SENATE—*Tuesday, September 29, 1992*

The Senate met at 9:15 a.m., and was called to order by the Honorable J. ROBERT KERREY, a Senator from the State of Nebraska.

PRAYER

The Chaplain, the Reverend Richard C. Halverson, D.D., offered the following prayer:

Let us pray:

Have mercy upon me, O God, according to thy lovingkindness, according unto the multitude of thy tender mercies blot out my transgressions. Wash me thoroughly from my iniquity, and cleanse me from my sin.—Psalm 51:1-2.

Our Father, our King, in light of the promise given through Isaiah of forgiveness and cleansing, we turn to You. We acknowledge our need of repentance: In days of prosperity, when "things never looked better," intoxicated with power and pleasure, we allowed greed and lust to run their course. Now we see joblessness, homelessness, poverty, hunger, and hopelessness. Our streets are unsafe because of drugs and crime. We sought liberty without law, choice without consequences, comfort without responsibility. We have forgotten God. We are an angry people, angry with ourselves, but we blame others for our dilemma.

Grant us grace, patient Father in Heaven, to face our deep collective need and turn to You for the renewal so desperately needed in our land. Be merciful, O Lord our God. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore [Mr. BYRD].

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, September 29, 1992.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable J. ROBERT KERREY, a Senator from the State of Nebraska, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mr. KERREY thereupon assumed the chair as Acting President pro tempore.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

Mr. MITCHELL. Am I correct in my understanding that the Journal of the proceedings has been approved to date?

The ACTING PRESIDENT pro tempore. The majority leader is correct.

EXECUTIVE SESSION

TREATY WITH THE UNION OF SOVIET SOCIALIST REPUBLICS ON THE REDUCTION AND LIMITATION OF STRATEGIC OFFENSIVE ARMS (THE START TREATY)—TREATY DOC. NO. 102-20

PROTOCOL TO THE TREATY WITH THE UNION OF SOVIET SOCIALIST REPUBLICS ON THE REDUCTION AND LIMITATION OF STRATEGIC OFFENSIVE ARMS—TREATY DOC. NO. 102-32

The ACTING PRESIDENT pro tempore. The Senate will now go into executive session and resume consideration of Executive Calendar Nos. 45 and 46, which the clerk will report.

The legislative clerk read as follows:

A treaty (Treaty Doc. No. 102-20) with the Union of Soviet Socialist Republics on the Reduction and Limitation of Strategic Offensive Arms (the START Treaty); a protocol (Treaty Doc. No. 102-32) to the Treaty With the Union of Soviet Socialist Republics on the Reduction and Limitation of Strategic Offensive Arms.

The Senate resumed consideration of the treaty and the protocol.

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

Mr. MITCHELL. Mr. President, there will now be approximately 1 hour for further debate on the treaty and protocol equally divided and controlled in the usual form.

At 10:15 a.m., the Senate will vote on whether or not to invoke cloture on the treaty and protocol.

The time will be managed.

Mr. LUGAR. Mr. President, I suggest that in fairness, as the Senator from Rhode Island and I are proponents of the treaty and the Senator from Wyoming is the opponent, that 30 minutes be controlled by the distinguished Senator from Wyoming and 30 minutes by Senator PELL.

Mr. MITCHELL. Mr. President, I think that is fair and appropriate.

I yield the floor.

The ACTING PRESIDENT pro tempore. Who yields time?

The Senator from Rhode Island.

Mr. PELL. Mr. President, I yield myself 1 minute here. We had a good discussion yesterday. Not too many new arguments were raised but we will raise them again.

And in this regard, several Senators have wondered why it is that the START Treaty does not require the dismantling of warheads and the destruction of missiles. I have raised this concern myself. Frankly, I believe that this was simply impossible to achieve in the atmosphere of antagonism and mistrust that characterized the cold war.

With the collapse of the Soviet empire, there has been a dramatic and fortuitous change that has opened the way for the destruction of tactical nuclear warheads. In the future, I believe we will be able to achieve the verifiable destruction of strategic nuclear warheads.

Such steps were simply not achievable in the START Treaty. The administration was opposed to required warhead destruction for several reasons. First, the administration wanted to reuse the W-76—Trident—and the W-87—MX—warheads, rather than destroy them. Second, the administration did not want to have intrusive verification of their Department of Energy warhead dismantlement facilities or warhead storage facilities. Because of the concerns, START does not constrain nondeployed warheads. START constrains the means to deliver these nuclear warheads and the numbers of deployed warheads, but it does not constrain the nondeployed warheads or the warheads from eliminated systems.

There is always a possibility that the other side could have extra warheads on undeclared, nondeployed missiles. These missiles would be most effective if they could be launched from mobile missiles that could be reloaded in a relatively short time. They would be much less effective if they were to be launched from silos which take days to reload, and are generally considered to be much less effective in any kind of extended nuclear conflict.

The United States encouraged the retention of formerly deployed missile systems in order to use them for testing assets, space-launched vehicles, and for the U.S. strategic defense initiative. START contains a number of provisions which limits the usefulness of such surplus missiles such as prohibiting the storage of these systems within 100 kilometers of missile launchers, the notification of the storage locations, the banning of rapid-reload systems, the banning of soft-launch facilities, the destruction of nondeployed mobile missiles beyond the limit of 250—no more than 125 may be rail-mobile missiles—the destruction of nondeployed mobile launchers beyond the limit of 110—no more than 18 rail-mobile launchers—and other provisions. The administration has examined the pos-

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

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sible uses of these retired systems and does not consider that they add significant additional dangers to the U.S. national security.

Virtually all computer models show that the number of additional United States warheads destroyed by any clandestine warheads from a Russian breakout of the treaty would be relatively small. This is so, because the bombers on alert would then be in the air, the submarines at sea would not be affected, and the targeting of more than two warheads on a silo would not be very effective.

The declining marginal utility of additional nuclear warheads is widely accepted by the Joint Chiefs of Staff and other military scholars. Because of this declining marginal utility, it is difficult to quantify the amount of extra warheads which would be a military significant violation of START since the marginal ability of additional Russian warheads to destroy additional United States warheads is relatively small.

A breakout from the treaty by a large excess of mobile missiles has been one of the most important areas addressed by the START verification regime. Because mobile missiles could be reloaded more easily than silos and because the United States cannot readily count deployed mobile missiles, a great deal of effort has been expended in the START negotiating process to develop a very complex verification regime which gains some access to the following aspects of mobile missiles: flight tests for development and reliability, production, movement, deployment, storage, maintenance, and elimination. In addition, special access visits can be requested of undeclared sites. The challenging party can call a special meeting of the JCIC to address suspicions in this area. It is the duty of the challenged party to convince the challenger that the suspicions are unfounded. If this cannot be done, the challenging party can request a special access visit to the suspicious site, but the challenged party can refuse such a request.

Mr. President, despite the many protections built into the START Treaty, I cannot stand before the Senate and tell you that there can be no cheating at all. There probably will be compliance problems. For example, biological weapons work was recently discovered in Russia. With a good effort, we were able to stop that program and gain onsite inspection rights.

We must put the possibility of compliance problems into perspective. As Gen. Colin Powell, Chairman of the Joint Chiefs of Staff, told the Foreign Relations Committee:

> We are not dueling with each other again, my warhead against your warhead. The question is, does the United States' force structure give us enough capability to deliver a devastating blow against any nuclear State that may choose to attack us? If it does, then that is a deterrent to that nuclear State ever contemplating such an action?

Senators and administration experts alike can debate the adequacy of verification measures endlessly. But on the crucial central elements of START, there can be no debate. START will require the destruction of 154 heavy ICBM silos. That we can verify. START will require the destruction of hundreds of other strategic offensive arms. That we can verify. START will require extensive notifications and data. That we can verify. START will require the broadcast of unencrypted telemetry. That we can verify.

It is true that nondeployed mobile ICBM's cannot be verified as well as we would like. The Intelligence Committee and the Foreign Relations Committee both considered this issue in detail and agreed that, on balance, the provisions were acceptable. The Chairman of the Joint Chiefs of Staff explicitly testified that he was unconcerned by any problems associated with nondeployed mobile ICBM's. To forego the benefits of direct, verifiable reductions in ICBM's which threaten the United States today because of concerns over the verifiability of second-order provisions, which are not of concern to military professionals, would be the height of irresponsibility.

There are two aspects to the problems of assessing compliance. First, we must be able to agree that a violation has occurred. Second, we must be able to do something about it. With regard to the first, the START Treaty is hundreds of pages long precisely because our negotiators sought to ensure that our rights and obligations were unambiguous. This should ease the burden of making compliance judgments.

With regard to the fundamental problem of what to do about violations, it is, of course, true that there is no international police court that can compel corrections. Nor would we allow such a system to operate. But we are not without the ability to act. The illegal Krasnoyarsk radar no longer stands. Other violations have been corrected and not repeated. The task is obviously a difficult one. But rejecting arms control is not the answer. If we abolish all arms control treaties, the Russian compliance record will be perfect, but our national security will be lessened, not enhanced.

I now yield any time that he may desire to the ranking Republican Member of the Committee on Foreign Relations.

Mr. LUGAR addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Indiana.

CENTRAL LIMITS AND KILLER AMENDMENTS

Mr. LUGAR. Mr. President, yesterday afternoon the Senate heard a series of indictments of its committees' work on the START Treaty. Chairman PELL and I were asked to respond to a number of questions on everything from the MOU data on throw-weight, perceived transgressions of past arms control agreements, to the exemption of retired SS-25 road-mobile missiles from the limit of 250 nondeployed, mobile ICBM's, and the development of the mythical Fat Boy missile.

But if the committee does understand one thing, it is that the heart of the START Treaty is to be found in the four central limits in article II. They work together to capture real military capability. And it is on that central focus that I wish to center these remarks this morning.

The first basic limit is 1,600 deployed delivery vehicles, with an accompanying sublimit of 154 heavy ICBM's. This is an actual, physical limit that constrains the development of ICBM's and their launchers, SLBM's and their launchers, and heavy bombers.

The second basic limit is 6,000 warheads; and the third limit is 4,900 ballistic missile warheads. There are sublimits on heavy ICBM warheads, and on warheads on mobile ICBM's. Because the treaty uses the term "warhead" as a unit of account, the numbers that count against the 4,900 and 6,000 limit are derived by counting rules, and those counting rules result in an attribution of warheads to ballistic missiles which is very close to reality.

The fourth and final central limit is 3,600 metric tons of ballistic missile throw-weight.

Mr. President, the treaty does not have intermediate levels for throw-weight or for heavy ICBM's, but a separate, legally binding letter obligates the former Soviet Union—and now the four States which have replaced it—to eliminate heavy ICBM launchers at the rate of at least 22 a year until the limit of 154 is reached.

The treaty also has a number of auxiliary limits, of which the most important are a limit of 250 spare mobile ICBM's, and a limit of 110 spare launchers for mobile ICBM's, and a limit of 75 modified bombers.

Mr. President, I have reviewed these four central limits and key sublimits in article 2 of the treaty in light of the critical comments yesterday by the Senator from Wyoming. I highlight these central limits for my colleagues as well because a review of the amendments filed in connection with the treaty—which now include 68 amendments that have been filed—include many whose intent or consequence is a major revision of the basic contract—the basic central limits—between the parties contained in the treaty. In other words, many of these filed amendments would seek to change significantly the rights and obligations of the parties.

Examples of these kinds of amendments include:

Amendments which would require the elimination of all MIRV'd ICBM's

before the START Treaty can come into force, amendments 3262 and 3263;

Amendments which significantly change the settlement of the heavy ICBM issue in the treaty, amendments 3264, 3265, 3266, and 3267;

Amendments which would also require the elimination of ICBM's equipped to carry MIRV's before the START Treaty can enter into force, amendments 3274, 3275, 3278, 3279, and 3280;

An amendment which requires the ratification of the START II Treaty before this underlying START Treaty can enter into force, amendment 3285;

Another amendment which again changes the settlement on heavy ICBM's, amendment 3286.

Mr. President, the Senate needs to be clear on this point:

To attempt to change the START Treaty in this way—that is, to seek to revise the central limits of the treaty contained in article II—would be tantamount to a call for the negotiation of a totally new treaty.

Such a negotiation would, of necessity, involve all of the other four parties, now that the START Treaty is multilateral. At a minimum, this would be time consuming, and at maximum, this would lead to an unraveling of the START Treaty process. Such action would be tantamount to the Senate voting down the START Treaty.

In addition, Mr. President, in any such new negotiation, Russia would not agree to such proposed changes without significant and adverse changes to the obligations applicable to United States forces, and perhaps not even then with such changes.

Thus, to adopt amendments such as many of those on file—and I have illustrated in particular certain ones—would likely destroy the START Treaty and lead us toward many of the negative results that the chairman and I discussed yesterday in connection with a failure of the treaty to come into force—whether it be an increased risk of nuclear proliferation or enhanced United States vulnerability should Russia revert to a regime hostile to American interests.

I appreciate the critical remarks made yesterday concerning the central limits of the treaty contained in article II. But should such recommendations take amendment form and be adopted, the negative consequences I mentioned should be considered likely.

That is why amendments of this nature will be referred to as killer amendments—they seek to change the basic contract between the parties on central limits—and why the Senate should oppose them.

When some of my colleagues complain about a rush to judgment on this treaty or speak of arms control as a relic of the cold war, what they mean is that they want no treaty at all or a brandnew renegotiated one. That is their option. And many of their amendments are offered with these objectives in mind.

The Senate should be clear on these objectives when votes occur on the various amendments filed at the desk.

Mr. President, I would add, in conclusion, that I take this occasion prior to cloture to make this point because, with 86 amendments filed and a limited time available for all Senators, it is well for Senators to consider in advance the structure or the strategy, at least, which is involved in this debate, both precloture and postcloture, should it be invoked.

Mr. President, throughout the debate I will refer to these comments and to these central core issues which, at least in the judgment of many Senators, would cause renegotiation of the treaty or its defeat.

I thank the Chair.

Mr. WALLOP addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Wyoming.

Mr. WALLOP. Mr. President, I yield myself 10 minutes.

The ACTING PRESIDENT pro tempore. The Chair will advise that the Senator has 28 minutes to begin with.

Mr. WALLOP. I understand. I yield myself 10 of those 28. I wish to be advised when that time is up.

Mr. President, I said yesterday and restate again today that the Foreign Relations Committee, the Armed Services Committee, and the Intelligence Committee refused to allow opponents of the treaty, who had requested to be heard, their day in front of the committees.

This is not the way the Senate ought to treat its role, its unique role in modern democracies, over the treaty-making process in America. I was told that these were not credible people. Yet Dr. Sven Kraemer was invited by those who said they were not credible people to be one of their chief witnesses in the INF Treaty.

The same may be said of Dr. Frank Gaffrey and others who asked, and were denied, the opportunity to be heard.

My friend from Indiana referred to the central limits that are contained in this treaty. But the central limits refer only to deployed ICBM's SLBM's, and bombers. And the word "deployed" is an artful evasion of reality.

The Senator knows and the Senate should know that nondeployed systems are not limited. They are not destroyed and they are still very lethal. The term "deployment" is misleading because the nondeployed missiles do not need their deployed launchers to be fired and to threaten the American people.

The amendments that the Senator from Indiana referred to, Mr. President, are those agreed to by Presidents Yeltsin and Bush last June, and promised to be delivered to the Senate by Labor Day by then Secretary of State Baker.

But somehow or another the administration did not get around to beginning their negotiations until last week. I said yesterday and I restate today, this is a stealth treaty, the treaty nobody knows.

There were four of us here on the floor of the Senate yesterday—once five. No one from the Armed Services Committee and no one from the Intelligence Committee was here to answer questions posed by this Senator. No press was in the gallery. Senators were off enjoying a holiday or campaigning or doing other kinds of things—anything but their accountable responsibility in the process for making treaties.

The majority leader by his decision—and within his rights, clearly—has by filing a cloture motion and allowing the debate to proceed on a day when nobody was here including the chairman and ranking members of the responsible committees, gave us an hour today when some Senators may be in town just before this vote to try to make a case that took the Senator from Wyoming in excess of 5 hours to make yesterday.

The Senate is willing and able to call itself responsible. That is fine. But it is not and cannot be judged to have been accountable to this unique role amongst modern democracies.

Forcing us to close our eyes to valid questions and real problems merely to accommodate election year pressures would be the height of irresponsibility. We have the opportunity, but it is to be denied us, to clarify many of the outstanding dilemmas posed by the treaty—but only if the Senate is willing to take time to focus on these issues. And it has declared itself to be unwilling to take time.

Yesterday's debate demonstrated that lack of seriousness. I mentioned that nobody was here. Today we are being asked to end open debate 1 hour after the Senate comes into session and go into the constraints of the rules of cloture.

Mr. President, this is a sham. Senators do not care about the contents of the treaties they give advice and consent to. Let me again quote as I did yesterday from the distinguished Senator from West Virginia's statement on the INF Treaty in 1988. "The important thing is that it be a good agreement, not dictated by calendar deadlines, not dictated by election year politics." Yet that is precisely what the case is right here today.

What yesterday's debate did was to establish beyond a doubt that there are serious legal and substantive problems existing within the treaty. These serious and substantive problems were recognized by the President of the United States and the President of the Russian Republic. And yet we are to be denied the opportunity to even have consideration of amendments to that

event by the simple reason—by saying that these are deal breakers. Oh, and what a deal, Mr. President, what a deal.

We learned yesterday that despite the world "reduction" the START Treaty does not in fact require any weapon to be reduced. This treaty limits only launchers. No nuclear weapons must be destroyed. No ballistic missiles must be destroyed. And the treaty does not limit instruments of war, those things which ultimately can be shot, fired, or directed toward the free world and the American people.

We learned that due to a lack of limits on nondeployed SLBM's and fixed ICBM's and a dubious limit on mobile missiles that START provides a license to build virtually as many of all types as each side chooses to build. We learned the treaty is outdated and obsolete without the so-called START II treaty, which is, Mr. President, one of the very specific concerns raised by the Senate Armed Services Committee which was ignored by the Foreign Relations Committee. They simply collated the reports of the committees, put them into one, put it out here, laid the treaty in front of us and never considered the condition that was suggested by the Armed Services Committee.

So unsatisfactory was it that the Armed Services Committee dedicated over twice as many pages to START II as it did to START I; slightly less than 2 pages was the report of the Senate Armed Services Committee on START I.

We learned that there are serious legal questions regarding the ability and willingness of our treaty partners to enter the START Treaty into force and that there are serious legal ambiguities regarding the Lisbon protocol, without which this treaty has no standing. We learned the Armed Services Committee report recommends conditions to the Resolution of Ratification that the Foreign Relations Committee did not include because of their hurry to get the report out.

Mr. President, we learned that in negotiating the START Treaty the administration by its own admission did not feel bound by the Jackson amendment which formed the basis for the Senate's approval of the SALT I agreement. After all Scoop Jackson did for the national security of this Nation and to ensure equality in arms control, his amendment was dismissed as a mere sense of the Senate.

Well, I am here to say that the Senate once had more sense than it is exhibiting today.

We learned that despite years of attempts to get a ban on mobile ICBM's, that the START Treaty allows the Russians virtually unlimited numbers of mobile ICBM's and this, in effect, allows them a monopoly on such systems and thoroughly undermines key verification provisions. And speaking of verification, we learned the Intelligence Committee raised important concerns about the verifiability of key provisions, yet no member of the Intelligence Committee was present to describe their report's findings and no indication came from the Foreign Relations Committee that they paid them any heed.

We learned that potential violations of the START Treaty are occurring while we speak, and we know that to be the case; that a closed session of the Senate is clearly in order to clarify many serious and sensitive matters, but that under the terms and conditions of cloture having been invoked, that it is clearly impossible for us to receive any benefit from such a closed session.

We learned that the Parliamentarian was unable to answer questions about how this would be treated, this closed session. We learned that the Senate is unprepared to go through with this debate, and yet it is seeking to go ahead anyway.

We cannot get parliamentary rulings, though they were submitted last Friday. We could not get rulings yesterday. I suspect we will get them today and I suspect I know why we could not get them before.

We learned that potential violations of the START Treaty are occurring, as I said, and that these are known by Members, or ought to be known by Members taking care of this.

Regarding the Fat Boy missile, the follow-on to the SS-25, the so-called limits referred to by the Senator from Indiana on mobile missiles actually allow for an increase in the number known to exist. And the follow-on missile will replace the existing missile, and under the terms of nondeployed missiles they would have two of what they now have one of—one vastly improved.

The proponents of the START Treaty have stated the premise that since the cold war is over we do not have to worry about the details of arms control agreements. I share with them a great deal of trust in Boris Yeltsin.

But let me say clearly to the Senate and to the American people that the constraints of a treaty are not on the intentions of leaders but on the capabilities of leaders, and if the constraints in the treaty do not in fact reduce those capabilities then the Senate has the obligation to look clearly at what can be done, should someone come along with different intentions.

Everyone has told us—everyone has told us—that the control that Mr. Yeltsin exercises over his military is tenuous at best. Everyone has warned that, should he fail, that some mysterious Darth Vader is likely to replace him. Everyone has told us that the reason we have to get this treaty in place is to deny those evil forces the opportunity to function when they come to power.

I am here to say, Mr. President, that this treaty provides those dark forces with the ability to function and actually removes from this country and the moderate forces in Russia and the successor States the ability to get to the constraints in START II. We have been promised time after time in the whole arms control process that one thing is absolutely clear, that if we only will do this treaty, a good one will follow it and not to worry about the constraints in here. It goes back to 1972 when Gerard Smith, the negotiator of the ABM Treaty, said that, if we did not get significant reductions in the heavy threatening missiles of the day, we would have to in 5 years consider withdrawal from the treaty. Did we? No. Did they decrease? No; they increased.

It is not intentions that I question here, either of the Foreign Relations Committee or of Mr. Yeltsin or of Mr. Bush. It is the capabilities that can be arrayed against and threaten the American people and our survival. This treaty cannot stand that rigorous test. We are told that we need not worry about cheating and, even if cheating occurs, that it would not be significant. That is from the Chairman of the Joint Chiefs of Staff. This is not the position of a serious power with a sense of its own history. If perpetual peace is upon us, Mr. President, then the treaty is irrelevant. If we need to be prepared for difficult times ahead, then the treaty does not measure up.

Mr. President, let me conclude by saying, in invoking cloture, the Senate will be shirking its constitutional duty to provide advice and consent. no Senator is sufficiently familiar with these terms and the problems in this treaty to accept a time limitation at this point.

I will say, Mr. President, that, if I am wrong—and I am perfectly willing to concede that that is one of the many times in my life that I have been and could be again—I and all of us will praise the Lord and give great thanks for our deliverance. But, Mr. President, if I am right, who will be around to hear us weep?

Mr. President, I reserve the remainder of my time.

Mr. LUGAR. Mr. President, how much time remains on the proponents' side?

The ACTING PRESIDENT pro tempore. Nineteen minutes. The Senator from Wyoming has 14 minutes, 18 seconds. Who yields time?

Mr. PELL. I yield myself 2 minutes.

Mr. President, I think we should look at the whole picture and see where this treaty is in the general scheme of things, the general relationship we have with the countries that make up the former Soviet empire. By ratifying START, in my view, we are not settling for second best. By suggesting that we are does not square with the facts. In fact, when we look back over

these past years since nuclear weapons were brought into the area of discussion, START is the most far-reaching nuclear arms control agreement that we have experienced.

While past efforts like SALT I and SALT II allowed the significant nuclear buildup, START will actually lead to major stabilizing reductions. It may not reduce the fissile material, but what it does do is it reduces the number of vehicles that carry that material, and that is a major step forward, as I think we all know.

Delay at this time would be unwise. We need to get START in place so that we can lock in the reductions it requires as a hedge against the future emergence of unfriendly regimes. We can implement, too, the verification regime and realize the treaty's benefits of openness and transparency. The collapse of communism and breakup of the Soviet Union gave us an opportunity to increase stability while reducing strategic offensive arms well below the START level.

Mr. President, I yield the floor at this time.

Mr. LUGAR. Mr. President, will the distinguished Senator yield to me 2 minutes of time?

Mr. PELL. I yield 2 minutes to the Senator from Indiana.

Mr. LUGAR. Mr. President, we are facing a dramatically different world than the one that emerged from the failed coup last August in the former Soviet Union. Some Members have asked whether there is still a need for ratification of START.

The Foreign Relations Committee posed this question to Secretary Baker and many of our witnesses, and there emerged seven basic reasons why ratification and implementation of the START Treaty remains important.

First, to encourage quick action by Ukraine, Belarus, and Kazakhstan to adhere to the Nuclear Non-Proliferation Treaty as non-nuclear-weapon States parties. The sooner we bring START into force, the sooner these States will be obligated to join the NPT and to begin eliminating nuclear weapons and strategic offensive arms from their territories.

Second, to ensure broad international support for the Nuclear Nonproliferation Treaty, which is due for extension in 1995. The nonnuclear States have traditionally regarded the continued pursuit of arms reductions as important to the success of the NPT. Failure to ratify START could be seen by some of the nonnuclear States as a rejection of nuclear arms control.

Third, to give the United States a window on the former Soviet Union. The START notification and verification provisions will provide unprecedented openness and transparency during a time of turmoil inside the former Soviet Union.

Fourth, to enhance stability in the successor States of the Soviet Union. START resolves major nuclear weapons issues among the four largest and most heavily armed successor States and thus removes these issues as a source of potential tension and conflict.

Fifth, to ensure that forces of the former Soviet Union are reduced when United States forces are reduced. As the United States reduces its forces in recognition of the changed international situation, the Senate has an obligation to ensure that the States replacing the former Soviet Union are obligated to reduce as well. We need the START Treaty to lock in those reductions.

Sixth, to establish a foundation for still deeper cuts. The June summit agreement between Presidents Bush and Yeltsin will make even more dramatic reductions in strategic forces. But that agreement depends on START and assumes START verification provisions will be put in place.

Finally, Mr. President, seventh, to hedge against a failure of democracy in the States of the former Soviet Union. While we are all hopeful, we cannot be certain that democracy will succeed. If new, unfriendly regimes come to power, we want those regimes to be legally obligated to observe START limits and verification provisions.

I yield the floor.

Mr. WALLOP. Mr. President, I yield myself 2 minutes.

The ACTING PRESIDENT pro tempore. The Senator from Wyoming is recognized.

Mr. WALLOP. Mr. President, I admitted yesterday and I will admit again today that the world is changed. This is not about the cold war and this is not attributing to the Russian Republic or the successor Republics the same kind of evil dimensions that were attributable to the Soviet Union. But the Senator from Indiana says one of the conditions is the successor Republics join the NPT. In what I described yesterday as a catch-22, they have conditioned their admission to the NPT, the Non-Proliferation Treaty, on the internationally supervised destruction of these weapons, which the treaty does not call for. The only entity likely to be bound by this treaty, the way it is now, is the Government of the United States.

I will say again, Mr. President, that deployment of the SS-18, the one thing we set about in START I to eliminate, continues on. As we speak, new deployments are going on in Kazakhstan, yet they have to be removed under the terms of the treaty and the signature protocol, but there is no means of assuring that compliance and none is insisted on, and that was dismissed as a gambit yesterday by the members of the Foreign Relations Committee.

They say it provides the foundation for deeper cuts. It does no such thing. In fact, by providing the means by which abnormal imbalance of power in their favor exists, there is no reason to proceed to the further deeper cuts that were envisioned.

Mr. President, had there been a reason, we might well have had Secretary of State Baker bring back, as he promised, START II by September 1. By negotiating this and by agreeing to this START I Treaty, we do not guarantee progress toward START II, but quite the opposite. We, in fact, lay down the predicate that the deal is better the way it is cut today.

The last thing was that democracy exists, and if they will only contain themselves, if they, the Russians and the successor Republics, will only bind themselves to the conditions of START I, a later Darth Vader successor state would be equally bound.

Mr. President, nobody who has seen the history of arms control can possibly do anything but smile when they hear that. This country and our allies have never been willing to challenge violations. The discovery of violations has never been our problem. It is dealing with them that has been our problem. Even when we knew the radar at Krasnoyarsk to be a violation of the treaty we would not declare it so, and the only people who ever declared it a violation were the Russian Republic successors to the state that was in violation.

We will not, Mr. President, find ourselves with an evil-intended nation constrained by legally binding commitments that were done by a democracy in the name of a country that now no longer is democratic. I say again, Mr. President, that the obligation of the Senate is not to look at the intentions of the current leaders. I give them all grace and credit, and I pray daily, as do all Americans, for their success. But should they fail, Mr. President, what the Senate ought to concern itself with is what a successor state with different intentions could do to the American people.

I say to the Senate that we have not so carefully considered this treaty as to be able to say we are comfortable that Americans would be well protected by this even should the weak constraints and the weaseled wording be viewed as somehow or another satisfactory by the Senate in this day.

Mr. President, I retain the remainder of my time.

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. PELL addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Rhode Island.

Mr. PELL. How much time remains on either side?

The ACTING PRESIDENT pro tempore. Fourteen minutes, four seconds. The Senator from Wyoming has 9 minutes 47 seconds.

Mr. PELL. Nine minutes for the opponents, 14 for the proponents?

The ACTING PRESIDENT pro tempore. The Senator is correct.

Mr. PELL. I suggest the absence of a quorum, the time to be equally divided.

The ACTING PRESIDENT pro tempore. Is there objection? Without objection, it is so ordered. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MITCHELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. MITCHELL. Mr. President, I ask if Senator PELL will yield me such time as remains.

Mr. PELL. I yield such time as may be needed to the majority leader.

Mr. MITCHELL. Mr. President, how much time remains?

The ACTING PRESIDENT pro tempore. Ten minutes.

Mr. MITCHELL. Mr. President, I am pleased that the Senate today is considering ratification of the Strategic Arms Reduction Treaty.

START is a benchmark agreement, one that marks the transition between cold war and post-cold-war relations with the former Soviet Union.

START's military significance has been overshadowed by the more far-reaching strategic reduction agreement subsequently concluded by the United States and Russia.

But START remains an important codification of the end of the cold war. It is the first agreement to actually reduce strategic nuclear weapons.

I hope and believe that the overwhelming majority of this body will advise and consent to this treaty. The unanimous endorsements of the Senate Foreign Relations Committee and the Select Committee on Intelligence, and the voice-voted endorsement of the Armed Services Committee are indicative of the broad support this treaty deserves.

Of course, START has a decade-long history.

It is clear now that the slow rate of progress resulted less from technical challenges presented by the treaty than from the overall state of political relations between the United States and the Soviet Union.

For the great improvements in relations that prompted the conclusion of START also led rapidly to a stunning follow-on strategic accord. The even deeper cuts subsequently negotiated in principle in what is known as the June joint understanding, or START II agreement, have eclipsed the significance of the START Treaty itself.

Yet START remains an important achievement in its own right.

Although complex counting rules mean that the actual warhead reductions will not approach the 50-percent goal initially envisioned for START, the reductions will still be significant.

We are now all familiar with the basic terms of the agreement: A 6,000 limit on accountable warheads coupled with a limit of 1,600 strategic nuclear delivery vehicles.

The subceilings on land- and sea-based missile warheads, heavy missile warheads, mobile missile warheads, and overall throw-weight are equally significant.

What is the net effect of all these provisions?

The United States will likely cut over 4,000 strategic warheads from its 1990 arsenal of about 13,000 such weapons. Russia will make even deeper reductions, cutting from the 1990 level of roughly 11,000 warheads to roughly between 6,000 and 7,000 warheads.

Moreover, Russia's heavy intercontinental ballistic missiles will be limited and Russian throw-weight will be significantly reduced.

These are significant achievements, and they represent a great security enhancement for the United States.

Given everything else that has occurred in the former Soviet Union and superpower relations, it is easy to forget how significant the conclusion of this treaty is. It is also valuable for reasons that were not initially foreseen.

When U.S. negotiators began discussing START, they had no idea that it would become the means by which we clarified strategic nuclear questions raised by the breakup of the Soviet Union.

But this is now a critical aspect of the process begun by START and culminating in the Lisbon protocol and the bilateral letters that were signed in May 1992.

In signing these agreements, Byelarus, Kazakhstan, and Ukraine committed themselves to implement START's provisions to join in eliminating weapons and providing access for verification inspectors. In fact, Kazakhstan has already ratified the treaty.

All three States have agreed to eliminate their nuclear arsenals by the end of the 7-year period in which the START provisions must be implemented.

Kazakhstan, Ukraine, and Byelarus also have agreed to join the Nuclear Non-Proliferation Treaty.

These related provisions combine to provide welcome safeguard for American security in the event of chaos or a return to totalitarian rule in those countries, or any other part of the former Soviet Union.

The conditions that the Foreign Relations Committee recommends to the resolution of ratification are extremely important in this regard.

The resolution of ratification reaffirms that these pledges by Ukraine, Byelarus, and Kazakhstan are legally binding. The resolution of ratification further requires the President to monitor the three nations' progress toward fulfilling these commitments and requires the President to consult with the Senate on further action in the event that these commitments are not fulfilled.

So, in addition to shrinking the United States-Russian nuclear balance, the START process has helped to resolve positively the new questions regarding the nuclear capabilities of other States of the former Soviet Union.

The end result of the START Treaty is to make the world more stable. In large part, it achieves this goal by including these new States in the arms control framework and by gaining their commitment to a nonnuclear future.

START also contributes to global security by reshaping those strategic forces that will remain.

By limiting both warheads and delivery vehicles, the treaty helps reduce the incentives to MIRV—to put more than one independently targetable warhead on a missile. Having fewer warheads per delivery vehicle reduces incentives to strike first and makes the strategic balance more stable.

Similarly, START focuses special attention on restraining those weapons most commonly considered destabilizing—MIRV'd and heavy land-based missiles. Controls on mobile land-based missiles is also an important contribution.

Moreover, the counting rules maximize each side's flexibility to deploy air-launched weapons, another boost for stability.

No one would argue that START is a panacea.

No one can or should argue that this agreement, or any single arms control agreement will, by itself, ensure peace.

Even as we move toward ratification of START, we look forward to receiving another more far-reaching strategic arms accord.

But each agreement is a step forward.

Each is a building block in the structure of lasting peace that we hope to create over time.

I am pleased that today we can take another step toward that end by providing our advice and consent to the START Treaty.

Mr. President, I close by commending President Bush and the members of his administration for their successful negotiation of this agreement.

I ask unanimous consent that the full text of a letter to me from Secretary of State Lawrence Eagleburger be printed in the RECORD.

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

DEPARTMENT OF STATE,
Washington, DC.

Hon. GEORGE J. MITCHELL,
Majority Leader,
U.S. Senate.

DEAR SENATOR MITCHELL: As the Senate takes the historic step of beginning its final

consideration of the START Treaty, I wanted to contact you personally to urge you to join with your colleagues in giving your advice and consent to ratification of this vital agreement. The history of the Cold War will not be over until START is ratified and has entered into force. Your actions today will culminate a decade of bi-partisan effort to move us to a safer, more secure, more stable world.

Thirteen months ago, the failed coup in the former Soviet Union signaled the death knell of seventy years of oppression and the beginning of a new era of freedom and democracy for nearly three hundred million people. In the months that followed, new independent states rose from the ashes of communist failure, and a new dawn of freedom and independence broke.

In this dramatically changed world, some have asked whether START is still important. The answer is an unqualified yes. Ratification of START remains crucial for the following reasons:

First, to encourage quick action by Ukraine, Belarus, and Kazakhstan to adhere to the Nuclear Non-Proliferation Treaty (NPT) as non-nuclear-weapon States Parties. The sooner we bring START into force, the sooner these states will be obligated to join the NPT and to begin eliminating nuclear weapons, including strategic offensive arms, from their territories.

Second, to ensure broad international support for the Nuclear Non-Proliferation Treaty. The non-nuclear states have traditionally regarded the continued pursuit of arms reductions as important to the success of the NPT. Failure to ratify START could be seen by some of them as a rejection of nuclear arms control, complicating our efforts to extend the NPT in 1995.

Third, to give us a window on the former Soviet Union. The START verification regime will increase openness and transparency during these times of turbulence.

Fourth, to enhance stability in the former Soviet Union. START resolves major nuclear weapons issues among the four largest and most heavily armed former Soviet Republics, removing these issues as a source of potential tension and conflict.

Fifth, to ensure that forces of the former Soviet Union are reduced when ours are. We are reducing our forces in recognition of the changed international situation. We want to be certain the states replacing the former Soviet Union are obligated to reduce as well. We need START to lock-in those reductions.

Sixth, to establish a foundation for deeper reductions. The June 17 Summit agreement to further reduce strategic forces depends on START and assumes START verification provisions will be in place. while we are moving to codify that agreement, we should not delay START ratification.

Finally, to hedge against a failure of democracy in the former Soviet Union. While we all are hopeful, we cannot be certain that democracy will prevail. If new, unfriendly regimes come to power, we want those regimes to be legally obligated to observe START limits and verification provisions.

Some of your colleagues, while recognizing the ultimate importance of START, have asked, "Why now?" In my view, the answer is clear. We want START now because we want Belarus, Russia, and Ukraine to approve START, as Kazsakhstan has already done; delay by the United States will not encourage fast action on their part. We want to lock Belarus, Kazakhstan and Ukraine into the Non-Proliferation Treaty as non-nuclear states as soon as possible. The U.S. and Russia are now building on the accomplishments of START and taking additional steps toward safety and stability. And it is now that the Senate must act to help bring about this new and safer world.

We stand at a crossroads of history. The collapse of communism, the demise of the Soviet Union, and the end of the cold war offer the prospect of a world in which the nuclear nightmare is only a dim memory. Senate action to codify the end of the era of confrontation, along with the new steps we are taking to enhance stability, will allow our children and grandchildren to grow up free from the fear of a nuclear Armageddon. On behalf of the President and the Administration, I urge you to fulfill our commitment to history and our obligation to posterity by ratifying START.

Sincerely,

LAWRENCE S. EAGLEBURGER,
Acting Secretary.

Mr. MITCHELL. Mr. President, I conclude by reading the last paragraph of Secretary Eagleburger's letter, which is think is both eloquent and relevant to the vote about to occur.

Secretary Eagleburger wrote:

We stand at a crossroads of history. The collapse of communism, the demise of the Soviet Union, and the end of the cold war offer the prospect of a world in which the nuclear nightmare is only a dim memory. Senate action to codify the end of the era of confrontation, along with the new steps we are taking to enhance stability, will allow our children and grandchildren to grow up free from the fear of a nuclear Armageddon. On behalf of the President and the Administration, I urge you to fulfill our commitment to history and our obligation to posterity by ratifying START.

Mr. President, we should heed the words of President Bush and Secretary of State Eagleburger. We should vote today to ratify START.

I thank my colleagues, and I yield the floor.

The PRESIDING OFFICER (Mr. KOHL). All time of the proponents has expired.

Mr. WALLOP. How much time remains for the opponents, Mr. President?

The PRESIDING OFFICER. The Senator from Wyoming has 5 minutes, 40 seconds.

Mr. WALLOP. Mr. President, let me begin by saying that I agree with the majority leader that the START Treaty has a decade-long history. But what is not stated in there is that from within that decade-long history was the receding of the United States on very, very basic principal points which we had sought to achieve all during that debate and negotiations.

The treaty represents many compromises that we accepted because the Gorbachev regime was shaky, and we were heading toward a summit. And the compromises rained down in the last few days. For example, we had always sought a mobilized ICBM ban and onsite inspection of production facilities. We have neither of those in this treaty. In fact, we admit that the only people in the world who will have mobilized ICBM's are the Soviets, and we have had the Senate Intelligence Committee tell us—and anybody with a brain could recognize that even in Iraq, in Desert Storm, in the most perfect conditions in the world, we never were able to locate mobile missiles on the ground.

Mr. President, we have a more cooperative partner, I agree with that. I wonder if since we do, should we not use the opportunity to renegotiate as President's Yeltsin and Bush told us, and as the then Secretary of State, Mr. Baker, told us we could.

During yesterday's debate, we heard and the majority leader spoke to the signature protocols and the bilateral letters. We also heard bilateral letters only have standing when they suit the position taken by the Senate and the administration. When they do not suit it, they do not have standing.

There is a long interrogatory that I inserted in the RECORD yesterday between the Senator from Maryland [Mr. SARBANES], and the Secretary of State, and it is revealing to notice that even the Senator from Maryland did not believe that the Secretary of State had it all right.

It is simply not the truth, Mr. President, to say that this treaty provides a limit on warheads. It is not the truth. The truth is that it provides a limit on warheads on deployed missiles. But there are no limits on nondeployed missiles. This treaty does not call for the destruction of anything but launchers, and launchers are only one of the means, the convenient means of setting in motion the weapons of destruction that threaten America.

We have undercounted the warheads in here, simply by saying, for example, on the SS-18 it now has only three, when the Soviets themselves said earlier that it had seven. The last agreement was for three.

We only verify assembly points, Mr. President, not the points of production. A long and specific intrusion of the intrusive verification that was sought by the United States we abandoned in advance of the summit.

Mr. President, the majority leader read from Acting Secretary Lawrence Eagleburger's eloquent letter that we will now have Americans grow up free from the fear of nuclear weapons.

If they grow up free from the fear of nuclear weapons, Mr. President, under the terms of this treaty, it is only because they believe what they have been told and not because they know what the case is on the ground, because, if they knew, the SS-18, though reduced, is more powerful than the one that replaced it, it does not require destroying of the old SS-18, so, in fact, the fleet could be more than doubled from what it currently is. The follow-on missile to the SS-25, the so-called Fat Boy, is a violation while we speak and are being asked to ratify this treaty—is in exist-

ence a violation of the agreement right today.

Mr. President, furthermore, Soviet military spending next year will be greater than it was this year. I believe that we are on the threshold of a new world and if we are on that threshold this treaty is irrelevant and if we are not on the threshold of a new world this treaty is inadequate.

The way to find out is not to bind ourselves in response to things that might be coming down the road but to work with the new democracies over there in seeing to it that the old reasons for confrontation have vanished.

But an arms control agreement that says just for the nones, you be my enemy and I will be your enemy and we will agree to this, if we were not to do that, Mr. President, if we said just for the nones we will take care of our security as we see the need for it and we will help you and your country grow, then the world of which the Acting Secretary spoke might, in fact, be the case but it is not the truth to say it under this treaty.

Mr. President, I yield back the remainder of my time.

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order the clerk will report the motion to invoke cloture.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on Executive Calendar Order No. 45 (Treaty Doc. No. 102-20), the Treaty with the Union of Soviet Socialist Republics on the Reduction and Limitation of Strategic Offensive Arms (The START Treaty), and Executive Order No. 46 (Treaty Doc. 102-32), a Protocol to the START Treaty:

George Mitchell, Claiborne Pell, Barbara A. Mikulski, Joe Biden, Dale Bumpers, Patrick Leahy, Richard Shelby, Brock Adams, Alan Cranston, Tom Harkin, Bill Bradley, Herb Kohl, Paul Sarbanes, David Pryor, Frank R. Lautenberg, Paul Wellstone.

CALL OF THE ROLL

The PRESIDING OFFICER. By unanimous consent the call of the roll pursuant to rule XXII has been waived.

VOTE

The PRESIDING OFFICER. The question is, Is it the sense of the Senate that debate on Executive Calendar Nos. 45 and 46, the START Treaty and protocol thereto, shall be brought to a close. The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Louisiana [Mr. BREAUX], the Senator from Tennessee [Mr. GORE], and the Senator from Vermont [Mr. LEAHY] are necessarily absent.

I further announce that, if present and voting, the Senator from Vermont [Mr. LEAHY] would vote "yea."

Mr. SIMPSON. I announce that the Senator from Missouri [Mr. BOND], the Senator from Texas [Mr. GRAMM], the Senator from Wisconsin [Mr. KASTEN], and the Senator from Pennsylvania [Mr. SPECTER] are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 87, nays 6, as follows:

[Rollcall Vote No. 246 Ex.]

YEAS—87

Adams	Exon	Metzenbaum
Akaka	Ford	Mikulski
Baucus	Fowler	Mitchell
Bentsen	Garn	Moynihan
Biden	Glenn	Murkowski
Bingaman	Gorton	Nickles
Boren	Graham	Nunn
Bradley	Grassley	Packwood
Brown	Harkin	Pell
Bryan	Hatch	Pressler
Bumpers	Hatfield	Pryor
Burdick, Jocelyn	Heflin	Reid
Burns	Hollings	Riegle
Byrd	Inouye	Robb
Chafee	Jeffords	Rockefeller
Coats	Johnston	Roth
Cochran	Kassebaum	Rudman
Cohen	Kennedy	Sanford
Conrad	Kerrey	Sarbanes
Cranston	Kerry	Sasser
D'Amato	Kohl	Seymour
Danforth	Lautenberg	Shelby
Daschle	Levin	Simon
DeConcini	Lieberman	Simpson
Dixon	Lott	Stevens
Dodd	Lugar	Thurmond
Dole	Mack	Wellstone
Domenici	McCain	Wirth
Durenberger	McConnell	Wofford

NAYS—6

Craig	Smith	Wallop
Helms	Symms	Warner

NOT VOTING—7

Bond	Gramm	Specter
Breaux	Kasten	
Gore	Leahy	

The PRESIDING OFFICER. On this vote the yeas are 87, the nays are 6. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

TREATY WITH THE UNION OF SOVIET SOCIALIST REPUBLICS ON THE REDUCTION AND LIMITATION OF STRATEGIC OFFENSIVE ARMS (THE START TREATY)—TREATY DOC. NO. 102-20

PROTOCOL TO THE TREATY WITH THE UNION OF SOVIET SOCIALIST REPUBLICS ON THE REDUCTION AND LIMITATION OF STRATEGIC OFFENSIVE ARMS—TREATY DOC. NO. 102-32

The Senate continued with the consideration of the treaty and the protocol.

The PRESIDING OFFICER. Who seeks recognition?

Mr. PELL addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Rhode Island.

Mr. PELL. Mr. President, what is before the Senate at this time?

The PRESIDING OFFICER. The Senate is considering the START Treaty and its protocol under cloture.

Mr. PELL. I thank the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Wyoming.

Mr. WALLOP. Mr. President, could I direct an inquiry to the majority leader? Mr. President, I ask we have order in the Senate.

Mr. President, for a variety of reasons, several of which I think are very important—one Jewish Senator has suggested to me that he feels required to be in synagogue, at least through lunch—would the majority leader find it remiss, if I were to lay down an amendment now, to try not to come to a vote until after the weekly luncheons?

Mr. MITCHELL. Mr. President, I would like to see if there is any possibility of an agreement which would permit the Senator to offer whatever amendments he wanted to offer and set out a schedule for debating and voting on those amendments and bringing the matter finally to a conclusion at a time that is agreeable to all.

I wonder, last week I proposed such a schedule to the Senator from Wyoming on which there was no possibility of agreement. I wonder now if that is possible to consider, including the proposal the Senator has just presented?

Mr. WALLOP. Mr. President, I will confirm that I am willing to work with the leader on achieving such a thing. I do not feel capable of arguing it through right here on the floor at this moment in time but will try to come to some understanding of a time schedule for Senators and others. I really was directing this to lunch because I do feel sympathy toward those Jewish Senators who felt constrained to be in their synagogues during this holy day through the luncheon period and that is really the first part of it.

I will be happy to go to a quorum call now and try to talk with some people on our side and see if we can come to some procedure to conclude this. If we can, all for the good; if we cannot, we are prepared to go ahead. Will the majority leader object to my suggesting the absence of a quorum?

Mr. MITCHELL. Not at all, Mr. President. Is my understanding correct that time will be running against the 30 hours during a quorum call?

The PRESIDING OFFICER. That is correct.

Mr. WALLOP. Mr. President, I have a parliamentary inquiry.

Does the rule of the Senate that requires the treaty to lay over a day before voting pertain in cloture?

The PRESIDING OFFICER. There is no precedent directly on that point.

Mr. WALLOP. Mr. President, I will say that I think the Senator from Wyoming now has the record for inquiries to the Chair on parliamentary rulings that have no precedent and no basis for decision. We will try to work on that as well.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MITCHELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER OF PROCEDURE

Mr. MITCHELL. Mr. President, I have been advised through staff that Senator WALLOP has requested that the Senate not now proceed to consideration of the treaty and possible amendments thereto but rather either recess or go into morning business with the understanding that the time would count against the 30 hours under the cloture rule.

While that is not my preference, that is, I would prefer that we immediately begin the debate and discussion and proceed to consideration of the treaty and amendments, I understand and am prepared to accommodate the request.

MORNING BUSINESS

Mr. MITCHELL. Therefore, I now ask unanimous consent that there be a period for morning business not to extend beyond 12:30 p.m. with the time to count against the 30 hours under the cloture rule as if in legislative session.

The PRESIDING OFFICER. Is there objection to the request of the majority leader?

Mr. LUGAR. Mr. President, reserving the right to object, and I will not object, I pose an inquiry to the distinguished majority leader. When the Senate recesses for the luncheons of the parties the time against the 30-hour time limit continues to run during those luncheons. Is that the correct understanding?

Mr. MITCHELL. That is correct, pursuant to an order entered yesterday.

Mr. LUGAR. I thank the leader.

The PRESIDING OFFICER. Is there objection to the request of the majority leader?

Without objection, it is so ordered.

Mr. MITCHELL. Accordingly, Mr. President, there will now be a period for morning business to extend not beyond 12:30 p.m. with the time between now and then to run against the 30 hours under the cloture rule from 12:30 p.m., or if the morning business period terminates prior to then, from that time until 2:15 p.m. there will be a recess for purposes of the respective party conferences and that time will run against the 30 hours as well.

I now suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. WIRTH). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. RIEGLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. RIEGLE. Mr. President, I asked unanimous consent to proceed for 5 minutes as if in morning business.

The PRESIDING OFFICER. The Senate is in morning business.

Mr. RIEGLE. Very good.

CONSUMER CONFIDENCE IN ECONOMY FALLS AGAIN

Mr. RIEGLE. Mr. President, I want to share with my colleagues an item that has just come across the AP Wire Service and is in the current news this morning.

The headline on the AP story is: "Consumer Confidence in Economy Falls Again." And it reads as follows—I am going to read most of the AP release verbatim:

NEW YORK.—Consumer confidence in the economy fell in September for the third straight month, said a widely watched survey released today.

The Conference Board, a private business research group, said Americans were more pessimistic about the future of the economy now than before each of the five previous presidential elections.

The group's consumer confidence index fell to 56.4 this month from 59.0 in August. The index registered 72.6 in June when it began falling. In September 1991, the index measured 72.9.

"The nation's sluggish economy and weak job market are continuing to dampen consumer spirits," said Fabian Linden, executive director of the Conference Board's consumer research group.

The survey is conducted by National Family Opinion Inc. of Greenwich, Conn., which questions 5,000 households nationwide monthly on subjects ranging from local economic conditions to buying plans for homes and appliances.

The index is monitored on Wall Street and in Washington as an economic barometer because consumer spending is critical to the economy's health.

Jumping down it says here—and I am continuing to quote:

Nearly 46 percent of the survey's participants said that current business conditions are bad, while only 11 percent say they are good. Forty-six percent of the respondents said jobs are difficult to get, while 6 percent said jobs were "plentiful."

I do not know who that 6 percent is, I might say parenthetically.

The figures were similar to the previous month.

But consumers are less optimistic about the future than in August, the survey showed. More people fear business conditions will worsen in the next six months and there is greater concern about job availability, the Conference Board said.

And that is the end of the item on the ticker tape.

Now what does this say to us, with that index dropping that sharply? In just one month, it has fallen from a rating of 59 down to 56. That is a very sharp drop in this index. And, of course, it shows it is going the wrong way; the consumer confidence is dropping.

Why is that happening? It is happening because we do not have an economic strategy in place that is really helping the American economy.

Unfortunately, our Government, for the last few years, has had an economic policy for every country in the world except our own.

So the Bush administration has had an economic plan for Kuwait, an economic plan for Communist China, an economic plan for the old Soviet Union, an economic plan for Mexico—the so-called fast-track free trade agreement, which is a jobs program for Mexico—but really nothing to deal effectively with the economic problems of this country.

And that is why this recession continues to go on and on and on, and why, as we learn right now from this item out of this morning's news off the Associated Press wire service, that consumer confidence has dropped again.

That will hurt the economy because as consumers become more pessimistic about the future, as this data indicates, they are going to spend even less money. They are going to draw back. And that will help take the economy down even further.

Why are they doing that? They are doing that because there is a tremendous amount of unemployment in the country. It is very difficult to find a job today, no matter what your skill level or training or preparation. For example, in California there have been a lot of defense industry cutbacks, a lot of people have lost their jobs who have advanced degrees, have great technical expertise. We have people now with Ph.D.'s in all kinds of fields who cannot find work.

We also find other workers who have spent maybe 10 or 20 years working in a skilled trade in the manufacturing industry who have lost their jobs. They are not finding replacement work.

Just the other day there was an announcement that the last U.S. typewriter factory in upstate New York, a Smith-Corona plant, was going to close. They are the victim of trade cheating by Japan about which nothing has been done. And they now feel they have to close that plant, this company does, and move their production down to Mexico to take advantage of the low wage rates in Mexico just in order to enable the company to survive.

In fact we had the CEO of that company in the other day for a hearing and

he is very angry about the fact that he has to close an American plant and go down to Mexico to take advantage of low-cost labor just to be able to salvage his company. He has been victimized by trade cheating by Japanese companies who have been flooding the market with below-cost products in the United States and compelling that kind of change in that company.

The absence of a trade policy has hurt us in other areas. We have now had a cumulative trade deficit with the rest of the world in merchandise trade since 1980 of nearly $1.2 trillion; a half a trillion dollars by the end of this year will be with one country, namely Japan. They will have a trade surplus with us again this year of about $45 billion. So they are sucking the jobs and the economic strength out of America and taking it over to Japan. That makes them stronger. It makes us weaker.

It is ironic that just the other day the Japanese indicated that they want to stimulate their economy even more. So they have just announced a big investment program in infrastructure. They are going to invest—from memory I think the figure is $80 billion over a period of time—to strengthen their infrastructure.

Their infrastructure is already very modern, but they are going to make it even more modern by investing another $80 billion. That is something we need to do in America but we are not doing it right now. And in fact Japan is taking money that they have gotten from us with this trade surplus to pay for their infrastructure investment.

So here they are, about to improve their infrastructure with our money. And we do not have enough money left here to improve our own infrastructure. It is an incredible turn of events. And it is what happens when you have an administration in power that does not have an economic strategy for America. It does not have a trade strategy that insists on fair trading rules; it does not have an economic growth strategy; it does not have an infrastructure strategy. Now we have all of this unemployment in the country, and the unemployment is getting worse.

We are going to get the new unemployment figures. They will be out this Friday. My expectation is we will probably see an increase, again, in the unemployment rate, meaning more people will be out of work and even fewer will have jobs out across the country. And that is what is actually happening where people live. That is why they are reflecting this lower level of confidence in the economic future, because they see what is happening where they live and where they work. They see what is happening to their families and in the neighborhoods where they live, in the communities in which they live. And they know we are in serious economic trouble.

That is why we need to make a change in economic direction. We have to develop a new economic growth strategy that can create jobs in America and get people back to work. The Washington Post today and over the last 2 days has been running the first parts of a five-part series on the Federal budget deficit. It is a very important series and I commend them for doing it. The problem now is that the economy is so weak and unemployment is so high, that the faltering economy is increasing the size of the Federal deficit. In fact, we cannot reduce the deficit meaningfully until we get this economy going faster, and get more people back to work. So we have to have an economic recovery strategy that can kick in and start to create jobs in America.

