

NATIONAL EMERGENCIES ACT

REPORT

OF THE

COMMITTEE ON GOVERNMENT OPERATIONS
UNITED STATES SENATE

TO ACCOMPANY

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



AUGUST 26, 1976—Ordered to be printed

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NATIONAL EMERGENCIES ACT

August 26, 1976.—Ordered to be printed

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

REPORT

[To accompany H.R. 3884]

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

The amendments are as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PURPOSE

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

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

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

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

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

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

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

COMMITTEE AMENDMENTS

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

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

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

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

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

STATEMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

HISTORY OF LEGISLATION

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

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

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

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

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

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

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

- (1) Extension of the termination date for existing emergencies from nine to twelve months from enactment;
- (2) A semiannual review and decision by Congress on whether to end an emergency, rather than automatic termination of states of emergency;
- (3) Reduction of the number of statutes to be repealed;
- (4) Exemption of six statutes considered essential by the executive branch and provision for their review by appropriate congressional committees;
- (5) Requirements for an accounting of expenditures incurred in the exercise of national emergency statutes.

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

HEARINGS

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

SECTION-BY-SECTION ANALYSIS

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

TITLE I—TERMINATING EXISTING DECLARED EMERGENCIES

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

TITLE II—DECLARATIONS OF FUTURE NATIONAL EMERGENCIES

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

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

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

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

TITLE III—EXERCISE OF EMERGENCY POWERS AND AUTHORITIES

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

TITLE IV—ACCOUNTABILITY AND REPORTING REQUIREMENTS OF THE PRESIDENT

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

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

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

AGENCY COMMENTS

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

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

ESTIMATED COST OF LEGISLATION

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

CHANGES IN EXISTING LAW

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

TITLE 8—ALIENS AND NATIONALITY, UNITED STATES CODE

* * * * *

PART III—LOSS OF NATIONALITY

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

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

(1) * * * :

* * * * *

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

TITLE 10—ARMED FORCES, UNITED STATES CODE

* * * * *

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

* * * * *

§ 2667. Leases: non-excess property.

(a) * * * :

* * * * *

(b) A lease under subsection (a)—

(1) * * * :

* * * * *

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

TITLE 12—BANKS AND BANKING, UNITED STATES CODE

Chapter 3—FEDERAL RESERVE SYSTEM

DEFINITIONS, ORGANIZATION, AND GENERAL PROVISIONS AFFECTING SYSTEM

§ 249. Regulation of consumer credit.

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

TITLE 16—CONSERVATION, UNITED STATES CODE

Chapter 12A—TENNESSEE VALLEY AUTHORITY

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

The board is authorized—

(a) * * *

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

TITLE 18—CRIMES AND CRIMINAL PROCEDURE,
UNITED STATES CODES

* * * * *

Chapter 67—MILITARY AND NAVY

§ 1383. Restrictions in military areas and zones.

【Whoever, contrary to the restrictions applicable thereto, enters, remains in, leaves, or commits any act in any military area or military zone prescribed under the authority of an Executive order of the President, by the Secretary of the Army, or by any military commander designated by the Secretary of the Army, shall, if it appears that he knew or should have known of the existence and extent of the restrictions or order and that his act was in violation thereof, be fined not more than \$5,000 or imprisoned not more than one year, or both.】

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

* * * * *

Chapter 6A—THE PUBLIC HEALTH SERVICE

SUBCHAPTER I—ADMINISTRATION

§ 211a. * * *

* * * * *

§ 211b. Promotion of commissioned officers.

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

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

(b) Service credit.

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

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

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

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

[(d) Service for purpose of seniority.]

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

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

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

* * * * *

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

* * * * *

SALE OF SURPLUS WAR-BUILT VESSELS

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

* * * * *

§ 1742. Price adjustment on prior sales to citizens.

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

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

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

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

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

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

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

(b) Determination of amount.

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

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

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

[(3) The adjusted mortgage indebtedness shall be in an amount equal to the excess of the statutory sales price of the vessel as of the date of the enactment of this Act [March 8, 1946] over the sum of the cash payment retained by the United States under, paragraph (1) plus the readjusted trade-in allowance (determined under paragraph (7)) with respect to any vessel exchanged by the applicant on the original purchase. The adjusted mortgage indebtedness shall be payable in equal annual installments thereafter during the remaining life of such mortgage with interest on the portion of the statutory sales price remaining unpaid at the rate of $3\frac{1}{2}$ 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, any, required under the terms of the charter) under any charter party made prior to the date of the enactment of this Act [March 8, 1946], and any charter hire for such use accrued up to such date of enactment and unpaid shall be canceled; and the commission shall credit the applicant with the amount that would have been paid by the United States to the applicant as charter hire for bare-boat use of vessels exchanged by the applicant on the original purchase (for the period beginning with date on which the vessels so exchanged were delivered to the Commission and ending with the date of the enactment of this Act [March 8, 1946]).

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

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

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

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

[(c) Conditions binding on applicant.

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

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

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

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

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

[(d) Applicability of other laws.

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

ROLLCALL VOTE IN COMMITTEE

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

Yeas: (10)	Nays: (0)
McClellan	
Muskie	
Chiles	
Nunn	
Glenn	
Percy	
Javits	
Brock	
Roth	
Ribicoff	

APPENDIX A

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

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

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

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

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

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

Sincerely,

W. E. COLBY,
Director.

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

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

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

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

Section 403 of title 50 of the United States Code, the basic charter of the CIA, does not exempt the CIA from the reporting provisions of the National Emergencies Act. The reporting exemptions which are contained in that section were designed to prevent disclosure in an official U.S. Government publication, of information which would reveal the size or personnel strength of the CIA. The National Emergencies Act does not require the public reporting of such classified information.

