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R	2/24/1999 NLSF96-115 #17			
252112 TABLE OF CONTENTS	SURVEY	5	12/31/1982	B1
R	2/24/1999 NLSF96-115 #18			
252113 REPORT	SURVEY OF EMERGENCY LEGAL AUTHORITY FOR ECONOMIC STABILIZATION AND PUBLIC FINANCE MEASURES IN THE EVENT OF A NATIONAL EMERGENCY, PARTIAL	50	12/31/1982	B1
PAR	2/24/1999 NLSF96-115 #19			

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SURVEY OF EMERGENCY LEGAL AUTHORITY FOR ECONOMIC
STABILIZATION AND PUBLIC FINANCE MEASURES IN
THE EVENT OF A NATIONAL EMERGENCY

Material to John Soahn for an Emergency Mobilization
Preparedness Board Meeting - Jul 11 84

Prepared by:

Economic Stabilization and
Public Finance Working Group

(December 31, 1982)

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			Tab A Subj: Survey of Emergency Legal Authority	12/31/82	ESPFWG
	U		Tab B Subj: Leg. Working Draft	7/12/83	ESPFWG
	U		Tab C Subj: Outlines of Control	7/12/83	ESPFWG
	C		Tab D Subj: Policy Options Pkg;	10/21/83	ESPFWG
	C		Tab E Subj: Proposed Amendments to Draft DRA	1/19/84	ESPFWG
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EMERGENCY MOBILIZATION PREPAREDNESS BOARD

Washington, D.C. 20472

JUN 13 1984

MEMORANDUM FOR: Board Members

FROM:

Fred J. Villiella
Fred J. Villiella
Executive Secretary

SUBJECT: Material For Board Meeting

(U) At the last Board meeting, Dr. Ikle, the DOD Member, suggested that a future Board meeting be devoted to the overall issue of economic and fiscal mobilization. In keeping with Dr. Ikle's suggestion, the next Board meeting, tentatively scheduled for July 11, is expected to be devoted to economic stabilization and public finance matters. It is also expected that the Acting Chairman of the Economic Stabilization and Public Finance Working Group will brief the Board on the materials produced by the Working Group prior to a general discussion of the subject.

(U) Attached for your information and familiarization is the material which will be discussed at the meeting:

~~(S)~~ - Survey of Emergency Legal Authority for Economic Stabilization and Public Finance Measures in the Event of a National Emergency -- prepared in accordance with milestones E-1.V.a, E-2.V.a and E-3.V.a of the National Plan of Action on Emergency Mobilization Preparedness. (Tab A, ~~SECRET~~)

(U) - Legislative Working Drafts -- prepared in accordance with milestones E-1.V.b, E-2.V.b and E-3.V.b. (Tab B, UNCLASSIFIED)

(U) - Outlines of Controls -- prepared in accordance with milestones E-1.V.c, E-2.V.c and E-3.V.c. (Tab C, UNCLASSIFIED)

(U) - Policy Options Package -- prepared in accordance with milestones E-1.V.d, E-2.V.d and E-3.V.d. (Tab D, ~~CONFIDENTIAL~~)

(U) - Proposed Amendments to the Draft Defense Resources Act -- prepared in accordance with milestones E-1.V.e and E-3.V.e. (Tab E, ~~CONFIDENTIAL~~)

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(U) - Proposed Executive Orders and Regulations -- prepared in accordance with milestones E-1.V.f and g, E-2.V.e and f, and E-3.V.f and g. (Tab F, ~~SECRET~~)

Attachment

cc: Acting Chairman, ESPFWG
Liaison Officers

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SURVEY OF EMERGENCY LEGAL AUTHORITY FOR ECONOMIC
STABILIZATION AND PUBLIC FINANCE MEASURES IN
THE EVENT OF A NATIONAL EMERGENCY

Prepared by:

Economic Stabilization and
Public Finance Working Group

(December 31, 1982)

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252113	REPORT SURVEY OF EMERGENCY LEGAL AUTHORITYFOR ECONOMIC STABLIZATION AND PUBLIC FINANCE MEASURES IN THE EVENT OF A NATIONAL EMERGENCY, PARTIAL	50	12/31/1982	B1

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- B-9 Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

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TAB A

(U) SURVEY OF EMERGENCY LEGAL AUTHORITY FOR ECONOMIC STABILIZATION
AND PUBLIC FINANCE MEASURES IN THE EVENT OF A NATIONAL EMERGENCY

(U) INTRODUCTION

(U) This survey of emergency legal authority for economic stabilization and public finance measures in the event of a national emergency has been compiled at the request of the Chairman of the Economic Stabilization and Public Finance Working Group of the Emergency Mobilization Preparedness Board. The survey is intended to assist decision-makers in a time of national emergency in determining whether legal authority exists to institute various economic stabilization and public finance measures. This survey is concerned with the economic aspects of a national emergency, with the primary emphasis on national defense emergencies, including both actual military conflicts and the mobilization of the nation's armed forces.

(U) It is anticipated that a national defense emergency will have at least two major economic impacts. First, increased defense spending will have to be financed. Second, the reallocation of the nation's limited resources from the private sector to the military may result in major inflationary pressures and shortages. This survey examines the extraordinary legal authority ^{1/} available to finance a military response (public finance) and to control possible inflation and shortages (economic stabilization).

(U) The extraordinary legal authority available to implement public finance and economic stabilization measures during a national defense emergency depends upon whether the emergency is a declared war, a declared national emergency, or a statutorily-

^{1/} (U) Apparently, the last comprehensive study of emergency legislation was completed in 1973. See "Emergency Powers Statutes: Provisions of Federal Law Now in Effect Delegating Extraordinary Authority in Time of National Emergency," S. Rep. No. 93-549, 92d Cong. 1st Sess. (Nov. 19, 1973). We understand, however, that the Emergency Mobilization Preparedness Board's Working Group on Government Operations is currently in the initial stages of preparing a government-wide survey of emergency legal authority.

(U) The extraordinary legal authorities examined included statutes, executive orders, draft legislation, draft executive orders, draft regulations, draft proclamations, draft directives and draft delegations triggered by a declaration of war or national emergency or the existence of a statutorily-defined emergency. Unless otherwise noted, the survey does not include a review of an act's legislative history or the judicial interpretations thereof. Generally, the survey does not examine existing legal authority that supports current executive activities in the areas of economic stabilization and public finance.

defined emergency. The broadest legal authority is triggered by a Congressional declaration of war, while more limited legal authority is triggered by the declaration of a national emergency or the existence of certain statutorily-defined emergencies.

(U) This survey of emergency legal authority for economic stabilization and public finance measures is divided into three major areas: (1) an examination of the legal authority derived from a declaration of war; (2) an examination of the legal authority derived from general statutes that constrain and structure the declaration of a national emergency; and (3) an examination of the legal authority derived from certain statutorily-defined emergencies other than a declared war or national emergency. Within each area, we have set forth existing legal authority followed by an examination of proposed emergency authority (including draft legislation, proclamations, executive orders, regulations, etc.).

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(U) We also reviewed the following emergency planning documents: (1) Federal Civil Emergency Actions Guidelist 4/; (2)

~~REDACTED~~

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Major Emergency Actions 5/; and (3) Policy and Planning Preparedness Activities.6/ These emergency planning documents set forth anticipated actions by decision-makers during certain national emergencies, but do not constitute independent legal authority to undertake the recommended actions.

(U) A comprehensive delegation of planning responsibilities for public finance and economic stabilization measures to the different federal departments and agencies is set forth in Executive Order 11490, as amended. This delegation will be important in the event of a national emergency because the departments and agencies currently assigned planning responsibilities will undoubtedly have to assume an initial operational role. Executive Order 11490, as amended, is discussed at length in Annex A. Executive Order 11490 specifically states that it confers no substantive legal authority.

(U) Flow Charts A and B (at pp. 5 and 6) trace the national emergency decision-making process as it applies to the implementation of economic stabilization (Flow Chart A) and public finance (Flow Chart B) measures.

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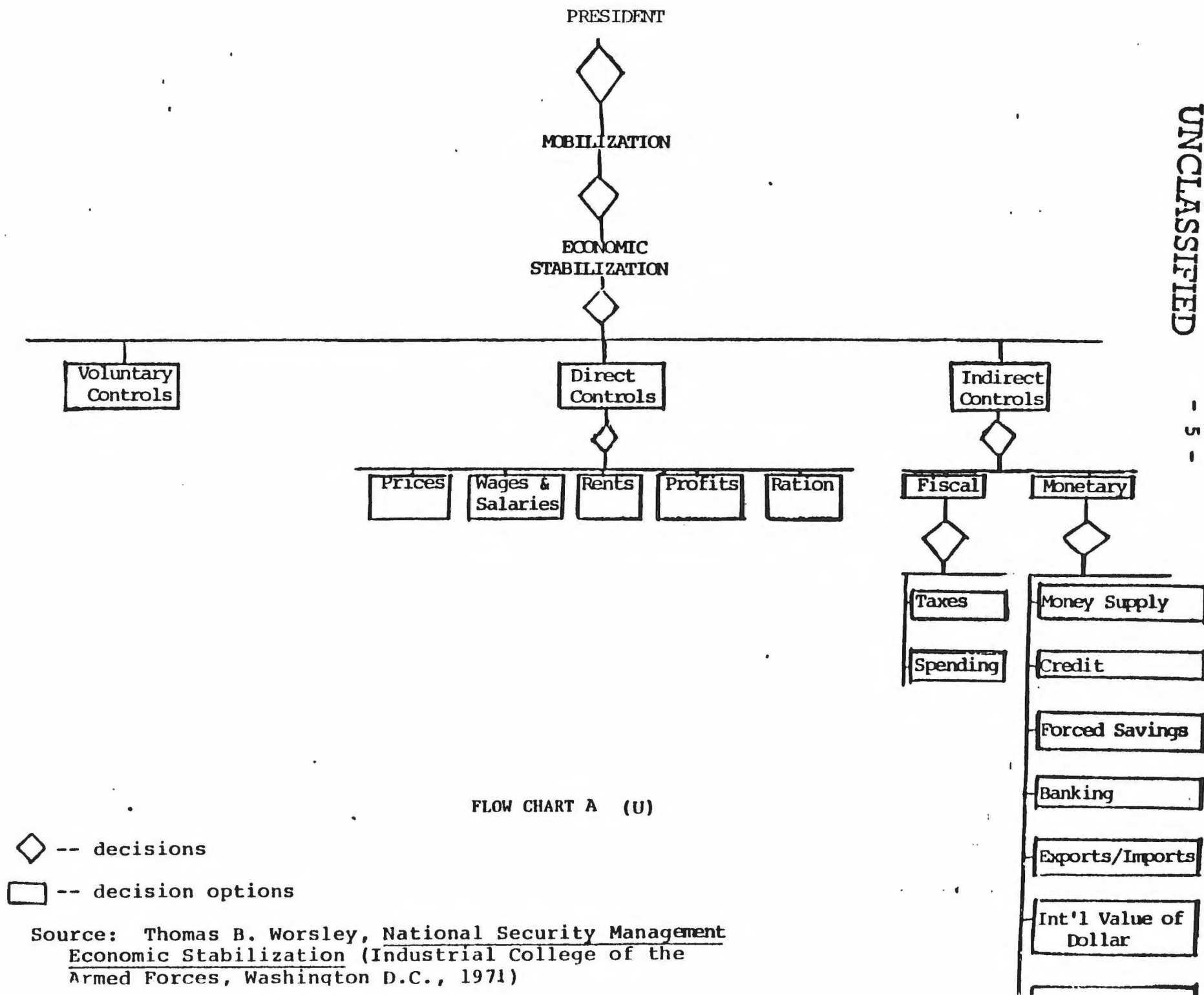
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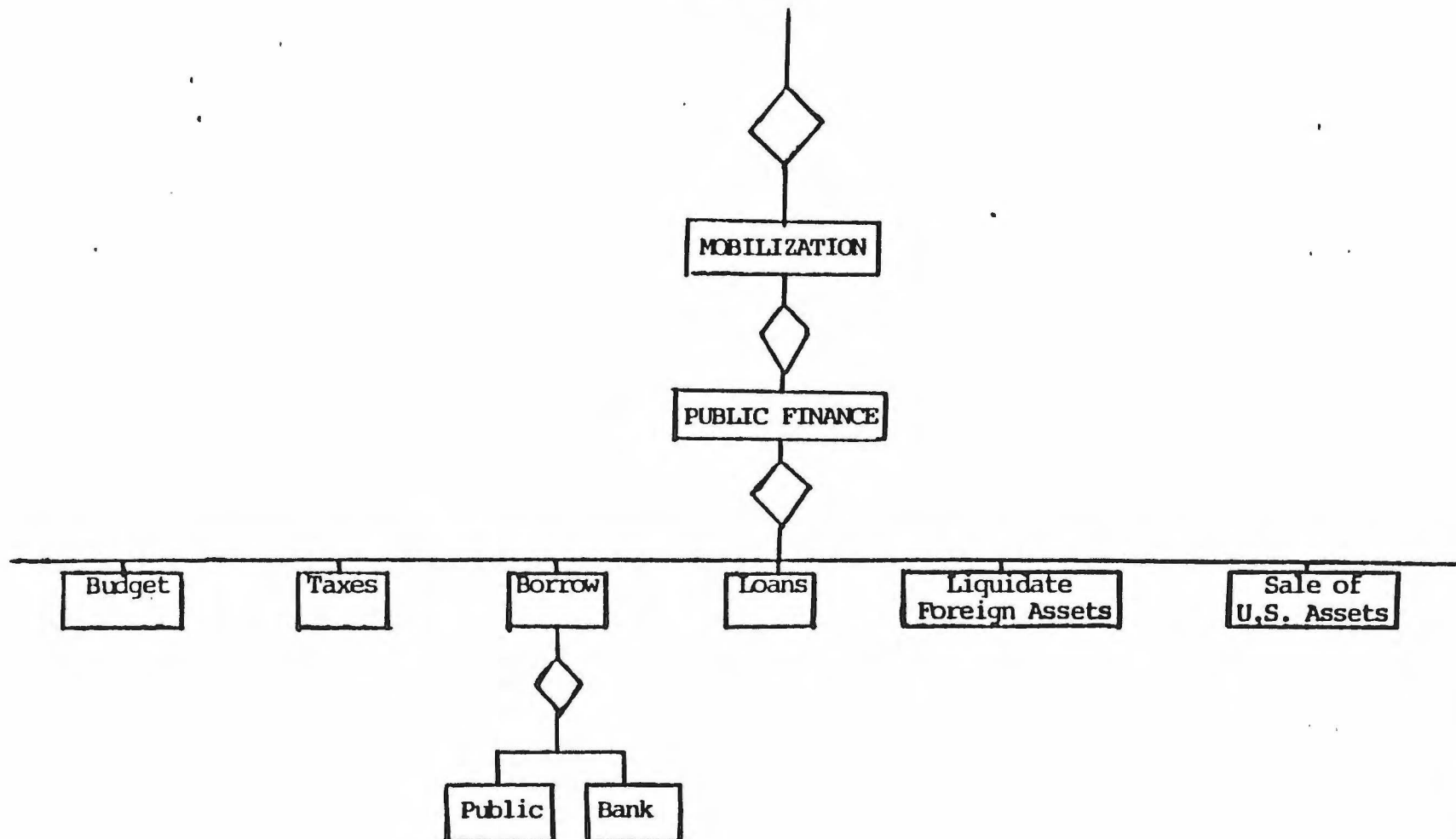
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- 5 -



PRESIDENT



FLOW CHART B (U)



-- decisions



-- decision options

Source: Thomas B. Worsley, National Security Management Economic Stabilization
(Industrial College of the Armed Forces
1971)

I. (U) WAR

A. (U) CONSTITUTIONAL AUTHORITY

(U) The most comprehensive legal authority to institute economic stabilization and public finance measures in the event of a national emergency derives from a Congressional declaration of war. Such a declaration triggers both the extraordinary emergency authority of the Congress under the War Power provision and the extraordinary emergency authority of the President as Commander-in-Chief and Chief Executive.