How many jobs do we need? If you use an estimate of the amount of jobs created in the last several recoveries through other administrations, Democrat and Republican, you can see from the growth rates achieved after those recessions, in applying that in our situation, that over the next 4 years we are going to have to create about 12 million jobs in the American economy. Maybe the figure is higher than that but I think that is a conservative estimate; 12 million new jobs are needed.

Yet when we look around we are seeing jobs disappearing, jobs leaving the country; jobs going to Mexico, jobs going to Thailand, jobs going to Communist China. We see very little jobs creation in America.

Not only are unemployed engineers, unemployed Ph.D's in computer science, unemployed skilled-trades people not finding work—young people who have come through college at great sacrifice by their families and themselves to earn an education are coming out of college unable to find work. They cannot find a job. They might look for 6 months, 12 months, a year, 2 years. A lot of those college graduates are having to go back and live with their parents because they cannot find a job in the job market even though they have prepared themselves for that kind of work. In many cases they have come out with outstanding academic performance and good, solid résumés, and yet there are no jobs to be had. That is the problem. We are going to have to create in our economy, principally in the private sector of our economy, enormous job growth. And that means a new economic strategy. I think that means a new President is needed. Because the President that we have had has not seen this need, has not responded to it, and I do not think will respond to it, quite frankly.

I think their view is to sort of let nature take its course and in the end somehow it will all work out. That is a failed strategy and that is what this consumer confidence index information today tells us.

Our colleague from South Carolina, Senator HOLLINGS, is quoted in the Wall Street Journal today, I think very importantly on this very subject, because I think he understands the economy and the problems in the economy as well as anyone in the Congress. He is quoted today in the Wall Street Journal to the following effect. He is talking about how the American Government has had a plan to help every other country but no plan to really pay attention and deal with the economic problems building up in America. This is Senator HOLLINGS today quoted as saying:

> We got Americans in the Corps of Engineers rebuilding the emir's palace in Kuwait. * * * Come on, they've got an American plan to put up—on fast-track—whatever jobs are left to go down to Mexico. Why * * * can't we get an American plan for America?

That is Senator HOLLINGS talking and he is exactly right. Here we are over in Kuwait trying to help them with their economic problems, rebuilding the palace over there. We are all around the world. We have programs everywhere. Do you see a program here in America? I would like to see a program to help this country. We need jobs in Michigan. I have over 400,000 people in Michigan right now that we know by name who are out of work and need jobs now to feed their families, to provide for themselves. And there is no work to be had.

The thing that bothers me is that I think this administration which has been in charge of economic policy is detached from the realities of what is happening out there at the grassroots, where people live. There is a detachment. You have had an elitist administration that is almost as if it is up on a different planet.

I think, unfortunately, that has been due to the fact that so many people in the area of economic policy development around the President live in such favorable economic circumstances themselves, are so well off—many with inherited family fortunes, and they have trust fund income rolling in every month—they do not feel the economic pinch. When you talk about the economic problems, they do not really know what you are talking about because it is not happening to them. They do not see it. It is not happening to their friends. Frankly I do not think it is happening to their children. When they go out into the job market, I suspect that because of the friendships and other relationships, that those sons and daughters of those policymakers are finding jobs. They are part of the 6 percent here who say that they do not see a problem in the job market, because they have more access to opportunity than everybody else out there looking for work.

And so I think as a result of that, the administration is disconnected from the realities of what is actually hap-

pening out in the economy and what is really happening in people's lives. That is why there is a political revolt underway in the country right now, and it is over this economic sickness, this underperformance of our economy, and the lack of an economic plan to make America stronger and to make sure that we have enough jobs to go around—enough good jobs to go around. I am not talking about jobs flipping hamburgers, and I do not demean that work, but we have to have a lot of jobs that pay middle-class incomes and have health care protection and pension benefits associated with them. That is what built the middle class of this country over the long history of our country.

So when we talk about making sure there are more jobs, we have to make sure they are jobs that are high skill, high wage that can support a family and provide, as I say, health care protection and pension program that can provide income after a person retires at the end of a long work career.

So these are basic things. What is so ironic, if you look at other countries, is that Japan has a plan like that. It is working very effectively. Germany has a plan like that. It is working very effectively. The European countries have a plan like that. It is working quite effectively. The only big industrial nation remaining that does not have a competent, sensible, economic plan for itself is the United States.

We have been relying on this trickle-down theory with the tax cuts where you send all the money up to the top of the income scale and hope that somehow or another some of it will trickle down and create jobs along the way and keep the economy going.

That strategy is a failure. It has not worked. That is why, as I say, this confidence number has just dropped again in the latest month. Trickle down does not work. You have to do it the other way around. You have to invest in the core elements of your economy. You have to invest in your people, your job base, your technology. You have to invest in the things which create economic growth and create jobs. We have not done that.

We took this wrong path with supply-side economics and trickle-down economics, and it has proven to be a dead end street. Now we are in deep trouble. We have huge structural Federal budget deficits, we have huge structural trade deficits, and we have huge structural investment deficits where we are not investing in our businesses, in job creation, our infrastructure, our educational system, and in our people.

Even in the health care area, where we spend a fortune on health care, we have some 40 million people in America today without a penny of health care coverage. I have been coming to the floor each week to give a case example of a family or a person in my home State of Michigan who is caught in this health care crisis. I will be doing that again this week.

But something even as basic as health care protection is missing. In my home State of Michigan, we have 1 million people this very day without a penny of health care protection and about 400,000 of them are children. That is just not right. Other advanced countries are not operating that way. They have universal health insurance plans of one kind or another where they protect the health of their people.

Why? Because, first of all, it is the humane and decent thing to do. But, second, it is good economics. Your people are your most valuable asset, and you want your people well and healthy so they can work, so they can produce, so they can support themselves, so they contribute to the country.

If you have somebody you can keep from getting sick, that is a good investment, to keep that person from becoming ill and unable to function properly. And the same thing when someone gets sick, to go ahead and move in with the medical resources needed to help that person overcome the health problem, to get well, so they can get back in action and provide for themselves and support the country.

It is so basic. Every other country has figured it out. The only place so far that has not figured it out and done it in a comprehensive way is our country. That is another reason why we need a new President. We need a President who is for a comprehensive national health insurance plan.

I am supporting Governor Clinton because he is in favor of that. He favors a plan that is almost precisely the same as the plan I have developed with Senator MITCHELL, Senator KENNEDY, and Senator ROCKEFELLER, what we call HealthAmerica, which would control health care costs and provide coverage across the country so everyone would have a chance to have health insurance protection. It is something we need. It is very fundamental.

But we have to engineer for ourselves a new economic growth plan for America. We do not have a minute to lose. If Governor Clinton becomes President Clinton, the first order of business for him is going to be to develop an economic surge plan that can create more real jobs in the private sector of our economy.

I think there also has to be an infrastructure investment component, and that will involve some public investments with much of the work done by private sector contractors. But the bulk of the 12 million or so jobs that are going to have to be created over the next 12 years are going to have to come out of the private sector of our economy.

I hope we will immediately initiate a Team America concept where business and Government and labor sit down together and think and work in a unified way, because if we are going to match the strides and the gains being made by other countries around the world, then we must stop fighting among ourselves and distracting ourselves and diverting our energies on issues that are far less important. We have to get the economic engine of America rebuilt and functioning at a very high level of efficiency.

We need more jobs in this country. We have had incomes falling over the last 3 years. We have had unemployment rising. We have to reverse those trends. And we can do it. We have the capacity to do it. But we are going to have to concentrate on how we craft a new economic growth strategy for America.

There will be several components for that plan. I think an investment in infrastructure is one component that has been talked about. I also think we are going to have to put into our tax policy an explicit economic growth strategy which can stimulate job creation in those areas of our economy where we really want to be strong in the future. And that is everything from the incentives needed to help small business flourish along the lines of the things Senator BUMPERS has talked about, right on up the line to what we do with major core strategic elements of our national economy, our industrial base, our high-technology industry areas, to make sure they have the capital they need, they have the technological advancement they need, that they are moving, and that they are moving as fast or faster than any other country and creating jobs in the process.

I also think we are going to need to have an aggressive trade strategy. We are not going to be able to tolerate the trade cheating by Japan. Japan through the end of this year, since 1980, will have taken over $500 billion out of the United States with their cumulative trade surplus—much of it due to trade cheating; they keep their home market largely closed to our goods; they flood their surplus production into the United States, much of it below cost. They set up a ring of Japanese companies in America, and then they use what is called a keiretsu arrangement, to trade with one another to maintain a kind of national monopoly within our country and to choke off the American firms in those fields in America. We have seen that, particularly in the auto parts industry, and also in the auto plants they have established in this country.

That has to be confronted, and it has to be confronted aggressively. Unfortunately, President Bush went over to Japan a few months ago to talk about this problem, about this huge trade deficit that is hurting us and helping Japan, he went over there to ask them to do some things to reduce this trade deficit, and do you know what has hap-

pened since? The trade deficit is worse. Since that trip the President made, which received a lot of attention because he was stricken with an illness when he was there and put some additional attention on that trip—he was there, so he said, to get the Japanese to start to play fair in the trade area and bring down the trade deficit. Lo and behold, several months later the trade deficit is worse and it has gone higher. It has gone higher since the trip.

It would probably have been better if he had not made the trip, because the problems have gotten worse since that time. That is another reason why we need a new President, who is willing to insist on fair trading rules and not just buy this notion that anything goes, even if other countries are using a double standard in a way that is helping them and hurting us.

So we are going to need a much more aggressive trade strategy. Part of it, by the way, in my view, is also going to have to deal with this fast-track proposal to go into a common market with Mexico. Mexico is a Third World economy. Their wages are in the area of $1 an hour down there with very few workplace protections and environmental standards.

In the auto industry, we have seen the big three auto companies in America locate over 70 plants in Mexico. It is obvious that if a free-trade agreement goes into place, many more plants will close in America and move to Mexico to take advantage of the low wages down there. That becomes a jobs program for Mexico. It is a jobs program for Mexico.

We need a jobs program for America. We cannot afford to ship anymore jobs out of the United States to Mexico, to Thailand, to Kuwait, to Communist China, to Japan, or any other place. In fact, it is time we brought some of those jobs back to America, because our people need them. Our people need the work. They are capable of doing the work if they are in a system where the trading rules are fair and where the trading rules are enforced. But we often find that the trading rules are not enforced.

We had a case just the other day about an agreement where cars built in Canada have to have a certain percentage of content that actually is Canadian or United States content. Lo and behold, we found out that one foreign company—in this case Honda—was cheating. They were saying that the content level was higher than it really was. And so our Customs officials did an investigation, and they found that Honda was cheating on this domestic content requirement. So our Customs officials made that public, and moved against that violation of our trade laws, to put a stop to it and to require them to have a higher level of domestic content, as we call it, which, of course, means more jobs here in this country and in our home market.

Lo and behold, Honda then went out and hired one of these for-hire people here in Washington that charge the big fees that used to work in the Treasury Department. And that person used their access to the administration's Treasury Department to come in and complain about this and actually get the Treasury Department to call over to the Customs Service that had caught this trade violation, this cheating by Honda. And the Treasury Department told the Customs Service to send Honda a letter of apology for the fact that we caught them cheating. I mean, that is how ridiculous this has become. It is an absolute travesty.

So we do not have an effective trade policy today, and we are being killed in the trade area, and that is where a lot of jobs are disappearing. If this United States-Mexico Free-Trade Agreement goes into place, we are going to see hundreds of thousands of jobs going south of the border.

It is so interesting that a lot of the editorial opinion that I read in various newspapers is in favor of the United States-Mexico Free-Trade Agreement. I have talked with some of the editorial writers about it, and they have this very lofty view that we ought to have a free-trade agreement with Mexico. I can tell you as I stand here, because I have dealt with newspapers and editorial board people on other issues where their own self interest was at stake, where their attitude is completely different.

I know as I stand here that if all of the editorial writers in America were facing a job threat by editorial writers in Mexico, who could write the editorials for the papers here for 50 cents an hour or 75 cents an hour, and wipe out the jobs of the editorial writers in America, the editorial writers of America would be on the very next airplane to Washington. They would be here ripping the doors off of this Chamber and ripping the doors off of all of our offices, because they would not want to lose their jobs. They would be very aggressive in defending their jobs.

But, right now, it is an abstraction because they are not giving away their jobs. They are giving away the jobs of somebody else that lives in their town. Eventually, that is a self-defeating strategy, because in the end, as our economy gets sicker and sicker, even the newspapers get into financial trouble; and there are going to be fewer editorial writers in this country, if we find ourselves with a more and more depleted national economy. So later on down the line, many of them will in fact lose their jobs, although they do not see that today, because they do not face that prospect in the immediate sense. It is unfortunate that they are so shortsighted and, in a sense, I think narrowly self-interested on this issue.

We are talking about America's economic future, and we are talking about being able to have enough jobs at the high-skill, high-wage level to employ our people and meet all of our national responsibilities, those in the public sector and those in the private sector, even in the area of meeting the social security payments of the future.

Right now, our Government, while we are taking in all of the Social Security contributions from today's work force and we are supposed to be saving that money and investing it at a return so that that money, plus the earnings, will be available in the future to pay future claims on Social Security, that is not what we are doing with the money. The money over at the Social Security system right now is being borrowed by the Government and spent willy-nilly on the day-in and day-out activities of the Government today in order to make the Federal budget deficit look smaller.

We are replacing the money at the Social Security Administration with a bunch of IOU's that we are putting in the cash drawer over at the Social Security Administration. So instead of saving the money and investing it in earning assets and productive assets over a period of time, we are spending the money. The only way of being able to repay that money in the future is to have a big work force in America that is earning high wages at high-skilled jobs that can face off effectively in this global economy with the other nations of the world. But all of the data we can see shows just the reverse is happening.

We are losing jobs, high-skilled jobs; we are losing out to other countries that have more effective strategies than we do. So, in the future, if we stay on this track, we are not going to have enough of the good jobs and enough of the income base and people paying into Social Security to be able to turn the money around and pay the benefits out of Social Security to the retirees who, at that future time, are going to need that income that they have been depending upon, that they contributed to help established. The income will not be there in sufficient amounts, because we are not going to have the job base of sufficient size and strength and value, in terms of the work being done, to actually generate the Social Security tax revenues and income to finance that system.

It is a huge problem. It is a huge problem, and nobody wants to talk about it, because if you talk about it, and you really wake people up to the dimension of the problem, then we are going to have to do something about it. And the people today in charge of the executive branch of Government do not want to do anything about the economy, because they think the strategy that they are following is working.

They think if you stay with trickle down economics long enough, it will

eventually work. It will eventually work all right. It will work us right into a depression. That is where it will take us, if we maintain this nonsense any longer, and that is what this conference board survey data tells us. The American people have figured it out. They know we are on the wrong track. And they know we have to get off this track while we still have the time and the strength to do it.

So we need a new economic growth strategy. It is going to be a very ambitious and aggressive strategy.

If Bill Clinton becomes President Clinton, I hope he will call in the major business leaders of our country, the major labor leaders of our country, the other people who are some of the experts that we can call on for advice in economic policy and craft a Team America plan, an economic strategy that can give us the prospect of having these 12 million or so additional jobs created out over the next 4-year period of time and get us out of this quagmire and get us going again so people can have some faith and confidence in their economic future.

Our young people and people of all ages need to understand that this country is paying attention to their prospects and to their needs and that we are making sure that we are nourishing the job growth and job development base in America, that we are going to see to it that there are enough good jobs to go around so that people who are trained and out there and trying to find work will be able to find work.

There is nothing worse that I know of today in the kind of discussion we are having than to be a man or a woman needing to work, needing to have income to support yourself and to support your family and to find that no one wants you or no one will employ you and that there is no job to be had. And, after months of unemployment that so many millions of people have gone through, with the exhaustion of unemployment benefits if you are entitled to those and your children have needs that have to be met and you have to put food on the table for your family, and you do not have the income to do it. People become desperate and people are increasingly desperate in those situations across the country.

I saw one of the most extreme examples the other night on national television. One of the networks was interviewing two young men who are veterans of the Desert Storm military operation just over 1 year ago, and both of these young men wore the uniform of America, went over to that war effort, put their lives on the line to carry out the mission of their country, did it with great distinction, came back, received the parades at the time that were deserved. But now months later, these two young men are unemployed, homeless, living in cardboard boxes here in our Nation's Capital.

What are we saying to them and to others like them? Yes, you meant something to us a year or a year and a half ago when we wanted you to put on the uniform of this country and go over into a war effort and put your life on the line, but now a few months later you do not matter anymore. You do not count anymore, and we are just going to forget about you and you can just make do the best you can.

Is that what we want to say to our people? Is that what America in 1992 is really all about?

These two veterans were very bitter when they were interviewed on that TV show, and they have a right to be bitter and I am bitter about it. And that is not an isolated example.

In fact, a very substantial part of the huge group of unemployed people in this country today and the homeless people are veterans—are veterans—veterans of various wars. They gave what they were asked to give to the country and now the country, in effect, has turned its back on them.

That is not right. I mean, that is just one of the things that is just greviously wrong with this country today and where our whole value system somehow got turned upside down during, I think, the 1980's.

Trickle-down economics is sort of a classic illustration of it. It is a failed strategy, it is a selfish strategy, and it is hurting America every single day.

For those two veterans, that I just cited, and many of the people who have been seen on national television when they were interviewed, there is nothing trickling down to them, nothing trickling down to them. They are forgotten and they are just out there having to fend for themselves the best they can. We can change that.

And that is why we have a government in this country, not to be passive and disinterested, incompetent, and uncaring. We have a government to deal with these kinds of challenges that the natural order of things does not take care of and, if the private sector is not functioning in a way to create enough jobs to provide for our people, then the Government has to come and work in partnership with the private sector to see that there are enough jobs to go around.

If the Japanese Government thinks it is important for their people to be employed, as it is, why shouldn't our Government be just as smart and just as committed to our people? It should be. It should be. It is not today. It has not been the last 4 years. We can do something about this on November 3.

That is the only way these confidence numbers are going to start to change. We had here a drop just in one month, according to Conference Board data, from a rating of 59, which is a very low rating to start with, in 1 month that dropped down to 56.4 in terms of consumer confidence looking at things today and looking ahead. We are going the wrong way. We are on the wrong economic track.

We can do better. We have to get off that track, but we are going to need new leadership to do it. We have to take a fresh look at these problems and we cannot be trapped by the failed policies and hubris of the crowd that has produced this problem. They have to be removed, some new people have to be brought in, and we have to think our way through and craft an aggressive new economic growth strategy for America. That is what the country must have. We are capable of doing it. It is the most important thing facing our Nation today, and it is time we get on with it.

Mr. President, I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. KERRY). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. RIEGLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. RIEGLE. Mr. President, shortly, there is need for a parliamentary step here, and I am prepared to be involved in that.

FAMILY VALUES

Mr. RIEGLE. Mr. President, I want to add one other thought I had while we were waiting here on a quorum call and the time is available to us. In the course of the remarks I made a moment ago, I want to just add this thought.

There has been a lot of talk in the last few months about family values. And there was a lot of political talk about family values, particularly at the national convention of the other party.

I must say, when I look around my State and at all the things I see in this country, family values sort of start with being able to have a job and being able to support yourself and support your family. It means being able to feed your children. It means being able to afford decent housing, hopefully in a safe neighborhood. It means having access to health care and being able to afford health care.

I shared with the Senate just a few days ago the case of a family up in northern Michigan that is about to lose their health care because they cannot afford to continue it because it is so expensive and they do not have the income.

And family values means, in addition to the protection of the health of family members, having some kind of a secure retirement in old age. It is hard to be old. It is hard to be old in America if you do not have the wherewithal you need to see you through that part of your life.

So, it does not mean anything to talk about family values if our economy is functioning in a way that is wrecking families, hurting families, damaging families, damaging family values.

I think we had a family values issue here the other day on the parental leave bill.

You know, those of us that have young children and have gone through the birth of a child not all that long ago—I have an 8-month-old, my wife and I do—know about this. When an infant is born, it is very important, I think, for everybody's sake and for the sake of family values that that child have the chance to have a parent be there giving the care, at least for a period of time.

So we had this legislation providing for unpaid leave. It did not affect small companies with a handful of employees. We had it come in above that level.

But it would say that in a case where there was a newly born child or a health emergency or maybe an elderly parent that was in an extreme situation and needed help, that a person could have unpaid leave for a period of time to go and care for that family member and try to get through that situation. Now that is family values. There is probably not a more clear-cut example of family values than that.

And I think we want to foster that. We want to say to a parent or to a child, if you have a family member in a situation that needs special care, special attention and there is really no one else that can provide that, that you should have the chance to have a leave from your job—not that you are paid where while you are gone; it would be nice if we could pay the person, too—but to have an unpaid leave to go and get through that situation so that the person needing the care gets the care they need. Now what am I missing? Why is that not——

Mr. SIMPSON. Will the Senator yield for a question?

Mr. RIEGLE. I will in a minute. Yes, I will be happy to.

Why is it that that is not sort of right at the heart of the family values—if we are going to use that phrase and sort of take it out into the arena and talk about family values—why is not the care of a family member who has a special need sort of right at the top of the list? Why would that not be almost the first thing that we would do if we were going to lay out a strategy for family values?

Now I happen to think that right along beside that you have to be able to have a job. You know, I see these families in Michigan right now, so many of them impoverished because there are not enough job opportunities out there; people with excellent work records, excellent experience are out of jobs. Their kids are in school. Their kids are growing just like your kids and my kids are growing.

I look at my 7-year-old and she literally grows while I watch. It seems like she outgrows a pair of shoes about every 30 days.

I look at families in Michigan today that are in this terrible economic distress. They need to be buying shoes for their children, be able to buy clothing, be able to make sure that they are able to have the school supplies that they need so they can go and do a good job; if they need glasses to see well, to correct a sight problem, that they have the glasses that they need.

We are in a situation now where literally millions and millions and millions of families in this country are going without these basic necessities. I mean, it is just a fact of life. You can go out and see them. You can go out and talk to them.

So, if we do not get this job machine going again in America, and obviously, people in turn have to prepare themselves and they have to do well in the work that they find within our economy. That, obviously, goes with it. It is part and parcel of it.

But that is not our problem today. Our problem today is we have people walking the streets. I received a letter the other day from a man in Texas with a graduate degree. I am going to bring that letter over one of these days and read it; a man with a graduate degree. He has been through three job retraining programs, three different job retraining programs to retrain in three different fields. This man still cannot find a job.

And that is part the problem with retraining. We talk about retraining. We throw that out as a slogan like family values. Retrain for what? We do not know what to train people for right now because there are very few areas in the economy where we can identify job growth.

Now, yes, there is some job growth in health services, because the health care system is out of control. We need to deal with that in a different way.

But apart from that, there is almost no job growth going on in the economy. That is why these confidence figures that I cited earlier are what they are today.

And I do not know if my colleague from Wyoming had a chance to see this data today, but the Conference Board, which is one of the leading places in which measurements are taken each month on consumer confidence in the country, just put out their data again today for the previous month, and the index has fallen again. It has fallen just about three points.

Mr. SIMPSON. Will the Senator yield for a question?

Mr. RIEGLE. Yes.

Mr. SIMPSON. I have been listening to the Senator expound. It is not the first time I have heard him expound about the evils of the present administration in every level of American society.

And the Senator from Michigan is very emotional and highly partisan and we know that.

Mr. RIEGLE. Have I heard the question yet?

Mr. SIMPSON. The question is coming.

Mr. RIEGLE. I will yield for a question. I will not yield for a speech.

Mr. SIMPSON. In asking for CAFE standards, Democrats in this body have continually proposed, sponsored, and advocated increases in burdensome CAFE standards which would affect your State more than any State in the Union. Such a plan would wreck Detroit economically. Jobs would be lost wholesale.

Mr. RIEGLE. Have I heard the question yet or am I missing the question?

Mr. SIMPSON. George Bush was opposed to that initiative.

Senator GORE was one of the proponents and has said the greatest threat to the American society is the internal combustion engine, saying the next time if—if—if there were such an aberration as President Clinton, it would be signed by the President, and the Vice President would urge him to sign it, a CAFE standards bill which would effectively wipe out the rest of the jobs, I guess, that are in Detroit.

I am asking you, how do you reconcile the double speak of that as you continue to speak of the double speak of the President?

Mr. RIEGLE. All right. Thank you. I now hear the question. I want to respond to it.

Mr. SIMPSON. Good. Good.

Mr. RIEGLE. On the issue of CAFE standards and on the whole question of what is going on that is damaging and hurting the auto industry, there are a variety of issues. The single most important one, by the way, is the trade cheating that has been going on for years and years and years, and which the administration has really done nothing to correct.

I do not know if the Senator heard me before, but after taking the trip to Japan a few months ago, our trade deficit with Japan has gotten worse since George Bush went over there and asked them to change the trading relationship and stop a lot of the unfairness. Problems got worse since that time.

So there are a whole host of problems. I would say the trade problem is a manifest part of that situation. That is up at the top of the list.

But with respect to CAFE standards it is very interesting. I lead the fight here as the Senator knows against arbitrary increases in CAFE standards. And I am proud to say we have had some success in preventing that. And I was out in Detroit, as a matter of fact, in the audience at the Detroit Economic Club when Bill Clinton was asked a question about that. He was asked a question about that. He was asked the question because a great ef-

fort has been made to gin that up as an issue.

I mean, here is the economy falling apart, confidence down, unemployment high, all the problems and so forth and the Bush administration has zeroed in on this CAFE thing and used that as a scarce tactic to try to get a banana peel under the Clinton campaign.

Mr. SIMPSON. Is that what that is? I did not understand.

Mr. RIEGLE. Let me finish. I do not yield further right now.

So they have taken that issue and tried to get that out there, to sort of take the attention away from the fact that there is this massive failure of trickle-down economics——

Mr. SIMPSON. I see.

Mr. RIEGLE. In the economy. So he was asked that question. Bill Clinton was asked that question, I think it was either the first or second question he was asked. And he said, and I am paraphrasing but I was two or three seats away and I heard it.

He said that he looked forward to working with the automobile industry and that he was not in favor of arbitrary standards that were going to cost jobs in the future. And he offered an answer in that area that I thought was a good, solid, sound answer and I know him well enough to know that his principle focus, if he is elected and I hope he is, is going to be to go to work on creating jobs in this country. Because that is why, frankly, the President now—a friends of yours, a friend of mine—is about to cashiered. Because he missed the boat on that. He had an economic plan for every country in the world except one. That happened to be America. And now America is in deep economic trouble and so people are about to bounce him out and try Governor Clinton.

Mr. SIMPSON. Mr. President, may I ask another question?

Mr. RIEGLE. If it is a question, yes.

Mr. SIMPSON. A single question. Is there any possible failure in the United States of America today that George Bush is not responsible for, in your vision?

Mr. RIEGLE. Yes, indeed.

Mr. SIMPSON. Is there? I would love to know what it might be.

Mr. RIEGLE. There are many.

Mr. SIMPSON. I do not have the time.

Mr. RIEGLE. There are failures on many levels in this country. But what we are talking about here is in terms of the economic stewardship of the country, which is one of the, I think, most important responsibilities that the President carries. No one else can carry that for him, quite frankly. When he runs for that job that is part of what comes with the job.

He may not want that part of the job. He may love foreign policy and be like the one-eyed President who can see all the foreign policy issues and want to spend every waking minute on foreign policy and not want to have to open up that other eye and see the domestic policy problems. I understand that. You and I know that. This man loves foreign policy and I think he deserves some credit for his interest in foreign policy.

I daresay if you put a map of the world up here right now that George Bush could come in here, he could identify every country in the world. But you ask him to talk for 10 minutes without notes that have been prepared by somebody else on the problems of the American economy and he is going to have a very hard time of it.

That is your problem and it is not just your problem, it is our problem. I mean the absence of an economic strategy for this country is hurting all 50 States. It is hurting fellows and candidates on your side of the aisle. Every article that I have read in the last week on the question of what is going on tells me—these are by third-party analysts—that candidates in your party are now being weighed down by the failure of the administration to have been effective on the economy.

Mr. SIMPSON. Mr. President, I will ask another question, if I may.

Mr. RIEGLE. So you are feeling this problem.

Mr. SIMPSON. Yes. Well, this is an extraordinary litany of things. And oddly enough I have heard everyone of them in much more passionate array, usually when no one is here on the floor. It seems to be more expedient and more fun to whack away on that issue when no one is present.

But I hope, then, with the next administration—if there is one, and there will not be—that you will be doing something adroit to ward off CAFE standards which would ruin your State.

Mr. RIEGLE. I assure you I would.

Mr. SIMPSON. When the only thing that has saved you to this point is President George Bush, thank you very much.

Mr. RIEGLE. If that is the question, I will be here at this desk, and I will be here to stop the CAFE standards.

May I say one other thing to my colleague from Wyoming, because I think we may well get a change in administration. And if we do, there is one thing I am convinced of, and that is, having served on that side of the aisle and this side of the aisle—and I have been in both parties like the senior Senator from South Carolina, who served in both parties, and in fact served in even a third party—I really think we have to figure out a way to get this economic strategy talked through. And I think it has to be done on a bipartisan basis, quite frankly.

One of the things I have said to Governor Clinton, and I will repeat here now, is that should he be elected and become President, I think we are going to have to find a way to work together across the party aisle. I think business and labor and Government are going to have to sit down around the table and leave the guns at the door and figure out how we work together in a team fashion to come up with a strategy that is as effective or more effective than what the Japanese have managed to do in their own way, or the Europeans are doing in their own way, and so forth.

So I would not want my statements about the frustration in the current situation, and the kinds of changes that I think need to be made, to be misinterpreted. In terms of—if there is that kind of change and there is that kind of movement to focus on domestic policy, I for one want to make sure everybody is in the discussion. I do not think we ought to do it according to some harebrained scheme that any one person walks in the door with, whether it is jotted down on the back of an envelope or anything else. I think we better have a serious talk among ourselves and figure out how we get this country going again.

Mr. SIMPSON. Mr. President, I assure the Senator from Michigan I will join in that effort. That is long overdue. And that means everything is on the table—all of it. You saw the vote several weeks ago that was about 28 of us who decided to go over the cliff in an honest approach to get a handle on the entitlement programs. But in doing that they were all sorted out in peculiar categories of senior citizens, disabled veterans, children. And if that is the way it is going to be we will never get it done. Those who will suffer will be the people you seem to be the most cardinal spokesman for. Those are the people that will suffer as we fail to address the issue of entitlements. I never see any terribly hard votes on that from that particular post that you occupy.

I think it would be good if you can tell us what is it that you personally intend to do about the entitlements programs, Social Security cost-of-living allowances, which go to people, a fourth of them who are wealthy, veterans benefits——

Mr. RIEGLE. If that is the question, let me respond.

Mr. SIMPSON. Please. I will leave you with that. I must retire to my chambers.

Mr. RIEGLE. Let me respond to that question. Let us start with Social Security. It is very interesting, and as I am sure the Senator knows, in terms of Social Security it is not Social Security that is contributing to the Federal deficit in this country. It has not added one penny to the Federal deficit. In fact, Social Security is generating more money than it is paying out. Social Security is providing a surplus right now.

I know there are some—I know the Senator has to leave and I understand

he has to preside in his caucus, but I am going to finish the answer to his question. And that is this.

The Social Security payments are not adding to the deficit. There are some who would like to argue about that, because they do not want to have to go and get the revenue other places where it is going to have to be gotten. They would rather go in and shave down the benefits of those on Social Security. In fact we had a move right here in this Chamber when Ronald Reagan was President to shave down Social Security benefits. And the people that they decided to target first were elderly women who were receiving the minimum benefit under Social Security and they came in here with a move to eliminate the minimum Social Security benefit.

It was absolutely incredible. I mean, here was Ronald Reagan, the new President, living in the lap of luxury, coming in here and targeting elderly women receiving the minimum Social Security benefit, a lot of them sort of subsisting on crackers and, you know, minimum things just to keep body and soul together because they did not have any money because it was the only source of income they had. And they decided to come in and target that.

Now, why did they target that? What did they want the money for? Did they want it to reduce the deficit? Of course not. The deficit got a lot bigger. They wanted that to pay for the tax cuts that went in substantial measure to the people at the highest income levels.

The PRESIDING OFFICER. The Senator is advised the hour of 12:30 has arrived and there is a previous order.

Mr. RIEGLE. Under those circumstances, I ask unanimous consent to proceed for 1 additional minute.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. RIEGLE. I thank the Chair and I will finish. I just want to finish the sentence.

It is not unfair to say that that approach, the tax cuts for the wealthy, the cuts in Social Security for the minimum benefit beneficiaries, was transferring money from those people up the income scale to the people at the top. Fortunately, we were able to stop the minimum benefit cut, but a lot of that occurred. It was unfair, and it has unbalanced the economy, and that is part of the reason for the fix we are in today.

We need an economic growth strategy. I think we can put one together. If we can get some jobs in this country, we can do something about helping family values. Family values first and foremost means having a job, supporting your family, decent housing, health care, being able to pay the bills and being able to take care of your kids. That is family values.

I yield the floor.

Mr. THURMOND addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. THURMOND. The distinguished Senator has been so long-winded. I ask unanimous consent I be allowed to speak for 6 minutes.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and the Senator is recognized for 6 minutes.

NEGOTIATIONS ON THE CRIME BILL

Mr. THURMOND. Mr. President, in recent months, I have been working in good faith with interested colleagues to resolve the crime bill deadlock. In fact, I was under the impression last week that we had reached a compromise on this issue. However, I feel compelled to respond to the remarks made yesterday by my friend, Chairman BIDEN, in which he accused the administration and my Republican colleagues of killing the crime bill.

As I have discussed previously on the floor of the Senate, the conference committee report on the crime bill, H.R. 3371, sounds tough, but it has proven to be no such thing. With remarkable consistency, the conferees to the crime bill rejected tougher options on major points and opted instead for provisions which expand the rights of criminals.

Although the conference report authorizes additional money for law enforcement, I oppose the bill since it contains numerous provisions which expand the rights of criminals. President Bush, Attorney General Barr, prosecutors, and victims' groups have all expressed strong opposition to the conference report because it, for one thing, overturns numerous Supreme Court decisions on death penalty appeals.

The result is a bill that expands the litigation rights of death row inmates. Rightfully, efforts to force the so-called compromise through the Senate have failed on two previous occasions. Yesterday, despite our good faith negotiations, Senator BIDEN announced that the majority party will drag this procriminal bill onto the floor one more time.

As my colleagues know, I have fought for congressional action on a tough crime bill for several years and, despite the disappointing action of the conference committee, I have remained strongly committed to passing a bill. I continued to work with my colleagues to try and resolve our differences, as did Attorney General William Barr.

Negotiations, it seems, were complete when the Attorney General and I agreed to an offer Senator BIDEN had made. In a letter to Senator BIDEN dated September 25, the Attorney General outlined the major points of this compromise. This compromise would have included the Senate-passed Brady bill, the President's death penalty title, a middle-of-the-road compromise on habeas corpus, and all of the funding proposed for additional law enforcement. According to the Attorney General, he and Senator BIDEN had negotiated a package that both agreed was an acceptable basis for compromise.

Unfortunately, the Democrats have retreated and distanced themselves from what we believed to be an accepted compromise. They now claim the Attorney General was mistaken or that he accepted the compromise too late. The fact is, the majority does not want a true, tough crime bill. Rather, they want to enact the conference report, which only sounds tough and which actually expands the rights of violent criminals.

For the past year, Senate Republicans have been forced to listen to the Democrats accuse the administration and Senate Republicans of playing politics with the crime bill. They state that opposition to the Brady bill is the only reason we do not have a bill. Yet, recent events illustrate what I have been stating all along—the President wants a tough crime bill acceptable to law enforcement, prosecutors, and victims. The compromise agreed to by the administration, while not as tough as I would like, is acceptable and it contains the Senate-passed Brady bill. Still, the Democrat's are retreating from that deal.

In closing, I ask my colleagues, "What could be so troublesome about this compromise that they should oppose it?" It drops the exclusionary rule reform, which I support. It goes more than half way on habeas reform, contains the Brady bill, a real death penalty, and all of the increased funding for law enforcement. According to the Attorney General, a deal was reached and the Democrats backed off.

Mr. President, when one reviews the facts, instead of the rhetoric, it becomes clear that President Bush and Republicans do truly want a tough crime bill. Yesterday, President Bush spoke before a crowd in Missouri and talked about how close we were to reaching a compromise on the crime bill. Yet, apparently, the majority party does not share his optimism. Rather than continue to work on a bill, they announced yesterday that the Senate will, yet again, be voting on the procriminal conference report.

Democrats control both Houses of Congress. If they want to pass a tough bill, it is within their power.

Mr. President, I yield the floor.

WOMEN AND POVERTY IN RUSSIA

Mr. PELL. Mr. President, I would like to call my colleagues' attention to a piece by Katrina vanden Heuvel re-

cently published in the New York Times. Ms. vanden Heuvel writes about the disproportional impact that declining economic conditions are having on women in Russia. As an editor of the Nation where she writes on Russian politics and society, Ms. vanden Heuvel's expert observations emphasize the difficulties confronting working women in Russia. Ms. vanden Heuvel clarifies the risks that these women are facing. They are subject to discrimination and harassment in the job market and workplace while anti-discrimination legislation is routinely unenforced. In addition, Russian women now face the dismantling of the Soviet system of child care and potential legislation limiting the number of hours that mothers would be allowed to work.

With the impending influx of American organizations and business representatives into the former Soviet Union, we have an unprecedented opportunity to influence attitudes toward women in the Russian workplace. These Americans can help demonstrate the economic wisdom of making work force participation a viable option for women. As the Senate moves toward consideration of the Freedom Support Act conference report, I believe it is appropriate for us to consider Ms. vanden Heuvel's perspective on the issue of women in the former Soviet Union. I commend Ms. vanden Heuvel's article to my colleagues and ask unanimous consent that it be inserted in the RECORD at this point.

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

[From the New York Times, Sept. 12, 1992]

WOMEN OF RUSSIA, UNITE!

(By Katrina vanden Heuvel)

As the Soviet welfare system collapses, the feminization of poverty may become the new Russia's largest and cruelest problem.

In Moscow, 70 percent of the newly unemployed are women between the ages of 45 and 55. When I visited one of Moscow's recently established unemployment offices this summer, women in line described the kind of discrimination they now face in the job market. Some were turned away because they were too old—in their 40's. Others had been told that their maternal responsibilities made them unreliable workers.

Women's economic desperation is visible on Moscow's streets, too, where the overwhelming number of peddlers are older women and young mothers.

Although anti-discrimination legislation still exists in Russia, it is not being enforced. Sexist (and ageist) job advertisements are commonplace. Alisa, a new brokerage house, published announcements seeking woman aged 18 to 21 for secretarial positions. Applicants were told to come to the interview wearing a miniskirt.

An advertising firm requested that applicants for a receptionist position submit a full-size photo, preferably one showing them in a bikini to display their "full super-attractiveness."

Still worse, legislation being discussed by the Parliament, and likely to be adopted this fall, would prevent women from participating equally in the emerging market economy. Mothers of children under the age of 14 would be allowed to work only a limited number of hours a week, thereby disqualifying them from the best jobs. The legislation is supported by a coalition of Russia's new democrats and old-style conservatives.

In addition, the Parliament and some city governments are dismantling the once elaborate Soviet system of child care. With fewer outside services, women will be compelled to leave the workplace. The Moscow City Council, for example, proposes to close about a third of the city's day-care centers in the next two years. While Russian politicians argue that women resented having to combine full-time work and full-time homemaking under the old Soviet system, a recent poll shows that only 20 percent of Russian women want to stay at home.

Regardless of personal preference, millions of Russian families will not be able to survive without two incomes, as inflation grows. In 1992, women's earnings account for 40 percent of family incomes, while every fifth Russian woman is the family's only breadwinner.

Not surprisingly, Russian women are forming activist and self-help groups. In some ways, their struggle is reminiscent of the American women's movement in the late 1960's. On the other hand, unlike the American economy of the time, Russia's economy is disintegrating and offers few new opportunities. And Russian women are unlikely to find allies among the overwhelmingly male political class.

Should the U.S. care about the plight of women in Russia? The Bush Administration has rightly argued that we must give financial support to Russia's reforms. But most of the aid is conditional on the Yeltsin Government's making drastic budgetary cuts. The cuts, of course, will lead to higher unemployment and fewer welfare provisions, which will victimize women first and foremost.

It would be wiser, more humane and more consistent with our values and laws to make all such aid intended to promote a market economy in Russia conditional on practices that will provide equal opportunity for all citizens. Women should be present at the creation of the new Russia. As my friend Anastasia insists, "Democracy without women is not democracy."

KUWAIT: IS IT REALLY MOVING TOWARD DEMOCRACY?

Mr. DECONCINI. Mr. President, as a Senator committed to the promotion of democracy throughout the world, I rise to address the Senate concerning the current situation in Kuwait.

As my colleagues will recall, the oil-rich city-State of Kuwait has been under the autocratic rule of the al-Sabah family for decades, with true democratic principles rarely guiding that government's policy. The country's unicameral legislature was dissolved in 1986 by Emir Jaber al-Ahmed al-Sabah for its harsh criticism of government ministers. Six years of autocracy have ensued—including a period of martial law—and genuine political participation, as provided for in the constitution of 1962, has been suppressed by a government rife with nepotism and policies that stress the power of the purse at the expense of political reform.

Now, under pressure from opposition parties within Kuwait, as well as the active dialogue initiated by our ambassador, Edward "Skip" Gnehm, Emir Jaber has announced that elections for the General Assembly will take place on October 5—7 years after the last elections.

It is this Senator's apprehension, however, that even though these elections will finally occur, real, multiparty democracy in Kuwait may not be attained for many years. It is my fear that the patrimonialism, patriarchalism and paternalism that have dictated Kuwaiti politics for years will continue.

The powerful diplomacy of the dinar, not the desire for democracy, has for some time dictated Kuwaiti governmental policy. The Kuwaiti leadership has made use of its considerable financial resources—its strong economy and vast oil reserves—to create a welfare state of sorts. Thus the citizenry of Kuwait is used to economic incentives from the government.

Money now plays a different role in politics, however—a role that jeopardizes the country's move toward genuine democracy. There have already been widespread reports of vote-buying throughout the 25 electoral districts, and vote brokers are actively promoting this corrupt practice. Votes sell for around 4,000 dinars, about $14,000, and, according to the Agence France Presse, oftentimes two candidates within the same district team up to purchase votes at half the price.

Opposition groups have denounced this practice—utilized by the political elite and backed by the al-Sabah family—and have attacked the government of Kuwait for their failure to put an end to this increasingly popular campaign strategy.

As my colleagues well know, free and fair elections are the cornerstones of any democratic movement. They are the foundation upon which a true democracy is built. Corruption only hinders the evolution toward fully participatory government. As one opposition leader put it, "Anyone who buys your vote is capable of selling your country and therefore not worthy of representing you in Parliament."

Mr. President, in light of the potential developments in Kuwait, I urge the Emir and the government of Kuwait to address the problems of vote-buying and possible electoral fraud so that freedom and sovereignty are afforded the people of that ravished nation. The people of Kuwait are so close to a return to democratic government; they cannot risk the possibility of a reversion to the days of autocracy. A clean break with the nepotism and inequity of the past is necessary—for all of the people of Kuwait.

I ask unanimous consent that a letter I sent to Ambassador Gnehm, and

his response via State Department cable, be printed at this point in the RECORD.

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

U.S. SENATE,
COMMITTEE ON APPROPRIATIONS,
Washington, DC, June 9, 1992.

Hon. EDWARD R. GNEHM,
Ambassador, U.S. Embassy, Kuwait City, Kuwait.

DEAR SKIP: I read in the paper last week that you have been encouraging the spread of that dangerous concept called democracy. All I can say is: keep up the good work!

It is deeply troubling to me that after all that Kuwait and the Kuwaiti people—not the royal family, but the people themselves—have gone through, there continues to be a deep-seated fear of democracy and true accountability in governance. It bothered me when you and I were in Kuwait in 1989. It bothered me about going to Kuwait's rescue. And it continues to bother me today—especially because American blood was spilt to liberate that nation.

I am pleased that you are serving as a burr under the Sabah family's saddle and that you are speaking up for what America is all about. While it is true that we have flaws in the application of our democratic system, it continues to serve as a model and a beacon of hope for others around the world.

Again, I am glad that we have you over there. Please let me know if there is anything I can do to assist you in the future.

Sincerely,

DENNIS DECONCINI,
U.S. Senate.

JULY 21, 1992.

Hon. DENNIS DECONCINI,
U.S. Senate, Washington, DC.

DEAR SENATOR DECONCINI: Thank you for your letter of June 9th. I am heartened to know that the evolution of democracy in Kuwait (as well as my small role in encouraging this process) made the papers there. More should be done to inform the world on what steps the Kuwait government has taken and continues to take toward instituting a truly representational political system.

It is true that the parliamentary elections to be held here in October will not result in an immediate changeover to Jeffersonian democracy. Kuwait, like its neighbors, is a tradition-bound society. By Western standards, its progress toward democracy has been slow and perhaps overdue.

Unlike other nations in this region, however, Kuwait has taken concrete steps toward the democratic ideal. Its press is unrestricted, its citizens are free to criticize the government without fear of reprisal, and its leaders—the Amir and the Crown Prince—have personally assured all who will listen that their goal is to preside over the transition to a functioning parliamentary democracy as specified in Kuwait's 1962 constitution. I believe that this goal will be achieved.

In sum, Kuwait serves as a model for the type of movement toward democracy we should hope to witness elsewhere in this volatile region. I am proud of the part I have had in encouraging this trend and am happy that you are pleased with the job that my staff and I are doing.

Sincerely,

EDWARD W. GNEHM, Jr.,
Ambassador, American Embassy.

KUWAIT, KUWAIT.

CUTTING GOVERNMENT WASTE

Mr. SEYMOUR. Mr. President, the Federal budget deficit has now grown to more than $1 billion a day. The most recent Bush administration estimate of the 1992 fiscal year deficit was $399.7 billion. The deficit continues to be the number one fiscal travesty of our Government. Despite several attempts during the past few years, Congress has failed to solve this problem of epic proportions.

The traditional view of deficit reduction is that a balanced budget can only be accomplished through raising taxes and eliminating Government programs. But Congress can spare the American people these twin burdens by taking steps to diminish the excessive operating costs of Government itself.

The General Accounting Office [GAO] recently published its annual report summarizing the findings and open recommendations of its audits of Federal agencies and departments. The report illustrated that improved management and accounting practices on the part of Government officials alone would begin to chip away at the deficit. For example, the GAO concluded that better management of the "Army's unserviceable inventories could save millions." Likewise, the GAO stated that the monopoly-like status of the Government Printing Office [GPO] breeded inefficiency and ineffectiveness. Furthermore, a financial audit of the Library of Congress [LOC] disclosed significant financial problems. The LOC could not even "substantiate the number or value of items in its collection, support its accounts receivable or its advances from others, or effectively prevent duplicate or incorrect payments."

Congress itself has added to this waste by earmarking funds to projects of dubious worth and by creating for itself a privileged working environment. The Washington Post reported that the $271 billion 1992 fiscal year Defense authorization bill contained a significant number of earmarks which were never requested by the Defense Department or scrutinized by the hearing process, Mr. President. Other such earmarks in 1992 fiscal year appropriations bills include $4 million for a National D-Day museum in New Orleans, $25 million for an Arctic region supercomputer, and $5 million to lobby the National Marine and Fisheries Service to keep salmon off the endangered species list.

Many studies have been undertaken in an attempt to do away with such waste. The President's Private Sector Survey on Cost Control, more commonly known as the Grace Commission, was the most exhaustive study of Government waste to date. In 1984, the Grace Commission proposed 2,478 recommendations to cut waste and inefficiency in the Federal Government. Over 80 Grace initiatives were adopted during the 99th Congress at a savings of $33 billion over 4 years. Yet, enactment of all of the Grace proposals would have saved taxpayers $424.4 billion over a 3-year period.

The Grace Commission, however, is not the final word with regard to eliminating governmental waste. The Council for Citizens Against Government Waste recently published a 13-point proposal to eliminate Government waste, increase Government efficiency, and control the Federal deficit. The plan recommended adopting "procedures to identify and eliminate porkbarrel spending" and statutory limits on spending growth that would force Congress to live within the means of the people. The council also advocates "privatizing Federal services that can be performed better, and for lower costs, by the private sector."

In April of this year, the Senate approved an amendment which I introduced to the 1993 budget resolution cutting legislative branch spending by 25 percent over a 2-year period. If we are to address waste throughout government, we must first put our own house in order. My amendment represented an initial step on the road back to fiscal responsibility and was, I believe, influential in pushing the House to adopt a reduced funding package for its operations in fiscal year 1993.

In addition, Mr. President, I have initiated further steps to reduce Government waste by introducing Senate Joint Resolution 60 to reduce the Federal Government's overhead expenditures by 10 percent. These overhead expenditures cost taxpayers $270 billion annually. Cutting such costs by 10 percent will save the Government $141 billion over 5 years.

Finally, last summer, in the midst of a recession, the Senate voted to raise its pay by more than 20 percent. I not only voted against this pay raise, but returned my portion of it to the U.S. Treasury. We did not deserve that raise and will not until our Federal spending practices are under control.

I believe that a new National Blue Ribbon Commission To Eliminate Government Waste, such as the one proposed by Senator LOTT and Congressman LOWERY, should be formed. It would undertake a thorough review of all of the Grace proposals that were not enacted, as well as the pending recommendations of GAO, the Congressional Budget Office, and other governmental and nongovernmental bodies. We need a credible and objective assessment of this problem so that we may devise an intelligent solution to it.

Mr. President, wasteful Government spending is a serious and difficult issue, but it is not intractable. The excessive operating costs of the Federal Government, including the legislative branch, must be pared. Americans of all ages and races make hard economic choices everyday. It is time that we in this body begin to do the same.

TRIBUTE TO DR. CONSTANCE CLAYTON

Mr. SPECTER. Mr. President, I wish to recognize and commemorate the 10th year of of Dr. Constance E. Clayton's tenure as superintendent of the Philadelphia School District. This anniversary falls on October 4 of this year, and I want to congratulate Dr. Clayton and highlight her accomplishments in the decade since she took office.

Mr. Clayton has restored fiscal stability, instilled labor peace and initiated a capital improvement plan in the Philadelphia schools. During Dr. Clayton's tenure, the school district has consistently improved in academic achievement, demonstrated an enhanced commitment to excellence in math and science, and instigated a core curriculum ensuring educational equality. Dr. Clayton also instituted a vibrant, varied, and growing partnership network with businesses, communities and institutions of higher education. Under Dr. Clayton's direction, Philadelphia has procured unprecedented foundation support and developed the major goal's plan and a governance model for shared decisionmaking/school based management. The culmination of these accomplishments is the designation of Philadelphia as an American 2000 community.

In keeping with Dr. Clayton's personal and professional philosophy that "the children come first," the district has pursued funding for an successfully implemented critical programs including: establishment of school-based health clinics and HIV and substance abuse prevention and education programs; expansion of the kindergarten and Head Start programs and initiation of the Even Start Program; revitalization of career and vocational education programming; implementation of the Philadelphia Parents as Teachers Program for teen parents; and creation of technology programs funded by major corporations to equalize access to technology for disadvantaged, inner city students.

Dr. Clayton is herself a graduate of the Philadelphia public schools. She earned a B.S. and her masters in education at Temple University, and her doctorate in education leadership as a Rockefeller scholar at the University of Pennsylvania. She has also been awarded honorary degrees by 15 colleges and universities. Dr. Clayton's career in the Philadelphia school system began in 1955 when she was hired as a teacher. In 1964, she became a collaborating teacher in the social studies department of the division of curriculum and instruction. In 1969, she served as project director of the Staff Development Program in African and Afro-American studies. From 1971–72 she served as the regional director of the Women's Bureau, U.S. Department of Labor. Upon her return to the school district in 1972, Dr. Clayton was appointed director of early childhood education programs; subsequently she was named executive director and then associate superintendent of early childhood education.

Dr. Clayton's commitment to excellence in education extends beyond her career posts. She is actively engaged in leadership activities in the community and serves on a number of boards including that of the Public Broadcasting System, the Private Industry Council, the National Board of Medical Examiners, Research for Better Schools, the Area Council for Economic Education, the American Association of School Administrators, Committee to Support the Public Schools, the Children's Defense Fund, and serves as president of the Council of Great City Schools.

Dr. Clayton is the well-deserved recipient of numerous achievement awards: The Gimbel Award, the Police Athletic League Award, the Humanitarian Service Award presented by the Philadelphia Commission on Human Relations, the Distinguished Daughters of Pennsylvania, and the American Spirit Award presented by the U.S. Air Force Recruiting Service.

I wish to thank Dr. Clayton for her tireless and generous efforts for the children of Philadelphia. I commend her numerous accomplishments and accolades and congratulate her on this auspicious anniversary.

CONTROLLING RISING HEALTH CARE COSTS

Mr. PACKWOOD. Mr. President, an op-ed which appears in today's Washington Post, discusses the problems associated with controlling rising health care costs in this country by imposing a global budget on health care. The article is written by Michael D. Bromberg of the Federation of American Health Systems.

Mr. President, I will not go into the details of his arguments against a global health care budget, but I would like to quote the last paragraph of Mr. Bromberg's article. I think this paragraph summarizes his arguments well:

> (But) prohibiting private health spending above some magic number—regardless of need—flies in the face of our constitutional guarantees. It is ironic that those who want government to limit our personal decisions on health spending are the first to proclaim their belief that "health care is a right, not a privilege." They ought to realize that under the Constitution, rights belong to the people—not the government.

Mr. President, I ask unanimous consent that a copy of Mr. Bromberg's article be inserted in the RECORD.

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

[From the Washington Post, Sept. 29, 1992]

HEALTH CARE: LET THE PEOPLE SPEND

(By Michael D. Bromberg)

Imagine the public outcry if Congress passed a "global entertainment budget" limiting the amount of money citizens may spend on movies, fast food and family vacations. That is what the Democratic leaders in Congress and their presidential nominee, Bill Clinton, are advocating for health care expenditures.

Frustrated by their inability to control federal health costs, these liberal lawmakers are suggesting an annual "global health budget" for the private sector. This mechanism would set an arbitrary ceiling on aggregate public and private health care spending. The cap would be enforced by controlling prices, which inevitably would limit health care purchases and lower the quality of care.

Whether applied to entertainment or health care, the concept of a global budget would require a constitutional amendment; our forebears did not grant government the authority to apportion our personal incomes. Congress does have limited authority to ration private consumption of scarce resources such as food and gasoline during national emergencies. Even during peacetime, Congress has invoked its authority to protect the public safety by requiring cares to be equipped with seat belts and by setting a national speed limit.

But the United States is not at war, and health care is hardly a scarce resource. In fact, capping individuals' health care purchasing would have a detrimental impact on public health. The use of a global budget even exceeds the health policies established by countries that embrace socialized medicine. In Great Britain, for example, citizens retain the freedom to purchase supplemental private coverage. Canada, which lacks our constitutional protections, does limit all health spending as well as such individual choices. Fortunately, most Canadians live near the U.S. border, and we provide the state-of-the-art health care they covet.

Our government does have the authority to balance individual rights against the overall welfare of the public, but it must do so cautiously—any restriction on our fundamental rights must stem from an overriding public interest. The Supreme Court has vigorously defended this principle by overruling laws that do not meet this "strict scrutiny" test. In doing so, the high court has cited our Constitution, its amendments and the Declaration of Independence as authority.

