect." and insert in lieu thereof "such emergency is to continue in effect after such anniversary.".

On page 6, lines 18 and 19, strike the word "emergency", and insert the word "emergency,".

On page 10, line 12, strike out "it" and insert in lieu thereof "such committee".

PURPOSE

The purpose of H.R. 3884 is to terminate, as of 2 years from the date of enactment, powers and authorities possessed by the Executive as a result of existing states of national emergency, and to establish authority for the declaration of future emergencies in a manner which will clearly define the powers of the President and provide for regular congressional review.

In order to carry out this purpose, the National Emergencies Act would:

(1) Terminate, as of 2 years from the date of enactment, powers and authorities available to the Executive, pursuant to approximately 470 statutes, as a result of the states of national emergency now in force;

(2) Provide for congressional review of future Presidential declarations of national emergencies no less frequently than every 6 months and congressional termination of states of emergency at any time by concurrent resolution;

(3) Provide for congressional oversight of and accountability for actions taken by the Executive in the exercise of delegated emergency powers;

(4) Repeal specific obsolete emergency powers statutes and retain in force certain statutes deemed necessary for ongoing operations of the government.

Enactment of this legislation would end the states of emergency under which the United States has been operating for more than 40 years. It would also insure that the extraordinary powers which now reside in the hands of the Chief Executive—powers delegated by the Congress to seize property and commodities, organize and control the means of production, assign military forces abroad and restrict travel—could be utilized only when emergencies actually exist, and then, only under safeguards of congressional review. Reliance on emergency authority, intended for use in crisis situations would no longer be available in non-crisis situations. At a time when governments throughout the world are turning with increasing desperation to an all-powerful executive, this legislation is designed to insure that the United States travels a road marked by carefully constructed legal safeguards.

Committee Amendments

The committee adopted one substantive and several technical amendments to H.R. 3884, as passed by the House of Representatives.

With respect to the substantive amendment, following consultations with several constitutional law experts, the committee concluded that section 201(a) is overly broad, and might be construed to delegate additional authority to the President with respect to declarations of national emergency. In the judgment of the committee, the language of this provision was unclear and ambiguous and might have been construed to confer upon the President statutory authority to declare national emergencies, other than that which he now has through various statutory delegations.

The Committee amendment clarifies and narrows this language. The Committee decided that the definition of when a President is authorized to declare a national emergency should be left to the various statutes which give him extraordinary powers. The National Emergencies Act is not intended to enlarge or add to Executive power. Rather the statute is an effort by the Congress to establish clear procedures and safeguards for the exercise by the President of emergency powers conferred upon him by other statutes.

Therefore, the Committee amendment makes no attempt to define when a declaration of national emergency is proper. The amendment simply requires the President to transmit to the Congress and publish in the Federal Register a Presidential declaration of national emergency authorized by other Acts of Congress.

The principal technical amendments adopted by the committee are contained in those portions of section 202 which set forth the procedures and time sequences to be followed by both Houses in considering and taking action with respect to declarations of national emergency. A perfecting amendment in section 202(c)(5) would correct a printing error by changing a reference to section 602(b) to section 502(b). Additional technical and perfecting amendments are contained in sections 301 and 502(b). None of the technical and perfecting amendments make any substantive changes.

Statement

Title I of H.R. 3884 provides for the termination of all existing powers and authorities based on any general declaration of national emergency in effect on the date of enactment, to take effect 2 years from the date of enactment of the legislation. The 2-year delay is designed to provide time for all executive agencies, offices, and departments, dependent on emergency statutes for their day-to-day operations, to seek permanent legislation, if appropriate. It would permit an orderly transition and give the Congress adequate opportunity to evaluate executive requests.

Exempted from the general termination provision are (1) any action taken, or proceeding pending, not finally concluded or determined on such date; (2) any action or proceeding based on any act committed prior to such date; and (3) any rights or duties that have matured or penalties that were incurred prior to such date. These exemp-

tions are to be narrowly construed to cover only pending legal actions or administrative proceedings based upon an action taken while the declaration of a national emergency was in effect, and the right to bring legal actions or administrative proceedings as a result of actions taken while the declaration of national emergency was in effect.

Thus, the termination of a declaration of national emergency would not prohibit legal action against a person or persons for conduct in violation of an emergency statute if the conduct occurred while the declaration of national emergency was in effect. The termination of an emergency power which is a subject of a court action still terminates that power but it does not affect the validity of that pending court action. Thus the emergency powers are terminated but not court proceedings based upon actions taken while those powers were still in effect.

Title I pertains solely to powers and authorities based on a Presidential declaration of emergency issued prior to the date of enactment of the bill. It does not affect laws, such as the Defense Production Act, which are not dependent upon a Presidential declaration of emergency—even though such laws may be referred to in a general sense as "emergency" statutes.

Title II concerns the declaration and termination of future national emergencies. The provisions of title II, together with those of titles III and IV, are designed to insure congressional oversight of Presidential actions pursuant to declarations of a national emergency autorized by an act of Congress. While the War Powers Act, (Public Law 93–148), established oversight powers and procedures with respect to the commitment of our armed forces absent a congressional declaration of war, no such oversight has existed to date with respect to other presidential actions taken pursuant to declarations of national emergency. Therefore, the Special Committee on National Emergencies recommended the remedial action contained in this statute. While these procedures are patterned after those in the War Powers Act, this statute is not intended to conflict with, supersede, or alter any part of the War Powers Act.

Section 201(a) provides that, with respect to Acts of Congress authorizing the exercise, during the period of a national emergency, of any special or extraordinary power, the President is authorized to declare such national emergency. Such proclamation must be immediately transmitted to the Congress and published in the Federal Register. This section is clearly not intended to grant additional authority to the President. The President can only exercise those powers delegated to him in other statutes. The circumstances authorizing a declaration of national emergency are defined by the statutes giving the President the extraordinary powers to use in the case of a national emergency. The purpose of this statute is to prescribe the procedures to be followed in the event that the President proclaims a national emergency, as authorized by some other statute.

The provisions of this bill are not meant to supersede existing provisions of law which authorize declarations of emergency by the Congress. The legislation is directed solely to Presidential declarations of emergency.

Emergency authorities will come into effect only if the President complies with the provisions of this act. Section 201(a) requires

that any Presidential declaration of an emergency be immediately transmitted to the Congress and published in the Federal Register. Section 201(b) states that the statutes granting powers to the President in time of emergency shall have effect only during times the President has declared a national emergency and then only if he has acted in accordance with the provisions of the act. This latter stipulation has particular reference to the provisions of section 301 which require that the President specify the laws he or other officers will utilize. Another provision of section 201(b) states that no subsequent enactment will supersede the title unless it does so in specific terms.

Section 202(a) provides for the termination of presidentially declared emergencies by either a concurrent resolution of the Congress or a proclamation by the President. Both the Congress and the President have terminated such emergencies in the past, but the absence of specific statutory procedures has resulted in the failure to terminate the declarations of emergency issued in 1933, 1950, 1970, and 1971. The exceptions to the termination provision for court proceedings are identical to those in section 101(a) discussed above.

Section 202(d) provides for the automatic termination of an emergency if the President does not publicly renew the emergency by means of the publication required by this section.

Subsections (b) and (c) of section 202 establish procedures to insure congressional consideration of a concurrent resolution which would terminate a national emergency. The provisions are similar to those set out in secton 7 of Public Law 93–148, the War Powers Act, of November 7, 1973. Not later than 6 months after a national emergency is declared and not later than the end of each 6-month period thereafter that such emergency continues, each House of the Congress must meet to consider a vote on a concurrent resolution to determine whether that emergency should be terminated. As stated above, while these procedures are patterned after those in the War Powers Act, this statute is not intended to conflict with, supersede or alter any part of the War Powers Act.

Section 202(c) sets forth procedures to be followed in considering the concurrent resolution. The provisions which guarantee prompt congressional action are stated to be an exercise of the rulemaking power of the House and Senate.

Title III states that when the President declares a national emergency, no powers and authorities made available by statute for use in an emergency shall be exercised unless and until the President specifies the provisions of law under which he or other officers will act. Under existing laws, a Presidential emergency declaration automatically activates emergency provisions throughout the United States Code, regardless of the relevance of the statute to the emergency at hand. The new procedure permits the Executive to invoke only the emergency provisions he needs without bringing into force an entire body of law, and insures that the Congress and the public will know what statutes are brought into force.

Title IV specifies the accountability and reporting requirements applicable during a time of national emergency. The President is required to maintain a file of significant orders, and executive agencies are required to keep a record of rules and regulations issued pursuant to a declaration of emergency. This information is to be promptly

transmitted to the Congress. In addition, the President is required to report emergency expenditures every 6 months. To provide time for a complete accounting of expenditures, the bill provides the Executive with 90 days from the end of each 6-month period to file his report in which he is expected to explain the nature of and authority for the expenditures.

In a letter to the committee, Mr. William Colby, then Director of the CIA, suggested that the Central Intelligence Agency would not be bound by the reporting requirements of this title. The committee does not acknowledge the existence of such an exemption. The need of the CIA for security and confidentiality can be respected by the Congress as much under this authority as under any other. The act specifically recognizes the need to "assure confidentiality where appropriate." The committee believes the CIA can comply with the requirement of the act by reporting to its oversight committee or committees. (Copies of Mr. Colby's letter and Senator Church's response, directed to Senator Ribicoff, are set forth in Appendix A of this report.)

Title V deals with the repeal and continuation of certain emergency powers and statutes. Section 501 provides for the repeal or amendment of eight existing laws which have been found to be superseded or obsolete. The provisions of section 501 are as follows:

Subsection (a) strikes paragraph 10 of section 349(a) of the Immigration and Nationality Act, which provides for the expatriation of persons remaining outside the jurisdiction of the United States in time of war or national emergency to avoid service in the military. The Supreme Court in *Kennedy* v. *Mendoza Martinez*, 372 U.S. 144 (1963), declared the authority to be unconstitutional.

Subsection (b) deletes clause 4 of section 2667(b) of title 10, which requires that leases of nonexcess property of a military department must include a provision making the lease revocable during a national emergency. The change allows military departments the option to decide whether to include a provision making leases of nonexcess property revocable during a national emergency declared by the President.

Subsection (c) repeals a 1947 joint resolution dealing with the regulation of consumer credit. The provisions of the act are obsolete, since, under section 1904 of title 12, the President is empowered to authorize the Board of Governors of the Federal Reserve System to regulate extensions of credit.

Subsection (d) repeals section 5(m) of the Tennessee Valley Authority Act of 1933, which bars the sale of TVA products outside of the United States except to the Government for military use or to its allies in case of war or until six months after the termination of the Korean emergency. The committee has been advised that the provisions of subsection (m) have no present application.

Subsection (e) repeals section 1383 of title 18, which provides criminal penalties for persons entering, remaining in, leaving, or committing any act in a military area or military zone contrary to applicable restrictions prescribed by Executive Order or the

Secretary of the Army where it appears that the individual knew of the restrictions and acted in violation thereof. This authority permits the President to establish defensive land areas, such as occurred when Americans of Japanese ancestry were interned during World War II. The recommendation that section 1383 be repealed stems from the committee's conviction that such powers are inappropriate in peacetime and that repeal is consistent with previous congressional action.

Subsection (f) strikes subsections (b), (c), (d), (e), and (f) of section 6 of the act of February 28, 1948, the Public Health Service Act, which deals with the promotion of Public Health Service officers. The committee was advised that the provisions are obsolete.

Subsection (g) repeals section 9 of the 1946 Merchant Ship Sales Act, which deals with price adjustment for prior sales to citizens of the United States. The committee has been advised that the section has no current application.

Section 502 exempts certain provisions of law from the force of the legislation, subject to further investigation by the standing committees of the House and Senate.

The exempted laws were enacted to meet emergency situations. Because of the prolongation of emergency rule in the United States, many government departments have come to depend on these laws for their day-to-day operations. As a result, abrupt termination of such provisions would disrupt activities deemed to be essential to the functioning of the government. To avoid such disruption and to allow careful consideration of the statutes in question and enactment of permanent law where appropriate, the committee recommends that these authorities be exempted from the effect of the legislation.

