The original documents are located in Box 13, folder "Emergency Powers Act" of the John Marsh Files at the Gerald R. Ford Presidential Library.

So the resolution was agreed to.

The Clerk announced the following pairs:

Mr. Hébert with Mr. Fraser.
Mrs. Chisholm with Mr. Riegle.
Mr. Giaimo with Mr. Long of Maryland.
Mr. Howard with Mr. Foley.
Mr. Patten with Mr. Duncan of Oregon.
Mr. Pepper with Mr. Evins of Tennessee.
Mr. Rangel with Mr. McCormack.
Mr. Teague with Mr. Abdnor.
Mr. Digge with Mr. Mills.
Mr. Hamilton with Mr. Biester.
Mr. Hungate with Mr. Jarman.
Mr. Clay with Mr. Fary.
Mr. Stuckey with Mr. Burke of Florida.
Mr. Stokes with Mr. Rees.
Mr. Mathis with Mr. Derwinski.
Mr. Conyers with Mr. Andrews of North Carolina.
Mr. Nedzi with Mr. Forsythe.
Mr. Haley with Mr. McKay.
Mr. McHugh with Mr. Horton.
Mr. Solarz with Mr. McDonald of Georgia.
Mr. Van Deerlin with Mr. Kindness.
Mr. Ullman with Mr. McClory.
Mr. Roe with Mr. McEwen.
Mr. Young of Alaska with Mr. Walsh.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PERMISSION FOR COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT TO SIT DURING PROCEEDINGS UNDER 5-MINUTE RULE TODAY

Mr. FLYNT. Mr. Speaker, I ask unanimous consent that the Committee on Standards of Official Conduct may sit this afternoon during proceedings under the 5-minute rule.

The SPEAKER. Is there objection to the request of the gentleman from Georgia?

There was no objection.

PERMISSION FOR SUBCOMMITTEE ON MONOPOLIES AND COMMERCIAL LAW TO SIT DURING 5-MINUTE RULE TODAY

Mr. FLOWERS. Mr. Speaker, I ask unanimous consent that the Subcommittee on Monopolies and Commercial Law of the Committee on the Judiciary be allowed to sit during the 5-minute rule this afternoon.

The SPEAKER. Is there objection to the request of the gentleman from Alabama?

There was no objection.

NATIONAL EMERGENCIES

Mr. FLOWERS. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of 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.

The motion was agreed to.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill H.R. 3884, with Mr. RONCALIO in the chair.

The Clerk read the title of the bill.

By unanimous consent, the first reading of the bill was dispensed with.

The CHAIRMAN. Under the rule, the gentleman from Alabama (Mr. FLOWERS) will be recognized for 30 minutes, and the gentleman from California (Mr. MOORHEAD) will be recognized for 30 minutes.

The Chair recognizes the gentleman from Alabama (Mr. FLOWERS).

Mr. FLOWERS. Mr. Chairman, I yield such time as he may consume to the distinguished chairman of the Committee on the Judiciary, the gentleman from New Jersey (Mr. RODINO).

(Mr. RODINO asked and was given permission to revise and extend his remarks.)

Mr. RODINO. Mr. Chairman, I wish to commend the gentleman from Alabama (Mr. FLOWERS) as well as the ranking member of the subcommittee (Mr. MOORHEAD), for their leadership in the handling of this legislation which is sorely needed to bring about a termination of unnecessary emergency powers.

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 end 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 continued and almost routine utilization of such emergency authorities for years after the original crisis serves 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 in normal, day-to-day Government operations. It is also conceivable that the existence of emergency authority has actually discouraged legislative action. Statutory authorization may not have been sought by executive agencies or granted by the Congress because of a failure to recognize the need. This bill will provide a basis for a return to a more rational and normal state of law and will eliminate reliance on unnecessary and undesirable emergency powers without upsetting 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.

The reports received from the departments on the 93d Congress bill, and testimony before the committee indicate support for the provisions of this bill.

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. It recognized the desirability of terminating existing states of emergency and further stated that it has no objection to their termination. This Department and others have noted that in some areas emergency authorities had over the years come to be relied upon in the day-to-day operations 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 2-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 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 emergency powers. 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.

Title 1 of the bill provides that after 2 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 transi-

tion in adjustment could, to a degree, disrupt the 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 I have indicated above, the termination date of all other powers and authorities is set at 2 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. The definite time 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 2-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. Subsection (b) limits the effectiveness of provisions of law to be exercised during a national emergency 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 this 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. This clarifies an existing problem as to emeregency statutes. At present, this power can only be implied with respect to some statutes. When the act 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.

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.

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.

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 of national emergency. 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 mandate 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 90 days of the end of each 6-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 90 days of the termination of the war or the emergency.

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.

As has been discussed, a basic problem with emergency legislation derives from the fact that by continued and customary use the authority has become the basis for current Government activity. Simply to abolish all emergency powers and dispositions on a specified date would not actually solve this problem but would ignore that in some instances this authority is vital to some governmental functions. For years, this committee has been concerned with the identification of emergency statutes and their utilization.

On January 25, 1962, the committee issued a committee print identifying such laws. More recently, the effort which the executive and legislative branches have devoted to this bill and earlier bills in the past several years has also 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 reasonably short

time those provisions of law can be converted from the "emergency" portions of the code in which they now appear to standard, nonemergency 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 eight specified provisions.

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

Mr. FLOWERS. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I thank the distinguished chairman for his comments, and I might also thank him for his leadership in insisting that this matter receive early attention. It was not by way of twisting my arm, because we were agreeable to every aspect of this legislation, but in our early planning the gentleman insisted that this matter receive early attention and that is exactly what we have given it.

Mr. Chairman, the purpose of the bill is to terminate all powers and authorities under any national emergency existing on the date of enactment as of 2 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 90 days after each 6-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.

The bill provides for 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 would end 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. 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 2-year study on the problems, application and scope 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. 3957 as it was finally passed by the Senate and referred to this committee in the 93d Congress.

It is recognized that an immediate termination without a period for transition and adjustment could undo and confuse many operations 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.

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.

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.

The committee has concluded that the facts developed in the hearings on the bill and as outlined in the committee 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.

Mr. MAZZOLI. Mr. Chairman, will the gentleman yield?

Mr. FLOWERS. I yield to the gentleman from Kentucky.

(Mr. MAZZOLI asked and was given permission to revise and extend his remarks.)

Mr. MAZZOLI. Mr. Chairman, I thank the gentleman for yielding.

The bill before us is a product of 2 years work by the Senate Special Committee on National Emergencies, extensive Senate debate in the 93d Congress, and thorough hearings this year conducted by the Subcommittee on Administrative Law and Governmental Relations chaired by my distinguished colleague, the gentleman from Alabama (Mr. FLOWERS).

The process of study and debate has produced a bill establishing a sound approach for terminating previously declared—and currently existing—states of national emergency; providing for an orderly transition from emergency status to nonemergency status; and regulating the declaration of future states of national emergency.

If Congress is to take a serious and fundamental role in conducting the affairs of our Government it must act to define and curtail the plenary powers possessed by the executive branch under authority of the existing national emergencies.

Four states of declared national emergency are still in existence today in 1975:

First. President Roosevelt's declared national emergency of 1933 to deal with the Great Depression.

Second. President Truman's declared national emergency of 1950 to deal with the Korean war.

Third. President Nixon's declared national emergency of 1970 to deal with the Post Office strike.

Fourth. President Nixon's declared national emergency of 1971 to deal with the Balance of Payments Crisis.

These emergencies have given the United States a total of 41 years of emergency government, and have nutured an executive branch that draws many of its powers from the 470 emergency statutes uncovered by the Senate Special Committee on National Emergencies during its study.

Despite the fact that these emergencies circumstances have ended, the executive branch's day-to-day operations rely, in all too many instances on emergency powers. Important matters, such as the regulation of international trade, and trade, and routine matters such as leases of property by the General Services Administration are based on emergency authority.

To prevent disruptions in the day-to-day executive branch functions, H.R. 3884 would not terminate the existing emergencies until 2 years after enactment.

Further, certain specific emergency powers would be exempted from the bill's effects with appropriate congressional committees mandated to review these laws and report their findings to the Congress within 270 days.

Congress could retain the emergency grants of power to the President, revise them, or abolish them totally as it decided.

H.R. 3884 also would delineate a specific role for Congress in the declaration and conduct of future national emergencies.

This bill would require that the President's declaration of a national emergency must specify the emergency provisions of law under which he and his agents wish to operate.

The President and all executive agencies must report periodically to the Congress on the use of these powers, the orders issued under the authority of the national emergency and the expenditures made in pursuance of these authorities.

At any time in this process, Congress could enact a concurrent resolution terminating the emergency. Every 6 months after declaration of a national emergency this bill requires that the Congress consider such a resolution of termination.

The provisions of the bill relating to the termination of future emergencies are worth a comment.

They require that Congress take specific action to enact a concurrent resolution to terminate an emergency. Thus, since a declared national emergency does not expire at the end of a certain time, Congress of necessity must publicly debate and definitely settle the issue of the existence or nonexistence of a national emergency.

Then by adopting H.R. 3884 we are consciously and deliberately forcing ourselves to come to grips periodically—and ultimately—with the vexing problems of national emergencies. The blame as well as the glory will be on the shoulders of the Congress in the years ahead. But that is as it is supposed to be—that is the responsible course to take.

The courts have long recognized the need for congressional oversight of the emergency powers of the Presidency. In the Supreme Court's decision prohibiting President Truman's 1952 takeover of the steel mills Justice Jackson wrote for the majority that—

> The President's power must stem from either an act of Congress or the Constitution itself . . . Emergency powers are consistent with free government only when their control is lodged elsewhere than in the Executive who exercises them . . . In the practical working of our Government we . . . have evolved a technique within the framework of the Constitution by which normal Executive powers may be considerably expanded to meet an emergency. Congress may and has granted extraordinary authorities which lie dormant in normal times but may be called into play by the Executive in war or upon proclamation of a national emergency.

In the granting of those "extraordinary authorities" it is the responsibility of the Congress to see that the powers are properly used and that they do "lie dormant in normal times."

I support this bill and recommend that it be enacted as reported by the distinguished Committee on the Judiciary.

Mr. FLOWERS. Mr. Chairman, I certainly appreciate the comments of the gentleman from Kentucky (Mr. MAZZOLI), and I wish to thank him for his effective work on the subcommittee in this matter as well as with respect to other proposals.

I also wish to thank the other members of the subcommittee, including the minority members headed by the gentleman from California (Mr. MOORHEAD), who have contributed greatly to this legislation.

Mr. MOORHEAD of California. Mr. Chairman, I yield such time as he may consume to the ranking member of the Committee on the Judiciary, the gentleman from Michigan (Mr. HUTCHINSON).

(Mr. HUTCHINSON asked and was given permission to revise and extend his remarks.)

Mr. HUTCHINSON. Mr. Chairman, I rise in strong support of this needed, long overdue legislation. The "National Emergencies Act" is an appropriate and prudent response to an important policy question currently facing Congress. That is, how extensive should be the powers granted to the President in a time of national emergency and, further, how should the exercise of these special powers be overseen and controlled?

As my colleagues in the House can ascertain from the content of this debate, we are in the anamalous situation of having been in a continuous state of national emergency since 1933. In fact, there are still in force four different national emergencies, the justification for which has now passed. What this means is the President of the United States has had a legal right to exercise sweeping, extraconstitutional powers for the last 40 years. Included among these broad powers are: the right to seize property and certain commodities; the right to control all modes of transportation; the right to call up the Ready Reserves; and the right to extensively regulate various aspects of private enterprise.

This measure seeks to remedy the fact that no statutory framework now exists to guide the conduct of our Government during a period of national emergency. Importantly, H.R. 3884 would establish standards and guidelines for the future declaration and termination of national emergencies. Two years from the date of its enactment all the power and authority that the President could exercise pursuant to the four existing national emergencies, would be discontinued. Title IV of the bill sets up a reporting system, so that Congress will be regularly informed concerning the conduct of a national emergency. Through section 202 of the bill, Congress can act as a check on the possible arbitrary or unnecessary use of emergency powers, by terminating the national emergency on its own by passing a concurrent resolution.

As a firm believer in a strong Presidency and Executive flexibility, I could not support this bill if it would impair any of the rightful constitutional powers of the President. In no way does H.R. powers. It will have no impact on his flexibility to declare a national emergency and to quickly respond if the necessity arises. The bill has no impact on the powers of the President in time of war. Rather, what it seeks to assure is that the rule of law prevails in a national emergency situation and that it cannot be bypassed, merely because we find ourselves in a state of national emergency.

H.R. 3884 is very similar to legislation (S. 3957) which unanimously passed the Senate near the end of the 93d Congress. It represents over 2 years of study and work, first by the Special Committee on the Termination of the National Emergency of the Senate and, more recently, by the Subcommittee on Administrative Law and Governmental Relations of the House Judiciary Committee. Both groups are to be commended for their thorough and thoughtful review of the problem.

The Ford administration is on record as supporting this legislation—both its philosophy and effect. However, the administration has expressed reservations about one provision, that which would permit Congress to unilaterally end the existence of a national emergency by the enactment of a concurrent resolution. Otherwise, H.R. 3884 is acceptable to them. In fact, administration officials were involved in drafting portions of the bill and their thoughts and views were continuously sought out during different stages of the legislative process. For example, the list of exempted statutes in title V were included at the request of the administration, to insure that the bill will not disrupt any essential governmental functions.

In summary, this legislation is an effort at assuring the exercise of emergency powers are confined to actual periods of national emergency and that Congress has a role in overseeing the conduct of national emergencies. I recommend the favorable action of the House on this matter.

Mr. MOORHEAD of California. Mr. Chairman, I yield myself such time as I may consume.

(Mr. MOORHEAD of California asked and was given permission to revise and extend his remarks.)

Mr. MOORHEAD of California. Mr. Chairman, I rise in support of H.R. 3884—the "National Emergencies Act." This legislation proposes to do away with the irrational and potentially dangerous practice of "government-by-emergency." In its place would be substituted a regularized machinery for the future declaration and termination of national emergencies.

This measure was prompted by the findings of a 2-year study conducted by tht Special Committee on the Termination of the National Emergency of the U.S. Senate, cochaired by Senator CHARLES MCC. MATHIAS and Senator FRANK CHURCH. What they discovered was that not one, but four, national emergencies are still in effect. These are: first, the "Bank Holiday" emergency declared by President Roosevelt in the midst of the Depression on March 6, 1933; second, the Korean war emergency, declared by President Truman on December 16, 1950; third, the national

emergency declared on March 23, 1970, by President Nixon to deal with the postal strike; and fourth, a national emergency to deal with international balance of payments and currency problems, also declared by President Nixon on August 15, 1971.