For instance, in *Buckley v. Valeo*, a cap on campaign expenditures by private citizens running for office was struck down as a violation of the First Amendment right to freedom of expression. Government-set limits on individual liberties, such as the right to personal privacy, were rejected under the due process clause of the 14th Amendment in *Griswold v. Connecticut* (which voided a state statute prohibiting the use of contraceptives). No overriding public interest would be served by forfeiting to government individuals' freedom to choose what they buy and how much they spend on health care service.

It would be constitutional for Congress to cap federal health spending because that involves the allocation of tax dollars. That would be unwise public policy, however, because a federal health cap would only compound the dilemma of the millions of poor Americans who do not qualify for Medicaid. It also would be legal for Congress to limit tax subsidies for private health expenditures, such as the tax deductions and exclusions for employer-paid insurance.

Reforming our health system to increase access and control costs is essential, and there are many pending proposals to achieve it without raising serious constitutional questions. The examples include:

Changing our tax laws to encourage cost-effective health plans:

Accelerating efforts to measure quality and eliminate unnecessary care:

Reforming malpractice laws to reduce the cost of defensive medicine; and

Establishing purchasing groups to lower the cost of insurance for small business.

But prohibiting private health spending above some magic number—regardless of need—flies in the face of our constitutional guarantees. It is ironic that those who want government to limit our personal decisions on health spending are the first to proclaim their belief that "health care is a right, not a privilege." They ought to realize that under the Constitution, rights belong to the people—not the government.

RESIGNATION OF SECRETARY OF VETERANS AFFAIRS EDWARD J. DERWINSKI

Mr. CRANSTON. Mr. President, I was quite surprised and sincerely disappointed to learn this past weekend of the resignation of Veterans Affairs Secretary Ed Derwinski.

Mr. President, in my nearly 24 years in the Senate, I have known and worked with eight VA Administrators and one Secretary. Many have done a very good job at VA. Some have not done well at all. Ed Derwinski and I certainly had numerous differences, and I did not hesitate to criticize him for taking actions or positions I considered misguided. Moreover, he is a Republican's Republican and my roots are all Democratic and, although we tried to keep partisan politics out of veterans affairs, it did crop up from time to time. But having said this, I have to conclude that he was a fine head of VA. His appointment as the last Administrator and first Secretary turned out to have been a very good one—and I have told him so.

I wish him well in his future endeavors—except, of course, in his campaign assignment in the next 5 weeks.

In his role as head of the Department of Veterans Affairs, Ed had clear and direct access to the President. He did not abuse that access as far as I know but, when he felt compelled to use it, the results were to the benefit of America's veterans. The most dramatic evidence of that can be seen in his success in each of the last 3 years in gaining the President's approval for a significant increase in funding for VA medical care.

During Ed Derwinski's tenure as VA Secretary, he was right on a large number of issues. His attention to VA's health-care system was timely and helpful. He insisted that the quality of care be first rate and set in place some significant changes to promote that result. He believed that VA had to have a place at the table when national health-care reform is under discussion—a view I share unequivocally—and he took steps to make that happen. He was right to call for a commission to focus on the future of the VA health-care system.

He was also right to take aggressive, compassionate action to address the concerns of Vietnam veterans about exposure to Agent Orange. He was right to oppose smoking in VA health-care facilities. He moved quickly to address the needs of our most recent veterans of a period of war, the Persian Gulf War veterans. VA took steps to meet these veterans needs shortly after the fighting ended and is in the forefront of activity today to address the concerns of some of these veterans for the impact of their service on their health.

Mr. President, in what may be the greatest irony in this matter, Secretary Derwinski may well have been right about the issue that I understand to be a root cause of this situation, the so-called rural health initiative. While I had some serious questions about the pilot program and while I did not believe VA did the best job selling it, it did not strike me as necessarily bad for veterans. Indeed, at least at one of the two sites where the pilot program was going to be carried out—the Salem, VA, VA Medical Center—the program clearly would have been a boon for veterans. Veterans who lived near the rural clinics where VA staff were going to go would have gained significant new access to VA care. In any event, I had hoped that that issue would have been behind us by now. But, obviously, that was not to be.

Mr. President, the one silver lining that I find in this dark cloud is that Deputy Secretary Tony Principi will be serving as Acting Secretary. Tony, who has adopted California as his home State, is an extremely capable public servant and an old and valued friend. I have enjoyed a fine, productive relationship with him ever since his days as Senator SIMPSON'S and Senator MURKOWSKI'S chief counsel on the Veterans' Affairs Committee in the mid-eighties and throughout his 3½ years as Deputy Secretary. I am confident that he will do a fine job as Acting Secretary and look forward to working with him in the weeks ahead.

INDIA CLEANING UP GANGES RIVER

Mr. PRESSLER. Mr. President, a very interesting front page story appeared in Friday's Washington Post. The article, written by John Ward Anderson, describes India's efforts to clean up the Ganges River, which is considered sacred by India's 750 million Hindus.

I have had a personal interest in Ganges River pollution control and cleanup efforts ever since discussing this matter with the late Indian Prime Minister Rajiv Gandhi in January 1985, shortly after his inauguration. In fact, I felt honored to be the first American elected official to meet with Gandhi following his inauguration.

The Prime Minister invited me to his personal office for a private meeting that also included our then Ambassador to New Delhi, Harry Barnes. It was clear from the beginning of our discussion that pollution control ranked very high on Prime Minister Gandhi's agenda. When our conversation turned to the Ganges River, I ventured the observation that the U.S. Corps of Engineers had considerable experience and expertise in dealing with riverine pollution. With Ambassador Barnes' support, I recommended to the Prime Minister that he make a request to the U.S. Government for technological advice and assistance in his efforts to address pollution of the Ganges River. I am pleased to note that the Washington Post article quite accurately credits Gandhi with having initiated the Ganges cleanup effort.

One humorous result of my meeting with Prime Minister Gandhi in his private office in New Delhi was the curious reaction of a Los Angeles Times reporter. Our U.S. Information Service asked me to participate in a press conference with Indian and foreign journalists after my meeting with Gandhi. Of course, I told the journalists about my Ganges River pollution discussion with the Prime Minister. Days later, I was rudely surprised to read an article in the Los Angeles Times which virtually accused me of insulting Hindus by publicly discussing their polluted sacred river. The Washington Post article of today, more than 7 years later, gives me some comfort that not all U.S. journalists are afraid to write about the realities of pollution in other nations.

Mr. President, I am pleased to see that India is making some progress in cleaning up the Ganges, and I wish that nation well in that effort. Improving the cleanliness of the Ganges River is a matter of great importance to the people of India. I ask unanimous consent that the Washington Post article appear in the RECORD.

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

[From the Washington Post, Sept. 25, 1992]

THE GREAT CLEANUP OF THE HOLY GANGES

(By John Ward Anderson)

VARANASI, INDIA.—Every day thousands of Hindus flock to the shores of the great Ganges River here, where they drink and bathe in the holy water as partially cremated corpses float past them and nearby drains spew millions of gallons of raw sewage into the river.

While the faithful seem unfazed, the Indian government—concerned that religious rituals and social customs have helped turn India's most sacred river into a 1,568-mile health hazard—has devised a solution for the most unsightly problem: specially bred snapping turtles to eat what is left of the corpses but do not nip at religious bathers.

The turtle program is part of the largest environmental project in Indian history—cleaning up the Ganges River, from its glacial source in the Himalayas to its mouth in the Bay of Bengal.

The biggest challenge according to environmentalists, comes not from the rapid ur-

banization along the river's shores, but from the firm belief among many Indians that the Ganges—called "Ganga" by Indians and considered the physical manifestation of the Almighty—is so spiritually pure that it cannot be polluted, regardless of how much garbage is dumped into it.

"A dip gets rid of illness and infection, and all sins are washed away," said C.L. Pandey, 45, a priest at Kashi Vishwanath Temple, one of the most famous temples in Varanasi.

He conceded, however: "Because of all the sewage and the corpses that are sometimes thrown into the river, and with people urinating, taking a bath and washing their clothes in the river every day, people are beginning to realize it's dirty. But the purity and sacredness of the river can never be destroyed or even diminished. Even a breeze from the Ganga is enough to wash sins away."

Clean water is one of India's most scarce resources, but as in many developing nations, the money and technology needed to properly treat sewage are not available in most cities and villages. With the country's 850 million population expected to double in 34 years, officials are concerned that Indians will have no choice but to continue dumping raw waste into local waterways, contributing to epidemics of diarrhea and other diseases that kill thousands of people annually.

Keeping the Ganges clean is made especially difficult, according to environmentalists, because faith in the river's incorruptible purity has generated complacency and ambivalence about its pollution among many of the 300 million people who live in the Ganges Basin. More than 410 million gallons of untreated municipal sewage, industrial waste, agricultural runoff and other pollutants are discharged into the river every day.

At the same time, officials estimate that more than 1 million people a day bathe or take a "holy dip" in the Ganges, and thousands drink straight from the banks. Every 12 years, during the religious festival of Maha Kumbha Mela, as many as 10 million Hindus trek to the city of Allahabad to bathe in the Ganges.

In 1986, in an effort to save the river, then-Prime Minister Rajiv Gandhi launched the Ganges Action Plan, a $140 million effort to raise the river's water quality so that its entire length would be safe for bathing. Before then, there were no sewage treatment plants along the Ganges.

Officials say that by 1994, 35 plants will be treating 230 million gallons of waste a day. Other measures, including community toilets, sewage diversion schemes and tougher regulations against industrial polluters, also have been initiated in an attempt to do for the Ganges what former President Lyndon B. Johnson's cleanup effort did for the Potomac River, once plagued by raw waste and fish kills.

AMBITIOUS MEASURES

The most ambitious cleanup measures have been targeted for the four-mile riverfront of Varanasi, a 3,000-year-old city that is as revered by the world's 700 million Hindus as Rome is by Catholics, Jerusalem by Jews and Mecca by Muslims.

About a million pilgrims a year visit the city, many traveling hundreds of miles on foot, and traditionally they leave with a bottle of Ganges water to display in their homes. They often pour some of the water into their town's well or stream, and when friends and relatives die, they sprinkle a little into the corpse's mouth.

To die in Varanasi and be cremated on the banks of the Ganges is the dream of every Hindu because of the belief that that will end the cycle of rebirth and bring final salvation. Officials estimate that between 20,000 and 30,000 bodies are cremated here every year, and the ashes are relegated to the river.

Efforts to dispose of partially cremated corpses have proven the most controversial part of the cleanup because, while floating body parts are the most obvious form of pollution, environmentalists say they are not the most toxic.

"We have spent $32 million [in Varanasi] building turtle farms," cackled Veer Bhadra Mishra, 53, a leading advocate of the river cleanup who is a professor of hydraulic engineering at Banaras Hindu University in Varanasi and the chief priest at one of the city's Hindu temples. "I take a dip in the river every day, and they've never even bitten my foot."

The assistant manager of the turtle farm outside of Varanasi said the turtles are fed dead fish from their infancy and are therefore "conditioned so they are attracted to the rotten smell of corpses and parts in the river. The people who are complaining about this are the kind who oppose any program."

He said about 24,400 snapping turtles have been raised and released into the Ganges since the program began in 1990. When fully grown, the turtles will be more than three feet long, weigh about 66 pounds and eat about a pound of meat a day.

"People have told me that when the corpses are brought in bags to the river for cremation, all the turtles flood the banks, and sometimes they start pulling the bags into the river before the fire is even out," he said.

That could be a slight exaggeration, judging from the observations of others.

"We see a lot of turtles, but I'm not sure it's really made any difference with the floating corpses," said Shyam Lal, 30, who operates a sightseeing boat along the Ganges. "We still see a couple of bodies every day, sometimes many more."

Baryar Chowdhury, 45, a manager at the Manikarnika Ghat, the largest wood-burning cremation area where as many as 50 bodies a day are cremated, insisted: "There is no such thing as a half-burned body. They are all 100 percent burned."

'MADE BY THE GODS'

The ghat—a huge stone landing area with steps leading into the river—appears suspended in clouds of gray smoke from blazing funeral pyres. The roar of fire is punctuated by the nearby clang of men splitting logs with sledge hammers and steel wedges.

"Where is the pollution? The river was made by the gods. How can it be dirty?" Chowdhury demanded.

Residents and environmentalists claim that many Indians cannot afford to buy enough wood to fully cremate their relatives, and half-burned bodies are routinely consigned to the river. It takes about 530 pounds of wood costing about $12—two weeks wages for the typical Indian—to fully burn an average-sized body.

Environmentalists complain that wood cremations are helping to devour India's forests, so as part of the Ganges Action Plan, an electric crematorium was built at Varanasi that charges less than $2 per body and does a thorough job of turning the bodies to ash.

With a population of about 1 million, Varanasi generates about 40 million gallons of municipal waste daily, much of it from an estimated 100,000 cows, bulls, water buffalo and other livestock that roam the city's streets and narrow alleys.

S.M. Hammad, a water official who oversees the city's Ganges cleanup, said most runoff and other sewage is captured in drains and about two-thirds of it is treated. The remainder is discharged downstream of the city, he said. However, during the monsoon months, when rain swells the river and floods the pumping stations, the drains are opened, and runoff and sewage flows directly into the river, Hammad said. Because of the huge volume of water, the waste is so diluted "it's not objectionable," he said.

About 70,000 people—half residents, half pilgrims—take a holy dip every day at one of Varanasi's 150 bathing ghats, which are interspersed with Hindu temples and monuments and old palaces built by maharajahs. The majority descend in a chaotic morning rush hour at the riverfront, where hundreds of people often cram the same small stretch of the bank, some plunging and other tiptoeing into the water. Monkeys peer down at the scene from nearby rooftops and chatter from the balconies.

Many people close their eyes and wade into the river up to their waists. Deep in prayer, they cup water in their hands and raise it toward the sun until it trickles down their arms and splashes over their head.

After the spiritual dip, some bathers lather up for more secular ceremonies and brush their teeth or wash their clothes.

"Just by chanting, 'Ganga, Ganga,' you can get God's blessing," said Harendra Dwivedi, 30, a religious scholar who takes a dip twice a day at the Asi Ghat and claimed the river "can never get dirty."

"I know what they're trying to do. They're trying to clean the river. But we don't feel there's anything wrong with the river," he said. "No matter what happens, Ganga will be Ganga."

THE NEED FOR A COHERENT POLICY IN THE FORMER YUGOSLAVIA

Mr. PRESSLER. Mr. President, I have risen on numerous occasions to discuss the war being waged in the former Yugoslavia and what I believe this country and the international community should be doing in an attempt to bring an end to the violence, bloodshed, and ethnic cleansing in that region of the world. In those speeches and in the legislation I have drafted and worked with others to write, I have tried to give life to this country's moral duty to help bring peace and freedom to what was once Yugoslavia.

The situation in the former Yugoslavia deeply disturbs me, as I know it does many Members of this body. For this reason, it has not been difficult to speak passionately about the need to find solutions. However, Mr. President, nothing I have said over these past many months comes anywhere close to the words expressed in a letter to me from one of my constituents, Rose T. Kennelly, of Sioux Falls, SD.

You see, Rose was born in Yugoslavia in 1940. As a young child she experienced firsthand the horrors of war and of the concentration camps. As a 4-year-old, Rose was forced to live in a concentration camp. While she survived, many in her family did not. She talks about the public executions of those who committed the crime of es-

caping from the camp, begging for food, and returning to the camp to share that food with loved ones. She explains how her father hid in grain, chimneys, and attics to avoid conscription into the German army. All of this was possible, she notes, because the truth was not made known to the world at the time those atrocities were occurring.

Rose ends her letter to me, "Dear Mr. Pressler * * * please make the President, the Congress and other officials aware that we need to expose the hidden evil happenings in what used to be Yugoslavia. Please don't leave this now unwritten like the past history of Yugoslavia." Rose Kennelly's personal experiences speak louder and more poignantly than any voice I have heard in any of the debates we have conducted here. I ask unanimous consent that the letter I received from Rose Kennelly be reprinted in the RECORD immediately following my remarks.

(See exhibit 1.)

Mr. President, what can we do to stop the killing and bring peace and freedom to the former Yugoslavia?

In a recent article for the Los Angeles Times, former Secretary of State Henry Kissinger considered the situation in the former Yugoslavia and discussed the need for a coherent strategy in that region. Dr. Kissinger wrote that, "putting an end to ethnic cleansing and concentration camps should be the moral objective; preventing an escalation of the crisis beyond the borders of Yugoslavia the political goal."

I agree with this position and his contention that mixed signals and shifting policies by Western democracies have slowed the resolution of the conflict in the former Yugoslavia. Indeed, in some ways policy decisions have given an unintentional boost to Serbia in its efforts to hold Yugoslavia together. Numerous international meetings have been held in an effort to bring the violence and bloodshed to an end. Serbia has participated in this process. However, little has been accomplished because Milosevic knows there are no real penalties for noncompliance. The U.N. General Assembly has voted 127 to 6 to deny Serbia and Montenegro the right to continue automatically in the seat held by the former Yugoslavia and declared the seat vacant. In addition, the United States, in response to a U.N. request, has begun providing the United Nations with documentation on specific atrocities being committed in the camps of the former Yugoslavia. I understand that several European countries soon will follow suit. Perhaps these actions will demonstrate to Serbia that the world does intend to impose real penalties for Serbia's policy of ethnic cleansing.

Dr. Kissinger also persuasively argues that the best solution in Bosnia would have been to "establish a U.N. trusteeship for Bosnia" rather than simply recognizing the independence of the former Yugoslav Republic. Tragically, it now is too late to take this type of step with regard to Bosnia. However, Dr. Kissinger correctly points out that it is still possible to prevent widespread bloodshed in areas where ethnic cleansing has not yet begun—in particular, in Kosova.

I support Dr. Kissinger's view that if we are to prevent what could become a much broader Balkan war, the United Nations should insist on autonomous status for Kosova and followup such a policy with a "joint air and naval command charged with developing rules of engagement and command structure." As one of the two congressional delegates to the current U.N. General Assembly, the resolution of the war in the former Yugoslavia and the future of a free Kosova will be high on my agenda. No one should be forced to endure the miserable life that has been inflicted on so many Yugoslavs.

Mr. President, I ask unanimous consent that the article written by former Secretary of State Henry Kissinger also be printed in the RECORD immediately following my remarks.

EXHIBIT 1

SIOUX FALLS, SD,
August 6, 1992.

Senator LARRY PRESSLER,
Russell Senate Office Bldg,
Washington, DC.

DEAR SENATOR PRESSLER: Tonight I was watching ABC Nightline News concerning the civil war in Bosnia-Herzegovina with Serbia. The big question was the concentration camps and what can be done. Having personally experienced concentration camps in Yugoslavia in 1945 under the Serbian direction, I feel, I need to speak up for my dead relatives and the starving, dying of today.

One of the best weapons the free world has to fight such sad happenings is to expose the evils. Expose the evil governments. When the honest press exposes such happenings, the evil has nowhere to hide. It is important that we make sure we do not use sensational press, for the evil governments know how to use that to their advantage.

Televisions, videos, is the best media to use to reveal the truth. One needs to overexpose the situation to the world, then nothing can hide.

I am a United States citizen. I was born in Apatin, Yugoslavia in 1940. My ancestors were Austrian-Hungarians. With wars this northern part of Serbia was shoveled between different countries. The people pretty much stayed the same. They learned the new countries' languages. They continued to live there and work there.

After World War II, Tito changed things. The Germans lost the War. Tito promised his followers vengeance for the German invasion of Yugoslavia. He promised them rewards. The reward was the German and Hungarian Territory of northern Serbia. Tito's excuse for vengeance was that those Germans sided with Hitler. Most didn't. My Father hid in grain, chimneys, attics, and Hungary, to avoid the German conscription.

The Yugoslavian government of 1945 made everybody, who had a German name, register with the authorities. People who had Hungarian or other name, or were of other nationality were exempt. Some of those people were of German ancestry, however, with being various countries throughout the years, some people had changed to more Hungarian or Serbian sounding names. First, the Russians took the young adults to Russia to slave labor camps to rebuild their country. Next came the older healthy men, who were used in the Yugoslavian slave working camps. The final group were the useless ones, young children and elderly, who were put into confinement.

They emptied out villages and put many people into one village, one house, one room. The entire village was guarded with machine guns. There one stayed till one died from starvation. First, the very young and elderly died of malnutrition. Then the ones in between. The ones who survived are the ones who learned to side with the oppressor or escaped with the price of their lives. One of the biggest crimes committed in the concentration camp was escaping from the camp, obtaining food through begging, and returning to the camp with the food to share with loved ones. Those who were captured committing this crime were publicly executed. Public executions were done with guns and the requirement of everybody in the concentration camp to be present there.

I was four years old when I was in the starvation concentration camp. I lost one set of great-grandparents and two sets of grandparents. I and my sister survived because of some help from nationalized name friends and the daring tactics of my father. By then the Russians had rejected the ill healthed slave labor workers and returned them to Yugoslavia. There they continued to be in labor camps.

Dear Mr. Pressler, please make our government and the world community aware Yugoslavia, Serbia, is capable of having concentration camps. It worked for them once, when the world was not aware of it. Please, push for truthful revelations. Please make the President, the Congress, and other officials aware that we need to expose the hidden evil happenings in what used to be Yugoslavia. Please don't leave this now unwritten like the past history of Yugoslavia.

Thank you for your attention.

Sincerely,

ROSE T. KENNELLY.

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

[From the Los Angeles Times, Sept. 20, 1992]

HOW TO PERSUADE SERBIA THE WORLD MEANS BUSINESS

BALKANS: WHAT'S NEEDED IS A COHERENT PROGRAM TO MULTIPLY POLITICAL AND ECONOMIC PRESSURES ON BELGRADE

(By Henry A. Kissinger)

It seems only yesterday that conventional wisdom was declaring nationalism "outdated," the integration of nations inevitable, another Europe an war inconceivable. Yet all these impossibilities are unfolding in Yugoslavia, including a new addition to the vocabulary of inhumanity-"ethnic cleansing."

I have great sympathy for the proposition that the consciences of democratic societies require some stand regarding the Bosnian barbarity. But implementation requires analysis of ends and means.

Three conceivable goals exist: imposing peace and restoring the pre-civil war borders of each Yugoslav republic; putting an end to human-rights abuses, especially ethnic cleansing, and preventing a new round of hostilities in such areas as Kosovo, which could expand into an international war.

The restoration of pre-war borders would require a large expeditionary force prepared to remain indefinitely and to accept serious casualties. No nation capable of affecting Serbian calculations is prepared to undertake such a mission.

Putting an end to ethnic cleansing and concentration camps should be the moral objective; preventing an escalation of the crisis beyond the borders of Yugoslavia the political goal. Up to now, the democracies' failure to understand the special conditions of Yugoslavia has enabled the Serbian leaders to create one fait accompli after another.

The Western democracies, with the best of intentions, made the likely inevitable. At first, they supported a more decentralized version of the unified Yugoslav state, largely because its breakup might have set unwelcome precedents. At the same time, the democracies imagined that, if a loose federal system did not work, autonomy for the republics could evolve gradually into full independence.

Each fanatical side interpreted the democracies' ambiguities as support for its own position. The word "autonomy" encouraged the constituent republics to speed their independence. The phrase "outdated nationalism" encouraged the Serbs to expect tolerance for their use of force to hold Yugoslavia together. Serbia, which deserved most of the blame for ethnic cleansing, received another unintentional boost when the democracies imposed an arms embargo against all parties. This gave a huge advantage to the heavily armed Serbs, who, in addition, possess an extensive armaments industry.

The U.N. cease-fire in Croatia, negotiated by Cyrus R. Vance, former U.S. secretary of state, had the practical effect of confirming Serbia's conquests. Though theoretically entitled to do so, no Croat would return to territory technically U.N.—controlled but, in fact, still dominated by Serbian military and para-military ethnic cleansers.

At the same time, the cease-fire saved thousands of lives and, perhaps more crucially for the future, established a vital precedent. The limit of U.N. control has established a dividing line across which further Serbian advances can be resisted by the international community, if the will for it exists. In short, some political demarcation in Bosnia and elsewhere is the precondition for outside intervention, political or otherwise.

All this was but a prelude to the nightmare awaiting in Bosnia-Herzegovina. Having delayed too long to recognize Croatia and Slovenia, thereby creating a gray area for Serbian intervention, the international community rushed to the recognition of Bosnia-Herzegovina. But Croatia and Slovenia were ethnically definable territories; recognizing them-even after the Serbian invasion-created a precondition for demarcation lines along ethnic boundaries. Bosnian nationality, on the other hand, was the invention of international lawyers.

In retrospect and with perfect hindsight, a determined international community should have tried, before recognition, to establish a U.N. Trusteeship for Bosnia. A checkerboard cantonal arrangement might have been sought, with large areas of self-government for the various communities. Such an arrangement could have established ground rules in the name of which "ethnic cleansing" might have been resisted.

All these proposals are put in the conditional, because their implementation would have had to depend on a heretofore missing ingredient: the pressures the international community would be prepared to employ. Periodically, the warring Yugoslav parties are called to meet in international forums—now by the European Community, now by the United Nations. Nothing has ever come of these meetings, because Slobodan Milosevic knows there are no penalties for non-compliance.

The new negotiation between and parties conducted by Vance and David Owen, former British foreign secretary, has the best conceivable leadership. But the problem must not be dumped on the shoulders of the negotiators and even less on the intractable parties. Those nations will to act should put forward a political program. If they are unwilling to do this much, there is no basis for any serious negotiation, let alone for military intervention.

The program for Bosnia should have three components: U.N. trusteeship, cantonization and placing all detention camps, of whatever party, under immediate international supervision. Since these goals will never be accomplished without pressure, the cooperating nations should give a deadline, say 30 days, after which they would lift their arms embargo against any former Yugoslav republic cooperating with their proposal, including Bosnia. Simultaneously, the economic sanctions against Serbia should be tightened. Severe economic penalties should be organized against those of Serbia's neighbors helping it to evade U.N. sanctions. Nothing less will convince the parties that the outside world means business—at last.

There is much idle talk about military intervention in Bosnia. There is next to no basis for it. Within Bosnia, the military contest is nearly over. To reverse the situation, major ground forces would be required. Every NATO leader has assessed ground operations as being too costly. Nor has any outsider ever managed fully to conquer the area, especially once Serbia was militarily involved. What is most needed is a coherent program to multiply political and economic pressures, and to increase the cost to Serbia to continued warfare by removing the arms embargo against victims of Serbian aggression.

There exists, however, a danger not yet overtaken by events for which the preparation of some military response seems essential. The democracies must not miss the boat a third time in areas where ethic cleansing has not yet begun. Kosovo is the most critical. It is perceived by Serbia as the origin of its national and poetic history due to a heroic defeat suffered there against the Ottoman Turks in 1389. As a result of that disaster, the Serbian population was pushed progressively north and today numbers barely 20% of the Kosovo total. The remainder is mostly Albanian Muslims.

If ethnic cleansing were to start in Kosovo, the risks of its becoming international would be grave. Albania has a common border with its compatriots in Kosovo. Turkey is not likely to permit another round of "ethnic cleansing" of Muslims without injecting assistance. Macedonia, Bulgaria and Greece could become involved as they have in previous Balkan wars.

Serbia must be given to understand that the world will not tolerate a Balkan war over Kosovo, and that an attempt to repeat the pattern of Croatia and Bosnia will make international retaliation against Serbia itself unavoidable. The only way such a threat will be believed is if the United Nations insists on an autonomous status for Kosovo and organizes a joint air and naval command charged with developing rules of engagement and command structures.

But if we want to avoid being faced down again, it is important that a coherent strategy be developed first. The haphazard round of ad hoc conferences needs to be replaced; military measures—if used at all—must be related to agreed political principles. It is dangerous to talk of one-shot bombing raids or of attacking specific targets like bridges or munitions plants unless one knows how far one will go. Otherwise, one runs a grave risk of fulfilling Bismarck's warning: "Woe to the statesman whose arguments at the end of a war are not persuasive, as they were at the beginning."

IRRESPONSIBLE CONGRESS? HERE'S TODAY'S BOXSCORE

Mr. HELMS. Mr. President, the Federal debt run up by the U.S. Congress stood at $4,045,041,387,267.48, as of the close of business on Friday, September 25, 1992.

Anybody familiar with the U.S. Constitution knows that no President can spend a dime that has not first been authorized and appropriated by the Congress of the United States.

During the past fiscal year, it cost the American taxpayers $286,022,000,000 just to pay the interest on Federal spending approved by Congress—spending over and above what the Federal Government collected in taxes and other income. Averaged out, this amounts to $5.5 billion every week, or $785 million every day, just to pay the interest on the existing Federal debt.

On a per capita basis, every man, woman, and child owes $15,748.10—thanks to the big spenders in Congress for the past half century. Paying the interest on this massive debt, averaged out, amounts to $1,127.85 per year for each man, woman, and child in America—or, to look at it another way, for each family of four, the tab—to pay the interest alone—comes to $4,511.40 per year.

What would America be like today if there had been a Congress that had the courage and the integrity to operate on a balanced budget?

ALCOHOL ABUSE

Mr. PRESSLER. Mr. President, I rise today to inform the Senate that during the period following the forthcoming adjournment of the Congress, I plan to study the growing problem of alcoholism. I plan to visit with Federal and private sector officials about alcoholism and the most cost-effective alcoholism treatment options.

Alcoholism has destroyed many lives. Fortunately, many have sought help successfully through Alcoholics Anonymous, private treatment centers and the Veterans' Administration.

The treatment cost for alcohol abuse is enormous. In 1992, the VA alone spent $418 million on substance abuse programs. I want to find out whether this could be done in a more cost-effective manner.

We all know that Federal resources are limited. My goal is to find the best way to help the most people deal with the deadly problems of alcoholism.

I look forward to addressing the Senate on this issue again in the future.

RECESS UNTIL 2:15 P.M.

The PRESIDING OFFICER. Under the previous order, the Senate will stand in recess until the hour of 2:15 p.m.

Thereupon, at 12:38 p.m., the Senate recessed until 2:17 p.m., whereupon, the Senate reassembled when called to order by the Presiding Officer [Mr. ADAMS].

EXECUTIVE SESSION

THE START TREATY

TREATY DOCUMENTS NOS. 102-20 AND 102-32

The PRESIDING OFFICER. Under the previous order, the Senate will return to executive session to continue with the consideration of the START Treaty.

The clerk will report.

The assistant legislative clerk read as follows:

Calendar No. 45, Treaty Document No. 102-20, treaty with the Union of Soviet Socialist Republics on the reduction and limitation of strategic offensive arms, the START Treaty (Treaty Document No. 102-20).

Calendar No. 46, Treaty Document No. 102-32, protocol to the treaty with the Union of Soviet Socialist Republics on the reduction and limitation of strategic offensive arms (Treaty Document No. 102-32)

The Senate continued with the consideration of the treaty and the protocol.

The PRESIDING OFFICER. Under the previous order, the Senate stands in executive session, and the Senator from Rhode Island is recognized to proceed.

Mr. PELL. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. PRESSLER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. PRESSLER. Mr. President, I would like to briefly explain the amendment that I will offer to the resolution of ratification to the START Treaty.

I met just this morning with a group of ranchers from western South Dakota. Some might ask, what do ranchers in western South Dakota care about an arms control treaty with Russia and other countries?

Well, it happens that there are launching silos in which ICBM missiles were deployed in western South Dakota. Those missiles will be removed and after the missiles are removed the treaty says that the silos must either be blown up or excavated. This could hurt the water supply in western South Dakota.

There are many artesian wells which supply the small communities and ranches in that part of my State with water. The blowing up of the missile silos could result in ruining the environment for the ranchers and small cities and towns in western South Dakota.

It is somewhat ironic that this good news, this wonderful news of an arms control treaty, which I do support, could have the result of these ruining wells and aquifers. The towns in western South Dakota pump water out of these aquifers. The artesian wells in the area naturally push water upward.

Thus, for example, when many of the silos were built, artesian water flowed into them, they had to be pumped out, and measures designed to keep them drained had to be installed. The point is that the missile silos and the water supply in western South Dakota are very closely linked.

For this reason, my amendment provides that the issue of destroying these missile silos be placed on the agenda of the Joint Compliance and Inspection Commission established by the treaty so that technical experts can figure out a way to destroy the silos in a way which would not pollute the waters of western South Dakota.

Of course, this has a bigger effect than just on the ranchers there. This water goes into the Oglala Aquifer upon which States other than South Dakota also depend for water. Some of the water that could be affected eventually flows into the Missouri River, which flows all the way into the Mississippi and throughout the United States.

So it is an environmental problem. However, it is one that is solvable. There are methods that can be used to assure the Russians that we will not put any missiles back in these silos at some point, but that will not do damage to our environment. The Russians must do the same thing. I would guess maybe they have some of the same problems, although maybe their missile silos are not located near major water supplies.

But that is the purpose of my amendment.

I thank my colleague from Wyoming, and my colleagues from Indiana and Rhode Island, for their understanding. Our staffers are working out language on this esoteric subject which has brought the ranchers of western South Dakota into international diplomacy.

I thank my friends from Indiana and Rhode Island for their assistance in getting the amendment up at the proper time, and I shall be standing by waiting for their call.

Mr. LUGAR addressed the Chair.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. LUGAR. Mr. President, I thank the distinguished Senator from South Dakota for offering these words of explanation.

As he has correctly stated, his amendment will be a declaration to the articles of ratification. Hopefully, after all amendments to the treaty have been completed, we will move then to the articles of ratification and his amendment or his declaration will be in order at that time.

I would indicate on our side of the aisle, I have been working with the distinguished Senator, and I think that is true of the chairman of the committee, so that it may be possible at that time to accept that declaration.

I thank the Chair.

Mr. PELL addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. PELL. This is an excellent amendment and one that I think is needed by the people of South Dakota.

When the time comes, I look forward to accepting it on this side of the aisle.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SYMMS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. SYMMS. Mr. President, I intend to vote against the proposed START Treaty for several reasons. I believe it is unequal, it is destabilizing, and it is unverifiable, to summarize succinctly.

Moreover, START is not an arms reduction treaty at all, as it has been advertised as if you just read about it in the paper or saw it on TV. It is billed as some kind of an arms reduction treaty. But START does not require the destruction of a single ballistic missile or a single nuclear warhead. And, further, START allows the continued mass production and retention of an absolutely unlimited number of new ballistic missiles and nuclear warheads. This is not an arms reduction treaty; it is an arms production agreement.

Unfortunately, in addition to these flaws of START, there is still a pattern of violation of all existing control of treaties by the former Soviet Union.

Mr. President, I want to say at the outset that I do not criticize Russian President Boris Yeltsin, his reformist leadership, or the marvelous things we have seen happen in the former Soviet Union in the past 2 years. I welcome to see the crumbling of the former Soviet

Union, what President Reagan so correctly used to refer to as the Evil Empire.

But I do think that we cannot be naive in the world we live in and think that there may not be some restoration of some form of a dictatorship, whether it be a fascist dictatorship, a restoration of the old hard-line Communist dictatorship, or an authoritarian military dictatorship that would like to restore the military might of that region of the world.

So I think the United States needs to be cautious and careful in its deliberation and be very sure that all Senators are keenly aware of the details of what is in this treaty.

In addition to the flaws of START, there is still a pattern of violations of all existing arms control treaties by the former Soviet Union.

There are even some new arms violations by the former Soviets. For example, the Russians are reneging on allowing the agreed on-site inspection procedures under the new Conventional Forces in Europe or CFE Treaty. Moreover, there has even been a recent Russian-Kazak violation of the proposed START Treaty in regard to illegal ICBM telemetry encryption.

In addition, it will take the former Soviets decades to destroy the huge illegal stockpiles that they have amassed in complete violation and disregard of the 1972 Biological Weapons Convention. Even the State Department concedes that these are new Soviet violations of the CFE, Biological Warfare, and START Treaties.

These new Soviet arms control treaty violations also include ever more serious Soviet violations of the 3-year-old Intermediate-range Nuclear Force Treaty, and the gross Soviet deception on the data regarding their ground forces in the recently implemented Conventional Forces in Europe Treaty.

Mr. President, in my view, this pattern of confirmed and even new Soviet arms control cheating should preclude the ratification of any new arms control treaties.

As I said, now that President Yeltsin is a democratically elected President of the Russian Federation, he has told the American Congress that there will be "no more lies, ever" in Russian foreign policy and I think that he personally wants it that way. But the lies, the deception, the cheating continue. And I have to say, why? Why does it continue?

The reason it continues is because the Russian military is still controlled by the old hardliners who are putting pressure on Yeltsin. As long as he is in power we may be all right. But how long will he be in power? What will the situation be in 4 or 5 years? You have to remember that the structure that is in power in the former Soviet Union military, now the Russian military, they were raised on the doctrine that you tell the West anything that you can tell them to get what you want. And misrepresenting the truth—or as we would call it, lying—is not considered any kind of bad conduct. It is considered that you operate that way; that is just standard operating procedure.

Mr. President, an analysis of the provisions of the proposed START Treaty suggests that START will have essentially the same basic fatal flaws as its predecessor treaties—the Strategic Arms Limitation Treaties—SALTS I and II—primarily unequal levels of forces favoring the Soviet Union. Thus unequal United States and Soviet strategic forces under START will result in the perpetuation of the existing and longstanding Soviet strategic superiority over the United States. That is really what we are talking about. Why should we enter into a treaty that leaves the framework for a nuclear strike force over and above what the United States has?

We probably should be here debating why we should be deploying the SDI, instead of debating some kind of treaty. It would make a lot more sense and would probably bring a lot more comfort to the American people if Congress were addressing moving forward with a strong strategic defense initiative, so we would have that no matter who is in power or who gains control of some of these missiles—what countries may have them in the future—because almost anything, I would say, is for sale in the former Soviet Union. Anyone with cash can buy practically anything over there because there is such a starvation and clamoring for hard currency.

So the stage is set for a great deal of movement of some of these weapons, even to other countries. We should be focusing on doing something to defend ourselves rather than focusing on some so-called treaty that I feel personally has not had the proper scrutiny that it needs.

If I had my way we would set this aside and the Senate could do this next year in the early part of the year when we could take the time and go through it chapter and verse; go through an extended period of hearings and see what has happened and have a little more time to see what is happening in the former Soviet Union in terms of what kind of government they will have, the kind of direction they are going to have for their leadership.

The Soviets have already expanded and preserved their existing and longstanding strategic superiority through SALTS I and II. Thus the former Soviet strategic superiority and the consequent growth of former Soviet nuclear blackmail capabilities have naturally forced continued United States negotiating concessions in ongoing strategic arms negotiations. These United States concessions have achieved ever greater Soviet strategic superiority, which naturally will again be recodified in START.

Thus START will again increase Soviet strategic superiority, as SALTS I and II did before it.

I want to go through the 10 fatal flaws of START. The 10 main defects or fatal flaws of the proposed START Treaty all enhance existing Soviet strategic superiority. They can be listed in summary form as follows:

No. 1, START will fully legalize Soviet heavy, extra-heavy, super-extra-heavy, and mobile missiles, that violated SALT I and SALT II, giving the Soviet enormous military advantages.

The Soviet heavy SS-19 intercontinental ballistic missile [ICBM] has been judged to have violated SALT I. The Soviet SS-24 extra-heavy ICBM and the Soviet extra-heavy SS-N-23 submarine-launched ballistic missile [SLBM] both have been judged to have violated SALT II. And the Soviet super-extra-heavy SS-26—also known as the SS-18 Mod 5—ICBM was developed and flight-tested in violation of SALT II as well.

But due to major American negotiating concessions, all four of these illegal heavy, extra-heavy, and super-extra-heavy missiles will be totally legal under START, thereby greatly increasing already existing former Soviet advantages in first-strike, counterforce capabilities.

I do not think that is a comfortable place for us to be as a country.

In addition, the Soviet SS-25 light, mobile ICBM violated SALT II in several ways, but it too will be made fully legal under START. These missiles were found to have violated SALT I and SALT II by the Reagan and Bush administrations, on the basis of strong intelligence evidence.

Moreover, the former Soviets supplied data on the characteristics of their missiles in START which has actually confirmed these violations.

Thus START will fully legalize five missiles which were clearly illegal under the two previous strategic arms control treaties.

Point 2: With START, the Soviets will achieve a significant bonus in total nuclear warheads, because of United States concessionary agreements allowing the serious undercounting of soviet missile and bomber warhead loadings.

The proposed START Treaty ostensibly allows only 1,600 deployed strategic nuclear delivery vehicles [SNDV's]—ICBM launchers, SLBM launchers, and long-range bombers, carrying a total of only 6,000 nuclear warheads attributed to these delivery vehicles, on each side.

But under START, the former Soviets can actually have, with complete legality, almost 4,000 extra nuclear warheads for their ICBM's, SLBM's, and long-range bombers above the START warhead level of 6,000 on each side.

Mr. President, it just seems to this Senator it would make more sense for us to be taking our Soviet aid package and buying some of these missiles from these people and dismantling them and seeing that that happens, rather than signing an agreement that leaves thousands and thousands of nuclear warheads in a part of the world that historically has always had a dictatorship. Remember, only recently has anyone been democratically elected, freely elected in the Russian republic. We do not know what the future holds.

This former Soviet warhead bonus of almost 4,000 extra warheads arises quite simply because the Soviets have secured United States agreement to seriously undercount their number of warheads carried on several types of Soviet ICBM's, SLBM's, and long-range bombers.

I think that is a point we should all consider. What are we talking about? We have allowed them to undercount the warheads.

Specifically, according to official unclassified information, Soviet SS-18 ICBM's are undercounted by about 1,233 warheads, Soviet SS-N-18 and SS-N-20 SLBM's are undercounted by a total of about 1,566 warheads, and Soviet Blackjack and Bear H air-launched cruise missile [ALCM]-carrying bombers are undercounted by a total of about 1,110 warheads. This deliberate undercounting is called down-loading.

This undercounting results in a total Soviet START missile and bomber warhead undercounting of about 3,909 nuclear warheads.

When these approximately 4,000 bonus warheads are added to the 6,000 warhead START ceiling, the Soviets will have a total of about 10,000 warheads. Thus under START, the Soviets can quite legally have at least about 10,000 nuclear warheads. But as we shall see, they can and will have even more.

Point 3, another fatal flaw. With START, the Soviets also get another significant bonus from allowed stockpiled forces that do not count.

Under START, the Soviets can also legally keep about several thousand more extra warheads on several thousand ICBM's, SLBM's, and long-range bombers that are in the allowed but uncounted categories of being either nondeployed, obsolete, inoperable, nonstrategic, or already stockpiled.

START allows an unlimited number of nondeployed missiles to be produced and retained. All of these categories of Soviet missiles and bombers are thus excluded from counting in the Soviet force totals due to further concessions that we made. This bonus gives the Soviets another approximately 2,000 more totally legal extra warheads.

Mr. President, if you are not concerned that those warheads may be used on us, I think we should be concerned about whose hands those warheads end up in. This is just a total offshoot from the entire discussion with respect to the treaty. But if we are planning to leave that kind of nuclear weapons, viable warheads, legally in the former Soviet Union, in the Russian republic and the other republics that have nuclear forces under their control, with the current ruble meltdown that is taking place, with the potential for civil wars breaking out all through the 15 republics of the former Soviet Union, we are leaving I think a very untenable and a dangerous situation.

Potentially, with an unlimited number of nondeployed missiles that the former Soviets are allowed to produce and keep, they could have many more than 2,000 extra warheads in this category and it does not take silos or trucks to launch these nondeployed missiles. They can be launched from any road or parking lot or flat area, from their own launch canisters.

Therefore, when we add about 10,000 warheads that the Soviets already quite legally retain to these 2,000 also legally excluded warheads, the former Soviets, Mr. President, will have 12,000 warheads—12,000 warheads.

I want to repeat that so that my colleagues understand what this treaty leaves the former Soviet Union. The former Soviet Union can legally have over 12,000 nuclear warheads under START. The Soviets thus can have over twice as many warheads under START as the United States ostensibly will allow. It will have twice as many warheads under START as START supposedly allows them to have.

Therefore, under START, the Soviets can legally have more than double the 6,000 warheads they are allowed under START, to give them 12,000, without even cheating or maintaining covert forces merely due to the multiple concessions that the United States has made, allowing the Soviets significant advantages in missile-bomber warheads counting rules.

These United States counting rule concessions have allowed the Soviets to exclude at least 6,000 warheads or twice their legal allocation. Both the CIA and the House of Representatives Committee on Armed Services have written reports, classified and unclassified, which concur, Mr. President, with this assessment. This just is not me talking. These are concurring reports from the CIA, classified, and the House Armed Services Committee, unclassified.

Fatal flaw 5. It means that the former Soviets can also have twice as many warheads under START as the United States can have under START, which means START clearly codifies unequal levels of forces. START thus clearly entails unequal levels of forces between the United States and the Soviet Union. Under START, the former Soviets can have more than 12,000 totally legal nuclear warheads. But under START, the United States can have only 6,000 warheads. Due to U.S. strategic program decisions already made resulting in U.S. unilateral disarmament, the United States actually plans to have only about 5,000 warheads and that may well be plenty. If we can have the proper accuracy, I am certain it is a deterrent that is nothing for anyone to take lightly.

But START explicitly codifies over a 2-to-1 advantage for the former Soviet Union in clear violation of the Jackson amendment to SALT I. The SALT I Jackson amendment required equal levels of United States and Soviet strategic forces under START. But the Jackson amendment is being torn up by the proponents and negotiators of the unequal START Treaty.

In sum, under START the Soviets can legally maintain more than twice as many warheads as are allowed in the United States. And I pose the question again to my colleagues: Do we really know where those 12,000 warheads will end up? Who will eventually own those warheads? Will they be protected, or will they be sold for hard currency on the international market so that every outlaw bandit in the world will have his own nuclear arsenal?

In addition, the former Soviets are allowed a significant covert force capability above the doubling of their allowed START level. That is fatal flaw No. 6.

In addition to the Soviets' legal allowance for over 6,000 extra warheads, the Soviets have been allowed under START to maintain their capability to covertly and illegally keep almost 2,000 more strategic nuclear delivery vehicles carrying several thousand warheads totally outside the START level.

For example, they can keep their already illegal 200 covert SS-16 mobile ICBM launchers, several hundred covert ICBM launchers at test ranges, thousands of older ICBM's and SLBM's which have been replaced by retrofits of newer missiles and are covertly stored, over 400 existing intercontinental Backfire bombers, plus another 100 newer intercontinental Backfires also allowed outside of START, over 200 Bear naval and older variants of the intercontinental bombers and several thousand more warheads carried on these covert Strategic Nuclear Delivery Vehicles which are completely excluded from the START constraints.

The history of the deception from that part of the world and confirmed cheating in arms control treaties suggests that the former Soviets intend to maintain significant illegal covert START forces. For example, United States intelligence has confirmed that the Soviets have covertly and illegally retained hundreds of banned SS-20's, SS-12's, SS-4's, SS-CX-4, SS-23 INF missiles that they never declared and never destroyed.

So I pose the question again: Where will they end up? Will they actually be parked in the bone yard and become so inoperable that they are no threat to anyone, or will they be clandestinely marketed for cash by people who have control of them in the lawlessness that is breaking out in that part of the world? I think that is a question we should ask ourselves.

Fatal flaw No. 7, Mr. President. The Soviets will thus actually be able to maintain several thousand covert warheads above their already double START level. They have, therefore, also succeeded in gaining United States START concessions explicitly allowing these covert Soviet strategically delivered nuclear vehicles and several thousand more warheads, all to be covertly excluded from the START constraints.

In light of the confirmed fact that we know the Soviets retain significant illegal covert forces under the INF Treaty—we know that now, Mr. President. It all came out. This was in the Gorbachev era, when everyone here was having a love affair with Mikhail Gorbachev and the American media particularly was having a love affair with Mikhail Gorbachev. I think he was made Time magazine's man of the decade, as a matter of fact. But while that was going on, they were covertly hiding missiles for which they had signed the INF Treaty and sworn to destroy, and it later came out with the collapse of the former Soviet Union that some 120 of these missiles had been covertly hidden, when they should have been declared under the INF Treaty and destroyed.

This is what we are dealing with. When you include those covert forces numbering at least 3,000 warheads on top of their legal 12,000 warheads, they will have around 15,000 warheads and we will have 5,000.

Now, I am sure my colleagues will say, well, 5,000 is enough. Maybe it is enough. I would feel more comfortable spending some more money to build a defense for this country from a stray missile that might come from one that is sold somewhere in the future to some smaller country that wanted to raise a ruckus than I would worrying about rushing through the Senate a treaty that will make very little difference in terms of the nuclear reduction. It will make no difference in terms of the reduction and will leave them with 15,000 warheads to our 5,000.

Fatal flaw No. 8: START will more than double the existing Soviet first strike advantage.

This is a very serious matter. I think Senators should take it seriously. The gross asymmetrical force structure, resulting first from the mostly unilateral United States strategic force cutbacks in the proposed START Treaty, and secondly from the Soviet capability to legally maintain over 6,000 warheads and at least 3,000 more covert warheads, when combined with the unequal United States-Soviet targeting requirements, will thus make it much easier for the former Soviets to strike the United States first with nuclear weapons against American missile bomber and submarine bases. Because as we are shrinking our force, they are going to have a twice-the-size force.

Thus START will make it much more easy for the Soviet Union to hit the United States first, because START will not even reduce existing former Soviet quantitative strategic advantages or constrain the significant modernization of several kinds of missiles, bombers, and nuclear first-strike weapons that the former Soviets possess, and that we do not possess and we will not possess.

For example, under START they could have more than 15,000 warheads available for a first strike in order to attack only about 1,500 U.S. strategic targets, thereby giving them an advantage of 15 to 1 on a first-strike advantage. This Soviet advantage more than doubles the already existing Soviet or former Soviet 6 to 1 first-strike advantage.

I know the critics will say, well, that does not make any difference because they are so economically constrained and strapped and wrapped that they cannot do this anyway. Some of these missiles seem to be on a stand-down condition.

That may well be true today but what does the future hold? I say to my colleagues why should we enter into some kind of agreement that we do not have to enter into, that we really get nothing out of? Why do we not just run our own defenses, build our own defenses the way we think we need them, and try to, as the saying goes, bomb them with Sears' catalogs so they can learn about how to enjoy the fruits of capitalism and freedom?

Why is it that we are going into a treaty because it looks good here at home, when the American people really are not aware of what the treaty does? It sounds good and everybody likes the feeling of having a treaty with our former adversaries under the guise that it is reducing the numbers of nuclear weapons in the world when, in fact, it leaves our former adversaries with 15,000 warheads.

Fatal flaw No. 9: START will also allow further former Soviet modernization of their forces to even further enhance their first-strike advantage. That is, in part, due to the U.S. concessions.

Under START they will be allowed to significantly modernize all of their strategic missile and bomber forces, and we will effectively be denied the same qualitative modernization options. Of course the fact of the matter is what we all know to be the truth, our B-52 force is now, very soon, approaching 50 years of age. We had developed in the eighties the newest, most modern, manned bomber in the world, the B-2. But this Congress unilaterally decided not to build it, unilaterally made a decision we will only build 20, if we get that many.

So we have made those decisions here. I see no reason why we need to sign a treaty that allows them, in fact encourages them, to modernize their forces when the U.S. Congress is already very capably unilaterally disarming the United States of America.

I made the comment in the Budget Committee earlier this year as I watched the slicing away—fortunately we saved the President's number in the Senate, not that it ended up that way, but we did do that job in the Senate. But I made the comment it took the U.S. military 43 days to decimate the world's fourth strongest military power. The way the U.S. Congress is operating, it will take them far less than 43 days to decimate the finest military organization in the world; that is, the one that is proudly that of the United States of America.

The 10th final flaw, Mr. President, is: START will not be effectively verifiable. United States intelligence knows that the former Soviets have cheated and, most likely, the odds are that those people in the military that will be responsible for the operation and the maintenance and the care of these missiles, bombers, submarines, et cetera, will cheat again. They have been raised that way. There is no reason to think that they will want to honestly show the world what they have.

Even with an augmented U.S. technical means of START monitoring and verification capabilities, and even with extensive U.S. onsite inspections and other so-called verification measures under the proposed START Treaty, START will still not be effectively verifiable. The START verification regime is full of loopholes inserted deliberately by our former adversaries in order to simplify their cheating. They knew what they were doing when they were working this START Treaty.

It already has been confirmed—the history of the deception from the former Soviet Union—cheating on all existing arms control treaties, including fraud in the inducement of SALT I, SALT II, and INF Treaty, and the Conventional Forces in Europe Treaty, the deception on arms control data; falsification of data on all these treaties and other serious, confirmed Soviet cheating on SALT I, II and the INF Treaty, the proposed CFE Treaty, all together suggests that there has been a persistent pattern of cheating on START, and the United States will continue to have great difficulty in detecting deception and cheating under START.

The facts are that the Soviet mobile missile, ICBM's, constitute 22 percent

of the Soviet legal allowance for strategic delivered missiles under a possible START Treaty. These mobile ICBM's carry about 13 percent of the Soviet legal allowance for nuclear warheads under START. SS-25 road mobile ICBM's are carried on truck launchers almost identical to the Soviet supplied Scud mobile truck launchers deployed in Iraq that are so extremely difficult for us to detect, using both satellite and aerial reconnaissance. It is almost impossible to detect those. We should have learned that lesson in the Gulf.

It is clear that the United States will not be able to effectively monitor and verify the road mobile ICBM deployment over a much larger area that is present in Russia under START using only satellite reconnaissance. It is impossible, Mr. President. It cannot be done.

Given the fact that the Soviet SS-24 rail mobile and ICBM's deployed on deceptive rail appear identical to normal civilian trains, the U.S. intelligence community has reportedly concluded, in a formal written assessment, that it will be impossible to effectively monitor and verify the SS-24 rail mobile ICBM deployment under START. It cannot be verified.

So what is it we are trying to get? I ask my colleagues, what are we trying to get out of this treaty, rather than something that makes everybody feel good here at home, when it has absolutely no impact on the safety and security in my opinion of the American people?

The greatest thing we could do to do something for our own security, Mr. President, is to help the Russian people, and the people in the other former Republics and the other Republics of the former Soviet Union, to develop a system where they have a sound currency and private ownership of their property so they can get a stake in the world that they live in, and they have some reason that they want to maintain a peaceful secure relationship with those of us in the West.

But, to sign some treaty and try to tell people that this is going to help anybody, I just find it is unbelievable for this Senator. I cannot understand how it is that we end up continually coming back to the table to do this same drill over and over again when there has been a pattern of cheating, a pattern of deception. Throughout the 20 years that I have been here in the Congress, there has never been a treaty signed with the former Soviet Union they did not cheat on. There has never been a treaty signed that really gave us any distinct advantage. We always had to do what we had to do. We restored the technology, the training, the morale of our troops, and of our equipment.

And we demonstrated that we had the ability in 1991 to very effectively carry out the political goals of the United States of America in the Free world. That had absolutely nothing to do with any agreements we had ever entered into that dealt with arms control.

We should reemphasize that the START mobile missile monitoring areas in the U.S.S.R. are several times larger than the Scud monitoring areas in Iraq, which are already about the size of several large United States States; and instead of being the largely open desert, the Soviet mobile missile deployment areas in the former Soviet Union are mostly in forests, where camouflage and concealment is much easier to facilitate.

There are also many more monitoring and verification problems with START which will emerge as more details about the START become known.

There will be so many problems with verification. In sum, what I am saying, Mr. President is that there are at least 10 serious defects in this draft as far as I am concerned. Even those 10 fatal flaws in the START are only the tip of the iceberg of the problem with the START Treaty. Many more defects and flaws will emerge as more details about START become known.