Under section 502(a), the following provisions of law are exempted from the force of this act:

Clause 1 lists section 5(b) of the act of October 6, 1917, the Trading with the Enemy Act [12 U.S.C. 95a and 50 U.S.C. App. 5(b)]. At hearings, administration spokesmen cited the continuing importance of section 5(b) which provides for the administration and regulation of both transactions in foreign exchange of gold and silver and property transfers in which any foreign country or national thereof has an interest.

Clause 2 continues in effect the provisions of the act of April 28, 1942 (40 U.S.C. 278b). This act provides for an exception to the existing provisions of law concerning maximum rental of leases in cases relating to vital leases during a war or national emergency. The GSA requested the continuation of the authority until permanent legislation to the same effect can be enacted.

Clause 3 continues in effect the provisions of the act of June 30, 1949 (41 U.S.C. 252). Subsection (c)(1) of the act contains an exception to a requirement of advertising purchases or contracts when it is determined to be in the public interest during a period of national emergency. The GSA requested extension of this authority.

Clauses 4 and 5 continue in effect sections 3477 and 3737 of the Revised Statutes (31 U.S.C. 203 and 41 U.S.C. 15). Both sections concern the assignment of claims. The GSA requested continuation of the authorities since they have proven important in the financing of government contracts. These sections permit claims for money due or to become due a contractor with the government to be assigned to a bank, trust company or other financial institution.

Clauses 6 and 7 extend the authority provided in Public Law 85–804 (50 U.S.C. 1431–1435) and section 2304(a)(1) of title 10, United States Code. The authorities concern the amendment of military contracts and the suspension of normal bidding requirements.

Clause 8 continues the provisions set forth in sections 3313, 6386 (c), and 8313 of title 10, United States Code. These three sections provide the authority to maintain MIAs on active duty until their status is finally determined.

In section 502(b) the appropriate standing committees of the House and Senate are directed to investigate the authorities continued in section 502(a) and to make recommendations with respect thereto within 270 days following the enactment of the National Emergencies Act.

The circumstances under which most of these laws were enacted, and their subsequent usage often in ways not envisioned in the original legislative histories, underline the necessity for immediate review and evaluation of these statutes.

History of Legislation

At the beginning of the 92d Congress, interest was expressed in the Senate in examining emergency powers available to the Executive. Thereafter, Senator Charles McC. Mathias, Jr., introduced Senate Concurrent Resolution 27 to establish a special joint committee to study the effect of terminating the state of emergency declared by President Truman in 1950 during the Korean War. In May 1972, Senator Mathias and Senator Frank Church introduced a Senate resolution calling for the creation of a Senate Special Committee on the Termination of the National Emergency. The resolution was subsequently approved, and the special committee began work on January 6, 1973. Senators Mathias and Church were designated as cochairmen, and Senators Hart, Pell, Stevenson, Case, Pearson, and Hansen were appointed to the committee. The mandate of the committee, as expressed in its authorizing resolution (S. Res. 9), was

> to conduct a study and investigation with respect to the matter of terminating the national emergency proclaimed by the President of the United States on December 16, 1950, as announced in Presidential Proclamation Numbered 2914, dated the same date.

Enlisting the aid of legal scholars, executive departments and agencies, and the Library of Congress, the special committee launched an extensive study. The committee held three sets of public hearings on the history of emergency government in the United States and constitutional problems created thereby.

The committee found that the whole field of emergency statutes and procedures was in disarray. Four emergency proclamations, issued in 1933, 1950, 1970, and 1971, had never been revoked; there was little historical guidance for declaring, administering, or terminating states of national emergency; and no current, comprehensive record of statutes effective during times of emergency existed. The enlarged task that the committee confronted led to its being redesignated the Special Committee on National Emergencies and Delegated Emergency Powers.

The committee has since issued several publications designed to provide an understanding of national emergency laws and procedures and provide the basis for legislation. One compilation provides a listing of "Emergency Power Statutes: Provisions of Federal Law Now in Effect Delegating to the Executive Extraordinary Authority in Time of National Emergency" (S. Rept. 93–549). This report lists all the statutes which could be utilized under a declaration of national emergency as well as similar authority, not dependent on a declaration of emergency. To make such a compilation, the committee relied upon the Air Force's LITE system to conduct a computer search of the United States Code and studied all 87 volumes of the statutes-at-large.

A second document, "Executive Orders in Times of War and National Emergency," is the result of an examination of the collections of proclamations and Executive orders found at the Library of Congress and the Federal Register. In addition, "A Brief History of Emergency Powers in the United States," prepared by the Library of Congress, was issued as a committee print. The committee also published a handbook containing evaluations of all emergency statutes. These evaluations were made by standing committees of the Senate and by executive departments and agencies.

The culmination of the special committee's efforts was the National Emergencies Act. Introduced by the Senate special committee on August 2, 1974, S. 3957 was sponsored by Senators Church, Mathias, Hart, Pell, Stevenson, Case, Pearson, Hansen, Ervin, Chiles, Williams, Muskie, Javits, Ribicoff, and Roth. The Senate Committee on Government Operations reported the bill without amendment on September 30, 1974 (S. Rept. 93–1193). On October 7, 1974, during debate on the measure in the Senate, Senator Mathias offered amendments incorporating changes recommended by the Office of Management and Budget and agreed to by the Government Operations Committee. The amendments provided for:

(1) Extension of the termination date for existing emergencies from nine to twelve months from enactment;

(2) A semiannual review and decision by Congress on whether to end an emergency, rather than automatic termination of states of emergency;

(3) Reduction of the number of statutes to be repealed;

(4) Exemption of six statutes considered essential by the executive branch and provision for their review by appropriate congressional committees;

(5) Requirements for an accounting of expenditures incurred in the exercise of national emergency statutes.

The amended legislation passed the Senate by voice vote on October 7, 1974, and was referred to the House Committee on the Judiciary which took no further action. On March 6, 1975, Senator Mathias, for himself and Senator Church, introduced S. 977, which is nearly identical to S. 3957 of the 93d Congress. At the same time, Representative Rodino introduced an identical bill, H.R. 3884, which was referred to the House Judiciary Committee. H.R. 3884 was amended by the House Judiciary Committee and passed the House on September 4, 1975, with some floor amendments.

Hearings

The committee held hearings on H.R. 3884 on February 25, 1976. Senators Church and Mathias appeared in support of the measure. Their testimony was related primarily to an analysis and summary of the problems sought to be resolved by the legislation and a review of their work as co-chairmen of the Senate Special Committee on National Emergencies and Delegated Emergency Powers. In addition, several communications relative to the measure were inserted in the hearing record.

Section-By-Section Analysis

H.R. 3884, the National Emergencies Act, contains five titles.

TITLE I—TERMINATING EXISTING DECLARED EMERGENCIES

Section 101 provides for the termination of all powers and authorities conferred by statutes dependent upon a declared state of national emergency. A 2-year delay in the effective date of the termination of emergency powers and authorities is designed to allow time to enact permanent law where needed. The section defines "any national emergency in effect" as any one declared by the President.

TITLE II—DECLARATIONS OF FUTURE NATIONAL EMERGENCIES

Subsection (a) of section 201 provides that with respect to Acts of Congress authorizing the exercise, during a period of a national emergency, of any special or extraordinary power, the President is authorized to declare such a national emergency. Any such proclamation must be "transmitted to the Congress and published in the Federal Register."

Subsection (b) declares that any statute that becomes effective in time of declared national emergency, shall only be lawful if the provisions of this act are complied with. No future act will supersede this act unless it does so in specific terms and declares that the purposes of the new law is to supersede provisions of this act.

Section 202 provides for the termination of a declared state of emergency, either by the Congress by concurrent resolution, or by Presidential proclamation. Congress would consider concurrent resolutions at 6-month intervals. This section sets forth the procedures to be followed by Congress in considering these resolutions, and provides that they are to be deemed a part of the rules of each House. A final clause provides that any national emergency declared by the President, not otherwise previously terminated, "shall terminate on

the anniversary of the declaration of that emergency if, within the 90-day period prior to each anniversary date, the President does not publish in the Federal Register and transmit to the Congress a notice stating that the emergency is still in effect."

TITLE III—EXERCISE OF EMERGENCY POWERS AND AUTHORITIES

Section 301 provides that when the President declares a national emergency, no powers or authorities made available by statute shall be exercised unless and until the President specifies the provisions of law under which he will act. While specification may be made in the declaration or in one or more contemporaneous or subsequent Executive orders, no powers may be made available until such specification.

TITLE IV—ACCOUNTABILITY AND REPORTING REQUIREMENTS OF THE PRESIDENT

Section 401 provides that when the President declares a national emergency, or the Congress declares war, the President shall maintain a file and index of all significant Presidential orders and each executive agency shall maintain a file of all rules and regulations issued during the emergency or war. These orders, rules, and regulations are to be transmitted to the Congress. This section further requires that, after the declaration of a national emergency or declaration of war, the President shall transmit to the Congress, within 90 days after each 6-month period following a declaration, a report of total expenditures which are attributable to powers and authorities exercised under such declarations. A final report is required not later than 90 days after the termination of the emergency or war.

TITLE V—REPEAL AND CONTINUATION OF CERTAIN EMERGENCY POWER AND OTHER STATUTES

Sections 501 and 502 repeal and continue in effect certain stated emergency powers and other statutes as appropriate.

AGENCY COMMENTS

Agency interests and concerns were coordinated by the special committee in connection with the drafting and consideration of the 93d Congress bill, S. 3957, which passed the Senate in October 1974. Most of the coordinating work was performed in cooperation with the Office of Management and Budget and the Department of Justice.

In the 94th Congress, this committee solicited comments from various agencies and departments. Where appropriate, some of their recommendations were incorporated in S. 977, the companion bill to H.R. 3884. These comments are set forth in Appendix B.

ESTIMATED COST OF LEGISLATION

It is not expected that enactment of this legislation will require any significant additional expenditures.

CHANGES IN EXISTING LAW

In compliance with subsection 4 of rule XXIX of the Standing Rules of the Senate, changes made by the bill as reported are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no changes is proposed is shown in roman):

TITLE 8—ALIENS AND NATIONALITY, UNITED STATES CODE

* * * * * * *

PART III—LOSS OF NATIONALITY

§ 1481. Loss of nationality by native-born or naturalized citizen; voluntary action; burden of proof; presumptions.

(a) From and after the effective date of this chapter a person who is a national of the United States whether by birth or naturalization, shall lose his nationality by—

(1) * * *.

* * * * * * *

[(10) departing from or remaining outside of the jurisdiction of the United States in time of war or during a period declared by the President to be a period of national emergency for the purpose of evading or avoiding training and service in the military, air, or naval forces of the United States. For the purposes of this paragraph failure to comply with any provision of any compulsory service laws of the United States shall raise the presumption that the departure from or absence from the United States was for the purpose of evading or avoiding training and service in the military, air, or naval forces of the United States.]

TITLE 10—ARMED FORCES, UNITED STATES CODE

* * * * * * *

Chapter 159—REAL PROPERTY; RELATED PERSONAL PROPERTY; AND LEASE OF NON-EXCESS PROPERTY

* * * * * * *

§ 2667. Leases: non-excess property.

(a) * * *.

* * * * * * *

(b) A lease under subsection (a)—

(1) * * *.

* * * * * * *

[(4) must be revocable by the Secretary during a national emergency declared by the President; and]

* * * * * * *

TITLE 12—BANKS AND BANKING, UNITED STATES CODE

* * * * * * *

Chapter 3—FEDERAL RESERVE SYSTEM

DEFINITIONS, ORGANIZATION, AND GENERAL PROVISIONS AFFECTING SYSTEM

* * * * * * *

[§ 249. Regulation of consumer credit.

[After November 1, 1947, the Board of Governors of the Federal Reserve System shall not exercise consumer credit controls pursuant to Executive Order Numbered 8843, and no such consumer credit controls shall be exercised after such date except during the time of war beginning after August 8, 1947, or any national emergency declared by the President after August 8, 1947.]

