retary is required in the administration of the bill to make a determination that not less than 10 percent of the personnel to be employed on the project have been currently for at least 30 days in the area, and have been currently unemployed for at least 30 days.

The Chair notes that the basic law does impose rather substantial requirements in the sense that it requires, first, that the Secretary consider among other matters the three factors listed in section 107 that were mentioned by the gentleman from Texas as statistical factors. The Chair agrees they are statistical factors. He notes as well, though, that the gentleman from Michigan has brought up the provisions of section 108(e) which go somewhat further than that, and they require that any grant made to a local government based upon the unemployment rate of a community or neighborhood within its jurisdiction must be for a project of direct benefit to, or provide employment for, unemployed persons who are residents of that community or neighborhood.

So the law already imposes some substantial duties and determinations similar to those which would be required by the proposed limitation in this proviso. The Chair therefore would hold that the particular proviso under consideration is one that does impose a valid limitation upon the use of an appropriation and that the duties imposed upon the Administrator are purely incidental and do not impose any substantial new duties on the administrator. Therefore the Chair overrules the point of order.

§ 66. Exceptions From Limitations

Proviso Construing Terms as "Exception"

§ 66.1 Where a limitation in an amendment to an appropriation bill prohibited certain payments to persons in "excess of . . . $500," a further provision stating that such limitation would not be "construed to deprive any share renter of payments" to which he might be otherwise entitled was held to be in order as an exception to a limitation.

On Mar. 24, 1944,(16) during consideration of the Department of Agriculture appropriation bill for 1945 (H.R. 4443), the following proceedings occurred:

> MR. [EDWARD H.] REES of Kansas: Mr. Chairman, I offer an amendment.
>
> The Clerk read as follows:
>
> Amendment offered by Mr. Rees of Kansas: On page 62, line 5, after the colon following the word "inclusive", insert the following: *"Provided further,* That no payment or payments hereunder to any one person or corporation shall be in excess of the total sum of $500: *And provided further,* That this limitation shall not be construed to deprive any share renter of payments not exceeding the amount to which he would otherwise be entitled."

16. 90 CONG. REC. 3095, 78th Cong. 2d Sess.

MR. [MALCOLM C.] TARVER [of Georgia]: Mr. Chairman, I make a point of order against the amendment because of the inclusion of the second proviso therein, which, in my judgment, constitutes legislation upon an appropriation bill. It is in effect a construction of the preceding proviso, and which legislatively provides that the preceding proviso in the case of tenants shall not be taken at its face value but that a different rule shall be applicable to them. Because that provision is included, I think the entire amendment is subject to a point of order because of its being legislative in character. . . .

. . . [I]t is my opinion, having heard the amendment read, although I have not had the opportunity to examine it carefully, that the second proviso does not constitute merely an exception to the limitation made in the first proviso, but it is legislative in character and constitutes a legislative construction of the language contained in the first proviso and is, therefore, clearly in itself legislation. I know no reason why the gentleman from Kansas should not offer or be permitted to offer the first proviso. But I think the second proviso which reads, *"And provided further,* That this limitation shall not be construed to deprive any share renter of payments not exceeding the amount to which he would otherwise be entitled," is clearly a legislative construction of the preceding proviso and, therefore, in itself constitutes legislation.

THE CHAIRMAN:[17] Does the gentleman from Kansas desire to be heard further?

MR. REES OF KANSAS: Just one point. Let me observe that the so-called limitation is a limitation only on the first proviso of the amendment and does not constitute legislation on the bill.

THE CHAIRMAN: The Chair is ready to rule. The Chair is of the opinion that the second proviso constitutes an exception to the provisions of the amendment as contained in the first proviso. The Chair overrules the point of order.

Excepting Project From Dollar Limit Otherwise Applicable

§ 66.2 A provision in the general appropriation bill, 1951, providing that no part of the appropriation shall be used for beginning construction of any building costing in excess of $15,000, except that a poultry breeding house may be constructed at Purdue University at a cost of not to exceed $29,000, was held to be a valid exception from a proper limitation and in order inasmuch as the authorization for such projects contained no ceiling on such expenditures and the exception was not construed as separate construction authority.