The continuing existence of these emergencies is not merely a historical anachronism. Rather, the state of being in a national emergency triggers into effect over 470 different statutes, some of which grant the President extra-constitutional powers. These powers were, of course, intended to assist him in dealing with a genuine emergency situation and not the everyday operation of government.

When testifying before the Subcommittee on Administrative Law and Governmental Relations of the House Judiciary Committee, on H.R. 3884, earlier this year, Assistant Attorney General Antonin Scalia stated:

> "Since the purpose of such emergency laws is to confer upon the Government extraordinary authority which in normal times it would not have, one must assume that undue prolongation of states of emergency has the effect of creating or perpetuating powers which neither the Congress nor the President would think desirable.

So, the situation with which we have lived too long is, at best, cumbersome and inefficient. At worst, it could allow for actions wholly inconsistent with our form of government.

It is interesting to note that, during the Second World War when the very existence of Britain was being challenged, and the possibility of invasion was imminent, Parliament took the precaution of extending that wartime emergency—along with the accompanying powers delegated to the Government's Ministers—for only 30 days at a time. Faithfully, every 30 days, Parliament undertook to review and extend the emergency bill for still another 30 days.

The caution of the British Parliament certainly stands in stark contrast to the tendencies of the Congress in recent decades. Congress would do well to learn from our British counterparts for we have gone in the opposite direction, conferring any number of emergency powers on the Executive, in an open-ended fashion, without any supervision or control.

There has been a great deal of talk about "oversight" in this House in the recent weeks and months. The legislation we consider today is an effort at genuine congressional oversight. H.R. 3884 would establish an orderly procedure for the handling of national emergency situations. As I have indicated no such statutory framework now exists. Under H.R. 3884, Congress would assume the major role of reviewing and overseeing the conduct of the executive branch in a national emergency situation. Most important, under its provisions, Congress would have the power to unilaterally terminate a national emergency should the facts warrant it.

Specifically, H.R. 3884 would accomplish the following:

First. Terminate all "powers and authorities" that could be exercised pursuant to the four existing national emergencies 2 years from the date of enactment. The rationale for a 2-year grace period is that it allows those departments and agencies, currently relying on emergency-based authorities to perform everyday functions, to seek alternative authority;

Second. Establish a procedure for the declaration of future national emergencies and provide for their termination by either the Congress or the President;

Third. Require that, after declaring a national emergency, the President specify which emergency powers statutes he intends to utilize to deal with the situation;

Fourth. Impose reporting requirements on the President and the entire executive branch, so that Congress will be advised regarding significant actions taken and funds expended in connection with an emergency; and

Fifth. Repeal outright seven emergency-based statutes that are either obsolete or viewed as unnecessary. Also it would exempt eight statutes from the provisions of H.R. 3884, which are seen as essential to certain on-going functions of the Federal Government. It was felt that any interruption of their authority would cause serious problems. The remaining emergency powers statutes would stay on the books, but be placed in a suspended status. They would be available for use during a future national emergency, if those specific powers are deemed necessary by the President.

It is worth noting that among the exempted statutes are provisions contained in title 10 of the United States Code dealing with mandatory separation and retirement from military service.

The exemption of these provisions prevents a premature and inadvertent separation from the military of those men classified as POW's or MIA's in Southeast Asia. Clearly, a determination regarding the status of these brave young men should not be made indirectly, in the context of legislation dealing with Presidential emergency powers. Rather, that is a decision that ought to be made on its own facts, by the President and the Department of Defense.

Another exempted law of considerable note is the so-called "Trading with the Enemy Act," which dates back to 1917. Originally designed to give the President the power to control commerce with countries with whom the United States was then at war, this authority was later expanded to include controls over certain domestic financial transactions. Since then, for example, this statute has been utilized as the authority for freezing the assets of nationals of enemy or occupied countries; for the imposition of consumer credit controls; and for establishing a foreign direct investment program. The case for its retention was effectively made by witnesses from the Treasury and Department of State, testifying before our subcommittee.

In conclusion, Mr. Chairman, I would stress that the formulation and drafting of this legislation has been a genuinely bipartisan effort. The Ford administration and Republican Members in both the House and Senate have been extensively involved in the work product you see before you. The Ford administration is on record as supporting the establishment of statutory controls declaring and terminating national emergencies. I urge my colleagues to vote favorably on H.R. 3884.

Mr. Chairman, I hope this legislation will be passed by this Congress without any devastating effects from amendments that are not carefully thought out in advance. The committee has carefully gone over this legislation and has tried to work it out to perfection. So I hope that there will be only minor changes made to the legislation, if any are necessary.

Mr. ROUSSELOT. Mr. Chairman, will the gentleman yield?

Mr. MOORHEAD of California. Yes, I yield to the distinguished gentleman from California.

(Mr. ROUSSELOT asked and was given permission to revise and extend his remarks.)

Mr. ROUSSELOT. Mr. Chairman, I appreciate my colleague yielding to me.

I wish to compliment the committee and my colleague, the gentleman from California (Mr. MOORHEAD), especially, who I know has been avidly proposing these changes in such wide, broad emergency powers delegated to the President and the executive branch for some time.

I know that my colleague, the gentleman from California (Mr. MOORHEAD), has been, along with many other members of the Committee on the Judiciary, anxious to change this so as to reassert congressional participation in the deliberations relating to national emergencies, and I wish to compliment my colleague, the gentleman from California, for his effort in this direction, along with the chairman of the committee and the other members of the Committee on the Judiciary.

Mr. Chairman, I rise in support of H.R. 3884, legislation which would terminate the powers and authorities of the President and other Federal officials which are presently being derived from emergency declarations. This legislation provides that these declarations of national emergencies currently in effect terminate 2 years after the date of enactment of this bill. However, as originally introduced, H.R. 3884 provided that the termination would take place 1 year after the date of enactment, and I would have preferred that the 1-year termination date be retained.

In my opinion, it is intolerable that Presidential emergency powers derived from a 1933 declaration by President Roosevelt concerning the problems of the depression, a 1950 declaration by President Truman in connection with the Korean conflict, a 1970 declaration because of the post office strike, and a 1971 declaration dealing with the balance-of-payments problem are still essentially in effect. The use of broad emergency powers by the Executive which include the right to seize property, take over transportation, institute martial laws, and indeed assume control of all aspects of private enterprise must be stopped.

This legislation provides a new mechanism to give Congress the ability to oversee the use of these powers, to take action to terminate an emergency proclamation, and to determine if an emergency situation actually exists.

As elected Representatives of the people, I believe that we have the responsibility to guard against the taking of what essentially could be basic constitutional rights, and to also protect the Nation in times of a legitimate state of emergency. This is an important role which Congress must assume, and H.R. 3884 is a step in the right direction.

Mr. SKUBITZ. Mr. Chairman, will the gentleman yield?

Mr. MOORHEAD of California. Yes, I yield to the gentleman from Kansas.

(Mr. SKUBITZ asked and was given permission to revise and extend his remarks.)

Mr. SKUBITZ. Mr. Chairman, I want to commend the Committee on the Judiciary for bringing this bill before us today. The statute books are cluttered with laws passed to meet a specific problem—only to remain on the books after the problem has long disappeared. Agencies of Government have learned to rely on old statutes to do their bidding—giving these statutes interpretation that were never dreamed of when the bills were enacted into law. Too often, such statutes are interpreted to give an agency authority to act when requested for new authority would be looked upon with a jaundiced eye.

The bill is the first step toward the elimination of emergency powers. I hope the committee will consider the repeal of other type legislation that has been in the books 60, 70 years—100 years ago—never used or amended but a tool that might be called on to meet new problems. The voice of the dead should not direct the steps of the living.

I think that this is a piece of legislation long overdue.

Mr. FLOWERS. Mr. Chairman, I yield 5 minutes to the gentleman from Massachusetts (Mr. DRINAN).

(Mr. DRINAN asked and was given permission to revise and extend his remarks.)

Mr. DRINAN. Mr. Chairman, and members of the Committee, I commend the subcommittee on clarifying this jungle of law where for 40 years the American people have lived under the shadow of laws that never should have been enacted or at least should have been repealed.

I wish to point out, however, two deficiencies, the subject of which I will propose to cover in amendments at the appropriate time.

Mr. Chairman, it seems to me that the problem of declaring a national emergency is very analogous to what this Congress did in the War Powers Resolution Act of 1973. In that act, as is well known, Congress reviewed the presidential powers and the congressional powers and brought about a relatively happy marriage of those two powers.

The declaration of a national emergency, it seems to me, confers upon the President powers that are awesome and potentially dangerous, similar to the President's exercise of the war powers. Consequently, I do not think that this legislation as presently proposed should allow the President to unilaterally declare a national emergency whenever he decides that it is essential to do so. I think that we should follow the example of the War Powers Act and insist that the President consult, whenever possible, with the Congress before the enactment of the proclamation of emergency, and at every moment thereafter.

Second, I do not think that we should allow the President to proclaim an emergency and then have the budren placed upon the Congress to terminate that emergency. That is precisely what this bill does and, in my judgment, that is a defect.

Once again, that is in sharp contrast with the war powers resolution which provides for automatic termination of the use of American forces unless Congress acts affirmatively to approve an extension.

Mr. Chairman, in an amendment that I shall propose at the appropriate time, I will urge the Congress to adopt an amendment to this very necessary bill that would provide that the emergency proclaimed by the President automatically be terminated within 30 days unless the Congress affirmatively seeks to extend the emergency.

It is very significant to note in the testimony taken by the subcommittee that Senator CHURCH said that was the original intent of the authors of this bill in the Senate. As it came out of the special committee, Senator CHURCH and others felt that the Congress should not have the burden; that this emergency power should terminate automatically within 30 or 60 days unless the Congress affirmatively renews that power.

On page 30 of the hearing conducted by the subcommittee, Senator CHURCH states:

> Why was the change made? The change was made because the Pentagon and the Administration did not want this automatic termination of their powers.

Now in the bill we have this very, very serious deficiency that permits the emergency to go on and on unless by a joint resolution of the Congress it is terminated. I think that is a basic deficiency. I think that it will aggravate the problem. It will continue the problem that is sought to be eliminated by this particular bill. After all, Mr. Chairman, an emergency is by definition a short-term affair. We should not allow the President to declare an emergency and then allow that emergency to go on and on unless someone has the initiative in both Houses of Congress to terminate it.

The President after the 30 days proposed in my amendment may once again proclaim the emergency, or Congress can extend the emergency. But in no wise should we have a very loose power residing in the President by which he can declare an emergency and this state of emergency will continue on and on until both Houses of Congress terminate it.

In conclusion, I commend the subcommittee once again but state that we have been relatively fortunate over the past 40 years not to have had abuses of this vast power that has been given to the President by the Congress. We have been very fortunate. Yet we recognized in the War Powers Act that we must very severely limit the power of the President to declare war, and I suggest that by amendments that I shall propose we will make this present piece of legislation as tight and as important and as protective of the rights of the Congress as it should be.

The CHAIRMAN. The time of the gentleman has expired.

Mr. MOORHEAD of California. Mr. Chairman, I yield such time as he may consume to the gentleman from Ohio (Mr. ASHBROOK).

Mr. ASHBROOK. Mr. Chairman, I rise in support of H.R. 3884. This legislation would—with certain specified exceptions—terminate all powers and authorities resulting from previously declared national emergencies. It would also establish procedures for the declaration, exercise of powers, and termination of future national emergencies.

H.R. 3884 is certainly needed. Once declared, national emergencies seem to have a way of staying on the books. The Korean war emergency declared by President Truman, for example, is still in effect. So also is the 1933 declaration of President Roosevelt.

It is time to finally bring these national emergencies to an end. Outdated emergencies should not serve as the legal basis for new governmental actions. The potential for abuse is too great. The Government should operate through normal statutory procedures, not by emergency procedures which were designated for limited periods of time.

H.R. 3884 would halt this practice. No longer could a declaration of national emergency be used to justify Government activity 20 to 40 years after the crisis has passed.

Not only would it repeal past national emergencies, it would establish procedures on the declaration and termination of future emergencies. This would prevent reliance on long-passed emergencies from recurring in the years ahead.

I urge the adoption of H.R. 3884. Government action on the basis of outdated national emergencies should be brought to a halt.

Mr. ANDERSON of Illinois. Mr. Chairman, this Congress has often been chided for tacking the word "emergency" onto the title of nearly every major bill we have considered this year. A visitor to our galleries might be led to conclude that this is the emergency room of a hospital instead of the House Chamber.

Although H.R. 3884 also contains the word "emergencies," being entitled the "National Emergencies Act," I think it is significant to note that for once we are not declaring yet another emergency, but instead are attempting to terminate some past emergencies, one of which dates back some 42 years.

As if we did not have enough contemporary problems, crises and emergencies to worry about, this country is still living under four declared states of national emergency including the Roosevelt depression emergency proclamation

of 1933, the Truman Korean emergency proclamation of 1950, and the Nixon postal and economic emergency proclamations of 1970 and 1971 respectively. In addition, we know from the work of the Senate Special Committee on the Termination of National Emergency in the last Congress that there are some 470 existing emergency statutes on the books. According to the Senate committee, these remain "a potential source of virtually unlimited power for a president should he choose to activate them." These potential powers conferred upon the President include the right to seize property, organize and control the means of production, seize commodities, assign military forces abroad, call reserve forces amounting to 2.5 million men to duty, institute martial law, seize and control all means of transportation, regulate all private enterprise, and restrict travel.

The chairman and ranking Republican on the Special Senate Committee, Senators CHURCH and MATHIAS, issued a joint statement in September of 1973 underscoring the inherent dangers in this vast array of standby emergency authority granted to the President. In their words:

> We cannot stress enough the warning contained in this catalog of emergency power statutes. The evident pattern in this accretion of power over a 40-year period is, in our view, symptomatic of what has occurred in law-making in all areas of our government.

They went on to say, and I again quote:

> Unless Congress takes steps to strengthen its capacity to write the laws through the representative political process as the Constitution intended, then the unmistakable drift towards one-man government will continue.

Mr. Chairman, I think it is important to observe that that statement was issued prior to the release of the so-called White House Watergate transcripts and their chilling revelations about the abuse of presidential power.

The 93d Congress, to its credit, made immense strides in the reassertion of congressional prerogatives through the enactment of the budget reform and war powers acts as well as the responsible exercise of its impeachment powers. The torch has now passed to this new Congress to continue the momentum in checking the potential abuse of presidential powers and reestablishing the delicate balance of powers between the great branches of our Government.

Although the Senate last year passed a bill similar to this terminating national emergencies, time ran out before the House could complete action on the measure. I want to commend our Judiciary Committee, which distinguished itself in the last Congress, for making this legislation a priority item in this session.