1. (U) Congressional Authority--The War Power

(U) The Constitution provides that:

"The Congress shall have power . . . To declare war . . . "

U.S. Const., Art. I, §8, cl. 11. This provision has been interpreted to authorize the Congress, not the President, to declare war. Such a declaration may not be necessary, however, if the United States has been attacked. Once the U.S. has been attacked a state of war may be presumed to exist. (See The Prize Cases, 2 Bl. (67 U.S.) 635 (1863), discussed below at p. 10; and The Protector, 12 Wall. (79 U.S.) 700 (1872). But see the War Powers Resolution (Pub. L. 93-148); and the National Emergencies Act of 1976 (Pub. L. 94-412), discussed below at pp. 12 and 16 respectively.) Following a declaration of war Congress has very broad authority to enact laws to control the civilian economy totally.

a. (U) Economic Stabilization

(U) Statutes authorizing the imposition of extraordinary economic stabilization controls during war (e.g., rent controls, price controls and consumer rationing) have consistently been upheld by the Supreme Court. See Yakus v. United States, 321 U.S. 414 (1944) (upholding the Administrator of the Office of Price Administration's powers under the Emergency Price Control Act of 1942 as a constitutionally valid exercise of Congressionally delegated authority); Bowles v. Willingham, 321 U.S. 503 (1944) (upholding the Administrator's enforcement of the rent control provisions of the Emergency Price Control Act of 1942); Fleming v. Mohawk Wrecking & Lumber Co., 331 U.S. 111 (1947) (upholding the Administrator's delegation of power to sign and issue subpoenas as valid under the Emergency Price Control Act of 1942); Lichter v. United States, 334 U.S. 742 (1948) (sustaining the recovery of excessive profits on war contracts under the Renegotiation Act of 1942); Steuart & Bro. v. Bowles, 322 U.S. 398 (1944) (upholding the issuance of "suspension orders" under the President's allocation powers granted by the Second War Powers Act). See also the discussion of these and other cases in "War Legislation" and "Constitutional Rights in Wartime", Constitution of the

United States of America Analysis and Interpretation, Congressional Research Service, Library of Congress (1973) at 335-349 (hereinafter referred to as Constitution of the United States).

b. (U) Public Finance

(U) Statutes authorizing extraordinary public financing measures during a declared war have similarly been upheld by the Supreme Court. For example, Congress, in order to pay the soldiers in the field during the Civil War, took what at the time was the extraordinary step of enacting legislation to authorize the issuance of Treasury notes which were not convertible in specie. Although the statute was initially held unconstitutional in Hepburn v. Griswold, 8 Wall. (75 U.S.) 603 (1870), that decision was overruled in the Legal Tender Cases (Knox v. Lee), 12 Wall. (79 U.S.) 457 (1871). One of the grounds cited for the Legal Tender Cases decision was "that the war justified the statute." Knox v. Lee, 12 Wall. at 540-41. See also, "Civil War Legislation," Constitution of the United States at 336.

c. (U) Delegation of Legislative Authority

(U) In addition to the broad authority of Congress to enact economic stabilization and public finance legislation, the Supreme Court has held that during a declared war Congress has broad discretion to delegate such authority to the Executive Branch. See "Delegation of Legislative Power in Wartime," Constitution of the United States at 341-342.

2. (U) Presidential Authority -- Chief Executive and Commander-in-Chief

a. (U) Congessionally Declared War

(U) In the absence of specific statutory authority to institute economic stabilization and public finance measures during a declared war, the President may, nevertheless, be empowered to impose some sanctions under his constitutional authorities, specifically including those as Chief Executive and Commander-in-Chief. The Constitution provides that:

The executive power shall be vested in a
President of the United States of America. . .
[and]

The President shall be commander in chief of
the army and navy of the United States, and of
the militia of the several States . . .

U.S. Const. Art. II, §1, cl. 1 and §2, cl. 1.

(U) In a September 7, 1942 message to Congress, President Roosevelt outlined an interpretation of the Constitution that vests the President with almost limitless wartime authority. In his message, President Roosevelt informed Congress that unless it amended the Emergency Price Control Act to his satisfaction, he would rely on his constitutional authority to amend the Act unilaterally. Under President Roosevelt's interpretation, the only limitation on the President's authority during a declared war is that: "When the war is won, the powers under which [the President] act[s] automatically revert to the people--to whom they belong." See "Presidential Theory of the Commander-in-Chiefship in World War II--And Beyond," Constitution of the United States at 453. Since Congress complied with President Roosevelt's request to amend the Price Control Act, he was not forced to rely on his theory of the Constitutional power of the President to amend a Congressional Act.

(U) During the Second World War, President Roosevelt also created, without Congressional authorization, a number of new agencies to deal with the war effort. In only one instance was the legal status of these agencies reviewed. In that case the court did not reach the basic question of constitutional authority. Employers Group v. National War Labor Board, 143 F.2d 145 (D.C. Cir. 1944) (affirming a lower court's dismissal of a suit to annul and enjoin a directive order of the National War Labor Board). See "Constitutional Status of Presidential Agencies," Constitution of the United States at 454.

(U) Also without Congressional authorization, President Roosevelt empowered the Director of Economic Stabilization (part of the Presidentially created National War Labor Board) to issue directives to departments and agencies "requiring that privileges, benefits, rights, or preferences enjoyed by the noncomplying party be withdrawn." These sanctions can best "be described as penalties lacking statutory authorization." "Presidential Government of Labor Relations" and "Sanctions Implementing Presidential Directives," Constitution of the United States at 456-457. 7/

7/ (U) In contrast to the broad powers asserted by President Roosevelt during World War II, the Federal Emergency Management Agency (FEMA) has stated in its analysis of the President's Emergency Powers that "Whatever action the President may take or plan to take will rarely be justified as being based solely on the constitutional grant of power as Commander in Chief." Federal Civil Emergency Actions Guidelist, Part 1 (July 1980) at 5.

(U) The authority of the President to act in the absence of specific statutory authority would appear to be quite broad during a declared war. 8/ (But see the discussion below of the National Emergencies Act and the War Powers Resolution at pp. 12 and 16 respectively). The actual extent of such emergency authority will undoubtedly depend on the circumstances of the situation.

b. (U) State of War Without Congressional Declaration

(U) As noted in the discussion of the authority of Congress under the War Power provision (see discussion at p. 7), the Supreme Court has indicated that a state of war can exist without a Congressional declaration. Specifically, after noting that the President has no power either as Chief Executive or as Commander-in-Chief to initiate a war, the Supreme Court, per Justice Grier, stated:

If a war be made by invasion of a foreign nation, the President is not only authorized but bound to resist force by force. He does not initiate the war, but is bound to accept the challenge without waiting for any special legislative authority. And . . . it is none the less a war, although the declaration of it be "unilateral."

The Prize Cases, 67 U.S. at 668 (emphasis in the original). It is reasonably clear that following an attack on the United States, the President would have broad authority to

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act as Chief Executive and Commander-in-Chief despite the fact that the Congress had not declared a state of war.

(U) In addition to the President's constitutional authority to act following an attack on the United States but absent a Congressional declaration of war, there may be statutory authority to act during a "time of war" that does not require a Congressional declaration of war. See e.g. Trading With the Enemy Act, codified at 50 U.S.C. §§ (et seq., 12 U.S.C. §95a and 40 U.S.C. §458), discussed below at pp. 36-37 and 48-49.

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B. (U) PROPOSED EMERGENCY AUTHORITIES

1. (U) Federal Emergency Plan D--Draft Joint Resolution

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~~REDACTED~~

2. (U) Other than Plan D--Draft Joint Resolution :

~~REDACTED~~

~~REDACTED~~

II. (U) NATIONAL EMERGENCIES

A. (U) STATUTORY AUTHORITY

(U) The President may, in his discretion, determine that events necessitate the declaration of a national emergency. Such a declaration could trigger a significant number of statutory authorities that would authorize the President to institute various economic stabilization and public finance measures. These specific statutory authorities are discussed in detail in Parts III and IV, below at pp. 18 - 49.

B. LIMITATION ON STATUTORY AUTHORITY -- NATIONAL EMERGENCIES ACT OF 1976

(U) The statutory authority triggered by the declaration of a national emergency is governed, in large part, by the National Emergencies Act of 1976 (Pub. L. 94-412, codified at 50 U.S.C. §§ 1601, et seq.). The Act, which was passed in the aftermath of the Vietnam War and "Watergate", limits the authority of the President to invoke extraordinary authorities otherwise triggered by the declaration of a national emergency. It also provides for extensive Congressional review of the existence and continuation of national emergencies. The Act does not, however, limit the President's authority to declare a national emergency.

(U) The legislative history of the National Emergencies Act states that its purpose was "to terminate, as of 2 years from the date of enactment [September 24, 1976], powers and authorities possessed by the Executive as a result of existing national emergencies, 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." S. Rept. No. 1168, 94th Cong., 2d Sess. 2 (1976) cited in the National Emergencies Act (Public Law 94-412) Source Book: Legislative History, Texts and Other Documents, Committee on Government Operations and the Special Committee on National Emergencies and Delegated Emergency Powers, United States Senate (November 1976), at 291.

(U) Effective September 24, 1978, the Act, with certain exceptions, terminated all powers and authorities possessed by the President as a result of existing national emergencies (one Congressionally declared "serious emergency" and three Presidential declarations of a "national emergency"). (50 U.S.C. §1601.) At the time of enactment this involved the President's emergency authority under approximately 470 statutes. See S. Rept. No. 1168, 94th Cong., 2d Sess. at 2.

(U) The National Emergencies Act currently authorizes the President to declare a national emergency in order to invoke any act of Congress authorizing the exercise of special or extraordinary powers during a national emergency. (50 U.S.C.

§1621(a)). The President can, however, rely on such statutory emergency authority only if he specifies in the national emergency declaration or a contemporaneous or subsequent Executive Order the provision of law under which he proposes to act. (50 U.S.C. §1631). Therefore, where possible all actions that are expected to be undertaken and their legal authority should be identified prior to the declaration of a national emergency. In addition to the requirement that such documents specifically cite the legal authority to be relied on, both the proclamation of a national emergency and any Executive Orders issued in connection with a national emergency must be published in the Federal Register and transmitted to Congress. The validity of a declaration of a national emergency and any Executive Orders thereunder do not, however, appear to be conditioned on the transmittal of the proclamation or Executive Orders to the Federal Register and Congress.

(U) A national emergency declared by the President may be terminated by its own terms; by a Congressional concurrent resolution (not subject to Presidential veto); by a subsequent Presidential proclamation; or by the passage of time. The Act provides for periodic Congressional review of the national emergency. Specifically, no later than six months after a national emergency has been declared, and not later than the end of each six-month period thereafter, Congress must meet to consider a concurrent resolution to terminate the national emergency. In addition, the national emergency shall terminate on the anniversary of its declaration unless within 90 days prior to such date the President publishes in the Federal Register and transmits to Congress notice that the emergency is to be continued. (50 U.S.C. §1622). Congress may overturn this decision by a concurrent resolution (not subject to Presidential veto). 9/

(U) The National Emergencies Act also imposes a number of accountability and reporting requirements on the President. The President and Executive agencies must maintain complete files and indexes of all significant orders, proclamations, rules and regulations issued during the national emergency and must promptly transmit these orders to the Congress. In addition, every six months (within 90 days after the end of each six months of the emergency) the President must submit to Congress a report on the total national emergency expenditures made during the six-month period. (50 U.S.C. §1641).

9/ (U) It is unclear whether the requirement that the Congress be afforded an opportunity to overturn a Presidential decision by a concurrent resolution is constitutional. See Consumer Energy Council of America et al. v. Federal Energy Regulatory Commission et al., 673 F.2d 425 (D.C. Cir. 1982), appeal pending. See also Chadha v. Immigration & Naturalization Serv., 634 F.2d 408 (9th Cir. 1980), consideration of juris. postponed until hearing on merits, 102 S. Ct. 87 (1981), argued 2/22/82, restored to calendar for reargument 7/2/82 (No. 80-1832).

C. (U) LIMITATION ON PRESIDENTIAL AUTHORITY

1. (U) Judicial Limitation -- Youngstown Decision

(U) In addition to the limitations in the National Emergencies Act on the authority delegated to the President by statute, the Supreme Court's decision in Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579 (1952), limits the constitutional authority of the President to respond to a national emergency. In Youngstown the Supreme Court held that President Truman lacked the authority to seize and operate the country's steel industry in the interest of national defense. The Court's holding and multiple opinions (each of the six Justices in the majority contributed a separate opinion) do not clearly define the limits of the President's authority. It is reasonably clear, however, that the Court relied, at least in part, on the fact that there was no statutory authority for the President's action and that the Congress had previously considered and rejected authority for such action. 10/ See "Presidential Action in the Domain of Congress--Steel Seizure Case," Constitution of the United States

10/ (U) In Youngstown, President Truman, relying solely on his own constitutional powers (including those as Chief Executive and Commander-in-Chief), had declared a national emergency in response to the Korean conflict and ordered the Secretary of Commerce to seize and operate most of the nation's steel mills. President Truman argued in support of his action that a steel strike would have immediately jeopardized the national defense, and that the seizure of the mills was necessary to avert a national catastrophe. Congress had, however, rejected legislation that would have authorized the President to take such action in an emergency.

(U) The Supreme Court held that Congress, not the President, had the authority under the Commerce Clause to regulate labor relations, even in times of national emergency. Although the Justices could not reach agreement on the extent of the President's emergency authority, Justice Jackson, in a concurring opinion, stated that "Presidential powers are not fixed, but fluctuate depending upon their disjunction or conjunction with those of Congress." He set forth the following three-part analysis of Presidential powers:

- (U) 1. When the President acts pursuant to an express or implied authorization of Congress -- The President's authority is at its maximum since it includes both his own powers and those Congress can delegate.

at 564-570. It is unclear whether, the Court would have reached the same conclusion absent Congressional rejection of the seizure authority, or if the President's action had been taken during a declared war.

(U) The Youngstown decision undermines the action taken by President Roosevelt on June 7, 1941 in seizing the North American Aviation Plant at Inglewood, California, where production was at a standstill due to a strike. At the time the Attorney General justified this seizure prior to a declaration of war as growing out of the "duty constitutionally and inherently rested upon the President to exert his civil and military as well as his moral authority to keep the defense efforts of the United States a going concern, [as well as] to obtain supplies for which Congress has appropriated the money, and which it has directed the President to obtain." "Presidential Government of Labor Relations," Constitution of the United States at 455.

10/ (con't)

- (U) 2. When the President acts in the absence of either a Congressional grant or denial of authority -- The President's authority can only be derived from his own independent authority. Where the President and Congress have concurrent or overlapping authority, events rather than abstract theories of law are likely to determine the extent of Presidential authority.
- (U) 3. Where the President acts contrary to the express or implied will of Congress -- The President's power is at its "lowest ebb", as he can only rely upon his own constitutional powers minus any constitutional powers of Congress over the matter.

Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. at 635-638, emphasis added.

(U) Relying on this three-part analysis, Justice Jackson found that President Truman's attempted seizure of the steel mills fell within the third category. Congress had legislated pursuant to the Commerce Clause as to when and how industrial property might be seized for public use, and had considered and rejected legislation that would have given the President the authority to seize industries as a means of settling strikes in an emergency. The President, on the other hand, did not have the express authority under the Constitution, even in an emergency situation, to seize industrial property for public use. Therefore, Justice Jackson concluded that under the circumstances presented in Youngstown, the President lacked the constitutional authority to override the will of Congress. Since its Youngstown decision, the Supreme Court has apparently adopted Justice Jackson's analysis of Presidential authority. See, Dames & Moore v. Regan, 453 U.S. 654 (1981).

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2. (U) Congressional Limitation -- War Powers Resolution

(U) Although few of President Roosevelt's economic stabilization actions during World War II were judicially-challenged, Congress has more recently sought to control the President's reliance on his authority as Commander-in-Chief to commit troops overseas without Congressional authorization. See the "War Powers Resolution" (Pub. L. 93-148, 87 Stat. 555 (1973)) which provides that:

The constitutional powers of the President as Commander-in-Chief to introduce United States Armed Forces into hostilities, or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, are exercised only pursuant to (1) a declaration of war, (2) specific statutory authorization, or (3) a national emergency created by attack upon the United States, its territories or possessions, or its armed forces.

(Pub. L. 93-148, §2(c)). 11/ The War Powers Resolution evidences a Congressional hostility toward a broad interpretation of the Constitution, absent a declaration of war or an attack on the United States.

(U) Both the National Emergencies Act and the War Powers Resolution evidence a Congressional intention to limit the President's authority during a time of national emergency other than declared war or attack on the U.S. Therefore, unless reacting to the latter two situations or pursuant to statutory authorization, the President would be acting solely on his own constitutional powers. In the absence of war or attack on the U.S., legislation would appear to be necessary in order to implement broad-based economic stabilization and public finance measures, since the Congress' authority appears to be fairly broad, while that of the President appears to be fairly narrow.

D. (U) PROPOSED EMERGENCY AUTHORITIES

1. (U) Federal Emergency Plan D--Declaration of a National Emergency

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11/ (U) Although the constitutionality of the War Powers Resolution has never been judicially challenged, it may be an unconstitutional limitation on the President's authority as Commander-in-Chief. The Department of Defense had indicated that it submits routine reports to Congress under the War Powers Resolution in a manner that preserves the argument that the legislation is unconstitutional.

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2. (U) Other than Plan D--Declaration of a National Emergency

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(U) Both proclamations cite the Constitution and laws of the United States as authority for issuance. The National Emergencies Act of 1976 could also be cited as authority.