I compliment my colleague from Wyoming and his staff, who has spent an enormous amount of time working on this to develop a very logical, rational reasoning behind a go-slow attitude in confirming this treaty. I believe there are several amendments to this treaty, or at least conditions that must be accepted by both sides before this should ever be ratified.

The START Treaty will be more destabilizing than SALT II. It is true that the economy of the former Soviet Union is in shambles right now. It is also true, Mr. President, that the potential in that country with the wealth that they have, inherent wealth, of the resources and the people, that under better leadership they could again restore some stronger economic well-being; and if the wrong people are in control of this military, they could recorral those military efforts and restore their ability to be a super military power again. And the cheapest military that they can maintain happens to be their strategic nuclear strike forces. That is where they can put some well-trained people and just a few people and a concentration of assets, and they can create havoc in the rest of the world if those missiles, bombers, and submarines come into the wrong hands.

To run a massive land army, I would agree that for them to try to attack into Western Europe today with their land army, it would be impossible. They would be decimated at the hands of the NATO forces in conventional warfare. But that is not to say that their SS-18 missiles cannot be fired with some degree of accuracy, and the huge, heavy megatons on those warheads are very destabilizing to world peace and freedom.

Currently, the START Treaty will clearly enhance the Soviet first-strike capability. The proposed START Treaty will thus further erode the survivability of the U.S. retaliatory deterrent capability. Indeed, by allowing a further increase in the overwhelming former Soviet first-strike capability—it is correct to say it was developed by the Soviets and is still in the hands of the former Soviets, and in the hands of some of the same military personnel that helped develop it—the proposed START Treaty seems to be worse and more destabilizing than SALT II, which the United States, I might add, refused to ratify, because it was felt that it was destabilizing.

Here we are on the eve of the election rushing in to ratify another treaty. These new Soviet arms control treaty violations include ever more serious Soviet violations of the 3-year-old Intermediate-range Nuclear Force Treaty, and gross Soviet deception in the new Conventional Forces in Europe Treaty. This pattern of confirmed and new Soviet arms control cheating should preclude the ratification of any new arms control treaties.

I will summarize the 10 reasons why I think we should not do this:

No. 1. START will fully legalize heavy, extra heavy, super extra heavy, and mobile missiles, that violated SALT I and SALT II, giving the former Soviets enormous military advantages. About the only part of their military that they are going to be able to hold together under the current economic system is their nuclear strike forces.

No. 2. With START, the former Soviets will achieve a significant bonus in total nuclear warheads, because of the United States concessionary agreements allowing the serious undercounting of former Soviet missiles and bomber warhead loadings.

No. 3. With START, the former Soviets also get another significant bonus from allowed stockpiled forces that do not count.

No. 4. The former Soviets thus can have over twice as many warheads under START as START ostensibly allows.

Fatal flaw 5. The former Soviets can also have twice as many warheads under START as the United States can have under START, which means START clearly codifies unequal levels of forces.

That is a matter of principle with me, Mr. President. We may have all of the nuclear weapons we think we need, but why should we be signing an agreement with our former adversaries who still, incidentally, have those missiles targeted on the United States. We are still the target for all of these missiles. Why should we be going into a treaty and telling the American people that somehow this means a reduced level of

forces, when in fact it codifies them to be able to have twice the amount that we will have?

Fatal flaw No. 7. The Soviets will thus actually be able to maintain several thousand covert warheads above their already double START level.

I think I left out No. 6, Mr. President, where the Soviets are allowed a significant covert force capabilities above their doubling of their last START level.

Fatal flaw 8. Under START, they will double the existing former Soviet first-strike advantage.

Fatal flaw No. 9. START will also allow further former Soviet modernization of their forces to even further enhance their first-strike advantage.

Fatal flaw No. 10. START will not be effectively verifiable, and United States intelligence knows that the former Soviet Union has cheated and cheated and cheated on every treaty we have signed with them.

Mr. President, I will have more to say later and more to insert into the RECORD, as this debate goes on.

I ask unanimous consent to have printed in the RECORD a full analysis of the current and new violations, together with a detailed and extensive treatment of the 10 fatal flaws that I have summarized here today; the second is an unclassified State Department analysis of the Soviet SS-18 launches over Hawaii in the fall of 1987. The third analysis which is an analysis of confirmed Soviet deception and cheating with regard to many heavy ICBM's; and the fourth which is a detailed analysis of the SS-25 mobile missile loophole in START.

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

THE TEN MAIN DEFECTS OF THE PROPOSED STRATEGIC ARMS REDUCTION TALKS—START TREATY

(Staff Study, U.S. Senate)

INTRODUCTION

Winston Churchill's skepticism during the 1920s and 1930s about the utility and effectiveness for the United Kingdom of Great Britain of arms control treaties for safeguarding world peace is well known, and it still has relevance today.

Winston Churchill believed that arms control treaties weakened Western democracies, and therefore did not help to preserve peace in the face of military build-ups by eastern authoritarian regimes. Churchill believed, therefore, that only deterrence through unilateral military capabilities best served to enhance peace.

Churchill stated the following in 1934 about proposed British-Nazi arms control agreements to the British House of Commons:

"If you wish to bring about war, you bring about such an equipoise that both sides think they have a chance of winning. If you want to stop war, you gather such an aggregation of force on the side of peace that the aggressor . . . will not dare to challenge."

In 1947, Churchill restated:

". . . When both sides believe they are more or less equal, then each thinks it has a good chance of victory."

Here is the relevance for today of Winston Churchill's skepticism about arms control treaties—What if the former Soviets could exploit an ostensibly equal START Treaty in order to achieve a superiority capable of upsetting an assumed equilibrium?

I. SHORT SUMMARY OF START FLAWS

The short summary of this United States Senate staff study is the finding that a proposed Strategic Arms Reduction Talks—START—Treaty will be unequal, unbalanced, destabilizing, and not effectively verifiable.

The proposed START Treaty is conceptually flawed in at least ten important respects.

Indeed, some believe that it is so flawed that it must be completely re-negotiated.

START is not in truth really an "arms reduction" treaty. In fact, contrary to popular perceptions, the Administration's own analysis of START demonstrates quite clearly that START:

Does not require the destruction of a single strategic missile or a single nuclear warhead;

Allows the retention of all existing strategic missiles and nuclear warheads, and allows the continued production of an unlimited number of new strategic missiles and nuclear warheads.

Second, START is not an equal treaty, as required by law—the Jackson Amendment to SALT I in 1972 requiring "equal levels of forces" in any new offensive arms treaty. According to an unclassified report of the U.S. House of Representatives Committee on Armed Services, and according also to several classified CIA assessments, START allows the former Soviets to legally have well over 12,000 nuclear warheads, despite the START "equal" limit of 6,000 warheads on each side, and despite U.S. plans to retain only 4,700 warheads.

Finally, START is not effectively verifiable, particularly in regard to verifying limits on "discounted" and "down-loaded" warheads, "non-deployed missiles," and mobile missiles.

The ten main conceptual flaws of START are as follows:

First, the proposed START Treaty will fully legalize five Soviet missiles which are confirmed to have violated either SALT I, SALT II, or both, thereby giving the Soviets enormous military advantages.

Despite the many falsifications in the Soviet START data declaration, the Soviet data declaration surprisingly confirms several long suspected Soviet violations of SALT I and SALT II.

Evidently, the Soviets decided that by providing data that confirmed their SALT I and SALT II violations, they could accept the limited risk that the United States might charge them with additional violations of the expired SALT agreements, in order to serve the much more important purpose of using their data declaration to exploit the permissiveness of START provisions.

But it is conceptually difficult to understand why a new treaty should legalize and legitimize five missiles which violated the previous SALT agreements.

START thus condones and actually rewards previous Soviet cheating in SALT.

Second, START deliberately, and grossly, undercounts the numbers of nuclear warheads on each side, because of the unwarranted but related concepts of "discounting" and "down-loading."

This deliberate, gross, START undercounting of warheads stems from a well-intended U.S. attempt to encourage both sides to concentrate their nuclear warheads in the more stabilizing "slow flyers" of the bomber forces, which are incapable of a first strike. But by thus opening the door to deliberate, allowed warhead under-counting in START, the un-intended effect is the disastrous result that all the ostensible "limits" of START can be legally transcended. The deliberate under-counting of bomber warheads was called bomber "discounting," and it was intended to encourage deployment of the more stabilizing, slow-flying, and recallable, heavy bomber force.

This allowed under-counting through bomber "discounting" has thus made a mockery out of START's ostensible "constraints." More significantly, when combined with deliberate strategic program restraint by the United States in contrast to the still rather dynamic momentum of Soviet strategic programs, START's allowed under-counting has made an ostensibly equal treaty into a manifestly unequal treaty.

Thus under START, both sides are given bonuses of thousands of un-counted bomber warheads. The United States will get a bomber warhead bonus of about 1,500 uncounted warheads. Not surprisingly, the Soviets will get a slightly larger bonus than the United States in un-counted bomber warheads—about 1,800 warheads, an advantage of about 300 more warheads.

But the Soviets are in a much better position to exploit the permissive under-counting of START than the United States. This is because the Soviets also succeeded in applying this concept of deliberate undercounting of warheads to ballistic missiles, by first introducing into the negotiations, and then achieving the agreement of the United States for them to exploit, the related concept of "down loading" of ballistic missiles.

The Soviets have an enormous advantage in ballistic missile throw-weight, especially in their destabilizing force of InterContinental Ballistic Missiles (ICBMs) capable of a first strike. The Soviets thus sought and achieved the allowed "down-loading" of their most capable ballistic missile, allowing them several thousand extra, covert warheads. Because of the reluctance of the United States to deploy new strategic systems, this allowed missile "down-loading" will largely be exploited by the Soviet Union.

But the Soviets also achieved the agreement of the United States to deliberately under-count 3 additional types of ballistic missiles, with a total under-counting potential of about 3,000 more covert warheads on these three types of missiles (not all of which will be exploitable due to some presumed missile retirements).

Thus this Soviet achievement of exploitable gross under-counting of ballistic missile warheads gratuitously gives the Soviets several thousands more legal, bonus ballistic missile warheads under START than the United States. The Soviets will thus be explicitly allowed to "down-load" but not count at all at least 4,000 ballistic missile warheads, plus another 300 covert, "discounted" or "down-loaded" warheads on heavy bombers—or a total down-loading of about 4,300 warheads, compared to only a few hundred "down-loaded" warheads for the United States.

In short, at least 4 Soviet ballistic missiles will be legally under-counted by at least 40 percent of their warhead carrying capacity.

Four of their most important and most threatening ballistic missiles will thus be counted as carrying thousands fewer warheads than they are capable of carrying. But the United States will not be able to exploit this bonus potential in its own forces, or to

monitor and verify whether the actual, higher Soviet warhead loading capacities are not being exploited.

Thus with regard to the second major conceptual flaw of START—the allowed undercounting resulting in thousands of bonus missile and bomber warheads—the Soviets will be able to exploit START's highly permissive regulatory provisions and the verification provisions in order to achieve several thousands of un-counted, bonus warheads on their bombers and ballistic missiles. In addition, the Soviets will be allowed 1,100 warheads on mobile ICBMs, while in contrast, Congress will not allow the United States to deploy any mobile ICBMs whatsoever.

Thus, as will be demonstrated in detail, under START the former Soviets will be allowed a total of about 6,000 discounted, down-loaded, and other bonus warheads, compared to only about 2,000 bonus warheads for the United States (partly on old B-52 bombers). The Soviets will thus be able quite legally to have almost twice as many bomber and ballistic missile warheads—about 12,000—compared to the 6,000 warheads allowed for each side under the ostensibly "equal" limits of START.

Third, in addition to their several thousands of un-verifiable discounted and downloaded, or bonus, bomber and ballistic missile warheads, the Soviets have also exempted many hundreds of "non-deployed" launchers and ballistic missiles, and also hundreds of "non-deployed" intercontinental bombers from counting under START.

These exempted "non-deployed" Soviet intercontinental bombers are misleadingly classified under START as being for such special purposes as conventional bombing, testing, training, refueling, naval strike, reconnaissance, Anti-Submarine Warfare, electronic warfare, command and control, or as being simply "retired" or "non-modern"—obsolete.

For example, the Soviets are allowed to completely exempt from START up to 500 of their long-range Backfire bombers, which U.S. Intelligence long ago concluded are bombers capable of intercontinental missions, with a range greater than some Soviet intercontinental bombers (such as Bison bombers) included in SALT II. Moreover, a recent Soviet defector has reportedly provided conclusive new evidence that the Backfire bomber has intercontinental range, and therefore should be included within START constraints as an intercontinental bomber.

In addition, thousands of warheads on "non-deployed" Soviet strategic reserve launchers and ballistic missiles are also exempted from counting in START. There are permissive numerical limits even on un-verifiable "non-deployed" mobile ICBMs under START, and there are absolutely no limits whatsoever on extra, "non-deployed" ICBMs for fixed silo launchers. In addition, there are also no constraints whatsoever under START on "non-deployed" Soviet Submarine-Launched Ballistic Missiles (SLBMs), despite the fact that we know the Soviets stockpile extra SLBMs in their six large subterranean submarine tunnels, and despite the fact that the Soviets also have an extensive capability to reload submarines with refine SLBMs at sea.

These totally exempted "non-deployed" ballistic missile launchers, ballistic missiles, and intercontinental bombers will be impossible to monitor and verify. For example, the Soviets will be allowed at least as many as 5,000 bonus warheads on "non-deployed" bombers and ballistic missiles, many of which will be on totally unverifiable railmobile launchers. In contrast, the United States will have only a few hundred bonus warheads in these categories.

Fourth, START does not require either side to destroy a single ballistic missile, or to destroy a single nuclear warhead.

Thus START allows the former Soviets to retain a totally unlimited number of "Non-Deployed Missiles"—an unlimited number of covert ICBMs and SLBMs. Moreover, START allows a totally unlimited number of nuclear warheads. And the former Soviets can actually produce an unlimited number of new ballistic missiles and nuclear warheads under START.

There is then the difficult problem of Soviet covert, strategic reserve forces. The Soviets will be allowed under START to deploy hundreds of entirely legal but covert mobile ICBMs, and their known mobile ICBM reload and refire capabilities will not be effectively constrained. More significantly, U.S. Intelligence has concluded that the former Soviets could easily deploy hundreds of covert mobile ICBM launchers and missiles, with thousands of warheads, without detection, especially on rail-mobile launchers, which are totally undetectable and also the most dangerous.

In addition, the Soviets have retained thousands of older ICBMs and SLBMs which have been replaced by newer missiles, ostensibly for use as "space launch vehicles." There is the strong possibility that several types of covert launchers for these covert, strategic reserve missiles exist, and they would also be totally undetectable. These covert, strategic reserve launchers and missiles are not effectively constrained by START, and they are impossible to monitor and verify effectively. There could be several thousand Soviet covert warheads in these categories, compared to none for the United States.

Fifth, due to the allowance for bonus warheads on "discounted" bombers and "downloaded" missiles, and the permissiveness of other START counting rules allowing several thousand "non-deployed" and covert warheads, and also to the reluctance of the United States to deploy new or additional strategic systems, the Soviets will be allowed to have well over twice as many warheads under START as START ostensibly allows.

Sixth, START thus will not constrain the United States and the Soviet Union to "equal levels" of strategic forces, as is required by the Jackson Amendment to SALT I. The Soviets will be allowed well over twice as many warheads under START as the United States. For example, totalling all Soviet bonus down-loading warheads, "non-deployed" warheads, and covert warheads, and fully complying with START "limits," the former Soviets will probably have under START over 15,000 warheads, compared to only about 4,700 for the United States, not even counting the Soviet potential to retain covert, strategic reserve forces totalling several thousand more undetectable warheads.

In short, START gives the Soviets a massive "breakout" potential that they could easily exploit for the purpose of nuclear blackmail.

Seventh, START does not successfully reduce the existing Soviet first strike advantage. The main Soviet first strike ICBM force is ostensibly cut in half by START, but this force is being modernized and improved in such a way that, even if it is being cut in half, its original first strike capability will be at least preserved intact. Moreover, the Soviets will be allowed to further modernize and qualitatively improve their heavy ICBM force, thus allowing them even to expand their heavy ICBM, first strike capability. And if they cheat and deploy more warheads than allowed on their heavy ICBMs, they could increase their first strike capability even more.

In contrast, under START, the United States is allowed zero heavy ICBMs. Heavy ICBMs are the single most lethal, dangerous, and therefore most important weapon in the world today, and the Soviets will be allowed 154 carrying ten warheads each, which they can continue to modernize, compared to zero for the United States. How can anyone possibly argue that START is an equal treaty under this circumstance?

Eighth, START's permissive "constraints" on modernization and new type ballistic missiles allow almost unlimited Soviet modernization of existing and new type ballistic missiles capable of expanding the Soviet first strike potential. The modernization and new type constraints of START are much too generous to the Soviets, who will be their main beneficiaries, because the United States does not intend to modernize or improve its forces much within the terms of the Treaty. The Soviets will be able, for example, to legally increase the throw-weight of each of their existing missiles by as much as 21 per cent. Thus in addition to already having the number of warheads on most existing Soviet ballistic missiles undercounted by 40 per cent, the Soviets will also be able to increase the throw-weight and the warhead capacity of each of their missiles by another 21 per cent. This will give them enormous "break-out" potential.

Ninth, the Soviets have engaged in at least eight major cases of data falsification in START. The Soviets are known to have falsified the warhead carrying capacities of at least three of their missiles, the throw-weights and other capabilities of many of their missiles, and the modernization possibilities for all of their missiles, and the United States has agreed to all of these Soviet data falsifications. U.S. Intelligence has reportedly done a 65 page study and a National Intelligence Estimate confirming large-scale Soviet data falsification in START.

Tenth, START will not be effectively monitorable or verifiable. The ineffectiveness of U.S. monitoring and verification are key elements in the Soviet ability to exploit each of the first nine conceptual flaws of START. Thus despite an elaborate monitoring regime even including many types of "intrusive" on-site inspections, the Soviets have agreed to a monitoring regime which forces the United States to look in the wrong places at the wrong times for the Soviet cheating that is certain to occur elsewhere.

But before considering the evidence for and the details of the ten arguable defects of the proposed START Treaty between the United States and the Soviet Union, the long and tragic record of continued Soviet negotiating deception and cheating on all existing arms control treaties must be examined.

CONFIRMED SOVIET NEGOTIATING DECEPTION

Last year, on June 19, 1991, then Russian President-elect Boris Yeltsin told a group of 72 U.S. Senators that Soviet hardliners falsified the numbers of Soviet weapons systems in arms control negotiations. Yeltsin stated to the Senators:

"In the past, the Soviet Union used false statistics in arms negotiations. This must not be repeated."

The next day, the front page, lead headline of The Washington Times stated "Soviets Lying on START, Yeltsin Says."

The Washington Post also of June 20, 1991, similarly stated:

". . . Yeltsin . . . criticized Soviet hardliners for attempting 'to cover up the true facts' about the quantity of Soviet weaponry during arms negotiations with the United States."

Press reports thus interpreted Yeltsin's statement to mean that the Soviets had falsified data in the START negotiations.

The democratically-elected leader of the Russian Federation, President Boris Yeltsin, recently made another unprecedented revelation of former Soviet "lies" in arms control negotiations. President Yeltsin made the following important revelation about former Soviet deception in arms control in his brilliant speech of June 17, 1992, to the Joint Session of the U.S. Congress.

President Yeltsin recently stated to the Joint Session of Congress:

"It is Russia that once and for all has done away with double standards in foreign policy. We are firmly resolved *not* to *lie* any more, either to our negotiating partners, or to the Russian or American or any other people.

There will be no more lies—ever.

The same applies to biological weapons experiments, and about the facts that have been revealed about American prisoners of war, the KAL-007 flight, and many other things. That list could be continued.

The archives of the KGB and the Communist Party central committee are being opened up."

President Yeltsin's two very credible admissions of Soviet untruths, data falsification, and negotiating deception in START should come as no surprise. As described in detail below, there are at least eight well documented cases of Soviet negotiating deception in START. And as noted, CIA has reportedly done a 65 page study and a National Intelligence Estimate of these Soviet START data falsifications.

In addition, on January 29, 1992, President Yeltsin admitted for the first time that the former Soviet Union had violated the Biological Weapons Convention. On February 5, 1992, Yeltsin also admitted that former Soviet leaders had even "deceived" the United States on their longstanding violations of the BW Convention.

Moreover, in addition to their many confirmed violations of arms control treaties, the Soviets have the following track record of negotiating deception in arms control treaties:

Five confirmed cases of negotiating deception in SALT I of 1972;

Six confirmed cases of negotiating deception and data falsification in SALT II of 1979; and,

Three confirmed cases of negotiating deception and data falsification in the INF Treaty of 1987.

Moreover, it is well known that the 1973-1982 MBFR negotiations could not be consummated because of deliberate, systematic Soviet data falsification.

This same problem has recurred on a massive scale in the 1990 CFE Treaty data—President Bush has confirmed that the former Soviets massively under-reported their data in the CFE Treaty.

Finally, the Chief U.S. negotiator of the INF Treaty, Ambassador Maynard Glitman, stated in March 1990, that the Soviets had engaged in:

"Deceit and mendacity both inside and outside, privately and publicly, during and after the INF negotiations."

And President Bush accused the Soviets of "bad faith" in the INF negotiations in his February 1991 Report, and again in his March 1992 Report, to the Congress on Soviet Noncompliance with Arms Control Treaties.

Thus, unfortunately, there is much independent evidence supporting Yeltsin's attack on the manifold lying and deception of the Soviet Union in the SALT I, SALT II, INF, CFE, and START negotiations.

Yeltsin's several authoritative statements confirming Soviet arms control deception has once again "let the cat out of the bag" on Soviet duplicity.

The only other Soviet political leader who has confessed Soviet deception and cheating in arms control is former Soviet Foreign Minister Eduard Schevardnadze, who actually admitted in 1989 that the Soviet Krasnoyarsk radar was a clear violation of the SALT I ABM Treaty. Schevardnadze even went on to openly concede that the Soviet political leadership under Gorbachev had flagrantly lied about their many arms violations for years.

We shall examine this evidence of Soviet "bad faith," falsification, and deception in the START negotiations in more detail below, but first we must examine the magnitude of Soviet cheating.

B. Previous Soviet arms control cheating

Tragically, despite the ten formal Presidential Reports to Congress on Soviet Noncompliance with Arms Control Treaties since 1984, the Soviets have gone right on negotiating deceptively and cheating in arms control, not only since 1984, but ever since strategic arms control began as early as 1963. This pattern of Soviet cheating in strategic arms control has thus continued to steadily expand ever since 1963.

Indeed, even nine years after the first Presidential Report to Congress on Soviet Noncompliance with Arms Control Treaties in January, 1984, there is even in 1992 still an expanding pattern of ever newer Soviet violations of all existing arms control treaties. In fact, the Soviets have recently been confirmed by President Bush himself to be expanding still their pattern of new cheating on all existing strategic arms control treaties.

C. The seventeen most serious new Soviet arms control violations

The seventeen most serious Soviet violations of existing arms control treaties are:

(1) The now confirmed Soviet covert deployment of at least 120 banned SS-23 missiles in Eastern Europe, still under Soviet command and control, which clearly violates the 1988 Intermediaterange Nuclear Forces (INF) Treaty, and which is contained in a report to Congress on September 18, 1991. President Bush confirmed that these un-declared SS-23s were a "probable violation" of the INF Treaty. President Bush repeated this "probable violation" finding for the banned SS-23s in his annual report of March 30, 1992;

(2) There is reportedly now a total of over 500 Presidentially confirmed, serious Soviet violations of the INF Treaty;

(3) U.S. Intelligence reportedly now has strong evidence that the Soviets probably have over 1,000 covert INF missiles banned by the Treaty;

(4) Several Soviet SS-20 missiles banned by the INF Treaty reportedly were detected by U.S. Intelligence satellite reconnaissance inside the Soviet Union in July, 1991, but alarmingly this reported detection occurred only weeks after all 654 SS-20s were declared by the Soviets to have been totally destroyed under the INF Treaty. Thus these several additional, banned, clearly illegal SS-20s detected have to be considered to be part of the Soviet covert SS-20 force totally banned by the INF Treaty. And there have been at least two recent press reports in early 1992 of former Soviets actually trying to sell SS-20s to the United States;

(5) The Soviets reportedly have recently converted a base previously housing banned SS-12 INF missiles into a SCUD Short Range Ballistic Missile base, without giving the U.S. the required 30 days notice, in clear violation of the INF Treaty;

(6) The U.S. has confirmed the Soviet deployment of MIG-21, MIG-23, MIG-27, and MIG-29 fighter-bombers in Cuba, all capable of delivering nuclear bombs, and this offensive weapons deployment is a serious, clear violation of the 1962 Kennedy-Khrushchev Agreement, and the 1973 Agreement on the Prevention of Nuclear War. As the recently defected Cuban Air Force General Rafael del Pino stated recently—"I can tell you that in 12 hours, Cuba can have the capability of attacking the United States with nuclear bombs. All it takes is for a plane to bring the bombs from the Soviet Union";

(7) The U.S. has reportedly detected the highly provocative covert Soviet deployment of several banned SS-20 INF missiles, under camouflage and concealment, also in Cuba, in violation of both the 1962 Kennedy-Khrushchev Agreement and the INF Treaty, and also in violation of the 1973 Agreement on the Prevention of Nuclear War;

(8) The Soviets have also deployed an SS-4 Medium Range Ballistic Missile to Cuba, identical to the SS-4s which the Soviets provocatively deployed to Cuba at the time of the October, 1962 Cuban Missile Crisis, in contradiction of the Soviet solemn promise in diplomatic channels not to consummate such a provocative deployment. But this provocative SS-4 has reportedly disappeared into newly constructed underground military tunnels in Cuba;

(9) the Soviet recalcitrance in dismantling their admitted Krasnoyarsk radar violation of the SALT I ABM Treaty, their attempt to blackmail the U.S. into further START concessions in exchange for their already-agreed dismantling of Krasnoyarsk, and the Soviet attempt to further circumvent the SALT I AMB Treaty by transferring all the components of the Krasnoyarsk radar to a new AMB radar planned to be built in Siberia at Komsomolsk, which will also violate the ABM Treaty, altogether remain a serious set of arms control violations;

(10) The Soviet expanding deployment of the long-range SAM-10 and SAM-12 Surface-to-Air-Missiles, recently confirmed by the Soviets themselves to be capable of use in the prohibited Anti-Ballistic Missile mode, especially around Moscow, also violates the SALT I ABM Treaty;

(11) The recent admissions in the Soviet military press that the nine Soviet Large Phased Array Radars are actually ABM Battle Management Radars, indicate that the Soviets have in fact illegally developed and deployed both the prohibited base, and the prohibited capability itself, for a nationwide ABM defense.

(12) The Soviets moved their new super aircraft carrier, the "Admiral Kuznetsov," out of the Black Sea in late 1991, in clearcut violation of the 1934 Montreaux Convention;

(13) The Soviets reportedly intend to begin the flight-testing soon of several new strategic missiles, which will probably violate START limits. As the CIA Director testified to Congress on February 27, 1991: "They [the Soviets] also continue to develop three additional new strategic missiles."

(14) The Soviets have clearly circumvented the CFE Treaty by moving upwards of 60,000 pieces of military equipment East of the Urals, and the Soviet Communist Party has admitted this circumvention, as we shall see.

(15) The Soviets have engaged in gross CFE data base deceptions, involving a now-confirmed deliberate under-declaration of tens of thousands of tanks, armored personnel carriers, artillery pieces, combat aircraft, and attack helicopters, in order to exclude these forces from being dismantled under the CFE Treaty. On December 24, 1991, President Bush confirmed these violations unequivocally and conclusively in a report to Congress;

(16) The Soviets re-subordinated three regular army divisions to "coastal defense," illegally after CFE Treaty signing, in order to try to exclude them from CFE limits, and the Soviets illegally attempted to raise already-agreed sublimits to gain 500 more armored personnel carriers to suppress freedom in the Baltics;

(17) And finally, former Soviet Military advisors in Iraq admitted to Western defense attaches that there were Soviet-supplied SS-12 missiles in Iraq, which were banned by the INF Treaty.

Thus the pattern of 17 serious Soviet violations of all existing arms control treaties continues to expand.

D. Soviet bad faith in arms control negotiations

Despite the serious problem of the State Department's attempt to avoid reporting the SS-23 violation, at least President Bush himself has honestly and openly admitted for the first time that the Soviets used negotiating deception on this important issue of covert SS-23s during the INF talks.

As noted, also in his February 15, 1991, Presidential Report to Congress on Soviet Noncompliance with Arms Control Treaties, President Bush stated that:

". . . [The] Soviet failure to inform the United States of the existence of SS-23 missile systems in the GDR, Czechoslovakia, and Bulgaria during the [INF] negotiations and in the interim period preceding the GDR announcement constitutes bad faith."

Moreover, as noted, the Chief U.S. Negotiator of the INF Treaty, Ambassador Maynard Glitman, reportedly stated in a March, 1990 State Department cable that the Soviets negated in:

"deceit and mendacity both inside and outside, privately and publicly, during and after the [INF] negotiations."

But it is important to note that the Senate never heard Ambassador Glitman or the State Department mention this Soviet "deficit and mendacity" at all during the ratification process on the INF Treaty.

Is it possible that some officials in the State Department also engaged in "deceit and mendacity" toward the Senate during the INF Treaty ratification process, by failing to disclose Ambassador Glitman's self-avowed frustration over Soviet INF negotiating deception?

To re-emphasize, there is now conclusive evidence that the Soviets covertly controlled all the SS-23 missiles in Eastern European countries, and further, that the Soviets also covertly controlled all the Soviet nuclear warheads for these covert Soviet SS-23 missiles.

Moreover, there is also strong evidence that the Soviets have illegally deployed SS-20 missiles banned by the INF Treaty covertly inside the USSR, and also covertly in Cuba.

If the Soviets negotiated in "bad faith" on the INF Treaty and the CFE Treaty, as President Bush and his chief INF and CFE negotiators have themselves both confirmed, then it is reasonable to ask whether the Soviets have also negotiated in "bad faith" on the START Treaty.

Have the Soviets been deceptive in CFE and START talks?

Unfortunately, the answer is yes, the Soviets have in fact continued to negotiate in bad faith in both the CFE Treaty, signed by 22 nations on November 19, 1990, and in the ongoing START negotiations. As noted, Russian President Yeltsin has recently admitted this Soviet negotiating deception in INF, CFE, and START negotiations again for a second time.

And as we shall see below in much more detail, there are also at least eight reported serious cases of Soviet "bad faith" negotiating deception in the START negotiations.

Thus how can the United States sign and ratify a START Treaty if the Soviets are still clearly engaged in *admitted* "bad faith," violations, and deceptive negotiations regarding both the predecessor INF and the CFE Treaties, and the especially serious duplicity in the START negotiations?

G. INF, CFE Violations and Krasnoyarsk

These new Soviet arms control treaty violations include the ever more serious and more numerous Soviet violations of the four year old INF Treaty, and the gross Soviet deception and even violation in the signed CFE Treaty.

Moreover, after repeated Soviet pledges to fully dismantle their admittedly illegal Krasnoyarsk radar, the Soviets are still stalling and reneging. The Soviets have missed two agreed deadlines on dismantling Krasnoyarsk, and recently they announced that they are replacing Krasnoyarsk with a new radar at Komsomolsk in the Far East. They seem to be planning to transport and re-use all of the dismantled components of Krasnoyarsk for their planned new Komsomolsk radar. But, unfortunately, the new Komsomolsk radar may also violate the SALT I ABM Treaty, by also having most of its coverage over Soviet territory.

And the Soviets seemed to use their pledges to dismantle Krasnoyarsk as bargaining leverage in the START negotiations—they will not finish the Krasnoyarsk dismantling unless the United States agrees to further concessions in START. Now the former Soviets have achieved U.S. agreement to allow the 40% intact Krasnoyarsk radar to be maintained as a "furniture factory."

But why should the U.S. have to pay any price at all in START in order for the Soviets to correct their longstanding and admitted cheating on the SALT I ABM Treaty?

As an example of the magnitude of Soviet cheating, there are now over 500 serious Soviet violations of the INF Treaty, and there seem to be more each year, such as a now confirmed total of over 1,000 Soviet covert INF missiles banned by the Treaty.

This ever expanding pattern of confirmed and new Soviet arms control cheating and "bad faith" should preclude the signing of any new arms control treaties. Indeed, despite covering up the serious Soviet SS-23 INF violations, the State Department wisely delayed presenting the already-signed CFE Treaty to the Senate until mid-July, 1991, due to the confirmed Soviet CFE data base deception, and to the Soviet attempts to irreversibly defeat the object and purpose of the CFE Treaty by means of their re-subordination of the three divisions, and finally because of the successful Soviet attempt to raise already-agreed sublimits so that they could get 500 more armored personnel carriers in order to suppress freedom in the Baltic States.

And as theoretical, ideological journal of the Communist Party of the Soviet Union, Kommunist, stated in 1991, the movement of vast amounts of weaponry beyond the Urals subverts the CFE agreement by maintaining Soviet advantages in conventional forces. U.S. CFE negotiator Woolsey has even called this "fraud."

The Kommunist statement is a remarkable Soviet admission that they have already circumvented the pending CFE Treaty, and have indeed engaged in fraud.

II. SUMMARY OF START'S TEN FATAL FLAWS

A. START's fundamental inequality

A preliminary analysis of the provisions of the proposed START Treaty suggests that START will have essentially the same basic "fatal flaws" as it predecessor strategic arms control treaties—the Strategic Arms Limitation Treaties—SALT I and SALT II—primarily unequal levels of forces favoring the Soviet Union.

Thus unequal U.S. and Soviet strategic forces under START, as codified in the 1972 SALT I Treaty and Agreement, and in the unratified 1979 SALT II Treaty, will result in the perpetuation of the existing and longstanding Soviet strategic superiority over the United States.

The Soviets have already preserved and expanded their existing and longstanding strategic superiority through SALT I and II.

This Soviet strategic nuclear superiority is documented in the attached official DOD graphics and summaries illustrating the growth of Soviet strategic superiority since SALT negotiations began in 1969.

President Bush stated in September, 1989 that the Soviets were modernizing their strategic forces "at a furious pace."

Defense Secretary Cheney also stated in July, 1990, that: ". . . the Soviet Union is still embarked on a deliberate and vigorous modernization of its strategic nuclear forces. Kommunist, the ideological journal of the Soviet Communist Party, reportedly stated the following in its 1991 number #6 edition:

"The Soviet Defense Ministry is planning to increase military spending despite the changing international climate and the Soviet Union's economic problems . . . Defense spending will rise in 1991 from 26% to 36% of the All-Union budget, [while] the military leadership has purposely ignored planned military and force reductions in the West."

This authoritative statement supports President Bush's assessment on the "furious pace" of the "deliberate and vigorous" Soviet strategic build up.

Moreover, the Soviet Union still has more than a 3 to 2 advantage over the United States in the number of intercontinental missiles and bombers, and also in the number of nuclear warheads loaded on these strategic nuclear delivery vehicles.

Even more significantly, the Soviets also have a 6 to 1 advantage in nuclear first strike potential, together with a total monopoly on strategic defenses.

Finally, the former Soviets still have operationally available over 3,000 Strategic Nuclear Delivery Vehicles (intercontinental missiles and bombers), carrying over 13,600 nuclear warheads, compared to less than only 1,831 U.S. Strategic Nuclear Delivery Vehicles, carrying less than only about 9,700 nuclear warheads. (See charts.)

[Charts not reproducible in the RECORD.]

Former Soviet President Gorbachev was thus continuing to commandeer the scarce resources of the Soviet Union and con-

centrate them in the military sector of the Soviet economy. Gorbachev's decision to continue to devote about 25 percent of the Soviet Gross National Product to the military has nearly bankrupted his country. But as a result of this military priority, Gorbachev achieved military superiority over the West.

Gorbachev was trying to use the former Soviet military superiority, especially his advantages in strategic forces, to blackmail or leverage the West into providing economic subsidies to the Soviet Union.

B. Existing and growing Soviet strategic superiority leads to explicit Soviet nuclear blackmail threats

Thus Soviet strategic superiority and the consequent growth of Soviet nuclear blackmail capabilities have naturally forced continued U.S. negotiating concessions in ongong strategic arms negotiatons—first in SALT I, then SALT II, and finally START. There was clearly an element of Soviet nuclear "blackmail" involved in the START endgame negotiations.

[From ICBM Education Bureau, Reston, VA]

SOVIET STRATEGIC MODERNIZATION CONTINUES: AS SOVIET CONVENTIONAL FORCES SHRINK, SOVIET STRATEGIC CAPABILITIES ARE INCREASING

SINCE 1985. . .

Deployment of 60 BEAR H Strategic Bombers with AS-15 Long-range ALCMs Current Deployment: 85 Aircraft.

Deployment of 21 BLACKJACK Strategic Bombers Current Deployment: 21 Aircraft.

Deployment of 3 TYPHOON SSBNs with SS-N-20 SLBMs Current Deployment: 6 SSBNs.

Deployment of 5 DELTA IV SSBNs with SS-N-23 SLBMs Current Deployment: 7 SSBNs

Despite recent drawdowns in the size of Soviet conventional forces in 1990, the U.S.S.R. continues to improve its strategic offensive forces. Since Mikhail Gorbachev came to power in March 1985, Soviet strategic modernization has proceeded unabated.

In recent months, Mikhail Gorbachev has realigned himself with the hard-line military leadership in the U.S.S.R. With the resignation of Soviet Foreign Minister Edvard Shevardnadze in December 1990, the Soviet military has increased its influence in the arms control process, jeopardizing the completion of a START treaty.

SOVIET OFFENSIVE AND DEFENSIVE STRATEGIC FORCE MODERNIZATION

Soviet offensive force modernization

Despite improved relations with the United States, potential arms control agreements, and the dissolution of the Warsaw Pact, the Soviet Union is continuing to streamline and improve its offensive strategic nuclear force. While the pace is not as rapid as previous modernization programs of the 1970s and early 1980s (due in part to anticipation of a strategic arms reduction treaty and in part to the weakness of the Soviet economy), it is still very clear that the Soviets are firmly committed to producing a nuclear force that is far more modern, mobile, and lethal.

Like our own strategic force, the Soviet strategic nuclear force is built on a Triad of intercontinental ballistic missiles, submarine launched ballistic missiles, and long range, intercontinental bombers. Each leg of the Triad is benefiting from the strategic modernization program.

Intercontinental ballistic missile

The ICBM component has historically been the strongest element of the Soviet Triad. Almost 1400 ICBMs, many of them with multiple warheads, are deployed at roughly two dozen locations across the Soviet Union. In terms of sheer megatonnage, an important measure of strategic force destructive power, the Soviets have had a nearly two-to-one advantage over the U.S. since 1975.

This first chart shows that the Soviets have significant superiority in each category of deployed Strategic Nuclear Delivery Vehicles:

[Charts not reproducible in the RECORD.]

The Soviets have over 1,500 ICBMs, compared to only 1,000 for the United States;

The Soviets have over 924 Submarine-Launched Ballistic Missiles, compared to only 616 for the United States;

The Soviets have over 575 intercontinental strategic bombers, compared to only 215 for the United States.

This second chart shows that the Soviets have over 6,600 nuclear warheads on Inter-Continental Ballistic Missiles, compared to only 2,150 for the United States. This is the best measure of first strike capability, especially when compared to hard targets.

The U.S. has only about 1,200 strategic hard targets, yet the Soviets have about a 6 to 1 ratio of ICBM nuclear warheads against this hard target set—this clearly indicates a strong Soviet first strike capability superiority of about 6 to 1.

The bottom chart clearly indicates that the Soviets have been able to more than quadruple their number of nuclear warheads since SALT I in 1972. This means that strategic arms control to date has not succeeded in limiting Soviet nuclear warheads. But U.S. nuclear warheads have clearly been limited under strategic arms control agreements to date, and have remained static at the current level of about 9,600 since 1976.

This chart shows that there is no "arms race," because the United States has not been keeping up.

Since 1960, the Soviets have deployed 47 new strategic systems, compared to only 22 for the U.S.

Analysis of DIA June 1991 De-classified Chart on Soviet versus U.S. ICBM Production During the Gorbachev Era.

This chart shows that over the 1985-1990 six year period of Gorbachev's term in power, the Soviets have produced at least 715 ICBMs, compared to the U.S. total ICBM production of only 68 ICBMs, or about over a 7 to 1 ratio of Soviet advantage.

The Deputy Commander of the Soviet Strategic Rocket Forces, Col. General Ryazhskikh, stated recently:

"We are increasing the survivability of existing missiles and command and control systems. We are increasing the number of mobile launchers . . . As a result, the rocket forces should become mobile and reliably protected from attack."

U.S. Defense Secretary Cheney stated the following in July, 1990:

"Despite reductions in Soviet conventional forces, the Soviet Union continues to modernize its strategic offensive and defensive forces. The Soviet leadership has repeatedly stated its commitment to strategic modernization and President Gorbachev has taken steps to improve the Kremlin's nuclear forces and strategic defense capability . . . The Soviet Union is still embarked on a deliberate and vigorous modernization of its strategic nuclear forces."

Analysis of DIA June 1991 De-classified Chart on Soviet versus U.S. Bomber Production During the Gorbachev Era.

This chart shows that the Soviets have produced over 140 bombers during the period of 1989 and 1990, compared by only 1 U.S. bomber produced in this same period.

This is a ratio of bombers produced over the last two years of 140 Soviet bombers produced, to only 1 U.S. bomber produced.

Over the entire 1985-1990 period of Gorbachev's rule, the Soviets have produced 450 bombers, compared to only 104 for the U.S.

Analysis of DIA June 1991 De-classified Chart on Soviet versus U.S. Submarine Production During the Gorbachev Era.

This chart shows that the Soviets have produced 54 submarines during the Gorbachev era, compared to 23 for the U.S. in the same period.

Analysis of DIA June 1991 Declassified Chart on Soviet versus U.S. Submarine Launched Ballistic Missile Production During the Gorbachev Era.

This chart shows that the Soviet have produced 490 SLBMs during the Gorbachev era, compared to only 205 for the U.S. in the same period.

This chart is all the more significant because of the fact that the new U.S. Trident II submarine and SLBM program is the *only* U.S. strategic program in current deployment, and yet the Soviets are even ahead in this area.

Analysis of DIA June 1991 Declassified Chart on Soviet versus U.S. Short Range Ballistic Missile Production During the Gorbachev Era

This chart shows that the Soviets have produced at least 3,900 total Short Range Ballistic Missiles (SRBMs) during the Gorbachev era, compared to 0 (zero) for the U.S.

The following five charts, from the 1986 Soviet Threat briefing book published by the U.S. Air Force Strategic Air Command, are self explanatory.

ICBM reconstitution/refire

Contingency plans to reconstitute ICBMs, underscores nuclear war-fighting capability and preparations for protracted nuclear warfare.

The Soviets do have contingency plans to deliver reserve missiles, warheads, and propellants to surviving silos to reconstitute their ICBM force in order to regain their strategic advantage in the post-war period. The U.S. philosophy has always been 'one missile for one silo'; as our silos are not designed to be reloaded.

U.S./U.S.S.R. strategic weapons

A comparsion of U.S. and Soviet weapons introduced since 1970 and projected into the 1990s shows the continued Soviet momentum. In the 1970s, the U.S. introduced the Trident I SLBM while Moscow deployed 10 new weapon systems. The Minuteman III ICBM was introduced 15 years ago. Our bombers date back to the 1950s and 60s. The lead unit of the Trident-class submarine was our first SSBN launched inover 15 years.

With the B-1, Peacekeeper, Trident, ALCM, and these future systems, the U.S. is moving to ensure future deterrence. We have no plans to match the Soviet one-for-one; rather our goal is to maintain a credible nuclear deterrent to reduce the risk of nuclear war and to encourage the Soviets to come to the negotiating table to bargain in earnest.

Moscow has long blamed the U.S. for fueling the arms race because 'we develop new weapon systems . . . weapon systems that the Soviets must then also develop simply to keep up with us.' The fact of the matter is that the Soviets have not only matched the U.S. weapon-for-weapon but they develop and deploy far more weapons than the U.S.

The resulting U.S. concession have clearly helped the Soviets to achieve ever greater Soviet strategic superiority, which naturally will again be re-codified in START.

Thus START will once again increase Soviet strategic superiority, as SALT I and II did before it.

The fact that the Soviets use nuclear blackmail is well known, but is not worthy of mention in "politically correct" circles.

For example, just before the December 7, 1987, U.S.-Soviet Summit meeting in Washington to sign the INF Treaty, Gorbachev ordered the firing of 2 Soviet super-extra-heavy SS-26 first strike ICBMs toward Pearl Harbor, Hawaii. This provocative demonstration of Soviet first strike capability clearly aimed at U.S. territory was obviously an exercise of Soviet nuclear blackmail. That was why some observes named the December 7, 1987, Summit the "Pearl Harbor" Summit. (See State Department unclassified analysis of this activity, attached.)

Here is another good example of Soviet nuclear blackmail threats in action.

On April 5, 1991, in a Moscow interview published in the London New Statesman and Society, Soviet Army Colonel Viktor Alksnis, a member of the Supreme Soviet, stated:

"The West is not aware of what danger the Soviet Union poses for it now—even more than in Stalin's time. If civil war here is unavoidable, it will involve nuclear arms, and weapons of mass destruction. Yes, we shall perish, but we shall take the whole world to the grave. You will perish with us. There will be no borders. The conflict will splash over them, first into neighboring countries and then into a world catastrophe. When some people in the West rejoice at the collapse of the 'the last empire,' they are seriously mistaken. You ought to be interested in preserving the USSR, and securing its internal stability."

Colonel Alksnis is a spokesman for the hardline, traditionalist "Soyuz" or Union group, of solid reactionaries to "perestroika and glasnost" in the Supreme Soviet.

But he must be taken seriously, because Colonel Alksnis is "the boy in Colonel's epaulettes" whom Eduard Shevardnadze himself personally attacked in his emotional Supreme Soviet speech in late December, 1990, when he resigned as Foreign Minister.

What is much more significant is the fact that Soviet President Gorbachev said almost the same thing as Colonel Alksnis. In Gorbachev's June, 1991, speech in Oslo, Norway, accepting the Nobel Peace Prize, Gorbachev stated that the West must aid the Soviet economy unconditionally, and that the Soviet Union would not accept any restrictions on the terms of the foreign aid that it accepted.

More explicitly, Gorbachev stated in his speech that the Soviet Union sincerely wants to join the family of nations, but the West will have to pay. If the West does not pay, and Gorbachev's "perestroika" fails, "The prospect of entering a new, peaceful period in history will vanish, at least for the foreseeable future." But the Western tribute money to the USSR must have no strings attached. It would be "futile and dangerous" for the Western lenders to set conditions on their tribute money.

This was, of course, Gorbachev's language of extortion and nuclear blackmail, not the language of peace.

Therefore, it is clear that the former Soviets naturally are using their nuclear superiority to engage in nuclear blackmail—the West must send blackmail payments—economic aid, financial loans, "investments," trade credits, agricultural aid, subsidies, and advanced technology, as the required, equitable financial tribute to Moscow that a superior military power demands from inferior military powers in recognition of its supremacy, in order for the West to avoid nuclear destruction.

This nuclear blackmail attempt by the former Soviets is, in fact, clearly overt, as several U.S. Senators from both parties have already publicly recognized, and Soviet nuclear blackmail is clearly the main reason that Gorbachev was invited to the Western "Economic Summit" in mid-July, 1991, in London, and that Russian President Yeltsin was invited to Washington on June 15, 1992.

As Soviet Marshal O. Losik boldly stated recently:

". . . The Soviet Union in the future is going to have to rely much more heavily on its nuclear capability."

This boastful statement is an ominous reinforcement to Soviet nuclear blackmail threats, and its suggests either that the Soviet military did not want to sign START, as advantageous as it is to the Soviets, or that they will cheat on this otherwise advantageous treaty now that they have signed. Indeed, as noted, given the magnitude of U.S. unilateral disarmament detailed below, the former Soviets need not themselves comply with START, because the U.S. is already structuring its forces as if START was already ratified and fully in force.

C. The ten fatal flaws of START

The ten main defects or "fatal flaws" of the proposed START Treaty all enhance existing and longstanding Soviet strategic superiority.

The ten main fatal flaws of START can be listed as follows:

(1) START will fully legalize six Soviet heavy, extra-heavy, supra-extra-heavy, and mobile missiles, each of which violated SALT I and SALT II, giving the Soviets enormous military advantages.

(2) With START, the Soviets will achieve a significant bonus in total nuclear warheads, because of U.S. concessionary agreements allowing warhead "discounting" and "downloading"—seriously undercounting Soviet missile and bomber warhead loadings.

(3) With START, the Soviets also get another significant bonus from allowed "nondeployed," stockpiled strategic reserve forces that do not count.

(4) The Soviets thus can legally have over twice as many warheads under START as START ostensibly allows.

(5) This means that the Soviets also can have over twice as many warheads under START as the U.S. can have under START, which means START clearly codifies unequal levels of forces.

(6) In addition, the Soviets are allowed significant covert forces capabilities above their doubling of their allowed START level.

(7) The Soviets will thus actually be able to maintain several thousand covert force warheads above their already more than double START level.

(8) In addition, START will more than double the existing overwhelming Soviet first strike advantage.

(9) START will also allow further Soviet modernization of their forces to even further enhance their first strike advantage.

(10) Finally, START will not be effectively verifiable, the Soviets have engaged in significant negotiating deception and data falsification in START, and U.S. intelligence knows that the Soviets have cheated and will continue to cheat in START. (End Summary.)

III. DISCUSSION AND DETAILS OF THE TEN FATAL FLAWS OF START

Let us examine each of these ten fatal flaws of START in order of importance, and in more detail:

(1) START will fully legalize six Soviet heavy, extra-heavy, supra-extra-heavy, and mobile missiles, each of which violated SALT I and SALT II, giving the Soviets enormous military advantages.

A. The illegal SS-19

By means of top-level Soviet negotiating deception perpetrated in May, 1972, by the late Soviet leader Leonid Brezhnev himself, the Soviet heavy SS-19 Inter-Continental Ballistic Missile (ICBM) replaced the light SS-11 ICBM, contrary to SALT I's Article II prohibition on such replacement.

This top level Soviet deception was revealed by sensitive communications intelligence intercepts long ago declassified—U.S. Intelligence listened in on the secret radio-telephone conversations from Soviet leader Brezhnev in his limosine to his military leaders during the SALT I Summit in Moscow on May 26, 1972. It is the best evidence of top-level Soviet intentions in arms control negotiations and compliance.

Later in the 1970s, U.S. Intelligence acquired similar evidence that the Soviet SS-19 ICBM was a "heavy ICBM" according to SALT I standards.

Thus in 1983 the Soviet heavy SS-19 ICBM was judged by the President's General Advisory Committee on Arms Control to have defeated the object and purpose of SALT I, by being a heavy ICBM replacing a light ICBM, in contradiction of SALT I's Article II. And U.S. Intelligence finally discovered in 1991 that the Soviet SS-19 ICBM had always had a throw-weight even heavier than the SALT II definition of light ICBMs, based in turn upon the erroneous U.S. Intelligence estimate of the SS-19's throw-weight in early 1979, at the time that SALT II was signed, establishing the SALT II threshold between light and heavy ICBMs. In their START MOU on data, the Soviets declared that the SS-19 had a heavier launch-weight and a heavier throw-weight than the U.S. stated in 1979 would be allowed in SALT II.

Thus the SS-19 is clearly also a heavy ICBM violating the SALT II constraints on heavy ICBMs.

B. The illegal SS-24

According to the Soviet START MOU data declaration, the Soviet SS-24 extra-heavy ICBM has launch-weight greater than U.S. Intelligence's original 1979 estimate of the SS-19's launch-weight, and therefore the SS-24 violates the SALT II heavy missile limit.

C. The illegal SS-N-23

Likewise, the Soviet extra-heavy SS-N-23 SLBM has heavier throw-weight than allowed by SALT II.

D. The illegal SS-26

And the Soviet super-extra-heavy SS-26 (also known as the "SS-18 Mod 5") ICBM was reported by U.S. Intelligence to have been developed, flight-tested, and deployed in violation of SALT II as well.

The SS-26 violated the SALT II prohibition on any increase whatsoever in the throw-weight of Soviet heavy missiles, and because this throw-weight increase is at least 10 to 20 percent, it even exceeds the 5 percent throw-weight increase allowed by SALT II before being classed as a new type missile.

Thus the SS-26 is both an illegal heavy and also an illegal new type missile, both developed since the mid-1970s and tested in early 1986, while the USSR still had a political

commitment to comply with SALT II. Moreover, it was flight-tested with illegal telemetry encryption. (See detailed discussion of SS-26 below.)

But due to major American negotiating concessions, all four of these illegal heavy, extra-heavy, and super-extra-heavy missiles, which violated SALT I and SALT II—the SS-19, SS-24, SS-N-23, and SS-26—will be totally legal under START, thereby greatly increasing already existing Soviet advantages in first-strike, counterforce capabilities.

E. The illegal SS-25

In addition, the Soviet SS-25 light, mobile ICBM clearly violated SALT II in many ways, but it too will be made fully legal under START.

F. The illegal SS-16

And the Soviet SS-26 light, mobile ICBM also "probably" violated SALT II in several ways, but it too will be fully legal under START.

There are thus a total of six Soviet missiles which have been officially judged to have violated SALT I or SALT II or both (in the case of the the SS-19), but which will be legalized by START.

G. Summary of the violations of the six illegal Soviet missiles

To summarize in detail the SALT illegalities of these 6 Soviet missiles:

1. The Soviet heavy SS-19 ICBM replaced the light SS-11, defeating the object and purpose of SALT I; the SS-19's actually observed throw-weight is also heavier than the U.S.-proposed and Soviet-agreed SALT II heavy ICBM throw-weight threshold (based on the U.S. 1979 estimate for the SS-19's throw-weight) which defined the heavy ICBM threshold in SALT II, and thus the SS-19 also violated SALT II's heavy ICBM limits;

2. The Soviet extra-heavy SS-24 ICBM clearly had launch-weight and throw-weight heavier than that of the SS-19 as estimated in 1979, and therefore violated the SALT II limits on heavy ICBMs, and also violated the prohibition on the encryption of telemetry, and finally it violated the prohibition on the concealment of the relationship between the rail-mobile SS-24 launcher and its missile;

3. The Soviet extra-heavy SS-N-23 SLBM had throw-weight heavier than the SS-19, and therefore it too violated the SALT II limits on no heavy or new type heavy SLBMs, as well as violating the prohibition on telemetry encryption;

4. The Soviet super-extra-heavy SS-26 ICBM violated the SALT II limits on heavy and new type ICBMs, as well as violating the prohibition on telemetry encryption;

5. The Soviet light, mobile SS-25 ICBM clearly violated SALT II limits on new type ICBMs, encryption of telemetry, the RV to throw-weight ratio constraint, and the prohibition on the concealment of the relationship between the launcher and its missile;

6. The Soviet light, mobile SS-16 ICBM "probably" violated the overall SALT II constraint on total missile launchers and bombers, or Strategic Nuclear Delivery Vehicles, because the Soviets failed to disclose in 1979 that they had deployed at least 50 and as many as 200 SS-16 mobile ICBMs. Moreover, the illegal and undeclared 1979 deployment of the mobile SS-16 ICBM was illegally camouflaged and concealed, and the relationship between the road-mobile SS-16 launcher and its missile was also illegally concealed.

