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EXPLANATION

Draft Economic Stabilization Act of ____ .

The proposed legislation is a simplified version of the Economic Stabilization Act of 1970 (Title II of Pub. L. 91-379, 84 Stat. 799 (Aug. 5, 1970), as amended, set out as a Note to 12 U.S.C.A. § 1904). It is anticipated that the draft legislation would be submitted to the Congress in those situations where it has been determined that the President should have the authority to impose a comprehensive system of direct controls on prices, wages, salaries and rents, but where it has been determined that it would not be feasible to submit the Draft Defense Resources Act.

Like the Economic Stabilization Act of 1970 the proposed legislation would authorize the President or his delegate to impose a comprehensive system of direct controls for prices, rents, wages, salaries, dividends and interest rates in the event that Congress finds it necessary to stabilize the economy during a period of grave national emergency.

The proposed legislation is based on the assumption that existing institutions will be capable of handling the impact and administration of the Act. However, the proposed legislation contains two alternative sections which could be submitted in those situations where it has been determined that existing administrative agencies and/or the existing judicial system are incapable of handling the impact of the Economic Stabilization Act.

7/12/83

A BILL

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That

Sec. 1. Short Title

This Act may be cited as the "Economic Stabilization Act of _____."

Sec. 2. Findings

The Congress finds that in order to stabilize the economy, reduce inflation and minimize unemployment in this period of grave national emergency it is necessary to stabilize prices, rents, wages, salaries, dividends, and interest. The adjustments necessary to carry out this program require prompt judgments and actions by the executive branch of the Government. The President is in a position to implement promptly and effectively the program authorized by this Act.

Sec. 3. Presidential authority

(a) The President is authorized to issue such orders and regulations as he deems appropriate, to --

(1) stabilize prices, rents, wages, and salaries at

levels necessary to carry out the purposes of this Act;

(2) stabilize interest rates and corporate dividends and similar transfers at levels consistent with orderly economic growth.

(3) settle those aspects of labor disputes involving wages and salaries covered by this Act.

Such orders and regulations shall provide for the making of such adjustments as may be necessary to prevent gross inequities.

(b) In carrying out the authority vested in him by subsection (a), the President shall issue standards for determining levels of wages, salaries, prices, rents, interest rates, corporate dividends, and similar transfers which are consistent with the purposes of this Act and orderly economic growth. Such standards shall --

(1) be generally fair and equitable;

(2) provide for the making of such general exceptions and variations as are necessary to foster orderly economic growth and to prevent gross inequities, hardships, serious market disruptions, domestic shortages of raw materials, localized shortages of labor, and windfall profits;

(3) take into account changes in productivity and the cost of living, as well as such other factors as are consistent with the purposes of this Act;

(4) require appropriate reductions in prices and rents whenever warranted after consideration of lower costs, labor shortages, and other pertinent factors; and

(5) call for generally comparable sacrifices by business and labor as well as other segments of the economy.

(c) The President is authorized to establish such mechanisms as may be necessary at the national or regional level to rule on requests for exceptions to the controls imposed under this Act and to perform other duties relative to interpretation and application of this Act.

(d) No State or portion thereof shall be exempted from any application of this Act solely by virtue of the fact that it regulates wages, salaries, prices, rents, interest rates, corporate dividends and similar transfers by State or local law, regulation or policy.

(e) Rules, regulations, and orders issued under this Act shall insofar as practicable be designed to encourage labor-management cooperation for the purpose of achieving increased productivity. The President is authorized to establish a special

board to settle those aspects of labor disputes involving wages and salaries covered by this Act.

Sec. 4. Delegation

The President may delegate the performance of any function under this Act to such officers, departments, and agencies of the United States as he deems appropriate, or to boards, commissions, and similar entities composed in whole or in part of members appointed to represent different sectors of the economy and the general public. Members of such boards, commissions, and similar entities shall be appointed by the President by and with the advice and consent of the Senate.

ALTERNATIVE SECTION 4. Economic Stabilization Agency

(a) The President may delegate the performance of any function under this Act to such officers, departments, and agencies of the United States as he deems appropriate, or to boards, commissions, and similar entities composed in whole or in part of members appointed to represent different sectors of the economy and the general public. Members of such boards, commissions, and similar entities shall be appointed by the President by and with the advice and consent of the Senate.

(b) The President is authorized to establish an Economic Stabilization Agency (hereinafter referred to as the Agency) to administer this Act.

(c) There shall be a Director of the Agency who shall be appointed by the President by and with the advice and consent of the Senate. The Director of the Agency shall perform such functions as the President may prescribe.

Sec. 5. Confidentiality of information; public disclosures

(a) All information reported to or otherwise obtained by any person exercising authority under this Act which contains or relates to a trade secret or other matter referred to in 18 U.S.C. § 1905 shall be considered confidential for the purposes of that section, except that such information may be disclosed to other persons empowered to carry out this Act solely for the purpose of carrying out this Act or when relevant to any proceeding under this Act. Furthermore, any information or data proprietary in nature, which concerns or relates to the amount or sources of a business' income, profits, losses, costs, or expenditures shall not be disclosed to the public. However, this limitation does not include data, or information which concerns or relates to a business' prices for goods and services.

(b) The President or his delegate shall issue regulations defining, for the purpose of this subsection, what information or data are proprietary in nature and therefore nondisclosable under paragraph (a). Such regulations shall define as nondisclosable any information or data which concerns or relates to the trade secrets, processes, operations, style of work, or apparatus of the business enterprise.

(c) Any information nondisclosable under this section is specifically exempted from disclosure under 5 U.S.C. § 552.

Sec. 6. Subpoena power

The head of an agency exercising authority under this Act, or his duly authorized agent, shall have the authority to sign and issue subpoenas for the attendance and testimony of witnesses and the production of relevant books, papers, and other documents, and to administer oaths. In the case of a refusal to obey a subpoena served upon any person under the provisions of this section, the head of the agency authorizing such subpoena, or his delegate, may request the Attorney General to seek the aid of the district court of the United States for any district in which such person is found, to compel such person, after notice, to appear and give testimony, or to appear and produce documents before the agency.

Sec. 7. Administrative procedure

(a) The functions exercised under this Act are excluded from the operation of 5 U.S.C. Chap. 5, subchapter II, and Chap. 7 except for the requirements of 5 U.S.C. §§ 552, 552a, 553, and 555(e).

(b) Any agency authorized by the President to issue rules, regulations, or orders under this Act shall to the extent possible establish procedures which are available to any person for the purpose of seeking an interpretation, modification, or recission of, or seeking an exception or exemption from, such rules, regulations, and orders. If such person is aggrieved by the denial of a request for such action under the preceding sentence,

he may request a review of such denial by the agency.

Sec. 8. Sanctions; criminal fine and civil penalty

(a) Whoever willfully violates any order or regulation under this Act shall, in addition to other penalties provided by law, be subject to a criminal fine of not more than $_____ for each violation.

(b) Whoever violates any order or regulation under this Act shall, in addition to other penalties provided by law, be subject to a civil penalty of not more than $_____ for each violation.

Sec. 9. Injunctions and other relief

Whenever it appears that any individual or organization has engaged, is engaged, or is about to engage in any acts or practices constituting a violation of any order or regulation under this Act the Attorney General may bring an action in the appropriate district court of the United States to enjoin such acts or practices and upon a proper showing a temporary restraining order or a preliminary or permanent injunction shall be granted without bond. The court may also issue mandatory injunctions commanding any person to comply with any such order or regulation. The court may also order restitution of moneys received in violation of any such order or regulation.

Sec. 10. Suits for damages or other relief

(a) Any person suffering a legal wrong because of any act or practice arising out of this Act, or any order or regulation issued pursuant thereto, may bring an action in a district court of the United States, for appropriate relief, including an action for a declaratory judgment, writ of injunction and/or damages.