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(U) Economic stabilization 12/ during a national defense emergency may require measures to control the inflationary pressures that may be generated by reallocation of the nation's resources from the production of civilian consumption goods to the military. There are three types of economic stabilization controls -- voluntary, indirect and direct (see Flow Chart A at p. 5). Voluntary controls require neither a declaration of a national emergency or war, nor statutory authorization; therefore, only the emergency legal authority for direct and indirect controls is examined.

A. (U) DIRECT CONTROLS

(U) The emergency legal authority for the following direct controls which may be used to achieve economic stabilization is examined: Price controls; Wage and Salary controls; Rent controls; and Consumer Rationing of end products.

1. (U) Statutory Authority

(U) No emergency statutory authority exists that would authorize a comprehensive system of direct controls for economic stabilization. The most recent example of such broad-based economic stabilization authority was the Economic Stabilization Act of 1970 (hereinafter ESA, set out as a note under 12 U.S.C.A. §1904) which expired on April 30, 1974. The Economic Stabilization Act authorized the President to stabilize prices, rents, wages, salaries, interest rates and corporate dividends. (ESA, §203). The Act was passed based on a Congressional finding that controls were necessary to stabilize the economy, reduce inflation, minimize unemployment, improve the Nation's competitive position in world trade, and protect the purchasing power of the dollar. (ESA, §202). The constitutionality of the Act was upheld by the courts. See Fry v. U.S. 421 U.S. 542 (1975) (The Act was only minimally intrusive); Derieux v. Five Smiths Inc., 499 F. 2d 1321 (1974) cert. den. 419 U.S. 896 (The Act was not an unconstitutional delegation of legislative power); and Oakland Raiders v. Office of Emergency Preparedness, 380 F. Supp. 187 (1974). Therefore, there can be little doubt that a comprehensive economic stabilization statute would be upheld for use during a national emergency.

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a. (U) Prices, Wages, Salaries, and Rents

(U) No emergency statutory authority exists to institute a comprehensive program of price, wage, salary, and rent controls.

(U) We could identify only one statute, 40 U.S.C. §276a-5, that might pertain to wage controls. This provision, which is part of the Davis-Bacon Act, as amended (40 U.S.C. §§276a to 276a-5), authorizes the President in times of a national emergency to suspend the provisions of 40 U.S.C. §§276a to 276a-5 that prescribe the rates of wages to be paid laborers and mechanics working on public building construction. Under normal circumstances Sections 276a to 276a-5 require that Government contractors pay laborers and mechanics wages comparable to those paid to the same workers in the locality. This statute would not, however, authorize the imposition of a system of general wage controls.

b. (U) Rationing

(U) No comprehensive statutory authority exists to institute consumer rationing. Although Title I of the Defense Production Act of 1950, 13/ as amended (50 U.S.C. App. §§2061, et seq.) gives the President broad authority to allocate materials as long as the material controlled is (1) scarce and essential, and (2) national defense needs cannot otherwise be met, the legislative history of the Act explicitly states that it cannot be used to ration retail level consumer goods.

2. (U) Proposed Emergency Authorities

a. (U) Federal Emergency Plan D

i. (U) Draft Executive Order--Office of Defense Resources

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13/ (U) Title I (except section 104), Title III, and Title VIII (except sections 708, 714, and 719) of the Defense Production Act of 1950, as amended are due to expire on March 31, 1983. (Pub. L. 97-336, (Oct. 15, 1982)).

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b. (U) Other Than Plan D

i. (U) Draft Legislation -- Draft Defense Resources Act

(U) Although no current statutory authority exists to institute a comprehensive program of economic stabilization measures, the "Draft Defense Resources Act" (November 1972) if enacted, would provide such comprehensive authority.

(U) The "Draft Defense Resources Act" (hereinafter referred to as the DDRA) is proposed legislation which would confer broad emergency authority on the President. Specifically, the DDRA would, if enacted, authorize "the President . . . to act immediately to mobilize fully the Nation's resources." The statute does not require that a "national emergency" be declared in order to trigger the authorities granted thereunder.

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(U) SURVEY OF EMERGENCY LEGAL AUTHORITY FOR ECONOMIC STABILIZATION
AND PUBLIC FINANCE MEASURES IN THE EVENT OF A NATIONAL EMERGENCY

(U) INTRODUCTION

(U) This survey of emergency legal authority for economic stabilization and public finance measures in the event of a national emergency has been compiled at the request of the Chairman of the Economic Stabilization and Public Finance Working Group of the Emergency Mobilization Preparedness Board. The survey is intended to assist decision-makers in a time of national emergency in determining whether legal authority exists to institute various economic stabilization and public finance measures. This survey is concerned with the economic aspects of a national emergency, with the primary emphasis on national defense emergencies, including both actual military conflicts and the mobilization of the nation's armed forces.

(U) It is anticipated that a national defense emergency will have at least two major economic impacts. First, increased defense spending will have to be financed. Second, the reallocation of the nation's limited resources from the private sector to the military may result in major inflationary pressures and shortages. This survey examines the extraordinary legal authority ^{1/} available to finance a military response (public finance) and to control possible inflation and shortages (economic stabilization).

(U) The extraordinary legal authority available to implement public finance and economic stabilization measures during a national defense emergency depends upon whether the emergency is a declared war, a declared national emergency, or a statutorily-

^{1/} (U) Apparently, the last comprehensive study of emergency legislation was completed in 1973. See "Emergency Powers Statutes: Provisions of Federal Law Now in Effect Delegating Extraordinary Authority in Time of National Emergency," S. Rep. No. 93-549, 92d Cong. 1st Sess. (Nov. 19, 1973). We understand, however, that the Emergency Mobilization Preparedness Board's Working Group on Government Operations is currently in the initial stages of preparing a government-wide survey of emergency legal authority.

(U) The extraordinary legal authorities examined included statutes, executive orders, draft legislation, draft executive orders, draft regulations, draft proclamations, draft directives and draft delegations triggered by a declaration of war or national emergency or the existence of a statutorily-defined emergency. Unless otherwise noted, the survey does not include a review of an act's legislative history or the judicial interpretations thereof. Generally, the survey does not examine existing legal authority that supports current executive activities in the areas of economic stabilization and public finance.

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By K, NARA, Date 8/19/99

defined emergency. The broadest legal authority is triggered by a Congressional declaration of war, while more limited legal authority is triggered by the declaration of a national emergency or the existence of certain statutorily-defined emergencies.

(U) This survey of emergency legal authority for economic stabilization and public finance measures is divided into three major areas:-(1) an examination of the legal authority derived from a declaration of war; (2) an examination of the legal authority derived from general statutes that constrain and structure the declaration of a national emergency; and (3) an examination of the legal authority derived from certain statutorily-defined emergencies other than a declared war or national emergency. Within each area, we have set forth existing legal authority followed by an examination of proposed emergency authority (including draft legislation, proclamations, executive orders, regulations, etc.).

(S) The proposed emergency authorities (including draft documents) we reviewed are set forth in the following compilations:

(S) (1) Federal Emergency Plan D. This compilation of emergency documents, commonly referred to as Plan D, is designed for use in connection with a nuclear attack on the United States. Plan D does not specify the exact circumstances under which its documents should be implemented. 2/

(S) Annex A to Federal Emergency Plan D contains 22 Presidential Emergency Action Documents that "are designed for selective use by the President immediately prior to or following a nuclear attack upon the Nation." Presidential Emergency Plan D, Annex A, Presidential Emergency Action Documents, "Introduction" (Revised May 1980). These PEAD's ". . . have been coordinated with the Office of Management and Budget and the Department of Justice with respect to legal form and content, and approved for distribution by the National Security Council." Letter from John W. Macy, Jr. (Director, Federal Emergency Management Agency) to G. William Miller (Secretary of the Treasury) (June 17, 1980).

(S) Generally, issuance of the various PEAD's would be based on certain statutory or constitutional authority contained in the PEAD itself. Therefore, unless issued in accordance with such authority, the PEADs would not constitute independent legal authority for the proposed action.

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~~(S)~~ (2) Documents for Contingencies (Other than Plan D Situation) Which Justify Application of Emergency Measures on a National Scale. This compilation of emergency documents, commonly known as Other than Plan D, would be available for use during a conventional war or other national emergency. Other than Plan D does not contain information concerning the advisability or appropriateness of implementing such measures. 3/

~~(S)~~ (3) Treasury's Emergency Preparedness Documents. The twenty-three draft documents maintained at the Department of the Treasury and its Bureaus were reviewed as possible authority for economic stabilization and public finance measures.

(U) We also reviewed the following emergency planning documents: (1) Federal Civil Emergency Actions Guidelist 4/; (2)

3/ ~~(S)~~ Documents for Contingencies (Other than Plan D Situation) Which Justify Application of Emergency Measures on a National Scale was prepared by the Office of Emergency Preparedness in 1972. It includes various measures available for use during conventional conflicts or other emergencies. (E.g. Expansion of Productive Capacity and Supply; Price, Wage and Rent Stabilization; Control of Credit; and Emergency Federal Financing). Other than Plan D is formulated similar to a recipe book providing assorted draft documents (statutes, regulations, orders). See "Steps to Put the Nation on a War Footing," supra note 1, at 2.

4/ ~~(S)~~ The Federal Civil Emergency Actions (FCEAs) are currently compiled in the Federal Emergency Actions Guidelist.

[The] Guidelist is intended to assist Federal decision makers and their supporting staffs in developing and staffing appropriate civil responses of the Federal Government to emergency situations. The Guidelist identifies a series of emergency actions/measures which appear to be appropriate, selectively, for consideration at various stages in a wide spectrum of emergencies, ranging from domestic crisis through general war (including nuclear attack on the U.S.). The list does not purport to be all-inclusive but should serve as a convenient reminder of measures which may be applicable to a given situation. The Guidelist indicates certain legal authorities as applicable to the measures discussed, as well as a range of contingencies under which the measures might appear to be reasonably considered. Neither the authorities listed nor the suggested 'applicable' contingencies, however, should be considered a basis for the official sanctioning of actions in an emergency situation. Instead, the appropriateness or legality of the use of these measures must be carefully considered in the light of particular situations as they may arise.

"Federal Civil Emergency Actions Guidelist -- Foreword" Federal Emergency Management Agency Manual 8500.2 (July 1980).

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Major Emergency Actions 5/; and (3) Policy and Planning Preparedness Activities.6/ These emergency planning documents set forth anticipated actions by decision-makers during certain national emergencies, but do not constitute independent legal authority to undertake the recommended actions.

(U) A comprehensive delegation of planning responsibilities for public finance and economic stabilization measures to the different federal departments and agencies is set forth in Executive Order 11490, as amended. This delegation will be important in the event of a national emergency because the departments and agencies currently assigned planning responsibilities will undoubtedly have to assume an initial operational role. Executive Order 11490, as amended, is discussed at length in Annex A. Executive Order 11490 specifically states that it confers no substantive legal authority.

(U) Flow Charts A and B (at pp. 5 and 6) trace the national emergency decision-making process as it applies to the implementation of economic stabilization (Flow Chart A) and public finance (Flow Chart B) measures.

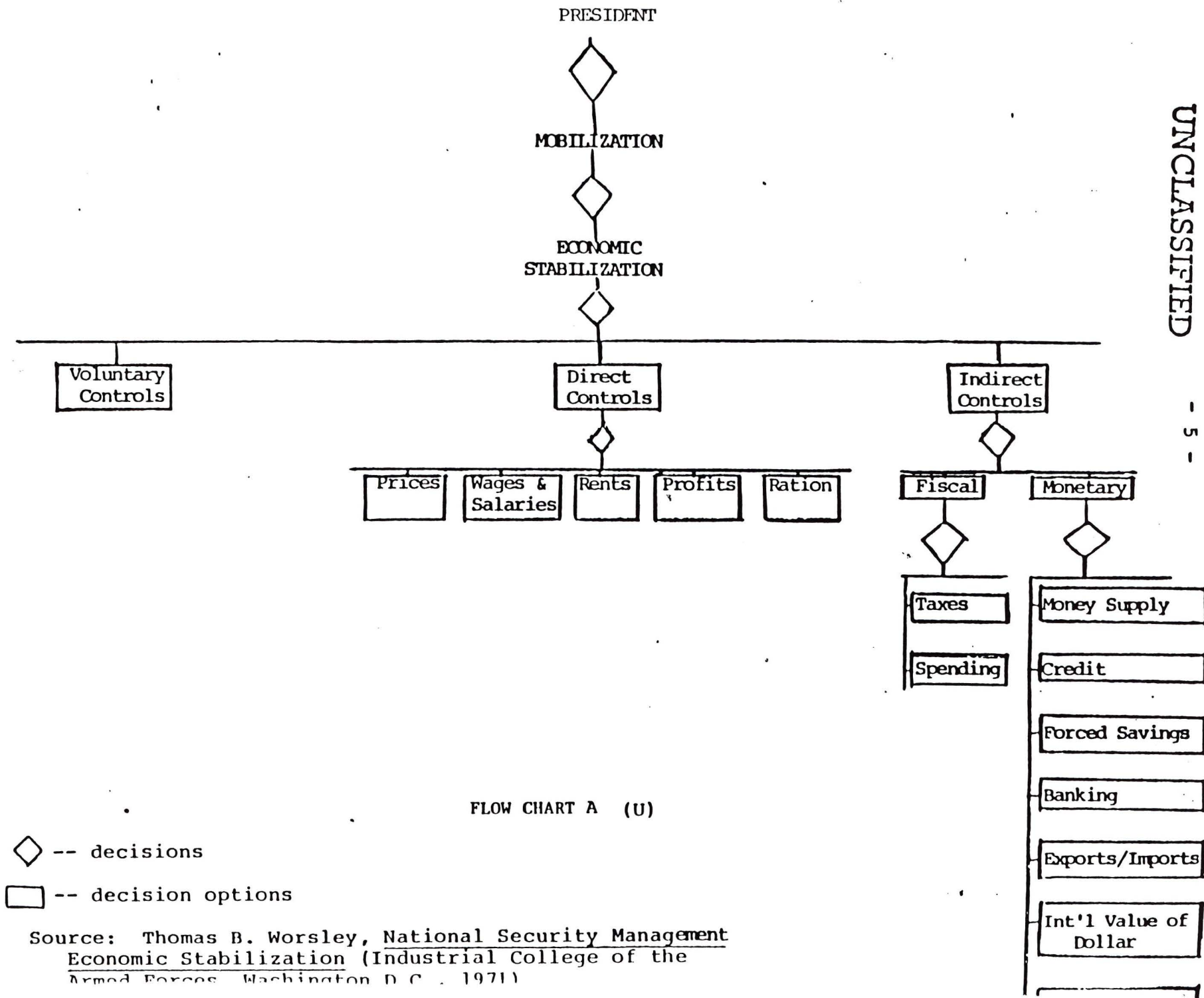
5/ ~~(8)~~ Major Emergency Actions (MEAs). The Major Emergency Actions were developed in order to consolidate, but not replace, the numerous FCEAs. The MEAs do not contain their own implementing documents and unlike the FCEAs do not contain references to those documents already contained in Other than Plan D. As with the other emergency planning documents, the Major Emergency Actions do not constitute independent legal authority for the recommended action.

6/ ~~(C)~~ Policy Planning and Preparedness Activities. The Policy Planning and Preparedness Activities are apparently an attempt to set forth the emergency planning activities that are necessary to improve emergency preparedness in general areas such as: Embargo Controls, Export Controls, Wartime Economic Controls and Legal Authority. Each Policy Planning and Preparedness Activity includes a description of the activity, a description of the intended purpose of the activity, a description of the need for scenarios, the activity's relationship with the major emergency actions, the agencies responsible for performing the planning activity, other coordinating agencies and a list of the relevant legal authority for the preparedness activity.