One of the main complaints of the Church committee was the irresponsible approach the Congress has taken to past emergency legislation. As Senators CHURCH and MATHIAS put it:

> The record of congressional performance is a poor one. These laws—in the main, drafted in the executive branch—were passed hastily, without much consideration. Almost all of the laws made no provision for congressional oversight nor do they provide a means for terminating the "temporary" delegated powers.

H.R. 3884, which is based on the recommendations of the Church committee, is designed to insure that the Congress will play a more active, conscientious and continuing oversight role with respect to future declarations of national emergencies. For not only does it terminate existing states of emergency after 2 years, but it prescribes strict procedures for the declaration and reporting of future emergencies, and for periodic congressional review and action on those declarations.

First, the bill defines under what circumstances the President may declare a national emergency. Second, the bill requires that the proclamation be immediately transmitted to the Congress and published in the Federal Register. Third, the President may not exercise his authority under any emergency statutes under a state of national emergency unless he specifies which provisions he will be invoking in the proclamation or in subsequent Executive orders published in the Federal Register and transmitted to the Congress. Fourth, the Congress may terminate the national emergency at any time by passage of a concurrent resolution. In any event, the Congress must consider whether the emergency should be terminated at periodic intervals of every 6 months. Sixth, the President must indicate to the Congress annually, and through the Federal Register, whether the emergency is still in effect. And seventh, the President may terminate the national emergency at anytime by proclamation.

Mr. Chairman, the bill contains certain other safeguards which I will not enumerate here. Suffice it to say, this legislation does institutionalize a very careful oversight procedure which shall insure that the Congress responsibly exercises its obligations with respect to any national emergency.

It is my understanding that an amendment may be offered to provide for the automatic termination of a national emergency after 1 year unless the President declares to the Congress at the end of that 1-year period that the emergency is still in effect. Since the bill already requires the President to make such annual declarations and forces the Congress to consider a termination semiannually, I question the necessity of such an amendment. Moreover, I think it is far preferable to have the Congress take affirmative action in the event the President fails to comply with the reporting provisions, rather than simply permit the state of emergency to lapse without proper consideration and debate.

In conclusion, Mr. Chairman, I strongly support this legislation as reported by the Judiciary Committee and urge its enactment.

Mr. FOUNTAIN. Mr. Chairman, I rise in support of passage of H.R. 3884, the National Emergencies Act now before the House. The worthwhile purpose of this legislation is to terminate all powers and authorities which were given to the executive branch during the past periods of national emergency and which are no longer needed.

During times of national crisis, like the Korean conflict or the economic difficulties encountered in the Great Depression of the 1930's, the Congress enacted more than 470 significant statutes delegating powers to the President, powers which had been the prerogative of the national legislature since the beginning of the Republic.

Generally speaking, there was good reason for the Congress, in the course of its legislative work, to delegate powers during times of national emergency. Problems have arisen, however, in the granting of various powers to the Chief Executive during previous emergencies because no mechanisms were set up to terminate the exercise of these delegated powers once the crisis had passed.

Ironically, the executive branch still carries on some of its normal activities under authority accumulated during the designated emergencies of 1933, 1950, 1970 and 1971. Clearly the particular emergencies of these years have passed. Yet no defined means of terminating or renouncing those grants of emergency power exist. This is a situation we must change, Mr. Chairman.

The legislation under consideration today would require the Chief Executive to specify the powers and emergency statutes he will utilize in the exercise of emergency powers, and it would require the Chief Executive to maintain a file of orders, rules, and regulations used in the exercise of the emergency authority. Furthermore, the statute would require that such information must be transmitted to the Congress, along with a report of expenditures directly related to the exercise of those emergency powers, at 6-month intervals.

In conclusion, let me say, I support passage of this measure on the simple proposition that H.R. 3884 will enable the Congress to keep an active watch on the growth of Presidential power, without curtailing the President's ability to respond in times of national crisis.

Currently, the President can, if he wishes, assume great control over our personal lives, the public life of our Nation, and over our economic and political affairs, using the many emergency powers which have not been formally terminated. Such vast powers are simply not needed—especially obsolete laws designed for emergencies which have long since passed. Consequently, our task is to assist in maintaining the balance of liberties and freedoms embodied in the Constitution by repealing unneeded, outmoded emergency powers.

Passage of this measure would restore that balance without hindering any future exercise of Presidential power in times of national emergency, however unforeseen or sudden.

In a word, this measure would preserve the Executive's authority to assume great and awesome responsibilities in times of national emergency, while permitting the Congress to discharge its Constitutional responsibility to check the potential ex-

ercise of power to the disadvantage of the separation of powers and civil liberties of the American people.

Mr. Chairman, legislation of this kind is long overdue. I therefore urge passage of H.R. 3884.

Mr. CLEVELAND. Mr. Chairman, I rise in support of H.R. 3884 as a long-overdue reform to redress the imbalance of authority between the executive and legislative branches and in the interests of restoring orderly process in government. After some 40 years of subjecting the country to government by executive fiat in the name of one type of emergency or other, it is time to call a halt. The time has come for reexamination and culling out of the nearly 500 provisions of law involved in one way or another with the existence of a declared state of emergency.

The other body, in which this legislation originated, and the Committee on the Judiciary, which brings us an amended bill, are to be commended for their initiative in shaping this reform measure.

It would terminate—with certain justifiable exceptions—emergency powers and authorities—some going back to 1933—within 2 years of enactment and would establish a system for both the declaration and termination of emergencies in the future.

At the same time, it will restore and strengthen congressional responsibility for regulatory-type activities which, because of their origin in emergencies of the past, tend to impinge on individual liberties and economic freedoms—which, incidentally, I happen to regard as inherently related.

While I support this legislation, I also wish to take this occasion to observe that it is somewhat negative in its thrust. The Congress in essence is withdrawing powers which it has delegated implicitly or explicitly to the Executive and allowed to remain there long after the original justification passed into history.

"ACTIVIST" PRESIDENCY

Our failure to act in the past is directly related to an infatuation with the doctrine of the "activist" presidency which flourished not only in academic circles, but in the Congress itself for decades.

I doubt that I am alone in my conviction that this concept of the presidency inflated the office and those who have held it in recent administrations—and I emphasize my use of the plural—and spurred the abuses of power inevitably and ultimately associated with its excessive concentration.

So I suppose that to some of my colleagues this legislation has its penitential aspects. But I also would like to think that this bill goes farther than that and like, for example, war powers legislation and other structural and procedural reforms, it represents another step in congressional efforts to regain control over the direction and growth of government at the Federal level.

In this connection, I would hope that we would pursue the logic of this legislation and be wary of further actions which would move us in precisely the opposite direction. I refer to a continuing tendency to seek salvation from the ills that beset society by the creation of new programs and new agencies to administer them; by passing new pieces of regulatory legislation inevitably followed by massive volumes of administrative regulation.

LARGER ISSUE—BIG GOVERNMENT

We cannot have it both ways. This bill before us today is designed to curb abuses or the potential abuses of power triggered by executive declarations of emergency. Thus the focus is the Presidency and rightly so. But I have become increasingly convinced in recent years that we create the same potential for arbitrary action and plain old bureaucratic red-tape, delays and mismanagement—bad government—when we add on to the agencies downtown additional layers of discretionary authority. My concern, again, is similar with the executive branch.

The results are much the same, a breakdown of responsive government and increasing frustration in our efforts, as Members of the most representative House of the legislative branch, to respond when the anonymous technicians who draft regulations and the more innovative members of the judiciary get their licks in.

This situation, as much as any of the more widely publicized infirmities of the traditional independent regulatory agencies, contributes to the growing public concern over excessive regulation by Government.

Let us by all means pass this bill. But then let us also pursue our legislative resposibilities with a greater awareness of the practical limitations on our ability to reform the world with Federal resources and Federal regulation.

Strengthened legislative oversight backed up by a stronger inclination to move by legislative enactment when the Executive or the courts act to frustrate or distort the intent of Congress—this is the practical alternative available to the Congress. If pursued in the same spirit that motivates our action on this bill, this can do much to improve the functioning of Government and its claim to the confidence of the public.

Mr. MOORHEAD of California. Mr. Chairman, I have no further request for time.

Mr. FLOWERS. Mr. Chairman, I have no further request for time.

The CHAIRMAN. The Clerk will read.

The Clerk read as follows:

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 one year 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 right 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 pursuant to a statute authorizing him to declare a national emergency.

TITLE II—DECLARATIONS OF FUTURE NATIONAL EMERGENCIES

SEC. 201. (a) In the event the President finds that a proclamation of a national emergency 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, the President is authorized to proclaim the existence of a 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.

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. Any national emergency declared by the President shall be terminated on the date specified in any concurrent resolution referred to in clause (1) of this subsection, 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) 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, 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 thereafter, 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 and shall thereupon become the pending business of such House and shall be voted upon within three calendar days, 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 legislation is referred to the committee of conference. Notwithstanding any rule in either House concerning the printing of conference reports in the Record 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 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 602(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.

TITLE III—DECLARATIONS OF WAR BY CONGRESS

SEC. 301. 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 such declaration.

TITLE IV—EXERCISE OF EMERGENCY POWERS AND AUTHORITIES

SEC. 401. 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 V—ACCOUNTABILITY AND REPORTING REQUIREMENTS OF THE PRESIDENT

SEC. 501. (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 such 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 thirty days after the end of each three month period after such declaration, a report on the total expenditures incurred by the United States Government during such three-month period which are directly attributable to the exercise of powers and authorities conferred by such declaration. Not later than thirty days after the termination of each such emergency or war, the President shall transmit a final report on all such expenditures.

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

SEC. 601. (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 (16 U.S.C. 831d(m)) is repealed.

(e) Section 1382 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. 602. (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. 95(a); 50 U.S.C. App. 5(b));

(2) Section 673 of title 10, United States Code;

(3) Act of April 28, 1942 (40 U.S.C. 278b);

(4) An act of June 30, 1949 (41 U.S.C. 252);

(5) Section 3477 of the Revised Statutes, as amended (31 U.S.C. 203);

(6) Section 3737 of the Revised Statutes, as amended (41 U.S.C. 15);

(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) (1) (6) 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 it may have, to its respective House of Congress within two hundred and seventy days after the date of enactment of this Act.

Mr. FLOWERS (during the reading). Mr. Chairman, I ask unanimous consent that the bill be considered as read, printed in the RECORD, and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from Alabama?

There was no objection.

COMMITTEE AMENDMENTS

The CHAIRMAN. The Clerk will report the first committee amendment.

Mr. FLOWERS. Mr. Chairman, I ask unanimous consent that all the committee amendments be considered en bloc and that reading of the committee amendments be dispensed with and that they be printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Alabama?

There was no objection.

The committee 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 3813, 6386(c) and 8313 of Title 10, United States Code."

Page 10, line 7, strike "(1)(6)".

The CHAIRMAN. The question is on the committee amendments.

The committee amendments were agreed to.

AMENDMENT OFFERED BY MR. MATSUNAGA

Mr. MATSUNAGA. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. MATSUNAGA: On page 3, line 16, strike the sentence beginning "At the end";

And on page 6, immediately after line 15, insert the following new subsection:

"(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 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."

Mr. MATSUNAGA. Mr. Chairman, as the author of Public Law 92–128, which prohibits the internment of any U.S. resident under authority of a national emergency, I stand fully in support of legislation to provide for a rational and deliberate review of declared national emergencies. This is the thrust of H.R. 3884 and I commend the Committee on the Judiciary, Chairman RODINO and especially the chairman of the subcommittee, Mr. FLOWERS, for bringing this legislation to the floor today. The bill will clear up the muddled situation which exists today relative to the duration of declared national emergencies.

My only concern about H.R. 3884 is with its provision that requires the President to redeclare any national emergency every year by publishing in the Federal Register and transmitting to Congress a notice stating that the emergency is still in effect. By failing to provide for any direct sanction in the event that the President fails to comply with this notice provision, the bill encourages executive neglect, which may well result in frustration when Congress attempts to enforce this requirement. As reported, H.R. 3884 also fails to state the consequences of the President's failure to comply with the requirements of publication and transmittal of notice. The question as to whether or not the declared national emergency continues is left unanswered.

My amendment would provide that if no notice of a continuing national emergency is transmitted to the Congress and printed in the Federal Register in the manner specified in the bill, the emergency would automatically terminate on its next anniversary date. My amendment would provide another method by which declared emergencies could be terminated, in addition to the two methods provided in the committee bill, but only in a technical sense, for the President would retain the power to redeclare the emergency by a simple publication in the Federal Register and transmittal of notice to the Congress.

If my amendment is adopted, Members of Congress, executive agencies, and the public desiring information on the status of any declared national emergency, may look to a single publication, the Federal Register, in the secure knowledge that any declared emergency over a year old has been terminated if not listed in this publication.

Mr. Chairman, my amendment would clearly serve the intended purpose of H.R. 3884, and I urge its adoption.

Mr. FLOWERS. Mr. Chairman, would the gentleman yield for a comment?

Mr. MATSUNAGA. I am happy to yield to the distinguished gentleman from Alabama, chairman of the subcommittee.

Mr. FLOWERS. Mr. Chairman, I appreciate the gentleman's comment. I certainly did not want to cut the gentleman short, particularly in the earlier part of the gentleman's statement here.

I would say from this Member's point of view it is a highly acceptable amendment. I think probably it does add something that needs to be added to the legislation that might not be taken care of quite as cleanly and as properly through the regular 6-month requirement of the concurrent resolution to terminate the emergency. It would be undoubtedly a better process to have, as the gentleman suggests in his amendment.

Mr. Chairman, as far as the Members on this side are concerned, we will accept the amendment.

Mr. MATSUNAGA. Mr. Chairman, I thank the gentleman from Alabama. I believe the gentleman from Alabama has exercised keen insight into the pending matter.

Mr. MOORHEAD of California. Mr. Chairman, will the gentleman yield?

Mr. MATSUNAGA. I am happy to yield to the distinguished gentleman from California.

Mr. MOORHEAD of California. Mr. Chairman, we will also accept the amendment.

Mr. MATSUNAGA. I thank the gentleman from California. His cooperation as minority floor manager has been excellent and very much appreciated.

Mr. DANIELSON. Mr. Chairman, will the gentleman yield?

Mr. MATSUNAGA. I most gladly yield to the gentleman from California.

Mr. DANIELSON. Mr. Chairman, I want to say I will support the amendment of the gentleman from Hawaii. I think this self-destruct provision of the Matsunaga amendment will add a good deal to the bill in that emergencies will not just go on and on because we are too busy to act upon them. It is a very wholesome amendment. It will improve the other beneficial portions of the bill.