On Apr. 27, 1950,[18] the Committee of the Whole was considering H.R. 7786. A point of order

17. William M. Whittington (Miss.).

18. 96 CONG. REC. 5910, 5911, 81st Cong. 2d Sess.

against a provision in the bill was overruled as follows:

Mr. [KENNETH B.] KEATING [of New York]: Mr. Chairman, I make a point of order against the language appearing in lines 15 to 17 on page 157, reading "Except that a poultry breeding house may be constructed at Purdue University," on the ground that it is legislation in an appropriation bill.

THE CHAIRMAN:[19] Does the gentleman from Mississippi desire to be heard on the point of order?

MR. [JAMIE L.] WHITTEN [of Mississippi]: Yes, Mr. Chairman. Mr. Chairman, I wish to call attention to the fact that under the Research and Marketing Act, section 7–A, 7 United States Code 427(h), the Department of Agriculture is authorized to construct agricultural buildings without limitation on the amounts. This committee has put restrictions heretofore on these amounts, fixing the individual amount at $15,000 per unit. We carry that provision with the exception that in this instance we let them go above it.

It traces back to the legislative authorization in the Research and Marketing Act under which they have authority to build such houses without any limitation.

In effect this is a limitation.

The authorization reads as follows:

> The money appropriated in pursuance of this title shall also be available for the purchase or rental of land and the construction and acquisition of buildings necessary for conducting research provided for in this title.

In effect this is a limitation fixing the amount they may spend for this purpose.

THE CHAIRMAN: . . . The Chair has examined the provisions of existing law cited by the gentleman from Mississippi and invites attention to the fact that the first part of this paragraph appears clearly to be a limitation and the latter part of the paragraph appears to be an exception to the limitation for a purpose authorized by law.

The Chair, therefore, overrules the point of order.

Duties Involved in Applying Limitation Already Required by Law

§ 66.3 It is in order as an exception from a limitation in a general appropriation bill to include language precisely descriptive of authority provided in law so long as the exception only requires determinations already required by law and does not impose new duties on federal officials.

On Aug. 3, 1978,[20] during consideration in the Committee of the Whole of the foreign assistance appropriation bill (H.R. 12931), a point of order was raised against the following amendment:

The Clerk read as follows:

> Amendment offered by Mr. [Tom] Harkin [of Iowa]: Page 11, strike out the period on line 17 and insert in

19. Jere Cooper (Tenn.).

20. 124 CONG. REC. 24249, 24250, 95th Cong. 2d Sess.

lieu thereof ", except that funds appropriated or made available pursuant to this Act for assistance under part I of the Foreign Assistance Act of 1961 (other than funds for the Economic Support Fund or peacekeeping operations) may be provided to any country named in this section (except the Socialist Republic of Vietnam) in accordance with the requirements of section 116 of the Foreign Assistance Act of 1961.". . .

MR. [CLARENCE D.] LONG OF Maryland: Mr. Chairman, I do make a point of order against the Harkin amendment. . . .

The gentleman's amendment clearly would place substantial additional new duties on officers of the Government. Mr. Chairman, in chapter 26, section 11.1, of "Deschler's Procedures," the following is stated:

> But when an amendment, while curtailing certain uses of funds carried in the bill, explicitly places new duties on officers of the government or implicitly requires them to make investigations, compile evidence, or make judgments and determinations not otherwise required of them by law, then it assumes the character of legislation and is subject to a point of order.

Mr. Chairman, the gentleman's amendment intends that aid should be provided to certain countries if such assistance will directly benefit the needy people in such countries. Several legislative provisions currently exist that presently provide for such determinations, but these provisions do not apply to all the funds appropriated in this bill.