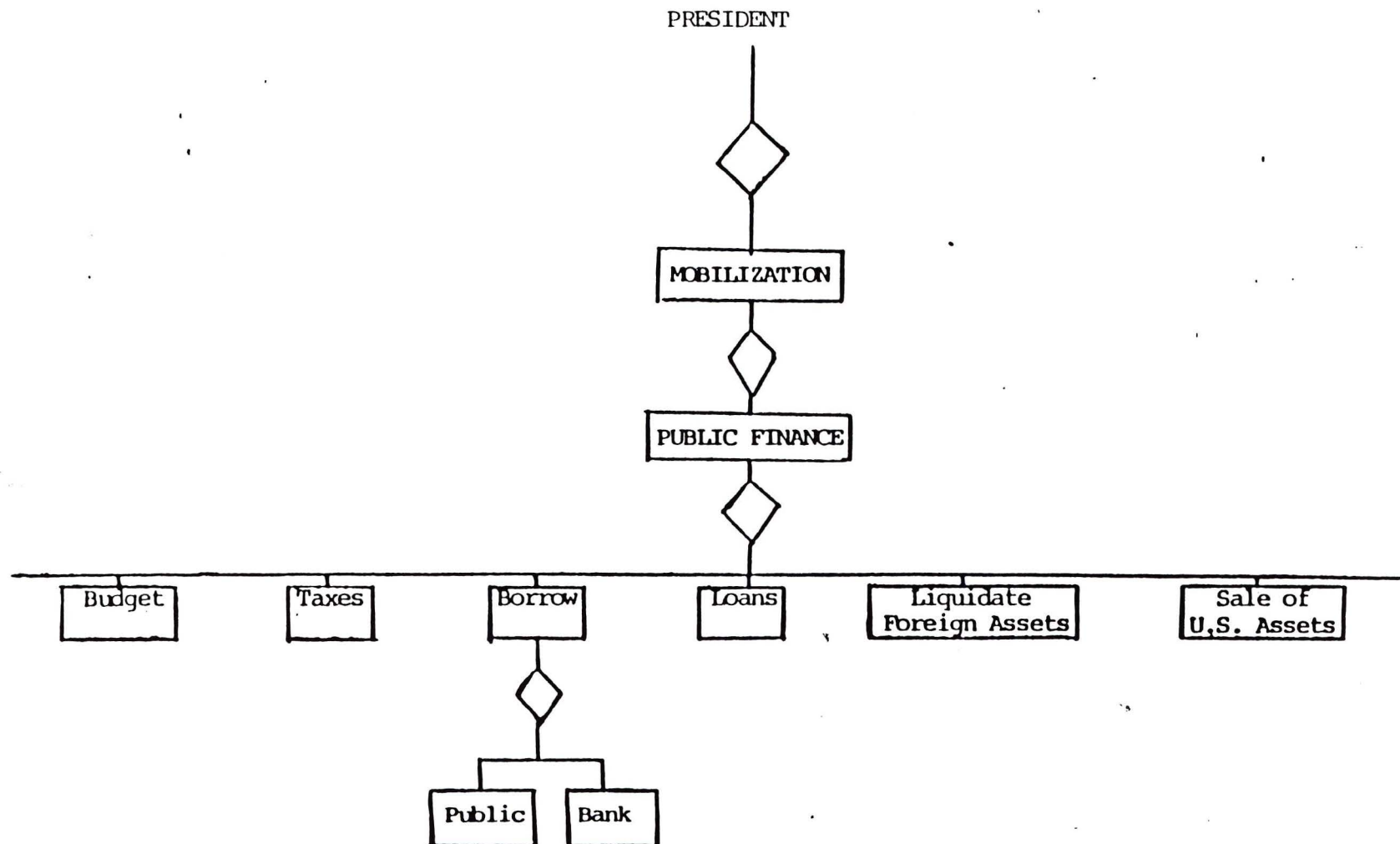
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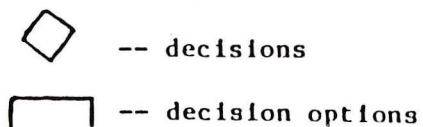
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FLOW CHART B (U)



Source: Thomas B. Worsley, National Security Management Economic Stabilization
(Industrial College of the Armed Forces)

I. (U) WAR

A. (U) CONSTITUTIONAL AUTHORITY

(U) The most comprehensive legal authority to institute economic stabilization and public finance measures in the event of a national emergency derives from a Congressional declaration of war. Such a declaration triggers both the extraordinary emergency authority of the Congress under the War Power provision and the extraordinary emergency authority of the President as Commander-in-Chief and Chief Executive.

1. (U) Congressional Authority--The War Power

(U) The Constitution provides that:

"The Congress shall have power . . . To declare war . . . "

U.S. Const., Art. I, §8, cl. 11. This provision has been interpreted to authorize the Congress, not the President, to declare war. Such a declaration may not be necessary, however, if the United States has been attacked. Once the U.S. has been attacked a state of war may be presumed to exist. (See The Prize Cases, 2 Bl. (67 U.S.) 635 (1863), discussed below at p. 10; and The Protector, 12 Wall. (79 U.S.) 700 (1872). But see the War Powers Resolution (Pub. L. 93-148); and the National Emergencies Act of 1976 (Pub. L. 94-412), discussed below at pp. 12 and 16 respectively.) Following a declaration of war Congress has very broad authority to enact laws to control the civilian economy totally.

a. (U) Economic Stabilization

(U) Statutes authorizing the imposition of extraordinary economic stabilization controls during war (e.g., rent controls, price controls and consumer rationing) have consistently been upheld by the Supreme Court. See Yakus v. United States, 321 U.S. 414 (1944) (upholding the Administrator of the Office of Price Administration's powers under the Emergency Price Control Act of 1942 as a constitutionally valid exercise of Congressionally delegated authority); Bowles v. Willingham, 321 U.S. 503 (1944) (upholding the Administrator's enforcement of the rent control provisions of the Emergency Price Control Act of 1942); Fleming v. Mohawk Wrecking & Lumber Co., 331 U.S. 111 (1947) (upholding the Administrator's delegation of power to sign and issue subpoenas as valid under the Emergency Price Control Act of 1942); Lichter v. United States, 334 U.S. 742 (1948) (sustaining the recovery of excessive profits on war contracts under the Renegotiation Act of 1942); Steuart & Bro. v. Bowles, 322 U.S. 398 (1944) (upholding the issuance of "suspension orders" under the President's allocation powers granted by the Second War Powers Act). See also the discussion of these and other cases in "War Legislation" and "Constitutional Rights in Wartime", Constitution of the

United States of America Analysis and Interpretation, Congressional Research Service, Library of Congress (1973) at 335-349 (hereinafter referred to as Constitution of the United States).

b. (U) Public Finance

(U) Statutes authorizing extraordinary public financing measures during a declared war have similarly been upheld by the Supreme Court. For example, Congress, in order to pay the soldiers in the field during the Civil War, took what at the time was the extraordinary step of enacting legislation to authorize the issuance of Treasury notes which were not convertible in specie. Although the statute was initially held unconstitutional in Hepburn v. Griswold, 8 Wall. (75 U.S.) 603 (1870), that decision was overruled in the Legal Tender Cases (Knox v. Lee), 12 Wall. (79 U.S.) 457 (1871). One of the grounds cited for the Legal Tender Cases decision was "that the war justified the statute." Knox v. Lee, 12 Wall. at 540-41. See also, "Civil War Legislation," Constitution of the United States at 336.

c. (U) Delegation of Legislative Authority

(U) In addition to the broad authority of Congress to enact economic stabilization and public finance legislation, the Supreme Court has held that during a declared war Congress has broad discretion to delegate such authority to the Executive Branch. See "Delegation of Legislative Power in Wartime," Constitution of the United States at 341-342.

2. (U) Presidential Authority -- Chief Executive and Commander-in-Chief

a. (U) Congressionally Declared War

(U) In the absence of specific statutory authority to institute economic stabilization and public finance measures during a declared war, the President may, nevertheless, be empowered to impose some sanctions under his constitutional authorities, specifically including those as Chief Executive and Commander-in-Chief. The Constitution provides that:

The executive power shall be vested in a
President of the United States of America. . .
[and]

The President shall be commander in chief of
the army and navy of the United States, and of
the militia of the several States . . .

U.S. Const. Art. II, §1, cl. 1 and §2, cl. 1.

(U) In a September 7, 1942 message to Congress, President Roosevelt outlined an interpretation of the Constitution that vests the President with almost limitless wartime authority. In his message, President Roosevelt informed Congress that unless it amended the Emergency Price Control Act to his satisfaction, he would rely on his constitutional authority to amend the Act unilaterally. Under President Roosevelt's interpretation, the only limitation on the President's authority during a declared war is that: "When the war is won, the powers under which [the President] act[s] automatically revert to the people--to whom they belong." See "Presidential Theory of the Commander-in-Chiefship in World War II--And Beyond," Constitution of the United States at 453. Since Congress complied with President Roosevelt's request to amend the Price Control Act, he was not forced to rely on his theory of the Constitutional power of the President to amend a Congressional Act.

(U) During the Second World War, President Roosevelt also created, without Congressional authorization, a number of new agencies to deal with the war effort. In only one instance was the legal status of these agencies reviewed. In that case the court did not reach the basic question of constitutional authority. Employers Group v. National War Labor Board, 143 F.2d 145 (D.C. Cir. 1944) (affirming a lower court's dismissal of a suit to annul and enjoin a directive order of the National War Labor Board). See "Constitutional Status of Presidential Agencies," Constitution of the United States at 454.

(U) Also without Congressional authorization, President Roosevelt empowered the Director of Economic Stabilization (part of the Presidentially created National War Labor Board) to issue directives to departments and agencies "requiring that privileges, benefits, rights, or preferences enjoyed by the noncomplying party be withdrawn." These sanctions can best "be described as penalties lacking statutory authorization." "Presidential Government of Labor Relations" and "Sanctions Implementing Presidential Directives," Constitution of the United States at 456-457. 7/

7/ (U) In contrast to the broad powers asserted by President Roosevelt during World War II, the Federal Emergency Management Agency (FEMA) has stated in its analysis of the President's Emergency Powers that "Whatever action the President may take or plan to take will rarely be justified as being based solely on the constitutional grant of power as Commander in Chief." Federal Civil Emergency Actions Guidelist, Part 1 (July 1980) at 5.

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(U) The authority of the President to act in the absence of specific statutory authority would appear to be quite broad during a declared war. 8/ (But see the discussion below of the National Emergencies Act and the War Powers Resolution at pp. 12 and 16 respectively). The actual extent of such emergency authority will undoubtedly depend on the circumstances of the situation.

b. (U) State of War Without Congressional Declaration

(U) As noted in the discussion of the authority of Congress under the War Power provision (see discussion at p. 7), the Supreme Court has indicated that a state of war can exist without a Congressional declaration. Specifically, after noting that the President has no power either as Chief Executive or as Commander-in-Chief to initiate a war, the Supreme Court, per Justice Grier, stated:

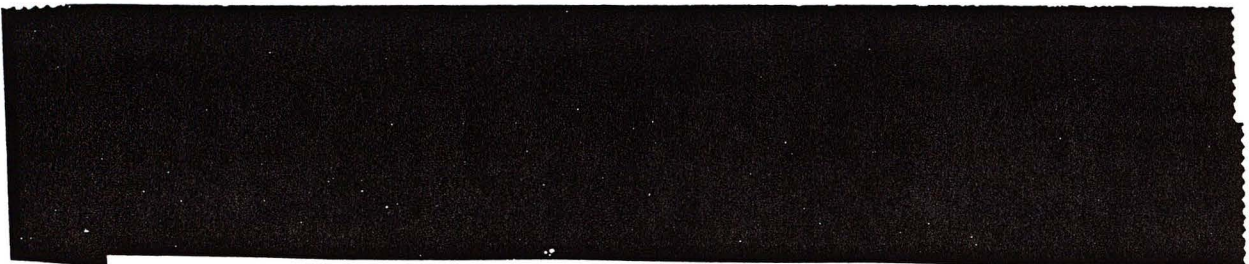
If a war be made by invasion of a foreign nation, the President is not only authorized but bound to resist force by force. He does not initiate the war, but is bound to accept the challenge without waiting for any special legislative authority. And . . . it is none the less a war, although the declaration of it be "unilateral."

The Prize Cases, 67 U.S. at 668 (emphasis in the original). It is reasonably clear that following an attack on the United States, the President would have broad authority to

8/ (~~S~~) The introduction to the Presidential Emergency Action Documents (PEAD's) compiled in Plan D supports a broad interpretation of Presidential authority:

Statutory authorities for execution of these Emergency Action Documents by the President are utilized where available. Where such authorities are not available and the probable delay would jeopardize the national security, the extraordinary powers of the President under the Constitution are used as legal authority for the proposed action.

Presidential Emergency Plan D, Annex A, Presidential Emergency Action Documents, "Introduction" (Revised May 1980).



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act as Chief Executive and Commander-in-Chief despite the fact that the Congress had not declared a state of war.

(U) In addition to the President's constitutional authority to act following an attack on the United States but absent a Congressional declaration of war, there may be statutory authority to act during a "time of war" that does not require a Congressional declaration of war. See e.g. Trading With the Enemy Act, codified at 50 U.S.C. §§ (et seq., 12 U.S.C. §95a and 40 U.S.C. §458), discussed below at pp. 36-37 and 48-49.

~~REDACTED~~

~~REDACTED~~

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~~REDACTED~~

B. (U) PROPOSED EMERGENCY AUTHORITIES

1. (U) Federal Emergency Plan D--Draft Joint Resolution

~~REDACTED~~

~~REDACTED~~

2. (U) Other than Plan D--Draft Joint Resolution

~~REDACTED~~

~~REDACTED~~

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II. (U) NATIONAL EMERGENCIES

A. (U) STATUTORY AUTHORITY

(U) The President may, in his discretion, determine that events necessitate the declaration of a national emergency. Such a declaration could trigger a significant number of statutory authorities that would authorize the President to institute various economic stabilization and public finance measures. These specific statutory authorities are discussed in detail in Parts III and IV, below at pp. 18 - 49.

B. LIMITATION ON STATUTORY AUTHORITY -- NATIONAL EMERGENCIES ACT OF 1976

(U) The statutory authority triggered by the declaration of a national emergency is governed, in large part, by the National Emergencies Act of 1976 (Pub. L. 94-412, codified at 50 U.S.C. §§ 1601, et seq.). The Act, which was passed in the aftermath of the Vietnam War and "Watergate", limits the authority of the President to invoke extraordinary authorities otherwise triggered by the declaration of a national emergency. It also provides for extensive Congressional review of the existence and continuation of national emergencies. The Act does not, however, limit the President's authority to declare a national emergency.

(U) The legislative history of the National Emergencies Act states that its purpose was "to terminate, as of 2 years from the date of enactment [September 24, 1976], powers and authorities possessed by the Executive as a result of existing national emergencies, 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." S. Rept. No. 1168, 94th Cong., 2d Sess. 2 (1976) cited in the National Emergencies Act (Public Law 94-412) Source Book: Legislative History, Texts and Other Documents, Committee on Government Operations and the Special Committee on National Emergencies and Delegated Emergency Powers, United States Senate (November 1976), at 291.

(U) Effective September 24, 1978, the Act, with certain exceptions, terminated all powers and authorities possessed by the President as a result of existing national emergencies (one Congressionally declared "serious emergency" and three Presidential declarations of a "national emergency"). (50 U.S.C. §1601.) At the time of enactment this involved the President's emergency authority under approximately 470 statutes. See S. Rept. No. 1168, 94th Cong., 2d Sess. at 2.

(U) The National Emergencies Act currently authorizes the President to declare a national emergency in order to invoke any act of Congress authorizing the exercise of special or extraordinary powers during a national emergency. (50 U.S.C.

§1621(a)). The President can, however, rely on such statutory emergency authority only if he specifies in the national emergency declaration or a contemporaneous or subsequent Executive Order the provision of law under which he proposes to act. (50 U.S.C. §1631). Therefore, where possible all actions that are expected to be undertaken and their legal authority should be identified prior to the declaration of a national emergency. In addition to the requirement that such documents specifically cite the legal authority to be relied on, both the proclamation of a national emergency and any Executive Orders issued in connection with a national emergency must be published in the Federal Register and transmitted to Congress. The validity of a declaration of a national emergency and any Executive Orders thereunder do not, however, appear to be conditioned on the transmittal of the proclamation or Executive Orders to the Federal Register and Congress.

(U) A national emergency declared by the President may be terminated by its own terms; by a Congressional concurrent resolution (not subject to Presidential veto); by a subsequent Presidential proclamation; or by the passage of time. The Act provides for periodic Congressional review of the national emergency. Specifically, no later than six months after a national emergency has been declared, and not later than the end of each six-month period thereafter, Congress must meet to consider a concurrent resolution to terminate the national emergency. In addition, the national emergency shall terminate on the anniversary of its declaration unless within 90 days prior to such date the President publishes in the Federal Register and transmits to Congress notice that the emergency is to be continued. (50 U.S.C. §1622). Congress may overturn this decision by a concurrent resolution (not subject to Presidential veto). 9/

(U) The National Emergencies Act also imposes a number of accountability and reporting requirements on the President. The President and Executive agencies must maintain complete files and indexes of all significant orders, proclamations, rules and regulations issued during the national emergency and must promptly transmit these orders to the Congress. In addition, every six months (within 90 days after the end of each six months of the emergency) the President must submit to Congress a report on the total national emergency expenditures made during the six-month period. (50 U.S.C. §1641).

9/ (U) It is unclear whether the requirement that the Congress be afforded an opportunity to overturn a Presidential decision by a concurrent resolution is constitutional. See Consumer Energy Council of America et al. v. Federal Energy Regulatory Commission et al., 673 F.2d 425 (D.C. Cir. 1982), appeal pending. See also Chadha v. Immigration & Naturalization Serv., 634 F.2d 408 (9th Cir. 1980), consideration of juris. postponed until hearing on merits, 102 S. Ct. 87 (1981), argued 2/22/82, restored to calendar for reargument 7/2/82 (No. 80-1832).

