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Appendix

Business Responsible for Hitler

EXTENSION OF REMARKS OF

HON. JAMES J. DAVIS

OF PENNSYLVANIA

IN THE SENATE OF THE UNITED STATES

Monday, July 14, 1941

EDITORIAL FROM LABOR

Mr. DAVIS. Mr. President, I ask unanimous consent to have printed in the RECORD an editorial entitled "Business Responsible for Hitler," taken from the July 15, 1941, issue of LABOR, a national weekly newspaper.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

[From LABOR of July 15, 1941]

BUSINESS RESPONSIBLE FOR HITLER—BANKER DECLARES NAZIS WERE ON WAY OUT WHEN INDUSTRIALISTS GAVE THEM HELP, EXPECTING THEM TO DESTROY UNIONS

The frightful mess in which the world finds itself today is very largely the result of the stupidity and greed of European businessmen. Labor has repeatedly made that statement, and it is confirmed up to the hilt by T. Graydon Upton, who represented large American financial interests in Germany and England from 1932 to 1940.

In an article in Harper's magazine, Upton declares that Hitler today would be but an uneasy memory had it not been for the support he received from German businessmen and industrialists. In 1932, the banker asserts, the Nazis were "all washed up" and were about to disappear from the scene. They had lost heavily in an election, were deeply in debt, and had no funds with which to start a new campaign.

Business was picking up and workers were restless and demanding a share in the increasing prosperity, which employers were unwilling to grant.

"During these crucial days," Upton says, "important business interests swung their support to the astounding Hitler-Hugenberg-Papen coalition which ushered in the National Socialist domination. Looking back, it seems quite possible that if businessmen had given less consideration to immediate industrial problems and more to the deeper implications of national socialism, Hitler never would have ruled Germany."

All that businessmen saw in national socialism was an ally against the power of the trade

unions, Upton declares. They thought, he said, that after the unions were destroyed and their leaders shot or sent to concentration camps it would be easy to handle Hitler and his assorted thugs.

The unions were destroyed according to plan, but businessmen learned to their sorrow they had jumped out of the frying pan into the fire.

"Today," Upton says as a warning to American businessmen, "German businessmen are suffering more under the Hitler regime than any group in the country except the Jews."

Upton insists that businessmen in England, Holland, Belgium, France, and other countries now under the heel of Hitler's troops made the same mistake.

"There was a tragic failure of the business mentality to comprehend the forces, aims, and methods of national socialism," he says. "They thought Hitler was out to destroy labor and other liberal organizations, while all the time his sole purpose was to destroy everything that civilized man holds precious."

"In every major country of Europe business has played a vital role in preparing its own destruction. By ignorance and refusal to cooperate with liberal forces it has aided a reaction which has dispossessed and destroyed it. By its failure to rise above the 'business outlook' and comprehend the deceptive tactics and terrible scope of national socialism, it has been bombed and annihilated in the office and in the home."

"In this there is a lesson to us businessmen. We can avoid a similar catastrophe only if in thought and action we deliberately give first place not to business factors but to social progress within our democratic structure."

And the same advice might well be taken to heart by labor-hating Members of Congress who are looking for a Hitler to "put workers in their place."

United States Citizens May Not Enlist in the Armed Forces of a Foreign Country

REMARKS

OF

HON. LEWIS D. THILL

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Monday, July 14, 1941

Mr. THILL. Mr. Speaker, there has been some agitation of late to enlist

American manhood in the armies of foreign powers. These war salesmen who are so anxious to have someone else do the fighting and dying are either deliberately encouraging the violation of law or they are proceeding with their nefarious importunings ignorant of certain provisions of the Criminal Code. It is an outrage against humanity and decency to play upon the emotions of impressionable youth and by the use of insidious wiles and devices to induce them to enlist in the armed forces of a foreign power.

The following provisions of the Criminal Code prohibit any United States citizen from entering the service of a foreign power against any country with whom the United States is at peace:

Title 18, chapter 2 of the United States Code details the following offenses against neutrality:

Section 21 (Criminal Code, sec. 9): Accepting commission to serve against friendly power. Every citizen of the United States who, within the territory or jurisdiction thereof, accepts and exercises a commission to serve a foreign prince, state, colony, district, or people, in war, by land or by sea, against any prince, state, colony, district, or people, with whom the United States are at peace, shall be fined not more than \$2,000 and imprisoned not more than 3 years (Rev. Stat. sec. 5281; Mar. 4, 1909, ch. 321, sec. 9, 35 Stat. 1089).