But to re-emphasize, SALT will fully legalize all 6 of these missiles, each of which was clearly illegal under the previous SALT I and SALT II arms control treaties.

(2) With SALT, the Soviets will achieve a significant bonus in total nuclear warheads, because of U.S. concessionary agreements allowing the serious under-counting of Soviet missile and bomber warhead loadings.

The proposed SALT Treaty ostensibly allows only 1,600 Strategic Nuclear Delivery Vehicles (SNDVs)—ICBM launchers, SLBM launchers, and long-range bombers, carrying a total of only 6,000 nuclear warheads, on each side.

But under START, the Soviets can actually have, with complete legality, about 6,000 extra nuclear warheads for their ICBMs, SLBMs, and long-range bombers, above the START warhead level of 6,000 on each side.

This Soviet warhead bonus of over 6,000 extra warheads arises quite simply because the Soviets, using deceptive arguments, have secured U.S. agreement to seriously undercount their number of warheads carried on several types of Soviet ICBMs, SLBMs, and long-range bombers.

Specifically, according to official, unclassified information, Soviet SS-18 and SS-26 class ICBMs are under-counted by about 1,232 warheads, Soviet SS-N-18 nd SS-N-23 SLBMs are under-counted by a total of about 1,664 warheads, and Soviet Blackjack and Bear H Air-Launched Cruise Missile (ALCM)-carrying bombers are also under-counted by a total of about 2,136 warheads.

This allowed bomber "discounting" and missile "down-loading" is because:

Soviet deception has induced the U.S. to agree that each of the SS-18/SS-26 class ICBMs, are counted as carrying 10 warheads, but each actually carries at least four more, or 14 RVs;

Soviet deception has sustained the argument that each SS-N-18 SLBM should be counted as carrying 3 warheads, but each actually carries four more, or 7 RVs;

Soviet deception has induced the U.S. to agree that each SS-N-23 SLBM is counted as carrying 4 warheads, but each actually carries six more, or 10 RVs, and;

Soviet deception has induced the U.S. to agree that each of the Bear H and Blackjack bombers are counted as carryng 8 ALCMs. but each actually is reportedly capable of carrying 10 more, or 18 Air-Launched Cruise Missile warheads.

This under-counting thus results in a total Soviet START missile and bomber warhead under-counting of about 6,000 nuclear warheads.

When these approximately 6,000 totally legal, bonus, extra warheads are added to the 6,000 warhead START ceiling, the Soviets will have an actual total of about 12,000 warheads.

Thus under START, the Soviets can quite legally have at least about 12,000 nuclear warheads. But as we shall see, they can and will have even still more.

This official, unclassified conclusion was first published by the Committee on Armed Services of the United States House of Representatives, chaired by Congressman Les Aspin, Democrat of Wisconsin, in July, 1988.

The House Armed Services Committee report was entitled Breakout, Verification and Force Structure: Dealing With the Full Implications of START.

This excellent House report concluded on page 5:

"In summary, the purported START limit of 6,000 weapons is an illusion. In addition to the limit of 6,000 weapons, the Soviets could 'legally'—and are likely to—deploy another nearly 3,000 weapons, and could 'legally' have available nearly 11,000 additional weapons that are a source for a sudden breakout from START. And, according to that rough yardstick of potential cheating, there could be an additional force of as many as 4,300 more weapons available to the Soviet attack planner."

This important conclusion that the former Soviets could have as many as 15,300 nuclear warheads fully legally under START will be elaborated below in more detail, but attached is the graphic from the July, 1988 House Armed Services Committee Report showing Soviet legal and excess "break-out" warheads under START.

A. Evidence that SS-18 class carries 14 warheads

U.S. Intelligence reportedly has long had evidence that the Soviet SS-18 class is designed to carry 14 warheads, not the 10 that will be counted in START.

First, the SS-18 has reportedly been flight-tested several times in which 10 actual warheads were released, but there were reportedly simulations of the release of 2 more warheads. The simulations of 2 stations were reportedly from different sets of additional stations.

In sum, these simulations showed that the SS-18 could release up to 4 more warheads from 4 more stations, in addition to the 10 warheads actually released. This indicated that the SS-18 class had 14 stations capable of carrying 14 warheads.

Moreover, the U.S. was reportedly allowed to actually inspect a Soviet SS-18 post-boost-vehicle in November, 1990, in a trial START on-site inspection, and from this on-site inspection we reportedly observed that there actually were 14 stations for 14 warheads on an SS-18 class ICBM.

In sum, there is extensive hard evidence that each missile in the Soviet SS-18/SS-26 class of super-extra-heavy ICBMs carries 14 warheads, not the 10 that would be counted under START, and that President Bush and Secretary of State Baker both have direct knowledge of this fact. But the U.S. has nevertheless agreed to this Soviet counting-rule ruse by accepting deceptive Soviet assurances that only 10 warheads are deployed on each SS-18.

(3) With START, the Soviets also get another significant bonus from allowed stockpiled strategic reserve forces that do not count.

U.S. Intelligence has long had strong evidence that the Soviets produce at least 3 strategic missiles for every launcher, and in most types of strategic missile classes, they produce 5 missiles for every launcher. Most of these extra missiles are stockpiled for reload and refire, as well as for reliability and flight testing. Indeed, the START Treaty itself allows 18 training, rail-mobile launchers for a total of 125 "Non-deployed" SS-24 ICBMs, a ratio of over 6 missiles to each launcher.

This ratio of about 5 missiles produced to launchers deployed was true for most of the missiles covered by the SALT I and SALT II agreements, and also the INF Treaty. Moreover, we know that the Soviets made many false data declarations during the SALT I, SALT II, and INF negotiations, in order to preserve significant covert, stockpiled missile forces.

For example, we know that the Soviets have covertly preserved a total of at least 1,000 banned INF missiles outside of their declarations under the INF Treaty.

Thus under START, the Soviets will probably also produce at least 5 missiles for every accountable launcher, which will be the basis for the Soviet covert START missile force.

Thus under START, the Soviets can also legally keep over about several thousand more extra warheads on thousands of ICBMs,

SLBMs, and intercontinental bombers that are in the allowed but uncounted categories of being either "retired," "non-deployed," "obsolete," "in-operable," or already stockpiled.

For example, under START the Soviets will be allowed to keep 125 extra SS-24 "non-deployed" rail-mobile ICBMs that will not be counted in their START ceilings. This could give the Soviets 1,250 extra, uncounted, legal, bonus warheads, which is almost half of the approximately 3,000 warheads that the former Soviets allegedly may have to "reduce" under START's ostensible 30 percent warhead reduction.

Also under START, the Soviets will be able to keep 125 more uncounted, "non-deployed" SS-25, road-mobile ICBMs, which is at least 125 more stockpiled warheads.

Moreover, about 100 older Bear bomber variants, about 100 naval Bear bombers, and about 50 old Bison refueling tankers will also be explicitly excluded from the Soviet START ceilings, again with a significant strategic reserve force intercontinental bombing capability.

In sum, we know that the Soviets probably produced about 5 strategic missiles for each launcher counted under the START limits, but most of these extra missiles intended for reload and refire will not be counted under START. They will remain as a strategic reserve force, legally excluded from the Soviet START ceilings.

All of these categories of stockpiled and reload/refire Soviet missiles and bombers are thus excluded from counting in the Soviet START force totals, due to further U.S. concessions, even though we know that the Soviets intend to maintain a very significant number of stockpiled and reload/refire START missiles.

This bonus gives the Soviets another approximately 3,000 or even more totally legal extra warheads, which are strategic reserve forces.

Therefore, when we add the about 12,000 warheads that the Soviets already quite legally will retain to these about 3,000 also equally legal, excluded strategic reserve force warheads, the Soviets will have at least about 15,000 totally legal warheads.

Thus the Soviets can quite legally have over about a total of 15,000 nuclear warheads under START.

(4) The Soviets thus can legally have well over twice as many warheads under START as START ostensibly allows.

Therefore under START, the Soviets can legally more than double the 6,000 warheads they are ostensibly allowed under START, to give them at least over 15,300 warheads, without even cheating or maintaining covert forces, merely due to multiple U.S. concessions allowing the Soviets significant advantages in missile and bomber and warhead counting rules, and allowing a significant uncounted strategic reserve force of missiles and bombers.

These U.S. START counting rule concessions have thus allowed the Soviets to legally exclude a large force of extra, bonus warheads or strategic reserve reload/refire missiles and bombers carrying at least about 9,000 warheads.

Thus with allowed total of about 15,300 warheads, the Soviets can thereby legally have over twice their legal allocation.

(5) This means that the Soviets also can have over twice as many warheads under START as the U.S. can have under START, which means START clearly codifies unequal levels of forces.

START thus clearly entails unequal levels of forces between the United States and the Soviet Union.

Under START, the Soviets can thus have more than 15,300 totally legal nuclear warheads, in two categories—uncounted extra, "nondeployed," bonus warheads, and also uncounted strategic reserve force covert warheads. But under START, the United States can have only at most 6,000 warheads.

Moreover, due to U.S. strategic program decisions already made, resulting in U.S. unilateral strategic disarmament, the U.S. actually plans to have only about 4,700 warheads under START, and we appear to be complying with START even now, as if START were fully in force already. The Soviets clearly already know that the U.S. is engaged in unilateral disarmament.

Thus START explicitly codifies over a 3 to 1 numerical advantage in the key strategic measure—number of warheads—for the Soviets—in clear violation of the Jackson Amendment to SALT I.

But the SALT I Jackson Amendment legally requires equal levels of U.S. and Soviet strategic forces under START.

A. U.S. unilateral nuclear disarmament

As noted, the U.S. is behaving as if a START Treaty were already ratified and fully in force. We are planning to conform our strategic force structure strictly even now to START, as if START was already signed, given advice and consent for Presidential ratification by two thirds of the Senate, and already ratified by the President and entered into force. This is clearly U.S. unilateral disarmament.

In contrast, the Soviets are continuing their relentless strategic force buildup well beyond START limits. As President Bush stated in September, 1989, the Soviet Union is modernizing its strategic forces "at a furious pace."

The Soviets are producing annually hundreds of: 3 new types of ICBMs; 3 new types of intercontinental bombers; 2 new types of strategic ballistic missile submarines; and 3 new types of SLBMs.

Moreover, the Soviets are developing follow-ons to all of these systems, some of which are about to be flight-tested for the first time soon.

The magnitude of U.S. unilateral disarmament, compared to the existing Soviet strategic superiority and to the continuing superior Soviet strategic buildup, is as follows:

(1) The U.S. is accelerating the unilateral dismantling of at least 75 Minuteman II ICBMs, while in contrast, the Soviets are accelerating the deployment annually of several hundreds of three new types of ICBMs. According to recently declassified data from the DIA, since Gorbachev came to power, the Soviets have produced 715 ICBMs, compared to only 68 ICBMs for the U.S.;

(2) The U.S. is continuing and accelerating the unilateral dismantling of 11 Poseidon ballistic missile submarines carrying 176 Poseidon C-3 SLBMs, while in contrast, the Soviets are converting most of their comparable Yankee Class ballistic missile submarines into cruise missile submarines with an equal or even greater threat value than the original ballistic missile submarines;

(3) The U.S. is unilaterally closing down the production line for the vital MX ICBM, the only existing ICBM production line in the Free World, while in contrast, the Soviets are mass producing several hundreds of three types of new ICBMs each year at three active ICBM production lines;

(4) The U.S. is unilaterally "moth-balling" and deferring indefinitely the development and deployment of the MX ICBM in the rail-garrison mode, as well as cancelling the development and eventual deployment of the road mobile Midgetman small ICBM, while in contrast, the Soviets are deploying up to 600 or more launchers of two new types of mobile ICBMs, and are developing and are about to flight-test even newer follow-ons to their SS-24, SS-25, SS-26 ICBMs, and also to their SS-N-20 SLBM;

(5) The U.S. is continuing the unilateral dismantling of many B-52 bombers, while the Soviets have three open production lines for producing hundreds of the intercontinental Backfire, Bear H, and Blackjack bombers. For example, in the period 1989-1990, the Soviets produced 140 intercontinental bombers, while the U.S. produced only 1 intercontinental bomber, according to recently declassified data from the DIA. During the entire period of Gorbachev's 1985 to 1990 rule, the Soviets have produced a total of 450 intercontinental bombers, compared to only 104 for the U.S.

(6) In sum, the Soviets are producing 15 strategic systems for deployment, while in contrast, the U.S. is producing only one strategic system for deployment—the Trident submarine and the Trident II SLBM. But even the U.S. Trident II SLBMs are being equipped with a smaller number of warheads than they were designed to carry, and they are being equipped with older, Trident I warheads. Indeed, in the area of SLBMs, during the entire period of Gorbachev's 1985-1991 rule, the Soviets have produced well over 490 SLBMs, compared to only 205 for the U.S.

Thus the U.S. is behaving as if START was already in effect, while as usual, the Soviets are continuing their relentless, "break out" strategic buildup well beyond projected START levels in order to increase their strategic superiority.

Moreover, the United States is currently unable to produce any new nuclear materials or any new nuclear warheads, whatsoever, while in contrast, the Soviets have over a dozen active nuclear reactors producing a great amount of new nuclear material for new Soviet nuclear warheads.

The dire fact that our new Trident II SLBMs are being equipped with older Trident I warheads stems from the total U.S. inability to fabricate any new nuclear warheads whatsoever.

In sum, under START the Soviets nevertheless can legally maintain more than twice as many warheads as are allowed the U.S.

This makes a mockery of the ostensible START reductions of 30 to 50 percent, down to only 6,000 warheads allowed on each side, because the Soviets can legally more than double the legal limit of 6,000 warheads, to over 15,000 warheads, while the U.S. plans to have only 4,700 warheads at most.

(6) In addition the Soviets are allowed significant covert forces capabilities above their doubling of their allowed START level.

In addition to the Soviets' legal allowance for over 9,000 extra, legal, bonus, and also strategic reserve force warheads, the Soviets have in addition been allowed under START to maintain their capability to covertly and illegally keep almost two thousand more Strategic Nuclear Delivery Vehicles (SNDVs) carrying several thousand warheads totally outside of START levels.

For example, the Soviets can covertly keep:

Their already-illegal 200 covert SS-16 mobile SLBM launchers and missiles;

Several hundred SLBM launchers with thousands of multiple warheads at test ranges, which are known to have operational capability in a crisis, but which are uncounted in START;

Thousands of several generations of older SLBMs and SLBMs which have been replaced by retrofits of newer missiles and are covertly stored;

About 500 intercontinental Backfire bombers, and over 100 older Bear and older variants of intercontinental bombers, and the several thousand more warheads carried on these covert Strategic Nuclear Delivery Vehicles, which are completely excluded from START constraints.

A. Confirmation of over 1,000 covert INF missiles

The history of Soviet deception and confirmed cheating in arms control treaties suggests that the Soviets intend to maintain significant illegal, covert START forces.

Moreover, U.S. Intelligence reportedly has strong evidence which confirms that the Soviets have covertly retained many hundreds of illegal, stockpiled missiles banned by the INF Treaty:

At least 300, to over 600, covert SS-20s; Many covert SS-12s; At least several thousand covert, stock-piled SS-4s; A few covert SS-5s; About 200 to 300 covert SS-CX-4s; And finally, at least 72 to over 120 covert SS-23s; all of which constitute well over a thousand covert INF missiles banned by the INF Treaty, which the Soviets never declared, as required by the INF Treaty.

Thus, taking reasonable estimates for Soviet covert INF forces, the Soviets probably have covertly retained as many as well over 1,000 covert INF missiles. If the many thousands more SS-4s known to have been produced are assumed to still exit, then under a worst case estimate the total of covert Soviet INF forces could extend into the several thousands.

The Soviets will probably likewise fail to declare hundreds or even thousands of START missiles, as they did in INF.

(7) The Soviets will thus actually be able to maintain several thousand covert force warheads above their already more than double START level.

The Soviets have therefore also succeeded in gaining U.S. START concessions explicitly allowing these many covert Soviet Strategic Nuclear Delivery Vehicles and their several thousand more warheads, all to be covertly excluded from START constraints.

Moreover, in light of the confirmed fact that we know that the Soviets retained significant illegal covert missile forces under the INF Treaty, the Soviets will almost certainly exploit their capability to maintain these excluded intercontinental strategic forces as covert START forces, thus allowing the Soviets enormous options to maintain significant numbers of *covert* START forces of launchers and warheads.

Including these estimated *covert* forces numbering at least over 3,000 warheads on top of their legal 15,300 warheads, the Soviets will have at least about *18,300* warheads, compared to a grand total of only about 4,700 warheads under START for the U.S.

(8) START will more than double the existing Soviet first strike advantage.

The grossly asymmetrical force structures resulting from the mostly unilateral U.S. strategic force cutbacks in the proposed START Treaty, such as the Soviet capability to legally maintain over 15,300 extra warheads, plus at least about 3,000 more that are covert, when combined with the unequal U.S./Soviet targeting requirements, will thus make it much easier for the Soviets to strike the U.S. first with nuclear weapons against American missile, bomber, and submarine bases.

Thus in sum, START will make it much more easy for the Soviet Union to hit the U.S. first, because START will not even count or reduce existing Soviet quantitative strategic advantages, or constrain the significant Soviet modernization of several kinds of missiles, bombers, and nuclear first strike weapons that the Soviets possess and the U.S. does not.

The open press recently published many quotations from a classified 1988 CIA memo on the Soviet SS-18 Mod 5—the SS-26.

This 1988 CIA memo reportedly stated:

"The Soviets have been able to achieve two important objectives in START. First, they can accept a provision which reduces the number of heavy missiles by 50 percent and hopefully obtain a major U.S. concession in return. Second, with the larger SS-18 Mod 5 Re-entry Vehicle, they can still maintain the capability to destroy all U.S. silo-based ICBMs with the SS-18. The Soviets probably agreed to the U.S. 50 percent reduction proposal only *after* assuring themselves that this capability could be maintained."

For example, under START, the Soviets could easily have many more than 15,000 warheads available for a first strike, in order to attack only about 1,500 existing U.S. strategic targets, thereby giving the Soviets over a 15 to 1 strategic first strike advantage. This Soviet advantage more than *doubles* the already existing, pre-START Soviet 6 to 1 first strike advantage.

Moreover, even with only half the number of SS-18/SS-26s, 154 allowed under START, the Soviets will still have about the same first strike capability that they had with the full 308 launchers of the SS-18/SS-26 class.

To re-emphasize, even with START's ostensible halving of the SS-18 force from 308 to 154 SS-26 launchers, the Soviets will still have about the same first strike capability as they had with 308 SS-18s. This is due to the SS-26's much increased throw-weight, accuracy, and warhead carrying capacity.

If the Soviets were to deploy 20 warheads on each of their allowed 154 SS-26 ICBMs, then only 154 SS-26s would give the Soviets more accuracy, and more effective first strike capability, and the same number of warheads, as the already-existing 308 SS-18s force with 10 allowed warheads each, aimed at fewer U.S. hard targets.

(9) START will also allow further Soviet Modernization of their forces to even further enhance their first strike advantage.

But due to even additional major U.S. concessions, under START the Soviets will be allowed to significantly modernize all of their strategic missile and bomber forces, and the U.S. will effectively be denied these same qualitative modernization options.

For example, the Soviets are reportedly already developing and even testing so-called "follow-on" missile variants to their SS-24, SS-25, and even SS-26 ICBMs, and also to their SS-N-20 SLBM.

There are indications that these four new missiles will soon be flight-tested this year and next, and that they will be quickly deployed, with or without START. These four new missiles will surely have even heavier throw-weight than their predecessors, and they will be able to carry even more extra, bonus warheads, especially if the U.S. concedes to recent Soviet proposals on "downloading" counting rules and new type missile definitions.

For example, the Soviet SS-25 follow-on will probably be deployed with 3 covert MIRV warheads, but START will count it with only 1 warhead. This deployment alone could give the Soviets almost 1,000 more covert warheads. In addition, the Soviets may deploy more than the 14 warheads that are already probably on each SS-18. If the Soviets deployed 20 warheads on each of their 154 SS-18-class ICBM launchers, credited with only 10 warheads each, the Soviets could have 1,540 more covert warheads even than listed above.

These further U.S. force structure concessions will greatly enhance already existing Soviet strategic advantages and first strike capabilities.

(10) Finally, START will not be effectively verifiable, and U.S. Intelligence knows that the Soviets have cheated and will continue to cheat.

Even with augmented U.S. National Technical Means of START monitoring and verification capabilities, and even with extensive U.S. on-site inspections and other so-called "co-operative verification measures" under a proposed START Treaty, START will still not be effectively verifiable.

The START verification regime is full of loopholes inserted deliberately by the Soviets, in order to simplify their deception and cheating.

A. Monitoring Soviet mobile missile production: not enough perimeter-portal continuous monitoring (PPCM)

The Soviets have already deployed over 400 solid propellant mobile ICBM's both SS-25 road-mobile ICBM's and SS-234 rail-mobile ICBMs.

Thus continuous on-site monitoring of the portals and perimeters of all of the many Soviet production facilities for the first stage solid rocket motors for these two mobile ICBMs are crucial to monitoring START.

And in addition there are several Soviet solid propellant SLBMs—the SS-N-23 and SS-N-20—which are also being massed produced at several first stage solid rocket motor production facilities.

But START will entail many problems in monitoring the production of these missiles proposed to be constrained by START limits.

For example, as currently agreed, START will only allow two "perimeter-portal continuous monitoring" systems to verify Soviet solid propellant missile final assembly. And as a further problem, these two monitoring facilities will definitely not be able to verify the many Soviet first stage solid rocket mobile missile production facilities inside the Soviet Union used to produce these 4 Soviet mobile, solid propellant missiles.

Yet first stage solid rocket motors for mobile ICBMs are the unit of account in START.

Indeed, the two allowed solid rocket final assembly monitoring systems will be totally inadequate to monitor Soviet START missile production, because they will only monitor two missile final assembly facilities, rather than the several first stage solid rocket motor production facilities which actually produce the SS-N-20, SS-N-23, SS-24, and SS-25 solid propellant mobile missiles and their stages which are allowed and counted under START.

Moreover, the Soviets can accomplish missile final assembly anywhere, such as at the test ranges, so it will not do us much good go monitor the two allowed final assembly facilities.

In addition, under START the U.S. may not be able to weigh and measure Soviet missiles and their stages. This failure could be a serious U.S. monitoring shortcoming in START. And under START, the Soviets will probably be able to continue the full encryption of all their electronic telemetry signals for missile tests.

B. Soviet negotiating deception in START

The already confirmed history of Soviet deception and cheating on all existing arms

control treaties, including Soviet "fraud in the inducement" in negotiating SALT I, SALT II, "bad faith" in the negotiation of the recent Intermediate-range Nuclear Forces Treaty, and Soviet falsification of data in the proposed Conventional Forces in Europe Treaty and the possible START Treaty, and other serious confirmed Soviet cheating on SALT I-II and the ABM Treaty, the INF Treaty, and the proposed CFE Treaty, altogether suggest that the Soviets will persist in cheating on START, and that the U.S. will continue to have great difficulty in detecting Soviet deception and cheating under START.

According to press reports, in their October, 1990 START data exchange the Soviets claimed that they had zero new ballistic missile submarines under construction. But U.S. NTMs have reportedly detected components for four new Soviet ballistic missile submarines under construction.

Moreover, also in November, the Soviets reneged on their long-agreed warhead counting rule for their SS-N-18 SLBM. Thus the Soviets have clearly engaged in data falsification and negotiating deception in START, just as they did in all previous arms control negotiations and treaties.

Here is a description of each of the seven serious cases of reported Soviet negotiating deception in START:

1. The Soviets falsely claimed that each of their SS-18/SS-26 class of ICBMs carried only 10 warheads, when in fact U.S. Intelligence knows that each ICBM of this class has the capability to carry at least 14 warheads;

2. The Soviets falsely claimed that each of their SS-N-23 SLBMs carried only 4 warheads, when in fact U.S. Intelligence knows that each such SLBM has the capability to carry 10 warheads;

3. The Soviet falsely claimed that each of their SS-N-18 SLBMs carried only 3 warheads, when in fact U.S. Intelligence knows that each such SLBM has the capability to carry 7 warheads;

4. The Soviets falsely claimed that they did not have any SLBM submarines under construction, when in fact, reportedly according to U.S. Intelligence National Technical Means of monitoring, they had at least 4 ballistic missile submarines under construction;

5. For years in the START negotiations, the Soviets claimed that they could not declare the launch-weights and the throw-weights of their individual strategic missile types, because these declarations would prove that they had systematically developed, tested, and deployed several missiles in violation of SALT II constraints, and the U.S. acquiesced in this Soviet refusal;

6. The Soviets claimed that their new type missile, the super-extra-heavy SS-26 ICBM, was only a legal modification of their old type SS-18 extra-heavy missile under SALT II, when in fact the SS-26 was developed, tested, and deployed in violation of SALT II constraints. The Soviets also falsely claimed that their SS-26 was fully legal under SALT II, when in fact it was not, and the Soviets are deceptively trying to "grandfather" their illegal SS-26 under START.

7. Then-Soviet Foreign Minister Shevardnadze claimed in July, 1990, that the Soviets would stop their deployment of rail-mobile SS-24 ICBM launchers at 36, but U.S. Intelligence has reportedly just detected the deployment of a new train carrying 3 more SS-24 rail-mobile launchers above the declared level of 36, and according to press reports, the Soviets have also recently deployed 18 additional SS-24 rail-mobile "training" launchers which are indistinguishable from regular SS-24 rail-mobile launchers. Thus instead of having only the 36 SS-24 rail-mobile launchers that the Soviets pledged that they would have, the Soviets now have at least 57 such launchers.

And very significantly, all have a refire capability, doubling the force.

Finally, there is further evidence, at least an eighth case, of Soviet negotiating deception in START.

C. Further Soviet START deception

The Soviets tried to exploit the "end-game" START negotiations over the definition of new type missiles to their advantage, by allowing all their new type options under development, and to allow the further "down-loading" of all their "new type" missiles, in order to maximize their options to have new heavier missiles, which will also be counted as carrying many fewer warheads than they are capable of carrying.

Indeed, it is clear that the Soviets have engaged in "fraud in the inducement"—data base deception—in negotiating all existing arms control treaties. In particular the Soviet-supplied data bases in SALT I, SALT II, MBFR, INF, CFE, and now START, have all had significant fraudulent and deceptive elements.

D. The details of the SS-26 deception case

The Soviet new-type, super-extra-heavy SS-26 ICBM should be regarded as an important violation of the Soviet political commitment to abide by SALT II. Moreover, through negotiating deception in START, the Soviets have succeeded in convincing U.S. negotiators that this missile is merely the fifth "modification" of the old type Soviet SS-18 ICBM, and therefore the "SS-18 Mod 5" is "grandfathered" under START as merely a completely legal old type ICBM. But in reality, the Soviet SS-26 is a missile which violated SALT II in several ways, is legalized under START through Soviet negotiating deception, and which poses about twice the first strike threat as the old SS-18 class ICBMs.

In 1987, the Commander of the Soviet Strategic Rocket Forces state in an interview with Pravda that the Soviet SS-18 Mod 5 (or the SS-26, as it should properly be called) ICBM was developed and tested in accordance with SALT II limits. The Soviets still consistently claim that they have always been in full compliance with SALT II.

But this Soviet statement and frequent claims are another example of a Soviet total lie.

These Soviet false statements and claims constitute another clear example of Soviet START negotiating deception.

In the 1988 CIA memo recently revealed in the press, CIA's top analysts reportedly stated that the characteristics of the SS-18 Mod 5 (SS-26) "differ from the characteristics of the SS-18 Mod 4 in some important ways." The CIA memo reportedly went on to say that the SS-18 Mod 5's (SS-26's) throw-weight increased by "10 to 20 percent above the operational throw-weight of the SS-18 Mod 4." The memo reportedly concluded that "we are highly confident that the SS-18 Mod 5's [SS-26's] throw-weight has increased."

The most important difference between the SS-18 Mod 4 and the SS-18 Mod 5 (SS-26) is the fact that the SS-18 Mod 5 (SS-26) has much heavier throw-weight than the SS-18 Mod 4. Moreover, as we shall see, this 10 to 20 percent increase in throw-weight makes the SS-26 a third "new type" ICBM, under SALT II's definition.

The 1988 CIA memo reportedly concluded that:

"Under the terms of the unratified SALT II Treaty, the Soviets were prohibited from any increases in the launch-weight or throw-weight of the SS-18 Mod 4. It is apparent that they planned to flight-test the SS-18 Mod 5 with a throw-weight in excess of SALT II limits before the U.S. formally announced it would abandon the SALT II Treaty in May, 1986."

This is a clear CIA conclusion that the SS-26 was developed and tested in violation of SALT II.

In fact, the SS-26 was first flight-tested in March, 1986, while the Soviets were still politically committed to observe SALT II.

Moreover, besides being super-extra-heavy in throw-weight, there is a second reason that the SS-26 should be classed as a new type ICBM. The SALT II definition of a "new type ICBM" is any missile with more than a 5 percent increase in throw-weight. The SS-18 Mod 5 should have been classed as a new type, super-extra-heavy ICBM and designated the SS-26, because of CIA's assessment that its throw-weight was 10 to 20 percent greater than that of the SS-18 Mod 4.

This heavier throw-weight, of which the CIA is highly confident, thus has two important implications:

(1) Because CIA states that the SS-18 Mod 5/SS-26 was first flight-tested in March, 1986, while the U.S. and the Soviet Union still maintained their political commitment to abide by SALT II, its heavier throw-weight means that the Soviet SS-18 Mod 5 is a missile which was developed and tested in violation of the 1979-1986 Soviet legal and then political commitment to observe the limits of the unratified SALT II Treaty;

(2) and, the SS-18 Mod 5's heavier throw-weight means that this missile should have been designated the SS-26 as a new type ICBM in terms of both SALT II and START, because the SS-26 exceeds both the SALT II limit on increased throw-weight for heavy ICBMs, and also the SALT II definition of a new type ICBM.

To re-emphasize, the 1988 CIA memo stated that CIA was "highly confident that the SS-18 Mod 5's throw-weight has increased" over the throw-weight of the older SS-18 Mod 4 by "10 to 20 percent."

This clearly means that the SS-18 Mod 5 (SS-26) is a SALT II violation, and a new type ICBM in terms of SALT II and START, which should carry the designator of SS-26.

Thus the Soviets lied again—the top CIA analysts believe that the Soviet SS-18 Mod 5 was developed and tested in violation of SALT II as an illegal third new type ICBM, and also as an illegal new heavier ICBM, despite Soviet claims to the contrary. And as a third new type, super-extra-heavy ICBM, the SS-26 should be treated as such in the START negotiations.

In sum, according to the CIA's own 1988 memo, the SS-18 Mod 5 should really be designated the SS-26, and should be regarded as a missile developed and tested in violation of SALT II, and as such also as a super-extra-heavy ICBM and a new type ICBM in terms of the START negotiations. But instead, as a result of Soviet START negotiating deception, the SS-26 is classed merely as the SS-18 Mod 5, and is therefore "grandfathered" as a completely legal old or existing type of ICBM under START.

E. The details of the case of the U.S. acquiescence in Soviet refusal to reveal their missile throw-weights

In addition to the SS-26 case of Soviet START deception, there is the further case of the Soviet refusal to reveal their ballistic missile throw-weights, for fear of confessing

to their serious violations of SALT I and SALT II.

The Soviets have consistently refused to reveal to the U.S. the specific throw-weights of each of their ballistic missiles in the START negotiations, in regard to discussions of limitations on new missile throw-weights.

The U.S. has accepted this Soviet refusal to reveal each specific missile's throw-weight, because we have conceded that all we need for negotiating the presumed 50 percent reduction in aggregate ballistic missile throw-weight is the Soviet aggregate ballistic missile throw-weight, in order to have a baseline from which to calculate the 50 percent reduction.

Until this recent U.S. concession to accept only a Soviet aggregate throw-weight, one element of the U.S. approach to throw-weight limits was for each side to declare the throw-weight of each of its existing ballistic missiles.

But on March 1, 1990, Soviet Deputy START negotiator, Ambassador Masterkov, was asked why the Soviets were reluctant to exchange throw-weight values for specific missiles.

Ambassador Masterkov reportedly stated that: "The Soviets feared that if they revealed their specific throw-weight values for each of their missiles, these revelations might be used by the U.S. to raise SALT II compliance concerns."

It is extremely important to note that this Soviet admission is tantamount to a Soviet admission that the throw-weights of many of their existing missiles violated SALT II.

The Soviets evidently feared revealing the throw-weights of their SS-24 extra ICBM and their super-extra-heavy SS-26 ICBM. As noted, U.S. Intelligence believes that the launch-weight of the SS-24 clearly violates SALT II, and that both of these missiles have throw-weights that violate SALT II. And in addition, if the Soviets revealed the true throw-weight of their SS-19 heavy ICBM, it would clearly be greater than the SS-19 throw-weight that the U.S. attributed to the Soviet SS-19 in the SALT II negotiations, which was regarded by the U.S. as marking the boundary between light and heavy missiles.

In response to this Soviet reluctance to reveal the truth about Soviet deception and cheating in SALT II during the START negotiations, U.S. START negotiators stated that the U.S. no longer made formal compliance judgments with regard to SALT II, and that we regarded SALT II as a closed chapter. The U.S. also said that it was looking forward, not backward toward SALT II, and that the U.S. was not interested "in engaging in a major debate over the accuracy of specific Soviet throw-weight values." This was a significant U.S. concession—in effect the U.S. negotiators stated that they were not interested in finding out whether the Soviets were going to admit that they had cheated on SALT I and SALT II.

Instead, U.S. negotiators stated that the U.S. approach was a "pragmatic" one—that the U.S. was willing to let the Soviets mislead and deceive the U.S. once again.

U.S. negotiators stated that they remembered the December, 1987, Washington Summit, at which time the Soviets declared a value of only 44 warheads to be attributed to the Soviet SS-N-23 SLBM. But U.S. Intelligence even then had clearcut evidence that the Soviet SS-N-23 instead carried 10 warheads.

The U.S. negotiators then stated that while this Soviet declaration of only 4 warheads for the Soviet SS-N-23 had surprised the U.S., the U.S. had nevertheless accepted this Soviet deception.

The U.S. negotiators further stated that in the case of the Soviet reluctance to provide their specific missile throw-weights, the U.S. would display the same attitude as had been shown regarding the Soviet SS-N-23 warhead number deception.

In other words, the U.S. negotiators told the Soviets to go ahead and lie again to us on their specific missile throw-weights, as the Soviets had already done regarding their SS-N-23 SLBM warhead number, and the U.S. would again believe the Soviet lies like we had done regarding their SS-N-23 SLBM warhead loading.

F. Difficulties in monitoring Soviet mobile ICBM deployment

There are several other serious START verification issues, especially those involving the monitoring of Soviet mobile ICBMs.

In particular, given the confirmed facts that:

—Soviet mobile ICBMs constitute about 22 per cent of the Soviet legal allowance for Strategic Nuclear Delivery Vehicles under a possible START Treaty;

These mobile ICBMs carry about 13 per cent of the Soviet legal allowance for nuclear warheads under START;

The SS-25 road-mobile ICBMs are carried on truck launchers that are almost identical to the Soviet-supplied SCUD mobile truck launchers that were deployed in Iraq and that were so extremely difficult for the U.S. to detect even in the open desert during operation Desert Shield/Desert Storm, using *both* satellite and aerial reconnaissance;

And General Schwarzkopf compared the task of finding Iraqi mobile SCUD missiles to "looking for a needle in a haystack."

It is therefore clear that the U.S. will not be able to effectively monitor and verify Soviet road-mobile ICBM deployment under START using *only* satellite reconnaissance.

Moreover, it is also a fact that the Soviet SS-24 rail-mobile ICBM is deployed in deceptive rail trains made to appear identical to normal Soviet civilian trains.

As a result of this confirmed Soviet SS-24 rail-mobile ICBM deception, the U.S. Intelligence community has reportedly concluded in a formal written assessment, that it will be totally impossible to effectively monitor and verify Soviet SS-24 rail-mobile ICBM deployment under START.

This will be especially true if 125 "non-deployed" SS-24 missiles are allowed, and also if there is no "Perimeter-Portal Continuous Monitoring" of SS-24 first stage solid rocket motor production facilities.

Finally, we should realize that the proposed START mobile missile monitoring areas in the USSR are several times larger than the SCUD monitoring areas in Iraq (which were already about the size of several large U.S. states), and instead of being largely open desert, the Soviet mobile missile deployment areas are mostly forest, where camouflage and concealment is much easier.

There are also many more monitoring and verification problems with START, which will emerge as more details about START become known. These monitoring problems include such thorny issues as telemetry encryption and data denial, monitoring of "down-loading," and monitoring of definitions of new type missiles and bombers.

Conclusion

In sum, there are at least ten serious defects in the draft, proposed START Treaty. But even these ten "fatal flaws" in START are only the "tip of the iceberg" of the problems with the START Treaty. Many more defects and flaws will emerge as more details about the proposed, 280 page, draft START Treaty become known.

IV. START WILL BE MORE DESTABILIZING THAN SALT II

Most seriously, the currently envisioned draft START Treaty will clearly further enhance the Soviet first-strike capability.

A proposed START Treaty will thus further erode the survivability of the U.S. retaliatory deterrent capability.

Indeed, by allowing a further increase in the already overwhelming Soviet first strike capability, a proposed START Treaty seems to be worse and more destabilizing than the SALT II Treaty, which the United States Senate refused to give its advice and consent for the President to ratify.

President Bush should be urged to correct these 10 serious START defects before he ever signs a proposed START Treaty.

REPORT ON SOVIET BALLISTIC MISSILE TESTS NEAR HAWAII AS REQUIRED UNDER SECTION 1201 OF THE FY '88-89 STATE DEPARTMENT AUTHORIZATION BILL

DESCRIPTION OF EVENTS RELATED TO SOVIET FLIGHT TESTS

On September 26, 1987[1] the Soviet Union notified the US Embassy in Moscow that the Soviet Union intended to conduct missile launches between September 29 and October 8, 1987. In addition, the Soviets provided coordinates of two impact areas in the northern Pacific Ocean: a circular area (referred to below as the "southern impact area"), which was 60 nm in radius and located about 350 nm southwest of Honolulu; and a large trapezoidal area (referred to below as the "northern impact area"), whose southern limit was located about 600 nm northwest of Honolulu (see attached map). The Soviet news agency TASS announced the upcoming tests on September 27.

On the day of the Soviet notification to Embassy Moscow—Saturday, September 26—the Embassy cabled the notification to the Department of State and other routine addresses for such notifications. US officials identified the proximity of the impact area to Hawaii and prepared a formal protest to the Soviet representative in Washington. On Wednesday, September 30 the Soviets were called in to the State Department to receive the protest.

On September 29, at approximately 7:00 p.m., the Soviet Union launched an SS-18-class ICBM from the Tyuratam missile test complex. The test was a failure. The Soviets launched a second SS-18-class ICBM at approximately 9:00 p.m. on September 30. This test appears to have been successful, with several RVs landing in the northern impact area. No RVs or missile debris from the September 29 or September 30 tests landed in the southern impact area. Shortly after the September 30 test, the Soviet Union announced that this series of tests was complete.

The announced impact points for the September 29-October 8 tests, and the prepositioning of Soviet auxiliary ships (used for test monitoring purposes) in the vicinity of both the northern and southern impact areas, indicates that the Soviets were prepared to have their re-entry vehicles (RVs) pass in unprecedented close proximity to major populated islands of the Hawaiian chain, an unnecessary and provocative act.

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[1] All dates are referenced as Eastern Daylight Time.

In addition, since failures can and do occur during Soviet missile tests, a Soviet attempt to target RVs in the southern impact area would have carried the inherent risk that a deviation in the missile's trajectory or other technical problems could have resulted in RVs landing much less than 350 nm from, or perhaps on, sovereign US territory.

During both the September 29 and September 30 tests, Soviet naval craft illuminated US military aircraft operating in international airspace with what we believe to be lasers. On September 29 a US Air Force aircraft, which was observing Soviet activities related to the missile tests in the northern impact area, reported seeing a bright light from an undetermined source near the Soviet Navy's experimental auxiliary ship "Chukotka." The light disturbed the copilot's vision for ten minutes. On the following day, a US Navy aircraft was illuminated by an intense light from the "Chukotka."

The potentially hazardous use by the Soviets of directed-energy devices against US personnel raises serious concerns. It should be noted that, prior to the occurrences related to the Soviet missile tests, there had been worrisome incidents involving probable Soviet use of lasers against military units of the US and other Western nations.

US DEMARCHES AND SOVIET RESPONSES

After interested agencies reviewed the facts, the highest ranking Soviet diplomat present in Washington was called in to receive a demarche protesting the Soviet tests. The demarche was presented by the Director of the Office of Soviet Union Affairs to the Deputy Chief of Mission of the Soviet Embassy at about 4 p.m.

By early morning on October 1 (roughly thirteen hours after the US protest and 8 hours after the second ICBM test), Tass reported the completion of missile launches. The Soviet Foreign Ministry, in an October 6 statement, claimed that the tests had posed no hazard to US territory and did not involve a trajectory that passed over the Hawaiian Islands.

On the basis of conclusions reached from intelligence and the debriefing of the US aircrews, the State Department's Office of Soviet Union Affairs, on November 4, 1987, lodged a formal protest with the Soviet Embassy regarding the incidents in which directed energy devices were used to interfere with US reconnaissance aircraft. Both the Soviet missile tests and the potentially hazardous use of directed energy devices were also raised in high level meetings with the Soviets both before and during the Washington Summit.

PREVENTING FUTURE INCIDENTS

Two agreements currently in force are relevant to the prenotification of ballistic missile flight tests as a means of reducing possible misinterpretation or misunderstanding. Under Article VI of the 1972 Agreement between the Government of the United States of America and the Government of the Union of Soviet Socialist Republics on the Prevention of Incidents on and over the High Seas (INCSEA Agreement), the Parties are obligated to "provide through the established system of radio broadcasts of information and warning to mariners, not less than 3 to 5 days in advance as a rule, notification of actions on the high seas which represent a danger to navigation or to aircraft in flight."

In addition, under Article IV of the 1971 Agreement on Measures to reduce the Risk of Outbreak of Nuclear War between the United States of America and the Union of Soviet Socialist Republics ("Accidents Measures" Agreement), each Party is obligated "to notify the other Party in advance of any planned missile launches if such launches will extend beyond its national territory in the direction of the other Party." Although the Soviets (as is their customary practice) did not specify the agreement under which the September 26 notification was given, the substance of the notification was consistent with either—or both—the INCSEA and "Accidents Measures" Agreements.

All states have the right to conduct missile tests on the high seas in conformity with applicable international legal restrictions. At present, there are not specific treaty restrictions on conducting missile tests in the direction, or within a specified distance, of foreign territory. Customary international law, however, would prohibit the flight of RVs or other objects through US airspace without prior consent. Thus, a missile launch and RV descent that involved the overflight of US territory into an impact area in close proximity to the state of Hawaii could have raised issues in this regard. However, the Soviet tests of September 29 and September 30 were conducted in compliance with international law and existing agreements.

While we cannot state with certainty that the end of the Soviet series of tests on October 1 was the result of US protests, or that such incidents could not occur in the future, we believe the series of high level US protests, through both diplomatic and military channels, has clearly conveyed the seriousness of the US position in this regard.

SOVIET MISSILE IMPACT AREAS

Possible impact areas announced by the Soviet Union for the period between September 29 and October 8 were described as:

(1) The circumference of a circle with a radius of 60 nautical miles, with a center having the coordinates of 18 degrees, 00 minutes north latitude and 163 degrees, 00 minutes west longitude;

(2) A trapezoid with coordinates of 39 degrees, 30 minutes north latitude and 173 degrees, 00 minutes West longitude; 30 degrees, 30 minutes north latitude and 165 degrees, 15 minutes west longitude; 28 degrees, 15 minutes north latitude and 170 degrees, 00 minutes west longitude; 38 degrees, 30 minutes north latitude and 176 degrees, 00 minutes west longitude.

SOVIET VIOLATIONS OF SALT I AND SALT II WITH TWO HEAVY ICBMS ARE CONFIRMED BY NEW SOVIET-PROVIDED START DATA, BUT START WILL NOW LEGALIZE THESE PREVIOUSLY ILLEGAL HEAVY MISSILES

Throughout the 1969–1991 period of strategic arms limitations and reduction negotiations between the United States and the former Soviet Union, the United States has tried to restrict Soviet heavy missiles. One of the most important objectives of the United States has been to prohibit Soviet Inter-Continental Ballistic Missiles—ICBMs—which were heavy, from replacing Soviet light ICBMs. The United States has also tried to prevent the Soviets from modernizing their ICBMs by developing and deploying "new type" heavy ICBMs. Both of these key American objectives have aimed at preventing the Soviet Union from increasing its heavy ICBM first strike threat.

But the Soviets used negotiating deception and "fraud in the inducement" during Strategic Arms Limitation Treaty I—SALT I—negotiations to deploy illegal heavy ICBMs to replace light ICBMs in violation of the SALT I agreements. The Soviets have also used negotiating deception and "fraud in the inducement" in SALT II in order to illegally develop and deploy a "new type" heavy ICBM.

For a cumulative total of almost 20 years, in diplomatic channels the Soviets have falsely denied that two of their ICBMs were heavy, and were illegally replacing their light ICBMs in violation of SALT I and SALT II.

Fortunately, now unclassified Soviet-provided data in the recent START Treaty finally confirms these past Soviet heavy ICBM deceptions and violations of SALT I and SALT II. Eleven cases of Soviet deception and violations related to this data are now confirmed.

But unfortunately, START will fully legalize two previously illegal Soviet heavy ICBMs and several other previously illegal missiles. Thus Soviet deceptions and violations on heavy ICBMs in SALT I and SALT II have finally triumphed in the proposed SALT Treaty.

SOVIET SALT I HEAVY ICBM DECEPTION AND VIOLATION

In the SALT I Interim Agreement signed in May 1972, the Soviets agreed to a key provision prohibiting heavy ICBMs from replacing light ICBMs. But there was no agreed definition of a heavy ICBM.

Soon after signing SALT I, the Soviets began long-range flight testing and deployment of a heavy ICBM—their SS–19—to replace their light SS–11 ICBM. The Soviet heavy SS–19 thus defeated the object and purpose of SALT I.

According to now declassified, but once extremely sensitive communications intelligence intercepts, Soviet leader Brezhnev himself in May, 1972 secretly regarded their SS–19 ICBM to be a "heavy" ICBM. Moreover, this evidence explicitly shows that Brezhnev wanted to keep the "heavy" SS–19 ICBM secret from the United States until after SALT I was signed, because Brezhnev stated that he planned to illegally deploy this heavy missile to replace Soviet light SS–11 ICBMs on a large scale.

In order to induce the United States to agree to such a prohibition on heavy ICBM deployment without a definition of a heavy ICBM, the Soviets engaged in negotiating deception. The Soviet negotiators falsely assured the United States several times that an agreed definition of a heavy ICBM was not necessary, because they falsely claimed that they had no intention to deploy heavy ICBMs to replace light ICBMs. Soviet negotiators actually even told United States negotiators that the United States could "trust" the Soviets not to replace light ICBMs with heavy ICBMs.

But their later large scale deployment of SS–19 heavy ICBMs to replace their SS–11 light ICBMs proved that they not only defeated the object and purpose of SALT I; it also proved that they fraudulently induced the United States to sign SALT I by falsely claiming that they did not intend such replacement. The large scale Soviet deployment of heavy SS–19 ICBMs increased the Soviet first strike threat by a factor of five. Other evidence indicates that throughout the 1970s the Soviet leaders continued to secretly refer to their SS–19 ICBM as a "heavy" ICBM. Indeed, recent Soviet-supplied START data has now confirmed that this sensitive intelligence accurately revealed that the SS–19 was in fact a "heavy" ICBM.

In sum, the Soviets not only negotiated deceptively to deploy their heavy SS–19 ICBM, but they also violated SALT I with this de-

ployment. Moreover, ever since 1972, in diplomatic channels the Soviets have continuously and falsely denied that their heavy SS-19 ICBM was a heavy ICBM.

This experience in SALT I taught the United States that any effort in SALT II to constrain heavy ICBMs from replacing light ICBMs, and also to constrain heavy ICBM modernization, must be accompanied by an agreed definition of a heavy ICBM.

SOVIET SALT II HEAVY ICBM DECEPTION AND VIOLATIONS

In the SALT II Treaty signed in 1979, the United States once again succeeded in gaining Soviet agreement to the key provision that heavy ICBMs could not replace light ICBMs. Moreover, the United States also succeeded in gaining Soviet agreement to prohibit development and deployment of "new type" heavy ICBMs. But having learned our lesson from SALT I, this time we also tried to secure Soviet agreement to a definition of a heavy ICBM, which was crucial to making these prohibitions on heavy ICBMs into effective constraints.

The United States therefore put forward a definition of a heavy ICBM that was based upon the U.S. Intelligence estimate in 1979 of the launch weight of the Soviet SS-19 heavy ICBM. U.S. Intelligence estimated then in an unclassified assessment that the SS-19 had a launch weight of 90,000 kilograms.

The United States thus proposed that in SALT II, any ICBM on either side with a launch weight greater than 90,000 kilograms would be classed as a heavy ICBM.

SALT II thus again prohibited any heavy ICBMs from replacing light ICBMs, and in addition it went on to prohibit "new types" of ICBMs that were heavy. Only one "new type" ICBM was to be allowed to be developed and deployed on each side, and it had to be light—with a launch weight less than 90,000 kilograms.

The Soviet Union did not respond to this SALT II launch weight definition of a heavy ICBM proposed by the United States, but the United States avowed that it interpreted the Soviet silence on this definition to be assent.

Thus the United States signed SALT II in 1979 believing that there was at least a tacitly agreed launch weight definition of a heavy ICBM, and that the Soviet Union had agreed not to deploy heavy ICBMs with launch weight greater than 90,000 kilograms to replace light ICBMs, and had agreed not to develop, test, and deploy any "new type" heavy ICBMs with launch weight greater than 90,000 kilograms.

In 1982, the Soviets suddenly began flight testing two new types of ICBMs—the SS-24 and the SS-25.

But the SS-25 ICBM turned out to be a prohibited second new type light ICBM, and it was illegal for several reasons—it had about ten times more than the allowed 5 percent increase in throw weight, its telemetry was fully encrypted (encoded) illegally, and it violated the prohibition on the proportion of throw weight used by the single warhead.

Moreover, the SS-24 also turned out to be illegal, because its electronic telemetry signals were fully encrypted in violation of SALT II prohibitions against such encryption.

But there was another aspect of the new SS-24 that we have long suspected—it too has turned out to be another illegal heavy ICBM. Its launch weight has turned out to be heavier than 90,000 kilograms.

Moreover, during the 1979-1986 period when both the United States and the Soviet Union claimed a joint "political obligation" to comply with the unratified SALT II Treaty, the Soviets continued to replace light SS-11s with heavy SS-19 ICBMs, which now were the threshold between heavy and light ICBMs.

SOVIET START DATA CONFIRMS EARLIER DECEPTION AND VIOLATIONS ON HEAVY ICBMS, WHILE LEGALIZING THE SS-19 AND SS-24 HEAVY ICBMS

The United States and the Soviet Union signed the START Treaty on July 31, 1991. (Since then, the former Soviet Union changed its name to the "Commonwealth of Independent States," and changed the structure of legal and political control of strategic nuclear weapons, complicating the legal status and the ratification prospects of START.)

Like SALT I and SALT II before it, START's Article V again tries to prohibit heavy ICBMs from replacing light ICBMs. START's Article V also prohibits the development, testing, and deployment of "new type" heavy ICBMs. The START Treaty also finally contains a fully agreed definition of a heavy ICBM.

As an integral, legal part of the START Treaty, in the START Memorandum of Understanding (MOU) on Data, the Soviets were obliged to provide data on the characteristics and numbers of their missiles and bombers. But throughout the 1982-1991 START negotiations, the Soviets were very reluctant to provide this data, because they repeatedly stated that to provide this data would entail admitting their heavy ICBM deceptions and violations regarding SALT I and SALT II.

Nevertheless, just before START was signed on July 31, 1991, the Soviets finally revealed the launch weights of their SS-19 and SS-24 ICBMs. And the Soviet reluctance to provide this data was well founded—their MOU data provided under the START Treaty did in fact confirm several Soviet deceptions and violations of SALT I and SALT II.

In the unclassified START MOU on data, the Soviets finally revealed that the unclassified launch weight of their SS-19 ICBM was 105,600 kilograms, as compared to the 1979 U.S. Intelligence estimate in the SALT II definition of a heavy ICBM as any ICBM with a launch weight greater than 90,000 kilograms.

Moreover, the unclassified START definition of a heavy ICBM is any ICBM with a launch weight greater than 105,600 kilograms, that is, any ICBM with launch weight heavier than the SS-19.

Finally, the Soviets also revealed that the unclassified launch weight of their SS-24 new type ICBM was 104,500 kilograms, as compared to the 90,000 kilogram launch weight which defined a heavy ICBM under SALT II.

The Soviets thus finally revealed that the launch weight of the SS-19 indicates that the SS-19 was a heavy ICBM which defeated the object and purpose of SALT I. Moreover, the finally revealed launch weight of the SS-19 violated the U.S.-proposed and tacitly agreed definition in SALT II for heavy ICBMs. Further, the finally revealed launch weight of the Soviet SS-24 shows that it, too, was an illegal new type heavy ICBM under the terms of SALT II.

In sum, the newly revealed Soviet-provided START data confirms the following eleven significant facts:

1. The Soviet SS-19 was heavy ICBM which illegally replaced the light SS-11 ICBMs on a large scale, defeating the object and purpose of SALT I, and therefore violating SALT I.

2. The Soviets engaged in fraud in the inducement or negotiating deception in SALT I, by falsely claiming that they did not intend to replace light ICBMs with their heavy SS-19 ICBMs.

3. The repeated Soviet denials for almost 20 years in diplomatic channels that their SS-19 was a heavy ICBM were false.

4. The Soviet SS-19 was a heavy ICBM which also violated the U.S.-proposed SALT II definition of a heavy ICBM .

5. The Soviets engaged in fraud in the inducement or negotiating deception in SALT II, by allowing the United States to believe that their non-response to the U.S.-proposed heavy ICBM launch weight definition constituted their tacit agreement with this definition.

6. The Soviet SS-19 was a heavy ICBM which violated the SALT II prohibition on heavy ICBMs from replacing light ICBMs.

7. The Soviet SS-24 was a "new type" heavy ICBM which violated the SALT II prohibition on "new type" heavy ICBMs.

8. The Soviets also engaged in fraud in the inducement or negotiating deception in the case of their heavy "new-type" SS-24 ICBM, which was under advanced development in 1979 when they signed the SALT II Treaty containing prohibitions against it.

9. The repeated Soviet denials in diplomatic channels that their SS-19 was a heavy ICBM in violation of SALT II were false.

10. The repeated Soviet denials in diplomatic channels that their SS-24 was a "new type" heavy ICBM prohibited by SALT II were also false.

11. The Soviets have engaged in fraud in the inducement yet again in START, because they induced the United States to sign a START Treaty with a definition of a heavy ICBM that proves that both the Soviet SS-19 and SS-24 ICBMs violated both SALT I and SALT II. But now the Soviet SS-19 and SS-24 ICBMs are fully legal under START, incorrectly and fraudulently defined as "light" ICBMs. This continued Soviet negotiating deception on heavy ICBMs suggests that the Soviets will once again violate attempts in START to constrain heavy ICBM replacement and modernization, by developing even newer heavy ICBMs. And yet again, the Soviets will continue to deny the facts in diplomatic channels.