C. (U) LIMITATION ON PRESIDENTIAL AUTHORITY

1. (U) Judicial Limitation -- Youngstown Decision

(U) In addition to the limitations in the National Emergencies Act on the authority delegated to the President by statute, the Supreme Court's decision in Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579 (1952), limits the constitutional authority of the President to respond to a national emergency. In Youngstown the Supreme Court held that President Truman lacked the authority to seize and operate the country's steel industry in the interest of national defense. The Court's holding and multiple opinions (each of the six Justices in the majority contributed a separate opinion) do not clearly define the limits of the President's authority. It is reasonably clear, however, that the Court relied, at least in part, on the fact that there was no statutory authority for the President's action and that the Congress had previously considered and rejected authority for such action. 10/ See "Presidential Action in the Domain of Congress--Steel Seizure Case," Constitution of the United States

10/ (U) In Youngstown, President Truman, relying solely on his own constitutional powers (including those as Chief Executive and Commander-in-Chief), had declared a national emergency in response to the Korean conflict and ordered the Secretary of Commerce to seize and operate most of the nation's steel mills. President Truman argued in support of his action that a steel strike would have immediately jeopardized the national defense, and that the seizure of the mills was necessary to avert a national catastrophe. Congress had, however, rejected legislation that would have authorized the President to take such action in an emergency.

(U) The Supreme Court held that Congress, not the President, had the authority under the Commerce Clause to regulate labor relations, even in times of national emergency. Although the Justices could not reach agreement on the extent of the President's emergency authority, Justice Jackson, in a concurring opinion, stated that "Presidential powers are not fixed, but fluctuate depending upon their disjunction or conjunction with those of Congress." He set forth the following three-part analysis of Presidential powers:

- (U) 1. When the President acts pursuant to an express or implied authorization of Congress -- The President's authority is at its maximum since it includes both his own powers and those Congress can delegate.

at 564-570. It is unclear whether, the Court would have reached the same conclusion absent Congressional rejection of the seizure authority, or if the President's action had been taken during a declared war.

(U) The Youngstown decision undermines the action taken by President Roosevelt on June 7, 1941 in seizing the North American Aviation Plant at Inglewood, California, where production was at a standstill due to a strike. At the time the Attorney General justified this seizure prior to a declaration of war as growing out of the "duty constitutionally and inherently rested upon the President to exert his civil and military as well as his moral authority to keep the defense efforts of the United States a going concern, [as well as] to obtain supplies for which Congress has appropriated the money, and which it has directed the President to obtain." "Presidential Government of Labor Relations," Constitution of the United States at 455.

10/ (con't)

- (U) 2. When the President acts in the absence of either a Congressional grant or denial of authority -- The President's authority can only be derived from his own independent authority. Where the President and Congress have concurrent or overlapping authority, events rather than abstract theories of law are likely to determine the extent of Presidential authority.
- (U) 3. Where the President acts contrary to the express or implied will of Congress -- The President's power is at its "lowest ebb", as he can only rely upon his own constitutional powers minus any constitutional powers of Congress over the matter.

Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. at 635-638, emphasis added.

(U) Relying on this three-part analysis, Justice Jackson found that President Truman's attempted seizure of the steel mills fell within the third category. Congress had legislated pursuant to the Commerce Clause as to when and how industrial property might be seized for public use, and had considered and rejected legislation that would have given the President the authority to seize industries as a means of settling strikes in an emergency. The President, on the other hand, did not have the express authority under the Constitution, even in an emergency situation, to seize industrial property for public use. Therefore, Justice Jackson concluded that under the circumstances presented in Youngstown, the President lacked the constitutional authority to override the will of Congress. Since its Youngstown decision, the Supreme Court has apparently adopted Justice Jackson's analysis of Presidential authority. See, Dames & Moore v. Regan, 453 U.S. 654 (1981).

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2. (U) Congressional Limitation -- War Powers Resolution

(U) Although few of President Roosevelt's economic stabilization actions during World War II were judicially challenged, Congress has more recently sought to control the President's reliance on his authority as Commander-in-Chief to commit troops overseas without Congressional authorization. See the "War Powers Resolution" (Pub. L. 93-148, 87 Stat. 555 (1973)) which provides that:

The constitutional powers of the President as Commander-in-Chief to introduce United States Armed Forces into hostilities, or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, are exercised only pursuant to (1) a declaration of war, (2) specific statutory authorization, or (3) a national emergency created by attack upon the United States, its territories or possessions, or its armed forces.

(Pub. L. 93-148, §2(c)). 11/ The War Powers Resolution evidences a Congressional hostility toward a broad interpretation of the Constitution, absent a declaration of war or an attack on the United States.

(U) Both the National Emergencies Act and the War Powers Resolution evidence a Congressional intention to limit the President's authority during a time of national emergency other than declared war or attack on the U.S. Therefore, unless reacting to the latter two situations or pursuant to statutory authorization, the President would be acting solely on his own constitutional powers. In the absence of war or attack on the U.S., legislation would appear to be necessary in order to implement broad-based economic stabilization and public finance measures, since the Congress' authority appears to be fairly broad, while that of the President appears to be fairly narrow.

D. (U) PROPOSED EMERGENCY AUTHORITIES

1. (U) Federal Emergency Plan D--Declaration of a National Emergency

~~REDACTED~~

11/ (U) Although the constitutionality of the War Powers Resolution has never been judicially challenged, it may be an unconstitutional limitation on the President's authority as Commander-in-Chief. The Department of Defense had indicated that it submits routine reports to Congress under the War Powers Resolution in a manner that preserves the argument that the legislation is unconstitutional.

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2. (U) Other than Plan D--Declaration of a National Emergency

REDACTED

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REDACTED

REDACTED

REDACTED

(U) Both proclamations cite the Constitution and laws of the United States as authority for issuance. The National Emergencies Act of 1976 could also be cited as authority.

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III. (U) ECONOMIC STABILIZATION

(U) Economic stabilization 12/ during a national defense emergency may require measures to control the inflationary pressures that may be generated by reallocation of the nation's resources from the production of civilian consumption goods to the military. There are three types of economic stabilization controls -- voluntary, indirect and direct (see Flow Chart A at p. 5). Voluntary controls require neither a declaration of a national emergency or war, nor statutory authorization; therefore, only the emergency legal authority for direct and indirect controls is examined.

A. (U) DIRECT CONTROLS

(U) The emergency legal authority for the following direct controls which may be used to achieve economic stabilization is examined: Price controls; Wage and Salary controls; Rent controls; and Consumer Rationing of end products.

1. (U) Statutory Authority

(U) No emergency statutory authority exists that would authorize a comprehensive system of direct controls for economic stabilization. The most recent example of such broad-based economic stabilization authority was the Economic Stabilization Act of 1970 (hereinafter ESA, set out as a note under 12 U.S.C.A. §1904) which expired on April 30, 1974. The Economic Stabilization Act authorized the President to stabilize prices, rents, wages, salaries, interest rates and corporate dividends. (ESA, §203). The Act was passed based on a Congressional finding that controls were necessary to stabilize the economy, reduce inflation, minimize unemployment, improve the Nation's competitive position in world trade, and protect the purchasing power of the dollar. (ESA, §202). The constitutionality of the Act was upheld by the courts. See Fry v. U.S. 421 U.S. 542 (1975) (The Act was only minimally intrusive); Derieux v. Five Smiths Inc., 499 F. 2d 1321 (1974) cert. den. 419 U.S. 896 (The Act was not an unconstitutional delegation of legislative power); and Oakland Raiders v. Office of Emergency Preparedness, 380 F. Supp. 187 (1974). Therefore, there can be little doubt that a comprehensive economic stabilization statute would be upheld for use during a national emergency.

12/ (S) Federal Emergency Plan D, Appendix 3 defines economic stabilization as follows: "Emergency economic measures designed to stabilize the economy or, in the event of attack upon the United States to restore our economy and, thereafter, to stabilize it. These economic measures would include indirect controls concerned with fiscal and monetary policies as well as direct controls such as rationing of consumer goods and price, wage, and rent controls."

a. (U) Prices, Wages, Salaries, and Rents

(U) No emergency statutory authority exists to institute a comprehensive program of price, wage, salary, and rent controls.

(U) We could identify only one statute, 40 U.S.C. §276a-5, that might pertain to wage controls. This provision, which is part of the Davis-Bacon Act, as amended (40 U.S.C. §§276a to 276a-5), authorizes the President in times of a national emergency to suspend the provisions of 40 U.S.C. §§276a to 276a-5 that prescribe the rates of wages to be paid laborers and mechanics working on public building construction. Under normal circumstances Sections 276a to 276a-5 require that Government contractors pay laborers and mechanics wages comparable to those paid to the same workers in the locality. This statute would not, however, authorize the imposition of a system of general wage controls.

b. (U) Rationing

(U) No comprehensive statutory authority exists to institute consumer rationing. Although Title I of the Defense Production Act of 1950, 13/ as amended (50 U.S.C. App. §§2061, et seq.) gives the President broad authority to allocate materials as long as the material controlled is (1) scarce and essential, and (2) national defense needs cannot otherwise be met, the legislative history of the Act explicitly states that it cannot be used to ration retail level consumer goods.

2. (U) Proposed Emergency Authorities

a. (U) Federal Emergency Plan D

i. (U) Draft Executive Order--Office of Defense Resources

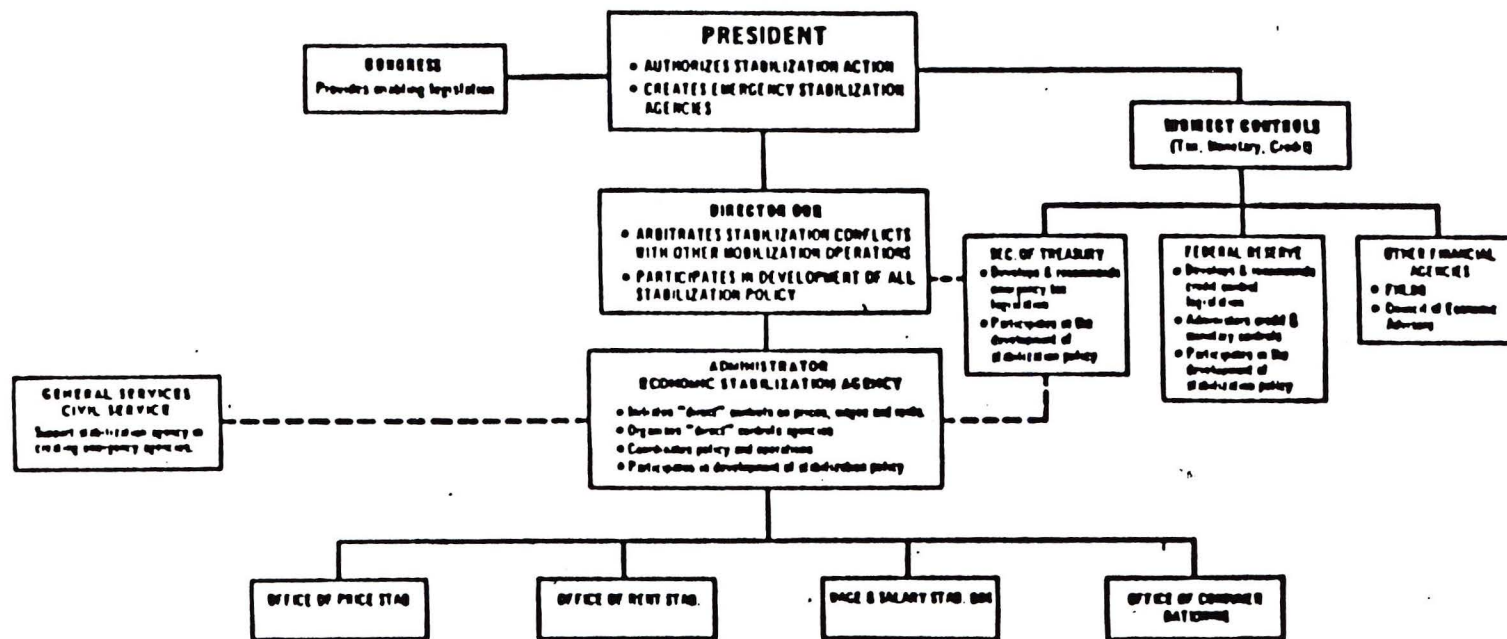
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13/ (U) Title I (except section 104), Title III, and Title VIII (except sections 708, 714, and 719) of the Defense Production Act of 1950, as amended are due to expire on March 31, 1983. (Pub. L. 97-336, (Oct. 15, 1982)).

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Source: Office of Emergency Preparedness, National Resource Analysis Center.

FIGURE 5. ECONOMIC STABILIZATION RESPONSIBILITIES IN LIMITED WAR

CHART D

Source: Other than Plan D

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ii. (S) Office of Defense Resources Actions

(S) Federal Emergency Plan D, Annex B, "Actions by the Director of the Office of Defense Resources" (Revised March 1970) provides a summary of the actions (Office of Defense Resources Actions (ODRs)) that could be taken by the Director of the Office of Defense Resources in order to implement the powers vested in him by the PEAD-5 Executive Order. These emergency planning documents incorporate the assumption that the Director of ODR will take these ODR actions and issue the related implementing documents immediately after the President issues the PEAD-5 Executive Order. See Federal Emergency Plan D, Annex B, "Actions by the Director of the Office of Defense Resources", Preface at i. See also the discussion below concerning the Office of Defense Resources under the Draft Defense Resources Act.

(A) (S) ODR-1, Freeze Order

(S) ODR-1 is a "Federal General Freeze Order" which would freeze all prices, wages and salaries, and rents at the levels specified in the order and forbid any person from paying, charging or receiving more than those rates. ODR-1 would also provide for the prohibition of all retail sales, except perishable foods or health items dispensed under prescribed procedures, and for the rationing of selected essential consumer items.

(S) The Economic Stabilization Agency, created by ODR-8, would administer the Freeze Order (ODR-1). If the Economic Stabilization Agency has not been established the Secretary of Labor would, on an interim basis, administer the provisions of ODR-1. The Secretary would also be empowered to settle any labor disputes that may arise and to issue such regulations, orders or directives as he deems necessary. The Governor of each State, acting under State law, would administer those provisions of ODR-1 dealing with ceilings on prices, rents, the prohibition of retail sales, evictions of tenants, and rationing of essential consumer items.

(B) (S) ODR-8, Economic Stabilization Agency

(S) ODR-8 would establish the Economic Stabilization Agency, provide for the appointment of an Administrator and vest him with the powers and functions necessary to stabilize the nation's economy. Section 101(b) of ODR-8 specifically provides that the Administrator shall be responsible for: (1) implementation of a general freeze of prices, wages, salaries, and

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rents (i.e. ODR-1), and the prescription and administration of appropriate adjustments, suspensions, exemptions, and exceptions thereof; (2) the institution of a system for the licensing of business establishments; and (3) establishment of a program for rationing consumer goods at the retail level. ODR-8 would also establish within the Economic Stabilization Agency a Director of Price Stabilization, a Director of Rent Stabilization, a Director of Consumer Rationing, a Wage Stabilization Board and a Salary Stabilization Board. An organizational breakdown of the Economic Stabilization Agency under ODR-8 is set forth in Chart E at p. 25.

(S) A general overview of the program for economic stabilization is set forth in Federal Emergency Plan D, Annex C-I "Economic Stabilization" (January 31, 1972). However, Annex C-I appears to be outdated as inconsistent with the May 1980 version of the Presidential Emergency Action Documents (PEADs).

b. (U) Other Than Plan D

i. (U) Draft Legislation -- Draft Defense Resources Act

(U) Although no current statutory authority exists to institute a comprehensive program of economic stabilization measures, the "Draft Defense Resources Act" (November 1972) if enacted, would provide such comprehensive authority.

(U) The "Draft Defense Resources Act" (hereinafter referred to as the DDRA) is proposed legislation which would confer broad emergency authority on the President. Specifically, the DDRA would, if enacted, authorize "the President . . . to act immediately to mobilize fully the Nation's resources." The statute does not require that a "national emergency" be declared in order to trigger the authorities granted thereunder.