(b) In any action brought under subsection (a) against any person renting property or selling goods or services who is found to have overcharged the plaintiff, the court may, in its discretion, award the plaintiff reasonable attorney's fees and costs. Where the overcharge is not willful, no action for an overcharge may be brought by or on behalf of any person unless such person has first presented to the seller or renter a bona fide claim for refund of the overcharge and has not received repayment of such overcharge within ninety days from the date of the presentation of such claim.

(c) For purposes of this section, the term 'overcharge' means the amount by which the consideration for the rental of property or the sale of goods or services exceeds the applicable ceiling under regulations or orders issued under this Act.

Sec. 11. Judicial review

(a) The district courts of the United States shall have

original jurisdiction of cases or controversies arising under this Act, or under regulations or orders issued thereunder,

(b) No regulation of any agency exercising authority under this Act shall be enjoined or set aside, in whole or in part, unless the court determines in a final judgment that the issuance of such regulation was in excess of the agency's authority, was arbitrary or capricious, or was otherwise unlawful under the criteria set forth in 5 U.S.C. § 706(2). No order of such agency shall be enjoined or set aside, in whole or in part, unless the court determines in a final judgment that such order is in excess of the agency's authority, or is based upon findings which are not supported by substantial evidence.

(c) Cross Reference: For jurisdiction of the Supreme Court and the Court of Appeals see 28 U.S.C. §§ 1251-1296.

Alternative Sec. 11. Judicial review

This alternative section would create a new Court of Appeals to handle cases arising under the Act. The section is based on § 211 of the Economic Stabilization Act of 1970 (Title II of Pub. L. 91-379, 84 Stat. 799 (Aug. 5, 1970), as amended, set out as a Note to 12 U.S.C.A. § 1904).

Alternative Sec. 11.

(a) The district courts of the United States shall have exclusive original jurisdiction of cases or controversies arising under this Act, or under regulations or orders issued thereunder, except that nothing in this subsection or in subsection (h) of this section affects the power of any court of competent jurisdiction to consider, hear, and determine any issue by way of defense (other than a defense based on the constitutionality of this Act or the validity of action taken by any agency under this Act) raised in a proceeding before such court. If in any such proceeding an issue by way of defense is raised based on the constitutionality of this Act or the validity of agency action under this Act, the case shall be subject to removal by either party to a district court of the United States in accordance with the applicable provisions of 28 U.S.C. Chap. 89.

(b)(1) There is hereby created a court of the United States to be known as the Economic Stabilization Court of Appeals, which

shall consist of three or more judges to be designated by the Chief Justice of the United States from judges of the United States district courts and circuit courts of appeals. The Chief Justice of the United States shall designate one of such judges as chief judge of the Economic Stabilization Court of Appeals, and may, from time to time, designate additional judges for such court and revoke previous designations. The chief judge may, from time to time, divide the court into divisions of three or more members, and any such division may render judgment as the judgment of the court. Except as provided in subsection (d)(2) of this section, the court shall not have power to issue any interlocutory decree staying or restraining in whole or in part any provision of this Act, or the effectiveness of any regulation or order issued thereunder. In all other respects, the court shall have the powers of a circuit court of appeals with respect to the jurisdiction conferred on it by this Act. The court shall exercise its powers and prescribe rules governing its procedure in such manner as to expedite the determination of cases over which it has jurisdiction under this Act. The court shall have a seal, hold sessions at such places as it may specify, and appoint a clerk and such other employees as it deems necessary or proper.

(2) Except as otherwise provided in this section, the Economic Stabilization Court of Appeals shall have exclusive jurisdiction of all appeals from the district courts of the United States in cases and controversies arising under this Act or under regulations or orders issued thereunder. Such appeals

shall be taken by the filing of a notice of appeal with the Economic Stabilization Court of Appeals within thirty days of the entry of judgment by the district court.

(c) In any action commenced under this Act in any district court of the United States in which the court determines that a substantial constitutional issue exists, the court shall certify such issue to the Economic Stabilization Court of Appeals. Upon such certification, the Economic Stabilization Court of Appeals shall determine the appropriate manner of disposition which may include a determination that the entire action be sent to it for consideration or it may, on the issues certified, give binding instructions and remand the action to the certifying court for further disposition.

(d)(1) Subject to paragraph (2), no regulation of any agency exercising authority under this Act shall be enjoined or set aside, in whole or in part, unless the court in a final judgment determines that the issuance of such regulation was in excess of the agency's authority, was arbitrary or capricious, or was otherwise unlawful under the criteria set forth in 5 U.S.C. § 706(2) and no order of such agency shall be enjoined or set aside, in whole or in part, unless the court in a final judgment determines that such order is in excess of the agency's authority, or is based upon findings which are not supported by substantial evidence.

(2) A district court of the United States or the Economic Stabilization Court of Appeals may enjoin temporarily or permanently the application of a particular regulation or order issued under this Act to a person who is a party to litigation before it. Appeals from interlocutory decisions by a district court of the United States under this paragraph may be taken in accordance with the provisions of 28 U.S.C. § 1292(b) except that reference in such section to the courts of appeals shall be deemed to refer to the Economic Stabilization Court of Appeals.

(e)(1) Except as provided in subsection (d) of this section, no interlocutory or permanent injunction restraining the enforcement, operation, or execution of this Act, or any regulation or order issued thereunder, shall be granted by any district court of the United States or judge thereof. Any such court shall have jurisdiction to declare: (A) that a regulation of an agency exercising authority under this Act is in excess of the agency's authority, is arbitrary or capricious, or is otherwise unlawful under the criteria set forth in 5 U.S.C. § 706(2); or (B) that an order of such agency is invalid upon a determination that the order is in excess of the agency's authority, or is based upon findings which are not supported by substantial evidence.

(2) Any party aggrieved by a declaration of a district court of the United States respecting the validity of any regulation or order issued under this Act may, within thirty days

after the entry of such declaration, file a notice of appeal therefrom in the Economic Stabilization Court of Appeals. In addition, any party believing himself entitled by reason of such declaration to a permanent injunction restraining the enforcement, operation, or execution of such regulation or order may file, within the same thirty-day period, a motion in the Economic Stabilization Court of Appeals requesting such injunctive relief. Following consideration of such appeal or motion, the Economic Stabilization Court of Appeals shall enter a final judgment affirming, reversing, or modifying the determination of the district court and granting such permanent injunctive relief, if any, as it deems appropriate.

(f) The effectiveness of a final judgment of the Economic Stabilization Court of Appeals enjoining or setting aside in whole or in part any provision of this Act, or any regulation or order issued thereunder, shall be postponed until the expiration of thirty days from the entry thereof, except that if a petition for a writ of certiorari is filed with the Supreme Court under subsection (g) within such thirty days, the effectiveness of such judgment shall be postponed until an order of the Supreme Court denying such petition becomes final, or until other final disposition of the action by the Supreme Court.

(g) Within thirty days after entry of any judgment or order by the Economic Stabilization Court of Appeals, a petition for a writ of certiorari may be filed in the Supreme Court of the

United States, and thereupon the judgment or order shall be subject to review by the Supreme Court in the same manner as a judgment of a United States court of appeals as provided in 28 U.S.C. § 1254. The Economic Stabilization Court of Appeals, and the Supreme Court upon review of judgments and orders of the Economic Stabilization Court of Appeals, shall have exclusive jurisdiction to determine the constitutional validity of any provision of this Act or of any regulation or order issued under this Act. Except as provided in this section, no court, Federal or State, shall have jurisdiction or power to consider the constitutional validity of any provision of this Act or of any such regulation or order, or to stay, restrain, enjoin, or set aside in whole or in part, any provision of this Act authorizing the issuance of such regulations or orders, or any provision of any such regulaton or order, or to restrain or enjoin the enforcement of any such provision.

(h) The provisions of this section apply to any actions or suits pending in any court, Federal or State, on the date of enactment of this Act in which no final order or judgment has been rendered. Any affected praty seeking relief shall be required to follow the procedures of this Act.

Sec. 12. Personnel

(a) Notwithstanding any other limitations, any agency or officer of the Government carrying out functions under this Act is authorized to employ such personnel as the President deems necessary to carry out the purposes of this Act.