Mr. MATSUNAGA. Mr. Chairman, if the gentleman will yield, I thank the gentleman for his contribution and for his keen insight. With his support, I know now there is no "mission impossible."

Mr. DANIELSON. Mr. Chairman, I think the world should remember this as the Matsunaga "self-destruct" amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Hawaii (Mr. MATSUNAGA).

The amendment was agreed to.

AMENDMENT OFFERED BY MR. DRINAN

Mr. DRINAN. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. DRINAN: Page 3, strike out the period at the end of line 15 and insert in lieu thereof the following: "; or

"(3) thirty calendar days elapse following the declaration of an emergency unless Congress (A) has authorized by concurrent resolution the extension of such an emergency to a date certain, or (B) is physically unable to meet as a result of an armed attack upon the United States."

Mr. DRINAN. Mr. Chairman, we have to decide here today a very crucial question. Are we going to allow this vast emergency power of the President to be continued in the way that it has been done over the last 40 years? This bill is good, but it is imperfect. My amendment simply states that the President can declare an emergency, but an emergency in the nature of things is a short thing. It is something urgent.

Consequently, my amendment states that after 30 days this state of emergency lapses unless the Congress by concurrent resolution extends the emergency to a date certain. That would be simple to do at the request of the President. We are not tying his hands. At the same time, we are in control of this vast reservoir of power that is conferred upon the President.

My amendment also provides that the emergency can continue if the Congress is physically unable to meet as a result of an armed attack on the United States. This once again tracks the war powers resolution where we stated that the President, under the Constitution, under our laws, has only those powers that we, the Congress, specifically confer upon him.

Under my amendment when we confer the power to declare an emergency, we state that this power can be exercised for 1 month, and for 1 month only, and that at the end of that 30 days it terminates unless the Congress, both bodies, by concurrent resolution extend it. This obviously gives us a further way of protecting the country from the misuse and the abuses of the vast, inherent emergency powers of the President.

I think this amendment would improve the bill. I think furthermore that this amendment coincides with the original intent of the Senate special committee. Senator FRANK CHURCH stated in testimony before this subcommittee, that when they brought the bill out, they clearly intended that the emergency power would exist only during a specific period of 30 or 45 or 60 days. It was the administration that caused the Church special committee to change its view and to state that the emergency goes on and on.

With the amendment adopted which was offered by the gentleman from Hawaii (Mr. MATSUNAGA), I think that the dilemma is pointed up even more sharply: that we cannot wait for an entire year. There is no reason why we should legislate that a whole year can go by in which these emergency powers are continued unless the Congress acts, or unless the President takes affirmative action.

The proposal I am making, Mr. Chairman, tidies up this bill. It states exactly what we, as the Congress, should do with this vast emergency power. In all candor, we have abused our powers in this

area over the past 40 years. Since 1933 there have been some 480 emergency declarations, all there in the law. If we are going to continue emergency powers in the President—as we must—we must very carefully state that he has that power for 30 days and for 30 days only unless, by concurrent resolution, we seek an extension of that particular state of emergency.

Mr. Chairman, I urge the Members to vote for this amendment. It would improve this Act. It would reaffirm the congressional powers without inhibiting the powers of the President.

(Mr. FLOWERS asked and was given permission to revise and extend his remarks.)

Mr. FLOWERS. Mr. Chairman, I rise in opposition to the amendment of the gentleman from Massachusetts. It seems to me, Mr. Chairman, that what we have here in the bill is a perfectly balanced, coordinated approach to a problem. If we adopted the amendment as the gentleman from Massachusetts would have us do by his amendment, we would be tilting substantially in favor of, I think, enlarging the problem of executive action while not really giving the Congress what this amendment seeks to do.

Let us remember what the bill provides in section 202(a), subsection (1), "Congress terminates the emergency by concurrent resolution; or

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

In addition thereto, there is a written-in proviso in the legislation that at each 6-month period after the declaration of an emergency, the Congress—that is, both the House and the Senate—must vote on the issue whether or not to continue the emergency. That seems to me to be an adequate safeguard here.

The gentleman's amendment, I must say, contemplates that the Congress will not be responsible. I cannot find it in myself to declare that for this or any future Congress. Furthermore, I do not think, Mr. Chairman, there is an essential parallel between this resolution and the War Powers Act.

It is not contemplated under any of the emergency powers that are conferred upon the President through various pieces of legislation that we will be taken into a war and put American men and women overseas fighting a war, as does the War Powers Act.

We are talking about mostly technical matters. The objective of this legislation is to either wipe the slate clean or to allow a process whereby the slate can be wiped clean in the future as to these declared emergencies and the powers activated thereunder.

Therefore, Mr. Chairman, I do oppose the gentleman's amendment and I ask my colleagues to support us in voting down the amendment.

Mr. MAZZOLI. Mr. Chairman, will the gentleman yield?

Mr. FLOWERS. I yield to the gentleman from Kentucky.

Mr. MAZZOLI. I thank the gentleman for yielding. I appreciate what the gentleman said, and I concur in his statement. I oppose the amendment offered by the gentleman from Massachusetts.

Is it not correct, I ask the Chairman, that during our hearings and our discussions it was stated that the gentlemen from the other body, in an effort to get a piece of legislation like this on the books, urged us not to make any changes in order that the arrangements made with the administration could go forward and this bill could be signed?

Mr. FLOWERS. The gentleman is correct. A great deal of work was done in the other body on this legislation. We worked, I think, hard and diligently on it, and in a large part we did accept what the other body did. It was not because we were rubberstamping the other body, but because it was good work. The compromise was a good piece of legislation. For that reason, I think we should leave this particular provision intact.

Mr. MAZZOLI. If the gentleman will yield further, it would seem to me, Mr. Chairman, that unless there is some real, profound need for making these changes, we should leave the legislation the way it is.

Mr. FLOWERS. I thank the gentleman.

Mr. CONYERS. Mr. Chairman, I move to strike the requisite number of words.

(Mr. CONYERS asked and was given permission to revise and extend his remarks.)

Mr. CONYERS. Mr. Chairman, I do not know if I understood, by the previous colloquy with the distinguished chairman of the subcommittee, whether or not we have received Senate instructions not to tamper with this legislation. If that is the effect of the discussion, I suppose it is clearly not relevant to the deliberations of 435 Members. But as I see this amendment—and I would like to raise this question with my colleagues on the subcommittee—the apparent thrust of this amendment is to determine whether an emergency under this legislation is to exist for 1 year or 30 days. I think that is an important enough question with which some of us might have a different view. I, of course, would be one of those who would like to limit the emergency powers of the executive branch to as short a time as is reasonable, and 30 days seems reasonable to me. I suppose that the Congress could, as the chairman of the subcommittee has pointed out, at any time operate within that 1-year period, but I think the burden more properly in this instance should rest upon the executive branch in requesting an emergency situation to exist.

I would say that this is a reasonable issue that has been framed by our colleague from Massachusetts. Would the gentleman not agree to that?

Mr. FLOWERS. Mr. Chairman, will the gentleman yield?

Mr. CONYERS. I will yield to the gentleman.

Mr. FLOWERS. No, I would not agree to that. I think the gentleman's amendment contemplates that the Congress must act within 30 days in order to continue the emergency powers. Just as the gentleman said, he is apparently wary that the Congress would not act to terminate emergency powers. There are many impediments to the Congress acting on anything within a 30-day period. For instance we have just had a 30-day recess in the month of August. We have many reasons why I think we should not tie the administration's hands with this sort of provision.

Mr. CONYERS. Would the gentleman not agree with me that if we were in a state of emergency and wished to terminate it and we are on a 30-day recess, we would probably be able to rise to the occasion?

Mr. FLOWERS. Mr. Chairman, I will say to the gentleman, if he will yield further, that I would hope we could rise to the occasion, but I would not want to say for sure we would. I do not think I could say, nor could he.

I think we are really talking about such a minor part of this legislation that the language here takes care of what the gentleman is apparently concerned about. We are not talking about extending this thing ad infinitum; we are talking about only a short period of time.

Mr. CONYERS. Mr. Chairman, if my friend, the gentleman from Alabama (Mr. FLOWERS), is not certain whether the Congress in recess would be able to come back to terminate an emergency, I think that is the best stated case for this amendment and the best reason why either of us who support it would offer it.

Mr. MAZZOLI. Mr. Chairman, will the gentleman yield?

Mr. CONYERS. I yield to my friend, the gentleman from Kentucky.

Mr. MAZZOLI. Mr. Chairman, I thank the gentleman for yielding.

I have been very interested in this conversation. I think this really goes back to our discussions concerning the War Powers Act. The House was divided on the question in this case here of whether the provisions of the War Powers Act should be brought in upon the action of Congress or upon its inaction.

Many of us felt that the inaction of Congress was an inappropriate way to show our displeasure at the pursuit of some international adventure involving American Armed Forces; others felt that was the appropriate way, because of the parliamentary problems involved, that inaction was the proper way to display our opposition.

Here in the subcommittee we came to this same philosophical split. We in the subcommittee eventually went along with the view that it should depend upon congressional action rather than inaction, as the gentleman from Massachusetts (Mr. DRINAN) would suggest.

Mr. CONYERS. But, Mr. Chairman, I think this question raised by the amendment turns on whether an emergency should be constituted within 30 days or within 12 months. I think that is a reasonable basis for our position.

Mr. MAZZOLI. Mr. Chairman, if the gentleman will yield further, I think not in any case does it depend on whether the Congress should take action in 30 days or in 12 months under the present bill. There is nothing that prevents us from taking action.

Mr. CONYERS. I realize that, but we are trying to define the time period.

Mr. DRINAN. Mr. Chairman, I make the point of order that a quorum is not present.

The CHAIRMAN. Evidently a quorum is not present.

The Chair announces that he will vacate proceedings under the call when a quorum of the committee appears.

Members will record their presence by electronic device.

The call was taken by electronic device.

QUORUM CALL VACATED

The CHAIRMAN. One hundred Members have appeared. A quorum of the Committee of the Whole is present. Pursuant to rule XXIII, clause 2, further proceedings under the call shall be considered as vacated.

The committee will resume its business.

Mr. MOORHEAD of California. Mr. Chairman, I move to strike the requisite number of words.

(Mr. MOORHEAD of California asked and was given given permission to revise and extend his remarks.)

Mr. MOORHEAD of California. Mr. Chairman, I rise in opposition to this amendment. I think in the bill that we have before us there are adequate opportunities given to Congress to terminate a national emergency. Congress can terminate a declared national emergency at any point, in 1 day, or in 365 days, or at any time they desire to do so by a vote of both Houses of the Congress to terminate a national emergency.

Congress is required to review a national emergency after 9 months, and it would automatically end after a year if the Congress did not find that it was still necessary to retain it.

We have passed the Matsunaga amendment which puts extra pressure on the President and the executive branch to justify an emergency.

This amendment, however, that is proposed by the gentleman from Massachusetts (Mr. DRINAN) would terminate an emergency 30 days after it was declared if either or both Houses of the Congress had not been able to get together to pass a resolution supporting the emergency.

All of us know that the Senate many times is tied up in filibusters or its tied up on other issues and we in the House also get tied up on major bills that we are considering. Sometimes we go on recess. It is unrealistic to think we can run our Government in such a way that one or both Houses of the Congress could terminate a national emergency with absolutely no action whatsoever.

I think the proposed amendment is a very dangerous amendment. I think it would do an injustice to the purpose we have before us. I would ask that the amendment be defeated.

Mr. DRINAN. Mr. Chairman, will the gentleman yield?

Mr. MOORHEAD of California. I yield to the gentleman from Massachusetts.

Mr. DRINAN. Mr. Chairman, would the gentleman from California spell out why we should have a national emergency at all, where the President unilaterally has exerted a power to do extraordinary things? Should we not state that it is an extraordinary thing when he is exercising unspecified powers? Should we not say that such powers which he assumes, then, should terminate within 30 days unless we, the lawmakers of the nation, specifically and affirmatively give the President a renewal of that power?

Mr. MOORHEAD of California. In this particular legislation we are telling the President that he must designate those powers that he is going to use under a declaration of a national emergency. Congress has given the President certain authority to act under emergency situations, and the President triggers specifically the laws that this Congress itself has passed on when he declares a national emergency. I know that there are other unspecified powers that a President under the Constitution can trigger, but most of the powers we are involved with here come out of congressional acts.

Unless there is a positive action on the part of the Congress stating that there is no emergency or that they are not terminating the emergency, I do not believe the act of Congress should be—

Mr. DRINAN. If the gentleman will yield again, under the 6-months provision as set forth in the bill, the burden is on us to state that the President should not be exercising these powers. It seems to me that the burden should always be on the President, and my amendment seeks to place it on the President. It states that if he exercises these emergency, extraordinary, most unusual, powers, then the exercise of those powers terminates automatically after 30 days, unless we in the Congress affirmatively extend them. But under the 6-months provision, if the Senate fails, and if the House passes it, then we have no way of terminating that particular emergency. It could go on for years and years.

Mr. MOORHEAD of California. We can terminate any emergency at any time with a vote of both Houses of Congress.

Mr. DRINAN. But in the nature of things, that puts the burden on us, and the burden should not be on us. We gave, and the Congress historically has given, emergency powers for a very short period of time, for something unforeseen and unprecedented, where the President has to act in an unusual emergency situation. We have been lucky over the last 40 years that Presidents have not very often abused those powers, and now is the hour of the first curbing of this emergency power.

The CHAIRMAN. The time of the gentleman has expired.

(At the request of Mr. FLOWERS, and by unanimous consent, Mr. MOORHEAD of California was allowed to proceed for 1 additional minute.)

Mr. FLOWERS. Mr. Chairman, will the gentleman yield?

Mr. MOORHEAD of California. I yield to the gentleman from Alabama.

Mr. FLOWERS. I thank the gentleman for yielding.

The basic problem here is that the gentleman from Massachusetts insists on a 30-day period, and the bill has by operation a 6-months period in which the Congress has got to act on it. If we want to stay with the present situation, which most of us seem to agree is not a good situation, while we have in the legislation basically a compromise position which recognizes the legislative branch's and the executive branch's peculiar problems, if we want to give it all up in order to try to have this 30-day period, then that is what we should do. However, I do not think that is what a majority of the Members here want to do. I think we have a good measure here, a good measure that works to everybody's advantage, and so I think we ought to go with it.

The CHAIRMAN. The time of the gentleman has expired.

Mr. JOHN L. BURTON. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I would like to direct a question, if I could, to the proposer of the amendment. I believe that there is a great deal of merit in the point of view that he has expressed concerning the entire procedure of how the emergencies would be terminated. I also believe there is a great deal of merit in the concern of the chairman and ranking minority member at least as far as the 30-day period is concerned. I am wondering what the gentleman's response would be, and also the response of the others, to, say, a 90-day period, because we are dealing with a very extraordinary power given to the Chief Executive under states of emergency.

