

## 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.<sup>1</sup> 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.<sup>2</sup>

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

<sup>1</sup> Proclamation No. 2974.

<sup>2</sup> E.g., E.O. 11810 of September 30, 1974, Continuing the Regulation of Exports.

of national emergency.<sup>3</sup> 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.

<sup>3</sup>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 Mitsuye Endo* 323 U.S. 283, 298 when it was pointed out that Congress had made the orders regarding the evacuation program subject to the civil penalties provided in the Act of March 21, 1942, the act upon which the codified provisions of section 1383 of Title 18 are based. Clearly, the Act was not intended to apply in normal peacetime situations. Further, by the Act of September 25, 1971, Public Law 92-128 repealed the provision of Title II of the Internal Security Act of 1950 (50 U.S.C. 811-826) the "Emergency Detention Act." The report of the Committee which accompanied that legislation (H. Rept. 92-116, 92nd Congress, 1st Session) stated:

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

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

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

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

#### CONTINUING AUTHORITY PROVIDED FOR IN THE BILL

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

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

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

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

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

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

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

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

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

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

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

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

#### COMMITTEE VOTE

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

#### COST

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

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

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

## CONCLUSION

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

## ANALYSIS OF THE BILL

### TITLE I—TERMINATION OF EXISTING EMERGENCIES

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

### TITLE II—FUTURE NATIONAL EMERGENCIES

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

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

### TITLE III—DECLARATIONS OF WAR

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

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

#### TITLE IV—EXERCISE OF EMERGENCY POWERS

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

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

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

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

##### [REPEALS]

SEC. 601 (501) repeals the following statutes:

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

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

3. A joint resolution approved August 8, 1947 concerning the regulation of consumer credit which contains 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 or its 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 of the 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 the present 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 administration 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 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.

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. 16743, as introduced.

Sincerely,

ROY L. ASH, *Director*.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely yours,

RICHARD R. ALBRECHT,  
*General Counsel.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely,

MARTIN R. HOFFMANN.

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

HON. PETER W. RODINO, JR.,  
*Chairman on the Judiciary,*  
*House of Representatives.*

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

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

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

Cordially,

LINWOOD HOLTON,  
*Assistant Secretary, for Congressional Relations.*

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

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

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

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

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

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

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

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

Sincerely,

LARRY F. ROUSH,  
*Acting Assistant Administrator.*

Enclosure.

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

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

Attention Mr. William P. Shattuck.

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

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

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

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

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

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

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

Sincerely,

ROBERT J. BLACKWELL,  
*Assistant Secretary for Maritime Affairs.*

## APPENDIX

### I

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

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

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

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

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

\* \* \* \* \*

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

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

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

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

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

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

§ 2667. LEASES: NON-EXCESS PROPERTY.

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

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

(b) A lease under subsection (a)—

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

(2) may give the lessee the first right to buy the property if the lease is revoked to allow the United States to sell the property under 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 States 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 statute providing penalties for persons entering, remaining in, leaving or committing 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 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.

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  $3\frac{1}{2}$  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  $3\frac{1}{2}$  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 enforcement 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 property 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.)

§ 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 Air Force. (Aug. 10, 1956, ch. 1041, 70A Stat. 519.)

§ 3386 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.)