Finally, it must be noted that the U.S. Peacekeeper or MX ICBM deployed in 1986 is a clearly legal light ICBM in terms of both SALT II and START, because it was deliberately designed to have a launch weight of 88,000 kilograms, which is less than the 90,000 kilogram 1979 U.S. Intelligence estimate of the SS-19's launch weight.

In sum, the former Soviet START data confirms that the Soviet SS-19 and SS-24 heavy ICBMs violated SALT I and SALT II, while fully legalizing these two previously illegal heavy ICBMs under START. Moreover, START will also fully legalize several other Soviet missiles confirmed to be illegal, such as the SS-25 ICBM and the SS-16 covert mobile ICBM.

Russian President Yeltsin was correct in June 1991, and again in June 1992, when he stated that the leaders of the then Soviet Union had repeatedly lied and deceived the United States on arms control data over many years.

ANALYSIS OF START TREATY PROVISIONS REVEALS SIGNIFICANT SS-25 MOBILE ICBM "RETIREMENT" LOOPHOLE AND TWO POTENTIAL NEW START VIOLATIONS RELATED TO THE "FOLLOW-ON" TO THE SS-25

Summary: The START Treaty explicitly omits any requirement for each side to destroy a single strategic ballistic missile, with one exception pertaining to some mobile missiles. START also does not require either side to destroy a single nuclear war-

head. The START Treaty also allows each side to produce and retain an unlimited number of strategic ballistic missiles and missile stages, and to produce and retain an unlimited number of nuclear warheads.

The START Treaty only "reduces" missile launch silos, submarine missile launch tubes, and heavy bombers which are launch platforms for air-launched cruise missiles and nuclear bombs. START thus requires only the destruction of these excess missile launchers above START ceilings—only silos, submarine tubes, and bombers will be destroyed under START.

No missiles themselves are required to be destroyed under START, with one exception—some "non-deployed missiles" for mobile ICBM launchers are the only missiles specified for destruction in START.

But even in this unique case requiring some "non-deployed" mobile missile destruction, the former Soviets have secured U.S. agreement to an explicit exemption from START's required destruction of these mobile missiles. The former Soviets can easily and simply declare that their approximately 594 currently existing and allowed mobile, single warhead, SS-25 missiles and launchers are "retired." This "retirement" would completely exempt all SS-25's from destruction.

This exemption constitutes a significant loophole in the Treaty.

Moreover, if the former Soviets decide to take advantage of this loophole, which would be easy and relatively inexpensive to exploit, it would allow them to legally have more than 1,192 single warhead missiles for mobile ICBM launchers. There is evidence that the former Soviets intend to exploit this loophole shortly after the START Treaty enters into force. Thus by "retiring" their SS-25 force of mobile ICBM's and by replacing it with the probable "new type" mobile ICBM nick-named "Fat Boy," the former Soviets could have over 1,192 mobile ICBMs and still fully comply with START.

The Administration has failed to notify the Senate about the existence and status of the "Fat Boy." In addition, the failure of the former Soviets to notify the U.S. that more than 20 "Fat Boy" prototypes have exited from its production facility, and their failure to discuss the "Fat Boy" in the START Joint Commission on Implementation and Compliance may also constitute two serious new violations of START's requirements on notification and discussion of new type mobile ICBMs.

A. The START Treaty explicitly allows each side an unlimited number of "non-deployed missiles" for ICBM silo launchers and SLBM launchers.

Thus an unlimited number of missiles for ICBM silos and SLBM submarines area allowed.

B. But START does contain a limit on the number of mobile missiles that the former Soviets can have.

Article IV of the START Treaty states in part:

"(a) Each Party shall limit the aggregate number of nondeployed ICBMs for mobile launchers of ICBMs to no more than 250."

This provision means that the former Soviets cannot legally have more than 250 "non-deployed missiles" for launchers of mobile ICBMs. The former Soviets would have to "eliminate" or destroy any "non-deployed missiles" for mobile ICBM launchers above the limit of 250.

But according to the START MOU on Data on page 151 of the START Treaty, the former Soviets only declared 60 "non-deployed missiles" for mobile ICBM launchers, and hence they have the "head-room" or the opportunity to legally build 190 more "non-deployed missiles" for mobile ICBM launchers.

Thus because of this "head-room," even now the START limit on 250 "non-deployed missiles" for mobile ICBMs would not require the former Soviets to destroy a single "non-deployed missile" for a mobile ICBM launcher, and instead of requiring the destruction of "non-deployed" mobile ICBMs, START allows 190 more to be legally produced.

C. The START Treaty does not require the destruction of any missiles, with one exception—only missiles for mobile ICBM launchers are required to be destroyed in one general circumstance.

Article VII .2 of the START Treaty states in part that:

"2. ICBMs for mobile launchers of ICBMs . . . shall be subject to the limitations provided for in this Treaty until they have been eliminated . . ."

This is the only general requirement in the START Treaty to destroy a ballistic missile. Notice that missiles for mobile ICBM launchers are the only missiles mentioned in START for elimination.

The Administration's "article by article" analysis of the letters associated with the START "signature protocol" states succinctly:

"START requires the destruction of silo launchers; it does not require the destruction of ballistic missiles, except as necessary to remain within numerical limits on non-deployed mobile ICBMs."

D. The only specific missile that START requires to be destroyed is a mobile missile.

The START Treaty Protocol on Conversion and Elimination states in part I. That:

"Elimination of ICBMs for mobile launchers of ICBMs . . . [shall entail that] . . . the stages shall be destroyed by explosive demolition or burned . . ."

This is the only specific missile destruction procedures mentioned in the START Treaty whatsoever. Notice again that missiles for mobile ICBM launchers are the only missiles mentioned in START with specific procedures for elimination and destruction.

The Administration's own "article by article" START analysis states:

"Note that the [250] limit in this [Article IV.] subparagraph [(a)] is the only provision in the Treaty which actually requires destruction of any ballistic missile . . ."

The Administration's own "article by article" analysis of START also states:

"The absence of specific elimination procedures is appropriate since there are no limits on the numbers of ICBMs for silo launchers or on SLBMs and thus no requirement ever to eliminate such ICBMs or SLBMs by any means."

E. START contains a specific exemption for the only requirement for missile destruction—some mobile missiles destruction.

The Thirty-seventh Agreed Statement of START states that:

"The Parties agree that—

(a) The limitations provided for in subparagraph I (a) of Article IV of the Treaty [i.e. the limitation on no more than 250 "non-deployed missiles" for mobile ICBM launchers] shall not apply to ICBMs of retired types of ICBMs for mobile launchers of ICBMs to each of which one warhead was attributed . . .

(f) Procedures contained in the Conversion or Elimination Protocol for the elimination or removal from accountability of ICBMs for mobile launchers of ICBMs shall not apply to ICBMs of retired types of ICBMs for mobile launchers of ICBMs to each of which one warhead was attributed . . .

The former Soviet SS-25 single warhead mobile ICBM is the only single warhead mobile ICBM that was deployed on either side at the time of the signature of the START Treaty on July 31, 1991. So this provision in effect applies only to the SS-25.

The Administration's own "article by article" analysis of START states:

"Subparagraph (a) of the Thirty-seventh Agreed Statement provides that the limitations of [Article IV.] subparagraph 1 (a) do not apply to retired mobile ICBMs attributed with only one warhead . . . Since the SS-25 is the only single-reentry vehicle mobile ICBM that was deployed at the time of the signature of the Treaty, this provision applies in effect, only to it . . . Since retired mobile ICBMs attributed with only one warhead are not subject to the 250/125 limits, the Thirty-seventh Agreed Statement also exempts them from the elimination procedures in the Conversion or Elimination Protocol."

This Administration analysis thus confirms that there is in fact a major loophole in the START Treaty regarding the allowed retirement of the SS-25.

In fact, the above analysis strongly suggests that no ballistic missiles will be destroyed under START, because the only ballistic missile that might potentially have to be eventually destroyed is the SS-25.

But as noted, the former Soviets can actually build 190 more SS-25s before would come up against the 250 limit on "non-deployed missiles" for mobile ICBMs. Moreover, in the likely event that the SS-25 will be declared "retired" after entry into force, even the SS-25 will not have to be destroyed, because it is specifically exempted from destruction if it is declared "retired." Thus this exemption means that there is actually an incentive for the former Soviets to declare the SS-25 to be "retired."

In sum, the SS-25 is the only ballistic missile that might potentially have to be destroyed under START, but the former Soviets can build up to 190 more SS-25s before they might have to destroy any, and in the likely event that the SS-25 will be declared "retired," no SS-25s at all will probably have to be destroyed because of the "retirement" exemption.

This exemption permits the former Soviets to declare approximately all 350 of their currently deployed SS-25 single warhead ICBMs and mobile launchers, together with their 565 declared "non-deployed missiles" for the SS-25, together with the 190 more "non-deployed missiles" for SS-25 mobile launchers that they are still allowed to build, to be "retired."

The allowed "retirement" of these 596 SS-25 mobile ICBMs would mean that they would be completely outside of START and all START ceilings. Their locations and movements would have to be reported under START provisions, and the approximately 350 mobile truck launchers would have to be marginally modified so that they could not launch SS-25s. But then even these 350 trucks could be used as support vehicles for another, new mobile ICBM program.

Moreover, they could keep 20 "test launchers" for the "retired" mobile SS-25.

Finally, under Paragraph 10(b) of Article V, they would have to stop producing the SS-25, although this production stoppage is unverifiable, due to the fact that SS-25 stages can be produced at several facilities, and can be assembled at several other facilities.

In sum, simply by "retiring" the mobile SS-25, the former Soviets could avoid having to destroy a single mobile missile, and they could easily gain an extra 596 mobile missiles completely uncounted in START.

F. START then also allows the former Soviets to build an entirely new force of over 596 mobile missiles to replace the force of 596 "retired" SS-25s.

The Definitions Annex of the START Treaty states in definition number 69. that:

"The term 'new type' means, for ICBMs or SLBMs, a type of ICBM or SLBM, the technical characteristics of which differ from those of an ICBM or SLBM, respectively, of each type declared previously in at least one of the following respects:

(d) length of either the assembled missile without front section or length of the first stage, by ten percent or more;

(f) throw-weight, by an increase of 21 percent or more, in conjunction with a change in the length of the first stage by five percent or more . . ."

This definition means that the new "Fat Boy" missile, over 100 of which have reportedly already exited without U.S. inspection from the Votkinsk Perimeter-Portal Continuous Monitoring facility, can probably qualify as a "new type" single warhead, mobile ICBM.

Reportedly, several new garages which are 25 percent shorter than SS-25 garages are being built for the "Fat Boy" at an ICBM test range where mobile ICBMs are tested. The correspondence of the "Fat Boy's" length being 25 percent shorter than the SS-25's length, and the new garages' lengths being 25 percent shorter than the SS-25's garages means that the new garages are probably intended to house the "Fat Boy," which in turn is probably a prototype "new type" mobile missile being prepared for flight-testing.

This suggests that the former Soviets intend to exploit the SS-25 "retirement" loophole after START's entry into force, by testing and producing a "new type," single warhead mobile missile to replace the soon-to-be-retired SS-25s.

Thus the "Fat Boy" will probably differ in length from the SS-25 by about 25 percent, more than enough to qualify it as a "new type." Moreover, the thickness of the "Fat Boy's" stages suggest that it will carry more solid propellant and will therefore have over 21 percent more throw-weight than the SS-25, also qualifying it as a "new type."

G. The "Fat Boy" mobile "now type" ICBM must be a single warhead ICBM, and it must be properly notified and agreed to as an allowable "new type" mobile ICBM in the START Joint Compliance and Inspection Commission.

Article V. Paragraph 4. of START states:

"Each Party undertakes not to deploy on a mobile launcher of ICBMs an ICBM of a type that was not specified as a type of ICBM for mobile launchers of ICBMs in accordance with paragraph (2) of Section VII. of the Protocol on Notifications Relating to this Treaty . . . unless it is an ICBM to which no more than one warhead is attributed and the Parties have agreed within the framework of the Joint Compliance and Inspection Commission to permit deployment of such ICBMs on mobile launchers of ICBMs. . ."

This means that the "Fat Boy" must be a single warhead mobile ICBM, and that it must be properly notified and agreed to as an allowable "new type" mobile ICBM in the Joint Commission on Implementation and Compliance.

But the Senate has not been informed by the Administration of even the existence of the "Fat Boy," nor has the Senate been informed of its status and characteristics, nor informed of the garage construction activities at the mobile missile test range. Nor has the Administration notified the Senate that the former Soviets have met these JCIC notification and discussion requirements for the "Fat Boy."

H. The former Soviets may already have committed two new major violations of START by failing to notify the U.S. about the "Fat Boy"

Section VII. of the Protocol on Notifications states:

"Each Party shall provide the other Party, pursuant to subparagraph 3(g) of Article VIII. of the Treaty [on notifications concerning strategic offensive arms of new types and new kinds] the following notifications concerning strategic offensive arms of new types and new kinds:

(2) notification, no later than five days after the first flight test of a prototype ICBM of a particular type from a mobile launcher of ICBMs, or after the eighth flight test of a prototype ICBM of the same type from a fixed launcher of ICBMs, or after the exit of the twentieth prototype ICBM of the same type from a production facility, whichever is earlier, of whether ICBMs of that type shall be considered ICBMs for mobile launchers of ICBMs."

The fact that over 100 "Fat Boy" probable "new type," single warhead, mobile ICBMs have already reportedly exited from their missile production facility at the Votkinsk PPCM site without U.S. inspection and without former Soviet notification or discussion in the JCIC under the above language suggests that two new violations of the START Treaty may already have occurred. These two new violations would be in addition to the former Soviet flight test with full encryption of the SS-19 last December, which the Administration has already conceded was inconsistent with START obligations.

I. Conclusion: major START loophole and two new START violations confirmed

The former Soviets could produce, test, and deploy at least another 596 "Fat Boy" single warhead mobile ICBMs, to completely replace their "retired" SS-25 force of 596 missiles. All they would need to do is have a "new type" or even a "converted" mobile launcher, which must merely be "distinguishable" from the current SS-25 mobile launcher. Because the former Soviets have the freedom to compose their START force structure within the START limit of 1,100 attributable warheads for mobile ICBMs any way they wish, they could legally have many more than 596 "Fat Boy" mobile ICBMs.

Thus by "retiring" their SS-25 force, the former Soviets could have well over 1,192 single warhead mobile ICBMs and still be fully complying with START.

The Senate should have a complete CIA briefing on the "Fat Boy" loophole, and the Senate should conduct a closed session on this issue before it votes to give its advice and consent to the START Treaty.

Mr. SYMMS. Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. BRYAN). The Senator from Wyoming [Mr. WALLOP] is recognized.

Mr. WALLOP. Mr. President, the Senator from Wyoming I am sure will be forgiven a little dose of paranoia. I have referred to this as the Stealth Treaty, because of the arrangement made yesterday first to debate it during a holiday and then to constrain its free debate for an hour today in the presence of few if any Senators.

Then I discovered I have now made seven parliamentary inquires the answers to which were not made available, and I would say to the Chair now that the earlier indications that the Senator received as to how those might be ruled upon have all been changed. So I will not seek the response to those, because I think the rulings would set bad precedents for the Senate.

The Senate at least is operating under a set of rules which it supposes would be somewhat permanent and able to be relied upon.

Then, Mr. President, yesterday I asked unanimous consent that papers by two experts whose testimony was not allowed, was specifically refused to be inserted into the RECORD, and I find on examination of that RECORD that they are not and were not put into the RECORD.

Mr. President, I had hoped in the offhand chance somewhere, somehow, that some Senator might be just casually interested enough in this treaty to have read, if not my words, at least theirs. That was not to be.

So, Mr. President, I now ask again unanimous consent that the two papers, one by Dr. Sven Kraemer and the other by Mr. Frank Gaffrey of the Center for Security Policy be printed in the RECORD and this time with my fervent prayer that they actually appear.

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

[From The National Interest, Fall 1992]

RE: START—ADVISE, DON'T CONSENT

(By Sven Kraemer)

The Strategic Arms Reduction Treaty (START) signed by Mikhail Gorbachev and George Bush on July 31, 1991 and now before the United States Senate involves the American people in deadly strategic gambles. START's flawed foundation and erratic chronology are as yet little understood. START has been a "stealth" treaty, essentially unnoticed and unexamined by Americans preoccupied by domestic electoral issues and caught up by high hopes about the end of the Cold War and a New World Order.

START was launched at the wrong time and on the wrong foot. It was signed in a mad rush at a Moscow summit before it was quite ready, and it required further detailed work before the administration could submit it to the Senate on November 25, 1991. The treaty was negotiated under summit deadlines at a time when the hardliners around Gorbachev largely determined the soviet positions. Thus START is marked by concessions to those hardliners—concessions that radically weakened key elements of the treaty earlier proposed by President Reagan. Reagan's START, in turn, contrasted sharply with President Carter's illfated, unratified Strategic Arms Limitation Treaty (SALT II) of 1979.

Gorbachev and the Soviet Union are long gone and the 1991 treaty is now obsolete.

Major new strategic arms control proposals were subsequently tabled in Moscow and Washington, notably at the June 17, 1992 Yeltsin-Bush summit meeting. Yet on July 2, 1992, the Foreign Relations Committee of the United States concluded its hearings on the 1991 treaty with a unanimous recommendation in favor of its ratification.

The full Senate will consider START at a time of national reassessment and new beginnings, which invariably come after a national election—whether it be followed by a new administration or the start of a second term. The Senate's consideration will present a unique opportunity to set things right with START, to safeguard American security and global stability, and to establish the enduring foundation of a new strategic framework for the post-Cold War era. That opportunity must be seized.

BASIC FLAWS

The administration's chief argument for START's ratification is that the treaty would "lock in" the foundation for future arms control progress in a volatile world. As we shall see, however, the old START needs a new start, for, as it now is, it rests America's security on crumbling foundations. The 1991 treaty signed under the aegis of the Soviet Union and Gorbachev's hardline associates is not a sound Strategic Arms Reduction Treaty. The treaty's flaws are magnified by three dangerous strategic realities that require special safeguards:

First, Russia remains a nuclear superpower. The collapsed Soviet Empire has left the future of 12,000 strategic weapons (and 18,000 tactical nuclear weapons) in doubt. In the wrong hands, these weapons have the capacity to destroy the United States and the entire globe. General Colin Powell, the chairman of the Joint Chiefs of Staff, spoke of this to senior Soviet generals in 1991 in words that ring true for the foreseeable future: "Even with the START treaty, you will have the capability to destroy us in 25 minutes.

Second, there is new and increased volatility in the former Soviet Union. It would be suicidal for the United States to rest its security either on the flawed START Treaty or on hopes about irreversible changes in the former Soviet Union. Boris Yeltsin and his fellow reformers face enormous obstacles. They may not succeed in irreversibly establishing full democracy, civilian control of military and intelligence operations, and conformity to international law and treaty obligations. Future coup attempts may well bring aggressive forces to power ready to exploit START's fatal flaws. Eight civil wars are currently being fought within the former empire, and large scale strife and new threats cannot be precluded.

And third, the end of the Cold War signals increased global weapons proliferation and reduced U.S. defenses. Indeed, the genie of advanced weapons proliferation is out of the bottle, even as U.S. and allied defense forces are being sharply reduced in the post-Cold War era. These two powerful historical realities make it imperative that America's future defense capabilities are exceptionally effective—and cost-effective—against a wide range of contingencies, and that arms control agreements such as START support rather than undercut such capabilities.

These strategic realities and START's high stakes have not been reflected in the actions of the Senate Foreign Relations Committee, which has primary jurisdiction on treaty ratification. The full Senate will now need to address the serious substantive flaws of the treaty as well as the serious flaws in the ratification proceedings.

Unfortunately, the Foreign Relations Committee appears to have prejudged its work on the treaty. On July 2, 1992, it unanimously recommended a Resolution of Ratification. (Senator Jesse Helms was hospitalized). The committee voted "yes" despite the fact that key elements of the START package were obsolete, incomplete, and inconsistent. It heard no critics and accepted no amendments. Few of its members attended the hearings and most avoided tough questions, although committee staff had prepared many. The committee did not wait for Senate Armed Services and Intelligence Committee hearings.

Though the committee's Resolution of Ratification includes numerous "conditions," these merely paper over problems and are essentially expressions of wishful thinking. They are not real "conditions" or preconditions since they require no treaty amendments and provide no effective safeguards. Following the administration's lead, the committee's resolution limits Senate consideration to only two of at least six key integral legal elements of START. These two are the bilateral July 1991 US-USSR treaty and a multilateral protocol of May 23, 1992, involving four of the former Soviet Union's successor states.

This bits-and-pieces approach to START ratification is designed to disguise the obvious inconsistencies between START's elements. It must be firmly rejected if the Senate is to fulfill its constitutional responsibility of advice and consent. Senators need to review, and vote on, a single, comprehensive, and fully integrated START package which includes—at the least—all of the following six of the treaty's major and interdependent legal elements:

1. The July 31, 1991 bilateral US-USSR START Treaty and its associated declarations and protocols. This set of documents was signed in Moscow by Presidents Gorbachev and Bush. Committee members and administration officials call this "START I."

2. The May 23, 1992 multilateral "Signature Protocol." This was signed in Lisbon, Portugal, by the United States and the four Soviet nuclear successor states—Russia, Byelarus, Ukraine, and Kazakhstan. The four pledged as yet unspecified and perhaps unachievable future "arrangements to be worked out among themselves" on: (a) future implementation of START (e.g., its verification provisions); (b) the commitments of the three smaller states to adhere "as early as possible" to the Nuclear Non-Proliferation Treaty and (c) the future status of the nuclear weapons on their soil.

According to the protocol, the tactical nuclear weapons were to be relocated into Russia by mid-1992, but the strategic weapons need to be relocated or destroyed only by the end of the seven-year treaty period. (In one of START's loopholes, however, "non-deployed" mobile missiles are permitted to remain outside of Russian even after that time.)

3. Side letters to the Signature Protocol addressed to President Bush from the heads of state of Ukraine (May 7, 1992), Kazakhstan (May 19), and Byelarus (May 20). These further spell out views and conditions of implementation of START, accession to the Nuclear Non-Proliferation Treaty, etc. Although, in an official statement on the Signature Protocol, Russia indicates it will not implement START unless the other three nuclear successor states join the NPT, Ukraine and Byelarus indicate in their side letters that they will not join the NPT unless nuclear weapons (missiles and warheads) are destroyed under international guarantees, a step not required by START.

4. The June 17, 1992 bilateral US-Russia Joint Understanding signed by Yeltsin and Bush at the Washington summit. This superseded key provisions of the 1991 treaty, but consisted of only a two-page framework and required weeks of additional negotiations to be put into treaty text form. It was not expected to be completed until at least September 1992. It is not a treaty, but administration officials and committee members call it "START II," or "The Deep Cuts, DeMIRVing Treaty."

5. The June 17, 1992 letter from Secretary of State Baker to Russian Foreign Minister Kosyrev. The document further changes key provisions by waiving the requirement that the warhead-carrying "platform" of "downloaded" missiles needs to be dismantled and replaced by smaller units and by the U.S. pledging, in effect, never to use its (97) B-1 bombers in a nuclear role.

6. The June 17, 1992 Joint U.S.-Russian Statement on A Global Protection System (GPS). This establishes a bilateral high-level group to develop a GPS "concept" within the framework of a modified ABM Treaty and focuses on ground-based systems, early-warning centers, and space-based sensors, but not space-based interceptors under U.S. control.

The administration and the Senate Foreign Relations Committee insist on a START ratification sequence that would begin with the bilateral treaty of July 31, 1991, would then take up the multilateral protocol signed with the successor states on May 23, 1992, and would altogether omit the Yeltsin-Bush Joint Understanding of June 17, 1992. The intent appears to be two-fold: to avoid waiting for the Joint Understanding's thorny details to be negotiated into treaty text and to avoid having the full Senate consider the problematic Signature Protocol and associated side letters (with their caveats) before political ratification momentum has been built up by "locking in" the old 1991 U.S.-Soviet treaty.

The proposed sequence makes neither legal nor arms control sense. For one thing, the Soviet contracting parties of 1991 are gone and Gorbachev's signature and the former Soviet Union's treaty are obsolete and retain no legal standing. Furthermore, the gains of the post-coup Yeltsin reforms and the 1992 summit's Joint Understanding are ignored by this approach and consigned to a future negotiations limbo.

The July 1991 treaty has no legal standing and therefore no ratification standing, except by virtue of the subsequent Signature Protocol and its associated side letters. Therefore, it is clear that the protocol, with all its problems and inconsistencies, must be considered and resolved by the Senate before the Senate can turn to the 1991 treaty.

In any legitimate START ratification procedure, the Gorbachev-signed treaty of July 1991 cannot validly be considered apart from the Joint Understanding or as a separate "START I" unconnected to the Understanding's "START II." The Joint Understanding is by no means a separate treaty, but an updating protocol to the obsolete 1991 document, a number of whose key provisions it clearly supersedes.

The Senate should scrupulously examine and resolve inconsistencies not only in the 280-page START Treaty of 1991, but also in all of its interdependent associated documents. For reasons of logic and legality, it should do so in the following sequence: first, a package including the June 1992 Joint Understanding in treaty text form, the Baker

letter, new multilateral commitments to the Understanding from the successor republics, and the GPS and other related summit statements; second, the May 1992 Signature Protocol and side letters; and last, the July 1991 START Treaty itself.

SEVEN SAFEGUARDS FOR THE SENATE

A responsible Senate assessment of START ratification issues must face up fully to the treaty's major loopholes and missed opportunities and should consider key safeguards for a safer new START and a sound new strategic framework.

It is important to note that the safeguards proposed below apply to the Soviet Union's successor states but need not be applied reciprocally to the United States. This is because, although Yeltsin and the other reformers may have good intentions, there is as yet no democratic political parity between the successor states and the United States—no firmly established commitment to democracy, no equivalent checks and balances, or a record of full treaty compliance.

The proposed START safeguards to be applied to the successor states, together with the significant loopholes and the way in which the Senate might set about plugging them, are as follows:

1. EFFECTIVELY ELIMINATE MISSILES AND WARHEADS

Loophole: The July 1991 START Treaty requires destruction only of launchers and not of a single missile or warhead (possibly excepting some mobiles). Further START loopholes permit the designation of many "retired" missiles as no longer START accountable, and permit a massive "downloading" of warheads without destroying missiles or their "front-end" warhead carriers that could be reloaded under new circumstances.

Many hundreds of missiles and warheads are thus exempt from destruction and are potentially available for use (e.g., with covert mobile launchers) by aggressive future leaders.

It is therefore significant that in their side letters to the May 23, 1992, Signature Protocol, two of the Soviet Union's successor states have, as part of their formal position on their own compliance with START and their commitments to join the Nuclear Non-Proliferation Treaty, asked for the verifiable international "elimination" or "destruction" of nuclear weapons: In a May 7, 1992, letter to President Bush, Ukraine's President Leonid Kravchuk requested that the "elimination of nuclear weapons . . . be carried out under reliable international control which should guarantee the non-use of nuclear charge components for repeated production of weapons." A similar letter from Belarus' President Shushkevich states that "the destruction of nuclear weapons should be carried out under rigorous and effective international control."

At the June 1992 Yeltsin-Bush summit, the United States offered technical and financial assistance for weapons dismantlement in addition to the $400 million already allocated from Pentagon funds under the Nunn-Lugar Act of November 1991. But much of this is for chemical and tactical nuclear weapons, not strategic weapons, and it appears likely that problems and costs of strategic warhead dismantlement could prove overwhelming.

Safeguard: The Senate should require that all four of the USSR's nuclear successor states, in undertaking START reductions, should rapidly dismantle or permanently bury in deep underground sites all launchers, missiles (including those being designated as "retired" or for "training," and all warheads on such missiles, to be accomplished with U.S. assistance and under continuous on-site U.S. inspection. The fissile material could be sold to energy companies, earning hard currency.

2. ELIMINATE ALL HEAVY MISSILE LAUNCHERS AND MISSILES NOW

Loopholes: The single most destabilizing strategic weapons are the "heavy" missiles, ideally suited for a first strike. The United States has none. The former Soviet Union has developed 308-204 in Russia and 104 in Kazakhstan, each with between 10 and 14 warheads.

President Reagan's START proposed to correct this dangerous imbalance through a 50 percent cut in numbers and a "no modernization" ban for heavy missiles. This would have banned all of the Soviet Union's current heavy missile force of SS-18s deployed with upgraded "Mod-5" and Mod-6" warheads. But the July 1991 START abandoned this position and retroactively legalized the entire upgraded force—which the Pentagon considers twice as lethal as prior versions—and wiped out any arms control gains from a 50 percent cut in numbers. The 1991 START permits even more modern SS-18 warhead upgrades and would leave half the heavy missile force (154 missiles with at lest 1,500 of the world's most lethal warheads) even after the conclusion of START in the year 2000.

START's heavy missile loopholes include two other elements. First, START permits the "relocation" (i.e. new construction) of up to 50 new launch silos for Soviet heavy missiles. Second, the START data base may be askew since the Soviet Union consistently provided false data on the throwweight and launchweight cut-off points which define a heavy missile in terms of existing missiles such as the SS-19, and doubts persist. In permitting any heavy missiles under such dubious definitions, it is possible that large numbers of additional missiles currently deployed or planned in the former Soviet Union may exceed anticipated heavy missile thresholds.

The June 1992 summit's Joint Understanding protocol moves to ban all SS-18s by the year 2000 or 2003, but while it mentions "elimination" and "missiles," it states that all reductions are to be carried out under July 1991 START procedures, which do not require elimination of missiles. Yeltsin stated at the June 1992 summit that he would take some SS-18s "off alert," but this means neither dismantlement nor even retirement.

SS-18 launchers are currently scheduled to be eliminated only very slowly—at the rate of 22 per year under the 1991 START, or at the rate of 44 per year under the 1992 Joint Understanding. Very substantial heavy missile capability will therefore be retained over most of the next 7-10 years, available to potentially hostile forces who may come into power during that time.

Safeguard: The Senate should set a high START priority on rapidly eliminating the SS-18 knock-out threat once and for all within the next 12-24 months. It should require the early removal of all SS-18 missiles from their silos to be followed by the use of high explosives within all 308 SS-18 silos and/or the filling of the craters with concrete. The missiles and warheads (whether defined as deployed, non-deployed, deactivated or not) should be dismantled or buried as rapidly as possible under continuous U.S. onsite inspection. U.S. defense dollars (e.g. one-half million per silo) could be dedicated in support of this purpose.

3. BAN ALL MOBILE MISSILES NOW—DON'T RELY ON "DOWNLOADING"

Loophole: A second key strategic asymmetry and loophole in START involves mobile intercontinental ballistic missiles. The United States has no such missiles and plans none, the Bush administration having canceled the small ICBM and rail-garrison MX programs during the past year. But over 370 mobile strategic missiles—rail-mobile ten-warhead SS-24s and truck-mobile single-warhead SS-25s—are deployed in Russia and Ukraine.

Consistent with his "zero option" for the Intermediate-Range Nuclear Force (INF) mobile missiles, President Reagan's START required a ban on all strategic mobile missiles. Two national security reasons still relevant today confirmed this position: the existing imbalance and the fact that the hard-to-find mobiles of whatever range or armament are destabilizing and not effectively verifiable—e.g., Iraq's Scuds, 72 covert Soviet SS-23 missiles, and possible Soviet SS-20 missiles deployed in violation of the INF Treaty of 1987.

The July 1991 START abandoned the prior U.S. position and legally permits 1,100 warheads on deployed mobile missiles and potentially many more warheads on "non-deployed," "retired," and "training" mobile missiles—provisions that are asymmetric and cannot be monitored with high confidence. The June 1992 Joint Understanding retains the 1,100 warhead limit. It goes after the multiple-warhead SS-24 mobile missiles, not by eliminating them or the SS-25, but by permitting them to be "downloaded" or "de-MIRVed" from ten warheads to one.

Downloading, however, cannot be monitored with high confidence, a situation further exacerbated by a U.S. decision cited in a June 17, 1992 letter from Secretary of State Baker to Russian Foreign Minister Andrey Kozyrev. This letter indicates that the U.S. has canceled the earlier START requirement to destroy and replace the platform containing the warheads in the downloaded missiles.

In sum, large numbers of SS-25 mobile missiles designated as "non-deployed" and "retired," and large numbers of SS-24 mobile missiles designated as "downloaded" are likely to remain available to potentially aggressive new leaders.

Safeguard: The Senate should require a total ban, to be implemented within two years, on all mobile missile launchers and their missiles—whether multiple warhead or single warhead, deployed or non-deployed, downloaded or not, and to include those designated "retired" or for "training." Launcher destruction should begin at once and the missiles and warheads should immediately be stored away from their launchers and dismantled or buried under continuous U.S. on-site inspection. The United States could offer to pay U.S. defense dollars (e.g. one-third of a million each) to cut up all of the mobile missiles and launchers within a two-year time period.

4. COUNT ALL THE MISSING BOMBERS

Loopholes: The 1991 START has a number of bomber loopholes not improved by the June 1992 Joint Understanding. The 1991 START permits the former USSR 180 "heavy" bombers but permits the United States only 150. It has counting rules which cannot be monitored with high confidence for limiting the air-launched cruise missile (ALCMs) to be carried on such bombers and it limits ALCM ranges far below the 1,500 kilometer range considered most cost-effective for U.S. bombers. It gives a free ride to 500 Soviet "Backfire" bombers, which the U.S. government has long officially de-

scribed as having inter-continental range and which President Reagan wanted to counter under START's bomber limits. Soviet steps taking (now Russian- and Ukrainian-based) heavy bombers off alert status have not altered these loopholes.

Safeguard: The Senate should set equal bomber limits to include all bombers the U.S. government has previously defined as having either strategic or intercontinental range, therefore including all Backfire bombers. The Senate should reject all ALCM limits, including present ones, which the president and the U.S. intelligence community cannot certify as monitorable with high confidence.

5. DON'T LIMIT SEA-LAUNCHED CRUISE MISSILES (SLCMS); DON'T RELY ON "DOWNLOADING" OF SUBMARINE-LAUNCHED BALLISTIC MISSILES (SLBMS)

Loopholes: The Bush administration recently abandoned the Reagan administration's opposition to SLCM and SLBM limits which cannot be verified effectively, and which affect our most secure deterrent forces.

For SLCMs, binding U.S. and Soviet declarations to the 1991 START set a limit of 880 on deployment of nuclear-armed SLCMs exceeding 600 kilometers in range. This limit captures most U.S. systems, but excludes most deployed by the Soviet Union and its successors and it cannot be monitored effectively. Additionally, such missiles are considered particularly stabilizing and cost-effective and they could prove to be increasingly valuable multi-mission alternatives to other flexible deterrent systems being curtailed, like the B-2 bomber or carrier forces. For such national security reasons, which are still persuasive, President Reagan did not agree to SLCM limits in START.

For SLBMs, the June 1992 Joint Understanding permits "downloading" of multiple-warhead SLBMs to a ceiling of 2,160 warheads during START and to 1,750 warheads by the year 2000 or 2003. Such "downloading" cannot be monitored with high confidence.

Safeguards: SLCMs should be kept out of START since SLCM limits are not effectively verifiable and the SLCMs offer potentially highly cost-effective and stabilizing U.S. deterrent and defense capabilities for a range of future contingencies. For SLBMs, vital strategic stability and verification issues also require extreme caution in implementing any limitations on U.S. SLBMs. SLBM downloading provisions clearly should be kept out of START as they are not effectively verifiable and invite future disputes and cheating.

6. REQUIRE MANDATORY ON-SITE INSPECTIONS AT SUSPECT SITES

Loophole: Notwithstanding pages of detailed verification protocols and assertions that START is effectively verifiable, key START elements simply cannot be monitored with high confidence—e.g., mobile missiles, SLCMs, ALCMs, "downloading," "new types," ect. Furthermore, START does not authorize mandatory inspections at suspect sites involving undeclared facilities and activities. START's Joint Committee and Inspection Commission does not impose inspections on a party which rejects such inspections and it cannot enforce compliance.

Safeguard: The Senate should require mandatory suspect site inspections by the United States for the Soviet Union's nuclear successor states. Such a requirement need not apply reciprocally to the United States. The Senate should tie economic assistance to the former Soviet Union to full inspection access, including continuous monitoring and mandatory suspect site investigations.

7. INSIST ON FULL ARMS CONTROL COMPLIANCE

Loophole: If to be serious about arms control is to be serious about compliance, the proposed 1991 START Treaty, the 1992 Joint Understanding, and initial Senate Foreign Relations Committee actions do not qualify. The abysmal record of Soviet violations of major arms control treaties has been well documented by a series of White House reports and by the General Advisory Committee on Arms Control and Disarmament. As recently as April 9, 1992, in a report to Congress, President Bush cited continuous problems of Russia's violations, including presentation of false data and covert activities, involving the INF Treaty, the Conventional Forces in Europe (CFE) Treaty, the Chemical and Biological Weapons conventions, the Limited Nuclear Test Ban Treaty, the ABM Treaty, and other agreements.

Safeguard: The Senate should insist on the arms control safeguard set forth by President Reagan in a March 1987 report to Congress: "Compliance with past arms control commitments is an essential prerequisite for future arms control agreements. . . . Strict compliance with all provisions of arms control agreements is fundamental, and this administration will not accept anything less."

In following up Boris Yeltsin's June 1992 summit statement that Russia has stopped lying to us, the Senate should require, as a precondition of START ratification, that President Bush certify the immediate correction of false data for INF, GFE, START, Chemical and Biological agreements, and correction of all other violations of treaty obligations (excepting the obsolete ARM Treaty).

MAD, SDI, ABM

If strategic arms control and the June 1992 summit's proclaimed "Global Missile Protection System" are to be taken seriously, it is necessary to eliminate START's MAD poison pill against the U.S. Strategic Defense Initiative (SDI); to put aside the 1972 ABM Treaty, which is broken, obsolete, and no longer legal; and to accelerate U.S. deployment of space-based missile defenses.

The July 1991 START carries forward the Soviet hardliners' poison pill against U.S. deployment of advanced missile defense systems under SDI. The Soviet position explicitly tied future Soviet compliance with START to U.S. compliance (albeit unilateral) with the 1972 ABM Treaty which bars advanced defenses. Absent such U.S. compliance, says a Soviet START declaration of June 13, 1991, START would not be "effective and viable."

Yet the ABM Treaty is a broken Humpty Dumpty of a treaty, irretrievably breached since 1983 by a central Soviet violation (construction of the Krasnoyarsk radar), first acknowledged by former Soviet Foreign Minister Edwuard Shevardnadze in October 1989. The treaty is also undercut in at least five other areas of noncompliance cited in President Bush's April 9, 1992 report to the Congress.

At the same time, the ABM Treaty is obsolete in its underlying assumptions about the assured effectiveness of global nonproliferation efforts and against the technological possibility of cost-effective missile defenses. The ABM Treaty also has an obsolete and increasingly questionable ethical base in its reliance on the doctrine of nuclear deterrence based on the threat of mutual assured destruction.

Furthermore, since no successor state protocol exists for the ABM Treaty comparable to START's multilateral "Signature Protocol" of May 23, 1992, its legal status has expired. In an added twist, systems limited under the ABM Treaty now include a large phased-array radar based in Skrunda, Latvia, an independent country which does not want any independent country which does not want any Soviet or Russian installations on its soil and which has not assumed Soviet treaty obligations.

The June 1992 Yeltsin-Bush summit proved quite inadequate in handling these issues or the additional global reality of the increasing threat of proliferation of weapons of mass destruction. The summit's "Joint US-Russian Statement on a Global Protection System" (GPS) signed by Yeltsin and Bush did not reject the ABM Treaty as expired, broken, or obsolete. It sets aside nothing, but merely establishes a high-level group to explore potential avenues in developing a "concept" for a GPS. The proposed high-level group will apparently be bound by a commitment to the obsolete ABM Treaty and will be limited in its focus. An important indicator is that the group will be headed for the United States by a State Department planning official, Dennis Ross, a Middle East expert, rather than, for example, by the knowledgeable head of the Pentagon's Strategic Defense Initiative Organization and former U.S. ambassador to the Defense and Space Talks, Henry Cooper.

The group's "concept" focus is expected to be on ground-based systems, warning centers, and space-based sensors, rather than on space-based interceptors like SDI's promising "Brilliant Pebbles." Yet only space-based interceptors and U.S. control can effectively assure engagement of missiles going to any direction from any direction (e.g. from submarines or Third World locations). Space-based interceptors are alone able to counter missiles near their launch point or in midcourse rather than over one's own territory close to the missiles' expected point of impact.

The American people, Boris Yeltsin and his fellow reformers, and, indeed, the entire globe all need a far more assertive and stronger pro-SDI U.S. position than the June 1992 summit's against the Soviet hardliners or than Congressional approaches focused on "narrow" interpretations which gut timely deployment of advanced defenses. The world is marked by unprecedented volatilities in the former Soviet Union, an ABM Treaty long broken in its provisions and assumptions, continued treaty violations, increasing proliferation problems, and the suicidal madness of MAD.

As part of any START framework, the United States should therefore insist on setting aside the ABM Treaty (as it set aside the broken SALT I and SALT II agreements in 1986) and accelerate a spaced-based SDI system fully under U.S. control. There can be no doubt that it is in the supreme national interest of the American people and in the highest interest of global security and stability that the United States rapidly provide the global insurance safeguard only advanced anti-missile defenses can assure. To guard against adverse developments the implementation of U.S. START cuts (particularly in the latter phases) should be tied by the Senate to the pace of U.S. deployment of advanced, space-based interceptors.

A NEW STRATEGIC GRAND BARGAIN

The administration and the Senate Foreign Relations Committee are pressing for early ratification of the obsolete July 1991 START Treaty. They insist the Senate vote without resolving START's fundamental pro-

cedural, substantive, and legal inconsistencies, and without waiting for a critical examination of the June 1992 summit's Joint Understanding and its final treaty text. They are proceeding without testimony from START critics, without the assessments of the Senate Armed Services and Intelligence Committees, and without establishing any effective safeguards to assure American security and global stability.

Such an approach to an immensely important issue endangers U.S. security and loses a historic opportunity for shaping a far-reaching new strategic framework, even as Boris Yeltsin and his fellow reformers face staggering obstacles and aggressive elements maintain the hope of gaining control in the former Soviet Union.

At this historic juncture, the Senate should undertake an integrated judgment on START and on the evolution of a new strategic framework. Budgets and treaties are drastically cutting U.S. strategic capabilities even as we face an increasingly volatile globe and a stumbling nuclear superpower in the former Soviet Union. At the same time, START ratification proceedings and national elections bring special requirements and opportunities for reassessment. The required strategic decisions should include assessments of the globe's new strategic realities, expert critiques of the START and Anti-Ballistic Missile (ABM) treaties, and development of safeguards and alternative strategies for a new framework based on the following elements:

First, restart START as a single coherent treaty, building on the 1991 Gorbachev agreement, the 1992 Signature Protocol, Side Letters and summit Understanding, and other associated START elements and new safeguards, to achieve a truly far-reaching, stabilizing, and effectively verifiable START treaty with key elements changed as proposed above.

Second, set aside the obsolete 1972 ABM Treaty and commit to rapid U.S. deployment of advanced strategic defenses. Agreement should be sought, and greater economic assistance could be offered as an inducement for such an agreement. But whether or not agreement is forthcoming, the United States should declare, notably in conjunction with any START package, that for reasons of supreme national security interests and to strengthen global arms control, security, and stability, it will set aside the ABM Treaty and will accelerate the testing and deployment, under U.S. control, of advanced strategic defenses to include space-based, anti-missile interceptors by the year 2000.

Third, insist on fundamental institutional changes in the former Soviet Union. The United States must finally act as if it really won the Cold War and wants to keep it that way, and while there is still time, exercise decisive leadership to consolidate and safeguard that victory for democracy and peace. The United States must, therefore, use all available diplomatic and economic leverage to work with Boris Yeltsin and his fellow reformers to set the terms for a far-reaching partnership against the Soviet hardliners and for the transformation of the successor states to full democracy at home and peaceful behavior abroad.

In such a new Grand Bargain, U.S. economic assistance under the Freedom Support Act of 1992 or the Nunn-Lugar Soviet Nuclear Threat Reduction Act of November 1991, as well as implementation of major START reductions or consideration of new arms control agreements (e.g. on chemical weapons or nuclear testing), should be conditioned on fundamental institutional changes certified by the U.S. president and Congress. Such changes should include: full civilian parliamentary control and transparency of military and intelligence programs and budgets equivalent to those in the Western democracies; full treaty compliance, including accurate data; immediate Soviet/Russian military withdrawal from the Baltic countries; verifiable dismantling, within the next two years, of the former Soviet Union's strategic weapons and force structure below START levels; and conversion to private civilian production and ownership under a legal system which fosters and protects full democracy at home and international law abroad.

As the Berlin Wall and the Iron Curtain came down and the military coup failed in Russia, the first fine flush of victory left many optimistic about the beginning of a benign new era in which the United States could afford to be more relaxed about the control of nuclear weapons and about serious military threats to ourselves and to our friends and allies. Many months later, with the old Soviet Union in turmoil and the distinct possibility of more turmoil and aggressive new leaders to come, with the proliferation genie out of the bottle, and with the knowledge of how close Saddam Hussein, and perhaps others, have come to acquiring weapons of mass destruction and their delivery systems, there can be no excuse for such dangerous illusions.

We are living in a world in which the problem is more, not less acute. Only with the establishment of a new strategic framework and a new Grand Bargain—restarting START, deploying advanced strategic defenses, and pressing with all available leverage to establish the institutions of full democracy in the successor republics of the former Soviet Union—can the freedom and security of America and the world be safeguarded for future generations.

[From the Center for Security Policy, Sept. 24, 1992]

STOP "START": THE CASE AGAINST RATIFICATION OF THE STRATEGIC ARMS REDUCTION TREATY

I. AN INSTITUTIONAL CRISIS: THE SENATE AS RUBBER-STAMP?

Fifteen months after the Strategic Arms Reduction Treaty (START) was signed in Moscow by President George Bush and then-Soviet President Mikhail Gorbachev, the United States Senate is preparing to give its advice and consent to the Treaty. On the face of it, this seems bizarre.

After all, the government with whom the Treaty was negotiated no longer exists; its successors are, moreover, behaving in ways that do not encourage confidence about their future compliance with its terms. Serious defects incorporated into the START agreement at the insistence of the ancien Soviet regime persist. And an agreement that would go some ways toward correcting START's flaws—initialled with much fanfare at the June summit between President Bush and Russian President Boris Yeltsin—appears, at present, unlikely to be translated into a binding accord.

The fact that the Senate could contemplate agreeing to the ratification of the START Treaty under these circumstances is a sorry indictment of the degree to which the institution no longer performs its constitutional responsibilities in the treaty-making process. Instead, it merely goes through the motions; the outcome—Senate advice and consent—is preordained well in advance.

To be sure, quite some time has passed since the START Treaty was submitted to the Senate for ratification. The lapse of so much time should not be confused, however, with a careful and rigorous examination of and debate on the accord and its terms. Instead, the delay has largely been due to the uncertainty and disarray caused by the collapse of the Soviet Union. During most of this period, the Senate has simply been unable to act on START as the Bush Administration engaged in a series of desperate negotiations aimed at salvaging a treaty in which the latter had invested immense political capital. This has largely been accomplished through the device of papering over those problems inherent in the accord that were exacerbated by the Soviet empire's dissolution.

To be sure, a number of hearings have been held by the Senate Foreign Relations, Armed Services and Intelligence Committees. With the active connivance of the Bush Administration, however, no expert witnesses who believe the Treaty's defects to be sufficiently serious as to justify withholding ratification have been permitted to testify.

To be sure, amendments have been drafted and approved by the Foreign Relations Committee. Still others may be offered and accepted when the resolution of ratification reaches the Senate floor in the near future. If so, such amendments will—all other things being equal—be like those already adopted: By definition, they are not "killer amendments," i.e., those that would require renegotiation of the Treaty's terms with the Russian or other Soviet successor governments. They are instead cosmetic modifications, intended not to correct important defects in the Treaty but rather to provide political cover to Senators.

In short, the United States Senate is in serious jeopardy of being reduced to a rubber-stamp for the Bush Administration's seriously flawed arms control agreements. The absence of a rigorous Senate review of START is symptomatic of a much larger problem: the atrophying of that all-important check-and-balance on the executive intended by the framers of the Constitution when they divided treaty-making power between it and the Senate. Such a corruption of the constitutionally mandated ratification process creates conditions likely to produce not only unwarranted approval of the present Strategic Arms Reduction Agreement but future accords that are even more defective. The upcoming, wholly unverifiable and ill-conceived Chemical Weapons Convention is a case in point.

The Center for Security Policy believes that—for both these immediate and longer-term reasons—the Senate must be given an opportunity to consider the unvarnished facts about the START accord. Since none of its cognizant committees have permitted such facts to be made a part of the record of their review of the Treaty, the Center believes it imperative to provide the Senate, the media and the American public at large with the following, brief arguments against ratification of the START agreement in its present form.

II. UNDERSTANDING THE POLITICAL CONTEXT

The general absence in the Senate of serious challenge—or even rigorous questioning—of the Bush Administration's assertions about the START Treaty appears to reflect the almost euphoric reaction of official Washington to the end of the Cold War and certain assumptions about the future of U.S.-Russian relations. Three of these interrelated assumptions warrant especially close scrutiny:

First, the contention that—with the dissolution of the Soviet Union—Russia is becoming an open society that can simply not afford to continue to invest heavily in its strategic forces, at least to the degree it has in the past. In short, according to this reasoning, START's exact provisions, and any defects it may have, do not matter.

Second, Russia is now a reliable negotiating partner, determined to comply with its arms control obligations. And

Third, the follow-on agreement to START, negotiated as a "Joint Understanding" at the June Washington summit, will solve any problems which may exist with the present Treaty.

Unfortunately, when subjected to rigorous analysis, these assumptions simply do not stand up to scrutiny:

Just how "former" is the former Soviet Union?

In important respects, the battle for the heart and soul of the new Russia and the other Soviet successor states is *not* over. The forces committed to systemic political and economic reform in each of the former republics are a long way from consolidating their claim to power, to say nothing of achieving their goals. They are increasingly confronted with the determined resistance of reactionary elements anxious to preserve—and, if possible, restore to their former glory—many of the institutions, policies and capabilities of the old order.

In particular, the jury is still very much out as to whether the Civic Union coalition—comprised of communist apparatchiks, figures from the military-industrial complex and KGB and disaffected reformers in Russia—will succeed in their campaign to sustain vast defense expenditures and programs wholly inconsistent with Russia's legitimate security needs. There are, however, worrying signs. For example, on 11 September 1992, Interfax reported that purchase orders from the Russian government for military hardware will be greater in 1993 than this year.

Moreover, a number of hard-line figures are actually receiving appointments to influential positions in the Yeltsin government. Notably, one of these is a General Ladygin whose calculated obstreperousness and inflexibility as a member of the Gorbachev START negotiating team induced the Bush Administration to make many of the last minute concessions that seriously weakened the Treaty. As a reward for his useful recalcitrance, Ladygin has been promoted and put in charge of the GRU, Russia's military intelligence service. The ominous symbolism of such personnel decisions is not being lost on others in the former Soviet Union, nor should it be on members of the U.S. Senate.

In short, it is certainly premature, and quite probably irresponsible, to predicate long-term U.S. security policies on the assumption that the transformation of the Soviet Union into democratic and peaceable successor states is an accomplished fact. Even if the intentions of those who claim to want such a transformation are genuine, they have not been realized to date and may never be.

Russia is not going out of the nuclear business

Meanwhile, the United States must remain concerned about the military capabilities inherited from the Soviet Union which are still largely in place. While some strategic programs have been eliminated as a result of the breakup of the Soviet Union, major resources continue to be devoted to facilities and programs intended to fight and win a nuclear conflict with the West. Worse yet, as a result of a lack of discipline and transparency in U.S. approaches to aiding the former USSR, the United States is now actually subsidizing, indirectly if not directly, Russia's operational nuclear forces—forces that are still directed against the United States.

For example, some of the $400 million in U.S. Defense Department funds set aside by the Congress last year to support nuclear weapons safety, security and dismantling activities in the former Soviet Union are being spent on enhanced survivability transporters for Russian nuclear weapons. In practice, these rail cars and tractor trailers will likely be used to support deployed missile and bomber units as well. Similarly, the recently announced decision to purchase Russian uranium at market prices without stipulating that on-going, state-subsidized production of this special nuclear material be halted is a formula for underwriting such production.

"Business as usual" in arms control

To those who maintain that these uncertainties are all the more reason for ratifying START (i.e., in the interest of "locking in" the former Soviet Union and prevent unpleasant surprises), a "sanity check" is in order: The conduct of the present, putatively open and honorable regime in Moscow does not inspire great confidence in its willingness—to say nothing of its successors'—to comply fully with arms control obligations. Consider the following illustrative examples of the problem:

Russia has already violated agreements associated with START (e.g., the encryption of telemetry on strategic test vehicles).

Russia is walking, if not running, away from the Joint Understanding agreed upon by President Yeltsin at the Washington summit in June (e.g., by linking their ultimate adoption to continued observance of the ABM Treaty—a proposition recently stated explicitly as a precondition by hard-line Defense Minister Pavel Grachev—and by arguing against elimination of the heavy SS-18 force).

Russia is continuing to violate the Biological Weapons Convention's ban on production and stockpiling of such weapons despite their repeated promises by the Yeltsin government to cease and desist. Recently announced undertakings about inspection of civilian facilities are not likely to eliminate concerns about the use being made of them for illegal biological weapons-related purposes—to say nothing of proscribed activities at still-closed military facilities.

Russia is violating CFE verification/inspection provisions precluding Western inspectors from conducting on-site inspections of all equipment and facilities that are supposed to be open to such monitoring.

Russia is also walking away from the destruction provisions of the Chemical Weapons Convention—on which the ink is scarcely dry.

Russia is even stalling on the implementation of START itself, insisting that Ukraine and the other Soviet states now parties to START under the Lisbon Protocol accede to the Non-Proliferation Treaty as non-nuclear weapon states before START enters into force.

The best that can be said about current Russian policy with regard to arms control is that it is both inconsistent and uncertain. At worst, it appears to be consistent with the cynical practice of the predecessor communist regimes: agree only to accords that significantly advantage Moscow's interests and ensure that such advantages are compounded by selective compliance.

This syndrome and the aforementioned manifestations of it argue strongly that, at a minimum, the United States must proceed with caution, undertaking a full and realistic assessment of any new commitments which would affect the present and future security of the United States. This is especially true of an agreement like START whose impact would be both sweeping, profound and lasting.

III. AN OVERVIEW OF THE START TREATY

At the outset of the START negotiations in 1982, the United States publicly articulated a number of key objectives against which the final treaty can now be assessed:

"Real reductions" in offensive arms—particularly in the then-Soviet land-based missile force;

"Equal and stabilizing" force postures; and

"Effective verification" of the development, production and deployment of Soviet strategic systems.

Claims by the Bush Administration to the contrary notwithstanding, the START agreement signed in July 1991 fails to achieve any of its original goals:

Not the advertised "deep reductions": The true effect of START in reducing the former Soviet Union's strategic arms is sure to be substantially less than claimed by the Treaty's proponents. The combined effect of START's counting rules, inaccurate data supplied by Moscow, allowed "downloading," unverifiable limits (e.g., on mobile missiles) and the absence of limits (notably on non-deployed non-mobile ICBMs) will be to permit the old USSR to reduce substantially the practical impact of such reductions as the Treaty requires.