(b) The President may require the detail of employees from any executive agency to carry out the purposes of this Act.

(c) The President is authorized to appoint, without regard to the civil service laws, such advisory committees as he deems appropriate for the purpose of consultation with and advice to the President in the performance of his functions under this Act.

(d) Under such regulations as the President may prescribe, officers and employees of the Government who are appointed, without a break of service of one or more work days, to any position for carrying out functions under this Act are entitled, upon separation from such position, to reemployment in the position occupied at the time of appointment or in a position of comparable grade and salary. Furthermore, upon reemployment the time served in carrying out functions under this Act shall be credited as if no interruption in service had occurred.

Sec. 13. Experts and consultants

Experts and consultants may be employed, as authorized by 5 U.S.C. § 3109 for the performance of functions under this Act. Such contracts may be renewed from time to time without limitation. Service of an individual as an expert or consultant under this section shall not be considered as employment or the holding of an office or position.

Sec. 14. Mass transportation systems

No company, or other entity constituting a public benefit corporation, charged by law or contract with the responsibility to operate a mass transportation facility or facilities, the fares of which are not otherwise regulated, shall increase any fare without first obtaining approval under this section from the President or his delegate.

Sec. 15. Funding

(a) There are authorized to be appropriated and to remain available until expended, such sums as may be necessary to carry out the provisions of this Act.

(b) The President may accept and use in furtherance of the purposes of this Act money, funds, property, and services of any kind made available for such purposes by gift devise, bequest, grant, or otherwise.

Sec. 16. Severability

If any provision of this Act or the application of such provision to any person or circumstances is held invalid, the remainder of the Act, shall not be affected thereby.

Sec. 17. Expiration Date

The authority conferred by this Act expires at midnight of _____, ____, but such expiration shall not affect any action or pending proceedings, civil or criminal, not finally determined on such date, nor any action or proceeding based upon any act committed prior to _____, ____.

E-1

EXPLANATION

Draft Emergency Consumer Rationing Act of ____ .

The proposed legislation is based in part on 56 Stat. 176 and the enforcement and review provisions of the Economic Stabilization Act of 1970 (Title II of Pub. L. 91-379, 84 Stat. 799 (Aug. 5, 1970), as amended, set out as a Note to 12 U.S.C.A. § 1904). It is anticipated that the draft leglslation would be submitted to the Congress in those situations where it has been determined that the Presdient should have the authority to impose a comprehensive program for the rationing of consumer goods. Under most circumstances the proposed legislation would be submitted in conjunction with the submission of the proposed legislation to controls prices, wages, salaries and rents. As with the proposed legislation to control prices, wages, salaries and rents, the proposed rationing legislation is an alternative to the rationing provisions of the Draft Defense Resources Act, and could be submitted in those situations where it has been determined that it would not be feasible to submit the Draft Defense Resources Act.

The proposed legislation is based on the assumption that existing institutions will be capable of handling the impact and administration of the Act. However, the proposed legislation contains two alternative sections which could be submitted in those situations where it has been determined that existing administrative agencies and/or the existing judicial system are incapable of handling the impact of the Consumer Rationing Act.

A BILL

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That

Sec. 1. Short Title

This Act may be cited as the "Emergency Consumer Products Conservation Act of _____ ."

Sec. 2. Findings

The Congress finds that in order to minimize the disruptions associated with the shortage of consumer goods as a result of the existing emergency situation, it is necessary to provide for the nationwide rationing of consumer goods.

Sec. 3. Presidential Authority

(a) Whenever the President is satisfied that the fulfillment of the requirements for the defense of the United States will result in shortages of any consumer goods, the President is authorized to --

(1) issue such orders, regulations and rules as he deems appropriate, to ration consumer goods in such manner, upon such conditions, and to such extent as he

shall deem necessary or appropriate in the public interest and to promote the national defense; and

(2) obtain information from, require reports by, and make inspection of the premises of, any person, firm, or corporation as deemed necessary or appropriate to the enforcement or administration of the provisions of this Act.

(b) Such orders, regulations and rules shall provide for the making of such adjustments as may be necessary to prevent gross inequities.

Sec. 4. Delegation

The President may delegate any power, authority, or discretion conferred on him by this Act to such department, agency, or officer of the United States as he deems appropriate, or to boards, commissions, and similar entities composed in whole or in part of members appointed to represent different sectors of the economy or the general public. Members of such boards, commissions, and similar entities shall be appointed by the President by and with the consent of the Senate.

Alternative Section 4. Consumer Rationing Agency

(a) The President may delegate any power, authority, or discretion conferred on him by this Act, to such department, agency, or officer of the United States as he deems appropriate, or to boards, commissions, and similar entities composed in whole or in part of members appointed to represent different sectors of the economy or the general public. Members of such boards, commissions, and similar entities shall be appointed by the President by and with the consent of the Senate.

(b) The President is authorized to establish a Consumer Rationing Agency (hereinafter referred to as the Agency) to administer this Act.

(c) There shall be a Director of the Agency, who shall be appointed by the President by and with the advice and consent of the Senate. The Director of the Agency shall perform such function as the President may prescribe.

Sec. 5. Confidentiality of information; public dicslosures

All information reported to or otherwise obtained by any person exercising authority under this Act which contains or relates to a trade secret or other matter referred to in 18 U.S.C. § 1905 shall be considered confidential for the purposes of that section, except that such information may be disclosed to other persons empowered to carry out this Act solely for the purpose of carrying out this Act.

Sec. 6. Subpoena power

The head of an agency exercising authority under this Act, or his duly authorized agent, shall have the authority to sign and issue subpoenas for the attendance and testimony of witnesses and the production of relevant books, papers, and other documents, and to administer oaths. In the case of a refusal to obey a subpoena served upon any person under the provisions of this section, the head of the agency authorizing such subpoena, or his delegate, may request the Attorney General to seek the aid of the district court of the United States for any district in which such person is found, to compel such person, after notice, to appear and give testimony, or to appear and produce documents before the agency.

Sec. 7. Administrative procedure

(a) The functions exercised under this Act are excluded from the operation of 5 U.S.C. Chap. 5, subchapter II and Chap. 7 except for the requirements of 5 U.S.C. §§ 552, 552a, 553, and 555(e).

(b) Any agency authorized by the President to issue rules, regulations, or orders under this Act shall to the extent possible establish procedures which are available to any person for the purpose of seeking an interpretation, modification, or recission of, or seeking an exception to or exemption from, such rules, regulations, and orders. If such person is aggrieved by the denial of a request for such action under the preceding sentence, he may request a review of such denial by the agency.

Sec. 8. Sanctions; criminal fine and civil penalty

(a) Whoever willfully violates any order or regulation under this Act shall, in addition to other penalties provided by law, be subject to a criminal fine of not more than $_____ for each violation.

(b) Whoever violates any order or regulation under this title shall be subject to a civil penalty of not more than $_____ for each violation.

Sec. 9. Injunctions and other relief

Whenever it appears that any individual or organization has

engaged, is engaged, or is about to engage in any acts or practices constituting a violation of any order or regulation under this Act the Attorney General may bring an action in the appropriate district court to enjoin such acts or practices and upon a proper showing a temporary restraining order or a preliminary or permanent injunction shall be granted without bond. Any district court may also issue mandatory injunctions commanding any person to comply with any such order or regulation. The court may also order restitution of moneys received in violation of any such order or regulation.

Sec. 10. Suits for damages or other relief

Any person suffering a legal wrong because of any act or practice arising out of this Act, or any order or regulation issued pursuant thereto, may bring an action in a district court of the United States, for appropriate relief, including an action for a declaratory judgment, writ of injunction and/or damages.

Sec. 11. Judicial review

(a) The district courts of the United States shall have original jurisdiction of cases or controversies arising under this Act or under regulations or orders issued thereunder.