Under laws that are presently around, there are some pretty heavy things that have come down. If we read them, we would think it was 1984. I would not say any Chief Executive would use these powers, but they are certainly there, and I am just wondering if a proposal of 90 days, which would seem to be at least to me a lot more reasonable than 30 days, and a lot more reasonable than the situation presently, might be at least an acceptable substitute for the gentleman's amendment that I know I could support.

Mr. DRINAN. Mr. Chairman, will the gentleman yield?

Mr. JOHN L. BURTON. I yield to the gentleman from Massachusetts.

Mr. DRINAN. I thank the gentleman for yielding.

I am not wedded to 30, 60, or 90 days, and I would be prepared to accept a substitute for 90 days. I think the basic principle I am fighting for is the burden of proof should be on the President and not on the Congress, and if the President asserts these powers and he wants to continue them after a certain term, 30, 60, or 90 days, the burden should be on him to reconvince the Congress, and the Congress—and the Congress alone—should extend those powers.

I thank the gentleman for those comments, and I would accept 60 or 90 days, because the burden of proof is the essential thing.

As the gentleman sugested, there have been some terrible enactments that have come down, some 400 or 450, over the last 30 years, and we have been very fortunate that no President has exploited them. Congress has been derelict in its duty in not tidying up this legislation.

Mr. CONYERS. Mr. Chairman, will the gentleman yield?

Mr. JOHN L. BURTON. I yield to the gentleman from Michigan.

Mr. CONYERS. I thank the gentleman for yielding.

I would like to commend the gentleman from California for suggesting that perhaps some compromise period may make good sense. I think that a period of 12 months or 6 months or 30 days has not been cast in granite. I concede that the Senate has acted.

But perhaps the distinguished chairman of this subcommittee would consider some possible form of a 60- or 90-day provision. I think that unless we do this we are extending a definition of emergency to cover a period of time that I think is longer than it should really be under these circumstances and as this bill is written.

Mr. FLOWERS. Mr. Chairman, will the gentleman yield?

Mr. JOHN L. BURTON. I yield to the chairman.

Mr. FLOWERS. Mr. Chairman, I think the gentleman's proposal of a longer period is far more acceptable than the 30-day period but I regret I cannot accept it on the basis of principle as well as on timing. The gentleman from Michigan knows we are not rubberstamping the Senate. I certainly hope he knows that. It is not this Member's intention to do that.

I think we have a good balance in the bill between the recognition of the problems of the legislative branch and those of the executive branch with its peculiar responsibilities.

As the gentleman from Massachusetts says, the reason this is here is because we failed to act over a long period. There has been no real abuse by the executive branch of the emergency powers. Many of the emergency powers that have been utilized have been utilized for the purpose of carrying on the day-to-day business of the Government. Those powers have been utilized for so long they have become ingrained. They are almost like regular law instead of emergency powers, but we want to change this through this legislation. But to change the whole thrust of it so that we would require some affirmative legislative action in order to continue the emergency, I just could not accept that, regretfully.

I ask my colleagues to vote down the amendment.

(Ms. HOLTZMAN asked and was given permission to revise and extend her remarks.)

Ms. HOLTZMAN. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, basically I support the amendment that has been offered by the gentleman from Massachusetts (Mr. DRINAN) which would automatically terminate a national emergency declared by the President in 30 days unless specifically extended by Congress. I am gravely concerned that under this bill in order to abridge vast Presidential emergency powers the Congress is going to be required to act affirmatively.

In the last session of Congress we enacted the war powers legislation. In that legislation we tried to control the war-making power that we had seen abused. We said that if the President starts his own war, it has got to terminate automatically after a 90-day period.

That was an important provision because sometimes it takes a great deal of effort to get Congress to act affirmatively—even to stop abusive executive action. I do not think the Congress ought to be put to the affirmative burden of stopping an abuse of Executive emergency powers. I think instead that after a 30- or 90-day period the emergency powers ought to terminate automatically unless Congress is persuaded that the circumstances warrant an extension.

I cannot believe the Congress of the United States is incapable of acting expeditiously and promptly in a real emergency when called upon by the President.

We do not even know the full extent of the emergency powers the President has. I have not seen a list of all of them. Is he allowed to have people arbitrarily arrested? Can he suspend various civil rights? If I saw a complete list of the powers the President could exercise under this bill, perhaps I would be less concerned.

In addition, there is another problem: the President's emergency powers come into play when the President declares a national emergency. Yet this bill permits the President to declare a national emergency if he finds it "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." These are pretty vague and broad standards for declaring a national emergency and triggering vast Presidential powers. That is why my concern exists.

When we delegate vast powers to a President, we ought to also take into account how to protect the people from an abuse of those powers. Unfortunately this bill fails to do this effectively.

Mr. FLOWERS. Mr. Chairman, if the gentlewoman will yield, the gentlewoman knows that this bill does not confer the powers. Those were conferred by other acts. And, the report of the committee and the Senate study and many other books and references including earlier compilations by the House Judiciary Committee are at our disposal now to determine what emergency powers exist under the statutes passed by the Congress over a long period of time.

Ms. HOLTZMAN. Would the gentleman agree we have not as members of this committee or Congress even received a list of all the emergency powers the President has under the statute?

Mr. FLOWERS. No. I disagree with the gentlewoman. We have had this before, the subcommittee had that fully before it, a rather complete volume which identifies the statutes and sets forth the language of the different pieces of legislation conferring these powers.

The thrust of this legislation is to provide a vehicle whereby a determination is made of a national emergency which activates these powers.

Ms. HOLTZMAN. The gentleman would surely agree that in order to terminate a Presidential declaration of emergency—assuming there is no real emergency—the bill requires the Congress to act affirmatively but that in the War Powers bill in order to prevent the possible abuse of Presidential powers those war-making powers terminate automatically affirmative Congressional action.

Mr. FLOWERS. This bill by its own terms set up the absolute requirement that the Congress meet on the measure, but on a 6-month basis.

Ms. HOLTZMAN. Would the gentleman answer this? Suppose the Congress in a 6-month period is unable to reach an agreement about what to do; the emergency power persists, is that not true?

Mr. FLOWERS. If Congress does not deny the emergency power, then the emergency exists.

Ms. HOLTZMAN. Suppose the House of Representatives opposes the declaration of emergency and the Senate votes otherwise and an agreement cannot be reached in conference, then what happens—the emergency power persists, is that not correct?

Mr. FLOWERS. That is correct; if Congress fails to act, then Congress has failed to act.

Ms. HOLTZMAN. That is precisely the problem I have. Congress has the burden of stopping a Presidential impropriety instead of giving the President the burden of affirmatively demonstrating that an emergency really exists.

AMENDMENT OFFERED BY MR. CONYERS AS A SUBSTITUTE FOR THE AMENDMENT OFFERED BY MR. DRINAN

Mr. CONYERS. Mr. Chairman, I offer an amendment as a substitute for the amendment offered by the gentleman from Massachusetts (Mr. DRINAN).

The Clerk read as follows:

Amendment offered by Mr. CONYERS as a substitute for the amendment offered by Mr. DRINAN: Page 3, strike out the period at the end of line 15 and insert in lieu thereof the following: "; or

(3) 90 calendar days elapse following the declaration of an emergency unless Congress (A) has authorized by concurrent resolution the extension of such an emergency to a date certain, or (B) is physically unable to meet as a result of an armed attack upon the United States."

(Mr. CONYERS asked and was given permission to revise and extend his remarks.)

Mr. CONYERS. Mr. Chairman, it is my hope that our subcommittee chairman, the gentleman from Alabama (Mr. FLOWERS) will see in his wisdom the validity of the 90-day calendar period that would require Congress to authorize such a resolution if the emergency itself had not been terminated within that period if time.

I think this came out of our previous colloquy with the gentleman from California (Mr. JOHN L. BURTON). To me it makes eminently good sense. I think the period of time should not rest upon the executive branch that an emergency could continue by definition and preferentially for a period of 1 year as proposed in the amendment of the gentleman from Hawaii.

It is conceded that the Congress can act at any time that it chooses, but, by definition, I think that to extend an

emergency beyond 90 days is stretching the generally understood meaning of that time.

For those reasons, I join with those of my colleagues who think that this would be a more reasonable and more practical resolution of what is generally a discussion around the definition of emergency.

I would hope that my colleagues would consider this substitute amendment and I would yield to the original maker of the amendment, the gentleman from Massachusetts (Mr. DRINAN), to seek his support.

Mr. DRINAN. Mr. Chairman, I have no objection to the substitute amendment offered by the distinguished gentleman from Michigan (Mr. CONYERS). I think it is a reasonable one, and I would urge my colleagues to support it.

Mr. FLOWERS. Mr. Chairman, I rise in opposition to the substitute amendment. It is eminently more sensible than the original, but it still bears the same basic fault that the original did. It destroys the finely tuned balance that is in the original piece of legislation.

Mr. MOORHEAD of California. Mr. Chairman, will the gentleman yield?

Mr. FLOWERS. I yield to the gentleman from California.

Mr. MOORHEAD of California. Mr. Chairman, I wish to join with the chairman of the subcommittee in his remarks. I think that while it is somewhat better than the original, the same major objections are present in the substitute amendment.

Mr. FLOWERS. Mr. Chairman, I ask for a no vote on the substitute and on the amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Michigan (Mr. CONYERS) as a substitute for the amendment offered by the gentleman from Massachusetts (Mr. DRINAN).

The question is taken; and on a division (demanded by Mr. DRINAN) there were—ayes 17; noes 36.

So the substitute amendment for the amendment was rejected.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Massachusetts (Mr. DRINAN).

The amendment was rejected.

AMENDMENT OFFERED BY MR. DRINAN

Mr. DRINAN. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. DRINAN: Page 2, line 22, insert immediately after the period the following:

"The President shall issue such a proclamation pursuant only to: (1) a declaration of war; (2) an attack upon the United States, its territories or possessions, or its armed forces; or (3) the prior enactment of a joint resolution specifically authorizing the President to issue such proclamation. The President in every possible instance shall seek the advice and counsel of Congress and provide Congress with all pertinent information before proclaiming the existence of a national emergency. After such proclamation has been issued, the President shall consult regularly with Congress until the national emergency has been terminated."

Mr. DRINAN (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

Mr. DRINAN. Mr. Chairman, in H.R. 3884 there is no standard really, whatsoever, when and why the President can proclaim a national emergency. Section 201 states simply that the President may do this when he finds that such a proclamation of a national emergency 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."

It seems to me, Mr. Chairman, very clear that the Congress was given the lawmaking powers under the Constitution, and that whatever right the President has to declare an emergency should be spelled out by the Congress of the United States. Though the last 40 years, the Congress has been very careless and derelict in not doing this. I think that today in this bill we should specify three areas, and three areas alone, in which the President can proclaim an emergency. Obviously, when there is a declaration of war; second, when there is an attack upon the United States or its territories or its armed forces; and third, when the Congress by prior enactment of a joint resolution specifically authorizes the President to issue such proclamation.

In each case, once again tracking the War Powers Resolution Act, the President in every possible instance, according to my amendment, shall seek the advice and counsel of Congress and shall provide Congress with all pertinent information before proclaiming the existence of a national emergency.

After the emergency has been proclaimed, the President shall consult regularly the Congress until the national emergency has been terminated.

The key word in the language of my amendment is "consult." Why should we in the Congress allow the President unilaterally to proclaim an emergency and unilaterally to implement the provisions of said emergency? That is an abdication of the power clearly placed in the Congress by the Constitution. I would urge, therefore, Mr. Chairman, that we adopt as an amendment to this particular bill today this clearly defined, explicitly spelled-out set of reasons why the President in certain limited unusual circumstances may in fact declare an emergency.

Mr. FLOWERS. Mr. Chairman, I rise in opposition to the amendment offered by the gentleman from Massachusetts.

(Mr. FLOWERS asked and was given permission to revise and extend his remarks.)

Mr. FLOWERS. Mr. Chairman, I must say in this particular instance I am even in much stronger opposition than I was in the previous instance. The gentleman's amendment would attempt, it appears, to derogate the power of the President under the Constitution of the United States. It would attempt to define within a very, very narrow scope the power of the President to declare a national emergency. The gentleman's amendment would require that it be done only pursuant to a declaration of war or an attack upon the United States, which we would have to assume would be a prelude to a declaration of war, or a prior enactment of a joint resolution. In other words, the legislative branch would be required to pass a joint resolution directing the President to so declare a national emergency.

Mr. Chairman, I do not think that is what the principal of separation of powers of the branches of Government under our Constitution envisions. It envisions that the Executive has some very peculiar responsibilities as does the legislative branch. We do not govern by legislative fiat in this country. We are not a parliamentary form of government.

Mr. Chairman, I strongly oppose the gentleman's amendment. I think there would be serious questions as to whether this bill would be enacted into law should this amendment be adopted. It would completely destroy the balance, as I said previously, that exists in this bill.

Mr. Chairman, for these and a multitude of other reasons I strongly oppose the gentleman's amendment.

Mr. MOORHEAD of California. Mr. Chairman, I move to strike the last word, and I rise in opposition to this amendment.

(Mr. MOORHEAD of California asked and was given permission to revise and extend his remarks.)

Mr. MOORHEAD of California. Mr. Chairman, this amendment would completely take away from the President the flexibility of acting in times of crisis or an emergency. I think there was one particular emergency that was declared by a very well known President at an important time, and that was President Roosevelt's declaration of the banking holiday. If that had been triggered by congressional debate and it required 30 days or so of debate before it could be put into effect, all of the good that could have been done would have been wiped out and the whole thing would have gone down the tube before we had ever begun.

Mr. Chairman, it is important that we give our President some flexibility from time to time. This bill gives the Congress the right to wipe out those emergencies on a moment's notice if we decide it is in the best interest to do so. But let us at least leave the President the constitutional authority he has to protect this country in times of need.

Mr. Chairman, I ask for a no vote.

Mr. CONYERS. Mr. Chairman, I move to strike the requisite number of words.

(Mr. CONYERS asked and was given permission to revise and extend his remarks.)

Mr. CONYERS. Mr. Chairman, my final participation in this debate revolves around the reason of this question: What happens if the President of the United States vetoes the congressional termination of the emergency power? Is that contemplatable within the purview of this legislation?

I direct the question to the Chairman.

Mr. FLOWERS. Mr. Chairman, will the gentleman yield?

Mr. CONYERS. I yield to the gentleman from Alabama.

Mr. FLOWERS. Mr. Chairman, on the advice of counsel we have researched that thoroughly. A concurrent resolution

would not require Presidential signature or acceptance.

It would be an impossibility that it would be vetoed.

Mr. CONYERS. So there would be no way that the President could interfere with the Congress?