In addition, the gentleman's amendment would require officials to make judgments and determinations that they are not required to make at the present time. We presently have no AID programs or AID missions in any of these countries. In two of the countries we do not have diplomatic relations, Vietnam and Cambodia. In one country we have no U.S. Government representative, and that country is Uganda. The gentleman's amendment would not only allow direct assistance to flow to these countries, which is not now possible, but also would require some U.S. Government official to determine if the assistance is reaching the needy. This would require a U.S. Government official to travel to these countries to make an onsite inspection since there are no AID missions in any of these countries and no U.S. Government representation present in three of the countries. The gentleman's amendment definitely places substantial additional duties on U.S. Government officials.

Also current law prohibits any direct assistance to Vietnam, Laos, Cambodia, Uganda, Mozambique, or Angola. The gentleman's amendment would allow direct assistance to flow to these countries if the assistance would benefit the needy people. This in effect changes the existing law. The amendment is legislative in nature and in violation of clause 2, rule XXI. . . .

MR. HARKIN: Mr. Chairman, by the fact that I have included section 116 of the Foreign Assistance Act of 1961, by that very inclusion those four countries so named and listed are then put in the category of being gross violators of human rights, and because of the inclusion, then, of section 116, which I have laid out in my amendment, there are no new duties imposed in my amendment—only the requirements of existing law. . . .

MR. LONG OF MARYLAND: I would simply say that we do not have missions in these countries, and the duties that would be required, to find out whether needy people would get the money, would require us to send people there. That clearly imposes duties on the Government which are not implied in the current legislation.

THE CHAIRMAN:[1] The Chair is ready to rule.

According to the amendment, the only funds that the amendment refers to are funds provided for in the bill, and the only exception would be to the Socialist Republic of Vietnam; but funds are to be provided in accordance with the requirements of law and the law cited is, on its face, applicable to the countries covered by the amendment; so the Chair does not see that there are any new duties imposed on anyone by the amendment. Therefore, the Chair respectfully overrules the point of order.

Statement of Purpose Should Not Accompany

§ Sec. 66.4 A limitation on the use of funds in a general appropriation bill, or an exception therefrom, may not be accompanied by language stating a motive or purpose in carrying out the limition or exception.

On Aug. 8, 1978,[2] the Committee of the Whole had under consideration the Defense Department appropriation bill (H.R. 13635), when a point of order was sustained against a provision in the bill as indicated below:

The Clerk read as follows:

Sec. 860. None of the funds appropriated by this Act shall be available for the pay of a prevailing rate employee, as defined in paragraph (A) of section 5342(a)(2) of title 5, United States Code, at a rate that is greater than 104 percent of the rate of pay payable to an employee in the second step of the grade of the regular, supervisory, or special wage schedule, in which the prevailing rate employee is serving: *Provided*, That to assure that this limitation does not (1) reduce the rate of pay of a prevailing rate employee, continuously employed after September 30, 1978, as set forth hereafter, below the rate of pay for that employee in effect on September 30, 1978, or (2) prevent such employee from receiving the first 5.5 percent increase in rate of pay as the result of any adjustments in pay pursuant to section 5343 of title 5, United States Code, that become effective on or after October 1, 1978, the pay of a prevailing rate employee who was employed before October 1, 1978, shall not be reduced by this limitation (1) below that to which the employee was entitled based on his or her rate of pay on September 30, 1978, or (2) after a pay adjustment pursuant to section 5343 effective during fiscal year 1979, below 105.5 percent of that to which the employee would be entitled based on his or her rate of pay on September 30, 1978, if the employee—

(A) continues to be employed after October 1, 1978, without a break in service of one work day or more; and

(B) is not demoted or reassigned for personal cause, or at his or her request.

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1. Abraham Kazen, Jr. (Tex.).

2. 124 CONG. REC. 24969, 24970, 95th Cong. 2d Sess.

MR. [RICHARD C.] WHITE [of Texas]: Mr. Chairman, I raise a point of order to section 860, that the provisions of this section constitute legislation in an appropriation bill in violation of rule XXI, clause 2 of the rules and regulations of the House of Representatives.

In support, I cite Deschler's Procedures, page 367, section 1.2, in which it states:

> Language in an appropriation bill changing existing law is legislation and not in order.

And Cannon's Precedents, section 704, which states that the language controlling executive discretion is legislation and is not in order on an appropriation bill.