* * * * * * *

TITLE 16—CONSERVATION, UNITED STATES CODE

* * * * * * *

Chapter 12A—TENNESSEE VALLEY AUTHORITY

* * * * * * *

§ 831d. Directors; maintenance and operation of plant for production, sale, and distribution of fertilizer and power.

The board is authorized—

(a) * * *.

* * * * * * *

[(m) No products of the Corporation except ferrophosphorus shall be sold for use outside of the United States, its Territories and possessions, except to the United States Government for the use of its Army and Navy, or to its allies in case of war or, until six months after the termination of the national emergency proclaimed by the President on December 16, 1950, or until such earlier date or dates as the Congress by concurrent resolution or the President may provide but in no event after April 1, 1953, to nations associated with the United States in defense activities.]

TITLE 18—CRIMES AND CRIMINAL PROCEDURE, UNITED STATES CODES

* * * * * * *

Chapter 67—MILITARY AND NAVY

[§ 1383. Restrictions in military areas and zones.

[Whoever, contrary to the restrictions applicable thereto, enters. remains in, leaves, or commits any act in any military area or military zone prescribed under the authority of an Executive order of the President, by the Secretary of the Army, or by any military commander designated by the Secretary of the Army, 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 fined not more than $5,000 or imprisoned not more than one year, or both.]

TITLE 42—THE PUBLIC HEALTH AND WELFARE, UNITED STATES CODE

* * * * * * *

Chapter 6A—THE PUBLIC HEALTH SERVICE

SUBCHAPTER I—ADMINISTRATION

§ 211a. * * *

* * * * * * *

[§ 211b. Promotion of commissioned officers.

[(a) Temporary promotions prior to July 1, 1948.

[Except as provided in the third and fourth paragraphs of this section, no promotion shall be made under section 211 of this title, prior to July 1, 1948. Until that date officers of the Regular Corps may receive temporary promotions to higher grades with the pay and allowances thereof pursuant to section 211(a)(1) of this title in force prior to February 28, 1948, notwithstanding the termination, prior to such date, of the war and of the national emergencies proclaimed by the President. Any officer holding, on June 30, 1948, an appointment pursuant to such section to a higher temporary grade shall continue in such grade until such appointment is terminated, as the President may direct.

[(b) Service credit.

[Effective as of February 28, 1948, each officer of the Regular Corps on such date, in addition to the credit he has under preexisting legislation for purposes of promotion, shall be credited with three years of service.

[(c) Promotion based on years of service; effective date; examination; service credit.

[Officers of the Regular Corps who have, or who on or before July 1, 1948, will have, the years of service prescribed in paragraph (2) of section 211(d) of this title, for promotion to the senior assistant, full, or senior grade, shall be recommended to the President for such promotion, to be effective as of July 1, 1948, whether or not vacancies exist in such grade. Such promotions shall be made without examination, except that no promotions shall be made to the senior grade or any grade immediately below a restricted grade until the officer is found qualified for promotion pursuant to subsection (c) of section 211 of this title. No promotion shall be made pursuant to this paragraph to any grade in any professional category if such grade has been made a restricted grade pursuant to subsection (b) of section 211 of this title. For purposes of seniority an officer promoted under this paragraph shall be credited with the years of service in the grade to which promoted equal to the excess of his years of service on the date of promotion over the years of service required for promotion to such grade under paragraph (2) of section 211(d) of this title.

[Officers in the junior assistant grade in the Regular Corps who have, or who on or before July 1, 1948, will have four or more years of service in the junior assistant grade, shall be recommended to the President for promotion to the assistant grade, to be effective as of July 1, 1948, without examination and whether or not vacancies exist in such grade. For purposes of promotion and seniority in grade, an officer promoted under this paragraph shall be credited with the years of service equal to the excess of his years of service on the date of promotion over four years.

[(d) Service for purpose of seniority.

[For purposes of seniority, any officer of the Regular Corps of the Public Health Service on February 28, 1948, shall be considered as having had service in the grade which he holds on such date equal to the excess of the service credited to him for promotion purposes over the length of service required under section 211(d)(2) of this title, for promotion to such grade.

[(e) Term or tenure of office unaffected prior to July 1, 1948.

[Except as provided in the third and fourth paragraphs of this section, the provisions of this section shall not, prior to July 1, 1948, affect the term or tenure of office (including any office held under temporary promotion) of any commissioned officer of the Service in office upon February 28, 1948.]

* * * * * * *

TITLE 50, APPENDIX—WAR AND NATIONAL DEFENSE, U.S. CODE

* * * * * * *

SALE OF SURPLUS WAR-BUILT VESSELS

(Act Mar. 8, 1946, Ch. 82, Stat. 41)

* * * * * * *

[§ 1742. Price adjustment on prior sales to citizens.

[(a) Form, manner, and time of application.

[A citizen of the United States who on the date of the enactment of this Act [March 8, 1946]—

[(1) owns a vessel which he purchased from the Commission prior to such date, and which was delivered by its builder after December 31, 1940; or

[(2) is party to a contract with the Commission to purchase from the Commission a vessel, which has not yet been delivered to him; or

[(3) owns a vessel on account of which a construction-differential subsidy was paid, or agreed to be paid, by the Commission under section 504 of the Merchant Marine Act, 1936, as amended [section 1154 of Title 46], and which was delivered by its builder after December 31, 1940; or

[(4) is party to a contract with a shipbuilder for the construction for him of a vessel, which has not yet been delivered to him, and on account of which a construction-differential subsidy was agreed, prior to such date, to be paid by the Commission under section 504 of the Merchant Marine Act, 1936, as amended [section 1154 of Title 46],

shall, except as hereinafter provided, be entitled to an adjustment in the price of such vessel under this section if he makes application therefor, in such form and manner as the Commission may prescribe, within sixty days after the date of publication of the applicaable prewar domestic costs in the Federal Register under section 3(c) of this Act [section 1736(c) of this Appendix]. No adjustment shall be made under this section in respect of any vessel the contract for the construction of which was made after September 2, 1945, under the provisions of title V [subchapter V of chapter 27 of Title 46] (including section 504 [section 1154 of Title 46] of title VII of the Merchant Marine Act, 1936, as amended [subchapter VII of chapter 27 of Title 46].

[(b) Determination of amount.

[Such adjustment shall be made, as hereinafter provided, by treating the vessel as if it were being sold to the applicant on the date of the enactment of this Act [March 8, 1946], and not before that time. The amount of such adjustment shall be determined as follows:

[(1) The Commission shall credit the applicant with the excess of the cash payments made upon the original purchase price of the vessel over 25 per centum of the statutory sales price of the vessel as of such date of enactment [March 8, 1946]. If such payment was less than 25 per centum of the statutory sales price of the vessel, the applicant shall pay the difference to the Commission.

[(2) The applicant's indebtedness under any mortgage to the United States with respect to the vessel shall be adjusted.

[(3) The adjusted mortgage indebtedness shall be in an amount equal to the excess of the statutory sales price of the vessel as of the date of the enactment of this Act [March 8, 1946] over the sum of the cash payment retained by the United States under, paragraph (1) plus the readjusted trade-in allowance (determined under paragraph (7)) with respect to any vessel exchanged by the applicant on the original purchase. The adjusted mortgage indebtedness shall be payable in equal annual installments thereafter during the remaining life of such mortgage with interest on the portion of the statutory sales price remaining unpaid at the rate of 3½ per centum per annum.

[(4) The Commission shall credit the applicant with the excess, if any, of the sum of the cash payments made by the applicant upon the original purchase price of the vessel plus the readjusted trade-in allowance (determined under paragraph (7)) over the statutory sales price of the vessel as of the date of the enactment of this Act [March 8, 1946] to the extent not credited under paragraph (1).

[(5) The Commission shall also credit the applicant with an amount equal to interest at the rate of 3½ per centum per annum (for the period beginning with the date of the original delivery of the vessel to the applicant and ending with the date of the enactment of this Act [March 8, 1946]) on the excess of the original purchase price of the vessel over the amount of any allowance allowed by the Commission on the exchange of any vessel on such purchase; the amount of such credit first being reduced by any interest on the original mortgage indebtedness accrued up to such date of enactment and unpaid. Interest so accrued and unpaid shall be canceled.

[(6) The applicant shall credit the Commission with all amounts paid by the United States to him as charter hire for use of the vessel (exclusive of service, any, required under the terms of the charter) under any charter party made prior to the date of the enactment of this Act [March 8, 1946], and any charter hire for such use accrued up to such date of enactment and unpaid shall be canceled; and the commission shall credit the applicant with the amount that would have been paid by the United States to the applicant as charter hire for bare-boat use of vessels exchanged by the applicant on the original purchase (for the period beginning with date on which the vessels so exchanged were delivered to the Commission and ending with the date of the enactment of this Act [March 8, 1946]).

[(7) The allowance made to the applicant on any vessel exchanged by him on the original purchase shall be readjusted so as to limit such allowance to the amount provided for under section 8 [section 1741 of this Appendix].

[(8) There shall be subtracted from the sum of the credits in favor of the Commission under the foregoing provisions of this subsection the amount of any overpayments of Federal taxes by the applicant resulting from the application of subsection (c) (1) of this section, and there shall be subtracted from the sum of the

credits in favor of the applicant under the foregoing provisions of this subsection the amount of any deficiencies in Federal taxes of the applicant, resulting from the application of subsection (c)(1) of this section. If, after making such subtractions, the sum of the credits in favor of the applicant exceeds the sum of the credits in favor of the Commission, such excess shall be paid by the Commission to the applicant. If, after making such subtractions, the sum of the credits in favor of the Commission exceeds the sum of the credits in favor of the applicant, such excess shall be paid by the applicant to the Commission. Upon such payment by the Commission or the applicant, such overpayments shall be treated as having been refunded and such deficiencies as having been paid.

[For the purposes of this subsection, the purchase price of a vessel on account of which a construction-differential subsidy was paid or agreed to be paid under section 504 of the Merchant Marine Act, 1936, as amended [section 1154 of Title 46], shall be the net cost of the vessel to the owner.

[(c) Conditions binding on applicant.

[An adjustment shall be made under this section only if the applicant enters into an agreement with the Commission binding upon the citizen applicant and any affiliated interest to the effect that—

[(1) depreciation and amortization allowed or allowable with respect to the vessel up to the date of the enactment of this Act [March 8, 1946] for Federal tax purposes shall be treated as not having been allowable; amounts credited to the Commission under subsection (b)(6) of this section shall be treated for Federal tax purposes as not having been received or accrued as income; amounts credited to the applicant under subsection (b)(5) and (6) of this section shall be treated for Federal tax purposes as having been received and accrued as income in the taxable year in which falls the date of the enactment of this Act [March 8, 1946];

[(2) the liability of the United States for use (exclusive of service, if any, required under the terms of the charter) of the vessel on or after the date of the enactment of this Act [March 8, 1946] under any charter party shall not exceed 15 per centum per annum of the statutory sales price of the vessel as of such date of enactment [March 8, 1946] and the liability of the United States under any such charter party for loss of the vessel shall be determined on the basis of the statutory sales price as of the date of the enactment of this Act [March 8, 1946], depreciated to the date of loss at the rate of 5 per centum per annum: *Provided*, That the provisions of this subsection (c)(2) [of this section] shall not apply to any such charter party executed on or after the date of enactment of this amendatory proviso [August 6, 1956]; and the Secretary of Commerce is directed to modify any adjustment agreement to the extent necessary to conform to the provisions of this amendatory proviso; and

[(3) in the event the United States, prior to the termination of the existing national emergency declared by the President on

May 27, 1941, uses such vessel pursuant to a taking, or pursuant to a bare-boat charter made, on or after the date of the enactment of this Act [March 8, 1946]; the compensation to be paid to the purchaser, his receivers, trustees, shall in no event be greater than 15 per centum per annum of the statutory sales price as of such date.

[(d) Applicability of other laws.

[Section 506 of the Merchant Marine Act, 1936, as amended [section 1156 of Title 46], shall not apply with respect to (1) any vessel which is eligible for an adjustment under this section, or (2) any vessel described in clause (1), (2), (3), or (4) of subsection (a) of this section, the contract for the construction of which is made after September 2, 1945, and prior to the date of enactment of this Act [March 8, 1946].]