Mr. FLOWERS. The gentleman is correct.

Mr. CONYERS. Mr. Chairman, I thank the gentleman.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Massachusetts (Mr. DRINAN).

The amendment was rejected.

The CHAIRMAN. Under the rule, the Committee rises.

Accordingly the Committee rose; and the Speaker pro tempore (Mr. MCFALL) having assumed the chair, Mr. RONCALIO, Chairman of the Committee of the Whole House on the State of the Union, reported that the Committee having had under consideration 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, pursuant to House Resolution 524, he reported the bill back to the House with sundry amendments adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment? If not, the Chair will put them en gros.

The amendments were agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. FLOWERS. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 388, nays 5, not voting 40, as follows:

[Roll No. 494]

YEAS—388

Abdnor	Bedell	Burke, Calif.
Abzug	Bell	Burke, Mass.
Adams	Bennett	Burleson, Tex.
Addabbo	Bergland	Burlison, Mo.
Alexander	Bevill	Burton, John
Ambro	Biaggi	Burton, Phillip
Anderson, Calif.	Bingham	Butler
	Blanchard	Byron
Anderson, Ill.	Blouin	Carney
Andrews, N.C.	Boggs	Carr
Andrews, N. Dak.	Boland	Carter
	Bolling	Casey
Annunzio	Bonker	Cederberg
Archer	Bowen	Chappell
Armstrong	Brademas	Chisholm
Ashbrook	Breaux	Clancy
Ashley	Breckinridge	Clawson, Del
Aspin	Brinkley	Clay
AuCoin	Brodhead	Cleveland
Badillo	Brooks	Cochran
Bafalis	Broomfield	Cohen
Baldus	Brown, Calif.	Collins, Ill.
Barrett	Brown, Mich.	Collins, Tex.
Baucus	Brown, Ohio	Conable
Bauman	Broyhill	Conlan
Beard, R.I.	Buchanan	Conte
Beard, Tenn.	Burgener	Corman
Cornell	Jones, N.C.	Rangel
Cotter	Jones, Okla.	Rees
Coughlin	Jones, Tenn.	Regula
Crane	Karth	Reuss
D'Amours	Kasten	Rhodes
Daniel, Dan	Kastenmeier	Richmond
Daniel, R. W.	Kazen	Rinaldo
Daniels, N.J.	Kelly	Roberts
Danielson	Kemp	Robinson
Davis	Ketchum	Rodino
de la Garza	Keys	Rogers
Delaney	Kindness	Roncalio
Dent	Koch	Rooney
Derrick	Krebs	Rose
Devine	Krueger	Rosenthal
Dingell	LaFalce	Rostenkowski
Dodd	Lagomarsino	Roush
Downey, N.Y.	Latta	Rousselot
Downing, Va.	Leggett	Roybal
Duncan, Tenn.	Lehman	Runnels
du Pont	Lent	Ruppe
Early	Levitas	Russo
Eckhardt	Litton	Ryan
Edgar	Lloyd, Calif.	St Germain
Edwards, Ala.	Lloyd, Tenn.	Santini
Edwards, Calif.	Long, La.	Sarasin
Eilberg	Lott	Sarbanes
Emery	Lujan	Satterfield
English	McCloskey	Scheuer
Erlenborn	McCollister	Schneebeli
Esch	McDade	Schroeder
Eshleman	McDonald	Schulze
Evans, Colo.	McFall	Sebelius
Evans, Ind.	McHugh	Seiberling
Fascell	McKinney	Sharp
Fenwick	Macdonald	Shipley
Findley	Madden	Shriver
Fish	Madigan	Shuster
Fisher	Maguire	Sikes
Flood	Mahon	Simon
Florio	Mann	Sisk
Flowers	Martin	Skubitz
Flynt	Matsunaga	Slack
Foley	Mazzoli	Smith, Iowa
Ford, Mich.	Meeds	Smith, Nebr.
Ford, Tenn.	Melcher	Snyder
Fountain	Metcalfe	Spellman
Frenzel	Meyner	Spence
Frey	Mezvinsky	Staggers
Fuqua	Michel	Stanton, J. William
Gaydos	Mikva	
Giaimo	Milford	Stanton, James V.
Gibbons	Miller, Calif.	
Gilman	Miller, Ohio	Stark
Ginn	Mills	Steed
Goldwater	Mineta	Steelman
Gonzalez	Minish	Steiger, Ariz.
Goodling	Mink	Steiger, Wis.
Gradison	Mitchell, Md.	Stephens
Grassley	Mitchell, N.Y.	Stokes
Green	Moakley	Stratton
Gude	Moffett	Studds
Guyer	Mollohan	Sullivan
Hagedorn	Montgomery	Symington
Haley	Moore	Symms
Hall	Moorhead, Calif.	Talcott
Hammer-schmidt	Moorhead, Pa.	Taylor, Mo.
		Taylor, N.C.
Hanley	Morgan	Teague
Hannaford	Mosher	Thone
Hansen	Mottl	Thornton
Harkin	Murphy, Ill.	Traxler
Harrington	Murphy, N.Y.	Treen
Harris	Murtha	Tsongas
Harsha	Myers, Ind.	Udall
Hastings	Myers, Pa.	Ullman
Hawkins	Natcher	Vander Jagt
Hayes, Ind.	Neal	Vander Veen
Hays, Ohio	Nichols	Vanik
Hechler, W. Va.	Nix	Vigorito
Heckler, Mass.	Nolan	Waggonner
Hefner	Nowak	Wampler
Heinz	Oberstar	Waxman
Helstoski	Obey	Weaver
Henderson	O'Brien	Whalen
Hicks	O'Hara	White
Hightower	O'Neill	Whitehurst
Hillis	Ottinger	Whitten
Hinshaw	Passman	Wiggins
Holland	Patman, Tex.	Wilson, Bob
Holt	Patterson, Calif.	Wilson, C. H.
Horton		Winn
Howe	Pattison, N.Y.	Wirth
Hubbard	Perkins	Wolff
Hughes	Pettis	Wright
Hutchinson	Pickle	Wydler
Hyde	Pike	Wylie
Ichord	Poage	Yates
Jacobs	Pressler	Yatron
Jeffords	Preyer	Young, Fla.
Jenrette	Price	Young, Ga.
Johnson, Calif.	Quie	Young, Tex.
Johnson, Colo.	Quillen	Zablocki
Johnson, Pa.	Railsback	Zeferetti
Jones, Ala.	Randall	

NAYS—5

Conyers	Drinan	Moss
Dellums	Holtzman	

NOT VOTING—40

Biester	Hébert	Pepper
Burke, Fla.	Howard	Peyser
Clausen, Don H.	Hungate	Pritchard
	Jarman	Riegle
Derwinski	Jordan	Risenhoover
Dickinson	Landrum	Roe
Diggs	Long, Md.	Solarz
Duncan, Oreg.	McClory	Stuckey
Evins, Tenn.	McCormack	Thompson
Fary	McEwen	Van Deerlin
Fithian	McKay	Walsh
Forsythe	Mathis	Wilson, Tex.
Fraser	Nedzi	Young, Alaska
Hamilton	Patten, N.J.	

So the bill was passed.

The Clerk announced the following pairs:

Mr. Hébert with Mr. Duncan of Oregon.
Mr. Stuckey with Mr. Riegle.
Mr. Hamilton with Mr. Charles Wilson of Texas.
Mr. Thompson with Mr. Fithian.
Mr. Fary with Mr. Biester.
Mr. McCormack with Ms. Jordan.
Mr. Nedzi with Mr. Long of Maryland.
Mr. Pepper with Mr. Don H. Clausen.
Mr. Patten with Mr. Forsythe.
Mr. Roe with Mr. McClory.
Mr. Solarz with Mr. McKay.
Mr. Fraser with Mr. Dickinson.
Mr. Van Deerlin with Mr. Burke of Florida.
Mr. Diggs with Mr. Howard.
Mr. Evins of Tennessee with Mr. Jarman.
Mr. Risenhoover with Mr. McEwen.
Mr. Landrum with Mr. Derwinski.
Mr. Mathis with Mr. Peyser.
Mr. Hungate with Mr. Pritchard.
Mr. Walsh with Mr. Young of Alaska.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. FLOWERS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill just passed.

The SPEAKER. Is there objection to the request of the gentleman from Alabama.

There was no objection.

FURTHER LEGISLATIVE PROGRAM

(Mr. O'NEILL asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. O'NEILL. Mr. Speaker, I should like to announce the program for the remainder of the week. There will be a Friday session, and the items that we will have before the House are:

H.R. 8800, electric vehicles, and we will also have H.R. 8674, metric conversion.

Those are the two items that are left for the remainder of the week.

HOUR OF MEETING TOMORROW

Mr. O'NEILL. Mr. Speaker, in view of the fact that it is a light program, I ask unanimous consent that the House, when it adjourns today, adjourn to meet at 10 o'clock tomorrow morning.

The SPEAKER. Is there objection to

Statistics, the Department of Commerce, the Tariff Commission, economic analysts, labor unions, and private industry;

(3) the publication of periodic reports and reference works using analysis prepared pursuant to this section and containing exemplary materials from the career education field, including research findings, results, and techniques from successful projects and programs, and highlights of ongoing analsyis of career trends in America; and

(4) the conduct of seminars, workshops, and career information sessions for the purpose of disseminating to teachers, guidance counselors, other career educators, administrators, other education personnel, and the general public information compiled and analyzed under this section.

(b) In carrying out the provisions of this title, and to the extent practicable, the Commissioner shall (1) make use of existing offices, centers, clearinghouses, and research capabilities, (2) coordinate among the offices, centers, clearinghouses and research capabilities in carrying out his career information responsibilities, and (3) use the career information capabilities of the Education Division.

NATIONAL ADVISORY COUNCIL

SEC. 507. The National Advisory Council for Career Education established pursuant to section 406(g) of the Education Amendments of 1974 shall, in addition to its duties under that section, advise the Commissioner with respect to the implementation of this part.

TITLE VI—GUIDANCE AND COUNSELING

FINDINGS

SEC. 601. The Congress finds that—

(1) guidance and counseling activities are an essential component to assure success in achieving the goals of many education programs;

(2) lack of coordination among guidance and counseling activities supported jointly or separately by Federal programs and by State and local programs has resulted in an underutilization of resources available for such activities, and

(3) increased and improved preparation of education professionals are needed in guidance and counseling, including administration of guidance and counseling programs at the State and local levels, with special emphasis on inservice training.

APPROPRIATIONS AUTHORIZED

SEC. 602. There is authorized to be appropriated $20,000,000 for fiscal year 1978 and for each succeeding fiscal year ending prior to October 1, 1982, to carry out the provisions of this title.

ADMINISTRATION

SEC. 603. (a) The Commissioner shall establish or designate an administrative unit within the Education Division for purposes of—

(1) carrying out provisions of this section,

(2) providing information regarding guidance and counseling as a profession, guidance and counseling activities of the Federal Government, and, to the extent practicable, activities of State and local programs of guidance and counseling, and

(3) advising the Commissioner on coordinating guidance and counseling activities included in all programs which he is authorized to carry out, and, to the extent he deems practicable, how such activities may be coordinated with other programs of the Federal Government and State and local guidance and counseling programs.

(b) The Commissioner may reserve an amount not to exceed 10 per centum of the sums appropriated under this title to carry out the provisions of this section.

PROGRAM AUTHORIZED

SEC. 604. (a) The Commissioner is authorized, on a competitive basis, to enter into contracts and make grants to State and local educational agencies, to institutions of higher education, and to private nonprofit organizations to assist them in conducting institutes, work shops, and seminars designed to improve the professional guidance qualifications of teachers and counselors in State and local educational agencies and nonpublic elementary and secondary school systems, and to provide training for supervisory and technical personnel in such agencies and systems having responsibilities for guidance and counseling, and to improve supervisory services in the field of guidance and counseling.

(b) The Commissioner is authorized to make grants to States to assist them in carrying out programs to coordinate new and existing programs of guidance and counseling in the States.

Mr. JAVITS. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. PELL. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

DESIGNATION OF THE PHILIP A. HART OFFICE BUILDING—SENATE RESOLUTION 525

Mr. MANSFIELD. Mr. President, I send to the desk a resolution on behalf of Senators HUGH SCOTT, ROBERT C. BYRD, GRIFFIN, CANNON, HATFIELD, ALLEN, and MANSFIELD and ask that it be read.

The PRESIDING OFFICER. The resolution will be stated.

The second assistant legislative clerk proceeded to read the resolution.

Mr. MANSFIELD. I ask unanimous consent that further reading of the resolution be dispensed with. The substance is in the part which has been read.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MANSFIELD. At the present time, would the clerk read all of the cosponsors, again?

The second assistant legislative clerk read as follows:

Mr. MANSFIELD, for himself and Mr. HUGH SCOTT, Mr. ROBERT C. BYRD, Mr. GRIFFIN, Mr. CANNON, Mr. HATFIELD, and Mr. ALLEN.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the resolution be placed on the calendar, and that it lie at the desk for the rest of the day so that all Senators who desire to do so may join as cosponsors.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MANSFIELD. I hope that the number will be 99.

Mr. HUGH SCOTT. Mr. President, if the Senator will yield, I simply want to express the same hope. I know that all Senators will wish to be included as cosponsors. We hope for prompt passage of the resolution.

The resolution (S. Res. 525), submitted by Mr. MANSFIELD (for himself, Mr. HUGH SCOTT, Mr. ROBERT C. BYRD, Mr. GRIFFIN, Mr. CANNON, Mr. HATFIELD, Mr. ALLEN, Mr. ABOUREZK, Mr. BAYH, Mr. BEALL, Mr. BENTSEN, Mr. BIDEN, Mr. BROOKE, Mr. BUMPERS, Mr. BURDICK, Mr. HARRY F. BYRD, Mr. CASE, Mr. CHILES, Mr. CHURCH, Mr. CLARK, Mr. CRANSTON, Mr. CULVER, Mr. DURKIN, Mr. EAGLETON, Mr. EASTLAND, Mr. FONG, Mr. FORD, Mr. GLENN, Mr. GRAVEL, Mr. GARY HART, Mr. HARTKE, Mr. HASKELL, Mr. HATHAWAY, Mr. HELMS, Mr. HOLLINGS, Mr. HRUSKA, Mr. HUDDLESTON, Mr. HUMPHREY, Mr. INOUYE, Mr. JACKSON, Mr. JAVITS, Mr. JOHNSTON, Mr. KENNEDY, Mr. LAXALT, Mr. LEAHY, Mr. LONG, Mr. MAGNUSON, Mr. MATHIAS, Mr. MCCLELLAN, Mr. MCGEE, Mr. MCGOVERN, Mr. MCINTYRE, Mr. METCALF, Mr. MONDALE, Mr. MONTOYA, Mr. MORGAN, Mr. MOSS, Mr. MUSKIE, Mr. NELSON, Mr. NUNN, Mr. PASTORE, Mr. PEARSON, Mr. PELL, Mr. PROXMIRE, Mr. RANDOLPH, Mr. RIBICOFF, Mr. ROTH, Mr. SCHWEIKER, Mr. WILLIAM L. SCOTT, Mr. SPARKMAN, Mr. STENNIS, Mr. STEVENS, Mr. STEVENSON, Mr. STONE, Mr. SYMINGTON, Mr. THURMOND, Mr. TUNNEY, Mr. WEICKER, Mr. WILLIAMS, and Mr. YOUNG, and ordered placed on the calendar, reads as follows:

Resolved, That insofar as concerns the Senate, the extension of the Senate Office Building presently under construction pursuant to the Supplemental Appropriations Act, 1973 (86 Stat. 1510) is designated and shall be known as the "Philip A. Hart Office Building."