Section 22 (Criminal Code, sec. 10, amended): Enlisting in foreign service; exceptions. Whoever, within the territory or jurisdiction of the United States, enlists or enters himself or hires or retains another person to enlist or enter himself, or to go beyond the limits or jurisdiction of the United States with intent to be enlisted or entered in the service of any foreign prince, state, colony, district, or people as a soldier or as a marine or seaman on board of any vessel of war, letter of marque, or privateer shall be fined not more than \$1,000 and imprisoned not more than 3 years: *Provided*, That this section shall not apply to citizens or subjects of any country engaged in war with a country with which the United States is at war, unless such citizen or subject of such foreign country shall hire or solicit a citizen of the United States to enlist or go beyond the jurisdiction of the United States with intent to enlist or enter the service of a foreign country. Enlistments under this proviso shall be under regulations prescribed by the Secretary of War (Rev. Stat. sec. 5282; Mar. 4, 1909, ch. 321, sec. 10, 35 Stat. 1089; May 7, 1917, ch. 11, 40 Stat. 39).

projects in the Great Plains, 30 acres of grazing land can be made available for the support of the livestock industry. Thus the 13,400-acre Buford-Trenton project will extend its benefits to more than 400,000 acres.

It is a matter for satisfaction on the part of all agencies involved that the Buford-Trenton project is now ready to begin its service. A large part of the credit must go to the landowners. They were cooperative.

On the other hand, the Bismarck project has been stalemated. Indifference to the distress of neighbors and the desire to make a personal profit have delayed the start of construction. I regret this deeply. But I assure you that my regret, no matter how deep, will not shake my determination to help build a project of benefit to the entire community. I hope that through the influence of the North Dakota Reclamation Association it may be possible to avoid another Bismarck in the future.

With the progress made in the water conservation and utilization program so far, it is clear drought-stricken Great Plains and other areas may be rehabilitated. It can be shown that by turning relief labor into beneficial construction, Federal funds can be channeled into great and lasting good. Sixty percent of the costs of these projects goes into labor at the site.

Furthermore, the reimbursable feature of direct appropriations for reclamation from the Federal Treasury—the backbone of the reclamation policy for 40 years—still holds true. It has not been abandoned. It is evidence of the good faith of the beneficiaries of reclamation developments.

Now let us turn a page and look at the future of a program I know is close to the hearts of every member of this association.

Within the limits of funds available, investigations are being pressed by the Bureau of Reclamation to uncover worthy projects that qualify economically under the provisions of the law. With the installation of power-generating facilities at Fort Peck Dam, now probable in 1943, the Bureau of Reclamation will be able to provide low-cost power for pumping at projects which may be constructed in North Dakota and Montana. Reports are awaited with interest on the investigations of two major pumping developments. Both contemplate turning the waters of the Missouri River into channels for the preservation of agriculture in western North Dakota. Preliminary reports on the North Dakota pumping and the Fort Peck pumping investigations indicate highly interesting possibilities which, if found economically feasible, will go far toward averting future consequences of critical droughts.

Other investigations include areas on Knife River, the Cannonball, Heart River, and the Little Missouri.

I can assure you that these investigations will be prosecuted not only in North Dakota but throughout the Great Plains and the areas to the westward. But the people of the areas affected must take a realistic view of what irrigation means to their communities and the State. It will not do to assume that the Bureau of Reclamation will recommend a project without the interest and cooperation of the citizens of the area to be benefited. The project must not only be desirable but also desired.

Assuming that the North Dakota Reclamation Association will interest itself in this aspect, I call your attention to the dominating factor in our national life today. The country has set itself to an all-out effort for the preservation of our way of life on this hemisphere, and all other activities must be subordinated to this end.

The construction activities of the Bureau of Reclamation are necessarily affected by this policy. What new construction work is undertaken will depend on its relation to national defense. The continuance of the construction of projects under way will rest to a large extent on the availability of labor,

priority, and transportation facilities for equipment and materials.