The agency is, however, properly concerned about disclosure of classified information. The National Emergencies Act specifically provides that rules and regulations covered by the act "shall be transmitted to the Congress promptly under means to assure confidentiality where appropriate." The proper course is to stipulate that the CIA need only report its rules and regulations to the appropriate oversight committee—in the case of the Senate, the oversight committee which the Government Operations Committee will shortly recommend be established for the CIA.

I would also draw attention to the fact that the National Emergencies Act requires that only regulations issued "pursuant to a national emergency" be reported, not that all such authorities be made available. In the case of the Central Intelligence Agency, these new rules and regulations are likely to be quite limited.

Sincerely,

FRANK CHURCH.

APPENDIX B

EXECUTIVE OFFICE OF THE PRESIDENT,
OFFICE OF MANAGEMENT AND BUDGET,
Washington, D.C., September 15, 1975

HON. ABRAHAM RIBICOF,
Chairman, Committee on Government Operations,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to your request of April 22, 1975, for the views of the Office of Management and Budget on S. 977, a bill "To terminate certain authorities with respect to national emergencies still in effect, and to provide for orderly implementation and termination of future national emergencies."

S. 977 is substantially similar to H.R. 3884 which was passed in the House on September 4, 1975, and referred to your committee on September 5, 1975. While the provisions of S. 977 are generally acceptable, the House bill incorporates a number of amendments proposed by the executive branch.

Both bills, however, contain one feature in common which the Administration does not support. Section 202(a)(1) of each bill provides that Congress can terminate future, Presidentially-declared national emergencies by concurrent resolution. As you know, the executive branch, on many previous occasions, has objected to the use of similar concurrent resolution provisions in legislation on constitutional grounds because such provisions circumvent the President's role in the legislative process as provided in article I, section 7 of the Constitution.

Finally, in addition to the emergency authorities in existing law which would be excepted from termination under the provisions of either S. 977 or H.R. 3884, several Departments, such as the Department of Transportation, have proposed that certain other emergency authorities should be similarly exempt.

Accordingly, except for the concurrent resolution provision discussed above, and subject to the Committee's consideration of the additional authorities proposed for exclusion from a general termination of current emergency powers, the Office of Management and Budget would have no objection to enactment of either S. 977 or H.R. 3884.

Sincerely,

JAMES M. FREY,
Assistant Director for Legislative Reference.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., August 6, 1976.

B-178364.

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

DEAR MR. CHAIRMAN: This is in response to your request of April 22, 1975, for our views on S. 977, 94th Congress, a bill to terminate certain authorities with respect to national emergencies still in effect and to provide for orderly implementation and termination of future national emergencies.

Section 602(a) (4) provides that the provisions of the proposed bill do not apply to the powers and authorities conferred by the Act of June 30, 1949 (41 U.S.C. § 252). The authority conferred upon Executive agencies (except the Department of Defense, the Coast Guard and the National Aeronautics and Space Administration) by 41 U.S.C. § 252(c) (1) is used to negotiate contracts without advertising to assist labor surplus areas, to unilaterally set-aside contracts with small business concerns and to further the U.S. Balance of Payments Program. Similar authority is provided to the Departments of the Army, the Navy and the Air Force, the Coast Guard and the National Aeronautics and Space Administration by 10 U.S.C. § 2304(a) (1) (1970). This exception to advertising requirements is used for labor surplus set-aside programs, disaster area programs, small business set-asides after unilateral determinations and Balance of Payments Restricted Advertising. The authority of section 2304(a) (1) is not excluded from the provisions of the bill, and if the bill is enacted, legislation will be necessary for these agencies to continue the above-mentioned programs where no other negotiating authority is available. The committee may wish to consider exempting the powers and authorities of 10 U.S.C. § 2304 from the provisions of S. 977.

We note that, if enacted, the proposed bill will eliminate the power of the President to authorize Government agencies that exercise functions in connection with the national defense to enter into, amend, or modify contracts without regard to other provisions of law, conferred by Pub. L. No. 85-804 (Act of August 28, 1958, 72 Stat. 972, 50 U.S.C. §§ 1431-35). The Commission on Government Procurement (with one Commissioner dissenting) recommended that this authority be made permanent and not be limited to periods of national emergency. See Report of Commission on Government Procurement, Volume 4, pp. 51-60.

The objective of providing regular and consistent procedures by which national emergency powers are called into force and terminated, thereby according greater visibility and improving the exercise of effective congressional oversight, is one which we favor.

Sincerely yours,

R. F. KELLER,
Deputy Comptroller General of the United States.

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE,
Washington, D.C., February 23, 1976.

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

DEAR MR. CHAIRMAN: This is in reply to your request for an expression of the views of the Department of Defense on S. 977, 94th Congress, an Act "To terminate certain authorities with respect to national emergencies still in effect, and to provide for orderly implementation and termination of future national emergencies."

S. 977 would terminate, one year after its enactment, any authority conferred on an executive or other federal agency by law or executive order as a result of the existence of a state of national emergency on the date of enactment. The bill would authorize the President, upon certain findings, to proclaim the existence of a future national emergency but would require the proclamation to be transmitted to Congress and published in the Federal Register. Such a future national emergency would terminate upon a concurrent resolution by Congress or by a proclamation of the President. Thus a future national emergency could be terminated by either Congress or the President.

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

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

World and national conditions have changed since President Truman officially proclaimed the state of national emergency in 1950 incident to the commencement of hostilities in Korea. Many authorities which were used then for the first time were regarded as extraordinary. Since then, experience has demonstrated a need for these authorities in the regular conduct of the day-to-day operations of the Department of Defense. The desirability of terminating existing states of emergency is recognized and no objection to their termination is entertained by the Department of Defense. However, there are certain continuing needs, outlined below, which are accommodated by the existing national emergency proclaimed by President Truman in 1950 but which are not specifically provided for in S. 977.