(b) No regulation of any agency exercising authority under this Act shall be enjoined or set aside, in whole or

in part, unless the court determines in a final judgment that the issuance of such regulation was in excess of the agency's authority, was arbitrary or capricious, or was otherwise unlawful under the criteria set forth in 5 U.S.C. § 706(2). No order of such agency shall be enjoined or set aside, in whole or in part, unless the court determines in a final judgment that such order is in excess of the agency's authority, or is based upon findings which are not supported by substantial evidence.

(c) CROSS REFERENCE: For jurisdiction of the Supreme Court and the Court of Appeals see 28 U.S.C. §§ 1251-1296.

ALTERNATIVE SEC. 10.

Option A: If the "Economic Stabilization Act of _____" has been enacted

Alternative Sec. 11. Judicial review

For purposes of this section, cases or controversies arising under this Act, or under regulations or orders issued thereunder shall be considered as if they were cases or controversies arising under the Economic Stabilization Act of _____ .

(b) CROSS REFERENCE: See the Economic Stabilization Act of _____ ," Sec. 11, Pub. L. , Stat. ( ).

Option B: If the "Economic Stabilization Act of _____" has been enacted

(a) The district courts of the United States shall have exclusive original jurisdiction of cases or controversies arising under this Act, or under regulations or orders issued thereunder, except that nothing in this subsection or in subsection (h) of this section shall affect the power of any court of competent jurisdiction to consider, hear, and determine any issue by way of

defense (other than a defense based on the constitutionality of this Act or the validity of action taken by any agency under this Act) raised in any proceeding before such court. If in any such proceeding an issue by way of defense is raised based on the constitutionality of this Act or the validity of agency action under this Act, the case shall be subject to removal by either party to a district court of the United States in accordance with the applicable provisions of chapter 89 of title 28, United States Code.

(b)(1) There is hereby created a court of the United States to be known as the Consumer Rationing Court of Appeals, which shall consist of three or more judges to be designated by the Chief Justice of the United States from judges of the United States district courts and circuit courts of appeals. The Chief Justice of the United States shall designate one of such judges as chief judge of the Consumer Rationing Court of Appeals, and may, from time to time, designate additional judges for such court and revoke previous designations. The chief judge may, from time to time, divide the court into divisions of three or more members, and any such division may render judgment as the judgment of the court. Except as provided in subsection (d)(2) of this section, the court shall not have power to issue any interlocutory decree staying or restraining in whole or in part any provision of this Act, or the effectiveness of any regulation or order issued thereunder. In all other respects, the court shall have the powers of a circuit court of appeals with respect

to the jurisdiction conferred on it by this Act. The court shall exercise its powers and prescribe rules governing its procedure in such manner as to expedite the determination of cases over which it has jurisdiction under this Act. The court shall have a seal, hold sessions at such places as it may specify, and appoint a clerk and such other employees as it deems necessary or proper.

(2) Except as otherwise provided in this section, the Consumer Rationing Court of Appeals shall have exclusive jurisdiction of all appeals from the district courts of the United States in cases and controversies arising under this Act or under regulations or orders issued thereunder. Such appeals shall be taken by the filing of a notice of appeal with the Consumer Rationing Court of Appeals within thirty days of the entry of judgment by the district court.

(c) In any action commenced under this Act in any district court of the United States in which the court determines that a substantial constitutional issue exists, the court shall certify such issue to the Consumer Rationing Court of Appeals. Upon such certification, the Consumer Rationing Court of Appeals shall determine the appropriate manner of disposition which may include a determination that the entire action be sent to it for consideration or it may, on the issues certified, give binding instructions and remand the action to the certifying court for further disposition.

(d)(1) Subject to paragraph (2), no regulation of any agency exercising authority under this Act shall be enjoined or set aside, in whole or in part, unless the court in a final judgment determines that the issuance of such regulation was in excess of the agency's authority, was arbitrary or capricious, or was otherwise unlawful under the criteria set forth in 5 U.S.C. § 706(2). No order of such agency shall be enjoined or set aside, in whole or in part, unless the court in a final judgment determines that such order is in excess of the agency's authority, or is based upon findings which are not supported by substantial evidence.

(2) A district court of the United States or the Consumer Rationing Court of Appeals may enjoin temporarily or permanently the application of a particular regulation or order issued under this Act to a person who is a party to litigation before it. Appeals from interlocutory decisions by a district court of the United States under this paragraph may be taken in accordance with the provisions of 28 U.S.C. § 1292(b) except that reference in such section to the courts of appeals shall be deemed to refer to the Consumer Rationing Court of Appeals.

(e)(1) Except as provided in subsection (d) of this section, no interlocutory or permanent injunction restraining the enforcement, operation, or execution of this Act, or any regulation or order issed thereunder, shall be granted by any district court of the United States or judge thereof. Any such court

shall have jurisdiction to declare: (A) that a regulation of an agency exercising authority under this Act is in excess of the agency's authority, is arbitrary or capricious, or is otherwise unlawful under the criteria set forth in 5 U.S.C. § 706(2); or (B) that an order of such agency is invalid upon a determination that the order is in excess of the agency's authority, or is based upon findings which are not supported by substantial evidence.

(2) Any party aggrieved by a declaration of a district court of the United States respecting the validity of any regulation or order issued under this Act may, within thirty days after the entry of such declaration, file a notice of appeal therefrom in the Consumer Rationing Court of Appeals. In addition, any party believing himself entitled by reason of such declaration to a permanent injunction restraining the enforcement, operation, or execution of such regulation or order may file, within the same thirty-day period, a motion in the Consumer Rationing Court of Appeals requesting such injunctive relief. Following consideration of such appeal or motion, the Consumer Rationing Court of Appeals shall enter a final judgment affirming, reversing, or modifying the determination of the district court and granting such permanent injunctive relief, if any, as it deems appropriate.

(f) The effectiveness of a final judgment of the Consumer Rationing Court of Appeals enjoining or setting aside in whole or

in part any provision of this Act, or any regulation or order issued thereunder, shall be postponed until the expiration of thirty days from the entry thereof, except that if a petition for a writ of certiorari is filed with the Supreme Court under subsection (g) within thirty days, the effectiveness of such judgment shall be postponed until an order of the Supreme Court denying such petition becomes final, or until other final disposition of the action by the Supreme Court.

(g) Within thirty days after entry of any judgment or order by the Consumer Rationing Court of Appeals, a petition for a writ of certiorari may be filed in the Supreme Court of the United States, and thereupon the judgment or order shall be subject to review by the Supreme Court in the same manner as a judgment of a United States court of appeals as provided in 28 U.S.C. § 1254. The Consumer Rationing Court of Appeals, and the Supreme Court upon review of judgments and orders of the Consumer Rationing Court of Appeals, shall have exclusive jurisdiction to determine the constitutional validity of any provision of this Act or of any regulation or order issued under this Act. Except as provided in this section, no court, Federal or State, shall have jurisdiction or power to consider the constitutional validity of any provision of this Act or of any such regulation or order, or to stay, restrain, enjoin, or set aside in whole or in part, any provision of this Act authorizing the issuance of such regulations or orders, or any provision of any such regulaton or order, or to restrain or enjoin the enforcement of any such

provision.

(h) The provisions of this section apply to any actions or suits pending in any court, Federal or State, on the date of enactment of this Act in which no final order or judgment has been rendered. Any affected praty seeking relief shall be required to follow the procedures of this title.

Sec. 12. Personnel

(a) Any agency or officer of the Government carrying out functions under this Act is authorized to employ such personnel as the President deems necessary to carry out the purposes of this Act.

(b) The President may require the detail of employees from any executive agency to carry out the purposes of this Act.

(c) The President is authorized to appoint, without regard to the civil service laws, such advisory committees as he deems appropriate for the purpose of consultation with and advice to the President in the performance of his functions under this Act.

(d) Under such regulations as the President may prescribe, officers and employees of the Government who are appointed, without a break of service of one or more work days, to any position for carrying out functions under this Act are entitled, upon separation from such position, to reemployment in the position occupied at the time of appointment or in a position of comparable grade and salary. Furthermore, upon reemployment, the time served in carrying out functions under this Act shall be credited as if no interruption in service had occurred.