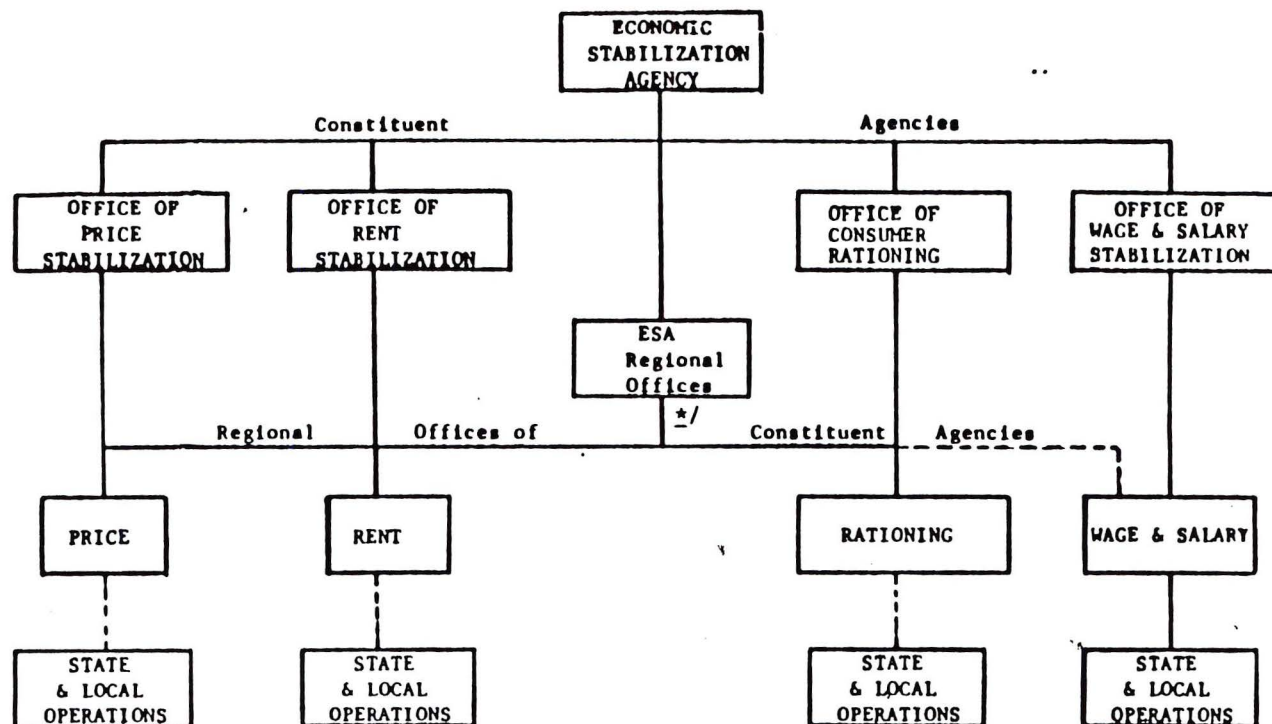
(A) (C) DDRA - General Provisions

(S) Generally the DDRA would authorize the President to redistribute agency functions; to create new agencies; to make necessary rules and regulations; to obtain information; to require reports and keep records; and to institute actions for violation of the provisions of the DDRA. Several titles of the DDRA grant emergency powers to implement public finance and economic stabilization measures. (The public finance

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EMERGENCY ECONOMIC STABILIZATION ORGANIZATION



*/Until notified to the contrary, Regional Offices of the Constituent Agencies will receive direction from the Regional ESA offices.

- - - Indicates support and guidance to State and Local organizations.

_____ Indicates direction.

CHART E

Source: Federal Emergency Plan D (Annex C-I-A)

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provisions of the DDRA are discussed below in Part IV at p. 42).

(B) ~~(C)~~ DDRA - Economic Stabilization

~~(C)~~ Title VII of the DDRA would authorize the President to impose direct controls on prices, wages, and rents and to impose consumer rationing. Title IX, relating to the settlement of labor disputes, would further authorize the President to assure that labor disputes are settled subject to the necessities of price and wage stabilization. Title VIII would authorize the President to impose controls on credit and is discussed below at p. 33 as an indirect control.

(C) ~~(C)~~ DDRA - Wage and Price Controls

~~(C)~~ Title VII of the DDRA would authorize the President, if he finds that immediate steps must be taken to prevent inflationary increases in prices, wages, and rents, to establish a federal freeze on: (1) prices, rentals, commissions, margins, markups, rates, fees, charges, allowances, or any other form of compensation paid or received on the sale, delivery, purchase, or receipt of commodities, services, and real property; (2) wage and salary rates, and other compensation paid or received with respect to employment; and (3) rents paid or received for the use or occupancy of any or all rental accommodations. (DDRA, §§701 and 702.) The only explicit restriction on the President's broad authority under Title VII, is that he must control both prices and wages together. (DDRA, §702(f)).

~~(C)~~ Title IX of the DDRA would authorize the President to establish one or more Boards to perform wage and salary stabilization functions.

(D) ~~(C)~~ DDRA - Rationing

~~(C)~~ Title VII of the DDRA would provide that the President, after establishing a freeze on prices, wages and rents, could also establish consumer rationing of such commodities as he deems appropriate to the national defense or to further the administration and objectives of the price, rent, and wage and salary stabilization programs (DDRA, §702(d)).

ii. (U) Draft Executive Orders

~~(S)~~ A draft Executive Order entitled "Providing for the Mobilization of the Nation's Resources," which

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appears in Other Than Plan D, Part IV B 2 would provide a comprehensive means for implementing the economic stabilization measures authorized under the DDRA. This Draft Executive Order would create: (1) a new agency within the Office of the President to be known as the Office of Defense Resources (\$101); (2) an advisory Board to be known as the Defense Resources Board (\$103); and (3) an independent agency to be known as the Economic Stabilization Agency (\$901(a)). See Chart F at p. 28 for the structure for implementing the Draft Defense Resources Act. This chart is identical to Chart D on page 21. However, Chart D, which sets up the Office of Defense Resources under Plan D would require no Congressional action. See also Chart G at p. 29 for an organizational breakdown of the Economic Stabilization Agency under the Draft Defense Resources Act. Chart G is identical to Chart E at p. 25, except that the Economic Stabilization Agency in Chart E would be organized under Plan D, which requires no legislation.

(A) (U) Office of Defense Resources

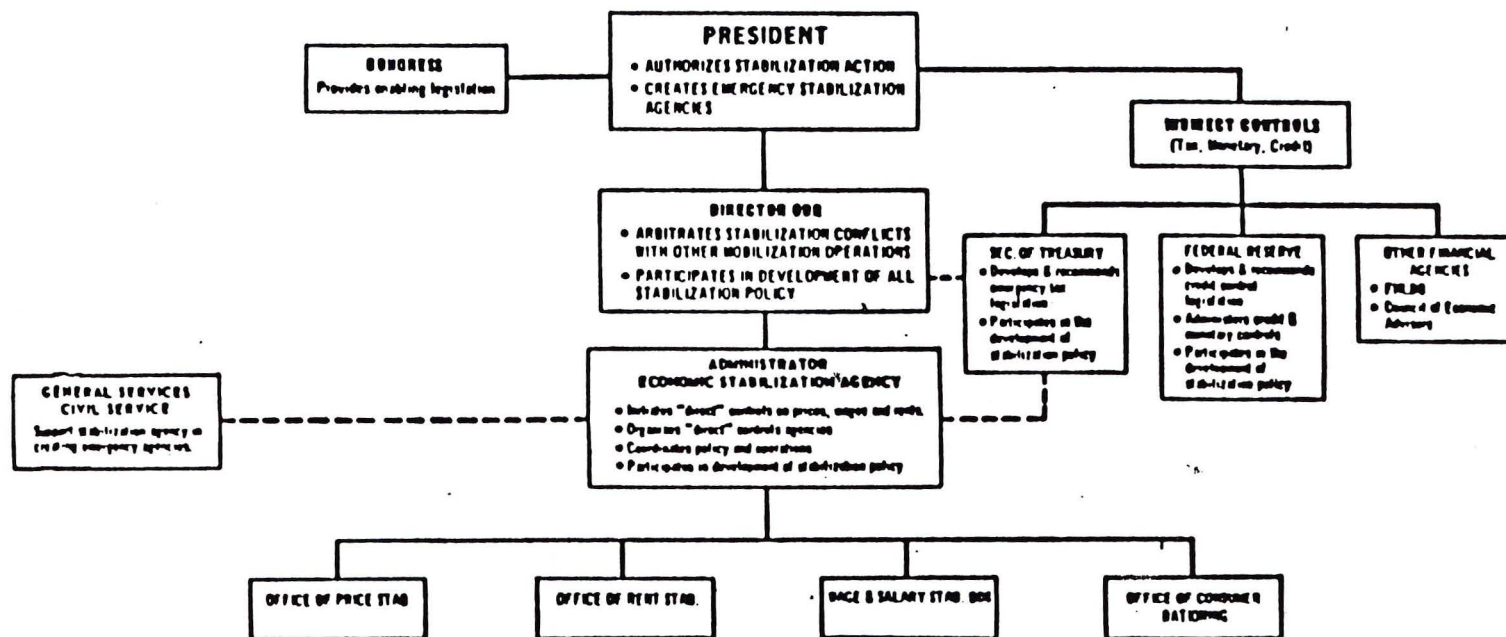
(C) Under the Executive Order, contained in Other Than Plan D, Part IV B 2, the Office of Defense Resources would be responsible for the direction and coordination of the application of direct stabilization controls. (Note that the Office of Defense Resources may also be established under the PEAD-5 Executive Order discussed in connection with Chart D at p. 21.) Most of the authority in the DDRA would be delegated to the Director of the Office of Defense Resources, with the authority to redelegate, if necessary. In addition, the Director of ODR would be assigned all of the functions previously vested in the Director of the Federal Emergency Management Agency. The Director of ODR would be authorized, in carrying out his assigned responsibilities to:

prescribe policies for the development of direct stabilization controls on prices, wages and salaries, rents, and consumer rationing and participate in coordination of fiscal and monetary measures designed to support economic stabilization; and

insure adequate consultation and cooperation between Government officials responsible for procurement, production, [the] common service resources (such as transportation, communications, fuel, and electric power), and the various stabilization programs.

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SOURCE: Office of Emergency Preparedness, National Resource Analysis Center.

FIGURE 5. ECONOMIC STABILIZATION RESPONSIBILITIES IN LIMITED WAR

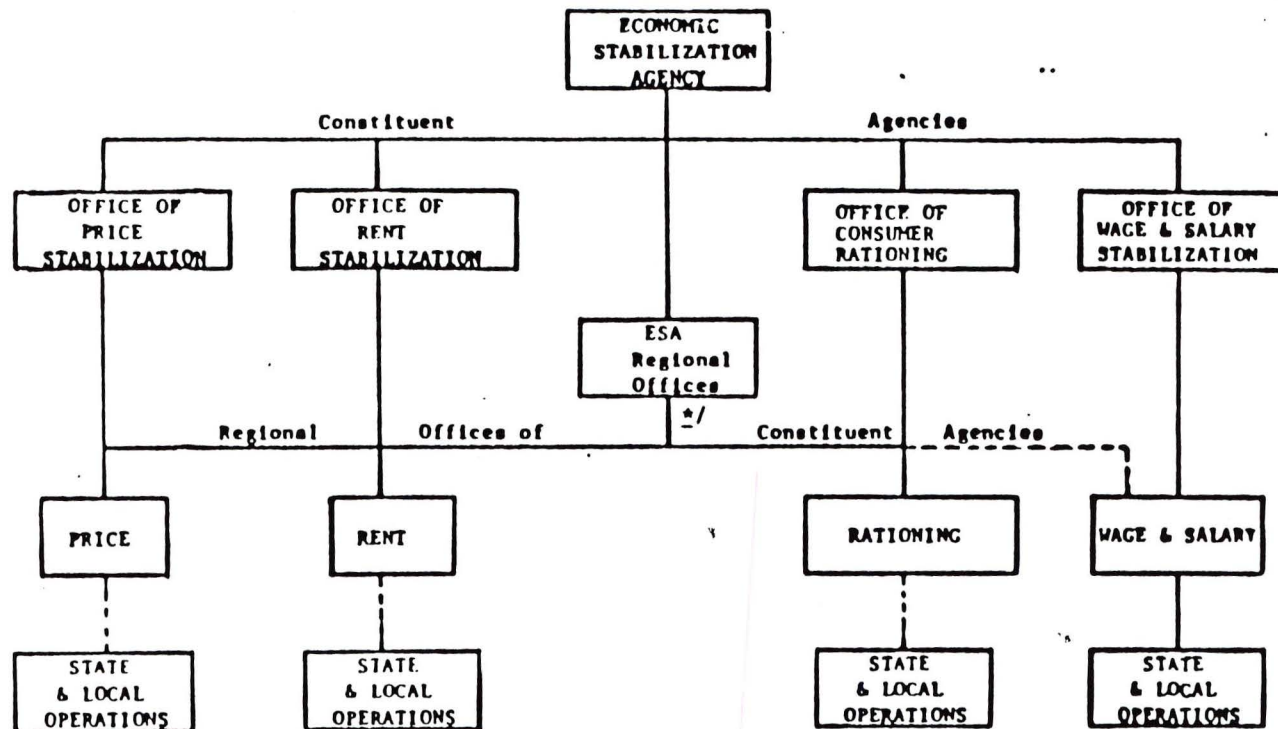
CHART F

Source: Other than Plan D

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EMERGENCY ECONOMIC STABILIZATION ORGANIZATION



*Until notified to the contrary, Regional Offices of the Constituent Agencies will receive direction from the Regional ESA offices.

- - - Indicates support and guidance to State and Local organizations.
_____ Indicates direction.

CHART G

Source: Federal Emergency Plan D (Annex C-I-A)

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Draft Executive Order, Other Than Plan D, Part IV B 2, §203, emphasis added.

(B) (U) Defense Resources Board

(C) The Defense Resources Board would be established under the Executive Order, contained in Other than Plan D, Part IV B 2, solely to advise the Director of the Office of Defense Resources. The Defense Resources Board would consist of the Director of the Office of Defense Resources, the Secretaries of State, Defense, Treasury, Interior, Commerce, Agriculture, Health and Human Services, Housing and Urban Development, and Transportation; the Director of the Office of Telecommunications Policy; the Chairman of the Board of Governors of the Federal Reserve; the Administrator of the General Services Administration; the Chairman of the Council of Economic Advisors; and the heads of such other agencies as the Director may designate.

(C) (u) Economic Stabilization Agency

(C) The Economic Stabilization Agency would be established under Section 901(a) of the Executive Order, contained in Other than Plan D, Part IV B 2, to perform the functions of the President under the DDRA pertaining to price, wage and salary, and rent stabilization and to the settlement of labor disputes. It would be headed by an Administrator, appointed by the President. The Administrator would be responsible for:

(1) imposing a general freeze on all prices, wages and salaries, and rents, 14/ and making the appropriate adjustments and exceptions thereto;

(2) instituting a system of licensing business establishments;

(3) establishing and administering a program for rationing consumer goods at the retail level; and,

(4) establishing policies and procedures for the prompt settlement of labor disputes.

14/ (S) A "Draft Executive Order" contained in Other than Plan D, Part III C (November 1972) would impose a 90-day freeze on wages and prices. This Executive Order could not be promulgated as drafted because its authority, the Economic Stabilization Act of 1970, has expired.

(C) The Executive Order, contained in Other Than Plan D, Part IV B 2 would also establish within the Economic Stabilization Agency, Directors of Price Stabilization, Rent Stabilization, and Consumer Rationing. Each Director would be appointed by the President and would be responsible for the functions delegated by the Administrator of the Economic Stabilization Agency.

(C) There would also be two boards created in the Economic Stabilization Agency. One would be a Wage Stabilization Board, composed of twelve members appointed by the President (four representing the public, four representing labor, and four representing management). The other would be a separate Salary Stabilization Board.

(C) Each Board would settle such labor disputes as the President or the Administrator may assign, and would be authorized to prescribe rules and regulations to provide for the prompt settlement of labor disputes.

(C) A second draft Executive Order, contained in Other than Plan D, Part IV B 2, would establish under Title VII of the DDRA a program for the rationing of consumer goods at the retail level. Rationing would be administered by the Administrator of the Economic Stabilization Agency through the Director of Consumer Rationing.

iii. (U) Office of Defense Resources Actions

(S) Presumably the Office of Defense Resources Actions compiled in Federal Emergency Plan D, Annex B could also be implemented under the authority of the Draft Defense Resources Act and the implementing Executive Order contained in Other than Plan D, Part IV B 2.

(S) Once the Draft Defense Resources Act has been enacted, the President could issue the Executive Order, contained in Other than Plan D, Part IV B 2 "Providing for the Mobilization of the Nation's Resources," which would establish the Office of Defense Resources and delegate to the Director of that Office the responsibility for implementing the Draft Defense Resources Act. Office of Defense Resources Actions (ODR Actions) could be issued to implement economic stabilization measures. (It should be noted that the Office of Defense Resources may also be established under Plan D without enactment of the DDRA. See discussion of ODRs under Plan D above at pp. 23-24. As a result there may be inconsistencies and redundancies between the ODRs and the Executive Orders contained with Other than Plan D).

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B. (U) INDIRECT CONTROLS

1. (U) Fiscal Measures

a. (U) Taxes

i. (U) Statutes

(U) We found no emergency statutory authority to impose additional income taxes, excise taxes or other taxes as a means of controlling inflation.

ii. (U) Proposed Emergency Authorities

(A) (U) Federal Emergency Plan D

(U) There are no provisions in Federal Emergency Plan D that would provide for the imposition of additional taxes to control inflationary pressures during a national emergency.