First, there are 863 members of the armed forces who are still unaccounted for as a result of their participation in the recent hostilities in Southeast Asia. Although the Department of Defense is making every effort to resolve the uncertain status of these men, several factors have hampered this effort so that it is not possible to predict the exact date by which their status will be finally determined. One of these factors is the decree of a federal court in a case styled *McDonald*

v. *McLucas* which precludes the Secretaries of the military departments from changing the status of those now classified as missing in action to killed in action until the primary next of kin are afforded an opportunity to attend a hearing with counsel to present whatever evidence they deem relevant and to examine service files. Only the emergency authority of 10 U.S. Code 3313, 6386(c) and 8313 authorizes the suspension of mandatory separation and retirement requirements which would otherwise be applicable to allow some of these members to remain in the armed forces until they return or are accounted for. Whether or not their situation is viewed as warranting continuation of a national emergency, it would be inequitable to force their separation or retirement while they are still unaccounted for.

In the field of personnel administration, the emergency authority of 10 U.S.C. 3444 and 8444 has been used to grant relief, by way of temporary appointment, to officers in the chaplain, judge advocate and medical fields who, because of constructive service credit in their specialties, are considered for permanent promotion earlier than their line officer counterparts and whose separation for failure of promotion might become mandatory under conditions inconsistent with the needs of the armed forces or fairness to the officers. Legislation which would, among other things, provide a solution in permanent law for this problem has been introduced in the Congress (H.R. 7486 and S. 2424, Defense Officer Personnel Management Act, and H.R. 7769, Uniformed Services Retirement Modernization Act) and hearings have begun on H.R. 7486. However, the legislative changes which these bills would effect are so extensive that it would not be realistic to expect early enactment.

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

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

Termination of the 1950 national emergency would also terminate entitlement to disability retirement or separation benefits under 10 U.S.C. 1201 and 1203 for members with less than 8 years of service whose disability of 30 percent or more, although incurred in line of duty while on active duty, was not the proximate result of the performance of active duty. Imposition of this limitation—which would affect only the junior officers and enlisted men—is particularly untimely when the armed forces are endeavoring to meet their manpower needs through voluntary means. Continuation of the authority to retire or separate military personnel with less than 8 years of service who become unfit for further service by reason of a disability incurred in line of duty, is needed as part of the military disability system.

Termination of the national emergency would also terminate the authority of the Department of Defense (and certain other agencies) under Public Law 85-804 (50 U.S.C. 1431-1435) to correct mistakes in contracts, to formalize informal commitments, to indemnify contractors against losses or claims resulting from unusually hazardous risks to which they might be exposed during the performance of a contract and for which insurance, even if available, would be prohibitively expensive; and to grant other extraordinary contractual relief. Loss of the indemnification authority, in particular, would have an immediate adverse impact upon essential programs. During the calendar year 1974 the military departments included indemnification clauses under this authority in 128 contracts associated with nuclear-powered vessels, nuclear-armed guided missiles, experimental work with nuclear energy, handling of explosives and performance in hazardous areas. The Commission on Government Procurement, established by Public Law 91-129, has recommended that the authorizations of P.L. 85-804 be made available generally rather than being dependent upon the existence of a state of war or national emergency. But, here also, enactment of the Commission's recommendation in the near future does not appear likely.

S. 977 would adversely affect defense contracting in another way, that is, in denying the emergency exception to the requirement for advertising procurements not otherwise authorized to be negotiated. Cf. 10 U.S.C. 2304(a)(1). This exception is now narrowly limited in its application by the pertinent Armed Services Procurement Regulation (32 CFR 3.201), but its application affects major social and economic policies—the policies to favor labor surplus and disaster areas and small business and to achieve a balance of payments favorable to the United States.

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

In view of the need for continuation of the authorities referred to above, the Department of Defense recommends that any legislation terminating emergency powers exempt the cited statutes from its effect

in order to preserve the substantive provisions which are now needed but which would be lost by termination of the 1950 national emergency.

On September 4, 1975, the House of Representatives passed H.R. 3884, a bill that in its original form was virtually identical with S. 977. In the course of hearings on H.R. 3884 before the House Judiciary Committee's Subcommittee on Administrative Law and Governmental Relations, the Deputy General Counsel made a statement which presented in detail the position of the Defense Department. For your convenience a copy of his statement is enclosed. The House of Representatives adopted our recommendations with respect to needed exemptions in contracting authority (cf. pp. 2-4 of the statement); continuation of the statutory emergency authority which suspends mandatory separation and retirement as applied to those members of the armed forces who are still unaccounted for in Southeast Asia (cf. p. 7); deletion of the reference to section 673 of title 10, United States Code, as inappropriate (cf. p. 8); and extension of the period for reporting to Congress the quarterly expenditures incurred in future national emergencies from thirty days after the end of each quarter to ninety days (cf. pp. 8-9). In addition, at our informal suggestion that provision of H.R. 3884 which would have terminated powers authorized by the existing national emergency one year from the date of enactment was changed to provide for termination two years from the date of enactment. This longer grace period is needed to accommodate the orderly transition to normal procedures. It is strongly recommended that the Senate also adopt these changes which were concurred in by the House of Representatives.

There were several other exemptions from the reach of H.R. 3884 which were recommended by the Department of Defense but which were not accepted by the House of Representatives. These items relate to Defense organization (cf. pp. 4-7) and disability retirement or separation benefits for military members with less than eight years of service (cf. pp. 7-8). It is recommended that the Senate give favorable consideration to these items.

In general, the Department of Defense is in accord with the S. 977 goal of repealing obsolete or unnecessary emergency laws. Therefore, subject to the foregoing reservations and recommendations, this Department does not object to enactment of S. 977.

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

Sincerely,

RICHARD A. WILEY.