I believe that section 860 enacted into law can be construed as requiring lower payment of salaries than may be required by law, specifically Public Law 93–952, and thus it changes existing law. . . .

MR. [GEORGE H.] MAHON [of Texas]: Mr. Chairman, the object of the provision is to limit expenditures and retrench programs and expenditures, it is a limitation on an appropriation bill, which is designed to save tremendous sums of money over the long run.

THE CHAIRMAN:[3] The Chair is ready to rule.

The first part of the section seems to be a proper limitation, however the proviso placed on line 3, page 57, certainly is a legislative statement of purpose and not merely an exception from the limitation.

The Chair sustains the point of order against the entire section.

3. Daniel D. Rostenkowski (Ill.).

Additional Duties and Determinations Not Required by Existing Law

§ 66.5 To a proviso in a general appropriation bill denying the use of funds to pay price differentials on contracts made for the purpose of relieving economic dislocations, an amendment exempting from that prohibition contracts determined by the Secretary of the Army pursuant to existing laws and regulations as not to be inappropriate therefor by reason of national security considerations was ruled out as legislation imposing new duties on the Secretary, absent any showing of existing provisions of law requiring such a determination to be made.

On Sept. 16, 1980,[4] during consideration in the Committee of the Whole of the Department of Defense appropriation bill (H.R. 8105), a point of order against an amendment was sustained as follows:

> . . . No funds herein appropriated shall be used for the payment of a price differential on contracts hereafter made for the purpose of relieving economic dislocations: *Provided further*,

4. 126 CONG. REC. 25606, 25607, 96th Cong. 2d Sess.

That none of the funds appropriated in this Act shall be used except that, so far as practicable, all contracts shall be awarded on a formally advertised competitive bid basis to the lowest responsible bidder.

The Clerk read as follows:

> Amendment offered by Mr. [Joseph P.] Addabbo [of New York]: Page 41, line 23, strike out "*Provided further*," and all that follows through "economic dislocations:" on page 42, line 1, and insert in lieu thereof "Provided further, That no funds herein appropriated shall be used for the payment of a price differential on contracts hereafter made for the purpose of relieving economic dislocations other than contracts made by the Defense Logistics Agency and such other contracts of the Department of Defense as may be determined by the Secretary of Defense pursuant to existing law and regulations as not to be inappropriate therefor by reason of national security considerations:". . . .

MR. [JACK] EDWARDS of Alabama: Mr. Chairman, I make a point of order against the amendment as legislation in a general appropriation bill, and therefore in violation of clause 2 of rule XXI.

I respectfully direct the attention of the Chair to Deschler's Procedure, chapter 25, section 11.2 which states:

> It is not in order to make the availability of funds in a general appropriation bill contingent upon a substantive determination by an executive official which he is not otherwise required by law to make.

I also respectfully direct the attention of the Chair to section 843 of the House Manual, which states in part:

> The fact that a limitation on the use of funds may . . . impose certain incidental burdens on executive officials does not destroy the character of the limitation as long as it does not directly amend existing law and is descriptive of functions and findings already required to be undertaken under existing law. . . .

Mr. Chairman, the amendment prohibits the payment of price differentials on contracts except—and I quote:

> As may be determined by the Secretary of Defense pursuant to existing laws and regulations as not to be inappropriate therefor by reason of national security considerations.

The exception makes the availability of funds for payment of price differentials contingent on a substantive determination by the Secretary of Defense which is not now required under the current law. Although the determination is limited "pursuant to existing laws and regulations," there is no existing law at the present time, and if this amendment is enacted, it will constitute the existing law and require this new determination. . . .

THE CHAIRMAN:[5] The Chair is ready to rule.

The amendment would appear to call for a determination by the Secretary of Defense as to appropriateness by reason of national security considerations. Unless the gentleman from New York (Mr. Addabbo) can cite to the Chair those provisions of existing law requiring such determinations with respect to defense contracts, the Chair must conclude that the amendment would impose new duties upon the Secretary and would constitute legislation.

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5. Daniel D. Rostenkowski (Ill.).