Food supplies are a vital consideration in the national defense. The problem of feeding 132,000,000 people in the United States and the multimillions of war-torn countries must be met. Federal reclamation is called upon to aid in meeting this problem, just as it is coping with threatened power shortages on the Pacific coast and the Rocky Mountain region.

"Food will win the war and write the peace," says Secretary of Agriculture Wickard, speaking from San Francisco on September 8.

The great western livestock industry will need more hay and pasture to produce the meats and dairy products that only irrigated land can insure in the face of this emergency and all droughts to come.

Nutritious vegetables, both fresh and for canning, and certain fruits in the increased quantities necessary must come from land for which moisture is certain to be available in the growing season.

It is only through the Federal reclamation program that an increased output of food-stuffs can be assured west of the one-hundredth meridian. The 4,000,000 acres of irrigated land reclamation projects are now serving are already enlisted in the cause of increased production. Nearly 7,000,000 additional acres, half of which are now inadequately irrigated, will be given a secure water supply by projects under construction.

The Great Plains and other drought regions will receive their full share of attention in the advancement of this program.

Similarly the power to drive airplane factories and other industries producing critically needed equipment is coming from multiple-purpose projects of the Bureau of Reclamation. The present capacity of a million kilowatts in reclamation plants is being trebled under current plans.

Preparedness for peace is as vital as preparedness for defense. The Bureau of Reclamation, while giving all-out aid to national defense, aims to have in readiness a shelf of feasible projects strategically located with respect to labor. We propose to speed the completion of construction work which may be temporarily delayed during the emergency.

Work for unemployed industrial workers, soldiers, and sailors, and settlement opportunities on irrigated land for many thousands of families will be the prime objectives.

The North Dakota Reclamation Association can participate in this program of preparedness. With us you can follow the advice of Major Powell. "Don't forget the drought" is an appropriate slogan for reclamationists in North Dakota as well as throughout the West and for the entire country. Maintaining public interest in irrigation as an insurance against ravages of droughts in the future will help the people of the Great Plains to "look the question squarely in the face and provide for this and for all years."

Administration of Foreign-Agent Registration Act

EXTENSION OF REMARKS

OF

HON. JERRY VOORHIS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, August 14, 1941

REPORT OF INSTITUTE OF LIVING LAW

Mr. VOORHIS of California. Mr. Speaker, every law passed by Congress

requires a period of actual trial before it can become clear as to whether or not the law is adequately and effectively framed to meet all the contingencies it was supposed to meet.

In the case of the Foreign Agent Registration Act there is at present an obvious need of the most vigorous enforcement and the most effective bringing out of the facts about foreign agents which the act was intended to give to the American people.

The Institute of Living Law, a group of earnest and able lawyers and social scientists, has prepared a report on this matter which I believe merits the careful study of Members of Congress. What follows is a summary of this report:

THE ADMINISTRATION OF THE FOREIGN AGENT REGISTRATION ACT THE PROBLEM OF PROPAGANDA

The Foreign Agent Registration Act requires agents of foreign governments that seek to influence American public opinion to disclose certain facts about themselves. Congress hoped thereby to deprive their work of the extra effectiveness arising from secrecy. The antidemocratic material that reaches our shores from foreign countries has behind it the well-knit, powerful force of the dictator-ridden states. But the pro-American counter-propaganda issued in this country is sporadic and disunited. This is as much of a disadvantage in this ideological struggle as if the dictators had guns and we had none; as if they had armies and we had only disorganized bands of farmers armed with clubs and scythes. Unless some effective defense is devised, democracy may be condemned by its best friends without the benefit of a fair trial upon its merits. Most Americans believe that all, however hateful their opinions may be, have the right to speak their minds. But it is contrary to our spirit of fair play for anyone to pretend to be disinterested, or to speak as an individual, and yet really to represent an ulterior interest. This explains why the first weapon chosen by our Government to combat the insidious propaganda of the dictators was, not the un-American weapon of suppression of the propaganda, but the American way—disclosure of its sources, methods, and purposes.

A desirable byproduct of full disclosure of this sort would be a degree of protection to those who, because they promote unpopular causes, are falsely attacked as foreign agents. Careful administration of the act would protect bona fide foreign agents themselves, as well. To those agents of foreign countries who wish to deal with us on a fair and open basis, the Foreign Agent Registration Act offers an opportunity to prove their good faith.