Enclosure.

STATEMENT OF LEONARD NIEDERLEHNER, DEPUTY GENERAL COUNSEL,
DEPARTMENT OF DEFENSE ON H.R. 3884

Mr. Chairman and Members of the Committee: I am very pleased to have the opportunity to offer comments of the Department of Defense on H.R. 3884, "A Bill to terminate certain authorities with respect to National Emergencies still in effect, and to provide for orderly implementation and termination of future National Emergencies."

The Department of Defense favors the goal of H.R. 3884 to terminate obsolete or unnecessary authorities based upon states of emergency. However, a relatively small number of the authorities currently dependent upon a state of emergency affect contracting procedures, personnel entitlements, and organizational structure of the Department of Defense; and it is believed that the Congress will want to enact permanent legislation to treat with these various subject matters. Legislative proposals have been made to the Congress dealing with most of these items and it is hoped that they will receive attention in the near future. However, we recommend that they be exempted from the broad sweep of the pending bill until such time as the Congress has an opportunity to consider whether, and in what form, these authorities should be enacted to permanent law.

World and national conditions have changed since President Truman officially proclaimed the state of national emergency in 1950 incident to the commencement of hostilities in Korea. Many authorities which were used then for the first time were regarded as extraordinary. Since then, experience has demonstrated a need for these authorities in the regular conduct of the day-to-day operations of the Department of Defense. The desirability of terminating existing states of emergency is recognized and no objection to their termination is entertained by the Department of Defense. However, there are certain continuing needs which are accommodated by the existing national emergency proclaimed by President Truman in 1950 but which are not specifically provided for in H.R. 3884. The bill should provide an exception for each of the items I shall now refer to until such time as the Congress is able to consider permanent legislation to meet the particular need.

1. *Contracting Authority*

(a) Since 1941, there has been available to the Department of Defense authority to deal with unusual contract circumstances. Termination of the national emergency would terminate such authority of the Department of Defense (and certain other agencies) under Public Law 85-804 (50 U.S.C. 1431-1435), the current form of the 1941 statute. This statute provides authority to correct mistakes in contracts, to formalize informal commitments, to indemnify contractors against losses or claims resulting from unusually hazardous risks to which they might be exposed during the performance of a contract and for which insurance, even if available, would be prohibitively expensive, and to grant other extraordinary contractual relief. The Commission on Government Procurement, established by Public Law 91-129, recommended to the Congress in 1972 that the authorizations of Public Law 85-804 be made available generally rather than being dependent upon the existence of a state of war or national emergency.

(b) The procurement process within the Armed Services is utilized to accomplish certain major social and economic policies by the placement of contracts in labor surplus areas and in disaster areas, by letting contracts to favor small business, and to achieve a balance payments favorable to the United States. These collateral policies are achieved through the emergency exception to the requirement for formal ad-

vertisement under the Armed Forces Procurement Act (10 U.S.C. 2304(a)(1)). The use of this emergency exception is limited by regulation (32 CFR 3-201) to the achievement of the enumerated policies. In the light of the importance attached to these social and economic purposes, Congress should have the opportunity to consider the establishment of appropriate contracting procedures on a permanent basis.

2. *Personnel Administration*

A number of personnel procedures which have become basic to the current military structure are based upon a state of emergency. Major legislative proposals which place many of these personnel procedures on a permanent basis have been proposed but have not been enacted. The latest and most comprehensive of these proposals, the Defense Officer Personnel Management Act, was introduced in January, 1974, but was not acted upon. It will be resubmitted to the new Congress in 1975 and, if passed by the Congress, will cure most of the problems I shall now mention. These problems can be classified under two categories—those that deal with Defense organization and those that deal with personnel entitlements.

a. *Defense Organization*

(1) Retention of the emergency authority of 10 U.S.C. 3444 and 8444 is required for the following purposes:

(a) To provide the authority to make temporary appointments of officers in the Chaplain, Judge Advocate, and Medical fields, who, because of constructive service credit in their specialties, are considered for permanent promotion earlier than line officer counterparts, and whose separation for failure of promotion might become mandatory under conditions inconsistent with the needs of the service.

(b) To provide the authority of the President as Commander in Chief to grant temporary appointments to exceptional officers of the Army or Air Force. (The promotion of the Air Force astronauts.)

(c) To provide the authority to appoint alien doctors in the Army and Air Force as officers to meet critical shortages of military medical personnel.

(2) Over a period of years the personnel structure in the naval service has developed around several emergency authorities which now form the basis of officer management. These authorities include:

(a) 10 U.S.C. 5231(c), which suspends existing limitations on the number of admirals and vice admirals of the Navy. If this authority is not continued, the Navy would lose approximately one-half of its three- and four-star admirals.

(b) 10 U.S.C. 5232(b) suspends existing limitations on lieutenant generals of the Marine Corps. If this authority is not continued, the Marine Corps would lose five of the currently authorized seven lieutenant generals.

(c) 10 U.S.C. 5711(b) authorizes the suspension of the statutory limit of 5% for early promotion selections specified in section 5707(c).

(d) 10 U.S.C. 5785(b) is needed to suspend time-in-grade requirements for promotion to all Navy and Marine Corps grades except lieutenant and lieutenant commander. This statute is also the authority for suspension of the mandatory promotion selection rate provisions for certain staff corps officers to grades below rear admiral.

(e) 10 U.S.C. 5787 provides for temporary promotions in the Navy. Failure to retain this authority would require approximately 650 limited duty officers in the grade of lieutenant commander to revert to the grade of lieutenant. Discontinuance of this authority would also require Senate confirmation of all Regular promotions to lieutenant (junior grade).

b. Personnel Entitlements

(1) There are currently 913 members of the armed forces who are listed as missing in action in Southeast Asia. Only the emergency authority of 10 U.S.C. 3313, 6386(c), and 8313 authorizes the suspension of mandatory separation and retirement requirements which would otherwise be applicable to allow some of these members to remain in the armed forces until they return or are accounted for. Whether or not their situation is viewed as warranting continuation of a national emergency, it would be inequitable to force their separation or retirement while they are in a missing status.