SEC. 2. Any rule, regulation, document, or record of the Senate, in which reference is made to the building referred to in the first section of this resolution, shall be held and considered to be a reference to such building by the name designated for such building by the first section of this resolution.

SEC. 3. The Committee on Rules and Administration shall place appropriate markers or inscriptions at suitable locations within the building referred to in the first section of this resolution to commemorate and designate such building as provided in this resolution. Expenses incurred under this resolution shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman of the committee.

TERMINATION OF NATIONAL EMERGENCIES

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate turn to the consideration of Calendar No. 1102, H.R. 3884.

The PRESIDING OFFICER. The clerk will state the bill by title.

The assistant legislative clerk read as follows: a bill (H.R. 3884) to terminate certain authorities with respect to material emergencies still in effect, and to provide for orderly implementation and termination of future national emergencies.

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Government Operations, with amendments.

THE END OF 43 YEARS OF NATIONAL EMERGENCY

Mr. MATHIAS. Mr. President, over 5 years ago, I introduced a resolution to study the effect of terminating the state of emergency declared by President Truman in 1950 during the Korean war. In May 1972, Senator FRANK CHURCH and I introduced Senate Resolution 9, which created the Senate Special Committee on the Termination of the National Emergency. Over the following 2 years the work of the special committee involved many of the country's most distinguished

legal scholars, all of the executive departments and agencies, the Library of Congress, and a number of other scholarly institutions. The committee held three sets of public hearings on the history of emergency government in the United States and the constitutional problems that were created as a result of those national emergencies.

The special committee ascertained that the United States was under not just one state of national emergency, but four which had been proclaimed in 1933, 1950, 1970, and 1971 respectively, and none of these four states of national emergency had ever been terminated. The committee also found that there were over 470 significant statutes on the books which are triggered by a state of national emergency. These statutes, if taken as a whole, confer on the President the power to rule the United States outside of normal constitutional processes.

It was clear from the special committee's hearings, studies, and inquiries that the full nature and extent of emergency powers statutes had never been understood. It was further evident that the pattern of the growth of emergency power statutes and unrelieved state of emergency Americans have lived under since 1933 had made crisis or emergency government the norm rather than the exception. What was most extraordinary about these statutes was that these powers were delegated by the Congress without a consideration of the consequences of the cumulative effect of these delegated authorities. The four successive proclamations of these states of emergency have provided the President with the statutory power, among other authorities, to seize property and commodities, control the means of production, call to active duty over 1 million reservists, assign military forces abroad, seize and control all means of transportation, restrict travel, institute martial law.

In this century the United States has been through four major wars, catastrophic economic depression and a series of intense crises—the energy crisis being the most recent. These wars, depressions, and crises have created patterns of government which were originally fashioned only to meet the crisis of the moment.

The most important achievement of the Special Committee on National Emergencies and Delegated Emergency Powers, aside from the writing of the National Emergencies Act and creating a heightened awareness of the nature and extent of emergency powers, has been to give the Congress and the country a clear perspective of the process of lawmaking in the United States over the past 40 years.

Despite the responsibilities to make the law conferred on the Legislature by the Constitution, most laws were framed by the executive branch and written in such ways that they gave virtually open ended authority to the executive branch to exercise the power contained in more than 470 emergency power statutes. The combined power contained in these 470 statutes, is far too broad to permit their continuation without constitutional checks.

In large measure, these laws were written by the executive branch and sent to the Congress in a crisis atmosphere. In fact, as was the case in 1933 when the Emergency Banking Act was passed, hearings were not held and there was not even a committee report. Only one typescript copy of the bill was available and the protests of the few Members in both Houses that great powers were being given without restriction went unheeded because of the pressures of the moment.

The pattern of passing bills without thorough consideration, so evident in the history of emergency powers legislation, is found throughout legislative history of the past four decades on a great many other important measures. One result of this tendency in which laws are largely, if not entirely, shaped and written by the executive has been that the Congress has failed to exercise its responsibilities for the making of law and policy. Indeed, in the last 40 years the executive has largely determined without significant legislative participation the shape of the broad area of national security policy and it has done so often under the umbrella of emergency or crisis requirements.

The work of the Special Committee on Emergency Powers has helped to point out that in all areas of legislation, but particularly in the national security area, the Congress must give itself the capabilities to make the judgments about what laws should be made and what policies should be reflected in those laws. Further, the experience of 40 years of emergency has underlined the strength of the view that there should be no subjects of policy, no matter how complex or secret which should be determined outside of our constitutional system.

It is clear that the requirements of national security sometimes require secret activity or extraordinary actions to meet threats to the well-being of the American people. But in every case, each of the three branches must be involved in meeting its responsibilities for the actions of the U.S. Government. Under the Constitution, only Congress can make the law. But in order for the Congress to do so, it must have the resources to make judgments which are to be contained in the law. Legislative proposals and recommendations should, of course, continue to be made by the executive branch, but each proposal must be examined carefully, and if the issues are sentative and complex, the Legislature should be provided the information and staff assistance necessary to enable Members of the Congress to do their work.

It is vital that the Congress continue to strengthen its mechanisms and procedures to enable it to effectively carry out its oversight functions. In all areas of Government activity, the Congress must know what actions the executive branch has taken to fulfill national policies set forth in law and how it has expended appropriated moneys. In this regard, the record of accountability of all activities in the United States must be full and complete, and available to the courts and the Legislature so that they may meet their constitutional responsibilities.

The work done by the Special Committee on Emergency Powers has been a pioneering effort. It has laid the ground work, I believe, for bringing the whole area of national security and secret activities under constitutional processes. It has reaffirmed the necessity for an understanding of the lawmaking process as prescribed by the Constitution and has provided a framework for extending the full constitutional procedures into areas which for several decades have been left largely to the discretion of one branch alone.

In the aftermath of Watergate and Vietnam, and the turmoil of the past decade, we have begun to understand how those grievous mistakes of policy and failure of Government could have occurred. It is my belief that this understanding can lead to a strengthened Government. Our Government is stronger because it has reaffirmed its commitment to constitutional processes and each of the three branches is now more keenly aware of the duties, prerogatives, and responsibilities of the other two.

It is my belief that the National Emergencies Act is an example of how the three branches working together can resolve complex problems of Government and share power in ways which strengthen the ability of the Government as a whole to preserve and enhance the liberties, values, and well-being of all of our people.

THE NATIONAL EMERGENCIES ACT

Mr. CHURCH. Mr. President, it is with pleasure that I urge the passage today of the National Emergencies Act by the Senate. The legislation is, at the moment, little noticed and free of controversy, thanks to careful work by the Congress over 3 years time, cooperation with the administration of two Presidents, and a bipartisanship which all too seldom marks our deliberations.

First of all, I would like to extend my appreciation to Senator MATHIAS, who acted with me as cochairman of the Special Committee on National Emergencies and Delegated Emergency Powers, along with the other members of that committee, and our highly competent staff for the investigation and groundwork that made this bill possible. I also owe special thanks to Senator RIBICOFF and the members of his Committee on Government Operations for their excellent cooperation in bringing this bill to the floor.

From the beginning, we have also enjoyed the support of the leadership on both sides of the aisle. Senator MANSFIELD and Senator SCOTT leant their assistance whenever it was needed, for which I am very grateful.

Special mention is also due the executive branch of the Government, the cooperation of the Justice Department, the Department of Defense, and many other agencies was indispensable to the accomplishment of our mission. On one occasion, Senator MATHIAS and I met with President Ford and reached agreement with him on the principles underlying the bill now before us. The President is to be highly commended for his willingness to work with the Congress in developing a legislative formula for ending

emergency rule and restoring normal constitutional practices. I also wish to express my gratitude to the members of the Judiciary Committee of the House of Representatives. From the outset, that committee worked in close concert with the Senate in furthering our common objective and fully shares the credit for this legislation. In particular, I want to express my thanks to Chairman RODINO and Representative FLOWERS.

Mr. President, the obscurity and unanimity which surrounds this bill should not disguise its importance. For more than four decades, this Nation has been governed, in part, by emergency law. The President has had at his disposal virtually dictatorial power, ready for use as he desires. Even now, the President has power under the authority delegated to him by emergency statutes to: seize property; organize and control the means of production; seize commodities; assign military forces abroad; institute martial law; seize and control all transportation and communication; regulate the operation of private enterprise; restrict travel; and, in a host of other ways, regulate the lives of all American citizens. And the President can exercise all these extraordinary powers, without so much as asking leave of the Congress.

These powers can be invoked by the President as long as the country remains in a declared state of national emergency. Presently, there are four such national emergencies still in existence:

The national emergency declared by Franklin Roosevelt on March 9, 1933, to cope with the banking crisis;

The National emergency declared by Harry Truman on December 16, 1950, to respond to the Korean conflict;

The national emergency declared by Richard Nixon on March 23, 1970, to deal with the Post Office strike;

The national emergency declared by Richard Nixon on August 15, 1971, to implement currency restrictions and to enforce controls on foreign trade.

This means that a majority of the American people have lived all their lives under emergency rule. For 43 years, protections and procedures guaranteed by the Constitution have, in varying degrees, been abridged by Executive orders that derive from presidentially proclaimed states of national emergency.

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:

First. 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;

Second. 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;

Third. Provide for congressional oversight of and accountability for actions taken by the Executive in the exercise of delegated emergency powers;

Fourth. Repeal specific obsolete emergency powers statutes, while retaining in force certain others deemed necessary for ongoing operations of the government.

Emergency rule has always raised troublesome problems both in political theory and in constitutional practice. Since the failure of the Roman Republic, historians and philosophers have analyzed the problem posed to a legislature when it confers extraordinary power upon the Executive. Machiavelli, in his Discourses on Livy, acknowledged that great power may, on occasion, have to be given to the Executive if the state is to survive, but warned of the grave dangers in doing so. He cautioned:

Yet it is not good that in a republic anything should ever happen that has to be dealt with extralegally. The extralegal action may turn out well at the moment yet the example has a bad effect, because it establishes a custom of breaking laws for good purposes; later with this example, they are broken for bad purposes.

Rousseau discussed the question of delegated emergency powers in his Social Contract. He wrote:

Moreover, in whatever way this important commission may be conferred, it is important to fix its duration at a very short term which can never be prolonged. In the crises which cause it to be established, the State is soon destroyed or saved; and the urgent need having passed away, the dictatorship becomes tyrannical or useless.

Turning to the American context, I would like to stress that the word "emergency" is not found in the Constitution. As scholar Clinton Rossiter has observed:

It never seems to have been seriously considered in the Convention of 1787, the *Federalist*, or the debates in the state ratifying conventions that the men who were to govern in future years would ever have to go outside the words of the Constitution to find the means to meet any crisis.

As a result, the authority to respond to a crisis must be derived from the powers that are expressly provided for in the Constitution.

The Supreme Court has indicated that there are clear restraints upon Executive action in times of emergency. In Ex parte Milligan Justice Davis, speaking for the majority of the Supreme Court, wrote:

The Constitution of the United States is a law for rulers and people, equally in war and in peace, and covers with the shield of its protection all classes of men, at all times, and under all circumstances. No doctrine, involving more pernicious consequences was ever invented by the wit of man than that any of its provisions can be suspended during any of the great exigencies of government. Such a doctrine leads directly to anarchy or despotism; but the theory of necessity on which it is based is false; for the government, without the Constitution, has all the powers granted to it, which are necessary to preserve its existence . . .

. . . It could well be said that a country, preserved at the sacrifice of all the cardinal principles of liberty, is not worth the cost of preservation.

Similarly, in 1934, Chief Justice Hughes held for a majority of the Supreme Court:

Emergency does not create power. Emergency does not increase granted power or remove or diminish restrictions imposed upon power granted or reserved. The Constitution was adopted in a period of grave emergency. Its grants of power to the Federal Government and its limitations of the power of the States were determined in the light of emergency and they are not altered by emergency.

Nonetheless, the emergency powers made available to the President have steadily expanded. Foreign war and domestic crisis during the past 40 years, in addition to the inexorable growth of the executive bureaucracy under the leadership of aggressive Presidents, and the diminished role of the Congress in the making of policy—these factors have all contributed to the erosion of normal constitutional government.

Little review by the judicial branch was exercised until 24 years ago when the Supreme Court turned back an attempt by President Truman to take over the striking steel industry by means of an assertion of "inherent" emergency power. Speaking for the majority, Justice Black issued the Youngstown Steel opinion which still stands as the definitive statement in this area. Justice Black held that "the President's power, if any, to issue the order must stem from an act of Congress or from the Constitution itself." He characterized President Truman's action as an unconstitutional arrogation of "lawmaking power" by the Executive.

Justice Jackson's widely quoted and praised concurring opinion stressed that our system of government is a "balanced power structure" and pointed out that Executive power to act is a variable depending upon the collective will of Congress for its authority. Justice Jackson listed three situations which determine the extent of the President's power:

1. When the President acts pursuant to an express or implied authorization of Congress, his authority is at its maximum, for it includes all that he possesses in his own right plus all that Congress can delegate . . .

2. When the President acts in absence of either a congressional grant or denial of authority, he can only rely upon his own independent powers . . .

3. When the President takes measures incompatible with the expressed or implied will of Congress, his power is at its lowest ebb, for then he can rely only upon his own constitutional powers minus any constitutional powers of Congress over the matter.

In setting forth these tests, authorities feel that Justice Jackson set up a workable analysis which provided a sound conclusion;

The seizure of the steel mills by President Truman in face of a contrary congressional policy fell into the third of these categories and left presidential power "most vulnerable to attack and in the least favorable of possible constitutional postures." The court could sustain the President's action "only by holding that seizure of such strike-bound industries is within his domain and beyond control of Congress."