ROLLCALL VOTE IN COMMITTEE

In compliance with section 133 of the Legislative Reorganization Act of 1946, as amended, the rollcall vote taken during committee consideration of this legislation is as follows:

Yeas: (10)
McClellan
Muskie
Chiles
Nunn
Glenn
Percy
Javits
Brock
Roth
Ribicoff

Nays: (0)

APPENDIX A

CENTRAL INTELLIGENCE AGENCY,
Washington, D.C.,
September 19, 1975.

Hon. ABRAHAM RIBICOFF,
Chairman, Committee on Government Operations, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for the views and recommendations of this Agency on S. 977, the "National Emergencies Act." The act would terminate those national emergencies presently in effect, and establish procedures for the establishment, operation, and termination of future declared national emergencies.

The Central Intelligence Agency derives its responsibilities and autority from 50 U.S.C. 403, *et seq.* It would not be affected by the termination of existing states of national emergency. Therefore, I have no comment on the bill, except for section 501.

Section 501 of the bill establishes accountability and reporting requirements for the President and Federal agencies during a declared state of war or national emergency. Subsections (a) and (b) require Executive agencies to maintain a file and index of all rules and regulations issued pursuant to declarations of war or national emergency. These rules and regulations are to be transmitted to the Congress promptly under means to assure confidentiality where appropriate. I have no objection to this provision, with the understanding that Agency activities conducted pursuant to 50 U.S.C. 403, although occurring during a declared state of war or national emergency, are not covered by section 501 of S. 977 but are reported to the Congress under normal procedures.

The Office of Management and Budget has advised there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

W. E. COLBY,
Director.

U.S. SENATE,
SPECIAL COMMITTEE ON NATIONAL EMERGENCIES
AND DELEGATED EMERGENCY POWERS,
Washington, D.C., March 1, 1976.

Hon. ABRAHAM RIBICOFF,
Chairman, Committee on Governmental Operations, Dirksen Senate Office Building, Washington, D.C.

DEAR SENATOR RIBICOFF: I understand that William Colby, while Director of the CIA, wrote the Government Operations Committee of the U.S. Senate to the effect that CIA activities conducted pursuant to

50 U.S.C. 403, although occurring during a state of war or national emergency, would not be covered by the reporting requirement of the National Emergencies Act but would be reported to the Congress under other procedures which he did not detail.

Section 403 of title 50 of the United States Code, the basic charter of the CIA, does not exempt the CIA from the reporting provisions of the National Emergencies Act. The reporting exemptions which are contained in that section were designed to prevent disclosure in an official U.S. Government publication, of information which would reveal the size or personnel strength of the CIA. The National Emergencies Act does not require the public reporting of such classified information.

The agency is, however, properly concerned about disclosure of classified information. The National Emergencies Act specifically provides that rules and regulations covered by the act "shall be transmitted to the Congress promptly under means to assure confidentiality where appropriate." The proper course is to stipulate that the CIA need only report its rules and regulations to the appropriate oversight committee—in the case of the Senate, the oversight committee which the Government Operations Committee will shortly recommend be established for the CIA.

I would also draw attention to the fact that the National Emergencies Act requires that only regulations issued "pursuant to a national emergency" be reported, not that all such authorities be made available. In the case of the Central Intelligence Agency, these new rules and regulations are likely to be quite limited.

Sincerely,

FRANK CHURCH.

APPENDIX B

EXECUTIVE OFFICE OF THE PRESIDENT,
OFFICE OF MANAGEMENT AND BUDGET,
Washington, D.C., September 15, 1975

Hon. ABRAHAM RIBICOF,
Chairman, Committee on Government Operations,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to your request of April 22, 1975, for the views of the Office of Management and Budget on S. 977, a bill "To terminate certain authorities with respect to national emergencies still in effect, and to provide for orderly implementation and termination of future national emergencies."

S. 977 is substantially similar to H.R. 3884 which was passed in the House on September 4, 1975, and referred to your committee on September 5, 1975. While the provisions of S. 977 are generally acceptable, the House bill incorporates a number of amendments proposed by the executive branch.

Both bills, however, contain one feature in common which the Administration does not support. Section 202(a)(1) of each bill provides that Congress can terminate future, Presidentially-declared national emergencies by concurrent resolution. As you know, the executive branch, on many previous occasions, has objected to the use of similar concurrent resolution provisions in legislation on constitutional grounds because such provisions circumvent the President's role in the legislative process as provided in article I, section 7 of the Constitution.

Finally, in addition to the emergency authorities in existing law which would be excepted from termination under the provisions of either S. 977 or H.R. 3884, several Departments, such as the Department of Transportation, have proposed that certain other emergency authorities should be similarly exempt.

Accordingly, except for the concurrent resolution provision discussed above, and subject to the Committee's consideration of the additional authorities proposed for exclusion from a general termination of current emergency powers, the Office of Management and Budget would have no objection to enactment of either S. 977 or H.R. 3884.

Sincerely,

JAMES M. FREY,
Assistant Director for Legislative Reference.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., August 6, 1976.

B–178364.

Hon. ABRAHAM RIBICOFF,
Chairman, Committee on Government Operations,
U.S. Senate.

DEAR MR. CHAIRMAN: This is in response to your request of April 22, 1975, for our views on S. 977, 94th Congress, a bill to terminate certain authorities with respect to national emergencies still in effect and to provide for orderly implementation and termination of future national emergencies.

Section 602(a)(4) provides that the provisions of the proposed bill do not apply to the powers and authorities conferred by the Act of June 30, 1949 (41 U.S.C. § 252). The authority conferred upon Executive agencies (except the Department of Defense, the Coast Guard and the National Aeronautics and Space Administration) by 41 U.S.C. § 252(c)(1) is used to negotiate contracts without advertising to assist labor surplus areas, to unilaterally set-aside contracts with small business concerns and to further the U.S. Balance of Payments Program. Similar authority is provided to the Departments of the Army, the Navy and the Air Force, the Coast Guard and the National Aeronautics and Space Administration by 10 U.S.C. § 2304(a)(1) (1970). This exception to advertising requirements is used for labor surplus set-aside programs, disaster area programs, small business set-asides after unilateral determinations and Balance of Payments Restricted Advertising. The authority of section 2304(a)(1) is not excluded from the provisions of the bill, and if the bill is enacted, legislation will be necessary for these agencies to continue the above-mentioned programs where no other negotiating authority is available. The committee may wish to consider exempting the powers and authorities of 10 U.S.C. § 2304 from the provisions of S. 977.

We note that, if enacted, the proposed bill will eliminate the power of the President to authorize Government agencies that exercise functions in connection with the national defense to enter into, amend, or modify contracts without regard to other provisions of law, conferred by Pub. L. No. 85–804 (Act of August 28, 1958, 72 Stat. 972, 50 U.S.C. §§ 1431–35). The Commission on Government Procurement (with one Commissioner dissenting) recommended that this authority be made permanent and not be limited to periods of national emergency. See Report of Commission on Government Procurement, Volume 4, pp. 51–60.

The objective of providing regular and consistent procedures by which national emergency powers are called into force and terminated, thereby according greater visibility and improving the exercise of effective congressional oversight, is one which we favor.

Sincerely yours,

R. F. KELLER,
Deputy Comptroller General of the United States.

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE,
Washington, D.C., February 23, 1976.

Hon. ABRAHAM A. RIBICOFF,
Chairman, Committee on Government Operations,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to your request for an expression of the views of the Department of Defense on S. 977, 94th Congress, an Act "To terminate certain authorities with respect to national emergencies still in effect, and to provide for orderly implementation and termination of future national emergencies."

S. 977 would terminate, one year after its enactment, any authority conferred on an executive or other federal agency by law or executive order as a result of the existence of a state of national emergency on the date of enactment. The bill would authorize the President, upon certain findings, to proclaim the existence of a future national emergency but would require the proclamation to be transmitted to Congress and published in the Federal Register. Such a future national emergency would terminate upon a concurrent resolution by Congress or by a proclamation of the President. Thus a future national emergency could be terminated by either Congress or the President.

As a prerequisite to the exercise of any powers or authorities made available by statute for use in the event of an emergency, the bill would require the President to specify the provisions of law under which he or other officials of the Government propose to act.

Enumeration of such powers and authorities would be required to be transmitted to Congress and published in the Federal Register. Further, the President would be required to maintain a file and index of all significant presidential orders and proclamations and each federal agency would be required to maintain a file or index of all rules and regulations issued during future national emergencies. Copies of all such presidential and federal agency issuances would be required to be transmitted to Congress promptly.

World and national conditions have changed since President Truman officially proclaimed the state of national emergency in 1950 incident to the commencement of hostilities in Korea. Many authorities which were used then for the first time were regarded as extraordinary. Since then, experience has demonstrated a need for these authorities in the regular conduct of the day-to-day operations of the Department of Defense. The desirability of terminating existing states of emergency is recognized and no objection to their termination is entertained by the Department of Defense. However, there are certain continuing needs, outlined below, which are accommodated by the existing national emergency proclaimed by President Truman in 1950 but which are not specifically provided for in S. 977.

First, there are 863 members of the armed forces who are still unaccounted for as a result of their participation in the recent hostilities in Southeast Asia. Although the Department of Defense is making every effort to resolve the uncertain status of these men, several factors have hampered this effort so that it is not possible to predict the exact date by which their status will be finally determined. One of these factors is the decree of a federal court in a case styled *McDonald*

v. *McLucas* which precludes the Secretaries of the military departments from changing the status of those now classified as missing in action to killed in action until the primary next of kin are afforded an opportunity to attend a hearing with counsel to present whatever evidence they deem relevant and to examine service files. Only the emergency authority of 10 U.S. Code 3313, 6386(c) and 8313 authorizes the suspension of mandatory separation and retirement requirements which would otherwise be applicable to allow some of these members to remain in the armed forces until they return or are accounted for. Whether or not their situation is viewed as warranting continuation of a national emergency, it would be inequitable to force their separation or retirement while they are still unaccounted for.

In the field of personnel administration, the emergency authority of 10 U.S.C. 3444 and 8444 has been used to grant relief, by way of temporary appointment, to officers in the chaplain, judge advocate and medical fields who, because of constructive service credit in their specialties, are considered for permanent promotion earlier than their line officer counterparts and whose separation for failure of promotion might become mandatory under conditions inconsistent with the needs of the armed forces or fairness to the officers. Legislation which would, among other things, provide a solution in permanent law for this problem has been introduced in the Congress (H.R. 7486 and S. 2424, Defense Officer Personnel Management Act, and H.R. 7769, Uniformed Services Retirement Modernization Act) and hearings have begun on H.R. 7486. However, the legislative changes which these bills would effect are so extensive that it would not be realistic to expect early enactment.

In addition to these problems which would result from allowing the emergency authority now provided by 10 U.S.C. 3444 and 8444 to lapse, the President, as commander in chief of the armed forces, would have no authority to grant temporary appointments to truly exceptional officers of the Army or Air Force. For example, the President used this authority to extend a temporary appointment to the next higher grade to the Air Force astronauts who successfully completed suborbital or orbital flights. Continuation of this latitude is needed so that exceptional individual contributions can still be recognized through temporary appointments.

Termination of emergency authority under 10 U.S.C. 3444 and 8444 would also deny to the Army and Air Force the only authority available in some cases to appoint alien doctors as officers to meet increasingly critical shortages of military medical personnel.

Termination of the 1950 national emergency would also terminate entitlement to disability retirement or separation benefits under 10 U.S.C. 1201 and 1203 for members with less than 8 years of service whose disability of 30 percent or more, although incurred in line of duty while on active duty, was not the proximate result of the performance of active duty. Imposition of this limitation—which would affect only the junior officers and enlisted men—is particularly untimely when the armed forces are endeavoring to meet their manpower needs through voluntary means. Continuation of the authority to retire or separate military personnel with less than 8 years of service who become unfit for further service by reason of a disability incurred in line of duty, is needed as part of the military disability system.