(2) Termination of the 1950 national emergency would also terminate entitlement to disability retirement or separation benefits under 10 U.S.C. 1201 and 1203 for members with less than 8 years of service whose disability of 30 per cent or more, although incurred in line of duty while on active duty, was not the proximate result of the performance of active duty. Loss of this eligibility—which would affect only the junior officers and enlisted men—is particularly untimely when the armed forces are endeavoring to meet their manpower needs through voluntary means.

The Department recommends the deletion from the bill of subsection 602(a)(2) "Section 673 of title 10, United States Code;" this statute provides authority to order to active duty members of the Ready Reserve "In time of national emergency declared by the President after January 1, 1953." This statute would not be affected by termination of existing emergencies.

In view of the need for continuation of the authorities I have referred to, the Department of Defense recommends that any legislation terminating emergency powers except the cited statutes from its effect until such time as the Congress has the opportunity to consider the necessity for permanent legislation.

Finally, there is no procedural requirement of H.R. 3884 which is not realistic. I refer to the provision in subsection 501(c) which requires a report to Congress on total expenditures within thirty days after the end of each quarter during a national emergency period. The thirty-day reporting requirement does not provide sufficient time to collect the required data for transmittal to Congress. Ninety days would be more appropriate to accomplish the task properly.

DEPARTMENT OF STATE,
Washington, D.C., September 11, 1975.

HON. ABRAHAM RIBICOFF,
Chairman, Committee on Government Operations,
U.S. Senate.

DEAR MR. CHAIRMAN: Your letter of April 22 invited recommendations on S. 977, a bill "To terminate certain authorities with respect to national emergencies still in effect, and to provide for orderly implementation and termination of future national emergencies." This bill is very much the same as S. 3957, passed by the Senate last session.

The Department of State believes that it is appropriate to reexamine the national emergency authorities at this time, to repeal obsolete authorities, and to set criteria for national emergencies which may be declared in the future. S. 977 does this, and at the same time preserves major emergency authorities that are essential to the conduct of foreign relations. The Department is especially interested in section 602 of S. 977 because it preserves essential authorities, in particular section 5(b) of the Trading with the Enemy Act (50 U.S.C. App. 5(b) and 12 U.S.C. 95a) which provides the basic legal authority for a number of programs of major foreign policy importance. These include:

1. Foreign Assets Control Regulations (31 C.F.R. Part 500);
2. Cuban Asset Control Regulations (31 C.F.R. Part 515), and
3. Foreign Funds Control Regulations (31 C.F.R. Part 520).

Under these programs, transactions are prohibited which involve persons or property subject to United States jurisdiction and which take place with Cuba, North Viet-Nam, North Korea, and designated nationals of those countries, unless specifically or generally licensed. In addition, property in which those countries or their nationals have an interest has been blocked and is under United States Government control. We also are holding assets of the People's Republic of China blocked before May 1971 and assets of certain Eastern European countries. While the amounts of the blocked assets vary, in some cases it is substantial, for example possibly in excess of \$80 million in the case of the People's Republic of China.

An interruption of these programs would seriously prejudice the foreign relations interests of the United States and the interests of thousands of American nationals with outstanding claims against Cuba and the People's Republic of China. One effect of such interruption would be to release the blocked assets. Another would be to authorize transactions now prohibited without regard for the state of United States relations with countries concerned or the underlying United States interests served by these programs. Thus for example, Cuban imports could come into the United States without regard to other economic issues, and relaxation of transaction controls with respect to North Viet-Nam would be without regard to any context of improved bilateral relations. As a result it would become very difficult, if not impossible, to negotiate satisfactory claim settlements, or to realize other United States objectives.

The Department stresses that these are merely the current programs under section 5(b) of the Trading with the Enemy Act and the 1950

proclamation of national emergency. This authority has been utilized in the past for programs which have served their purposes and been terminated, and it may be necessary again. The present international situation has the potential for serious difficulties in international fiscal and economic matters, particularly energy, which may call for measures requiring recourse to this authority. Therefore, the Department believes it is essential that section 5(b) of the Trading with the Enemy Act be specifically exempted as section 602 now provides.

The Department of State has not opposed, and does not oppose, the replacement of section 5(b) by other permanent legislation. We do believe that there are a number of serious legal and policy questions in connection with any such legislation that will require protracted Congressional consideration and we are convinced that it would be highly imprudent to cast away the authority of section 5(b) without any assurance of such a replacement.

Since passage of S. 3957, the Department has given additional consideration to the effect of termination of the present state of emergency on activities authorized by section 215 of the Immigration and Nationality Act (8. U.S.C. 1185). Under Presidential Proclamation No. 3004 of January 17, 1953 and section 215 it is unlawful (with certain exceptions specified by regulation) for any citizen of the United States to depart from or enter, or attempt to depart from or enter, the United States unless he bears a valid passport. There is no other statute which makes it unlawful for any citizen to depart from or enter the United States without a valid passport or other official documentation. If, however, the national emergency upon which the Proclamation is based is terminated as now provided by S. 977, the power to regulate the entry into and departure from the United States of United States citizens would be ended.

The most modern forerunner of section 215 was 40 Stat. 559 passed in 1918. It provided that, in time of war and upon public proclamation by the President that the public safety required additional travel restrictions, no citizen could depart from or enter the country without a passport. In 1941 Congress amended the 1918 Act to provide for travel control during a national emergency proclaimed by the President. Presidential Proclamation No. 2523 based on that Act was replaced by Proclamation 3004 based on the Immigration and Nationality Act of 1952 containing the present section 215. Under S. 977 the requirement of a United States passport could be reinstated by a new declaration of national emergency.