Responsibilities Already Required in Broad Terms

§ 66.6 An exception from a limitation on the use of funds in a general appropriation bill, stating that the limitation does not prohibit use of funds for designated federal activities which were already required by law in more general terms, was held in order as not containing new legislation.

In proceedings on June 27, 1979,(6) an amendment denying the use of funds for state plan monitoring visits by the Occupational Safety and Health Administration where the workplace has been inspected by a state agency within six months, but also providing that the limitation would not preclude the federal official from conducting a monitoring visit at the time of the state inspection, to investigate complaints about state procedures, or as part of a special study program, or to investigate a catastrophe, was held not to require new determinations by federal officials, where existing law directed state agencies to inform federal officials of all their activities under state plans.

MRS. [BEVERLY B.] BYRON [of Maryland]: Mr. Chairman, I offer an amendment.

(The portion of the bill to which the amendment relates is as follows:)

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

SALARIES AND EXPENSES

For necessary expenses for the Occupational Safety and Health Administration, $181,520,000: *Provided,* That none of the funds appropriated under this paragraph shall be obligated or expended for the assessment of civil penalties issued for first instance violations of any standard, rule, or regulation promulgated under the Occupational Safety and Health Act of 1970 (other than serious, willful, or repeated violations under section 17 of the Act) resulting from the inspection of any establishment or workplace subject to the Act, unless such establishment or workplace is cited, on the basis of such inspection, for 10 or more violations: . . . *Provided further*, That none of the funds appropriated under this paragraph shall be obligated or expended for the proposal or assessment of any civil penalties for the violation or alleged violation by an employer of 10 or fewer employees of any standard, rule, regulation, or order promulgated under the Occupational Safety and Health Act of 1970 (other than serious, willful or repeated violations and violations which pose imminent danger under section 13 of the Act) if, prior to the inspection which gives rise to the alleged violation, the employer cited has (1) voluntarily requested consultation under a program operated pursuant to section 7(c)(1) or section 18 of the Occupational Safety and Health Act of 1970 or from a private consultative source approved by the Administration and (2) had the consultant examine the condition cited and (3) made or is in the process of making a reasonable good faith effort to eliminate the hazard created

6. 125 CONG. REC. 17033–35, 96th Cong. 1st Sess.

by the condition cited as such, which was identified by the aforementioned consultant, unless changing circumstances or workplace conditions render inapplicable the advice obtained from such consultants.

The Clerk read as follows:

Amendment offered by Mrs. Byron: Page 10, line 20, after the period, insert the following: "None of the funds appropriated under this paragraph may be obligated or expended for any state plan monitoring visit by the Secretary of Labor under section 18 of the Occupational Safety and Health Act of 1970, of any factory, plant, establishment, construction site, or other area, workplace or environment where such a workplace or environment has been inspected by an employee of a State acting pursuant to section 18 of such Act within the 6 months preceding such inspection, provided that this limitation does not prohibit the Secretary of Labor from conducting such monitoring visit at the time and place of an inspection by an employer of a State acting pursuant to section 18 of such Act, or in order to investigate a complaint about state program administration, a discrimination complaint under section 11(c) of such Act, or as part of a special study monitoring program, or to investigate a fatality or catastrophe.". . .

MR. [WILLIAM D.] FORD of Michigan: . . . I make the point of order that this amendment constitutes legislation in an appropriations bill in violation of rule XXI, clause 2, in that it imposes additional duties upon the executive to the extent that OSHA would be required to determine whether or not an employer had been inspected by a third inspector within the previous 6 months. The law does not now require OSHA to do this. This would clearly pose additional duties and goes beyond the simple limitation.

As a matter of fact, Mr. Chairman, if you look at the language of the authorization funded under this section of the appropriations bill the chairman will determine the extent to which the States participate as enforcers of the Federal OSHA regulations. This now would have a Federal official presumably trying to monitor the activities of State inspectors who are not, in fact, OSHA inspectors. This is a very unusual result because we do not now impose that duty in any way upon the OSHA inspectors. . . .