Not "equal": The Treaty provisions grossly favor Russia. Three blatant inequities codified in the Treaty are: the attribution rules for warhead counting; granting Russia a de facto monopoly on mobile ICBMs; and granting Russia a de jure monopoly on heavy MIRVed ICBMs. These inequalities were accepted on the basis of certain assumptions concerning U.S. strategic modernization—notably, that there would be a deployment of 132 B-2 bombers and, if mobile ICBMs were to be allowed, deployment of U.S. mobile missiles—assumptions that have not been borne out.

Not so "stabilizing": START limits are in fact destabilizing as a result of leaving in place the preponderance of the massive Soviet—now Russian—ICBM force, particularly the heavy missiles designed for a first strike against the United States. Stability is further undermined by the cheating and breakout potential inherent in the Treaty due to the absence of effective verification.

Not "verifiable": Finally, the verification provisions of START—although many in number—are either cosmetic, ineffective or easily spoofed.

In sum, there are certain direct parallels between the "fatal flaws" found in the SALT II Treaty—flaws considered sufficiently grievous to justify the Senate's refusal in 1979 to agree to ratification of that accord—with the flaws in START. If anything, the fatal flaws of START are even greater in number and considerably exceed in terms of their strategic significance those of SALT II.

IV. START'S FATAL FLAWS

The following bill of particulars is intended to illuminate with greater specificity the serious defects in the START Treaty. It is meant to be neither all-inclusive nor an exhaustive treatment of each of the issues raised here. Instead, it offers a sample of the problems inherent in this agreement which—if, with the Senate's agreement, are left uncorrected—will cause potentially grievous

harm for U.S. security in the future and create precedents and strategic conditions which may give rise to still more deficient arms accords down the road.

Three generic aspects of the START Treaty bear special mention: those governing ballistic missiles, air-breathing systems and verification.

Ballistic missiles

Mobile Missiles

A central element of the original U.S. START negotiating position was a total ban on mobile missiles. The Intermediate-range Nuclear Forces (INF) experience with SS-20s and shorter-range ballistic missiles demonstrated the impossibility of monitoring mobile missiles. This reality was the major factor in U.S. insistence on the "zero option" in INF.

The lessons of the Gulf war also make clear the difficulties inherent in monitoring mobile missiles by National Technical Means (NTM) of verification. In that conflict, the United States had complete air superiority and a panoply of reconnaissance assets at its disposal. The job of monitoring the Iraqi force, moreover, was manageable compared to that of tracking and verifying its counterpart in the former Soviet Union.

For example, U.S. intelligence was looking for a relatively small number of Scuds, systems whose concealment in the deserts of Iraq was substantially more difficult than would be the job of successfully hiding much more mobile systems—like the SS-25—in the immense forests of Siberia. Even so, the United States was unable to determine the numbers, to say nothing of the location and readiness, of Saddam Hussein's mobile missile arsenal. Effective use by Iraq of decoys also demonstrated the gravity of the problem associated with spoofing caused by look-alikes and count-alikes.

The Soviet Union consistently argued to permit mobile ICBMs under START, with limits on warheads and launchers. In 1989, the Bush Administration lifted the ban on mobiles contingent upon agreement on effective verification and congressional support for U.S. mobile programs. In 1990, the Administration unceremoniously dropped that precondition—even as Congress balked at spending money on mobile ICBM systems and as little progress was made in defining, to say nothing of actually agreeing upon, effective verification measures.

In the negotiating "end game," the United States accepted the Soviets' proposals concerning numerical limits for deployed mobiles and for monitoring mobile missiles. In short, the U.S. position on mobile missiles evolved from a complete ban to allowing ceilings of 1,100 warheads without effective verification.

Thus, given the termination of the U.S. mobile programs, START will not only grant the Russians a monopoly on mobiles, but also simple avenues for militarily significant cheating. For example, only assembled missiles are accountable under the Treaty and only final assembly plants have portal monitoring. As will be discussed at greater length below, this arrangement allows Russia to produce an unlimited number of states for mobile missiles, which can then be assembled covertly.

Heavy ICBMS

A key objective for the United States practically from the beginning of the SALT negotiations was that of achieving substantial reductions in Soviet heavy ICBMs. The SS-18 force, whose only mission can be a first-strike against the United States, has, since it was first deployed, been considered the most destabilizing element of the Soviet force posture. Accordingly, from the outset of the START talks, the U.S. insisted upon a ban on production, flight-testing and modernization of existing or "new types" of heavies—including the now deployed SS-18 Mod 5.

At the 1987 Washington summit meeting between President Reagan and Mikhail Gorbachev, the sides agreed to limit Soviet heavy missiles to 1,540 warheads on 154 deployed SS-18s. The decision to permit Moscow to retain half its most deadly first-strike force was bad enough; after 1988, however, the remainder of the U.S. position on heavies was seriously eroded.

For one thing, the Bush Administration accepted the deployment of the SS-18 Mod 5, a major qualitative improvement over the Mod 4. In fact, so great was the improvement in performance associated with this new missile that a force of 154 Mod 5s was judged roughly comparable in capability to the then-existing deployment of 308 earlier generation SS-18s. In short, the START Treaty's vaunted halving of the Soviets' most dangerous missile capabilities was largely vitiated.

For another, the Bush Administration agreed to drop flight test limits on heavies and permit modernization. The ban on flight testing and modernization of heavies was intended to remove this class of weapons by forcing the Soviets' heavy missiles to atrophy over time. Without the ban on modernization, the agreed-upon numerical restrictions on heavies will basically prevent only the quantitative expansion of the Russian SS-18 force.

Permitted modernization also allows the Russians to upgrade significantly qualitative capabilities in an area where the U.S. has no equivalent force. In the absence of the sort of outright ban on SS-18s envisioned in the June 1992 Washington summit agreement, the effect of START is to allow Russia to produce still more advanced follow-ons, each with greater capability than the previous modification. While an effective prohibition on new types would preclude such modernizations, the START Treaty—like the SALT agreements before it—has no such prohibition. Instead it leaves the former Soviet Union ample leeway to introduce essentially new missiles under the pretense that existing ones are simply being upgraded. In short, START prevents only the U.S. from deploying heavies now and in the future, an arrangement clearly inconsistent with the spirit and the letter of the 1972 Jackson amendment to the SALT I Treaty.

Non-Deployed Missiles and Launchers

A major flaw of SALT II was that the reductions it required could be easily reversed because of the absence of limits on non-deployed missiles and launchers. For this reason, the United States long sought to restrict the numbers and locations of all non-deployed land-based missiles (NDMs) and non-deployed launchers (NDLs).

In yet another reversal of the Reagan position, the Bush Administration agreed to the Soviet position of no numerical limits on non-mobile NDMs. Thus, Russia has the right to produce and stockpile as many land-based ICBMs as they desire, including MIRVed heavy ICBMs. This allows unlimited refire and breakout capability.

The Bush Administration did slightly better when it came to achieving limits on the number of NDMs and NDLs associated with mobile missiles. And yet, these limits (e.g., 250 for mobile NDMs) were set so high under START as to make them meaningless.

Unfortunately, the restrictions on NDMs/NDLs in the START Treaty designed to preclude rapid reload are unlikely to have any real effect on Russian capabilities. Mobiles provide for easy refire. Meaningful NDL/NDM limits, therefore, are crucial to preventing major breakout avenues. Such limits and geographic restrictions as are imposed by START for mobile NDMs/NDLs clearly do not serve this purpose.

Warhead Attribution

Russian warheads deployed under START are substantially undercounted. A 10-reentry vehicle (RV) payload is attributed to the SS-18—even though it is capable of carrying 14 RVs. The SS-N-23 is counted as carrying four warheads, but may be capable of carrying twice as many. This means that the former Soviet Union can legally have thousands of warheads beyond the levels nominally permitted under the START Treaty.

What is more, the ex-USSR added insult to potential strategic injury by changing their own data. In the December 1987 Washington Summit Joint Statement, the Soviets stated that the SS-N-18 carried seven warheads. In the Memorandum of Understanding accompanying the START Treaty, however, the SS-N-18 is listed as carrying only three reentry vehicles.

Overall, the START counting rules allow Russia to maintain a much larger force of launchers and platforms than has been expected. Thus, the SS-N-18 attribution numbers could decrease the number of accountable warheads by about 1,000—allowing the Russians to retain up to 40 ballistic missile submarines, over twice the number the United States will retain.

This enormous undercounting, which is fully legitimized by the START Treaty, also allows the Russians a ready-made breakout avenue through RV-uploading. The potential RV breakout resulting from the attribution rules on the SS-18, SS-N-18, and SS-N-23 could be measured in the thousands of warheads.

Downloading

The RV breakout problem is compounded by START's provisions allowing for downloading of up to 500 RVs. By nominally reducing the number of warheads these two missile types can carry, a larger quantity of each missile can be retained than would otherwise have been the case.

The downloading provisions also allow the Russians another path to breakout. Stockpiled RVs, legal in START, could be uploaded in a crisis or during a conflict. Combined with the agreement to undercount the SS-N-18, the Soviet successor states are allowed a total of about 2,500 downloaded warheads on three types of ballistic missiles. It seems likely that all of these additional warheads could be uploaded in a matter of weeks, at most, months.

Throw-weight

A long-held U.S. position was that the aggregate throw-weight of the Soviet ballistic missile force must be reduced by roughly 50 percent. Here again, the Bush Administration agreed to several Soviet-proposed changes which significantly and systematically mis- and undercount throw-weight.

For example, the START Treaty does not require that the parties' data concerning the throw-weight capabilities of their respective missile forces be measured by the other side. Instead, such data—and that concerning the throw-weight performance of new missiles—is simply "declared." Moscow's representations to date suggest that the Russians have chosen significantly to overstate their ac-

tual throw-weight capabilities (i.e., 6.6 million kilograms vs. roughly 5.8 million kg).

Such inflated estimates serve to make the actual effect of throw-weight reductions substantially less than 50 percent. In addition, the formula contemplated for calculating throw-weight under START amounts to just 70–80% of potential capability. As a result, the Russians could (assuming they were willing to make the necessary investment) field forces with a total capability of nearly 4 million kg throw-weight—roughly twice the current U.S. aggregate throw-weight and on the order of three times the capacity inherent in the missile forces the United States will deploy under START.

Air-breathing systems

Backfire Bomber

Another fatal flaw of SALT II repeated in START is the circumvention permitted by the absence of any real limits on Backfire bomber. The Backfire is capable of delivering a payload at strategic range, perhaps including long-range air-launched cruise missiles (ALCMs). The Soviets consistently contended that the Backfire is not an intercontinental heavy bomber. Under President Reagan, the United States insisted on this system's inclusion in START. The Soviets refused.

Under President Bush, the U.S. position eroded to the point where Backfires were ultimately exempted from START's limitations. Instead, they are dealt with under a separate, "politically binding" agreement. Under its terms, the number of Backfires were limited to a total deployment of 500—a number substantially larger than are currently in the Russian inventory. A ban was also imposed on giving the Backfire an aerial refueling capability, something it has long been suspected of having. As a result of this jury-rigged extra-treaty compromise, there is no inspection or verification regime for the Backfire.

Heavy Bomber Definition

The initial U.S. position in START was to include, and hold accountable, all types of existing and future Soviet heavy bombers—including Backfire follow-ons. The U.S. ultimately agreed, however, that a new Backfire-type bomber would not be limited by either START or the separate Backfire agreement unless the Russians agreed to do so. This would permit Russia to build a modern Backfire-type bomber in unlimited numbers. Should they choose to do so, they will be able legally to train air force personnel in aerial refueling on the follow-on.

ALCM Counting

Although the United States nominally achieved its objective of discounting air-breathing systems and of excluding conventional ALCMs, the benefits of the discount approach have been greatly undercut by the decision to reduce the number of B-2 bombers from 132 to the proposed 20. In fact, the gutting of the B-2 program will leave the U.S. without a sufficient force of modern and effective bombers to permit it to exploit such advantages as it nominally obtained under the agreed discounting arrangements for air-breathing systems. Finally, the U.S.-Russian force asymmetry exacerbated by the cut in the number of B-2s is compounded by the fact that U.S. bombers would face massive air defenses if they have to carry out attacks against the former Soviet Union. Russian bombers face no such obstacle.

ALCM Range

A further concession—which also served dramatically to undermine the U.S. approach in START with respect to air-breathing systems and stability—involved the range for START-accountable ALCMs. Throughout the Reagan Administration it was set at 1,500 km. This was a level meant to preserve maximum U.S. flexibility in fielding shorter-range systems and to recognize the need for American bombers to stand-off at considerable distances in launching ALCMs against unconstrained, forward-deployed Soviet air defenses. The 1,500 km level was also seen as advantageous to the United States, a provision that would go some way toward offsetting provisions favoring Soviet strengths in the ballistic missile area.

The Soviet position throughout the START negotiations, however, was 600 km and never changed. The Bush Administration sought a series of compromises starting with lowering the range accountability limit to 1,000 km. In the end, it accepted the ultimate "compromise"—the Soviet position of 600 km.

Verification

The verification aspects of the START Treaty are among its most troubling. Unprecedented in their complexity, intrusiveness and likely cost to the United States—qualities that have prompted Bush Administration spokesmen and other Treaty supporters to assert that this accord is verifiable—START's verification regime is in key respects, nonetheless, woefully inadequate to the task of monitoring Soviet successor states' compliance with its terms.

Portal Monitoring

At the beginning of the negotiations, the U.S. considered on-site monitoring of missile production facilities to be key to effective verification. The United States believes it was essential to monitor solid rocket motor production facilities—facilities with unique identifying signatures—as opposed to final assembly plants which typically have no such unique signatures. This arrangement differed from INF, where all missiles were to be eliminated and the discovery of any INF missile thereafter would constitute a violation. Under START, strategic ballistic missiles would continue to be produced and deployed. Here again, the Bush Administration reversed the long-standing U.S. position and agreed to establish portal monitoring only at final assembly locations for mobile missiles.

This central concession makes impossible monitoring Russian compliance with the limitations on mobile ICBMs. Without monitoring at solid rocket motor production facilities, the United States simply has no hope of verifying the number of missile stages produced. Such stages can then be stockpiled, to be assembled (a relatively straightforward and rapidly accomplished task) when desired. Given that mobile missiles inherently lend themselves to operations deployment away from fixed—and monitored—installations, such production could translate into substantially larger numbers of mobile ICBMs than permitted under START.

Russia could also use covert assembly and storage to maintain a ready augmentation force of fixed ICBMs with minimal risk of detection. When the United States dropped limits on non-deployed missiles for such systems, it rationalized away the need for monitoring of production facilities associated with such missile stages. The Russians are, therefore, legally able to produce as many of such missiles as they desire.

On-Site Inspection (OSI)

The United States has long believed that on-site inspections were necessary to deter the Soviets from establishing covert production and storage sites for START Treaty-limited items. However, the START Treaty contains a right to short notice inspections only for facilities on a list provided by the inspected side. Naturally, Russia is unlikely to place covert production and storage facilities on the list to be provided.

The START Treaty contains no suspect-site inspection of non-declared facilities, a provision that might have deterred covert production and storage facilities. Instead, if the United States believes it necessary to visit a site not on Moscow's list, it must obtain Russian permission. Should that permission not be forthcoming, there is no recourse.

ALCM Inspections

Because ALCMs are produced in non-unique facilities and are easily moved and stored, the United States believed that no effective verification regime could be found for ALCMs. From this reason the U.S. sought to prevent the Soviets from using the ALCM verification regime as an intelligence gathering tool to gain information on advanced U.S. programs.

However, the START Treaty the United States has agreed to an intrusive ALCM inspection regime—despite the fact that there are no numerical limitations on ALCMs. This contrasts starkly with the far less stringent inspection arrangements that apply to much more rigorous constraints.

The ALCM inspection provisions are, moreover, drafted in such a way as to affect essentially only U.S. systems. The inspection regime will not have the effect of increasing the sides' confidence in compliance with the ALCM provisions of the Treaty. Instead, it will likely risk compromising U.S. "black" missile programs and sensitive long-range, conventionally armed ALCM programs.

Tagging

For years, the United States insisted that effective verification of production and deployment of missiles required "tagging" (a means of identifying objects in a tamper-resistant fashion). For mobiles, tagging was intended to monitor deployed launchers—in part to deter rotation of non-deployed launchers or covert introduction of illegal launchers into the deployment areas for operational checkout and crew training.

In the START negotiating end game, however, the Bush Administration agreed to replace the tagging provisions the U.S. had insisted upon with ineffective "unique identifiers," consisting of little more than the factory number of the launch canister the first stage—information easily manipulated or spoofed.

The sum of these numerous defects of the START Treaty are substantially more worrisome than they are individually. Collectively, they constitute an arms control regime that is neither equitable nor verifiable. The dramatic, and adverse, effect it will have on the size and quality of American strategic offensive forces is not likely to be matched by comparable changes in those of the former Soviet Union.

In fact, provisions included in the Treaty at the insistence of hard-line elements in the Russian military-industrial establishment will—unless altered by Senate action—create loopholes and inequities certain to be exploited if the influence of this faction continues to grow in Moscow. Since such an unsavory development is very much in prospect, the recommendations to the Senate contained in the following section take on special urgency and importance.

V. CONCLUSIONS AND RECOMMENDATIONS

This litany of issues on which the Bush Administration abandoned negotiating positions adopted by its predecessor is of concern not only because it demonstrates the myriad times Soviet tenacity and obstreperousness were rewarded with substantive U.S. concessions. Far more important is the fact that the ground given up by the Bush team in order to "close" the deal on START was the difference between an accord that served U.S. interests and one that manifestly does not.

The Center for Security Policy believes that, had the Reagan Administration been willing to accept so seriously defective and inequitable an agreement—had it been prepared to make the many unwarranted and dubious "compromises" with Moscow negotiated by its successor—an agreement as flawed as the START Treaty could have been accomplished years ago. It is especially stupefying that the United States would consider entering into such a deficient accord now, at a moment when the opportunity for far more satisfactory arrangements presents itself thanks to the collapse of the Soviet Union and the attendant increase in Moscow's need for U.S. assistance.

Why START must be improved

Ironically, the Administration's own handiwork implicitly recognizes this reality. The Joint Understanding signed in June 1992, in effect, amends the START Treaty by cutting the number of strategic nuclear warheads each side is (nominally) permitted to have by roughly one-half. More importantly, it also eliminates the right the former Soviet Union was accorded under START to field and modernize 154 of the dreaded SS-18 heavy intercontinental ballistic missiles and hundreds of other threatening multiple-warheaded ICBMs.

The missile force Moscow could retain under the unamended START Treaty—but not under the accord as modified in June—would leave Russia with the ability to execute a fearsome preemptive first-strike against the United States. While the threat that such an attack might actually be launched has receded for the moment (thanks to the collapse of Soviet totalitarianism and the policies adopted by democratic successors led by Boris Yeltsin), until the former Soviet Union's first-strike weaponry is actually dismantled, that threat could quickly reemerge.

Unfortunately, recent developments in the old Soviet empire have underscored the dangers of confusing permanent changes with ones that can be rapidly reversed. The renewed assertiveness of imperialist elements—evident in the increasingly belligerent rhetoric of the Russian Defense Minister, Gen. Pavel Grachev (among others)—has already translated into threats of substantial Russian military involvement in Moldova, Georgia, Azerbaijan, Armenia and even the Baltic states.

Other bloody crises may be in the making as Moscow "assists" ethnic Russians or Slavs elsewhere in the former USSR. The ascendancy in the Yeltsin cabinet of leading figures from the Soviet military-industrial complex, moreover, augurs ill for the domestic transformation so urgently needed—to say nothing of the prospects for a permanent, peaceable realignment of Moscow's foreign relations.

The need for a revised approach to START—and beyond

Under these circumstances, it behooves the Senate to use its unique status under the Constitution—that of a partner with the executive branch in treaty-making—to effect two changes in the Bush Administration's approach to strategic arms control:

First, the Senate should insist that the Administration abandon its current two-track strategy involving prompt ratification of the present Treaty and then separate action on the amendments entailed in the Joint Understanding in the form of a START II Treaty." Instead, President Bush should be directed to present as quickly as possible the fleshed-out agreements outlined in that Understanding as a protocol to START—an integral part of the original Treaty which would be considered simultaneously by the Senate.

In this manner, the danger would be reduced that the United States will be stuck with a strategic arms reduction treaty bereft of changes even the Administration agrees (at least implicitly) are needed. Whereas an effort to fix a crucial defect in START by linking its ratification to the elimination of all SS-18s might once have been resisted on the grounds that it would be a deal-breaking "killer amendment," that argument no longer applies. Today, this defect can be fixed merely by formally affixing the Russians' expressed commitment to dispense with their SS-18s before the Treaty is ratified.

In the process of such a renegotiation, other problems with the START Treaty should also be revisited. Most of these problems, like START's "grandfathering" of 154 SS-18s, were incorporated when the Bush Administration acquiesced to Mikhail Gorbachev's intransigence. If the starkly contrasting spirit of cooperation and flexibility Mr. Yeltsin seemed to exhibit in Washington is real, it should be possible to correct such other serious—but as yet unaddressed—deficiencies as:

Moscow's right to deploy hundreds of mobile ICBMs—systems designed to defeat U.S. monitoring and verification techniques;

the latitude Russia will enjoy to retain every single missile taken off-line pursuant to reductions requirements. If such systems are not destroyed, they could be used to field a significant covert offensive force; and

limitations on verification activities that preclude continuous U.S. monitoring of former Soviet missile production facilities, tagging of missiles to assist in distinguishing between legal and illegal ones, and inspection visits to sites other than those approved by Moscow suspected of concealing proscribed activities or systems.

Delay on U.S. ratification of the START Treaty would also permit an opportunity to clear up seemingly conflicting commitments made by Russia and the other three Soviet successor states now party to START (Ukraine, Belarus and Kazakhstan). As it currently stands, it appears that Moscow is determined to delay the Treaty's entry into force until the latter accede to the Nuclear Non-Proliferation Treaty as non-nuclear states—something that may not happen anytime soon.

A time for "new thinking" on arms control

Second, the Senate should encourage the executive branch to engage in some "new thinking" about arms control. Specifically, the executive branch should be urged to concentrate less on the symptomatic treatment of the residual Soviet threat (i.e., traditional arms control) and more on systemic therapies (i.e., approaches that address its underlying cause). After all, it will only be when genuine democratic political and free market economic systems have fully displaced the persisting institutions of empire and militarism that the rest of the world can hope for real safeguards against a renascent danger from the former USSR.

In this regard, the Senate may wish, both as an incentive to swift completion of a START protocol based on the Joint Understanding and as a catalyst to sweeping structural reform, to urge the Bush Administration to propose a deal: U.S. help in securing generous, multi-year relief of the $80-plus billion in international debt that was the crushing legacy of Soviet misrule once START's shortcomings have been formally fixed and the amended Treaty ratified.

By these two initiatives, the Senate could help transform the START Treaty from a major liability into a useful instrument for constructive change in the former Soviet Union and for stable, peaceful relations between this country and the successor states. Advice and consent to anything less would be an abdication of the Senate's constitutional role and a strategically reckless disservice to the national interest.

AMENDMENT NO. 3317

(Purpose: To further the interests of the United States in connection with the START Treaty ratification)

Mr. WALLOP. Mr. President, I send an amendment to the desk and ask for its immediate consideration .

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Wyoming, Mr. WALLOP, proposes an amendment numbered 3317.

Add at the appropriate place the following:

The Senate's advice and consent to the ratification of the START Treaty is subject to the following condition, which shall be binding upon the President:

"The START Treaty, including the May 23, 1992, Protocol, the two Annexes, six Protocols, Memorandum of Understanding, and Corrigenda, shall not enter into force until the President certifies that all MIRVed ICBMs, and all launchers for MIRVed ICBMs, shall be eliminated in accordance with the agreement in the Joint Understanding on deep cuts of June 17, 1992, signed by the President of the United States of America and the President of the Russian Federation."

Mr. WALLOP. Mr. President, I am prepared to debate this in a few minutes but I note that my friend from New Hampshire has risen to address the Senate on the treaty and I yield the floor at this time.

The PRESIDING OFFICER. The Senator from New Hampshire [Mr. SMITH] is recognized.

Mr. SMITH. I thank my colleague from Wyoming for his courtesy.

Mr. WALLOP. Mr. President, will my friend yield for just a brief unanimous consent request?

Mr. SMITH. Yes, I am happy to yield.

AMENDMENT NO. 3260

(Purpose: To further the interests of the United States in connection with the START Treaty ratification)

Mr. WALLOP. Mr. President, I ask unanimous consent that the amendment No. 3317 that I sent to the desk be withdrawn and be replaced by amendment No. 3260 which qualifies as the pending amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

So the amendment (No. 3317) was withdrawn.

The amendment (No. 3260) is as follows:

Add at the appropriate place the following:

The Senate's advice and consent to the ratification of the START Treaty is subject to the following condition, which shall be binding upon the President:

"The START Treaty, including the May 23, 1992, Protocol, the two Annexes, six Protocols, Memorandum of Understanding, and Corrigenda, shall not enter into force until the President certifies that all MIRVed ICBMs, and all launchers for MIRVed ICBMs, shall be eliminated in accordance with the agreement in the Joint Understanding on deep cuts of June 17, 1992, signed by the President of the United States of America and the President of the Russian Federation."

Mr. WALLOP. I thank my friend.

The PRESIDING OFFICER. The pending amendment is now 3260.

Mr. SMITH. Mr. President, I rise today to offer some personal comments concerning the START Treaty and to outline deep concerns I have with the manner in which the Senate is discharging its advice and consent prerogatives.

This advice and consent is a very important constitutional responsibility and under no circumstances should it be taken lightly.

Mr. President, let me begin my remarks with a question. Why on Earth is the Senate moving to ratify the START Treaty at this time? Here we are, on the verge of adjourning for the year, we have a mountain of appropriations bills, conference reports, and other legislation to consider, yet we are seeking to dispose of this extremely complex and flawed accord with very limited debate. I simply cannot understand it.

Why have we not debated this treaty earlier when we could have spent more time and Members could have had the opportunity to actually read this treaty? The treaty before us took nearly a decade to negotiate, yet we are rushing to ratify it within 2 short days in which many Members are either out of town or preoccupied with other business. I would say to my friends on both sides of the aisle if this accord is not worth spending more time on, it probably is not worth ratifying at all.

Unfortunately, it appears that the will of the Senate is to proceed with ratification. But I fear that the time allotted for consideration is inadequate for Members to fully evaluate the treaty and the ramifications of it. I ask my colleagues, have each of you had an opportunity to review the various limits and sublimits, counting rules, verification provisions, and accompanying protocols to the treaty? Have you read those? This accord will significantly affect our ability to respond to unforeseen crises for years to come. We have a moral and constitutional obligation to fully and substantively consider its implications before we consent to ratification. That is what advice and consent in the constitutional sense really means.

As my colleagues know, the START Treaty was signed by the United States and the Soviet Union on July 31, 1991, ironically just a few days before the coup. After nearly a decade of cold war haggling this action took place. The treaty establishes central limits on deployed strategic nuclear delivery vehicles, such as intercontinental ballistic missiles, submarine-launched ballistic missiles, heavy bombers, and their accountable warheads. Yet, there is no requirement, I repeat, no requirement for the destruction or the dismantlement of excess systems. In fact, both sides are free to retain an unlimited stockpile of non-deployed missiles and warheads; only deployed systems are accountable under START.

Mr. President, the reality is that the START Treaty will not require the destruction of one single ballistic missile. It will not require the destruction of a single nuclear warhead, with the possible exception of a few mobile missiles. The only thing that START actually limits is launchers. The qualifications of "deployed" and "accountable," provide a loophole whereby literally thousands of missiles and warheads escape capture under this treaty. How can anyone seriously consider this action to be legitimate arms reduction? Mr. President, it is not. It simply is not arms reduction.

Additionally, START explicitly allows each side an unlimited number of nondeployed missiles for ICBM silo launchers and SLBM launchers, and supposedly limits the sides to only 250 nondeployed missiles for mobile launchers. However, since the START memorandum of understanding on data indicates that the former Soviet side possesses only 60 nondeployed mobile missiles, in actuality they could build an additional 190 mobile missiles under the agreement.

This aspect becomes increasingly problematic since agreed statement 37 provides an exemption for so-called retired mobile missiles with a single warhead. Under this scenario, the Russians could conceivably double that part of their ICBM force by introducing a follow-on to the SS-25, then retiring the entire SS-25 force. Recent reports suggest that the Russians have already developed and initiated production of a new ICBM known as Fat Boy which could fit the definition of a new type replacement for the SS-25. Moreover, the so-called Fat Boy may already constitute a START violation since reports indicate that more than 20 prototypes may have already been produced.

Verification of compliance poses, perhaps, the greatest challenge. The START verification regime includes: data exchanges prior to treaty signature relating to numbers, locations, and technical characteristics.

It includes 12 types of onsite inspections, including inspections to verify data and observe elimination of weapons and related facilities, short notice inspections at facilities related to strategic offensive arms, suspect site inspections, and inspections to verify the number of warheads on deployed ballistic missiles.

It includes perimeter portal continuous monitoring; a ban on data encryption where national technical means are used; and creation of a Joint Compliance and Inspection Commission to resolve questions of compliance, clarify ambiguities, and discuss ways to improve treaty implementation.

Mr. President, in principle, the web of interlocking prohibitions, data exchanges and monitoring activities might seem to effectively supplement verification by nation technical means. Realistically, however, the regime falls far short of ensuring compliance. We will only be able to verify with confidence those items and areas that the other side want us to see; namely, deployment areas and some limited production and assembly areas On the other hand, there are very significant shortfalls in our ability to verify other important aspects of the treaty.

For instance, in its report on START, the Intelligence Committee states "Members of the Senate should understand, however, that U.S. intelligence will have less than high confidence in its monitoring of such areas as nondeployed mobile ICBM's, the number of reentry vehicles actually carried by some ICBM's and SLBM's, and some provisions relating to cruise missiles and the heavy bombers that carry them." In fact, the committee report indicates that the intelligence community's overall ability to monitor nondeployed mobile missiles is questionable. The report continues by stating, and I quote, "This committee remains deeply concerned, moreover, that Russia's former, and perhaps continuing, biological weapons program may indicate that the CIS /Russian military is capable of mounting or continuing a START violation, either in contravention of the wishes of Russia's civilian authorities or with the knowledge or support of at least part of that leadership."

Under START, onsite inspection is permitted only at final assembly sites and not at production sites. According to the Intelligence Committee report, "the lack of solid rocket motor monitoring will clearly limit, to some degree, U.S. capability to verify START's mobile missile provisions."

Mr. President, these statements hardly represent a ringing endorsement of the verification regime. Rather, they highlight some very serious and dangerous shortfalls in our ability to monitor compliance. Again, I would say to my colleagues, while, on the surface,

the intrusive START verification regime may seem adequate, our past experience and the assessment of the Intelligence Committee suggest otherwise.

Mr. President, I do not mean to imply that the intentions of Mr. Yeltsin and the other CIS leaders are duplicitous. But we do not know what is going to happen in the former Soviet Union. We are not sure at this point what the military could or may do.

Perhaps most disturbing about the START Treaty is the fact that the United States abandoned many fundamental and deeply important negotiating positions in order to close the deal on the treaty. For instance, from the outset, a key objective of the United States was to achieve substantial reductions in Soviet heavy ICBM's; namely, the SS-18. That was our objective throughout the Reagan administration, the United States insisted upon a ban on production, flight-testing and modernization of existing or new type heavy ICBM's. At the Washington summit in 1987, Presidents Reagan and Gorbachev agreed to limit Soviet heavy missiles to 1,540 warheads on 154 deployed missiles, which represented a 50-percent reduction.

The Bush administration, however, accepted Soviet deployment of the SS-18 in the upgraded Mod-5 version. According to the Defense Department, in its 1991 report entitled "Military Forces in Transition," "The improved lethality of the SS-18 Mod 5 offsets the START requirement to reduce heavy ICBM's by 50 percent. Assessed improvements in the Mod 5's accuracy and warhead yield give each reentry vehicle almost double the capability of those of the Mod 4 against U.S. ICBM silos, which the United States will substantially reduce under START." Thus, while START requires the former Soviets to halve their SS-18 force from 308 missiles down to 154 missiles, the post-START force will be as effective as the larger existing force.

Another key element of the original U.S. negotiating position was a total ban on mobile missiles. As my colleagues know, the former Soviet Union has deployed the 10 warhead, rail-mobile SS-24, as well as the single warhead, road mobile SS-25. The United States, on the other hand, has no mobile missiles deployed and has unilaterally terminated the rail-garrison MX and small ICBM programs. Nevertheless, under the treaty before us, the former Soviet Union is allowed 1,100 warheads on mobile missiles. These are systems which we cannot verify, and which have no comparable U.S. counterpart.

We cannot verify them and we have no counterpart. This represents another flaw, a fatal flaw.

Mr. President, the mobile missile question is immensely important. Of the many lessons learned in the Persian Gulf war, none was more sobering than the realization that mobile missiles are immensely difficult to detect, track, and kill. I would say to my colleagues, if we were unable to find Scuds in the barren desert of Iraq, we are not going to be able to find mobile ICBM's in the mountains, valleys and urban centers of the former Soviet Union. Under START, the former Soviet Union will retain a monopoly on mobile missiles and numerous avenues for militarily significant cheating.

Mr. President, we must not overlook the potential for cheating in this accord. The precedent set last year on the CFE Treaty, whereby supporters downplayed the significance of underreported equipment holdings as not militarily significant, is a dangerous one. This approach simply will not do when we are considering a nuclear weapons treaty, and a single missile could kill millions. While we all hope for the best from the new Republics of the former Soviet Union, we have a moral and constitutional obligation to be judicious in ratifying treaties. This is a very serious responsibility which may affect the lives of millions of people in the future.

Historically, the arms control scorecard of the Soviet Union is replete with circumvention and defiance. As we learned just a few short years ago with the discovery of SS-23 missiles in East Germany, Bulgaria, and Czechoslovakia, that were banned by the INF Treaty, declarations do not always correspond with deeds, Mr. President. Declarations do not always correspond with deeds. And it would be naive to assume that compliance is assured in this treaty. It is not assured.

The U.S. Senate, in trying to protect the best interests of America, has to deal with former Soviet capabilities. We do not know what their intentions are. But we do know what there capabilities are.

In its report on Soviet noncompliance with arms control agreements, dated March 30, 1992, the administration charged the former Soviet Union with continued violations of the CFE Treaty, the INF Treaty, the ABM Treaty, the Limited Test Ban Treaty, and the 1972 Biological and Toxin Weapons Convention. In addition, it has been reported that, on December 20, 1991, an ICBM was launched from Kazakhstan with its electronic telemetry encrypted. This is inconsistent with the former Soviet obligations associated with START. More recently, it has been widely reported that the former Soviet's have denied CFE Treaty inspectors full access to equipment holding sites, and there exist lingering reports of continued biological weapons production.

Mr. President, Who is really in control of the strategic weapons of the former Soviet Union? Does anybody know the answer to that question? Who determines and enforces their adherence to arms control obligations? Is it the military? Mr. Yeltsin? Who knows?

While most of us, myself included, welcome and support the efforts of Boris Yeltsin to transform the Soviet political, economic, and military culture, no one knows what the future will hold or who will hold the future in their hands. If, by some chance, Yeltsin does not endure, what will follow? Who will follow? We seem to be placing all our eggs in a basket of uncertainty. This is not wise.

As my colleagues know, the START Treaty was signed by Mikhail Gorbachev on behalf of the Soviet Union, but the Soviet Union has since dissolved. In order to help restore some legal order to the START framework, the United States and the nuclear Republics of Russia—Byelarus, Kazakhstan, and Ukraine—signed the Lisbon protocol on May 23, 1992. By its terms, the protocol is an amendment to the START Treaty, and must be ratified by all parties. The protocol obligates Byelarus, Kazakhstan, Russia, and Ukraine to make such arrangements as are necessary to implement the START Treaty and, importantly, obligates Byelarus, Kazakhstan, and Ukraine to adhere to the Nuclear Non-proliferation Act as soon as possible.

Associated with the protocol are three separate, binding letters signed by the leaders of Byelarus, Kazakhstan, and Ukraine which obligate each Republic to eliminate all nuclear weapons and strategic offensive arms from its territory within 7 years of entry into force of the START Treaty.

Mr. President, the Lisbon protocol is essential to make START a legally binding treaty. At the very least, we should ensure that it will be honored and implemented by all States parties before we allow the treaty to enter force. The Republics have yet to execute a four-party agreement on implementation and verification of START. Yet, here we are, poised to ratify under the optimistic assumption that the Republics will resolve these issues quickly and appropriately. If the quest to resolve disposition of the Black Sea fleet between Russia and Ukraine is any indication, we may have a very long wait.

As I have indicated, the START Treaty is a deeply flawed accord. The fact that Presidents Bush and Yeltsin felt compelled to negotiate and agree to conclude a follow-on treaty when we have yet to even ratify START is further evidence that it needs renegotiation. If implemented, the June 17, 1992, understanding between the United States and Russia would help to correct some fundamental flaws in the START Treaty, particularly by calling for the elimination of the entire SS-18 force. Unfortunately, translating this understanding into a viable treaty is

proving far more difficult than we were led to believe. On June 23, Secretary of State Baker advised the Foreign Relations Committee that "in the most pessimistic case," a follow-on treaty would be formally submitted to the Senate by September 1, 1992. Yet, here we are on September 29, the target date has come and gone, and there is no indication that we will see a follow-on treaty text any time soon.

I would say to my colleagues, with all due respect, the fact that we are not seeing a translation of the June 17 understanding, and that negotiations have bogged down, is an ominous indication. Again, we must ask ourselves, who is in control? Is the Russian military rebelling internally in response to Yeltsin's concessions? Does Yeltsin have control of the Russian military?

Who does control the Russian military? What about the other nation States in the CIS? Will there ever be a follow-on treaty to correct START's numerous shortfalls and inadequacies?

Should these issues not be resolved before the Senate offers its advice and consent to the START Treaty? How can you advise and consent on a treaty when you do not know what the terms are?

Unfortunately, no one can answer these questions. Senator WALLOP has tried to get answers. He has failed. Answers have not been forthcoming. But the real question is, should we not resolve these issues prior to ratification, assuming we can get those answers? The answer in this Senator's opinion is yes, we should. Absolutely. For the national security interests of the United States of America and perhaps for the world itself, we must resolve these issues.

The only responsible course of action is to recommit START to the negotiating table and update its provisions and limitations with a text embodying the June 17 understanding as well as the Lisbon protocol and its side letters. Such a comprehensive accord should also address the issue of ballistic missile defense. In the post cold war world, we need to move beyond mutual assured destruction to establish a deterrent posture which integrates both offensive and defensive forces. We can no longer consider elements of the triad and missile defense in isolation. Rather, they must be considered as integral elements of a comprehensive strategic package. Relaxation of the burdensome ABM Treaty restraints should accompany strategic arms reductions to make our deterrent policy more responsive and appropriate to the changing international security environment.

Mr. President, frankly I do not hold much hope that the Senate will discharge its advice and consent obligations on the START treaty in a responsible manner. Unfortunately, apathy has replaced vigilance here in the Senate, and without a second thought—with very few Senators debating—this body is railroading the most far reaching, militarily significant, and fatally flawed Arms Control Treaty in our history through with only cursory debate.

It may turn out to be fine. We may get lucky and everything may fall into place. The weapons may be removed and turned over to us for verification. The military may not attempt to reexert its control. Yeltsin may live forever, to be followed by another democratically elected President in Russia.

But do we know for sure? Are we sure, Mr. President, that is what is going to happen? If we are not sure we ought not to be voting to ratify this treaty.

Moreover, not one of the jurisdictional committees heard testimony from a witness who opposes ratification of the treaty even when, as in the case of the Armed Services Committee, it was specifically requested by numerous members. This does not speak well for our institution, and I fear that history will exact a toll for our neglect.

It does not speak well for this institution, when those who want to hear the opposite side do not have the opportunity to hear it at the committee stage. That is simply wrong. It is not what the Founding Fathers had in mind when they drafted the Constitution and established the Senate.

In closing, Mr. President, I want to express my profound admiration and heartfelt appreciation to the Senator from Wyoming, Mr. WALLOP, for having the courage and the integrity to challenge this process. It is very easy to jump in the canoe and go downstream, but when you get in the canoe and try to paddle upstream and take on the system, it is much tougher.

The ratification process has clearly been corrupted when no dissenting witnesses were allowed to testify, and the Senate becomes nothing more than a rubberstamp for major arms control accords. That is wrong. Senator WALLOP has spoken to it eloquently. I only wish more of my colleagues had the wisdom and fortitude, like my friend from Wyoming, to discharge their constitutional responsibilities in a manner worthy of the trust placed in us by the Framers.

History will judge Senator WALLOP kindly for his leadership on this issue, and I hope and pray that the mistakes we make today will not prove fatal. The Senator from Wyoming has done a tremendous service to the American people. We owe him a debt of gratitude. I thank the Chair, and I yield the floor.

AMENDMENT NO. 3260

The PRESIDING OFFICER. Under the previous order, amendment No. 3217 is withdrawn and the pending question is amendment No. 3260. The Senator from Wyoming is recognized.

Mr. WALLOP. I thank the Chair and I thank my friend from New Hampshire.

As I stated this morning, I feel very seriously about this issue. If I am wrong, and I am quite prepared to cede that that is a possibility, all of us, including me, will be only too happy to sing songs of praise and thanksgiving for those things which no longer threaten us. But if I am right—and those few of us who have this anxiety—there will be nobody around to hear us cry. The Nation will cry.

Mr. President, this amendment calls for a ban on MIRV'd ICBM's. It is in essence the same kind of a ban that would be called for in a subsequent amendment that I have filed and will not offer on heavy ICBM's because all of those are multiple reentry vehicles.

In recent years, I do not know how many Members of the Senate, the Armed Services Committee, the Foreign Relations Committee and other independent-minded folks have criticized the executive branch, both Reagan and Bush, for failing to seek a ban on intercontinental ballistic missiles equipped with MIRV'd warheads. The shame of this amendment—and I have no doubts about whether or not it will pass, but the shame of it is that those who have called on the Presidents of the United States for this ban will now vote against it.

A criticism of theirs, and it was mine, has emanated from a philosophy of arms control and strategic stability to which I have never personally subscribed. In my view, the MIRV'd ICBM's, like MX Peacekeeper, in the right hands, have been an indispensable part of a cost-effective U.S. nuclear deterrent posture. Those who will vote against this amendment were trying to neuter the United States power. Now they have succeeded in doing that essentially and succeeded at the same time in enhancing the power of the multiple warhead missiles of the former Soviet Union.

I agree—I did agree before—that in the wrong hands, such as the Evil Empire, the former Soviet Union, and those residual elements that remain which have continually been brought to mind as the reason we must pass this treaty so that we can enhance the power and strength of the democratic forces lest they be toppled by those waiting in the wings with less kindly disposition toward the United States and toward peace in the world—it is ironic that somehow or another we are using the means by which we enhance their power as the argument which will bring them to a table somewhere down the road to seek that power.

Mr. President, that is not in human nature. It was not when Girard Smith, having negotiated the ABM Treaty, worried about the numbers of heavy ballistic missiles growing on the Soviet side and said that within 5 years, if we

had not achieved real reductions, we ought to withdraw from the treaty. We did not achieve real reductions, and we did not withdraw from the treaty. It is not human nature to suppose those who have been ceded an exquisite margin of power will willingly give it up. And if they will, then the provisions of this treaty are equally not necessary.

Now, Mr. President, it is true that MIRV'd ICBM's have the inherent potential to be used in a first strike against the United States. What we have done under the provisions of this treaty, which everybody says is going to reduce the number of weapons arrayed against us, is allow the SS-18, modified, to be put in place in, albeit, smaller numbers, but by the recognizable admission of the intelligence community and the armed services community, the military intelligence, a condition that is the equivalent of the less able force which it replaces, and because of the quirkish nature of the words of this treaty they become nondeployed missiles, they do not get destroyed. My friends all over America, get it into your mind, nothing needs be destroyed under the terms of this treaty.

So what I am suggesting is that the treaty and its memoranda and protocols not enter into force until the President certifies that all the MIRV'd ICBM's and launchers for them will be eliminated in accordance with the agreement already reached by the President of the United States and the President of the Russian Republic. This does not require a negotiation, Mr. President. Our two Presidents have said that that is what they wished. Only the dilatory nature of the Secretary of State, occupied with other things this summer, made it impossible for him to deliver on his promise to bring that treaty back here by the 1st of September.

Now, even if the former Soviet forces are reduced in accordance with the terms of the START Treaty, and everybody does what we pray and hope that they will do, with conservatively 2,400 highly accurate lethal warheads aboard the SS-18 and the SS-24 MIRV'd system, the threat to America remains unacceptably high. It is, therefore, of more than a passing interest that almost a year after START was signed, both the Bush administration and the Russian Government have embraced the position that neither side should have these weapons. They have agreed, according to a joint understanding which both of these Presidents have signed, Mr. President—President Yeltsin and President Bush signed on June 17 a joint understanding to eliminate all such weapons by 2003 or perhaps as soon as 2000.

The complete and verified elimination of the former Russian Republics, or the former Soviet Union's SS-18 force and its SS-20 force and any and all MIRV'd ICBM's would go so far down the road toward alleviating some of my concerns about the deficiency of the START Treaty that lies before us today. I presume that it would also greatly appeal to those of my colleagues, particularly those on the other side of the aisle who have been demanding this outcome for years and years and years in the arms control process.

But watch them, Mr. President. Today, though they have demanded, for whatever reason, political or sincere concerns, strategic stability, they will now find it not in their interest to vote in the way in which they have prattled in this Senate for years.

As virtually all of us can agree, the two Presidents, most of the Senators in this body in the course of the last 10 years have agreed that realizing the prompt codification of the complete ban on MIRV'd ICBM's would be the most desirable thing.

I believe the only question is how best to accomplish it. And we are now told by the administration and by the treaty's Foreign Relations Committee proponents that the best way to do that is to give the Senate's advice and consent to a treaty that does not do that. How very quaint. Perhaps when all of this process is done Gilbert and Sullivan might arise someplace and write some political musical about how things we wish to do are achieved by doing precisely the opposite.

In fact, the treaty does quite the contrary insofar as it legitimizes, albeit, at reduced levels MIRV'd ICBM's, and once this is accomplished, we assure the momentum will be imparted to the negotiations just begun on translating the joint understanding into treaty text.

That treaty, dubbed START II, which was ignored by the Foreign Relations Committee and the plea of the Armed Services Committee for an understanding or a condition will be said to be available for ratification shortly.

But, Mr. President, they only started to negotiate last week despite the fact that the Secretary of State promises we can have it in September. With all due respect, I believe that this contention is preposterous. It is as improbable as it is illogical.

The administration assured the Senate back in July that START II would be completed by Labor Day. No one knows, all other things being equal, how long it is going to take to finish these negotiations. And the reason the treaty has been delayed already, and the reason this negotiation will surely be dragged out in the future, is that its terms might actually be mutually advantageous and not disproportionately in favor of the former Soviet Union, the newly independent Republics.

If the Russian military are labeled to lock in an agreement such as that contained in START I that serves their interests, who can explain why they think that they will find within that arms control community an assent to an agreement that would strip it of some of the triumphant inequalities in their favor that are contained in this treaty?

Obviously, if we are serious about securing improvements in START, we should do so now before it is ratified. We are just kidding ourselves as we have done time and time again in the past if we believe that the next agreement will be better, will compensate for some of the present accords' shortcomings even though this Senate blindly chooses not to insist that the problems with the present agreement be fixed first, even though the President of the United States and the Russian President have identified those problems.

Accordingly, Mr. President, I hope, though I have little conviction, that my colleagues who are serious in this commitment to achieving a MIRV'd ICBM ban will recognize that this is the last chance. A vote for my amendment to modify the START Treaty so as to incorporate a ban on MIRV'd ICBM's will assure that this agreement, and not some will-o'-the-wisp, plea-to-the-tooth-fairy, subject-to-change-without-notice future agreement, becomes the vehicle for achieving this objective. It will not happen, Mr. President. Mark my word.

I yield the floor.

The PRESIDING OFFICER. The distinguished senior Senator from Rhode Island is recognized.

Mr. PELL. Mr. President, I do not think that we are entering into this treaty blindly. But, I think of all the 20 hearings that we had, the witnesses who came before us, some skeptical, mostly proponents of it, and with this hearing background, the most impressive testimony was the fact that the Chairman of the Joint Chiefs, and each of the Chiefs of the military joint staff enthusiastically support it. They stood, all five of them, five-square behind this treaty, urging us to ratify it.

This particular amendment is a little bit like putting the cart before the horse because usually treaties talk about the future without having conditions for the past on which they would rest. And in this case, I think the best way of getting rid of the MIRV'd vehicles, MIRV'd weapons missiles, is to move ahead on the START Treaty.

But I must say, just speaking personally, I can remember not too many years ago that I personally urged the administration not to move ahead with MIRV'ing, receiving the argument at the time that if we did not do it, the Russians would do it. The fact is, we agree now, we are trying to unravel, unscramble that past decision on MIRV with the START Treaty.

The PRESIDING OFFICER (Mr. DIXON). Is there further debate on this amendment?

Mr. LUGAR addressed the Chair.

The PRESIDING OFFICER. The distinguished senior Senator from Indiana.

Mr. LUGAR. Mr. President, there is no question that codification of any sort of the essential features of the June 17 joint understanding between President Bush and President Yeltsin would be highly desirable.

Let me simply indicate my understanding is not that the United States Secretary of State has been dilatory but that a draft as sent to Russia has been caught up in the difficulties and complexities of running that State under very difficult times. The Foreign Minister Kozyrev of Russia has informed Acting Secretary Eagleburger that there are no particular hitches involved, simply difficulty in getting concentration of Russian authorities on those particular points of view.

But I would point out respectfully, Mr. President, that not only would the June 17, 1992, joint understanding which forms the basis of what is often called a START II Treaty result in major reductions, it would, in fact, lead to the elimination of the MIRV'd ICBM's that are in discussion today, including all heavy ICBM's that were the mainstay of the Soviet threat during the cold war.

The Senate should do everything it can to encourage such a result. Perhaps this debate will help stimulate activity on both sides.

Unfortunately, an attempt to stall implementation of START I is the wrong way to proceed. START I, first of all, is a multilateral among five parties—Byelarus, Kazakhstan, Ukraine, as well as the United States and Russia.

START II or any type of bilateral agreement between Russia and the United States dealing with the MIRV'd ICBM's in discussion in the amendment of the distinguished Senator from Wyoming for really a bilateral treaty or bilateral understanding, and that is only logical since these issues deal with the period after the strategic offensive arms have been eliminated from the former three Soviet Republics, Kazakhstan, Byelarus, and Ukraine.

In short, Mr. President, logically START I, a five-party treaty, multilateral treaty, precedes that situation of a bilateral treaty between the United States and Russia, or a bilateral understanding as the case may be. Thus, at a minimum, the amendment we are discussing would delay the implementation of START I.

Article 18 of the treaty under discussion today requires that any amendment to the treaty be ratified by all parties, and that means Byelarus, Kazakhstan, and Ukraine, to the extent that we get into elements of START I. We certainly do because we preclude implementation of it by the amendment before us now. Those other States would necessarily have to be involved. That would clearly complicate the procedure substantially.

Furthermore, although the distinguished Senator from Wyoming has mentioned the fact that the two Presidents, our President, George Bush, and Boris Yeltsin of Russia, have entered into this understanding, clearly have a vision of how it ought to go, those visions understandably are something different than treaty language.

With all the interpretations that are required, in both languages, those of us who have had any experience in this situation, the distinguished Senator from Wyoming certainly has, as well as the chairman of the Foreign Relations Committee, and I, understand how difficult it is to arrive at exactitude of language and how important that is with regard to treaties.

So something beyond the joint understanding of June 17 is required; in fact, negotiation of treaty language, a process in which hopefully Secretary Eagleburger and Foreign Minister Kozyrev, or their staffs, are now involved. If delay of START I were the only consequence, that would be difficult enough, but requiring that the MIRV situation be concluded before START I comes into force actually reduces the possibility of START I, the treaty before us today, ever being implemented. Conceivably, that is the purpose of the amendment. But even if it is not the purpose of the amendment, it is a likely consequence.

Let me just say, Mr. President, that clearly, as the debate both yesterday and today has indicated, there is indication within Russia of argument within the Russian military. Apparently, some elements of the Russian military are especially sensitive to the negotiations of President Yeltsin on June 17, as well as the notion that Russia in any way is being dictated to during its current economic crisis. Holding up START to force any element of the joint understanding in the process would be seen clearly in many corridors of Russia as putting demand on them that they take the next step beyond START I, that the two of us have signed, as a price for us to take the first step. This type of bait and switch strategy could clearly rekindle substantial arguments within the Russian military with regard to START I—the bird we believe we have in hand, as opposed to the agreement we are reaching for and trying to negotiate. It would delay a treaty that we can bring into force soon, as opposed to making it impossible to complete either.

Let me just say simply that delaying START I sends the wrong message, in addition to the very powerful State of Ukraine, an independent State with whom we are fashioning strong relations; and certainly to Byelarus and Kazakhstan, and Kazakhstan already ratified START I. We would be saying by adoption of the Wallop amendment today that these States are relatively unimportant. In START, what really counts also is the bilateral relationship with Russia on the MIRV's, and the rest of our five-party negotiation can simply wait—perhaps not even occur at all.

Let me just say that there has been substantial debate in this body on the inadequacy or adequacy of Senate consideration of the START I Treaty. I just say once again, for the record, that the administration has now written answers to more than 1,100 questions that have been offered by Senators. That is a substantial amount of interest. The body has been characterized as apathetic. I just want to set the record straight—1,100 inquiries, all answered in writing. Let me say simply that there were 30 hearings held by 3 committees, and I say that there has been very substantial understanding of the elements of this treaty for years—not simply in the very intense period of the hearings and the questioning.

Mr. PELL. If the Senator will yield for a moment, I would like to demonstrate the number of pages, over 1,000. They weigh several pounds, and one can see the amount of wordage in these responses by the administration to the committee's questions.

Mr. LUGAR. I thank the chairman for a dramatic and graphic illustration of the volume. But there it is.

Yet, it is very curious that we would adopt an amendment today, which is very far-reaching and a very important and desirable arms control objective—the end of MIRV—without hearings, really without the questions, without the careful drafting of language. In essence, the very criticisms leveled at the drafters of this treaty who have labored for years, who have tried to bring precision to language, safety and security for our country, which might very well be scrapped as we reach for the joint understanding of June 17, which as I have indicated is ardently being sought, and language negotiated, and the process is obviously difficult.

When elements of the June 17 understanding have been incorporated either in START II, III, or into any other treaty form, the Senate will have a full opportunity to inquire into it. Committee meetings will be held. Hearings will be held. Questions will be raised, and there will be a full debate and study by independent authorities.

But let us recognize that START I is a major accomplishment in itself. It is START I, the treaty before us today, that locks in the major reductions.