There is a more mundane, but nevertheless real problem for which the declaration of a new national emergency under S. 977 is not an ideal solution. This would be the chaotic conditions at United States ports-of-entry which may result if there is no authority to require citizens to have passports for entry into the United States. If large numbers of citizens choose not to obtain passports for foreign travel and then return undocumented to the United States, long delays in processing will result. In addition, the opportunities for aliens to fraudulently enter the United States will be significantly increased. For these reasons, the Department of State will propose amendment of section 215 of the Immigration and Nationality Act so that its provisions are not dependent upon executive action but stand independently as the expressed will of the Congress. Under S. 977, however,

there will be only a one year period in which such legislation can be sought. The Department believes that it would be wise to have the additional year for this purpose provided in H.R. 3884, the House version of S. 977.

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

Sincerely,

ROBERT J. MCCLOSKEY,
Assistant Secretary for Congressional Relations.

THE GENERAL COUNSEL OF THE TREASURY,
Washington, D.C., September 11, 1975.

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

DEAR MR. CHAIRMAN: Reference is made to your request for the views of this Department on S. 977, the "National Emergencies Act."

One year from the date of its enactment, the proposed legislation would terminate all powers and authorities bestowed upon governmental bodies due to past national emergencies, although certain statutes would be exempted from the application of its provisions. The bill would also establish procedures for Presidential declarations of future national emergencies. Congress would be required to meet within six months after the declaration of such an emergency to determine whether such emergency should be terminated by concurrent resolution.

S. 977, an amended version of proposed legislation relating to national emergencies introduced in the last Congress, reflects the recommendations of the Executive agencies. The Treasury Department believes that this bill represents a workable approach to the national emergencies question.

This Department believes that two features of the bill are especially important. First of all, the bill provides a full year in which the Executive branch and Congress can make the adjustments which may be necessary or desirable in relation to the termination of emergency powers provided for in section 101 of the bill. Given the nature of the legislative process and the number of other legislative programs of current importance, a grace period of two years as provided in H.R. 3884 may be necessary.

Second, the Department strongly believes that the exemption of section 5(b) of the Trading with the Enemy Act from the bill's provisions terminating emergency powers is highly desirable. This exemption is essential to the continued effectiveness of the Foreign Assets Control Program administered by the Department, under which controls are maintained in implementation of existing policies with respect to several foreign countries and their nationals and significant amounts of foreign assets have been frozen for an eventual settlement of the claims of United States citizens whose property has been seized without compensation. In addition, we believe that section 5(b) should

be retained for emergency use to deal with international financial and investment problems that may arise in the future.

The Department would like to make one technical comment. Although section 602(a)(1) refers to "12 U.S.C. 95(a)", the correct citation is "12 U.S.C. 95a".

Subject to the above considerations, this Department has no objection to enactment of S. 977.

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

Sincerely yours,

RICHARD R. ALBRECHT,
General Counsel.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,

Washington, D.C., January 23, 1976.

HON. ABE RIBICOFF,
Chairman, Committee on Government Operations, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for a report on S. 977, a bill "To terminate certain authorities with respect to national emergencies still in effect, and to provide for orderly implementation and termination of future national emergencies."

In summary, because the bill would have no adverse effects on the operations of this Department, we have no objection to the favorable consideration of the bill.

Title I of the bill would terminate the existing state of national emergency, effective one year from the date of enactment. Within the Commissioned Corps of the Public Health Service, the authority to (1) make temporary promotions to a higher grade irrespective of whether a vacancy exists in such grade or not (under 42 U.S.C. 211k), and (2) retire for disability an officer with less than eight years of service on the basis of a "line of duty" determination rather than a "proximate result of service" determination (under 10 U.S.C. 1201), would be terminated.

Title II of the bill would authorize future declarations of national emergencies by the President.

Title III of the bill would provide for the exercise of wartime or national emergency authorities under a congressional declaration of war.

Title IV of the bill would provide that no provisions of law conferring powers and authorities to be exercised during a national emergency or war shall become effective until the President specifies by Executive Order the specific provisions of law under which he or other officials will act. The proposed title would also place limitations on the duration of (1) national emergencies declared by the President, and (2) the exercise of emergency and wartime authorities.

Title V of the proposed bill would require the President to maintain certain records and to report to the Congress all Executive Orders, rules, regulations, orders, etc., issued by himself or Executive Branch officials in implementing national emergency and wartime authorities.

Title VI of the proposed bill would repeal a number of provisions of law, only one of which is of interest to this Department. 42 U.S.C. 211b

contained one-time authorities for promotion, service credit, seniority credit, etc., applicable to commissioned officers of the Public Health Service, all to be exercised by July 1, 1948.

The loss of the "line of duty" disability retirement authority and the unrestricted temporary promotion authority within one year after the termination of the existing states of national emergency will cause no unmanageable problems within the Public Health Service. The temporary promotion of commissioned officers will still be possible, but under the more stringent requirements of "vacancy in grade" to which promoted. Officers with less than eight years service will be eligible for disability retirement only if their disabilities are the "proximate result" of service, otherwise they are eligible for disability severance pay. During the period of emergency, disability retirement was possible if the disability was incurred "in line of duty", i.e., not as a result of his own misconduct, not while absent without leave, etc. The one year deferment of the effective date of the termination of the emergency permits adequate time for the indoctrination of disability retirement and temporary promotion boards and dissemination of information regarding new criteria to all of the officers who would be affected.