Sec. 13. Experts and consultants

Experts and consultants may be employed, as authorized by 5 U.S.C. § 3109 for the performance of functions under this Act. Such contracts may be renewed from time to time without limitation. Service of an individual as an expert or consultant under this section shall not be considered as employment or shall or the holding of an office or position.

Sec. 14. Funding

(a) There are authorized to be appropriated and to remain available until expended, such sums as may be necessary to carry out the provisions of this Act.

(b) The President may accept and use in furthereance of the purposes of this Act, money, funds, property, and services of any kind made available for such purposes by gift devise, bequest, grant, or otherwise.

Sec. 15. Severability

If any provision of this Act or the application of such provision to any person or circumstances is held invalid, the remainder of the Act shall not be affected thereby.

Sec. 16. Expiration Date.

The authority conferred by this Act expires at midnight of

_____, ____, but such expiration shall not affect any action or pending proceedings, civil or criminal, not finally determined on such date, nor any action or proceeding based upon any act committed prior to _____, ____.

"DRAFT"

7/12/83

EXPLANATION

Draft Credit Control Act of _____ .

The proposed legislation, is a revised version of the Credit Control Act of 1969, as amended (Title II, Pub. L. 91-151, 83 Stat. 376) which terminated on June 30, 1982. The proposed legislation could be submitted to the Congress in those situations where it has been determined that the President should have the authority to impose credit controls. Since the proposed legislation is an alternative to the credit control provisions of the Draft Defense Resources Act, it could be submitted in those situations where it has been determined that it would not be feasible to submit the Draft Defense Resources Act.

The primary difference between the proposed legislation and the Credit Control Act of 1969 is the transfer of the authority to implement the Act from the Federal Reserve Board (FRB) to the President. The President may, however, delegate his authority to the FRB.

"DRAFT"

7/12/83

A BILL

Be it enacted by the Senate and House of Representatives of the United States in Congress assembled, That

Sec. 1. Short title

This Act may be cited as the "Credit Control Act of _____."

Sec. 2. Definitions.

The definitions set forth in this section apply to the provisions of this Act.

(a) The term "organization" means a corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative, or association.

(b) The term "person" means a natural person or an organization.

(c) The term "credit" means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

(d) The term "creditor" refers to any person who extends, or arranges for the extension of credit, whether in connection

with a loan, a sale of property or services, or otherwise.

(e) The term "credit sale" refers to any sale with respect to which credit is extended or arranged by the seller. The term includes any rental-purchase contract and any contract or arrangement for the bailing or leasing of property when used as a financing device.

(f) The terms "extension of credit" and "credit transaction" include loans, credit sales, the supplying of funds through the underwriting, distribution, or acquisition of securities, the making or assisting in the making of a direct placement, or otherwise participating in the offering, distribution, or acquisition of securities.

(g) The term "borrower" includes any person to whom credit is extended.

(h) The term "loan" includes any type of credit, including credit extended in connection with a credit sale.

(i) The term "State" refers to any State, the Commonwealth of Puerto Rico, the District of Columbia, and any territory or possession of the United States.

Sec. 3. Rules and Regulations.

The President or his delegate (including the Board of Governors of the Federal Reserve System) shall prescribe such rules and regulations as are necessary to carry out the purposes of this Act. These rules and regulations may contain such classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for any class of transactions, as are necessary or proper to effectuate the purposes of this Act, to prevent circumvention or evasion thereof, or to facilitate compliance therewith.

Sec. 4. Interest.

Except as otherwise provided in this Act, the amount of the interest charge in connection with any credit transaction shall be determined under the rules and regulations promulgated under this Act as the sum of all charges payable directly or indirectly to the person by whom the credit is extended in consideration of the extension of credit.

Sec. 5. Authority for institution of credit controls.

(a) Whenever the President determines that 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 or his delegate may regulate and control any or all extensions of credit as follows --

(1) require transactions or persons or classes of either to be registered or licensed.

(2) prescribe appropriate limitations, terms and conditions for any such registration or license.

(3) provide for the suspension of any such registration or license for violation of any provision thereof or of any regulation, rule, or order prescribed under this Act.

(4) prescribe appropriate requirements as to the keeping of records and as to the form, contents, or substantive provisions of contracts, liens, or any relevant documents.

(5) prohibit solicitations by creditors which would encourage evasion or avoidance of the requirements of any regulations, license, or registration under this Act.

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

(7) 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.

(8) prescribe the methods of determining purchase prices or market values or other bases for computing permissible extensions of credit or required downpayment.

(9) prescribe special or different terms, conditions, or exemptions with respect to new or used goods, minimum original cash payments, temporary credits which are merely incidental to cash purchases, payment or deposits usable to liquidate credits, and other adjustments or special situations.

(10) prescribe maximum ratios, applicable to any class of either creditors or borrowers or both, of loans of one or more types or of all types --

(A) to deposits of one or more types or of all types.

(B) to assets of one or more types or of all types.

(11) prohibit or limit any extensions of credit under any circumstances the President or his delegate deems appropriate.

Sec. 7 Reports and Production of Records.

Reports concerning the kinds, amounts, and characteristics of any extensions of credit subject to this Act, or concerning circumstances related to such extensions of credit, shall be filed on such forms, under oath or otherwise, at such times and by such persons, as the President or his delegate may prescribe by regulation or order. Any person may be required to furnish, under oath or otherwise, complete information relative to any transaction within the scope of this Act, including the production of any books of account, contracts, letters, or other papers, in connection therewith in the custody or control of such person.

Sec. 8 Injunctions.

Whenever it appears that any person has engaged, is engaged, or is about to engage in any acts or practices constituting a violation of any regulation under this Act, the Attorney General may bring an action, in the proper district court of the United States or the proper United States court of any territory or other place subject to the jurisdiction of the United States, to enjoin such acts or practices. Upon a proper showing a permanent or temporary injunction or restraining order shall be granted without bond. Any such court may also issue mandatory injunctions commanding any person to comply with any regulation under this Act.

Sec. 9 Civil penalties.

(a) For each willful violation of any regulation under this Act, the President or his delegate may assess upon any person to which the regulation applies, and upon any partner, director, officer, or employee thereof who willfully participates in the violation, a civil penalty not exceeding $_____ .

(b) In the event of the failure of any person to pay any penalty assessed under this section, a civil action for the recovery thereof may be brought in the name of the United States.

Sec. 10 Criminal penalty.

Whoever willfully violates any regulation under this Act shall be fined not more than $____ or imprisoned not more than year(s), or both.

"DRAFT"

7/12/83

E-1

EXPLANATION

Amendment of 12 U.S.C. § 95.

The proposed legislation to amend the Bank Emergency Act of 1933 (12 U.S.C. § 95) could be submitted to the Congress in those situations where it has been determined that the President should have the authority to declare a nation-wide banking holiday.

The draft amendment would permit the President or his delegate to restrict the financial business of financial institutions during an emergency period proclaimed by the President. This amendment would expand the range of institutions affected by such restrictions from member banks of the Federal Reserve System and national banking associations to all financial institutions. Additionally, the stated purposes for imposing such restrictions would include the protection of deposits subject to withdrawal by electronic funds transfers or other means as well as by check.

Presently, the authority to promulgate regulations to restrict banking business activities of member banks lies with the Secretary of the Treasury. Similarly, the Comprtoller of the Currency may presently designate by proclamation a legal holiday in the event of an emergency. These authorities would be transferred to the President under the draft amendment. The Comptroller would retain authority to permit national banks to remain open after a state official declares a legal holiday for state-chartered institutions. In addition, the Comptoller retains the authority to designate by proclamation a legal holiday in the event of natural calamity or, arguably, riot.

The proposed amendment is not currently included in the Draft Defense Resources Act.

"DRAFT"

"DRAFT"

7/12/83

A BILL

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That

The Act of March 9, 1933, ch. 1., § 4 (48 Stat. 2), as amended, 12 U.S.C. § 95, is further amended to read as follows (New language is underlined. Deleted language is set off by brackets):

§ 95. Emergency limitations and restrictions on business of financial institutions [members of the Federal reserve system].