Termination of the national emergency would also terminate the authority of the Department of Defense (and certain other agencies) under Public Law 85–804 (50 U.S.C. 1431–1435) to correct mistakes in contracts, to formalize informal commitments, to indemnify contractors against losses or claims resulting from unusually hazardous risks to which they might be exposed during the performance of a contract and for which insurance, even if available, would be prohibitively expensive, and to grant other extraordinary contractual relief. Loss of the indemnification authority, in particular, would have an immediate adverse impact upon essential programs. During the calendar year 1974 the military departments included indemnification clauses under this authority in 128 contracts associated with nuclear-powered vessels, nuclear-armed guided missiles, experimental work with nuclear energy, handling of explosives and performance in hazardous areas. The Commission on Government Procurement, established by Public Law 91–129, has recommended that the authorizations of P.L. 85–804 be made available generally rather than being dependent upon the existence of a state of war or national emergency. But, here also, enactment of the Commission's recommendation in the near future does not appear likely.

S. 977 would adversely affect defense contracting in another way, that is, in denying the emergency exception to the requirement for advertising procurements not otherwise authorized to be negotiated. Cf. 10 U.S.C. 2304(a)(1). This exception is now narrowly limited in its application by the pertinent Armed Services Procurement Regulation (32 CFR 3.201), but its application affects major social and economic policies—the policies to favor labor surplus and disaster areas and small business and to achieve a balance of payments favorable to the United States.

Continuation of several emergency authorities governing personnel administration in the naval service is also needed. These authorities include 10 U.S.C. 5231(c), which suspends existing limitations on the number of admirals and vice admirals of the Navy. If this authority is not continued, the Navy would lose approximately one half of its three- and four-star admirals. Similarly, 10 U.S.C. 5232(b) suspends existing limitations on lieutenant generals of the Marine Corps. If this authority is not continued, the Marine Corps would lose six of the currently authorized eight lieutenant generals. Section 5711(b) of title 10 authorizes the suspension of the statutory limit of 5% below-the-zone selections specified in section 5707(c). Continuation of the authority provided in 10 U.S.C. 5785(b) is needed to suspend time-in-grade Navy and Marine Corps requirements for promotion to all grades except lieutenant and lieutenant commander. This statute is also the authority for suspension of the mandatory line fraction for promotion of staff corps officers to grades below rear admiral. Section 5787 of title 10 provides for temporary promotions in the Navy. Failure to retain this authority would require approximately 650 limited duty officers in the grade of lieutenant commander to revert to the grade of lieutenant. Discontinuance of this authority would also require Senate confirmation of all Regular promotions to lieutenant (junior grade).

In view of the need for continuation of the authorities referred to above, the Department of Defense recommends that any legislation terminating emergency powers exempt the cited statutes from its effect

in order to preserve the substantive provisions which are now needed but which would be lost by termination of the 1950 national emergency.

On September 4, 1975, the House of Representatives passed H.R. 3884, a bill that in its original form was virtually identical with S. 977. In the course of hearings on H.R. 3884 before the House Judiciary Committee's Subcommittee on Administrative Law and Governmental Relations, the Deputy General Counsel made a statement which presented in detail the position of the Defense Department. For your convenience a copy of his statement is enclosed. The House of Representatives adopted our recommendations with respect to needed exemptions in contracting authority (cf. pp. 2–4 of the statement), continuation of the statutory emergency authority which suspends mandatory separation and retirement as applied to those members of the armed forces who are still unaccounted for in Southeast Asia (cf. p. 7); deletion of the reference to section 673 of title 10, United States Code, as inappropriate (cf. p. 8); and extension of the period for reporting to Congress the quarterly expenditures incurred in future national emergencies from thirty days after the end of each quarter to ninety days (cf. pp. 8–9). In addition, at our informal suggestion that provision of H.R. 3884 which would have terminated powers authorized by the existing national emergency one year from the date of enactment was changed to provide for termination two years from the date of enactment. This longer grace period is needed to accommodate the orderly transition to normal procedures. It is strongly recommended that the Senate also adopt these changes which were concurred in by the House of Representatives.

There were several other exemptions from the reach of H.R. 3884 which were recommended by the Department of Defense but which were not accepted by the House of Representatives. These items relate to Defense organization (cf. pp. 4–7) and disability retirement or separation benefits for military members with less than eight years of service (cf. pp. 7–8). It is recommended that the Senate give favorable consideration to these items.

In general, the Department of Defense is in accord with the S. 977 goal of repealing obsolete or unnecessary emergency laws. Therefore, subject to the foregoing reservations and recommendations, this Department does not object to enactment of S. 977.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the submission of this report for the consideration of the Committee.

Sincerely,

RICHARD A. WILEY.

Enclosure.

STATEMENT OF LEONARD NIEDERLEHNER, DEPUTY GENERAL COUNSEL, DEPARTMENT OF DEFENSE ON H.R. 3884

Mr. Chairman and Members of the Committee: I am very pleased to have the opportunity to offer comments of the Department of Defense on H.R. 3884, "A Bill to terminate certain authorities with respect to National Emergencies still in effect, and to provide for orderly implementation and termination of future National Emergencies."

The Department of Defense favors the goal of H.R. 3884 to terminate obsolete or unnecessary authorities based upon states of emergency. However, a relatively small number of the authorities currently dependent upon a state of emergency affect contracting procedures, personnel entitlements, and organizational structure of the Department of Defense; and it is believed that the Congress will want to enact permanent legislation to treat with these various subject matters. Legislative proposals have been made to the Congress dealing with most of these items and it is hoped that they will receive attention in the near future. However, we recommend that they be exempted from the broad sweep of the pending bill until such time as the Congress has an opportunity to consider whether, and in what form, these authorities should be enacted to permanent law.

World and national conditions have changed since President Truman officially proclaimed the state of national emergency in 1950 incident to the commencement of hostilities in Korea. Many authorities which were used then for the first time were regarded as extraordinary. Since then, experience has demonstrated a need for these authorities in the regular conduct of the day-to-day operations of the Department of Defense. The desirability of terminating existing states of emergency is recognized and no objection to their termination is entertained by the Department of Defense. However, there are certain continuing needs which are accommodated by the existing national emergency proclaimed by President Truman in 1950 but which are not specifically provided for in H.R. 3884. The bill should provide an exception for each of the items I shall now refer to until such time as the Congress is able to consider permanent legislation to meet the particular need.

1. *Contracting Authority*

(a) Since 1941, there has been available to the Department of Defense authority to deal with unusual contract circumstances. Termination of the national emergency would terminate such authority of the Department of Defense (and certain other agencies) under Public Law 85–804 (50 U.S.C. 1431–1435), the current form of the 1941 statute. This statute provides authority to correct mistakes in contracts, to formalize informal commitments, to indemnify contractors against losses or claims resulting from unusually hazardous risks to which they might be exposed during the performance of a contract and for which insurance, even if available, would be prohibitively expensive, and to grant other extraordinary contractual relief. The Commission on Government Procurement, established by Public Law 91–129, recommended to the Congress in 1972 that the authorizations of Public Law 85–804 be made available generally rather than being dependent upon the existence of a state of war or national emergency.

(b) The procurement process wthin the Armed Services is utilized to accomplish certain major social and economic policies by the placement of contracts in labor surplus areas and in disaster areas, by letting contracts to favor small business, and to achieve a balance payments favorable to the United States. These collateral policies are achieved through the emeregncy exception to the requirement for formal ad-

vertisement under the Armed Forces Procurement Act (10 U.S.C. 2304(a)(1)). The use of this emergency exception is limited by regulation (32 CFR 3–201) to the achievement of the enumerated policies. In the light of the importance attached to these social and economic purposes, Congress should have the opportunity to consider the establishment of appropriate contracting procedures on a permanent basis.

2. *Personnel Administration*

A number of personnel procedures which have become basic to the current military structure are based upon a state of emergency. Major legislative proposals which place many of these personnel procedures on a permanent basis have been proposed but have not been enacted. The latest and most comprehensive of these proposals, the Defense Officer Personnel Management Act, was introduced in January, 1974, but was not acted upon. It will be resubmitted to the new Congress in 1975 and, if passed by the Congress, will cure most of the problems I shall now mention. These problems can be classified under two categories—those that deal with Defense organization and those that deal with personnel entitlements.

a. *Defense Organization*

(1) Retention of the emergency authority of 10 U.S.C. 3444 and 8444 is required for the following purposes:

(a) To provide the authority to make temporary appointments of officers in the Chaplain, Judge Advocate, and Medical fields, who, because of constructive service credit in their specialities, are considered for permanent promotion earlier than line officer counterparts, and whose separation for failure of promotion might become mandatory under conditions inconsistent with the needs of the service.

(b) To provide the authority of the President as Commander in Chief to grant temporary appointments to exceptional officers of the Army or Air Force. (The promotion of the Air Force astronauts.)

(c) To provide the authority to appoint alien doctors in the Army and Air Force as officers to meet critical shortages of military medical personnel.

(2) Over a period of years the personnel structure in the naval service has developed around several emergency authorities which now form the basis of officer management. These authorities include:

(a) 10 U.S.C. 5231(c), which suspends existing limitations on the number of admirals and vice admirals of the Navy. If this authority is not continued, the Navy would lose approximately one-half of its three- and four-star admirals.

(b) 10 U.S.C. 5232(b) suspends existing limitations on lieutenant generals of the Marine Corps. If this authority is not continued, the Marine Corps would lose five of the currently authorized seven lieutenant generals.

(c) 10 U.S.C. 5711(b) authorizes the suspension of the statutory limit of 5% for early promotion selections specified in section 5707(c).

(d) 10 U.S.C. 5785(b) is needed to suspend time-in-grade requirements for promotion to all Navy and Marine Corps grades except lieutenant and lieutenant commander. This statute is also the authority for suspension of the mandatory promotion selection rate provisions for certain staff corps officers to grades below rear admiral.

(e) 10 U.S.C. 5787 provides for temporary promotions in the Navy. Failure to retain this authority would require approximately 650 limited duty officers in the grade of lieutenant commander to revert to the grade of lieutenant. Discontinuance of this authority would also require Senate confirmation of all Regular promotions to lieutenant (junior grade).

b. *Personnel Entitlements*

(1) There are currently 913 members of the armed forces who are listed as missing in action in Southeast Asia. Only the emergency authority of 10 U.S.C. 3313, 6386(c), and 8313 authorizes the suspension of mandatory separation and retirement requirements which would otherwise be applicable to allow some of these members to remain in the armed forces until they return or are accounted for. Whether or not their situation is viewed as warranting continuation of a national emergency, it would be inequitable to force their separation or retirement while they are in a missing status.

(2) Termination of the 1950 national emergency would also terminate entitlement to disability retirement or separation benefits under 10 U.S.C. 1201 and 1203 for members with less than 8 years of service whose disability of 30 per cent or more, although incurred in line of duty while on active duty, was not the proximate result of the performance of active duty. Loss of this eligibility—which would affect only the junior officers and enlisted men—is particularly untimely when the armed forces are endeavoring to meet their manpower needs through voluntary means.

The Department recommends the deletion from the bill of subsection 602(a)(2) "Section 673 of title 10, United States Code;" this statute provides authority to order to active duty members of the Ready Reserve "In time of national emergency declared by the President after January 1, 1953." This statute would not be affected by termination of existing emergencies.

In view of the need for continuation of the authorities I have referred to, the Department of Defense recommends that any legislation terminating emergency powers except the cited statutes from its effect until such time as the Congress has the opportunity to consider the necessity for permanent legislation.

Finally, there is no procedural requirement of H.R. 3884 which is not realistic. I refer to the provision in subsection 501(c) which requires a report to Congress on total expenditures within thirty days after the end of each quarter during a national emergency period. The thirty-day reporting requirement does not provide sufficient time to collect the required data for transmittal to Congress. Ninety days would be more appropriate to accomplish the task properly.

DEPARTMENT OF STATE,
Washington, D.C., September 11, 1975.

Hon. ABRAHAM RIBICOFF,
Chairman, Committee on Government Operations,
U.S. Senate.