(B) (U) Other than Plan D

(U) We found no draft emergency legislation that would authorize the imposition of additional taxes to control inflationary pressures during a national emergency.

b. (U) Public Sector Spending

(U) We found no statutes or proposed emergency authority that would authorize emergency government spending or spending reductions as an economic stabilization measure.

2. (U) Monetary Policy

a. (U) Money Supply

i. (U) Statutory Authority

(U) The Depository Institutions Deregulation and Monetary Control Act of 1980, (DID & MCA) Pub. L. 96-221, (codified in part at 12 U.S.C. §§95 and 461) amended the Federal Reserve Act to authorize the imposition of special and supplemental reserve requirements for the purpose of implementing monetary policy.

(U) The Act (DID & MCA) provides that the Federal Reserve Board may impose special reserve requirements upon both member and non-member banks, including the foreign and international banking facilities of such banks, based on a finding by at least five members of the Board, after consultation with the appropriate committees

of Congress, that extraordinary circumstances require such action. Special requirements may be imposed to require that reserves be held against liabilities that are usually exempt from reserve requirements and to require that reserves be held in excess of the ratios normally imposed. The Board may impose such special requirements for a period of 180 days only, but five members of the Board may act to extend these requirements for additional 180-day periods. (12 U.S.C. §461(b)(3)).

(U) The Act (DID & MCA) also authorizes the Federal Reserve Board, after consultation with the Boards of Directors of the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board, and the National Credit Union Administration Board, to "impose a supplemental reserve requirement on every depository institution of not more than four percent of the total transaction accounts." Such a supplemental requirement may only be imposed for the purpose of increasing the amount of reserves maintained to a level essential for the conduct of monetary policy. (12 U.S.C. §461(b)(4)(A)).

ii. (U) Proposed Emergency Authority

~~REDACTED~~

b. (U) Credit 15/

i. (U) Statutory Authority

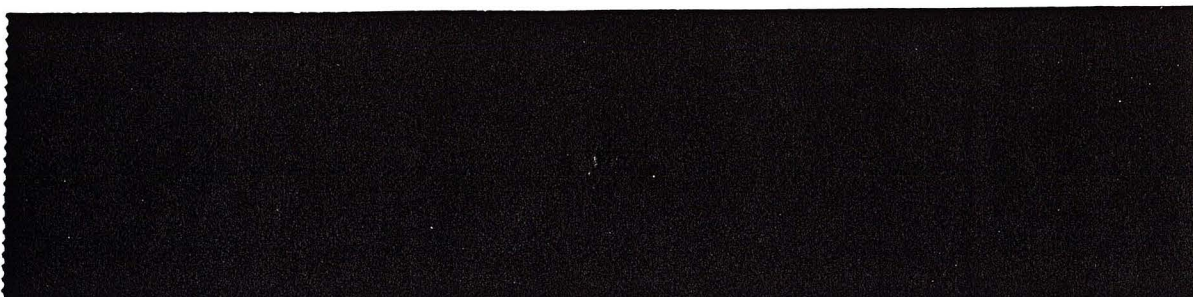
(U) We found no emergency authority to impose credit controls during a national emergency. 16/

15/ (8) The definition of economic stabilization in Federal Emergency D lists price, wage, and rent controls and consumer rationing as direct controls, but does not include credit controls. Therefore, we have assumed that credit controls are included in monetary policies as an indirect control.

16/ (U) The Credit Control Act of 1969 (Title II, Pub. L. 91-151, which expired on June 30, 1982, previously codified at 12 U.S.C. §§1901, et seq.) would have provided such authority. The Act provided that: "Whenever the President determines that such action is necessary or appropriate for the purpose of preventing or controlling inflation generated by the extension of credit in an excessive volume, the President may authorize the [Federal Reserve] Board to regulate and control any or all extensions of credit." (12 U.S.C. §1904, emphasis added). Under the Credit Control Act, the Federal Reserve Board had the authority to:

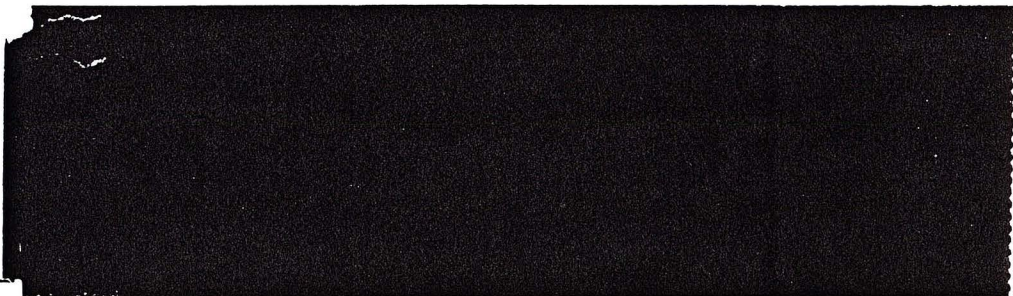
ii. (U) Proposed Emergency Authorities

(A) (U) Federal Emergency Plan D


(S) Office of Defense Resources Action-19 delegates the Director of the Office of Defense Resources' authority over credit controls to the Board of Governors of the Federal Reserve System. In the exercise of its duties, the Federal Reserve Board must take into consideration the recommendations of the Secretary of HUD with respect to housing and real estate credit measures, and the Secretaries of other Federal agencies with respect to activities within their province.

(B) (U) Other than Plan D

(1) (U) Draft Legislation


16/ (con't.)

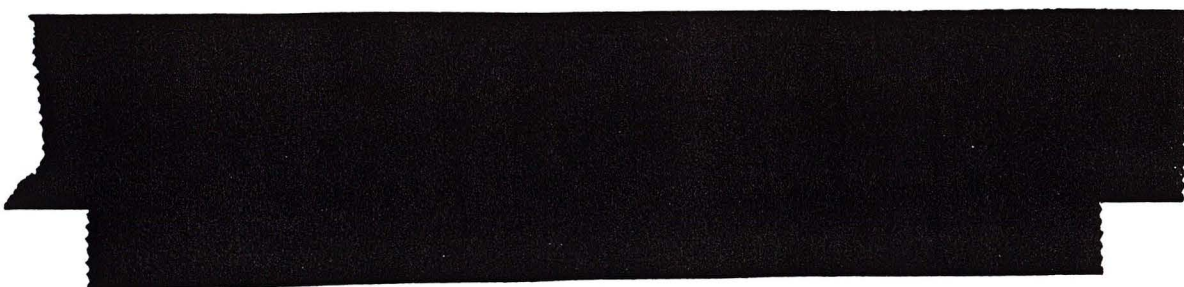
-- prescribe the maximum amount of credit which may be extended on, or in connection with, any loan, purchase, or other extension of credit. . . .

-- prescribe the maximum rate of interest, maximum maturity, minimum periodic payment, maximum period between payments, and any other specification or limitation of the terms and conditions of any extension of credit.

-- prohibit or limit any extensions of credit under any circumstances the Board deems appropriate.

12 U.S.C. §1905. The Attorney General determined that the Credit Control Act did not constitute an unconstitutional delegation of legislative power. See 43 Opin. Att'y Gen. (March 13, 1980).

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(C) Title VIII of the DDRA would also provide that the President may, notwithstanding any other provision of law, prescribe (1) the aggregate amounts of credit that may be extended by or to any person; (2) the maximum ratios of loans to deposits or other assets; (3) rules against any credit in specified circumstances; (4) maximum loan or credit values; (5) minimum down payments; (6) trade-in or exchange values; (7) maximum maturities; (8) rules regarding the amount, form and time of various payments; (9) rules regarding consolidations, renewals, revisions, refinancing, transfers, pledges, or assignments of credit; and (10) rules regarding other or related matters. (DDRA, §802).

(C) The President may further classify persons, transactions, and types of credit and apply different requirements to different classes. (DDRA §802). He may also require that transactions or persons or classes thereof be registered or licensed and that borrowing fees or charges be imposed. (DDRA, §803.)

(2) (U) Draft Executive Order

(S) Section 1001 of the Draft Executive Order contained in Other Than Plan D, Part IV B 2, would authorize the Board of Governors of the Federal Reserve to impose credit controls pursuant to Title VIII of the DDRA.

(S) Another draft Executive Order (November 1972) contained in Other Than Plan D, Part III C, would permit the Federal Reserve Board to take such steps as may be authorized by the Credit Control Act of 1969. Since the Credit Control Act of 1969 has expired there appears to be insufficient legal authority for this Executive Order.

c. (U) Forced Savings

(U) We found no emergency statutes or draft legislation that would authorize forced savings as a means of suppressing consumer demand in the event of a national emergency.

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d. (U) Banking

i. (U) Statutory Authority

(A) (U) Federal Reserve Act

(U) The Federal Reserve Act, as amended by the Depository Institutions Deregulation and Monetary Control Act of 1980 (Pub. L. 96-221) (codified in pertinent part at 12 U.S.C. §95) provides special authority for the imposition of direct restrictions on the banking business of Federal Reserve members. Subsection (a) of 12 U.S.C. §95 prohibits member banks from transacting any banking business during an emergency period proclaimed by the President except to the extent and subject to the restrictions prescribed by the Secretary of the Treasury, with the approval of the President. The purpose of subsection (a) is to enable the safer and more effective operation of the national banking and Federal Reserve systems; to preserve for the people the full benefits of the currency; and to relieve interstate commerce of the burdens and obstructions resulting from the unsound or unsafe receipt of deposits subject to withdrawal by check. It is unclear whether the authority triggered by the declaration of an emergency under the Act necessitates compliance with the National Emergencies Act (discussed above at pp. 12-13).

(U) Subsection (b) of 12 U.S.C. §95 authorizes the Comptroller of the Currency in the event of natural calamity, riot, insurrection, war or other emergency conditions occurring in a State, to declare any day a legal holiday for the national banks located in that State. Presumably, this authority could be exercised in all States if the emergency were nationwide. It is unclear whether this authority must be exercised in accord with the National Emergencies Act (discussed above at pp. 12-13).

(B) (U) Trading With the Enemy Act

(U) The Trading With the Enemy Act of 1917 (codified at 50 U.S.C. App. §§1 et seq., 12 U.S.C. §95a, and 40 U.S.C. §485) authorizes the President in times of war only to regulate any transactions in foreign exchange, any transfers of credit or payments made by or through any banking institution, and the hoarding, melting, or earmarking of gold or silver coin or bullion, currency or securities. 50 U.S.C. App.

§5(b); 12 U.S.C. §95a. ^{17/} Although the Act defines the words "the beginning of war" to mean "midnight ending the day on which Congress has declared or shall declare war or the existence of a state of war" (50 U.S.C. App. §2), it does not appear that the phrase "in times of war" is tied to this definition. Therefore, the possibility exists that the President may be able to exercise authorities granted Section 5(b) following an attack on the United States but absent a Congressional declaration of war. It should be noted, however, that the President may exercise substantially the same powers under the International Emergency Economic Powers Act in response to an unusual or extraordinary threat that does not involve the issue of whether the Congress must declare war.

(C) (U) International Emergency Economic Powers Act

(U) The International Emergency Economic Powers Act of 1977 (hereinafter IEEPA, Pub. L. 95-223, Title II, codified at 50 U.S.C. §§1701 et seq.) authorizes the President under certain specifically defined circumstances to regulate any transaction in foreign exchange and any transfers of credit or payments made by or through any banking institution, to the extent that such transfers or payments involve any interest of any foreign country or national thereof. (50 U.S.C. §1702). The authority conferred by the Act can only be exercised in order to deal with an unusual or extraordinary threat to the national security, foreign policy or economy of the United States that has its source in whole or substantial part outside the United States. (50 U.S.C. §1701, emphasis added).

(U) The IEEPA was passed in conjunction with several amendments to the Trading With the Enemy Act which revoked the President's authority under the Trading With the Enemy Act in times of a national emergency. The IEEPA, although applicable to a national emergency, restricts the President's authority

^{17/} Prior to its amendment by Pub. L. 95-223 (Dec. 28, 1977), the Trading With the Enemy Act authorized the President to exercise the powers granted under Section 5(b) during time of war or during any other period of national emergency declared by the President. Emphasis added. Pub. L. 95-233 amended section 5(b) to eliminate the President's authority during any period other than a time of war (Pub. L. 95-223, §101(a)) unless such authority was being exercised with respect to a country on July 1, 1977. Furthermore, the authority granted under this grandfather provision must be extended each year or it expires. (Pub. L. 95-223, §101(b)). This exemption is currently relied on to cover countries such as Cuba.

to exercise emergency economic powers previously available without such restrictions under the Trading With the Enemy Act. The limitations on the President's authority absent a war were a Congressional response to two developments, "(1) The extensive use by the Presidents of emergency authority under Section 5(b) of the Trading With the Enemy Act of 1917 to regulate both domestic and international transactions unrelated to a declared state of emergency, and (2) the passage of the National Emergencies Act of 1976 which provides safeguards for the role of Congress in declaring and terminating national emergencies, but which exempts section 5(b) of the Trading With the Enemy Act from its coverage." 1977 U.S. Code Cong. & Ad. News 4541.

(U) The IEEPA restricts the authority the President previously had to regulate banking under the Trading With the Enemy Act in two major ways. First, the IEEPA does not authorize the President to use his emergency economic powers to respond to a threat that does not have substantial origins outside the United States. Second, the IEEPA does not authorize the President to regulate transfers of credit or payments made between or through banking institutions except when such payments or transfers involve the interest of a foreign country or national thereof.

(U) In addition, the President may not rely upon a national emergency declared with respect to one threat to deal with another. The President is required to consult with Congress prior to and during the exercise of IEEPA emergency authority and must also provide Congress with detailed reports (when the emergency is first declared and at six month intervals thereafter) on the basis for, and his exercise of, the emergency authority (50 U.S.C. §1703). Congress may be authorized under the National Emergencies Act to terminate the state of "national emergency," thereby terminating the authority triggered by the IEEPA (50 U.S.C. §1622).

ii. (U) Proposed Emergency Authorities

(A) (U) Federal Emergency Plan D and Other than Plan D

(U) There are no documents contained in either Federal Emergency Plan D or Other than Plan D that specifically cover banking operations in an emergency situation.

(B) (U) Treasury Emergency Preparedness Documents

(1) (U) Draft Executive Order

(C) A draft Executive Order (August 10, 1960) maintained as Document E in Treasury's emergency preparedness documents would delegate all of the powers and authorities of the President with respect to financial and banking transactions and banking institutions to the Secretary of the Treasury with the authority to redelegate.

(2) (U) Draft Regulations

(a) (U) Emergency Banking Regulation No. 1

(U) In 1961, the Secretary of the Treasury, pursuant to section 5(b) of the Trading With the Enemy Act, issued Emergency Banking Regulation Number 1 (maintained as Treasury Emergency Preparedness Document B), which would become effective immediately after an attack upon the United States. This regulation would require banking institutions to (1) conserve monetary resources, specifically savings and credit, for the payment of priority expenses; (2) prohibit the hoarding of cash, goods and materials; (3) provide for wage and price stabilization; (4) provide for rationing; and (5) continue operations.

(b) (U) Emergency Banking Regulations A & B

(U) In 1963 Treasury, pursuant to 50 U.S.C. App. §5(b), drafted Emergency Banking Regulations A & B (maintained as Treasury Emergency Preparedness Document A) which could be implemented during a period of national emergency short of war to increase public confidence in the stability of commercial banks and to protect our financial resources. Either Regulation A or B would become effective upon issuance.

(U) Emergency Banking Regulation A would authorize Federal Reserve Banks to limit the distribution of currency to commercial banks, to ration cash withdrawals, and to prohibit withdrawals of cash to prevent hoarding.

(U) Emergency Banking Regulation B is intended to be used in more serious situations where additional action would be required to maintain confidence in the nation's financial institutions. The regulation would require banking institutions to

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remain open, in addition to restricting credit and the excessive withdrawals of cash.

(U) Based on the amendments to the Trading With the Enemy Act (Pub. L. 95-223, Title I) and the passage of the International Emergency Economic Powers Act (Pub. 95-223, Title II), Regulations A & B should be revised.

e. (U) Imports/Exports

(U) The controls on imports and exports represent an indirect control on inflation. The following acts, which deal with control of imports and exports, have been examined:

i. (U) Trading With the Enemy Act

(U) The Trading With the Enemy Act authorizes the President in times of war only to regulate imports and exports of gold and silver coin or bullion, currency, securities and property. 50 U.S.C. §5(b). (See discussion at p. 11 and at Note 17 concerning the extent of such authority absent a Congressional declaration of war.)

(U) The President is authorized under 50 U.S.C. App. §3 to control any United States-based trade with an enemy or an ally of an enemy. This section prohibits any person in the United States, unless licensed by the President, from trading or attempting to trade, directly or indirectly, with or for any other person that he knows is an enemy or an ally of an enemy, or is trading, directly or indirectly, for an enemy or an ally of an enemy.