PROVISIONS OF THE ACT

The act seeks to make known to the American people the sources of foreign propaganda. It requires registration at the State Department of each "agent of a foreign principal." But the act specifically excludes diplomats, foreign government officials, traders, consular officials, and those engaged only in religious, scholastic, academic, or scientific pursuits. It requires that agents file not only their names but also their addresses, the names of their principals, copies, or descriptions of their agency contracts, and a statement of the form and amount of pay they receive. They must also file supplementary statements every 6 months describing their activities. Congress intended to give the Department of State power to "fill in the details" of legal requirements by its grant of power to the Secretary of State to prescribe rules, regulations, and forms.

THE INTENTION OF CONGRESS

Any judgment concerning the act's success or failure must be based upon the intentions of the people's representatives who framed and enacted the law. That intention may be learned both from the act and from statements made by them at the time it was under discussion.

This report undertakes neither to challenge nor to support the validity of all those purposes of Congress. But if Congress passed the act to get these things done, then the act ought to do them. This report merely analyzes the act and its administration in view of those purposes, and attempts to determine its effectiveness. The basis of our evaluation and of our suggested changes in the act and regulations is the answer to the following questions:

(a) Does the act, as administered, actually disclose the foreign agents intended to be disclosed, namely, promoters of racial and religious disunity, subverters of democracy, and foreign-policy propagandists?

(b) Does it obtain the kind of information that Congress wanted, including the identity of the agents; the principals backing such agents, including not only foreign governments but also private and political groups acting in their behalf, not only the nominal or pretended principals but also the real ones; the duties and relations of the agents to their employers; and the details of their propaganda activities?

(c) Is this information subjected to intense publicity, calculated to render the activities of such agents less effective?

In connection with all of these questions, the general inquiry must also be made whether any failure fully to achieve the purposes of the legislation is caused by faults in the act or by improper or inadequate administration and what changes in either regard will render it more effective.

ACTUAL COVERAGE OF PROPAGANDISTS

An examination of the State Department files does not reveal the names of any of the Communist leaders in this country. Yet the Communist Party's organizational manual says:

"The decisions of the executive committee of the Communist International are binding for all parties belonging to the Communist (Communist International), and must be promptly carried out."

Many notorious propagandists in behalf of Nazi interests are also omitted from the State Department's list. Examination of the lists themselves confirms the conclusion that they contain the names of very few of the foreign agents actually engaged in propaganda activities. About 300 agents are now listed in the public files at the State Department, but it is questionable whether any substantial minority thereof are actually engaged in the kind of propaganda that Congress wanted disclosed.

Certain specific faults in the law and its administration would prevent any enforcement, however vigorous, from being effective. The first of these faults is in the interpretation that the State Department has chosen to put upon the word "agent." The regulations provide that subagents, subsidiaries, and branch offices are not considered subject to the requirement of registration. Congress certainly did not intend to limit the registration requirement by any such nice legal distinctions. Even if Congress did intend to make such distinctions, commercial law would not support the Department's interpretation of the word "agent." This interpretation is effective to exclude hundreds of persons in the employ of registered and unregistered foreign agents.

LOOPHOLE FOR ASSOCIATIONS, ETC.

While the act blithely declares that the term "person" means "an individual, partnership, association, or corporation," the fact remains that our criminal law does not provide

any procedure by which an unincorporated association (or, for that matter, a partnership) can be prosecuted or imprisoned; nor does it recognize any way in which an impetuous corporation can be punished effectively. Therefore, it seems that the Foreign Agent Registration Act could not be effectively enforced against an unincorporated association servicing a foreign master or against a corporation that took care to see that it had no funds available for attachment. If the statute required the officers of such an organization to file statements on its behalf, then they, at least, could be imprisoned or fined for its failure to register.

LOOPHOLE FOR CONSULAR EMPLOYEES, ETC.