DEAR MR. CHAIRMAN: Your letter of April 22 invited recommendations on S. 977, a bill "To terminate certain authorities with respect to national emergencies still in effect, and to provide for orderly implementation and termination of future national emergencies." This bill is very much the same as S. 3957, passed by the Senate last session.

The Department of State believes that it is appropriate to reexamine the national emergency authorities at this time, to repeal obsolete authorities, and to set criteria for national emergencies which may be declared in the future. S. 977 does this, and at the same time preserves major emergency authorities that are essential to the conduct of foreign relations. The Department is especially interested in section 602 of S. 977 because it preserves essential authorities, in particular section 5(b) of the Trading with the Enemy Act (50 U.S.C. App. 5(b) and 12 U.S.C. 95a) which provides the basic legal authority for a number of programs of major foreign policy importance. These include:

1. Foreign Assets Control Regulations (31 C.F.R. Part 500);
2. Cuban Asset Control Regulations (31 C.F.R. Part 515), and
3. Foreign Funds Control Regulations (31 C.F.R. Part 520).

Under these programs, transactions are prohibited which involve persons or property subject to United States jurisdiction and which take place with Cuba, North Viet-Nam, North Korea, and designated nationals of those countries, unless specifically or generally licensed. In addition, property in which those countries or their nationals have an interest has been blocked and is under United States Government control. We also are holding assets of the People's Republic of China blocked before May 1971 and assets of certain Eastern European countries. While the amounts of the blocked assets vary, in some cases it is substantial, for example possibly in excess of $80 million in the case of the People's Republic of China.

An interruption of these programs would seriously prejudice the foreign relations interests of the United States and the interests of thousands of American nationals with outstanding claims against Cuba and the People's Republic of China. One effect of such interruption would be to release the blocked assets. Another would be to authorize transactions now prohibited without regard for the state of United States relations with countries concerned or the underlying United States interests served by these programs. Thus for example, Cuban imports could come into the United States without regard to other economic issues, and relaxation of transaction controls with respect to North Viet-Nam would be without regard to any context of improved bilateral relations. As a result it would become very difficult, if not impossible, to negotiate satisfactory claim settlements, or to realize other United States objectives.

The Department stresses that these are merely the current programs under section 5(b) of the Trading with the Enemy Act and the 1950

proclamation of national emergency. This authority has been utilized in the past for programs which have served their purposes and been terminated, and it may be necessary again. The present international situation has the potential for serious difficulties in international fiscal and economic matters, particularly energy, which may call for measures requiring recourse to this authority. Therefore, the Department believes it is essential that section 5(b) of the Trading with the Enemy Act be specifically exempted as section 602 now provides.

The Department of State has not opposed, and does not oppose, the replacement of section 5(b) by other permanent legislation. We do believe that there are a number of serious legal and policy questions in connection with any such legislation that will require protracted Congressional consideration and we are convinced that it would be highly imprudent to cast away the authority of section 5(b) without any assurance of such a replacement.

Since passage of S. 3957, the Department has given additional consideration to the effect of termination of the present state of emergency on activities authorized by section 215 of the Immigration and Nationality Act (8. U.S.C. 1185). Under Presidential Proclamation No. 3004 of January 17, 1953 and section 215 it is unlawful (with certain exceptions specified by regulation) for any citizen of the United States to depart from or enter, or attempt to depart from or enter, the United States unless he bears a valid passport. There is no other statute which makes it unlawful for any citizen to depart from or enter the United States without a valid passport or other official documentation. If, however, the national emergency upon which the Proclamation is based is terminated as now provided by S. 977, the power to regulate the entry into and departure from the United States of United States citizens would be ended.

The most modern forerunner of section 215 was 40 Stat. 559 passed in 1918. It provided that, in time of war and upon public proclamation by the President that the public safety required additional travel restrictions, no citizen could depart from or enter the country without a passport. In 1941 Congress amended the 1918 Act to provide for travel control during a national emergency proclaimed by the President. Presidential Proclamation No. 2523 based on that Act was replaced by Proclamation 3004 based on the Immigration and Nationality Act of 1952 containing the present section 215. Under S. 977 the requirement of a United States passport could be reinstituted by a new declaration of national emergency.

There is a more mundane, but nevertheless real problem for which the declaration of a new national emergency under S. 977 is not an ideal solution. This would be the chaotic conditions at United States ports-of-entry which may result if there is no authority to require citizens to have passports for entry into the United States. If large numbers of citizens choose not to obtain passports for foreign travel and then return undocumented to the United States, long delays in processing will result. In addition, the opportunities for aliens to fraudulently enter the United States will be significantly increased. For these reasons, the Department of State will propose amendment of section 215 of the Immigration and Nationality Act so that its provisions are not dependent upon executive action but stand independently as the expressed will of the Congress. Under S. 977, however,

there will be only a one year period in which such legislation can be sought. The Department believes that it would be wise to have the additional year for this purpose provided in H.R. 3884, the House version of S. 977.

The Office of Management and Budget advises that from the standpoint of the Administration's program there is no objection to the submission of this report.

Sincerely,

ROBERT J. MCCLOSKEY,
Assistant Secretary for Congressional Relations.

THE GENERAL COUNSEL OF THE TREASURY,
Washington, D.C., September 11, 1975.

Hon. ABRAHAM RIBICOFF,
Chairman, Committee on Government Operations,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Reference is made to your request for the views of this Department on S. 977, the "National Emergencies Act."

One year from the date of its enactment, the proposed legislation would terminate all powers and authorities bestowed upon governmental bodies due to past national emergencies, although certain statutes would be exempted from the application of its provisions. The bill would also establish procedures for Presidential declarations of future national emergencies. Congress would be required to meet within six months after the declaration of such an emergency to determine whether such emergency should be terminated by concurrent resolution.

S. 977, an amended version of proposed legislation relating to national emergencies introduced in the last Congress, reflects the recommendations of the Executive agencies. The Treasury Department believes that this bill represents a workable approach to the national emergencies question.

This Department believes that two features of the bill are especially important. First of all, the bill provides a full year in which the Executive branch and Congress can make the adjustments which may be necessary or desirable in relation to the termination of emergency powers provided for in section 101 of the bill. Given the nature of the legislative process and the number of other legislative programs of current importance, a grace period of two years as provided in H.R. 3884 may be necessary.

Second, the Department strongly believes that the exemption of section 5(b) of the Trading with the Enemy Act from the bill's provisions terminating emergency powers is highly desirable. This exemption is essential to the continued effectiveness of the Foreign Assets Control Program administered by the Department, under which controls are maintained in implementation of existing policies with respect to several foreign countries and their nationals and significant amounts of foreign assets have been frozen for an eventual settlement of the claims of United States citizens whose property has been seized without compensation. In addition, we believe that section 5(b) should

be retained for emergency use to deal with international financial and investment problems that may arise in the future.

The Department would like to make one technical comment. Although section 602(a)(1) refers to "12 U.S.C. 95(a)", the correct citation is "12 U.S.C. 95a".

Subject to the above considerations, this Department has no objection to enactment of S. 977.

The Department has been advised by the Office of Management and Budget that there is no objection from the standpoint of the Administration's program to the submission of this report to your Committee.

Sincerely yours,

RICHARD R. ALBRECHT,
General Counsel.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,

Washington, D.C., January 23, 1976.

HON. ABE RIBICOFF,
Chairman, Committee on Government Operations, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for a report on S. 977, a bill "To terminate certain authorities with respect to national emergencies still in effect, and to provide for orderly implementation and termination of future national emergencies."

In summary, because the bill would have no adverse effects on the operations of this Department, we have no objection to the favorable consideration of the bill.

Title I of the bill would terminate the existing state of national emergency, effective one year from the date of enactment. Within the Commissioned Corps of the Public Health Service, the authority to (1) make temporary promotions to a higher grade irrespective of whether a vacancy exists in such grade or not (under 42 U.S.C. 211k), and (2) retire for disability an officer with less than eight years of service on the basis of a "line of duty" determination rather than a "proximate result of service" determination (under 10 U.S.C. 1201), would be terminated.

Title II of the bill would authorize future declarations of national emergencies by the President.

Title III of the bill would provide for the exercise of wartime or national emergency authorities under a congressional declaration of war.

Title IV of the bill would provide that no provisions of law conferring powers and authorities to be exercised during a national emergency or war shall became effective until the President specifies by Executive Order the specific provisions of law under which he or other officials will act. The proposed title would also place limitations on the duration of (1) national emergencies declared by the President, and (2) the exercise of emergency and wartime authorities.

Title V of the proposed bill would require the President to maintain certain records and to report to the Congress all Executive Orders, rules, regulations, orders, etc., issued by himself or Executive Branch officials in implementing national emergency and wartime authorities.

Title VI of the proposed bill would repeal a number of provisions of law, only one of which is of interest to this Department. 42 U.S.C. 211b

contained one-time authorities for promotion, service credit, seniority credit, etc., applicable to commissioned officers of the Public Health Service, all to be exercised by July 1, 1948.

The loss of the "line of duty" disability retirement authority and the unrestricted temporary promotion authority within one year after the termination of the existing states of national emergency will cause no unmanageable problems within the Public Health Service. The temporary promotion of commissioned officers will still be possible, but under the more stringent requirements of "vacancy in grade" to which promoted. Officers with less than eight years service will be eligible for disability retirement only if their disabilities are the "proximate result" of service, otherwise they are eligible for disability severance pay. During the period of emergency, disability retirement was possible if the disability was incurred "in line of duty", i.e., not as a result of his own misconduct, not while absent without leave, etc. The one year deferment of the effective date of the termination of the emergency permits adequate time for the indoctrination of disability retirement and temporary promotion boards and dissemination of information regarding new criteria to all of the officers who would be affected.

The proposal to repeal 42 U.S.C. 211b will have no adverse effects. These provisions contained one-time authorities for promotions, seniority credit (for promotion purpose), etc., of commissioned officers of the Public Health Service, all of which were exercised before July 1, 1948. Any benefits that accrued to officers under 42 U.S.C. 211b who are still on active duty are fully protected in that the repeal provides that "any risks . . . matured" prior to repeal are not affected.

We therefore would have no objection to favorable consideration of the bill.

We are advised by the Office of Management and Budget that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

(s) MARJORIE LYNCH,
Under Secretary.

TENNESSEE VALLEY AUTHORITY,
Knoxville, Tenn., May 22, 1975.

Hon. ABRAHAM RIBICOFF,
Chairman, Committee on Government Operations, U.S. Senate, Washington, D.C.

DEAR SENATOR RIBICOFF: This is in response to your April 22 letter requesting TVA's views on S. 977, "A bill to terminate certain authorities with respect to national emergencies still in effect, and to provide for orderly implementation and termination of future national emergencies."

Section 601(d) of the bill would repeal section 5(m) of the TVA Act. Section 5(m) of the TVA Act provides:

> No products of the Corporation except ferrophosphorus shall sold for use outside of the United States, its Territories and possessions, except to the United States Government for the use of its Army and Navy, or to its allies in case of war or, until six months after the termination of the national emergency pro-

claimed by the President on December 16, 1950, or until such earlier date or dates as the Congress by concurrent resolution or the President may provide but in no event after April 1, 1963, to nations associated with the United States in defense activities.

We have reviewed the impact of repeal of this section and find it would have no significant effect on the TVA program. For this reason we would have no objection to the enactment of section 601(d) of S. 977.

The balance of the bill deals with the termination of existing declared emergencies, declarations of future national emergencies, and other matters relating to the emergency powers of the President as well as the repeal or amendment of various statutes not related to the TVA program. As to these matters we will defer to the views of the departments and agencies most directly concerned.

The Office of Management and Budget advises that it has no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely yours,

AUBREY J. WAGNER, *Chairman.*

OFFICE OF THE SECRETARY OF TRANSPORTATION,
Washington, D.C., September 23, 1975.

Hon. ABRAHAM A. RIBICOFF,
Chairman, Committee on Government Operations,
U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: Your committee has asked for views of this Department concerning S. 977, a bill:

"To terminate certain authorities with respect to national emergencies still in effect, and to provide for orderly implementation and termination of future national emergencies."