(U) The President is also authorized under 50 U.S.C. App. §5(b) to regulate transactions in foreign exchange and other economic activity and to direct the disposition of any property subject to the jurisdiction of the United States in which a foreign country or a national of a foreign country holds an interest. 50 U.S.C. App. §§3 and 5(b).

ii. (U) International Emergency Economic Powers Act

(U) The International Emergency Economic Powers Act authorizes the President to regulate or prohibit the importing or exporting of currency or securities; and the use, importing, or exporting of property in which any foreign country or a national thereof has an interest; in order to deal with any unusual or extraordinary threat which has a substantial source outside of the United States.

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iii. (U) Tariff Act of 1930

(U) Section 318 of the Tariff Act of 1930 (19 U.S.C. §1318) provides that whenever the President has proclaimed that an emergency exists by reason of a state of war, or otherwise, he may authorize the Secretary of the Treasury to extend the time for performing an action required under the Tariff Act of 1930 (e.g. liquidation of entries, recordkeeping, payment of duties, protests, etc.). The President may also authorize the Secretary of the Treasury to permit the free importation of food, clothing, and medical, surgical, and other supplies. The Secretary is required to report any such actions to the Congress. 18/

iv. (U) Proposed Emergency Authorities

(A) (U) Federal Emergency Plan D

~~REDACTED~~

~~REDACTED~~

~~REDACTED~~

~~REDACTED~~

~~REDACTED~~

~~REDACTED~~

~~REDACTED~~

~~REDACTED~~

18/ (U) We did not review the "Export Administration Act of 1979" (Pub. L. 96-72, as amended, codified at 50 U.S.C. App. §§2401 et seq.), which may be invoked to further national security, foreign policy, or short supply objectives (50 U.S.C. App. §2402(10)), but does not require the declaration or existence of a national emergency.

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of any foreign government or national thereof or of property subject to the jurisdiction of the United States.

(B) (U) Other than Plan D

~~(C)~~ A Draft Presidential Proclamation contained in Other than Plan D, Part III N would authorize the Secretary of the Treasury to extend the time prescribed for the performance of any act required by the Tariff Act of 1930 and to permit the duty-free entry of certain emergency supplies. The authority cited in the proclamation for these actions is Section 318 of the Tariff Act of 1930 (discussed above).

(C) (U) Treasury Emergency Preparedness Documents

(1) (U) Draft Presidential Proclamations

~~(C)~~ An undated Draft Presidential Proclamation (maintained as Treasury Emergency Preparedness Document Q) would, on the basis of an armed attack against the United States and a Presidential proclamation of an unlimited national emergency, authorize the Secretary of the Treasury to extend the time prescribed for the performance of any act required by the Tariff Act of 1930 and to permit the duty free entry of certain emergency supplies.

(2) (U) Draft Regulations

(U) An undated set of draft regulations (maintained as Treasury Emergency Preparedness document T) would amend Treasury regulations (Office of Foreign Assets Control) to designate additional countries to the list of countries whose assets are blocked by the United States or with which transactions are limited or prohibited. These regulations could be used to implement the Trading with the Enemy Act and the International Emergency Economic Powers Act.

IV. (U) PUBLIC FINANCE

(U) The following methods of financing the federal government's response to a national defense emergency have been identified: Budget Authority, i.e. reallocation of current spending; Increased Taxes; Increased Borrowing (public and bank); Loan Guarantees; Seizure and Liquidation of Enemy Assets; and Sale of U.S. Assets.

(U) We found no emergency statutory authority to institute a comprehensive program involving the above mentioned methods of financing a national defense emergency.

A. (U) BUDGET AUTHORITY

1. (U) Statutory Authority

(U) No statute in Title 31 of the United States Code, which covers Money and Finance, specifically authorizes the President during an emergency to transfer spending authority from the accounts to which it was appropriated to other accounts. ^{19/} Numerous statutes in Title 31 do, however, impose restrictions on the use of amounts appropriated by Congress. For example, 31 U.S.C. §1501 prohibits the use of appropriations made for a class of objects or purposes for other objects or purposes, except as otherwise provided by law. See also 31 U.S.C. §1732, which provides that, unless otherwise specifically provided by law, when a transfer is made, the transferred funds are available for the same purposes and are subject to the same limitations and conditions as they would have been if not transferred.

2. (U) Proposed Emergency Authorities

a. ~~(S)~~ Federal Emergency Plan D -- There are no emergency provisions within Plan D that would authorize the President to budget and spend moneys in a manner other than that for which they were appropriated.

b. (U) Other than Plan D

~~(C)~~ Title XI of the "Draft Defense Resources Act" (DDRA) would give the President emergency authority to provide for federal financing whenever he determines that the conduct of the essential functions of the Government to meet the

^{19/} (U) We have not reviewed the possible authority of the President to achieve this result under statutes not found in Title 31. In addition, we have not endeavored to reexamine the legal authority for the current budgetary process which involves measures such as appropriations, deferrals, rescissions, reapportionments, and supplemental appropriations.

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demands of a national defense emergency requires such action. (DDRA, §1101.)

(S) Section 1102(b) of the DDRA would authorize the expenditure of funds available (presumably appropriated) to agencies prior to the emergency for the functions set forth in Section 1102(a). The President would also be authorized to transfer those funds between agencies and appropriations. Sections 1103 and 1104 appear to authorize the expenditure and obligation of funds outside the current budget process.

(S) Title XI of the DDRA would also require that the President establish and maintain on a standby basis an Emergency Financial System for the Federal Government and that the Comptroller General establish emergency accounting principles and standards to be used in the Emergency Financial System. (DDRA, §§1105 and 1106).

B. (U) INCREASED TAXES

(U) Statutes

(U) We found no emergency authority or draft legislation that would authorize the President to increase taxes to finance the federal government's response to a national emergency.

C. (U) INCREASED BORROWING

1. (U) Public Borrowing

a. (U) Statutes

(U) The public debt limit is currently \$1,290 billion. (See 31 U.S.C. §3101 and Pub. L. 97-270 (Sept. 30, 1982)).

b. (U) Proposed Emergency Authorities

i. (S) Federal Emergency Plan D -- There are no provisions within Plan D that would authorize increased public borrowing for the purpose of financing a response to a nuclear attack.

ii. (S) Other Than Plan D -- The Draft Defense Resources Act would remove any limitation on the public debt.

iii. (U) Treasury Emergency Preparedness Documents--Draft Legislation to Increase the Public Debt Limit

(S) Draft Legislation (March 7, 1960), maintained as Treasury Emergency Preparedness Document J, would amend section 21 of the Second Liberty Bond Act (31 U.S.C.

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§3101) to increase the limitation on the public debt. Since legislative authority is contained in both the Draft Defense Resources Act and Treasury proposed legislation, passage of either piece of draft legislation would facilitate financing a mobilization by means of borrowing.

2. (U) Bank Borrowing

a. (U) Statutes

(U) There is currently no statutory authority that would authorize Federal Reserve Banks to purchase public debt obligations directly from the Treasury. Such authority was included in Pub. L. 96-18 §1(c), 93 Stat. 35. The authority under the Act for Federal Reserve Banks to purchase public debt obligations directly from the Treasury during unusual and exigent circumstances expired on June 8, 1981.

b. (U) Proposed Emergency Authorities

i. (U) Federal Emergency Plan D and Other than Plan D --
There are no provisions within Plan D or Other than Plan D
D that would authorize Treasury borrowing from Federal
Reserve banks.

ii. (U) Treasury Emergency Preparedness Documents

(A) (U) Draft Legislation--Bank Purchase of
Government Obligations

(C) Draft legislation (October 20, 1980, maintained as Treasury Emergency Preparedness Document K) would authorize Federal Reserve Banks to purchase or sell public debt obligations directly from or to the Treasury. Such authority would enable the Treasury to raise cash more easily in order to meet its financing needs.

(B) (U) Draft Legislation--Exemption of U.S.
Deposits from FDIC Assessment Base

(C) Deposits arising from subscription for government securities issued under the Second Liberty Bond Act, as amended, and arising from internal revenue collections pursuant to section 6302(c) of the Internal Revenue Code of 1954 would be exempted by draft legislation (July, 1962) (maintained as Treasury Emergency Preparedness Document L) from the Federal Deposit Insurance Corporation (FDIC) assessment base during any emergency proclaimed by the President as the result of an attack on the United States. The legislation does not provide for such exemption in the event of a national emergency declared for a reason

other than an attack on the United States.

(U) United States deposits are currently included in the assessment base for payment of FDIC assessments. (12 U.S.C. §1817). Since the Treasury may have to raise large sums of money through periodic sales of public-debt obligations in order to finance the federal government's response to a national defense emergency, huge sums of money could be credited to Treasury's tax and loan accounts and left on deposit with banking institutions. The exemption of such deposits from the insurance assessment base could help raise money by not discouraging banks from subscribing for Government securities. 20/

D. (U) LOAN GUARANTEES

1. (U) Statutory Authority

(U) The Defense Production Act of 1950 21/ provides for loan guarantees to defense related industries.

(U) The Defense Production Act of 1950, as amended (DPA, 50 U.S.C. App. §§2061 et seq.) gives the President broad authority to assure the production and supply of scarce materials essential to the national defense. This authority is triggered by a Presidential determination that an act is "necessary or appropriate to promote the national defense." This determination does not appear to require the declaration of a national emergency under the National Emergencies Act (discussed above at p. 12).

(U) Title III of the DPA authorizes the President to provide for loan guarantees "in order to expedite production and deliveries or services under Government contracts." The President may also authorize any agency of the United States engaged in procurement for the national defense (referred to as "guaranteeing agencies") to guarantee any financing institution against losses of principal or interest on those loans sustained by that financing institution for the purpose of financing any person in connection with the performance or the termination of a contract or operation deemed by the guaranteeing agency to be necessary to expedite the performance of Government contracts for the procurement of materials or services for the national

20/ (U) The draft legislation would also exempt government deposits from the Federal Reserve requirements previously imposed by 12 U.S.C. §462a-1. Such an exemption no longer appears necessary because 12 U.S.C. §462a-1 was repealed by (Pub. L. 89-597, §2(d), 80 Stat. 824 (Sept. 21, 1966)).

21/ (U) The Defense Production Act of 1950 is due to expire on March 31, 1983. See note 12 at p. 19.

defense. (50 U.S.C. App. §2091). The maximum obligation of a "guaranteeing" agency under any loan, advance, or commitment, is limited to \$38,000,000 (50 U.S.C. App. §2091(e)(1)(A)), unless the obligation has been certified to Congress, which has sixty days to disapprove the loan. The authority to make guarantees cannot be used to prevent insolvency or bankruptcy unless the President has certified to Congress that without the guarantees there would be a "direct and substantial adverse effect" on the national defense.

(U) The President is also authorized to provide for loans to private enterprises for the expansion of capacity, the development of technological processes, or the production of essential materials "to expedite the performance of Government contracts for the procurement of materials or the performance of services for the national defense". (50 U.S.C. App. §2092). The only restriction is that such loans may be made only if alternative financing is unavailable at "reasonable terms". Otherwise the President may provide for such loans (including participations therein, and guarantees thereof) without regard to the limitations of existing law and subject to the terms and conditions he may prescribe. As with the President's guaranteeing authority, loans in excess of \$48,000,000 must be certified to Congress, which has sixty days within which either House can disapprove the loan. 22/

2. (U) Executive Orders

(U) Executive Order 10480 (18 Fed. Reg. 4939), as amended, implements the Defense Production Act of 1950. As amended by Executive Order 12148 (July 20, 1979), Executive Order 10480 assigns the Director of the Federal Emergency Management Agency the responsibility for the direction and coordination of all mobilization activities of the executive branch of Government.

(U) Sections 301 and 302 of Executive Order 10480, as amended implement the provisions for loan guarantees contained in Section 301 of the Defense Production Act. The Department of Defense, the Nuclear Regulatory Commission, the Department of Commerce, the Department of the Interior, the Department of Agriculture, the General Services Administration, and the National Aeronautics and Space Administration are designated as "guaranteeing agencies". These guaranteeing agencies are authorized to guarantee any financing institution against the loss of principal or interest on any loan, discount, advance, or other commitments that have been made by that institution in order to finance any person in connection with either the performance or the termination of any contract or operation deemed by the guaranteeing agency to be necessary to expedite production and delivery of services for the national defense.

22/ (U) See Note 9 at p. 13 for a discussion of the constitutionality of the legislative veto.

(U) Under Executive Order 10480, Federal Reserve Banks are authorized to act on behalf of any guaranteeing agency as the fiscal agents of the United States with respect to contracts of guarantee (§302(b)). The Board of Governors of the Federal Reserve System is also delegated the authority to prescribe, after consultation with the heads of the guaranteeing agencies, rates of interest, guarantee and commitment fees, and other charges which may be made in connection with loans, discounts, advances, or commitments guaranteed by the guaranteeing agencies through such fiscal agents. (§302(c)).

(U) Executive Order 10480 further implements Section 302 of the DPA, by delegating to the Secretary of the Treasury and the Export-Import Bank the President's authority to make loans to private business enterprises to promote the expansion of capacity, the development of technological processes, and the production of essential materials. (§§310 and 311). These loans are to be made upon issuance of a certificate of essentiality by the Director of the Federal Emergency Management Agency and a determination by the lending entity that other financial assistance is not available on reasonable terms (§§310 and 311). The Secretary of the Treasury is directed to make loans to finance activities carried on in the United States, and the Export-Import Bank is directed to make loans to finance activities carried on in foreign countries.

3. (U) Proposed Emergency Authorities

a. (U) Federal Emergency Plan D

i. (S) Presidential Emergency Action Documents--
Presidential Emergency Action Document 5 would provide that for the duration of a national emergency or until the President or Congress shall otherwise direct, the Federal Government shall "restore, repair, expand, or construct essential facilities, . . ., and make loans and loan guarantees for such purposes." Responsibility for implementing these activities is delegated to the Director of the Office of Defense Resources.

ii. (U) Draft Office of Defense Resources Actions

(C) ODR-17 -- Construction and Operation of Emergency Facilities

(C) Office of Defense Resources Action 17 (ODR-17) would delegate to the heads of the major departments and agencies the authority to: (1) restore, repair, expand, or construct essential facilities through loans, loan guarantees, and the obligation or direct expenditure of government funds; and (2) provide for the operation of facilities acquired by the Government.

~~(C)~~ Each of these agencies would be authorized by ODR-17 to redelegate that authority and to authorize successive redelegations to agencies, officers, and employees of the Federal Government.

b. (U) Other than Plan D

i. (U) Draft Legislation

(U) Title III of the Draft Defense Resources Act (DDRA) contains provisions for loans and loan guarantees that are much the same as those set out in Sections 301 and 303 of the Defense Production Act of 1950 (discussed above). Section 1102(a) of the DDRA would provide that the President could authorize any Government agency to borrow from the Secretary of the Treasury such amounts as the President may specify and to issue to the Secretary of the Treasury notes or other obligations for the purposes of conducting the essential functions of the Government and terminating or deferring non-essential functions. (DDRA, §1102(a)). The Secretary of the Treasury is directed to purchase any such notes, and for such purchases is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act, as amended. (DDRA, §1102(a)). The major difference between the draft act and current law is that the DDRA does not contain the limitations found in the Defense Production Act of 1950 on the amounts of loans and loan guarantees that can be made made without Congressional approval.

ii. (U) Draft Executive Order

~~(C)~~ The Draft Executive Order contained in Other than Plan D, Part IV B 2, would implement Sections 301 and 302 of the DDRA relating to loans and loan guarantees in much the same manner as Executive Order 10480 has implemented the Defense Production Act of 1950.

c. (U) Treasury Emergency Preparedness Documents

~~(C)~~ A proposed regulation (undated), maintained as Treasury Emergency Preparedness Document N, would authorize guaranteeing agencies to make direct loans presumably pursuant to the authority granted the Secretary of the Treasury under the Draft Executive Order contained in Other Than Plan D, Part IV B 2. A draft credit extension approval letter (maintained as Treasury Emergency Document O) would be sent to heads of agencies as appropriate.

E. (U) SEIZURE AND LIQUIDATION OF FOREIGN ASSETS

(U) Section 5(b) of the Trading With the Enemy Act authorizes the President to vest, when, as, and upon the terms he directs, any property or interest of any foreign country or national in such person or agency as he might designate. The President is also empowered under section 5(b) to prescribe that such interest or property be held, used, administered, liquidated, sold, or otherwise dealt with in the interest of and for the benefit of the United States.

F. (U) SALE OF GOVERNMENT ASSETS

1. (U) Statutes .

(U) An exception to the general provisions of 40 U.S.C. §484 pertaining to disposal of surplus government property is set out in 40 U.S.C. §484(c). The subsection authorizes the Administrator, if such action is found to be necessary in the public interest during a period of national emergency declared by the President or Congress, to negotiate contracts for the disposal of excess property without regard to the provisions of Section 484 that govern public advertising for bids. The Administrator must still negotiate such contracts with regard to obtaining as much competition as is feasible under the circumstances.

2. (U) Proposed Emergency Authority

-REDACTED

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