The proposal to repeal 42 U.S.C. 211b will have no adverse effects. These provisions contained one-time authorities for promotions, seniority credit (for promotion purpose), etc., of commissioned officers of the Public Health Service, all of which were exercised before July 1, 1948. Any benefits that accrued to officers under 42 U.S.C. 211b who are still on active duty are fully protected in that the repeal provides that "any risks . . . matured" prior to repeal are not affected.

We therefore would have no objection to favorable consideration of the bill.

We are advised by the Office of Management and Budget that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

(s) MARJORIE LYNCH,
Under Secretary.

TENNESSEE VALLEY AUTHORITY,
Knoxville, Tenn., May 22, 1975.

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

DEAR SENATOR RIBICOFF: This is in response to your April 22 letter requesting TVA's views on S. 977, "A bill to terminate certain authorities with respect to national emergencies still in effect, and to provide for orderly implementation and termination of future national emergencies."

Section 601(d) of the bill would repeal section 5(m) of the TVA Act. Section 5(m) of the TVA Act provides:

No products of the Corporation except ferrophosphorus shall sold for use outside of the United States, its Territories and possessions, except to the United States Government for the use of its Army and Navy, or to its allies in case of war or, until six months after the termination of the national emergency pro-

claimed by the President on December 16, 1950, or until such earlier date or dates as the Congress by concurrent resolution or the President may provide but in no event after April 1, 1963, to nations associated with the United States in defense activities.

We have reviewed the impact of repeal of this section and find it would have no significant effect on the TVA program. For this reason we would have no objection to the enactment of section 601(d) of S. 977.

The balance of the bill deals with the termination of existing declared emergencies, declarations of future national emergencies, and other matters relating to the emergency powers of the President as well as the repeal or amendment of various statutes not related to the TVA program. As to these matters we will defer to the views of the departments and agencies most directly concerned.

The Office of Management and Budget advises that it has no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely yours,

AUBREY J. WAGNER, *Chairman.*

OFFICE OF THE SECRETARY OF TRANSPORTATION,
Washington, D.C., September 23, 1975.

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

DEAR MR. CHAIRMAN: Your committee has asked for views of this Department concerning S. 977, a bill:

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

If enacted the bill would terminate one year from the date of enactment, (with certain exceptions) all powers and authorities possessed by the President, any other officer or employee of the Federal Government, or any executive agency, as defined in Section 105 of Title 5, United States Code, as a result of the existence of any declaration of national emergency in effect on the date of enactment.

Provision is made for the proclamation of national emergencies whenever the President finds it necessary. Any national emergency declared by the President shall terminate if the Congress terminates it by concurrent resolution, or the President issues a proclamation terminating it. Provision is made for periodic review by the Congress every six months to consider whether such declarations of emergency shall continue.

Title III of the bill would provide that whenever Congress declares war any provisions of law conferring powers and authorities to be exercised during time of war shall be effective from the date of declaration.

Provision is made in Title IV for the exercise of emergency powers and authorities. It provides that the President shall specify the provision of law under which he and other officers shall act.

Title V provides for accountability and reporting requirements of the President and Title VI contains certain repeal and continuation provisions.

Within this Department, enactment of this bill would have significant impact only on the United States Coast Guard in the following areas:

(a) In the area of controlling vessels for the purpose of marine security and safety, the Coast Guard for many years has primarily relied on the statutory authority found at 50 U.S.C. 191. Our reliance on the statute, which is keyed to the declaration of a national emergency, has been reduced with the passage of the Ports and Waterways Safety Act (33 U.S.C. 1221 *et seq.*) by the 92nd Congress, except in the area of actual possession and control of a vessel. Furthermore, the Ports and Waterways Safety Act requires that regulations issued under it be motivated by a concern for vessel and environmental safety and that full rulemaking hearings be conducted in the process of their issuance. However, the statutory authority found at 50 U.S.C. 191 serves as the basis for the regulation of vessels for security reasons alone without the panoply of the administrative procedures noted above.

(b) With regard to merchant vessel inspection and merchant marine documentation, the Coast Guard is also desirous of maintaining some of the statutory authority currently dependent upon a national emergency situation. For example, to ensure adequate manning of subsidized vessels, the provision for waiver of citizenship and naval reserve status of officers and crew contained in Section 1132 of Title 46, United States Code, should be retained.

(c) The Coast Guard is concerned with the impact of the proposed legislation upon Sections 1201 and 1203 of Title 10, United States Code, which deals with physical disability retirement particularly with regard to disability incurred in time of war or national emergency. The proposed legislation would terminate entitlement to disability retirement or separation benefits for members with less than eight years of service whose disability, although incurred in line of duty while on active duty, was not the proximate result of the performance of active duty.

This Department would prefer to continue to use all of the authorities discussed above. Therefore, in the event S. 977 is enacted, we recommend that our existing authority under these sections be excepted from the provisions of the bill.

We have no other suggestion for amendment.

There appear to be no cost implications since the bill provides for no specific new programs.

Subject to the Committee's consideration of the above comments, we would have no objection to enactment of the bill.

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

Sincerely,

JOHN HART ELY, *General Counsel.*

TEXT OF H.R. 3884 AS REPORTED

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

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

TITLE I—TERMINATING EXISTING DECLARED EMERGENCIES

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

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

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

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

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

TITLE II—DECLARATIONS OF FUTURE NATIONAL EMERGENCIES

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

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

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

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

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

Any national emergency declared by the President shall be terminated on the date specified in any concurrent resolution referred to in clause (1) or on the date specified in a proclamation by the President terminating the emergency as provided in clause (2) of this subsection, whichever date is earlier, and any powers or authorities exercised by reason of said emergency shall cease to be exercised after such specified date, except that such termination shall not affect—

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

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

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

(b) Not later than six months after a national emergency is declared, and not later than the end of each six-month period thereafter that such emergency continues, each House of Congress shall meet to consider a vote on a concurrent resolution to determine whether that emergency shall be terminated.