If enacted the bill would terminate one year from the date of enactment, (with certain exceptions) all powers and authorities possessed by the President, any other officer or employee of the Federal Government, or any executive agency, as defined in Section 105 of Title 5, United States Code, as a result of the existence of any declaration of national emergency in effect on the date of enactment.

Provision is made for the proclamation of national emergencies whenever the President finds it necessary. Any national emergency declared by the President shall terminate if the Congress terminates it by concurrent resolution, or the President issues a proclamation terminating it. Provision is made for periodic review by the Congress every six months to consider whether such declarations of emergency shall continue.

Title III of the bill would provide that whenever Congress declares war any provisions of law conferring powers and authorities to be exercised during time of war shall be effective from the date of declaration.

Provision is made in Title IV for the exercise of emergency powers and authorities. It provides that the President shall specify the provision of law under which he and other officers shall act.

Title V provides for accountability and reporting requirements of the President and Title VI contains certain repeal and continuation provisions.

Within this Department, enactment of this bill would have significant impact only on the United States Coast Guard in the following areas:

(a) In the area of controlling vessels for the purpose of marine security and safety, the Coast Guard for many years has primarily relied on the statutory authority found at 50 U.S.C. 191. Our reliance on the statute, which is keyed to the declaration of a national emergency, has been reduced with the passage of the Ports and Waterways Safety Act (33 U.S.C. 1221 *et seq.*) by the 92nd Congress, except in the area of actual possession and control of a vessel. Furthermore, the Ports and Waterways Safety Act requires that regulations issued under it be motivated by a concern for vessel and environmental safety and that full rulemaking hearings be conducted in the process of their issuance. However, the statutory authority found at 50 U.S.C. 191 serves as the basis for the regulation of vessels for security reasons alone without the panoply of the administrative procedures noted above.

(b) With regard to merchant vessel inspection and merchant marine documentation, the Coast Guard is also desirous of maintaining some of the statutory authority currently dependent upon a national emergency situation. For example, to ensure adequate manning of subsidized vessels, the provision for waiver of citizenship and naval reserve status of officers and crew contained in Section 1132 of Title 46, United States Code, should be retained.

(c) The Coast Guard is concerned with the impact of the proposed legislation upon Sections 1201 and 1203 of Title 10, United States Code, which deals with physical disability retirement particularly with regard to disability incurred in time of war or national emergency. The proposed legislation would terminate entitlement to disability retirement or separation benefits for members with less than eight years of service whose disability, although incurred in line of duty while on active duty, was not the proximate result of the performance of active duty.

This Department would prefer to continue to use all of the authorities discussed above. Therefore, in the event S. 977 is enacted, we recommend that our existing authority under these sections be excepted from the provisions of the bill.

We have no other suggestion for amendment.

There appear to be no cost implications since the bill provides for no specific new programs.

Subject to the Committee's consideration of the above comments, we would have no objection to enactment of the bill.

The Office of Management and Budget advises that from the standpoint of the Administration's program there is no objection to the submission of this report to the Committee.

Sincerely,

JOHN HART ELY, *General Counsel.*

TEXT OF H.R. 3884 AS REPORTED

AN ACT To terminate certain authorities with respect to national emergencies still in effect, and to provide for orderly implementation and termination of future national emergencies.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Emergencies Act".

TITLE I—TERMINATING EXISTING DECLARED EMERGENCIES

SEC. 101. (a) All powers and authorities possessed by the President, any other officer or employee of the Federal Government, or any executive agency, as defined in section 105 of title 5, United States Code, as a result of the existence of any declaration of national emergency in effect on the date of enactment of this Act are terminated two years from the date of such enactment. Such termination shall not affect—

(1) any action taken or proceeding pending not finally concluded or determined on such date;

(2) any action or proceeding based on any act committed prior to such date; or

(3) any rights or duties that matured or penalties that were incurred prior to such date.

(b) For the purpose of this section, the words "any national emergency in effect" means a general declaration of emergency made by the President.

TITLE II—DECLARATIONS OF FUTURE NATIONAL EMERGENCIES

SEC. 201. (a) With respect to Acts of Congress authorizing the exercise, during the period of a national emergency, of any special or extraordinary power, the President is authorized to declare such national emergency. Such proclamation shall immediately be transmitted to the Congress and published in the Federal Register.

(b) Any provisions of law conferring powers and authorities to be exercised during a national emergency shall be effective and remain in effect (1) only when the President (in accordance with subsection (a) of this section), specifically declares a national emergency, and (2) only in accordance with this Act. No law enacted after the date of enactment of this Act shall supersede this title unless it does so in specific terms, referring to this title, and declaring that the new law supersedes the provisions of this title.

SEC. 202. (a) Any national emergency declared by the President in accordance with this title shall terminate if—

(1) Congress terminates the emergency by concurrent resolution; or

(2) the President issues a proclamation terminating the emergency.

Any national emergency declared by the President shall be terminated on the date specified in any concurrent resolution referred to in clause (1) or on the date specified in a proclamation by the President terminating the emergency as provided in clause (2) of this subsection, whichever date is earlier, and any powers or authorities exercised by reason of said emergency shall cease to be exercised after such specified date, except that such termination shall not affect—

(A) any action taken or proceeding pending not finally concluded or determined on such date;

(B) any action or proceeding based on any act committed prior to such date; or

(C) any rights or duties that matured or penalties that were incurred prior to such date.

(b) Not later than six months after a national emergency is declared, and not later than the end of each six-month period thereafter that such emergency continues, each House of Congress shall meet to consider a vote on a concurrent resolution to determine whether that emergency shall be terminated.

(c) (1) A concurrent resolution to terminate a national emergency declared by the President shall be referred to the appropriate committee of the House of Representatives or the Senate, as the case may be. One such concurrent resolution shall be reported out by such committee together with its recommendations within fifteen calendar days after the day on which such resolution is referred to such committee, unless such House shall otherwise determine by the yeas and nays.

(2) Any concurrent resolution so reported shall become the pending business of the House in question (in the case of the Senate the time for debate shall be equally divided between the proponents and the opponents) and shall be voted on within three calendar days after the day on which such resolution is reported, unless such House shall otherwise determine by yeas and nays.

(3) Such a concurrent resolution passed by one House shall be referred to the appropriate committee of the other House and shall be reported out by such committee together with its recommendations within fifteen calendar days after the day on which such resolution is referred to such committee and shall thereupon become the pending business of such House and shall be voted upon within three calendar days after the day on which such resolution is reported, unless such House shall otherwise determine by yeas and nays.

(4) In the case of any disagreement between the two Houses of Congress with respect to a concurrent resolution passed by both Houses, conferees shall be promptly appointed and the committee of conference shall make and file a report with respect to such concurrent resolution within six calendar days after the day on which managers on the part of the Senate and the House have been appointed. Notwithstanding any rule in either House concerning the printing of conference reports or concerning any delay in the consideration of such reports, such report shall be acted on by both Houses not later than six calendar days after the conference report is filed in the House

in which such report is filed first. In the event the conferees are unable to agree within forty-eight hours, they shall report back to their respective Houses in disagreement.

(5) Paragraphs (1)–(4) of this subsection, subsection (b) of this section, and section 502(b) of this Act are enacted by Congress—

(A) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they are deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in the House in the case of resolutions described by this subsection; and they supersede other rules only to the extent that they are inconsistent therewith; and

(B) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

(d) Any national emergency declared by the President in accordance with this title, and not otherwise previously terminated, shall terminate on the anniversary of the declaration of that emergency if, within the ninety-day period prior to each anniversary date, the President does not publish in the Federal Register and transmit to the Congress a notice stating that such emergency is to continue in effect after such anniversary.

TITLE III—EXERCISE OF EMERGENCY POWERS AND AUTHORITIES

SEC. 301. When the President declares a national emergency, no powers or authorities made available by statute for use in the event of an emergency shall be exercised unless and until the President specifies the provisions of law under which he proposes that he, or other officers will act. Such specification may be made either in the declaration of a national emergency, or by one or more contemporaneous or subsequent Executive orders published in the Federal Register and transmitted to the Congress.

TITLE IV—ACCOUNTABILITY AND REPORTING REQUIREMENTS OF THE PRESIDENT

SEC. 401. (a) When the President declares a national emergency, or Congress declares war, the President shall be responsible for maintaining a file and index of all significant orders of the President, including Executive orders and proclamations, and each Executive agency shall maintain a file and index of all rules and regulations, issued during such emergency or war issued pursuant to such declarations.

(b) All such significant orders of the President, including Executive orders, and such rules and regulations shall be transmitted to the Congress promptly under means to assure confidentiality where appropriate.

(c) When the President declares a national emergency or Congress declares war, the President shall transmit to Congress, within ninety

days after the end of each six-month period after such declaration, a report on the total expenditures incurred by the United States Government during such six-month period which are directly attributable to the exercise of powers and authorities conferred by such declaration. Not later than ninety days after the termination of each such emergency or war, the President shall transmit a final report on all such expenditures.

TITLE V—REPEAL AND CONTINUATION OF CERTAIN EMERGENCY POWER AND OTHER STATUTES

SEC. 501. (a) Section 349(a) of the Immigration and Nationality Act (8 U.S.C. 1481(a)) is amended—

(1) at the end of paragraph (9), by striking out "; or" and inserting in lieu thereof a period; and

(2) by striking out paragraph (10).

(b) Section 2667(b) of title 10 of the United States Code is amended—

(1) by inserting "and" at the end of paragraph (3);

(2) by striking out paragraph (4); and

(3) by redesignating paragraph (5) as (4).

(c) The joint resolution entitled "Joint resolution to authorize the temporary continuation of regulation of consumer credit", approved August 8, 1947 (12 U.S.C. 249), is repealed.

(d) Section 5(m) of the Tennessee Valley Authority Act of 1933, as amended (16 U.S.C. 831d(m)), is repealed.

(e) Section 1383 of title 18, United States Code, is repealed.

(f) Section 6 of the Act entitled "An Act to amend the Public Health Service Act in regard to certain matters of personnel and administration, and for other purposes", approved February 28, 1948, is amended by striking out subsections (b), (c), (d), (e), and (f) (42 U.S.C. 211b).

(g) Section 9 of the Merchant Ship Sales Act of 1946 (50 U.S.C. App. 1742) is repealed.

(h) This section shall not affect—

(1) any action taken or proceeding pending not finally concluded or determined at the time of repeal;

(2) any action or proceeding based on any act committed prior to repeal; or

(3) any rights or duties that matured or penalties that were incurred prior to repeal.

SEC. 502. (a) The provisions of this Act shall not apply to the following provisions of law, the powers and authorities conferred thereby, and actions taken thereunder:

(1) Section 5(b) of the Act of October 6, 1917, as amended (12 U.S.C. 95a; 50 U.S.C. App. 5(b));

(2) Act of April 28, 1942 (40 U.S.C. 278b);

(3) Act of June 30, 1949 (41 U.S.C. 252);

(4) Section 3477 of the Revised Statutes, as amended (31 U.S.C. 203);

(5) Section 3737 of the Revised Statutes, as amended (41 U.S.C. 15);

(6) Public Law 85–804 (Act of Aug. 28, 1958, 72 Stat. 972; 50 U.S.C. 1431–1435);

(7) Section 2304(a)(1) of title 10, United States Code;

(8) Sections 3313, 6386(c), and 8313 of title 10, United States Code.

(b) Each committee of the House of Representatives and the Senate having jurisdiction with respect to any provision of law referred to in subsection (a) of this section shall make a complete study and investigation concerning that provision of law and make a report, including any recommendations and proposed revisions such committee may have, to its respective House of Congress within two hundred and seventy days after the date of enactment of this Act.

Passed the House of Representatives September 4, 1975.

Attest: W. PAT JENNINGS,
Clerk.

○

H. R. 3884

Ninety-fourth Congress of the United States of America

AT THE SECOND SESSION

Begun and held at the City of Washington on Monday, the nineteenth day of January, one thousand nine hundred and seventy-six

An Act

To terminate certain authorities with respect to national emergencies still in effect, and to provide for orderly implementation and termination of future national emergencies.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Emergencies Act".