MRS. BYRON: . . . It is my understanding that the State has the opportunity when they are investigating, they are then monitored by the Federal. This would then notify the Federal of where a State inspection was taken care of; therefore, the Federal would be following along after the State inspection. It would, therefore, not be new legislation in an appropriations bill. . . .

THE CHAIRMAN:[7] The Chair has read the statute entitled 29 and would like to propound an inquiry to the gentleman from Michigan, on part of his point of order.

The statute in subparagraph (f) states that the Secretary, meaning the Secretary of Labor—

> shall, on the basis of reports submitted by the State agency and its own inspections, make a continuing evaluation of the matter in which each State having a plan approved under this section is carrying out such plan.

Does that pertain to how frequently the plan must be reviewed?

MR. FORD of Michigan: Mr. Chairman, the amendment attempts to uti-

7. Don Fuqua (Fla.).

lize that language by talking about an attempt not to interfere with the power of the Secretary to conduct monitoring visits, but the fact is that the Secretary is required to determine, in order to determine whether or not they have jurisdiction to conduct a safety inspection, whether a State inspection had been conducted within the previous 6 months. The amendment does not even define what State inspection might be. It is not clear from reading the amendment without further explanation, whether that means an inspection is confined to OSHA or some overlapping State regulation. . . .

THE CHAIRMAN: The Chair is prepared to rule.

It appears that the interpretation that is being given by the gentleman from Michigan in his point of order is a personal interpretation and does not appear to be in the statutes.

The amendment of the gentlewoman states "no funds appropriated under this paragraph," and it appears to be a limitation on the expenditures of funds under certain conditions suggesting evaluations already imposed in broad terms upon Federal officials by existing law, and, therefore, does not provide any additional responsibilities that are not presently contained in existing statutes.

The Chair therefore rules against the point of order.

Exception to Limitation Not Adding Legislation

§ 66.7 An exception from a limitation or from a legislative amendment retrenching expenditures which does not add legislation to a general appropriation bill is in order.

On July 30, 1980,[8] during consideration in the Committee of the Whole of the Department of Agriculture appropriation bill (H.R. 7591), a point of order against an amendment was not sustained, as indicated below:

MR. [JAMIE L.] WHITTEN [of Mississippi]: Mr. Chairman, I offer an amendment to the amendment.

The Clerk read as follows:

> Amendment offered by Mr. Whitten to the amendment offered by Mr. [Herbert E.] Harris [of Virginia]: Strike [out the] period and add: ", except that this limitation shall not apply to emergency or disaster programs of the Farmers Home Administration and the Agricultural Stabilization and Conservation Service and programs for the control of infectious or contagious diseases of humans and animals carried out by the Food and Drug Administration and the Animal and Plant Health Inspection Service.".

MR. HARRIS: Mr. Chairman, I would like to make a point of order on that amendment. . . .

I feel the amendment is clearly legislation on an appropriation bill and does in fact do violence to my amendment. . . .

MR. WHITTEN: . . . Deschler's Procedure, chapter 25, section 9.7 [states]:

> An exception to a valid limitation in a general appropriation bill is in order, providing the exception does not add language legislative in effect.

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8. 126 CONG. REC. 20503, 96th Cong. 2d Sess.

I do not consider that this adds legislative language to the amendment. It is an exception to the limiting provision as offered. I respectfully submit that it is in order and should be considered.

THE CHAIRMAN:[9] The Chair is ready to rule.

An exception to a limitation or a retrenchment which does not add legislation is clearly in order under the precedents, and the point of order is not sustained.

§ 66.8 An exception to a limitation on the use of funds in a general appropriation bill is in order if it does not impose new duties or determinations on the executive branch.

On July 13, 1979,[10] it was held that, to an amendment retrenching expenditures in a general appropriation bill by reducing amounts therein and prohibiting their availability to particular recipients, an amendment lessening the amount of the reduction and also providing an exception from the limitation may be in order as a perfection of the retrenchment if funds contained in the bill remain reduced thereby. The proceedings are discussed in § 4.8, supra.