Another series of loopholes may be found in those provisions of the present statute which exempt from the requirement of registration various classes of individuals who would otherwise be foreign agents in the strictest sense. Although the diplomatic representatives of a foreign government are, by customary rules of international law, exempt in their official capacity from civil and criminal jurisdiction in the country wherein they serve, consular agents and their staffs are not immune from such jurisdiction. Thus, it would be no infraction of the rules of customary international law for the United States to require that consuls engaging in propaganda activities register as agents of foreign principals. The elimination of these exemptions is important.

LOOPHOLE FOR PROFESSED TRADERS, ETC.

When the act exempts from registration requirements persons active in furtherance of the "bona fide trade or commerce" of foreign principals, or of "bona fide . . . scholastic, academic, or scientific pursuits, or of the fine arts," it lays down standards which are inapplicable to totalitarian states. It is of the essence of totalitarianism that commerce, education, science, and art, as well as business, must be subordinated to the interests of the state. These exemptions, therefore, do much to destroy any possible efficiency of the existing law.

ACTUAL DISCLOSURE OF INFORMATION

Congress intended that the act should require the filing, not only of the agent's name, but also of full and complete information about him with regard to his identity, his relationship with his foreign principal, and the nature of his activities. In this regard the State Department has not taken full advantage of the broad congressional authority to prescribe necessary rules and regulations. Documents defining the organizational set-up of corporations, associations, and partnerships are referred to in the prescribed forms but not in terms specifically requiring them to be filed. While the registration statements do require the names of officers and directors of corporations and associations and partners of partnerships, the names of "dummies" apparently would be sufficient even though the actual management might be in the hands of an employee or some persons bearing no formal relationship to the organization. One of the commonest and handiest of devices for obscuring the identity is to do business first under one corporate or associate name until it has been discredited in the eyes of the public, then to close up shop and open up shortly thereafter under a new corporate name. The only way to keep track of such shenanigans is to follow other bits of identifying information that may appear upon the public record. The State Department might have prepared cross-indexed, tabulated, and publicized such information. Instead, when the act was but a year in operation, it appealed to Congress to amend the law so that as soon as one such "front" is abandoned all the records concerning it may be withdrawn from public view. As a result, it would be very difficult for any private citizen to trace the relationship to each other of

the various associations used by such "quick-change" artists to cover up their activities. The questionnaire requires a full statement as to contracts that are entirely oral but states no details as to the kinds of information required. The supplementary statement has no reference to changes that might have taken place in the agency relationship. Thus it would be quite possible for a foreign agent to have a contract for 363 days of the year which would never be revealed to the public at all under this statute. The State Department has ample administrative power to require full information about the sponsors of foreign propagandists as such. But it has seen fit to ask only the most elementary questions concerning the foreign nations, individuals, and organizations for which such agents act. Such questions as are asked certainly cannot reveal the kind of information that Congress desired about the identity and nature of both the foreign nation involved and the specific persons who are the propaganda agents' more immediate superiors. An examination of the material on file reveals that they certainly have not done so.

ACTIVITIES OF FOREIGN AGENTS

Naturally, the most important information required by the act, both from the point of view of public information and from that of law enforcement, concerns the details of the activities of such agents. It is worthless to know who an agent is or for whom he works or what he has agreed to do if we don't know anything about what he is actually doing. It is because of this very fact that Congress provided for the filing of a semiannual supplemental registration statement that is required to contain "such details required under this act as the Secretary shall fix, of the activities of such persons as agent of a foreign principal during the 6-month period." Under this broad authority what details have been required? It is almost incredible, but the fact is that none at all is required. There is not a single question in either registration statement that would require a description of any of the foreign agent's activities during the period between statements.

ACTUAL PUBLICITY AND AVAILABILITY

It was not the filing of information but rather the turning upon it of "the pitiless spotlight of publicity" that was considered a deterrent to foreign propagandists. The first action that might be expected would be the preparation of a list of the registrants, giving all the basic facts about them, properly classified and indexed, with, perhaps, a summary or abstract of all the important parts. No such thing has been done. The list is prepared without indexes or classifications and (mirabile dictu!) not in alphabetical order. No word of description of the agents registered or of information about them except their addresses appears on this list. Apparently no efforts have been made by the Department to use the press, radio, and other channels in accordance with the intent of the framers of the act. No press releases on the act were issued during the 3 years that the act has been effective except one which merely assured the general public that registration affords no grounds for assuming that the registrant is engaged in unpatriotic activity.