In order to provide for the safer and more effective operation of the nation's financial [national banking] system and the Federal reserve system, to preserve for the people the full benefits of the currency provided for by the Congress through the nation's financial [national banking] system, and the Federal reserve system, and to relieve interstate commerce of the burdens and obstructions resulting from the receipt on an unsound or unsafe basis of deposits subject to withdrawal by check, electronic funds transfers or other means, during such emergency period as the President of the United States by proclamation may prescribe, no financial institutions (including but not

limited to any bank, savings and loan association, credit union or similar institution) [no member bank of the Federal reserve system] shall transact any financial [banking] business except to such extent and subject to such regulations, limitations, and restrictions as may be prescribed by the President, or his delegate [Secretary of the Treasury with the approval of the President]. Any individual, partnership, corporation, or association, or any director, officer, or employee thereof, violating any of the provisions of this section shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $ _____ [$10,000] or, if a natural person, may, in addition to such fine, be imprisoned for a term not more than _____ [ten] years. Each day that any such violation continues shall be deemed a separate offense.

(b)(1) In the event of natural calamity, riot, insurrection, war, national emergency, or other emergency occurring in any State whether caused by acts of nature or of man, the President or his delegate [Comptroller of the Currency] may designate by proclamation any day a legal holiday for the financial institutions in the United States or any State [national banking associations located in that state]. In the event that the emergency conditions affect only part of a State, the President or his delegate [Comptroller of the

Currency] may designate the part so affected and may proclaim a legal holiday for the financial institutions located in the affected part. In the event of a natural calamity or riot affecting a state or a part of a state, the Comptroller of the Currency may designate by proclamation any day a legal holiday for the national banking associations located in that state or the affected part of that State. In the event that a State or a State official authorized by law designates any day as a legal holiday for ceremonial or emergency reasons, for the State or any part thereof, that same day shall be a legal holiday for all national banking associations or their offices located in that State or the part so affected. A national banking association or its affected offices may close or remain open on such a State-designated holiday unless the Comptroller of the Currency by written order directs otherwise.

(2) For the purposes of this subsection, the term "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, or any other territory or possession of the United States.

"DRAFT"

7/12/83

E-1

EXPLANATION

Selected Excise Tax Act of ____.

The proposed legislation would amend the Internal Revenue Code to authorize additional excise taxes. It could be submitted in those situations where it has been determined that additional revenues are necessary and that imposition of certain excise taxes would complement other economic stabilization efforts. The excise tax legislation could also serve as an alternative to other economic stabilization measures. The Draft Defense Resources Act contains no authority to impose excise taxes.

"DRAFT"

"DRAFT" 7/12/83

A BILL

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That,

Section 1. Short Title.

This Act may be cited as the "Selected Excise Tax Act of _____ .

Section 2. Congressional Findings.

The Congress finds that the existing national emergency has placed unusual revenue demands on the Government of the United States and has undermined efforts towards economic stabilization in the nation. The Congress further finds that the imposition of certain excise taxes would generate additional revenues and would complement economic stabilization efforts.

Section 3. Tax Imposed.

(a) Chapter 32 of the Internal Revenue Code of 1954, as amended, is further amended by inserting at the end thereof the following new Subchapter:

"DRAFT"

"Subchapter ____"

"Sec. ___ .

There is hereby imposed upon the following articles sold by the manufacturer, producer, or importer a tax of the designated percent of the price for which the article is sold:

List of Articles

1. [Article] -- [Tax Percentage]
2.
3.
4.

Section 4. Regulations.

The Secretary is authorized to prescribe such rules, regulations, and orders as he deems necessary to carry out the purposes of this Act.

E-2

EXPLANATION

Draft Amendment to the Trading With the Enemy Act.

The proposed legislation would expand the authority of the President under the Trading With the Enemy Act of 1917, as amended (50 U.S.C. App. §§ 1 et seq.). No comparable provision is contained in the Draft Defense Resources Act.

The draft amendment to the Trading with the Enemy Act (50 U.S.C. App. §§ 1 et seq.) would expand the range of institutions affected by the Act. Among other changes, this draft would amend the definition of "bank" to include a reference to the definition of "financial institution" in the Currency and Foreign Transactions Reporting Act (31 U.S.C. § 5311 et seq). That Act broadly defines "Financial institution" to include such institutions as a thrift, a securities broker or dealer, an insurance company, a pawnbroker, and a loan or financing company.

The proposed legislation coupled with the proposed amendment to 12 U.S.C. § 95 would significantly increase the Executive Branch's flexibility to respond to both wartime and less than wartime emergencies. By implementing the Draft Amendment to 12 U.S.C. § 95, Treasury could close certain banks during an emergency. On the other hand, the Draft Amendment to 50 U.S.C. § 1 et seq. could be utilized to keep the banks open. The Secretary needs this flexibility to respond to potential disruptions to the United States financial system that might occur during a serious national emergency.

The proposed legislation would also expand the definition of "enemy" to authorize the President to include terrorist organizations which are not within the concept of country. The proposed legislation would also expand the definiton of "war" to include attacks or imminent attacks on the United States or its allies. In additon, the proposed legislation would repeal the limitations imposed on Presidential authority by the amendments to the Trading With the Enemy Act in the International Emergency Economic Powers Act (Pub. L. 95-223).

7/12/83

"DRAFT"

A BILL

To amend the Trading with the Enemy Act, (Act of Oct. 6, 1917, 40 Stat. 415) as amended, 50 U.S.C. App. §§ 1 et seq.)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (New language is underlined. Deleted language is set off by brackets.)

Sec. 1. Section 2 of the Trading with the Enemy Act of 1917, as amended, (Act of Oct. 6, §2) 1917, 40 Stat. 415) 50 U.S.C. App. § 2 is further amended by changing the definition of "enemy" to read as follows:

"(c) Such other individuals, or body or class of individuals, as may be natives, citizens, or subjects of any nation with which the United States is at war, or such other political organizations, groups or entities not necessarily exercising political or military control over any nation, country or other geographical territory, other than citizens of the United States, wherever resident or wherever doing business, as the President, if he shall find the safety of the United States or the successful prosecution of the war shall so require, may, by proclamation, include within the term "enemy."

"DRAFT"

Section 2 is further amended by changing the definition of "the beginning of the war" to read as follows:

"The words 'the beginning of the war,' as used herein, shall be deemed to mean immediately upon a Congressional declaration of war or a Presidential proclamation of a state of war. [midnight ending the day on which Congress has declared or shall declare war or the existence of a state of war.]"

Section 2 is further amended by adding a definition of "war" to read as follows:

"The word 'war,' as used herein, shall be deemed to include (1) a Congressional declaration of war, (2) a proclamation by the President that an attack upon the United States or its allies has occurred and that a state of war exists, or (3) a proclamation by the President that an attack upon the United States or its allies is imminent. A Presidential proclamation of imminent attack shall have effect for no more than thirty days."

Section 2 is further amended by expanding the definition of "bank or banks" to read as follows:

"The words 'bank or banks,' as used herein, shall be deemed to mean and include national banks, State banks, trust

companies, or other banks or banking associations doing business under the laws of the United States, or of any State of the United States, and financial institutions as defined by the Currency and Foreign Transactions Reporting Act, (31 U.S.C. §§ 5311, et seq.)"

Sec. 2. The Trading With the Enemy Act of 1917 (Act of Oct. 6, 1917, 40 Stat. 415), as amended, 50 U.S.C. § 5), is further amended by reinserting in subsection (b)(1) the following language which was deleted by Public Law 95-223 (Dec. 28, 1977):

"(b)(1) During the time of war or during any other period of national emergency declared by the President, the President may, through any agency that he may designate, or otherwise, ascribe, by means of instructions, licenses, or otherwise--"

Sec. 3. Section 11 of the Trading With the Enemy Act of 1917 (Act of Oct. 6, 1917, 40 Stat. 415), as amended, 50 U.S.C. App. § 11, is further amended to read as follows:

"§11. Importations and Exportations prohibited

Whenever during the present war or any other period of national emergency declared by the President, the President shall find that the public safety so requires and shall make proclamation thereof it shall be unlawful to import into or

export out of the United States from or to any country or any enemy or ally of an enemy named in such proclamation any article or articles mentioned in such proclamation except at such time or times, and under such regulations or orders, and subject to such limitations and exceptions as the President shall prescribe, until otherwise ordered by the President or by Congress: Provided, however, That no preference shall be given to the ports of one State over those of another."