§ 66.9 To an amendment to a general appropriation bill prohibiting the use of funds therein to enforce any embargo on the export of agricultural commodities, an amendment excepting from that prohibition any subsequently imposed Presidential embargo based solely upon a determination that the export would be detrimental to U.S. foreign policy or national security was held in order as a valid exception from a limitation which did not impose new duties but which merely repeated responsibilities already required by law.

On July 23, 1980,[11] during consideration in the Committee of the Whole of H.R. 7584 (Departments of State, Justice, Commerce, and the Judiciary appropriation bill), the following amendment was held in order:

The Clerk read as follows:

Amendment offered by Mr. [E. Thomas] Coleman [of Missouri] to the amendment offered by Mr. [Mark] Andrews of North Dakota:[12]

9. James C. Corman (Calif.).

10. 125 CONG. REC. 18456, 18457, 96th Cong. 1st Sess.

11. 126 CONG. REC. 19295, 96th Cong. 2d Sess.

12. The Andrews amendment provided: "None of the funds appropriated by this Act may be used to carry out or enforce any restriction on the export of any agricultural commodity." See 126 CONG. REC. 19087, 96th Cong. 2d Sess., July 22, 1980.

After the word "commodity" in the last line insert: "unless on or subsequent to October 1, 1980, the President imposes a restriction on the export of any such commodity solely on the basis that such export would prove detrimental to the foreign policy or national security of the United States". . . .

MR. [SILVIO O.] CONTE [of Massachusetts]: Mr. Chairman, I make a point of order against the amendment in that it exceeds the limitation and imposes additional duties upon the President of the United States. . . .

MR. COLEMAN: . . . Mr. Chairman, the point of order is not well taken because my amendment does not establish any new additional duties. It simply says that if the President of the United States subsequent to October 1, 1980, imposes an embargo then none of these funds shall be used to fund that embargo. It imposes absolutely no new duties. It simply states that if the President on his own takes some action, that none of these funds shall be used to support that action. . . .

THE CHAIRMAN:[13] The Chair is prepared to rule.

The gentleman from Massachusetts (Mr. Conte) makes a point of order against the amendment of the gentleman from Missouri (Mr. Coleman) on the grounds that it imposes an additional duty, and constitutes legislation on an appropriation bill. Ordinarily, such Presidential determination language on an appropriation bill would constitute legislation, but the amendment only repeats verbatim the determination authority contained in the section of existing law (section 4(c) of the Export Administration Act of 1979) which has been called to the Chair's attention.

Therefore, the amendment does not constitute new legislation in any way discernible to the Chair.

Parliamentarian's Note: Ensuing debate on the Coleman amendment by Mr. Thomas S. Foley, of Washington, and Mr. Jonathan B. Bingham, of New York, suggested that section 7 of the Export Administration Act, relating to domestic short supply of agricultural products, imposed a different standard from section 4(c) relied upon by the Chair and that the use of the term "solely" therefore infringed upon the Secretary's discretionary authority under section 7. A reading of subsection 7(g) suggests that the same standard is applied in permitting the President and Secretary of Agriculture to issue export licenses of agricultural commodities not in short supply, but that under subsection 7(a), with regard to agricultural commodities which are in short domestic supply, the President may curtail export of such commodities regardless of whether such policy is in the best security or foreign policy interest of the United States.

Effect of Limitation Where Funds for Agency Are Eliminated From Bill

§ 66.10 A paragraph of a general appropriation bill deny-

13. George E. Brown, Jr. (Calif.).

ing use of funds therein for antitrust actions against units of local government, but providing that the limitation did not apply to private antitrust actions, where the appropriation for the FTC (which had brought such actions) had been stricken on a point of order, was held in order as a proper limitation not directly changing existing law, since the provision was confined to the funds in the bill and affected federal court jurisdiction only insofar as it was a simple denial of the use of funds in the bill.

On May 31, 1984,[14] during consideration in the Committee of the Whole of the Departments of State, Justice, and Commerce appropriation bill (H.R. 5172), a point of order was overruled as indicated below:

The Clerk read as follows:

Sec. 610. None of the funds appropriated or otherwise made available by this Act may be obligated or expended to issue, implement, administer, conduct or enforce any antitrust action against a municipality or other unit of local government, except that this limitation shall not apply to private antitrust actions. . . .