TITLE I—TERMINATING EXISTING DECLARED EMERGENCIES

SEC. 101. (a) All powers and authorities possessed by the President, any other officer or employee of the Federal Government, or any executive agency, as defined in section 105 of title 5, United States Code, as a result of the existence of any declaration of national emergency in effect on the date of enactment of this Act are terminated two years from the date of such enactment. Such termination shall not affect—

(1) any action taken or proceeding pending not finally concluded or determined on such date;

(2) any action or proceeding based on any act committed prior to such date; or

(3) any rights or duties that matured or penalties that were incurred prior to such date.

(b) For the purpose of this section, the words "any national emergency in effect" means a general declaration of emergency made by the President.

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(b) Any provisions of law conferring powers and authorities to be exercised during a national emergency shall be effective and remain in effect (1) only when the President (in accordance with subsection (a) of this section), specifically declares a national emergency, and (2) only in accordance with this Act. No law enacted after the date of enactment of this Act shall supersede this title unless it does so in specific terms, referring to this title, and declaring that the new law supersedes the provisions of this title.

SEC. 202. (a) Any national emergency declared by the President in accordance with this title shall terminate if—

(1) Congress terminates the emergency by concurrent resolution; or

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Speaker of the House of Representatives.

Vice President of the United States and
President of the Senate.

Any national emergency declared by the President shall be terminated on the date specified in any concurrent resolution referred to in clause (1) or on the date specified in a proclamation by the President terminating the emergency as provided in clause (2) of this subsection, whichever date is earlier, and any powers or authorities exercised by reason of said emergency shall cease to be exercised after such specified date, except that such termination shall not affect—

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(C) any rights or duties that matured or penalties that were incurred prior to such date.

(b) Not later than six months after a national emergency is declared, and not later than the end of each six-month period thereafter that such emergency continues, each House of Congress shall meet to consider a vote on a concurrent resolution to determine whether that emergency shall be terminated.

(c) (1) A concurrent resolution to terminate a national emergency declared by the President shall be referred to the appropriate committee of the House of Representatives or the Senate, as the case may be. One such concurrent resolution shall be reported out by such committee together with its recommendations within fifteen calendar days after the day on which such resolution is referred to such committee, unless such House shall otherwise determine by the yeas and nays.

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(4) In the case of any disagreement between the two Houses of Congress with respect to a concurrent resolution passed by both Houses, conferees shall be promptly appointed and the committee of conference shall make and file a report with respect to such concurrent resolution within six calendar days after the day on which managers on the part of the Senate and the House have been appointed. Notwithstanding any rule in either House concerning the printing of conference reports or concerning any delay in the consideration of such reports, such report shall be acted on by both Houses not later than six calendar days after the conference report is filed in the House in which such report is filed first. In the event the conferees are unable to agree within forty-eight hours, they shall report back to their respective Houses in disagreement.

(5) Paragraphs (1)–(4) of this subsection, subsection (b) of this section, and section 502(b) of this Act are enacted by Congress—

(A) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they are deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in the House in the case of resolutions described by this subsection; and they supersede other rules only to the extent that they are inconsistent therewith; and

(B) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

(d) Any national emergency declared by the President in accordance with this title, and not otherwise previously terminated, shall terminate on the anniversary of the declaration of that emergency if, within the ninety-day period prior to each anniversary date, the President does not publish in the Federal Register and transmit to the Congress a notice stating that such emergency is to continue in effect after such anniversary.

TITLE III—EXERCISE OF EMERGENCY POWERS AND AUTHORITIES

SEC. 301. When the President declares a national emergency, no powers or authorities made available by statute for use in the event of an emergency shall be exercised unless and until the President specifies the provisions of law under which he proposes that he, or other officers will act. Such specification may be made either in the declaration of a national emergency, or by one or more contemporaneous or subsequent Executive orders published in the Federal Register and transmitted to the Congress.

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SEC. 401. (a) When the President declares a national emergency, or Congress declares war, the President shall be responsible for maintaining a file and index of all significant orders of the President, including Executive orders and proclamations, and each Executive agency shall maintain a file and index of all rules and regulations, issued during such emergency or war issued pursuant to such declarations.

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(c) When the President declares a national emergency or Congress declares war, the President shall transmit to Congress, within ninety days after the end of each six-month period after such declaration, a report on the total expenditures incurred by the United States Government during such six-month period which are directly attributable to the exercise of powers and authorities conferred by such declaration. Not later than ninety days after the termination of each such emergency or war, the President shall transmit a final report on all such expenditures.

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(b) Section 2667(b) of title 10 of the United States Code is amended—

(1) by inserting "and" at the end of paragraph (3);

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(c) The joint resolution entitled "Joint resolution to authorize the temporary continuation of regulation of consumer credit", approved August 8, 1947 (12 U.S.C. 249), is repealed.

(d) Section 5(m) of the Tennessee Valley Authority Act of 1933 as amended (16 U.S.C. 831d(m)) is repealed.

(e) Section 1383 of title 18, United States Code, is repealed.

(f) Section 6 of the Act entitled "An Act to amend the Public Health Service Act in regard to certain matters of personnel and administration, and for other purposes", approved February 28, 1948, is amended by striking out subsections (b), (c), (d), (e), and (f) (42 U.S.C. 211b).

(g) Section 9 of the Merchant Ship Sales Act of 1946 (50 U.S.C. App. 1742) is repealed.

(h) This section shall not affect—

(1) any action taken or proceeding pending not finally concluded or determined at the time of repeal;

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SEC. 502. (a) The provisions of this Act shall not apply to the following provisions of law, the powers and authorities conferred thereby, and actions taken thereunder:

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(7) Section 2304(a)(1) of title 10, United States Code;

(8) Sections 3313, 6386(c), and 8313 of title 10, United States Code.

FOR IMMEDIATE RELEASE SEPTEMBER 14, 1976

Office of the White House Press Secretary

THE WHITE HOUSE

STATEMENT BY THE PRESIDENT

I am today signing H.R. 3884, the "National Emergencies Act."

The broad purpose of this bill is to reform the existing maze of statutes which has resulted from the states of emergency under which the country has been operating for over 40 years, and to provide appropriate procedures related to future declarations of national emergencies.

Accordingly, H.R. 3884 would generally terminate, two years after its enactment, all powers and authorities conferred on the President, any other government officer or employee, or any executive agency, which result because of the existence of any declaration of national emergency now in force. The two-year delay would provide time to enact permanent law, where needed, to replace the authorities that are to terminate. The bill would also authorize the President to proclaim the existence of future national emergencies, with provision for congressional review.

I support the purposes of the enrolled bill. One of its provisions, however, would purport to permit the Congress to terminate a national emergency by a concurrent resolution. This feature of the bill is unconstitutional.

As recently as August 13, 1976, in vetoing H.R. 12944, a bill "To extend the Federal Insecticide, Fungicide, and Rodenticide Act," I reiterated my position that provisions for disapproval of regulations and other action by concurrent resolution, or by resolutions of one House, are clearly unconstitutional. Such provisions are contrary to the general constitutional principle of separation of powers whereby Congress enacts laws but the President and the agencies of government execute them. In addition, they violate Article I, section 7 of the United States Constitution which requires that resolutions having the force of law be sent to the President for his signature or veto.

In recent years, the Congress has increasingly given consideration to these kinds of legislative encroachment measures. Accordingly, the Attorney General, at my direction, has become a party plaintiff in a lawsuit challenging the constitutionality of a comparable provision in the Federal Election Campaign Act. In the event that the court strikes down all legislative encroachment-type provisions now in law, I consider section 202(a)(1) of H.R. 3884 as separable from the rest of the bill, and would therefore expect the other provisions relating to emergency powers to remain in force.

# # #

P93-Rep

H. R. 3884

Ninety-fourth Congress of the United States of America

AT THE SECOND SESSION

Begun and held at the City of Washington on Monday, the nineteenth day of January, one thousand nine hundred and seventy-six

An Act

To terminate certain authorities with respect to national emergencies still in effect, and to provide for orderly implementation and termination of future national emergencies.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Emergencies Act".

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SEC. 101. (a) All powers and authorities possessed by the President, any other officer or employee of the Federal Government, or any executive agency, as defined in section 105 of title 5, United States Code, as a result of the existence of any declaration of national emergency in effect on the date of enactment of this Act are terminated two years from the date of such enactment. Such termination shall not affect—

(1) any action taken or proceeding pending not finally concluded or determined on such date;

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(b) For the purpose of this section, the words "any national emergency in effect" means a general declaration of emergency made by the President.

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P. No

(b) Any provisions of law conferring powers and authorities to be exercised during a national emergency shall be effective and remain in effect (1) only when the President (in accordance with subsection (a) of this section), specifically declares a national emergency, and (2) only in accordance with this Act. No law enacted after the date of enactment of this Act shall supersede this title unless it does so in specific terms, referring to this title, and declaring that the new law supersedes the provisions of this title.

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(b) All such significant orders of the President, including Executive orders, and such rules and regulations shall be transmitted to the Congress promptly under means to assure confidentiality where appropriate.

(c) When the President declares a national emergency or Congress declares war, the President shall transmit to Congress, within ninety days after the end of each six-month period after such declaration, a report on the total expenditures incurred by the United States Government during such six-month period which are directly attributable to the exercise of powers and authorities conferred by such declaration. Not later than ninety days after the termination of each such emergency or war, the President shall transmit a final report on all such expenditures.

TITLE V—REPEAL AND CONTINUATION OF CERTAIN EMERGENCY POWER AND OTHER STATUTES

SEC. 501. (a) Section 349(a) of the Immigration and Nationality Act (8 U.S.C. 1481(a)) is amended—

(1) at the end of paragraph (9), by striking out "; or" and inserting in lieu thereof a period; and

(2) by striking out paragraph (10).

(b) Section 2667(b) of title 10 of the United States Code is amended—

(1) by inserting "and" at the end of paragraph (3);

(2) by striking out paragraph (4); and

(3) by redesignating paragraph (5) as (4).

(c) The joint resolution entitled "Joint resolution to authorize the temporary continuation of regulation of consumer credit", approved August 8, 1947 (12 U.S.C. 249), is repealed.

(d) Section 5(m) of the Tennessee Valley Authority Act of 1933 as amended (16 U.S.C. 831d(m)) is repealed.

(e) Section 1383 of title 28, United States Code, is repealed.

(f) Section 6 of the Act entitled "An Act to amend the Public Health Service Act in regard to certain matters of personnel and administration, and for other purposes", approved February 28, 1948, is amended by striking out subsections (b), (c), (d), (e), and (f) (42 U.S.C. 211b).

(g) Section 9 of the Merchant Ship Sales Act of 1946 (50 U.S.C. App. 1742) is repealed.

(h) This section shall not affect—

(1) any action taken or proceeding pending not finally concluded or determined at the time of repeal;

(2) any action or proceeding based on any act committed prior to repeal; or

(3) any rights or duties that matured or penalties that were incurred prior to repeal.

SEC. 502. (a) The provisions of this Act shall not apply to the following provisions of law, the powers and authorities conferred thereby, and actions taken thereunder:

(1) Section 5(b) of the Act of October 6, 1917, as amended (12 U.S.C. 95a; 50 U.S.C. App. 5(b));

(2) Act of April 28, 1942 (40 U.S.C. 278b);

(3) Act of June 30, 1949 (41 U.S.C. 252);

(4) Section 3477 of the Revised Statutes, as amended (31 U.S.C. 203);

(5) Section 3737 of the Revised Statutes, as amended (41 U.S.C. 15);

(6) Public Law 85–804 (Act of Aug. 28, 1958, 72 Stat. 972; 50 U.S.C. 1431–1435);

(7) Section 2304(a)(1) of title 10, United States Code;

(8) Sections 3313, 6386(c), and 8313 of title 10, United States Code.

(b) Each committee of the House of Representatives and the Senate having jurisdiction with respect to any provision of law referred to in subsection (a) of this section shall make a complete study and investigation concerning that provision of law and make a report, including any recommendations and proposed revisions such committee may have, to its respective House of Congress within two hundred and seventy days after the date of enactment of this Act.

Speaker of the House of Representatives.

Vice President of the United States and
President of the Senate.