ADMINISTRATION OF THE ACT

The lack of initiative of the office charged with enforcement of the act is high lighted by contrasting it with the recent action of the Post Office Department in holding up vast quantities of propaganda received from foreign countries, the mailers of which were agents of foreign governments.

The first task of the State Department is to promote the diplomatic interests of this country. It is not easy for one official of the State Department to deal on friendly terms with diplomatic representatives of foreign countries when some other official of the same Department is making trouble for their

propaganda agents. The administration of the act is not essentially a foreign affair at all. It is quite unnecessary to delegate this power to the office charged with management of our diplomacy. The State Department, less than any other department of the Government, believes in exposing its files to public view. The Secretary of State is the only important governmental official who does not make a regular report to Congress. Dominating the public relations of the State Department is the assumption that public comment, criticism, and participation in the conduct of foreign affairs is an unfortunate incident which cannot be wholly dispensed with in a democracy, but which should be restricted within the narrowest possible limits. The administration of the act devolves upon the Division of Controls within the State Department. For the performance of these and many other functions the Division of Controls has at its disposal a staff for which the total salary expenditure in 1940 was \$52,815. Estimated requirements of this office for 1941 and 1942 run only slightly higher (\$59,683 for each year). The bulk of these appropriations is expended for purposes other than registration of foreign agents, and no single officer of the Division devotes his full time to such registration activities. Apart from any considerations of the capacity of the personnel employed in this Division, the notion that a \$60,000 agency, on a part-time basis, can exercise any effective control over agents of foreign principals spending amounts hundreds and thousands of times as great is ridiculous. In a letter to Chairman SWANNEK, of the House Judiciary Committee, the First Assistant Secretary of State, Hon. Sumner Welles, took pains to point out, with reference to this act, that "the policy by which this Department was made the agency to receive registrations of this type was a policy initiated by the Congress and not by this Department." Here is a clear implication that the State Department does not want to be charged with the registration of foreign agents. To place upon the State Department and the Division of Controls the burden of administering a statute which they neither desire to administer nor have proper administrative facilities for administering is to invite the failures which have occurred. Our recommendation is that the implied request of the State Department to be freed from this responsibility be granted.

An objective analysis of the operations of the Foreign Agent Registration Act must convince any unprejudiced observer that the act has been rendered a dead letter. Of no practical importance in exposing the propaganda activities it was designed to expose. Part of the responsibility for this failure may be attributable to deficiencies in the terms of the act itself, notably the long list of exemptions contained in the act, the failure to specify the kind of information to be supplied by registrants, the failure to provide effective sanctions against associations or corporations, and the permission to remove registration statements granted by an amendment which the State Department sponsored. These defects, however, might have been rendered comparatively innocuous if the act had been vigorously enforced. Chief responsibility for the fact that this act has become a dead letter must be laid at the door of the State Department. The Division of Controls, in that Department, has not been effective in carrying out the purpose of bringing correct information to the American people which the act was designed to effectuate. It has refrained from publicizing the information it has collected. The regulations issued by the State Department for the enforcement of the act make it inevitable that the information that Congress wanted is not collected. This result is reached by exempting the most dangerous propagandists from the requirements of the act, by omitting from the registration forms all questions relating to details

of the agent's propaganda activities, and by inserting a series of loopholes which have the effect of facilitating evasion of the purposes of the act.

It is clear that if the purposes of the act are to be accomplished, the regulations under which it is administered must be drastically revised and responsibility for enforcement must be vested in an agency that is in a better position to carry out the objective of the act. Finally, the complete achievement of the purposes of the act will require certain minor strengthening amendments in the act itself.

Emergency Powers Relating to Business and Industry

EXTENSION OF REMARKS

OF

HON. MILLARD E. TYDINGS

OF MARYLAND

IN THE SENATE OF THE UNITED STATES

Monday, September 29, 1941

COMPILATION BY HON. HARRY B. HAWES

Mr. TYDINGS. Mr. President, I ask unanimous consent to have printed in the Record a Compilation of Emergency Powers Granted to the Executive by the Congress, prepared by Hon. Harry B. Hawes, which, I think, will be of great value to Members of the Congress. The Government Printing Office estimates that it will require three pages of the CONGRESSIONAL RECORD to print the compilation and that the cost will be \$135.