"DRAFT"

E-3

EXPLANATION

Draft Legislation to suspend the public debt limit.

The proposed legislation could be submitted in those situations where it has been determined that the existing debt limit imposes an unreasonable burden on the ability to finance a defense mobilization.

7/12/83

"DRAFT"

A BILL

To suspend temporarily the public debt limit

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, during the period beginning on the date of enactment of this Act, the public debt limit set forth in 31 U.S.C. § 3101(b) shall be temporarily suspended and no limit shall apply.

"DRAFT"

E-3

"DRAFT"

EXPLANATION

Draft Surcharge Tax Act of ____.

The proposed tax surcharge legislation could be submitted in those situations where it has been determined that extra revenues are needed to finance the country's defense mobilization or response to war or an attack on the United States. The tax surcharge simply imposes an additional tax on the tax already imposed under the Internal Revenue Code of 1954. Generally, the tax is imposed before credits. The proposed legislation is a revision of the "Revenue and Expenditure Control Act of 1968" (Pub. L. 90-364, 82 Stat. 251).

"DRAFT"

A BILL

To amend the Internal Revenue Code of 1954 to impose a temporary surcharge tax.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That,

SECTION 1. SHORT TITLE, ETC.

(a) Short Title.

This Act may be cited as the "Surcharge Tax Act of ____."

(b) Amendment of 1954 Code.

Except as otherwise expressly provided, whenever in this Act an amendment is expressed in terms of an amendment to a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1954, as amended.

SECTION 2. IMPOSITION OF TAX SURCHARGE

(a) Subchapter A of chapter 1 (relating to determination of tax liability) is amended by inserting at the end thereof the following new part:

"DRAFT"

"PART __ --TAX SURCHARGE

"Sec. __ Tax surcharge.

"SEC. __. TAX SURCHARGE

"(a) Imposition of Tax.

"(1) Calender Years. In addition to the other taxes imposed by this chapter there is hereby imposed on the income of every person a tax equal to ___ percent of the adjusted tax (as defined in subsection (b)) for the taxable year.

"(2) Fiscal and Short Taxable Years. In addition to the other taxes imposed by this chapter, in the case of taxable years ending on or after _____ [the effective date of this Act], there is hereby imposed on the income of every person whose taxable year is other than the calender year, a tax equal to --

"(i) __ percent of the adjusted tax for the taxable year, multiplied by

"(ii) a fraction, the numerator of which is the number of days in the taxable year occurring on and

after _____ [the effective date of this Act] and the denominator of which is the number of days in the entire taxable year.

"(b) Adjusted Tax Defined. For purposes of this section, the term 'adjusted tax' means, with respect to any taxable year, the tax imposed by this chapter for such taxable year, determined without regard to --

"(1) the taxes imposed by this section, section 56, section 871(a), and section 881; and

"(2) any increases in tax under section 47(a) (relating to certain dispositions, etc. of section 38 property),

and reduced by an amount equal to the amount of any credit which would be allowable under section 37 (relating to credit for the elderly) and section 43 (relating to earned income) if no tax were imposed by this section for such taxable year.

"(c) Estimated Tax. For purposes of applying the provisions of this title with respect payments of estimated tax the time prescribed for filing or payment of which is after _____ [the effective date of this Act], sections 6654(d)(1) and 6655(d)(1) shall not

apply with respect to any taxable year for which a tax is imposed by this section.

"(d) Special Rule. For purposes of this title, to the extent the tax imposed by this section is attributable (under regulations prescribed by the Secretary or his delegate) to a tax imposed by another section of this chapter, such tax shall be deemed to be imposed by such other section."

(b) Clerical Amendment.

The table of parts of subchapter A of chapter 1 is amended by adding:

"Part 1 Tax Surcharge"

(c) Effective Date.--The amendments made by this section shall apply _____ .

EXPLANATION

Draft Wage Tax Act of _____.
Draft Sales Tax Act of _____.
Draft Business Activity Tax Act of _____.

The proposed legislation for a wage tax, a sales tax and a business activity tax are three alternative methods of generating revenues where the communications and recordkeeping systems necessary to support the income tax system have been severely damaged or destroyed. The decision as to which of these alternative forms of taxation should to be imposed would depend in large part on which tax could be most easily administered and enforced. It should be recognized that to a large degree the equity (e.g. taxation of the same article or receipt twice) of the system will have to be sacrificed in order to keep the system relatively simple and easy to enforce. Therefore, submission of this draft legislation would be considered only in those situations where the exisitng tax system is wholly inadequate.

The Internal Revenue Service has tentatively determined that with respect to ease of administration, difficulty in enforcement and possible ambiguity in interpretation, the business activity tax would be the easiest to administer and the wage tax the easiest to enforce. The conclusion that the business activity tax would be the easiest to administer is based on three factors:

(1) the manner of computing tax liability,

(2) the method designated for payment of the tax, and

(3) the means by which such a tax system could be established.

Administration of Tax System

1. Business Activity Tax

The business activity tax provides for a flat tax on gross receipts from the sale of property or performance of services; no deductions or credits are allowed. The only computation required is multiplication of the receipts reported by the percentage stated. The method for payment is also simple. The proposed legislation provides for an annual determination of gross receipts. Therefore, a short statement with the person's name, address, identification number and gross receipt by source could be submitted annually with the appropriate payment. Such a system could be quickly established by using the present service centers (if available) to receive and process the tax.

2. Wage Tax

The wage tax would be the next easiest to administer. The determination of tax liability is made difficult, however, when the payor of money (or other consideration) for services rendered determines that a worker is an independent contractor (i.e., The payor has no power or right to control how the work is to be performed). The Internal Revenue Service must determine whether the classification is correct. Such a conflict exists presently in the context of the employment tax. The language of the wage tax parallels the employment tax. Consequently, a method of payment similar to the employment tax (under which the employer deposits the tax monthly with authorized financial institutions or Federal Reserve Branches and files Form 941) could be established. Since such a method is already in use, the adoption of a similar method for wage-tax payments would be easy to implement.

3. Sales Tax

The sales tax, in contrast, would be the most difficult to administer. The computation of tax liability would not be simple. A determination would be necessary as to (1) the applicability of the sales tax to the item of property transferred, (2) whether the transfer involved a change in title, possession or a license to use or consume such item and (3) whether the transfer of the item subject to sales tax is an inconsequential element of a service transaction. In addition, such a tax may require the creation of additional administrative machinery. Unlike the business activity tax and wage tax, there is no similar tax of the same magnitude. It is true that the method for payment could follow that used in excise taxes and a form similar to Form 720 filed qaurterly with the payment of the tax. The excise tax, however, is of much smaller magnitude than the propsed sales tax since it applies only to a very limited group of articles.

Enforcement of Tax

Although the ease of administration is important in determining which tax to adopt, it is not as important as the ease of enforcement. The high rate of noncompliance under our present tax system and the urgent need for a reliable source of revenue in the event of its collapse require a tax that is easy to enforce.

1. Wage Tax

The wage tax would be the easiest of the three taxes to enforce because the Internal Revenue Service could look at the nature of the services rendered and the manner in which the services were rendered to determine if the worker was an employee and if the employee received pay similar to the pay employees receive for similar work.