(c) (1) A concurrent resolution to terminate a national emergency declared by the President shall be referred to the appropriate committee of the House of Representatives or the Senate, as the case may be. One such concurrent resolution shall be reported out by such committee together with its recommendations within fifteen calendar days after the day on which such resolution is referred to such committee, unless such House shall otherwise determine by the yeas and nays.

(2) Any concurrent resolution so reported shall become the pending business of the House in question (in the case of the Senate the time for debate shall be equally divided between the proponents and the opponents) and shall be voted on within three calendar days after the day on which such resolution is reported, unless such House shall otherwise determine by yeas and nays.

(3) Such a concurrent resolution passed by one House shall be referred to the appropriate committee of the other House and shall be reported out by such committee together with its recommendations within fifteen calendar days after the day on which such resolution is referred to such committee and shall thereupon become the pending business of such House and shall be voted upon within three calendar days after the day on which such resolution is reported, unless such House shall otherwise determine by yeas and nays.

(4) In the case of any disagreement between the two Houses of Congress with respect to a concurrent resolution passed by both Houses, conferees shall be promptly appointed and the committee of conference shall make and file a report with respect to such concurrent resolution within six calendar days after the day on which managers on the part of the Senate and the House have been appointed. Notwithstanding any rule in either House concerning the printing of conference reports or concerning any delay in the consideration of such reports, such report shall be acted on by both Houses not later than six calendar days after the conference report is filed in the House

in which such report is filed first. In the event the conferees are unable to agree within forty-eight hours, they shall report back to their respective Houses in disagreement.

(5) Paragraphs (1)-(4) of this subsection, subsection (b) of this section, and section 502(b) of this Act are enacted by Congress—

(A) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they are deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in the House in the case of resolutions described by this subsection; and they supersede other rules only to the extent that they are inconsistent therewith; and

(B) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

(d) Any national emergency declared by the President in accordance with this title, and not otherwise previously terminated, shall terminate on the anniversary of the declaration of that emergency if, within the ninety-day period prior to each anniversary date, the President does not publish in the Federal Register and transmit to the Congress a notice stating that such emergency is to continue in effect after such anniversary.

TITLE III—EXERCISE OF EMERGENCY POWERS AND AUTHORITIES

SEC. 301. When the President declares a national emergency, no powers or authorities made available by statute for use in the event of an emergency shall be exercised unless and until the President specifies the provisions of law under which he proposes that he, or other officers will act. Such specification may be made either in the declaration of a national emergency, or by one or more contemporaneous or subsequent Executive orders published in the Federal Register and transmitted to the Congress.

TITLE IV—ACCOUNTABILITY AND REPORTING REQUIREMENTS OF THE PRESIDENT

SEC. 401. (a) When the President declares a national emergency, or Congress declares war, the President shall be responsible for maintaining a file and index of all significant orders of the President, including Executive orders and proclamations, and each Executive agency shall maintain a file and index of all rules and regulations, issued during such emergency or war issued pursuant to such declarations.

(b) All such significant orders of the President, including Executive orders, and such rules and regulations shall be transmitted to the Congress promptly under means to assure confidentiality where appropriate.

(c) When the President declares a national emergency or Congress declares war, the President shall transmit to Congress, within ninety

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

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

SEC. 501. (a) Section 349(a) of the Immigration and Nationality Act (8 U.S.C. 1481(a)) is amended—

- (1) at the end of paragraph (9), by striking out “; or” and inserting in lieu thereof a period; and
- (2) by striking out paragraph (10).

(b) Section 2667(b) of title 10 of the United States Code is amended—

- (1) by inserting “and” at the end of paragraph (3);
- (2) by striking out paragraph (4); and
- (3) by redesignating paragraph (5) as (4).

(c) The joint resolution entitled “Joint resolution to authorize the temporary continuation of regulation of consumer credit”, approved August 8, 1947 (12 U.S.C. 249), is repealed.

(d) Section 5(m) of the Tennessee Valley Authority Act of 1933, as amended (16 U.S.C. 831d(m)), is repealed.

(e) Section 1383 of title 18, United States Code, is repealed.

(f) Section 6 of the Act entitled “An Act to amend the Public Health Service Act in regard to certain matters of personnel and administration, and for other purposes”, approved February 28, 1948, is amended by striking out subsections (b), (c), (d), (e), and (f) (42 U.S.C. 211b).

(g) Section 9 of the Merchant Ship Sales Act of 1946 (50 U.S.C. App. 1742) is repealed.

(h) This section shall not affect—

- (1) any action taken or proceeding pending not finally concluded or determined at the time of repeal;
- (2) any action or proceeding based on any act committed prior to repeal; or
- (3) any rights or duties that matured or penalties that were incurred prior to repeal.

SEC. 502. (a) The provisions of this Act shall not apply to the following provisions of law, the powers and authorities conferred thereby, and actions taken thereunder:

- (1) Section 5(b) of the Act of October 6, 1917, as amended (12 U.S.C. 95a; 50 U.S.C. App. 5(b));
- (2) Act of April 28, 1942 (40 U.S.C. 278b);
- (3) Act of June 30, 1949 (41 U.S.C. 252);
- (4) Section 3477 of the Revised Statutes, as amended (31 U.S.C. 203);
- (5) Section 3737 of the Revised Statutes, as amended (41 U.S.C. 15);

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

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

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

(b) Each committee of the House of Representatives and the Senate having jurisdiction with respect to any provision of law referred to in subsection (a) of this section shall make a complete study and investigation concerning that provision of law and make a report, including any recommendations and proposed revisions such committee may have, to its respective House of Congress within two hundred and seventy days after the date of enactment of this Act.

Passed the House of Representatives September 4, 1975.

Attest:

W. PAT JENNINGS,
Clerk:

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