MR. [JOHN EDWARD] PORTER [of Illinois]: Mr. Chairman, I raise a point of order against section 610, which would be lines 23 to 25 on page 56, and lines 1 to 3 on page 57 as being legislation on an appropriations bill under clause 2 of rule XXI.

I would note to the Chair two points. First, the wording of section 610 would apply to all funds under the act. That would include funds for the Federal judiciary and the operations of Federal courts. If, in fact, the language of section 610 were to apply to the Federal courts, it would limit Federal jurisdiction in cases involving antitrust suits against municipalities. If, in fact, it would limit Federal jurisdiction in that way, it seems to me, Mr. Chairman, that what it is is direct legislation both in terms of the basic law and in terms of the laws under which the courts operate.

Second, I would point out to the Chair that if, in fact, it does not apply to the Federal judiciary, under a ruling in 1959 of the Chair, indicated in Deschler's Procedure, chapter 26, section A, paragraph 1, subparagraph 1.5, there the Chair held that where there was a provision that was previously stricken on a point of order that limiting language to that provision was itself legislating.

And previously this afternoon the Chair has stricken on a point of order all authorizing language respecting the FTC, which agency would have jurisdiction over the subject matter.

So, Mr. Chairman, in either case it seems to me that this section 610 is in fact legislation on an appropriations bill. . . .

MR. [MARTIN O.] SABO [of Minnesota]: . . . Section 610 of this bill is simply a limitation on the expenditure

14. 130 CONG. REC.——, 98th Cong. 2d Sess.

of Federal funds. It does not provide for any new power. It is simply a limitation on the expenditure of funds, which clearly is well within the rules of the House. . . .

MR. [HAMILTON] FISH [Jr., of New York]: Mr. Chairman, as we look at section 610, the last clause reads: "except that this limitation shall not apply to private antitrust actions." So the word, "limitation," refers to the entire limitation in section 610 and does not affect the right to bring an action or the right to enforce a judgment.

It is my judgment, therefore, that the language of the bill allows private parties to bring actions under antitrust laws. It also allows the enforcement of outstanding judgments in favor of private parties, and as there is no limitation on the judicial powers, we do not reach the question of courts being affected by this limitation, as was stated in one of the arguments propounded on this point of order.

THE CHAIRMAN:[15] The Chair is prepared to rule.

The gentleman from Illinois (Mr. Porter) makes a point of order against section 610 on the ground that it constitutes legislation on an appropriation bill and would limit the power of the courts.

It is the Chair's opinion that the fact that the powers of the courts might be limited by the restrictions on the funds or that the FTC appropriation has been stricken on a point of order, does not in itself constitute legislation, and that the section is indeed only a limitation on expenditure of funds on the bill and as such is proper in this section.

MR. PORTER: Mr. Chairman, does the Chair's ruling indicate, therefore, that the language in section 610 does not affect Federal court jurisdiction over the type of suits described in that section, not including private suits?

MR. [JOHN D.] DINGELL [of Michigan]: Mr. Chairman, as I recall, the point of order was in two parts. The Chair has ruled on the first part. I await with some interest the ruling of the Chair on the second part.

THE CHAIRMAN: The Chair had felt that he ruled on both parts. The Chair feels that it is not . . . for the Chair to rule on the effect of the negative limitation on the jurisdiction of the courts. That is a matter for the House and the courts to determine. From a parliamentary standpoint, the limitation is a valid limitation and falls within the rules of the House.

Parliamentarian's Note: Even if FTC funds, no longer in the bill, were the only possible moneys affected, the provision would have been an appropriate denial of use of funds in the bill. But the federal courts were also funded by the bill. The authority of the courts to preside over such actions despite the limitation was a legal issue not for the Chair to decide.

§ 67. Subject Matter: Agriculture

Change in Administrative Policy

§ 67.1 While a limitation may not involve a change of exist-

15. George E. Brown, Jr. (Calif.).