There being no objection, the compilation was ordered to be printed in the Record, as follows:

COMPILATION OF EMERGENCY POWERS RELATING TO BUSINESS AND INDUSTRY GRANTED THE EXECUTIVE BY THE CONGRESS, WITH SPECIAL REFERENCE TO THE EMERGENCY POWERS GRANTED FROM MARCH 1933 TO AUGUST 1941
(By Harry B. Hawes)

EMERGENCY POWERS OF THE EXECUTIVE RELATING TO BUSINESS

Frequent inquiries from clients and correspondents relating to the emergency powers of the President have suggested this memorandum for the general information of businessmen.

Eliminating most of the emergency powers granted prior to President Franklin D. Roosevelt's election, and also the grants of military and naval emergency powers, the following may be found useful in general consideration of the subject.

The emergency powers granted the Executive fall into three classes: First, direct power; second, power qualified by ratification of the Senate; and third, power which, if exercised, requires appropriations from Congress.

The constitutional powers of the President may be summarized as follows:

Presidential constitutional powers are not enumerated in the statutes; they are derived from the Constitution with implied powers of execution.

The general powers of the President derived from the Constitution may be summarized as follows:

He has the administration of all Federal statutes, their execution, and the appointment and removal of Federal officers.

Congress may create public offices but all administrative officers are appointed by him. He shall, from time to time, give Congress "information of the state of the Union." He may convene both Houses or either of them.

Subject to the approval of the Senate, he shall appoint ambassadors, ministers, and consuls.

He has the power, with the advice and consent of the Senate, to make treaties with foreign nations.

He is Commander in Chief of both Army and Navy.

Approximately 200 emergency powers have been granted our Presidents by the Congress prior to the election of President Franklin D. Roosevelt.

To review each separate power granted would be a voluminous work, too large for ready reference. In attempting brevity there is a possibility of omission.

Emergency powers relating to business granted the Executive prior to 1933

On October 5, 1839, the then Attorney General, Frank Murphy, directed the attention of the Senate to certain emergency powers granted to the Executive prior to 1833, and included those granted to the end of the Seventy-sixth Congress.

Act of June 19, 1912 (37 Stat. 138, sec. 2; 40 U. S. C. 325): The President is authorized to waive stipulations of the 8-hour law in public contracts "during time of war or a time when war is imminent."

Penalties are not to be imposed for violations which were "due to any extraordinary events or conditions of manufacture or to any emergency caused by fire, famine, or flood, by danger to life or to property, or by other extraordinary event or condition on account of which the President shall subsequently declare the violations to have been excusable."

Act of March 3, 1913 (37 Stat. 726; 40 U. S. C. 321): Employment of laborers and mechanics on public works for more than 8 hours a day is prohibited, "except in case of extraordinary emergency."

Act of June 3, 1916 (39 Stat. 204, sec. 86; 32 U. S. C. 39): Material of war, purchased by States from Army stores, may be requisitioned by the United States for use in the military service "in time of actual or threatened war."

Same (p. 213, sec. 120; 50 U. S. C. 80): The President is authorized, "in time of war or when war is imminent," to place orders through the heads of departments for arms or other required material with any factory, etc.; such orders are obligatory and must be given precedence over other orders at such times. Failure to give such precedence subjects the factory, etc., to immediate possession by the Government, and the manufacturer, etc., to imprisonment up to 3 years and a fine up to \$50,000.

Same (p. 604; 10 U. S. C. 1362, 49:6 (8)): The President may demand, "in time of war or threatened war," that preference and precedence over all other traffic be given for the transportation of troops and war material.

Act of August 29, 1916 (39 Stat. 645; 10 U. S. C. 1361): The President is empowered to assume control of transportation systems for the transfer of troops, war material, etc. (See also act of Feb. 28, 1920; 41 Stat. 457 (c).)

Act of September 8, 1916 (39 Stat. 799, Nos. 805, 806; 15 U. S. C. 75, 77): The President may prohibit importation into the United States of articles from countries which prohibit, contrary to the law and practice of nations, the importation of any products of the United States.

The President may also withhold clearance of vessels of a belligerent discriminating unfairly against American vessels, etc., during a foreign war.