2. Sales Tax

The sales tax probably would be the next easiest to enforce. The Internal Revenue Service could ascertain whether all businesses that sell articles subject to the tax have paid sales taxes. The volume of sales could be estimated based on a random sampling or a comparison of purchases with stock on hand. Since the legislation applies to the sale of an article at each stage of its production and distribution process, a process requiring numerous transfers results in a higher aggregate sales tax than a process requiring few transfers. The discriminatory effect could lead to disguised mergers of retailers, wholesalers and manufacturers or inconspicuous transfers making determination of the tax difficult.

3. Business Activity Tax

The business activity tax would face the greatest enforcement problems. The legislation defines gross receipts as the amount of money or value of consideration received from the sale of property or the performance of services. This definition would give rise to valuation problems and might permit understatement of gross receipts in non-arm's length transactions. In addition, a business activity tax would permit continuation of well-established techniques of noncompliance by cash businesses and the underground economy.

The draft legislation authorizes the imposition of the tax, but leaves the responsibility for actually implementing the taxes to the President or his delegate.

7/12/83

A BILL

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That,

Section 1. Short Title.

This Act may be cited as the "Wage Tax Act of _____."

Section 2. Congressional Findings.

The Congress finds that the ability of the United States to administer and enforce the Internal Revenue Code of 1954, as amended, has been undermined by the recent attack on the United States and the resulting disruption of the communications, record-keeping and financial systems of the United States. The Congress further finds that in order to generate the revenues necessary to facilitate economic recovery, a new form of taxation is required.

Section 3. Repeal of the Income Tax.

The Internal Revenue Code of 1954, as amended is hereby repealed. Such repeal shall not affect any liability under, or action or proceeding commenced under, the Internal Revenue Code of 1954, as amended, if such liability, action or proceeding is based in whole or in part on any act committed or liability

incurred prior to the effective date of this Act.

Section 4. Imposition of Tax.

(a) There is hereby imposed a tax of ___ per cent on the wages paid by any employer to any employee with respect to employment.

(b) The tax imposed by this section shall be computed and paid by the employer to a designated representative of the Treasury at the time and in the manner prescribed by the President or his delegate in rules, regulations or orders issued under this Act.

Section 5. Rules and Regulations.

The President or his delegate is authorized to prescribe such rules, regulations and orders as may be necessary or appropriate to carry out the purposes of this Act, including the authority to define whether certain payments constitute wages for purposes of this Act.

Section 6. Definitions.

(a) For purposes of this Act the term "wages" shall mean every form of remuneration, including the cash value of all remuneration paid in any medium other than cash, payable for a

given period to a person for personal services, including salaries, commissions, vacation pay, dismissal wages, bonuses and the reasonable value of board, rent, housing, lodging, payments in kind, tips, and any other similar advantage received from the individual's employer or directly with respect to work for him. The term wages does not include remuneration for services provided in other than an employment relationship.

(b) For purposes of this Act the term "employment" shall mean any service, of whatever nature, performed by an employee for the person employing him, provided that either the employee or the employer are residing in the United States.

(c) For purposes of this act the term "employee" shall mean a person in the service of another under any contract of hire, express or implied, oral or written, where the employer has the power or right to control and direct the person in the material details of how the work is to be performed.

(d) For purposes of this Act, the term "person" shall be construed to mean and include an individual, a trust, estate, pratnership, association, company or corporation.

Section 7. Penalties.

(a) For each violation of this Act, or any regulation prescribed thereunder, the President or his delegate may, in addition

to other penalties provided by law, assess a civil penalty not exceeding $ _____ .

(b) Any person who willfully violates this Act or any regulation prescribed thereunder shall, in addition to other penalties provided by law, be fined not more than $ _____ or imprisioned not more than ___ years, or both, together with the costs of prosecution.

7/12/83

A BILL

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That,

Section 1. Short Title.

This Act may be cited as the "Sales Tax Act of _____."

Section 2. Congressional Findings.

The Congress finds that the ability of the United States to administer and enforce the Internal Revenue Code of 1954, as amended, has been undermined by the recent attack on the United States and the resulting disruption of the communications, record-keeping and financial systems of the United States. The Congress further finds that in order to generate the revenues necessary to facilitate economic recovery, a new form of tax is required.

Section 3. Repeal of the Income Tax.

The Internal Revenue Code of 1954, as amended is hereby repealed. Such repeal shall not affect any liability under, or action or proceeding commenced under, the Internal Revenue Code of 1954, as amended, if such liability, action or proceeding is based in whole or in part on any act committed or liability

imposed prior to the effective date of this Act.

Section 4. Imposition of Tax.

(a) There is hereby imposed on the sale by any person of any article a tax of _____ per cent of the price of the article at the time of sale.

(c) The taxes imposed by this section shall be computed and paid by the seller to a designated representative of the Treasury at the time and in the manner prescribed by the President or his delegate in rules, regulations or orders issued under this Act.

Section 5. Rules and Regulations.

The President or his delegate is authorized to prescribe such rules, regulations, and orders, as may be necessary or appropriate to carry out the purposes of this Act, including exceptions and exemptions from the imposition of tax under section 4, and including the authority to define whether a given transaction constitutes a sale for purposes of this Act.

Section 6. Definitions.

For purposes of this act "Sale" or "sales" shall include all transactions by which title or possession, or both, of tangible personal property is transferred or a license to use or consume

tangible personal property is granted. A construction contract pursuant to which tangible personal property is incorporated into a structure or improvement of real property is not a sale of such tangible personal property. "Sale" or "sales" does not include professional, insurance, or personal service transactions which involve the transfer of tangible personal property as an inconsequential element, for which no separate charges are made.

Section 7. Penalties.

(a) For each violation of this Act, or any regulation prescribed thereunder, the President or his delegate may, in addition to other penalties provided by law, assess a civil penalty not exceeding $ _____.

(b) Any person who willfully violates this Act, or any regulation prescribed thereunder shall, in addition to other penalties provided by law, be fined not more than $ _____ or imprisioned not more than _____ years, or both, together with the costs of prosecution.

A BILL

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That,

Section 1. Short Title.

This Act may be cited as the "Business Activity Tax Act of _____."

Section 2. Congressional Findings.

The Congress finds that the ability of the United States to administer and enforce the Internal Revenue Code of 1954, as amended, has been undermined by the recent attack on the United States and the resulting disruption of the communications, record-keeping and financial systems of the United States. The Congress further finds that in order to generate the revenues necessary to facilitate economic recovery, a new form of tax is required.

Section 3. Repeal of the Income Tax.

The Internal Revenue Code of 1954, as amended is hereby repealed. Such repeal shall not affect any liability under, or action or proceeding commenced under, the Internal Revenue Code of 1954, as amended, if such liability, action or proceeding is

based in whole or in part on any act committed or liability imposed prior to the effective date of this Act.

Section 4. Imposition of Tax.

(a) There is hereby imposed a tax of ____ per cent on the business activity of every person in the United States.

(b) The tax imposed by this section shall be computed and paid to a designated representative of the Treasury at the time and in the manner prescribed by the President or his delegate in rules, regulations or orders issued under this Act.

Section 5. Rules and Regulations.

The President or his delegate is authorized to prescribe such rules, regulations and orders as may be necessary to carry out the purposes of this Act including the authority to determine whether specific activity constitutes business activity for purposes of this Act.

Section 6. Definitions.

(a) For purposes of this Act the term "business activity" shall mean the gross receipts of the person for the calendar year.

(b) For purposes of this Act, the term "gross receipts" shall mean the total amount of money or the fair market value of other consideration received from selling or exchanging property or from performing services. The term shall include the receipt of interest, dividends, rents, royalties and similar payments.

(c) For purposes of this Act, the term "person" shall be construed to mean and include an individual, a trust, estate, partnership, association, company or corporation.

(d) For purposes of this Act the term "fair market value" shall mean the price at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts.

Section 7. Penalties.

(a) For each violation of this Act, or any regulation prescribed thereunder, the President or his delegate may assess a civil penalty not exceeding _____.

(b) Any person who willfully violates this Act or any regulation prescribed thereunder shall, in addition to other penalties provided by law, be fined not more than $ _____ or imprisioned not more than ___ years, or both, together with the costs of prosecution.