Justice Jackson's analysis is as important today as it was when written 24 years ago. As an example of its continuing importance, let me cite the counsel given to the special committee by the late Chief Justice of the Supreme Court, Earl Warren, just prior to his death:

Chief Justice Warren said that while the Constitution provides that only Congress can make the law, the legislature had the obligation through enacting statutes to provide firm policy guidelines for the Executive branch. The former Chief Justice agreed with Justice Jackson's view that where there are statutory guidelines, a President is obliged to follow the precepts contained in the laws passed by the Congress. Inherent powers problems arise and the other branches act, he said, largely when Congress fails to act definitely, when it fails to make needed laws and when there is a necessity for legislative action and Congress fails to meet the challenge.

In writing the National Emergencies Act, we have accepted Justice Jackson's opinion as a basic guideline. It is our belief that the National Emergencies Act will provide long overdue statutory guidelines for the handling of national emergencies in the future. It is our belief, supported I would suggest, by Justice Jackson's opinion and the weight of constitutional scholarship, that our legislation will constitute the exclusive authority for the exercise of Presidential powers in an emergency. The Congress having acted, the President's power will be, in Justice Jackson's words, "at its lowest ebb." In the future, every type and class of presidentially declared emergency will be subject to congressional control.

It should be emphasized that nothing in this bill would interfere with the President's right to declare a national emergency in the future or deprive him of the necessary power to cope with such an emergency. The statutes conferring emergency powers remain on the shelf, to be pulled off and used as may be required in order to deal with some future crisis. But the procedures governing the use of emergency powers in the future will always be subject to congressional review and any declaration of an emergency may be terminated by a concurrent resolution of the Congress. Thus the legislative branch will be in a position to assert its ultimate authority.

To those who argue that the duration of a given emergency should be left exclusively to the President to determine, I would cite the precedent established by the British Parliament which, throughout the Second World War, delegated emergency powers to the Prime Minister for no longer than 30 days at a time.

The point is simply this: The Congress should be forewarned that it is inherent in the nature of government that the Executive will seek to enlarge its power. We already have a Presidency the powers of which are unrivaled in our history. The historic redemption of jurisdiction by the Congress which has gone on in this decade—in the form of the War Powers Act, the congressional intervention to circumscribe and finally end the war in Vietnam, the new budget authority and the regaining of some control over foreign policy—is long overdue and urgently needed. The Congress must not again trade away its responsibilities in the name of national emergency. Let that be one of the lessons learned from the investigation now completed and the passage today of the National Emergencies Act.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the committee amendments be considered en bloc.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendments were agreed to en bloc.

The amendments were ordered to be engrossed and the bill to be read a third time. The bill was read the third time, and passed, as follows:

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 in the Record 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.

EXPORT ADMINISTRATION ACT EXTENSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent, in accord with the leadership's promise to the Senate, that the Senate now turn to the consideration of S. 3084, the Export Administration Act Extension.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered. The clerk will state the bill by title.

The legislative clerk read as follows:

A bill (S. 3084), to extend the Export Administration Act of 1969, as amended.

The Senate proceeded to consider the bill which had been reported from the Committee on Banking, Housing and Urban Affairs with an amendment to strike out all after the enacting clause and insert the following:

TITLE I—EXPORT ADMINISTRATION IMPROVEMENTS AND EXTENSION

SEC. 101. This title may be cited as the "Export Administration Amendments of 1976".

SEC. 102. The Export Administration Act of 1969, as amended (hereinafter in this title referred to as the "Act") is amended by striking "September 30, 1976" in section 14 and inserting in lieu thereof "September 30, 1979."

SEC. 103. (a) Section 4(b)(1) of the Act is amended by inserting at the end thereof the following "In administering export controls for national security purposes as prescribed in section 3(2)(C) of this Act, United States policy toward individual countries shall not be determined exclusively on the basis of a country's Communist or non-Communist status but shall take into account such factors as the country's present and potential relationship to the United States, its present and potential relationship to countries friendly or hostile to the United States, it ability and willingness to control retransfers of United States exports in accordance with United States policy, and such other factors as the President may deem appropriate. The President shall periodically review United States policy toward individual countries to determine whether such policy is appropriate in light of the factors specified in the preceding sentence. The results of such review, together with the justification for United States policy in light of such factors, shall be included in the semi-annual report of the Secretary of Commerce required by this Act for the first half of 1977 and in every second such report thereafter.".

(b)(1) Section 4(h) of the Act is amended by striking the term "controlled country" in the first sentence of paragraph (1) thereof and the second sentence of paragraph (2) thereof and inserting in lieu thereof "country named by the President pursuant to the last sentence of section 4 (b)(1) of this Act".

(2) Section 4(h)(2)(A) of the Act is amended by striking "controlled" and inserting in lieu thereof "such".

(3) Section 4(h)(4) of the Act is amended by striking everything following the semicolon at the end of subparagraph (B) thereof and inserting a period in lieu of the semicolon.

(c) The amendments made by subsection (b) shall become effective upon the expiration of ninety days after the receipt by the Congress of the report referred to in the last sentence of section 4(b)(1) of the Act.

SEC. 104. Section 4(b)(4) of the Act is amended to read as follows:

"(4) The Secretary of Commerce, in cooperation with appropriate United States Government departments and agencies and the appropriate technical advisory committees established pursuant to this Act, shall undertake an investigation to determine whether United States unilateral controls or multilateral controls in which the United States participates should be removed, modified, or added with respect to particular articles, materials, and supplies, including technical data and other information, in order to protect the national security of the United States. Such investigation shall take into account such factors as the availability of such articles, materials, and supplies from other nations and the degree to which the availability of the same from the United States or from any country with which the United States participates in multilateral controls would make a significant contribution to the military potential of any nation threatening or potentially threatening the national security of the United States. As part of such investigation, the Secretary of Commerce shall explore ways of simplifying and clarifying lists of articles, materials, and supplies subject to export controls. The results of such investigation shall be reported to the Congress not later than 18 months after enactment of the Export Administration Amendments of 1976.".

SEC. 105. Section 4 of the Act is amended by adding a new subsection (j) thereto as follows:

"(j) Any person who enters into a contract, protocol, agreement, or other understanding for, or which may result in, the transfer of United States origin technical data or other information to any nation to which exports are restricted for national security or foreign policy purposes shall report such transaction to the Secretary of Commerce and provide him with copies of all documents pertaining thereto within thirty days of entering into such contract, protocol, agreement, or understanding."

RESIGNATION AS CONFEREE AND APPOINTMENT OF CONFEREE ON H.R. 14032 AND S. 3149, TOXIC SUBSTANCES CONTROL ACT

The SPEAKER laid before the House the following resignation as a conferee:

WASHINGTON, D.C.,
August 30, 1976.

Hon. CARL ALBERT,
Speaker of the House,
Washington, D.C.

DEAR MR. SPEAKER: The purpose of this letter is to inform you of my decision to resign as a conferee during the upcoming House-Senate conference on the Toxic Substance Control legislation, H.R. 14032 and S. 3149.

Sincerely,

JOHN Y. MCCOLLISTER,
Member of Congress.

The SPEAKER. Without objection, the resignation is accepted.

There was no objection.

The SPEAKER. The Chair appoints the gentleman from Ohio (Mr. DEVINE) as a conferee on the bill H.R. 14032 and on the Senate bill S. 3149 to fill the vacancy resulting from the resignation of the gentleman from Nebraska (Mr. MCCOLLISTER).

The Clerk will notify the Senate of the change in conferees.

NATIONAL EMERGENCIES ACT

Mr. FLOWERS. Mr. Speaker, I ask unanimous consent to take from the Speaker's desk 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, with Senate amendments thereto, and concur in the Senate amendments.

The Clerk read the title of the bill.

The Clerk read the Senate amendments, as follows:

Page 2, strike out lines 16 to 23, inclusive, and insert:

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.

Page 3, line 18, after "subsection," insert: "whichever date is earlier,".

Page 4, line 14, strike out "days," and insert: "days after the day on which such resolution is referred to such committee,".

Page 4, line 20, strike out "thereafter," and insert: "after the day on which such resolution is reported,".

Page 4, line 25, after "days" insert: "after the day on which such resolution is referred to such committee".

Page 5, line 2, strike out "days," and insert: "days after the day on which such resolution is reported,".

Page 5, lines 9 and 10, strike out "after the legislation is referred to the committee of conference." and insert: "after the day on which managers on the part of the Senate and the House have been appointed.".

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

Page 6, line 15, strike out "filed." and insert: "filed in the House in which such report is filed first."

Page 5, line 19, strike out "602(b)" and insert: "502(b)".

Page 6, line 15, strike out "the emergency is still in effect." and insert: "such emergency is to continue in effect after such anniversary."

Page 6, lines 18 and 19, strike out "emergency" and insert: "emergency,".

Page 10, line 12, strike out "it" and insert: "such committee".

The SPEAKER. Is there objection to the request of the gentleman from Alabama?

Mr. MOORHEAD of California. Mr. Speaker, reserving the right to object, I want to ask the gentleman from Alabama (Mr. FLOWERS) to clarify the language in one of the Senate amendments. Section 201(a), as amended by the Senate, may be open to an ambiguous and troublesome interpretation. Could the gentleman please tell the House whether there is any intent here to limit either the President's power or flexibility to declare a national emergency?

Mr. FLOWERS. If the gentleman will yield, in my judgment, there is not. I do not think that we want to do that by legislation, in any event.

Mr. MOORHEAD of California. Mr. Speaker, further reserving the right to object, I will ask the gentleman, is the subject matter of the emergency or the timing of its declaration limited or affected in any way?

Mr. FLOWERS. Mr. Speaker, will the gentleman yield?

Mr. MOORHEAD of California. Yes, I yield to the gentleman from Alabama.

Mr. FLOWERS. Mr. Speaker, in my judgment it is not. The Senate amendments really just pertain to the activation of the powers that would be accorded the President under the declaration of an emergency.

Mr. MOORHEAD of California. Mr. Speaker, with that assurance, I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Alabama?

There was no objection.

A motion to reconsider was laid on the table.

CONFERENCE REPORT ON H.R. 8603, POSTAL REORGANIZATION ACT AMENDMENTS OF 1975

Mr. HENDERSON submitted the following conference report and statement on the bill (H.R. 8603) to amend title 39, United States Code, with respect to the organizational and financial matters of the United States Postal Service and the Postal Rate Commission, and for other purposes:

CONFERENCE REPORT (H. REPT. NO. 94-1444)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 8603) to amend title 39, United States Code, with respect to the organizational and financial matters of the United States Postal Service and the Postal Rate Commission, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows: In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

That this Act may be cited as the "Postal Reorganization Act Amendments of 1976".

SEC. 2. (a) Section 2401(b) of title 39, United States Code, is amended by striking out paragraph (3).

(b) Section 2401 of title 39, United States Code, is amended by adding at the end thereof the following new subsections:

"(d)(1) There is authorized to be appropriated to the Postal Service for fiscal year 1976 and for the period beginning July 1, 1976, and ending September 30, 1976, the amount of $500,000,000 to be applied against the accumulated operating indebtedness of the Postal Service as of September 30, 1976.

"(2) There is authorized to be appropriated to the Postal Service for fiscal year 1977 the amount of $500,000,000 to be applied against the accumulated operating indebtedness of the Postal Service as of September 30, 1977.

"(e) During the period beginning on the date of the appropriation of the funds under subsection (d)(1) and ending on the date on which the Commission on Postal Service is required to transmit the final report required under section 7(f)(1) of the Postal Reorganization Act Amendments of 1976 to the President and each House of Congress, the Postal Service shall not—

"(1) have in effect any permanent or temporary rate of postage or fee for postal services exceeding the rates and fees in effect on the date of enactment of the Postal Reorganization Act Amendments of 1976;

"(2) provide levels and types of postal services which are less than the levels and types of services provided on July 1, 1976;

"(3) close any post office where 35 or more families regularly receive their mail and which was providing service on July 1, 1976; or

"(4) close any post office where fewer than 35 families receive their mail and which was providing service on July 1, 1976, unless the Postal Service receives the written consent of at least 60 percent of the regular patrons of such office who are at least 18 years of age.

"(f) During the period beginning on the date of the appropriation of the funds under subsection (d)(1) and ending on the date on which the Commission on Postal Service is required to transmit the final report required under section 7(f)(1) of the Postal Reorganization Act Amendments of 1976 to the President and each House of Congress, the Postal Service shall provide door delivery or curbline delivery to all permanent residential addresses (other than apartment building addresses) to which service is begun on or after the date of enactment of the Postal Reorganization Act Amendments of 1976.

"(g) The Postal Service shall present to the Committees on Post Office and Civil Service and the Committees on Appropriations of the Senate and the House of Representatives, at the same time it submits its annual budget under section 2009 of this title, sufficient copies of the budget of the Postal Service for the fiscal year for which funds are requested to be appropriated, and a comprehensive statement relating to the following matters:

"(1) the plans, policies, and procedures of the Postal Service designed to comply with all of the provisions of section 101 of this title;

"(2) postal operations generally, including data on the speed and reliability of service provided for the various classes of mail and types of mail service, mail volume, productivity, trends in postal operations, and analyses of the impact of internal and external factors upon the Postal Service;

"(3) a listing of the total expenditures

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.

[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 dispositions 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 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. 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. 16748, 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 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.

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 advertisement 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,
Knowville, 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.

○

SEP 14 1976

THE WHITE HOUSE
WASHINGTON

Date 9-14-76

TO: Jack Marsh

FROM: Max L. Friedersdorf

For Your Information ✓

Please Handle

Please See Me

Comments, Please

Other Jenckes said Randall called Mathias last night. I saw this paper this morning. It didn't come thru.

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
From: William T. Kendall

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.

my office but went directly to Bill.

Max

Some items in this folder were not digitized because it contains copyrighted materials. Please contact the Gerald R. Ford Presidential Library for access to these materials.

SEP 20 1976

THE WHITE HOUSE
WASHINGTON

Date 9.20.76

TO: Jack Marsh

FROM: Max L. Friedersdorf

For Your Information ✓

Please Handle

Please See Me

Comments, Please

Other

Report From Capitol Hill

Big Cut in Presidents' Powers

WHOEVER WINS the White House in November will find his powers cut by an act just signed by President Ford.

The new law's goal: trim sharply the authority of Presidents to take wide-ranging action with the stroke of a pen by declaring a national emergency.

Although the full impact of the measure, the National Emergencies Act, won't be felt for two years, it could bring

one or more States, and shut off those areas from commercial traffic.

9. Keep on active duty military officers scheduled for retirement.

The new legislation is specifically intended to end, over the next two years, these four national emergencies proclaimed by Presidents and still on the books: Franklin Roosevelt's bank-holiday proclamation of 1933; Harry Truman's