Let me just clear the air for a moment, Mr. President, because so much has been said that not a single missile is being destroyed. I have the feeling this is almost totally inconsequential. Let me say that it makes a difference if the launchers are destroyed. It is a point, clearly, that has been made that

some missiles can be fired from naval vessels. Some can be dropped from the air. But, nevertheless, Mr. President, it makes a substantial difference to destroy seriatim the launchers of the ICBM's. That is incorporated in START I. A lot of other things are, too, in terms of basic limits of the various systems. But that makes a difference. That is why START I is consequential in itself. It is a building block upon which we can reach conventions of the June 17 understanding, a dramatic agreement, and one I hope will be flushed out quickly and that perhaps, as I say, our debate today may accelerate.

So, for all these reasons, Mr. President, let me just say that the adoption of the Wallop amendment before us, in essence, would negate START I. We would have to go back for renegotiation, or it would be delayed so very substantially and the disruption of the five parties—the recriminations involving those are incalculable. It is a very, very heavy price to pay for reaching for a treaty which is not yet there, not negotiated, not heard, not very well considered at this point.

In short, the Wallop amendment is what could be characterized accurately—not pejoratively—as a killer amendment. It effectively terminates our work with regard to START I. It advocates its defeat. And I hope Senators will oppose the amendment.

Mr. WALLOP. Mr. President, I will be brief in my arguments. First, it was not the Senator from Wyoming who promised that the June 17 agreement would be reduced to a treaty and presented on the floor of the Senate by Labor Day. It was the Secretary of State. It was not a contrivance of those who oppose this treaty. It was a promise of the Secretary of State.

We are told that there were 30 hearings held on this by three committees. Well, Mr. President, the able occupant of the chair is a member of the Armed Services Committee of the U.S. Senate, and he will recall that we had 20 hearings in the Armed Services Committee alone on the INF Treaty, but only one on the START Treaty. And none of the 30 hearings in any of the three committees allowed a dissenting voice. I say those words and choose them very specifically, Mr. President—allowed a dissenting voice.

So I do not think it is fair to say that they have had the kind of careful consideration that the Senate has normally given to a treaty. But we are in this brand-new world in which one cannot conceive of trouble on the road ahead.

Mr. President, it was said that the Joint Chiefs uniformly have found this to be in their favor, but if anybody knows the history of arms control, the Joint Chiefs of Staff of the American military have always endorsed treaties negotiated by civilians—always. And they have done it for two reasons. One, it is the civilians who specifically, under our system, run the military. Thank goodness. But most important, the Joint Chiefs have never been satisfied with what Congress has given them, so they have used the treaties to try to get our enemies over the course of time—principally, this half century the Soviets, but prior to that, the Germans and the Italians—to solve our strategic problems for us.

Knowing that, the appropriations process sometimes did not admit to the new and innovative responses to known dangers. What we did was try to say to the Soviets, and before that the British did it with the Italians and the Germans, to try to say we will be nice if you will be nice and let us sit down and figure out how this works.

But those of us who have struggled over the years to try to maintain some level of equality of American capability against those forces arrayed against us know no treaty did anything except accelerate the arms race until recent these ones. This one does not accelerate it and I will accede to that. It neither recedes it or slows it anything like the proponents claim for it.

We are talking about this amendment delaying implementation of the treaty. But the statements of the republics that they will not yield up, under the terms of the treaty, the nuclear weapons on their territory until they are destroyed under international controls is a condition that means that for them this treaty will not go into effect and for us it will.

There are no calls for the destruction of missiles in the terms of this treaty. There are no calls for the destruction of missiles under the terms of this treaty. Yet the conditions that the Ukrainians, Byelarussians, and Kazakhstanis put on this, they will not cede those weapons back to the central authority until they are destroyed under international controls, something that is not required. And that, too, is a condition before they join the Nonproliferation Treaty.

So it is hard for me to understand how, when we say take out the MIRV'd ICBM's according to the agreement promised and signed by the two Presidents of the Russian Republic and the United States of America, and ably defended and promised for deliverance by the Secretary of State by September of this year, we can be accused of delaying when the terms and conditions of the newly independent republics are of themselves in the nature of a delay.

The able Senator from Indiana has said that we claim that it makes no difference if launchers are destroyed. I do not make that claim, Mr. President. I do not make that claim. Destroying a launcher does inhibit the convenience of those who wish to launch missiles. But surely the Senator would yield this point to me and that is that most of the heavy ICBM's of the Soviet Union can be relaunched from existing silos. So all you do while you do not destroy the missile and only destroy the launcher is you minimize the number of those in which for a moment the missile can be launched with convenience, but can be launched in a moment's later time, a week's later time from that same silo.

That is not a condition that exists with American missiles. We do not have refired capabilities in our silos and the Soviets do. So the destruction of some launchers is a matter of inconvenience. But make certain that this other point rests in the minds of the Senate: Every single international ballistic missile of the former Soviet Union and the republics has been fired outside of its silo accurately. It has been tested and it has been tested successfully.

All Russian missiles are routinely tested from what are called soft pads; that is, just concrete pads. The silo is a convenience. It makes a nice place for people to store their helmets and reading materials and other things while they are on alert. But that is all it is. It is a convenience. It is not a necessity. And to say that because the launcher is destroyed but the missile that was in it is not destroyed, that we have somehow or another enhanced our safety is, I believe, a misstatement of the relative nature of truth in this agreement.

Mr. President, I have one other point: That in the Republic of Kazakhstan, also a signatory to this signature protocol, there are new deployments of SS-18 missiles, those that are going to be reduced under the terms of this treaty.

So I would say, Mr. President, that I am prepared to go to a vote on this amendment now, and I believe also, Mr. President, that we are on the threshold of achieving an agreement as to how to handle the remainder of this debate.

The PRESIDING OFFICER. The distinguished Senator from Arkansas is recognized.

Mr. PRYOR. Mr. President, I thank the Chair for recognizing me.

I will just engage in a discussion with the distinguished Senator from Wyoming and ask him the question if it would be permissible for the Senator from Arkansas to go into morning business for 2 minutes for the purposes of making a very short statement and sending a resolution to the desk to be referred on another matter?

I would like right now, if I might, to ask the distinguished Senator would it be possible if I could do that before the vote? And I ask the distinguished managers the same. Would there be objection or any concern expressed—if you would desire to go directly to the vote I could do it later. I think it would be well served, it would be a little better if I could go earlier.

Mr. WALLOP. Mr. President, reserving the right to object, I say to my friend, that I will not object so long as it is for the purposes stated, that no other transaction take place during this momentary reversion to morning business and that the rules of the executive session of cloture remain in place.

The PRESIDING OFFICER. With those conditions, is there objection to the request of the Senator from Arkansas?

Mr. PELL. Mr. President, it would include time under the treaty debate.

Mr. PRYOR. That is correct, I say to my friend from Rhode Island.

With that being agreed to, I will ask unanimous consent that the time, which will not exceed 2 minutes, be charged to the pending measure before the Senate.

The PRESIDING OFFICER. Without objection and under those conditions, the distinguished Senator from Arkansas is recognized as if in morning business for 2 minutes.

Mr. PRYOR. I thank the Chair.

(The remarks of Mr. PRYOR pertaining to the submission of Senate Resolution 353 are located in today's RECORD under "Submission of Concurrent and Senate Resolutions.")

The PRESIDING OFFICER. What is the pleasure of the Senate with respect to the amendment offered by the distinguished Senator from Wyoming?

Mr. WALLOP. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. Is there further debate?

If not, the question is on agreeing to the amendment of the Senator from Wyoming [Mr. WALLOP].

The yeas and nays have been ordered and the clerk will call the roll.

The legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Tennessee [Mr. GORE] is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 16, nays 83, as follows:

[Rollcall Vote No. 247 Ex.]

YEAS—16

Burns	Hollings	Smith
Coats	Lott	Symms
Craig	Mack	Thurmond
Garn	McCain	Wallop
Hatch	Seymour	
Helms	Simpson	

NAYS—83

Adams	Bradley	Cochran
Akaka	Breaux	Cohen
Baucus	Brown	Conrad
Bentsen	Bryan	Cranston
Biden	Bumpers	D'Amato
Bingaman	Burdick, Jocelyn	Danforth
Bond	Byrd	Daschle
Boren	Chafee	DeConcini
Dixon	Kasten	Pressler
Dodd	Kennedy	Pryor
Dole	Kerrey	Reid
Domenici	Kerry	Riegle
Durenberger	Kohl	Robb
Exon	Lautenberg	Rockefeller
Ford	Leahy	Roth
Fowler	Levin	Rudman
Glenn	Lieberman	Sanford
Gorton	Lugar	Sarbanes
Graham	McConnell	Sasser
Gramm	Metzenbaum	Shelby
Grassley	Mikulski	Simon
Harkin	Mitchell	Specter
Hatfield	Moynihan	Stevens
Heflin	Murkowski	Warner
Inouye	Nickles	Wellstone
Jeffords	Nunn	Wirth
Johnston	Packwood	Wofford
Kassebaum	Pell	

NOT VOTING—1

Gore

So the amendment (No. 3260) was rejected.

Mr. MITCHELL. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. LUGAR. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. CRANSTON. Mr. President, I rise today to express my most enthusiastic support for ratification of the START Treaty. As a member of both the Foreign Relations and Intelligence Committees, I have had the opportunity to examine this treaty in detail. I, like my colleagues on the committees, have concluded that this treaty is an historic breakthrough for U.S. national security interests and international partnership and world peace. It bears witness to the end of the cold war, and heralds the beginning of a new, more open era. It should be ratified promptly.

I have devoted a great deal of my time, attention, and effort toward the almost quarter century I have avowed in the Senate, to arms control treaties and efforts to control and reduce nuclear arms. START is the last one I will deal with as a Senator.

This treaty was negotiated with the Soviet Union at a time when its strategic arms reduction and verification regimes were close to revolutionary. During the ratification process, the Soviet Union fell apart, and new countries emerged. Four of those—Russia, Ukraine, Byelarus, and Kazakhstan—had nuclear weapons which had to be included in the START Treaty.

In Lisbon in May 1992, leaders of these countries met with Secretary Baker. I was impressed with the spirit and conduct of these negotiations, and commend Ukraine, Byelarus, and Kazakhstan for their commitments to accede to the Nuclear Non-Proliferation Treaty as nonnuclear weapon States. I hope they will stand by those commitments. This is definitely a step toward peace.

Further announcements by Presidents Bush and Yeltsin in June have promised even deeper cuts than START mandates. These reductions seize an opportunity to deal with short-range and tactical weapons not covered by the START Treaty. While I am enthusiastic about these reductions they do not serve to replace the START Treaty.

The START Treaty stands alone as the most important document we have negotiated on strategic nuclear weapons reductions thus far. Other promises have been made, and other documents will be concluded, but we should not miss the historic opportunity to codify what we have.

START not only mandates deep cuts in our nuclear arsenal, but also it creates a framework for further reductions—either unilateral, reciprocal, or negotiated.

The treaty is also remarkable in its open verification regimes. The regime is certainly adequate and it is clearly effective. It establishes such a level of openness, in fact, that some experts who testified before the committee described the treaty as overly verifiable.

Most important, at this point in time, however, is that ratification of the START Treaty would signal to other nuclear weapon States that the United States and Russia are serious about arms control.

After all of our talk of concern of nuclear proliferation, the START Treaty gives us an opportunity to demonstrate that we are serious about nuclear nonproliferation by taking that crucial step toward extension of the Non-Proliferation Treaty in 1995. I fully expect that other countries which possess nuclear weapons will consider cuts in their arsenals once they understand that the United States and Russia are making cuts in theirs.

I urge my colleagues to ratify the START Treaty. We should seal the book on the cold war, and begin to rewrite one on a new era, one dedicated to peace and security.

Mr. MITCHELL. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Ms. MIKULSKI). The majority leader suggests the absence of a quorum. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MITCHELL. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MITCHELL. Madam President, I ask unanimous consent that Senator WALLOP be recognized to offer his amendment No. 3301, on which there be 1 hour for debate, 30 minutes under the control of Senator PELL, 30 minutes under the control of Senator WALLOP; that on the conclusion or the yielding back of that time, a vote occur on or in relation to the Wallop amendment No. 3301; and that the vote on final passage of H.R. 11 scheduled by previous order to occur at 5 p.m. occur immediately

following the vote on or in relation to the Wallop amendment No. 3301 without any intervening action or debate.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. MITCHELL. Madam President, I thank my colleagues for their cooperation.

I yield the floor.

Mr. WALLOP addressed the Chair.

The PRESIDING OFFICER. The Senator from Wyoming.

AMENDMENT NO. 3301

(Purpose: To further the interests of the United States in connection with the START Treaty ratification)

Mr. WALLOP. Madam President, I call up my amendment No. 3301, and ask for its immediate consideration, and I ask that we have order in the Chamber.

The PRESIDING OFFICER. The Senator from Wyoming is correct. Before the clerk reports the amendment, the Senate is not in order.

The clerk will report.

The legislative clerk read as follows:

The Senator from Wyoming [Mr. WALLOP] proposes an amendment numbered 3301.

"The START Treaty, including the May 23, 1992 Protocol, the two Annexes, six Protocols, Memorandum of Understanding, and Corrigenda, shall not enter into force until the President certifies that all Non-Deployed Missiles for silo launchers for ICBM's, mobile launchers of ICBM's, and launchers of SLBM's, shall be eliminated, except for a finite, minimal, and verifiable number equal for each side to be agreed upon."

Mr. WALLOP addressed the Chair.

The PRESIDING OFFICER. The Senator from Wyoming [Mr. WALLOP] is recognized.

Mr. WALLOP. Madam President, may I say that I was most grateful to the Senate for the consideration given the last amendment, the seriousness of which is continued in this amendment.

Madam President, I have talked with a member of the Foreign Relations Committee who expressed to me his personal surprise at the terms and conditions dealing with nondeployed missiles and wondered why the committee had not acted on them while he being a member of the committee being in a better condition to ask that question than I.

But it is a point I wish to bring to the attention of the Senate once again and hope that we maybe can by seeking to have the President certify that all mobile launchers shall be eliminated except for a finite minimal, and all mobile launchers, silo launchers, and launchers for SLBM's be eliminated except for a finite minimal and verifiable number which are test articles and agreed to by each side.

Madam President, central to the treaty's ostensible and propounded value in reducing the offensive power of the former Soviet Union strategic arsenal which has been reiterated and reiterated, is the limitations imposed on the number of intercontinental range delivery vehicles and their launchers. Given the nature of Moscow's strategic forces, namely, the disproportionate emphasis on ballistic missile systems and, in particular, the reliance on those missiles optimized for first strike; that is, the silo-based MIRV'd ICBM's, the limits on these weapons are said by its proponents to be of particular importance.

Yet, Madam President, under the terms of the treaty, Russia is entitled to have as many of these ballistic missiles as they want. They have been told that this was a limitation but it is a limitation on launchers and not on missiles. These nondeployed missiles do not count, are not destroyed, and yet remain available for use against the American public in a first strike.

It can do this thanks to a very important and unspoken of loophole in the treaty that is agreed to by the United States and the Soviet—I might say Soviet not Russian—insistence late in the negotiations. Madam President, everybody knows here that this treaty came into being at the close of frantic negotiations so that there could be a summit with Mr. Gorbachev while we tried to save that presidency.

So we made concession after concession, and the biggest concession in this Senator's mind was that we placed no limits on the number of nondeployed ballistic missiles either side can retain in its inventory.

A nondeployed missile is one that has simply been taken out of its silo but it does not need that silo, that submarine, or that mobile launcher to be useful, to be launched against the American people. That, let us be clear, every single one of these missiles that the proponents claim is eliminated or reduced by this can be kept viable in a nondeployed status, and every single one of these has been and can be launched from sites other than the fixed silos or submarines in which they are normally deployed—every single one.

So this is a limit without limitation. This is a ruse. This is a dream and a prayer to the tooth fairy, Madam President. These missiles once declared nondeployed can be used against Americans. And they are not counted. They are not eliminated. And they are not destroyed.

In fact, according to press reports, the Soviet Union actually exercised the ability to launch even its heavy missiles, its SS-18's, from soft pads.

Madam President, I have made the point and I hope and wish somehow the Senate could hear it.

The SS-18 missile is the most terrifying missile in the Soviet arsenal, in the world today. We have negotiated a reduction in the Soviet arsenal from 308 to 154, cut it in half. But at the same time, we authorize that missile to be replaced by what is called the Mod 5, the fifth model of it, which is by itself, the equivalent in power and accuracy to the Mod 4, which it replaces—I mean, more than twice as much. So that what you have is the new Mod 5 deployed in numbers equivalent to half of the old deployment, but with every bit the power and accuracy and delivery of the old deployment.

If that is not bad enough, the reduction by half of the SS-18 force amounts to no reduction in danger; all of those older SS-18's, the Mod 4's, are taken from those silos and can be declared nondeployed and ready for use against America, without violation of this treaty.

In addition, the Soviet Union has built into many of its modern silo-based ballistic missile systems, the capacity to reload and refire. I might say, Madam President, and try to explain this to the Senate, when we destroy a launcher, we do not destroy a missile or a warhead. A launcher is basically the place where a missile is safest. It is a hardened silo, and it is impenetrable by most of the weapons the United States can array against it. It is a convenience for working on the missile, and repair and maintenance. But it is not a necessity for that missile to remain in a capability of firing on the American people.

So we have these modern weapons that do not count any longer; they are withdrawn and declared nondeployed. But guess what happens? Most of those silos can refire. Ours cannot. So you fire the one that is allowed and bring the nondeployed missile in and load it into the same silo, ready again in a few weeks' time for use against the American people, who will not have had the same indulgence, should this awful day take place.

I believe it is a thoroughly unacceptable state of affairs, and unless we alter it, it fundamentally corrupts whatever benefits claimed by the proponents of this treaty—I believe they are sincere—whatever benefits they claim for it are negated by this concept of the nondeployed missile. That the nondeployed missile can be fired against it does not count in the limits, and does not have a reduced capability to bring harm against the American people, against whom they are arrayed.

Accordingly, Madam President, I hope my colleagues will heed the warning of the nondeployed missile and the ruse that is present in it. It is the means by which the missile reductions do not take place. The missiles are not destroyed. The warheads are not destroyed. The weapons are not destroyed. Only the launcher, only the shelter and the convenience are destroyed.

So if it is the Senate's will to ignore this, I accept and understand that, Madam President, but I would feel that I had not done the duty that I feel compelled to if I did not call it to the Sen-

ate's attention and offer this amendment, and I hope the Senate sees fit to take care of the biggest ruse contained in this treaty, that of the nondeployed missile, so that when my amendment passes, should it, it would impose finite minimal and verifiable limits on the number of nondeployed missiles. And those finite, minimal, and verifiable are the necessary test vehicles to maintain the viability that both sides should be entitled to. But all of the other ones that are now the claim of the treaty's proponents to have been removed from the stable of danger would in fact be removed and not just the fairytale that somehow or another we are safer, because they are not in the silo, they are just in a nondeployed status.

I reserve the remainder of my time.

Mr. PELL. Madam President, as I understand it this amendment would require the extending of the limits to cover all nondeployed ICBM's and the SLBM's. The Joint Chiefs of Staff and others have testified that there is no military requirement from their viewpoint for such a limit. In fact, we have seen how they have enthusiastically supported the overall START Treaty. The members of the Joint Chiefs are foursquare behind it, as is the Chairman, Gen. Colin Powell.

The nature of the SLBM operation and the limited number of Russian loading facilities limits the threat from rapid reload of ballistic missile submarines. It would appear not necessary to add such a provision. In addition, this amendment would require negotiation of major portions of the treaty with all the successor States—Ukraine, Byelarus, and Kazakhstan—in advance of any action on START, leading to an indefinite delay in entry into force.

I think this amendment can be considered a repudiation of the basic treaty. I do very much trust the judgment of the Joint Chiefs of Staff and think this amendment should be defeated.

The PRESIDING OFFICER. Who yields time?

Mr. WALLOP. Madam President, what is the remaining time?

The PRESIDING OFFICER. The Senator from Wyoming, the advocate of the amendment, has 20 minutes, 25 seconds. The opponents have about 28 minutes.

Mr. WALLOP. Madam President, it is clear that the able managers of the bill feel that—and I share with them the sensation—they will be able to prevail on any amendment offered simply by saying, we have to renegotiate with the Joint Chiefs, and the Joint Chiefs are for it.

Madam President, if the Joint Chiefs have signed off on this, then shame on them, because it is not a military judgment that can be argued safely, that a missile going to nondeployed status, still available to be arrayed against the American people, constitutes no threat.

It does not have to be held in a verifiable arena. It can be put in sheds. It can be moved around and about the country. We have no verification regime which would direct itself to this. Interestingly enough, Madam President, the Joint Chiefs were worried enough about mobile missiles to put a finite ceiling on the number of nondeployed of those missiles. So what a ridiculous posture for grown military men with stars and ribbons all over them to take that missiles that can be fired against Americans and do not count against the numbers and pose no threat.

I would love to hear the rationale behind that, other than that it might, as the able chairman says, require major renegotiation. I do not think it would.

Why would it be any less than the Soviets' or Russian Republics' interest to find that the missiles that had been taken out of silos were not still available to be shot at them? Simply because that is not the way the United States would play it, and that is the way the whole hard-line arms control negotiators under the Soviet regime negotiated this provision.

This was a concession of significant importance that was achieved at the last moment for the political purpose of arriving at a summit with Mikhail Gorbachev, and no other reason. And I would say, Madam President, that those very same Joint Chiefs, who now find no danger in these nondeployed missiles that are deployable against the American people, thought that was one of the very most important and significant negotiating positions that the United States brought to the table.

It has been significantly noted in the paper by General Rowney, who was our arms control negotiator through most of these START negotiations, that this was a last-minute, unnecessary, and very dangerous concession.

Why should these able generals who thought it was among the most important negotiating postures that the United States had suddenly say that it does not matter that these missiles now called nondeployed can shoot at Americans?

There is no logic in this posture, Madam President.

I hate to use the word "deceit." But, in fact, we are deceiving the American people by claiming that this treaty reduces or eliminates missiles arrayed against them when in fact this provision runs right around the limitations that are contained in this treaty.

Madam President, some moment in time the Senate needs to wake up and pay attention to its obligation to protect and defend the Constitution of the United States and the people of the United States. This is not, as Senator BYRD stated in his eloquent remarks, some statute that can be undone by a statute down the road when we find it is there. This becomes a part of the guiding unchangeable presence upon which the U.S. military posture is bottomed. We cannot change it after we agree to it. And we are being asked by these folks here to say that these missiles that can be shot against us pose us no threat nor no danger.

The Senator from Wyoming spent too much time in the country, if that is logical. Why a missile, because its title has been changed, poses no threat is almost an inconceivable thought, deployed or nondeployed. So long as its warhead is intact, so long as its electronics are in place, so long as its propellants are available, it is a threat to Americans. Make no mistake about it.

And that is the case that we are being asked to swallow.

Madam President, in this country after we sign this treaty, and I have no doubt that we will because the Senate has exercised already that suspension of judgment, we will be bound not only by the letter of it but by the spirit of it. That has been the history of arms control from the very beginning, and the appropriators, if no other soul will, tell us that the spirit says that those missiles taken from the silos will be destroyed.

But that will not happen and will not be the case on the other side. I pointed out to the Senate, and I plead with the Senate to recognize that Russian military appropriations are going to be bigger in 1993 than they have been in 1992, this despite the claim so often made that what they need more than anything else is money, that their people are starving, that they are unhoused, and have no energy and everything else, but they are going to spend more money on military hardware in 1993 than in 1992. One of the things they are not going to have to spend their money on is replacing missiles that go from deployed to nondeployed status, because they still pose the same formidable threat and danger to the American people.

Madam President, I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator has about 15 minutes remaining.

Who yields time?

Mr. LUGAR. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. LUGAR. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LUGAR. Madam President, I suggest that the time be charged equally to both sides.

Madam President, I will request a quorum call with the time to be charged equally to both sides.

The PRESIDING OFFICER. Is there objection?

Mr. WALLOP. If the Senator will withhold, it is apparent that the committee does not wish to debate this, and I understand this, because there really are no debatable points. So let me just make two other observations and then if they are willing I am perfectly willing to yield back the remainder of my time.

Mr. LUGAR. I ask the Senator to withhold his judgment for a moment. We do wish to debate but our debaters are in process of arriving.

Mr. WALLOP. Madam President, in which case I object to the time being charged equally. I used mine in a fair and equitable manner and they have only heard but two of theirs.

The PRESIDING OFFICER. Objection is heard.

Who seeks recognition?

Mr. LUGAR. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll with the time charged to the opposing side.

The legislative clerk called the roll.

Mr. BIDEN. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BIDEN addressed the Chair.

The PRESIDING OFFICER. Who yields time to the Senator?

Mr. BIDEN. Will the Senator yield me a few minutes?

Mr. PELL. The opponents of the measure yield as much time as may be necessary to the Senator from Delaware.

The PRESIDING OFFICER. The Senator may proceed.

There are 23 minutes remaining.

Mr. BIDEN. Madam President, I say to the Chair, as well as to my colleagues, that I do not plan on taking anywhere near the 23 minutes. I know that my friends, the ranking member, and chairman of the committee, have responded to the Wallop amendment, but I would like to take maybe 3 to 5 minutes to make a few comments.

Madam President, the Senator from Wyoming, as I read this, is, in reality, refighting the SALT II Treaty. Critics of that treaty said that it was fatally flawed because it did not cover nondeployed missiles. But, lo and behold, when the Reagan and Bush administrations looked at the problem, they also determined that nondeployed missiles for fixed ICBM's and SLBM's have no military significance.

Madam President, the Foreign Relations Committee looked at this issue extensively in the INF Treaty and we heard testimony from the Joint Chiefs of Staff in the Intelligence Committee about the significance of nondeployed missiles in the context of START. And again the conclusion was reached that such missiles could not easily be made part of a militarily significant force.

Madam President, this Senator has concerns like the Senator from Wyoming about the fact that there may be nuclear warheads, not nuclear missiles, that are not covered by this treaty. It is not the missiles but the warheads that create a potential problem.

And the problem they create is not that they are going to put the United States directly in jeopardy or be militarily significant or relevant to our vulnerability to the nations with whom we have this treaty, but, for proliferation purposes, there is a concern expressed repeatedly by the committee and by many others that the inability to grab hold, if you will, of all the missiles, the warheads, as opposed to the missiles, would allow those nations to sell and/or trade those missiles, those warheads to third countries. And that is why we placed a condition on this treaty that in the future the President use all his best efforts to see to it that there is a way and ability to account for the warheads.

Now, what are we talking about here? The Intelligence Committee and the Foreign Relations Committee and the Joint Chiefs of Staff, as the Senator from Wyoming knows, have determined, after looking at this extensively, that the notion that, after having destroyed a silo, you would be able to take a nondeployed ICBM missile and put it in a posture that it was threatening to the United States in any militarily significant way is not a realistic possibility.

And so, based on the evidence that our committee received and based on the evidence, to the best of my knowledge, that the Intelligence Committee received in detail, this was not a military problem.

But I would respectfully suggest that the Senator is partially right for the wrong reason. The concern here should be, in my humble opinion, the warheads and not the missiles.

But in order to go back and reopen that negotiation, it seems to me to be implausible at this point and would be destructive to what otherwise is a very useful instrument in terms of U.S. military interests and U.S. security interests, because the concern relates not so much to the countries in question as much as it does to proliferation of those nuclear warheads to those Third World countries.

Again, we attempted to capture that concern in the action taken by the Foreign Relations Committee by a condition that would put the President in a position to attempt to initiate further negotiations with the individual signatories to this treaty in order to, in effect, capture those warheads, as well.

I am sure I have been redundant, because I have been off the floor dealing with another matter. It seems like I never stop dealing with the crime bill, with the crime issue. So I apologize to my colleagues if I have been redundant.

But I wanted to make those few points, at least so the Senate knows what my understanding is and what the understanding I have is of the intelligence community and the military with regard to how high a concern, probability for concern, that they place upon the concern raised by our friend from Wyoming.

Because if this were adopted, it is not a condition. It would require the President of the United States to, in effect, reopen the entire treaty, renegotiate the treaty. And that is the same as—I hate to use the phrase that is used so freely around here—that is what makes this a killer amendment; and a killer amendment, in my view, for no militarily significant reason.

So I thank my colleagues. I thank the chairman for yielding me the time, and I yield the floor.

Mr. LUGAR addressed the Chair.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. LUGAR. I thank the distinguished Senator from Delaware for a very important argument.

Let me follow on a point or two which he made which I think is relevant to the debate on the current Wallop amendment.

I would simply assert, Madam President, that requiring warhead elimination—and I make that distinction as opposed to missile elimination—but warhead elimination makes no sense without effective verification to determine compliance.

We have had a great deal of debate about that generally prior to coming to this amendment. There is no practical way to verify such elimination of warheads without unacceptable intrusiveness at our own facilities.

Madam President, in the debate thus far, we have assumed all along that our potential adversaries might have malevolent intent. But I think it is fair enough to say, from the standpoint of our own interests, that we have come to a conclusion as a Government, our negotiators, our Department of Defense, the President, that intrusiveness in terms of our own facilities is important.

Surely, the Senate would not ask the United States to subject sensitive weapons information to exposure or to require the destruction of our own warheads without insuring other parties were doing the same. And, surely, the Senate knows that warhead elimination makes no sense without numerical limits or constraints on production of new missiles and new nuclear warheads, constraints that we could not verify even with unacceptable intrusiveness.

Now, Madam President, this is a very large subject but it is relevant, I believe, to the debate we are having.

Mr. BIDEN. Will the Senator yield not on that point but a related point?

Mr. LUGAR. I am happy to yield.

Mr. BIDEN. The Senator has been clear in his view about the ability to monitor what is in our interest and not monitor but to count warheads, a point I left out that I think is relevant here.

It was not that our negotiators—I am going back to missiles now as opposed to warheads—it was not that our negotiators attempted to get a limitation on and/or destruction of nondeployed missiles. We did not want that. We, our military, did not want that.

And the reason they did not is because they agree with the Senator from Wyoming on SDI. They wanted to have boosters. They wanted to have these missiles available to them for testing purposes. And one of the underlying reasons for that was a program that I strongly oppose, that is the SDI program.

So one of the things I think our colleagues should put in the mix here is this is not as though we went out with an objective and our negotiators were, in effect, outnegotiated by our counterparts. It was the opposite.

We did not want these nondeployed missiles included either. And the reason we did not is, one, having them or not having them is of no military significance in the minds of our military intelligence community; and, two, we wanted to keep our nondeployed missiles for purposes unrelated to a nuclear program.

Mr. LUGAR. The Senator is clairvoyant, he read both my logic and my next two points.

Mr. BIDEN. I apologize to the Senator. I am sorry.

Mr. LUGAR. He also reinforced them.

Mr. BIDEN. I am sure the Senator would have made it more clear than I have.

Mr. LUGAR. It is a triangular discussion here, because really the Senator has been a very strong champion of strategic defense initiative. I have supported that, the Senator from Delaware has from time to time but not consistently and has occasionally opposed that idea. But let us be very clear, negotiations sometimes on the part of our own military people are in behalf of our own military interests. The distinguished Senator from Wyoming has been very sharply critical of our military people, suggesting that they really did not know our interests or where somehow misguided. But I would contend they though they did. I think it is demonstrable they had our interests very clearly in mind.

And I would just add, as the distinguished Senator from Delaware has, that I suggest that some Senators may misunderstand the benefits to be gained by keeping the nondeployed nonmobile missiles nondeployed, nonmobile missiles. The Senate should understand the START Treaty does contain limitations on nondeployed mobile missiles as opposed to the nonmobile missiles because of the inherent risk of the mobile missiles. In fact, mobile ICMB's would be eliminated, if necessary, to stay within these nondeployed limits.

But, since reload and breakout is less of a concern for nonmobile ICBM's and for SLBM's, these missiles need not be eliminated, in the judgment of our military. And by not requiring elimination we allow the use of these expensive assets, our assets, for other purposes such as, for example, space launch.

The provision included in START to which I gather the distinguished Senator from Wyoming objects was included over Soviet objection. I am making the point, not only was it in our interest but the Soviets saw it was in our interest and objected to it.

So the point the Senator from Wyoming wishes to eliminate was in fact something we wanted. And obtained. And is included in large measure because we want to use retired Minuteman missiles for testing in support of United States strategic defenses—in essence a portion of the SDI program.

It is particularly ironic, it seems to me, that champions of strategic defense criticize a hard-won U.S. victory preserved in large measure for preserving assets used in developing those defenses.

I make that argument, Madam President, in addition to the obvious one. And that is, if our hard-won gain was suddenly eliminated by action on the floor of the Senate today, we would, in fact, have to go back to the table. The amendment, whatever its other purposes may be, would cause the need for renegotiation of the treaty.

The Senator from Wyoming has indicated that he felt indeed that ought to be required and I understand his point of view. Obviously I disagree, as do our military people. As do our negotiators who deliberately maintained this item in the treaty for our benefit.

For these reasons, Madam President, I urge defeat of the Wallop amendment.

The PRESIDING OFFICER. The Senator from Wyoming, the proponent of the amendment.

Mr. WALLOP. Madam President, nothing about this debate so far has been anything short of "Alice in Wonderland," from the seven requests for parliamentary rulings that could not be, to the inserts in the RECORD that were not allowed, to the opponents of the treaty that were not permitted to testify. And now we have this mystical new set of requirements and arguments that are raised against my amendment.

Madam President, if the able leaders of the Foreign Relations Committee would read the English language, it said that they would be eliminated except for a finite, minimal and verifiable number equal for each side to be agreed on.

There is nothing in that provision which would not provide for the SDI launches, were that excuse to have been able to be found water impervious. But I would say, Madam President, the information the Senator from Wyoming has was that this was a concession that we made outside of a negotiating position that we had long held that was exactly as the Senator from Wyoming has described it. The thing that is unverifiable is that which the Senator from Delaware speaks of; is the ban on warheads. Let the Senator from Wyoming inform the Senate that every time we reduce one level of an intercontinental ballistic missile's means of inflicting lethality, one level of its lethality—every time one level is reduced, the safety is enhanced.

I would say under the terms of this treaty, no level of lethality is reduced, notwithstanding the claim of the Senator from Delaware. One of the things it is important to realize is that the Soviets, as a routine, launch these missiles from what are called soft pads. In other words just a concrete place out in Vladivostok or Novaya Zemlya, or some of the other places where they do it and we now can talk about it.

Madam President, among the other things that could take place if anybody were willing to listen to the possibilities, is that you could launch to destroy, if that was one of the concerns of the American military. I know enough about SDI to know when I am being fed a bowl of sugar and this is clearly, then, one of those times. This is not an argument that holds any—any—absolutely anything that is true.

If it were so, as the able Senator from Delaware has just declared, that we do not need this thing then why was it important to put a ban on the nondeployed mobile missiles; a ceiling there? And guess what the ceiling was? I see only the staff remains on the floor. But the ceiling was 250.

Guess how many they have? Sixty. So this treaty authorizes the construction of 190 missiles before any of them can be banned in a nondeployed status. Very good negotiating—tough old Yankee traders that were there.

What this was, Madam President, is nothing short of a blatant concession. And my amendment does not prevent us from negotiating a verifiable number for the Soviets to use for space launches and for ourselves to use for space launches. But it does go to the heart of the treaty matter that is claimed by its proponents, that we are safer with it than without it. And we cannot be said by any logic in the world to be safer with missiles that can still be fired against us and not counted in and amongst the reduction.

Madam President, if the leaders are ready I am prepared to yield back time as soon as they are prepared to yield back time.

The PRESIDING OFFICER. The Senator from Wyoming has 8 minutes and a few seconds left.

Mr. WALLOP. I am prepared to yield it back just so long as the proponents are prepared to yield back theirs.

Mr. PELL. I must object for the moment. I would object for the moment—let the quorum call continue.

The PRESIDING OFFICER. Whose time shall the quorum call be?

Mr. PELL. On mine. On ours.

The PRESIDING OFFICER. The Chair wishes to advise the Senator from Rhode Island he has approximately 10 minutes and 12 seconds.

Mr. PELL. I thank the Chair.

The PRESIDING OFFICER. The clerk will now call the roll.

The bill clerk proceeded to call the roll.

Mr. PELL. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. PELL. Madam President, while we are waiting to hear the leadership's plans for the evening, I would like to make a statement, quoting Gen. Colin Powell:

I and my colleagues in the Joint Chiefs of Staff believe that the START treaty achieves our original 1982 strategic arms reduction goals, which were to enhance deterrence and achieve stability through significant reductions in the most destabilizing nuclear systems, ballistic missiles, and especially ICBM's which have multiple warheads; second, to maintain an overall level of strategic nuclear capability that would always be seen as sufficient to deter conflict; third, underwrite our national security; and, fourth, meet our commitments to allies and friends.

We laid these goals out in 1982. The goals remain just as valid in 1992. The Chiefs and I have the capabilities of our post-START nuclear forces to meet these goals and to determine the military sufficiency of our nuclear forces.

To make this assessment, we analyze several measures of effectiveness, such as the level of damage expected, the numbers and types of survivable warheads, and our reserve force posture. When we compared the level of damage against the smaller target base in Russia that results from the START and other reductions that we are undergoing, we determined that our modern, more capable weapon systems will allow us to maintain approximately the same levels of damage in target coverage that we can achieve today.

When we examine the mixed weapons in the case when all of our forces are generated to full alert, we determine that even though the aggregate number of weapons declines, the percentage of survivable warheads increases because of the higher ratio of submarine and aircraft warheads compared to ICBM warheads.

Of the land-based and sea-based missiles on a day-to-day alert, the percentage of survivable warheads will also increase in the post-START force. The percentage of reserve weapons remains approximately the same. And our military judgment of all these measures is that national security is enhanced for both the United States and the republics of the former Soviet Union as a result of the START treaty.

Each of the other Chiefs joined the Chairman in his support for the treaty. Gen. Merrill McPeak the Air Force Chief of Staff said:

The original objectives of the START negotiations were to increase strategic stability, to achieve militarily significant reductions in strategic weapons, and to institute an effective verification regime. Not only have these objectives been achieved, they have been surpassed by the combination of the START treaty and subsequent unilateral actions and bilateral agreements. In my opinion, this treaty is in the best interest of the United States.

Admiral Kelso, the Chief of Naval Operations expressed similar views, saying:

I support, without reservation, the START treaty. I am satisfied that it is militarily sound and its ratification will result in a predictable and thus more stable environment with respect to our relations with Russia and the other nuclear-armed republics.

Gen. Gordon R. Sullivan, the Army Chief of Staff, said:

My endorsement is offered without reservation. The ratification of the Strategic Arms Reduction Treaty is in the best interest of the United States, and in my professional judgment, for the following reasons. The provisions of the treaty allow us to achieve our fundamental objectives of deterrence and stability through balanced reductions, and provides the legal framework to assure timely reductions, and the eventual elimination of all the nuclear weapons in Belarus, Ukraine, and Kazakhstan.

Gen. John R. Dailey, Assistant Commandant of the Marine Corps stated unequivocally:

The Treaty is in the national security interests of the United States. It retains the objective of deterrence against nuclear aggression, meets our commitments to our allies, and supports the U.S. arms control objectives of increased security and stability.

The Marine Corps has supported the START committee from its inception, and along with other services has monitored its progress to ensure military sufficiency. In our judgment, U.S. forces under the Treaty will be militarily sufficient to meet our national security requirements.

Mr. WALLOP. Madam President, let me just say once again to the Senate that any number of missiles could be retained under this nondeployed status. But Senators should be aware that in America, we have finished constructing our last missile. We do not have any hot missile production facilities now. Nobody is making new boosters for the Minuteman or for the MX. That is not the same case in the Soviet Union which has hot missile lines in all phases, 18's, 24's, 25's, and SSN-18. All of these are going on. We have only a missile production line for the Trident. So there is a big difference when we are trying to retain things for SDI.

But I will say the more important point, Madam President, is that this amendment does not call for any specific number, only that we begin to deal with the problem of nondeployed missiles so that they cannot be arrayed in the future against Americans.

Madam President, I yield back the remainder of my time and ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER (Mr. WELLSTONE). The question is on agreeing to the amendment.

The clerk will call the roll.

The bill clerk called the roll.

Mr. FORD. I announce that the Senator from Tennessee [Mr. GORE] is necessarily absent.

The result was announced—yeas 11, nays 88, as follows:

[Rollcall Vote No. 248 Ex.]

YEAS—11

Brown	Hollings	Smith
Craig	McCain	Symms
Garn	Pressler	Wallop
Helms	Seymour	

NAYS—88

Adams	Exon	Mikulski
Akaka	Ford	Mitchell
Baucus	Fowler	Moynihan
Bentsen	Glenn	Murkowski
Biden	Gorton	Nickles
Bingaman	Graham	Nunn
Bond	Gramm	Packwood
Boren	Grassley	Pell
Bradley	Harkin	Pryor
Breaux	Hatch	Reid
Bryan	Hatfield	Riegle
Bumpers	Heflin	Robb
Burdick, Jocelyn	Inouye	Rockefeller
Burns	Jeffords	Roth
Byrd	Johnston	Rudman
Chafee	Kassebaum	Sanford
Coats	Kasten	Sarbanes
Cochran	Kennedy	Sasser
Cohen	Kerrey	Shelby
Conrad	Kerry	Simon
Cranston	Kohl	Simpson
D'Amato	Lautenberg	Specter
Danforth	Leahy	Stevens
Daschle	Levin	Thurmond
DeConcini	Lieberman	Warner
Dixon	Lott	Wellstone
Dodd	Lugar	Wirth
Dole	Mack	Wofford
Domenici	McConnell	
Durenberger	Metzenbaum	

NOT VOTING—1

Gore

So the amendment (No. 3301) was rejected.

Mr. LUGAR. Mr. President, I move to reconsider the vote.

Mr. MITCHELL. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

BUSH'S FAILED IRAQ POLICY

Mr. WIRTH. Mr. President, George Bush would have us believe that he alone is qualified to conduct the foreign policy of the United States, that he is uniquely qualified to act as Commander in Chief given the depth and scope of his experience in international affairs. That is the rhetoric we hear from the Bush campaign. George Bush the foreign policy whiz.

Today AL GORE laid out the reality of the Bush administration's record on one of the core foreign policy issues George Bush has faced in office: Iraq. The record of Bush's handling of Iraq up to and after the gulf war is one of profound misjudgment and probable duplicity. The rhetoric and the reality

of Bush's Iraq policy, as on so many other issues, are like parallel lines: they never meet.

Not only did the Reagan and Bush administrations knowingly and purposefully coddle Saddam Hussein throughout the 1980's and pamper him right up to the eve of the invasion of Kuwait, they did so in the face of overwhelming evidence from the CIA, State Department, Commerce Department, and other agencies that Saddam was continuing his brutal and reckless policies, including:

Support for international terrorism, including the use of Iraq as a safe haven for over 1,400 terrorists;

Genocidal slaughter of hundreds of thousands of his own Kurdish citizens;

Illegal use of American agricultural credits to buy arms—credits which Saddam predictably defaulted on and which have left the American taxpayer holding the bag for nearly $2 billion;

And a concerted program by Saddam to acquire nuclear, biological and chemical weapons and the missiles to deliver them.

By coddling the Iraqi tyrant, the Bush administration evidently hoped to change Saddam's ways. George Bush was deeply involved in this effort to, as Ross Perot put it, "burp and diaper" Saddam. Twice, Vice President Bush personally lobbied the Export-Import Bank to extend credits to Iraq. Vice President Bush sided with Iraq's Ambassador in trying to get the Pentagon to ease its opposition to high-tech exports to Iraq. Clear warnings about Iraq's pursuit of nuclear weapons did not stop President Bush from signing a directive mandating the pursuit of improved economic and political ties—just 10 months before the invasion of Kuwait.

This myopic policy of appeasement continued right up to the eve of the invasion. The Bush White House vetoed Iraq sanctions legislation and continued to oppose sanctions even as Iraqi tanks massed on the Kuwait border. In early 1990, the Bush administration apologized to Saddam for a Voice of America broadcast critical of Iraq's human rights records. Bush followed up by sending Senators to Baghdad to make clear to Saddam that he would oppose sanctions and to advise the Iraqi dictator that the VOA reporter who had so offended Saddam had indeed been fired. Ambassador April Glaspie's infamous meeting with Saddam a week before the invasion was, as Senator GORE points out in his speech, a reflection of Bush's personal views on Iraqi policy. Be our friend.

George Bush defends this sad record by claiming that he was trying to bring Iraq back into the family of nations. But there was no evidence to support this hope, and overwhelming evidence to the contrary. Saddam was and remains a dangerous despot capable of the most brutal acts. Rather than deterring and containing Iraqi aggression, President Bush, the foreign policy expert, sent unmistakable signals of weakness and of acquiescence.

As Saddam was transformed overnight from friend into Adolf Hitler, George Bush sought to paint himself as Winston Churchill standing up to brutal aggression. Unfortunately, the record demonstrates clearly that the apt historical comparison is not Churchill at all, but the failed appeasement policy of his Foreign Secretary. As Senator GORE noted this morning "George Bush's poor judgment, moral blindness, and bungling policies led directly to a war that should never have taken place."

None of this is to take away from George Bush's handling of the gulf war itself nor from the brave men and women who served their Nation well and honorably in that effort. But if George Bush wants due recognition for his skill in prosecuting the war, he must also take responsibility for the policies that made that war inevitable.

George Bush claims that he was out of the loop on the Iran-Contra arms-for-hostages trade. We now know better from many of the key participants in that sad affair. George Bush was deeply involved and supportive of the cynical diplomatic default. But he continues to claim that, like Reagan, he knew nothing.

George Bush is also now seeking to cover up his central role in the failed Iraq policy. The administration knew that Saddam was out to acquire nuclear weapons, and that Iraq was shopping right here in America for key components. Yet last June, Bush repeated that the United States had not contributed to Saddam's pursuit of weapons of mass destruction. The record is just the opposite.

The record also shows that the Bush administration was aware that agricultural credits were being used illegally to finance Saddam's war machine. The record also shows that the Commerce Department altered documents provided to Congress on high technological exports to Iraq.

We do not yet have the full truth on the role the Atlanta branch of the Banca Nazionale del Lavoro [BNL] played in financing Saddam's regime. If Bush has his way, we may never know the full story.

We do know that illegal loans to Iraq were made by BNL. We do know that the CIA was aware of BNL's activities. We do know that the Bush Justice Department declined to appoint a special prosecutor and that the Federal judge, Marvin Schoob, presiding over the case criticized Attorney General Barr's decision. We do know that there have been credible reports of White House meddling in the investigation and prosecution of the case against BNL.

As in Watergate, the more we know, the worse it gets.

William Safire in a column entitled "Crimes of Iraqgate" summed it up well:

> Americans now know that the war in the Persian Gulf was brought about by a colossal foreign policy blunder . . . What is not widely understood is how that benighted policy led to the Bush administration's fraudulent use of public funds, its sustained deception of Congress and its obstruction of justice . . . Policy blunders are not crimes. But preventing the purposes of appropriated funds is a crime; lying to Congress compounds that crime; and obstructing justice to cover up the original crimes is a criminal conspiracy.

Mr. President, I ask unanimous consent that the text of Senator GORE's remarks before the Center for National Policy, as well as supporting documentation, be included in the RECORD at this point.

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

REMARKS BY SENATOR ALBERT GORE, CENTER FOR NATIONAL POLICY, WASHINGTON, DC, SEPTEMBER 29, 1992

One of the most important questions in this campaign involves the judgment of the candidates on foreign policy. The American people know the world is full of unexpected surprises and dangers—and as a result they want to know whether or not a president can handle these uncertainties, recognize unanticipated dangers, and realize when national policy must be changed to reflect new realities. The American people also want to know whether or not they can count on their president to tell them the truth.

President Bush, in his handling of our policy toward Iraq, has failed all these tests, and failed them badly. His poor judgment, moral blindness, and bungling policies led directly to a war that should never have taken place. And because of his naivete and lack of candor, U.S. taxpayers are now stuck with paying the bill for $1.9 billion President Bush gave to Saddam Hussein even though top administration officials were repeatedly told Saddam was using our dollars to buy weapons technology. Bush, of course, believes that the war with Iraq was his finest hour as the organizer and leader of a vast coalition of armed forces united for the purpose of frustrating the designs of an evil dictator.

But the war with Iraq had deep roots, and if George Bush's prosecution of the war is part of his record, so too is his involvement in the diplomacy which led to it, both in the Reagan/Bush era, and far more so, during his presidency when he accelerated foreign aid and the sale of weapons technologies to Iraq—right up until the invasion of Kuwait—in spite of repeated warnings that anyone with common sense would have had no difficulty understanding. The path leading us to that war, and the path which the President has followed after, are deeply shadowed in profound error, in duplicity, and in amoral disregard for our most basic values as a nation. There is also substantial evidence that his administration intentionally falsified export records, and reports to Congress, and in the process apparently violated a number of laws intended to prevent such horrendous mistakes.

Nineteen months ago, President Bush called Saddam Hussein a new Hitler who had to be stopped at all costs. Yet today, that same tyrant remains firmly in power, resisting by every means the will of the international community. No wonder so many

Americans ask themselves whether or not victory over Saddam will ultimately prove an illusion.

The conduct of the war will remain a proud memory for all Americans. But the full history must also include events before and after the war. That detailed record requires a little more time and effort to understand. And if we really want to judge President Bush's stewardship of policy, then we had better pay attention to that detailed record, which provides a deeply disturbing look at a blatant disregard for brutal terrorism, a dangerous blindness to the murderous ambitions of a despot, and what certainly appears to be an ongoing effort to hide the facts from the American people whose tax dollars paid for this policy and whose sons and daughters risked and lost their lives in its pursuit.

George Bush wants the American people to see him as the hero who put out a raging fire. But new evidence now shows that he is the one who set the fire. He not only struck the match, he poured gasoline on the flames. So give him credit for calling in the fire department, but understand who started the blaze.

Let me begin by providing a basic historical frame of reference: In September of 1980, Iraq invaded Iran. Iraq was the odds-on favorite to win the war in short order. However, by May 1982, Iraq was clearly in trouble. It had lost a major battle with Iran. Our policy-makers began to imagine Iran under a radical Islamic government emerging as the dominant regional power: a nightmare. I believe that is why, in February 1982, President Reagan took Iraq off the list of states that sponsored terrorism.[1] He did this not because Iraq had gone straight and given up terrorism, but because he wanted to help Iraq while there was time.[2] By taking Iraq's name off the list, President Reagan opened the way for Iraq to receive US credits through subsidized agricultural loan guarantees and Export-Import Bank credits. Reagan's decision also removed certain kinds of export controls intended to block the transfer of US technology to countries on the official terrorism list.

In other words, for strategic reasons, the Reagan/Bush Administration would overlook virtually any unpleasant reality in Iraq, and apparently subvert US laws in order to prop up Saddam Hussein's brutal regime.

George Bush claims he was an outsider in another momentous Reagan decision—to sell arms to Iran in exchange for American hostages. Of course by now, most people find that very hard to believe and the documentary record is closing in on him. Recently, we learned that former Secretary of State George Shultz and former Secretary of Defense Caspar Weinberger were outraged when they heard then Vice President Bush was disclaiming any knowledge of the Iran arms deal and the fact that the two senior cabinet officers had vigorously opposed it. Notes taken at the time of their telephone conversation about this event have Mr. Weinberger saying that Bush's comments were "terrible" and that, far from being ignorant of developments, Bush had been "on the other side" of the struggle over policy.[3] Just last week, more evidence surfaced showing that Bush is recorded as having attended numerous meetings across a span of three years when White House senior officials debated the plan to sell arms to Iran and then were briefed on the status of the program.[4] He was also present at the meetings in which the trade of arms for American hostages was explicitly discussed. And now two of the briefers have directly challenged the veracity of President Bush's claim that he didn't know arms were being swapped for hostages. Far from being "out of the loop", Bush seems to have been one of the most vigorous and vociferous advocates of the illegal side of the argument. Indeed, his arguments to the contrary are simply no longer credible. His national security adviser was clearly uncomfortable even going so far as to say that Bush's version was "possibly" true.

Now new evidence about his policy toward Iraq directly contradicts President Bush's repeated statements to the American people that he did nothing that helped Saddam's effort to acquire weapons of mass destruction during the months and years preceding Saddam's invasion of Kuwait. To begin with, George Bush cannot even try to claim ignorance where policy toward Iraq was concerned. Not only was he directly in the loop, he was a principal architect of the policy from its earliest days. For example, in April of 1984, Bush personally lobbied the Ex-Im Bank's chairman—a friend from college days—to disregard the views of his own economists, and extend credits to Iraq.[5] Doubts about Iraq's credit-worthiness were very well-founded. But the overriding issue was whether Iraq could continue to hold on in the war with Iran. That's all that seemed to matter.

In pursuit of that objective, the Reagan/Bush Administration would overlook the fact that it was an Iraq-based group that masterminded the assassination attempt against Israel's ambassador to the UK, which occurred in June 1982.[6] This event triggered Israel's invasion of Lebanon—not exactly a minor consequence for US policy. The Reagan/Bush Administration was also prepared to overlook the fact that the terrorist who masterminded the attack on the Achille Lauro and the savage murder of American Leon Klinghoffer fled with Iraqi assistance.[7] Nor did it matter that the team of terrorists who set out to blow up the Rome airport came from Baghdad with suitcase bombs.[8]

Iraq not only stayed off the terrorist list no matter what, but in November 1984, full diplomatic relations were established with the country. The US. government continued to exert every effort to channel assistance to Saddam Hussein—even with evidence that he was not only promoting terrorism, but was also pursuing a nuclear weapons program. As early as May of 1985, Assistant Secretary of Defense Richard Perle warned about the suspected diversion of US exports of dual-use technology to the Iraqi nuclear weapons program.[9] But Bush ensured that the flow of technology continued.

In March 1987, Bush again took a prominent role: when Iraq's ambassador complained that our Defense Department was taking too long and being too cautious about export licenses for high tech items, Bush apparently agreed with him that the Defense Department was being capricious and had to get with the program.[10]

There might have been a moment's pause for reflection when Iraqi aircraft intentionally attacked the USS Stark in May 1987, killing 37 sailors—but the Administration smoothed it over very fast. This was the spring when the Ex-Im Bank staff resisted another $200 million loan for Iraq, but again the loan was granted after Bush again personally intervened to stress its political importance. The loan went through in May, just two days before the attack on the Stark.[11]

Now, let me make a point about foreign policy and the real world. The actual conduct of foreign policy often bears as much resemblance to academic theory as the conduct of domestic politics bears to a civics course. If we have to deal with someone bad in order to handle someone worse, then for heaven's sake we should at least be ready to re-evaluate that relationship the moment it has outlived its value to the United States.

In other words, whatever the arguments for temporarily supporting Saddam Hussein as a barrier separating Saudi Arabia's oil from Iran's militant fundamentalists, Bush deserves heavy blame for intentionally concealing from the American people the clear nature of Saddam Hussein and his regime, for convincing himself that friendly relations with such a monster were possible, and for persisting in this effort far, far beyond the point of folly.

Throughout this period, Saddam's atrocities continued. In March 1988, Saddam Hussein used poison gas on the Kurdish town of Halabja, brutally murdering some five thousand innocent men, women and children. None of us can ever forget the pictures of their bodies—of parents trying to shield their infants even in death—that were in our news media.

The Iran-Iraq War ended in August of 1988. Iraq had not prevailed, but neither had it been defeated. As a result, you would think that the Administration would give our policies a second look to see if they should be altered. But the Reagan/Bush Administration never hesitated even when the news became much, much worse. Within days of the end of the Iran-Iraq War, Saddam Hussein—seeing that he had gotten away with using poison gas against the Kurds previously—launched additional major gas attacks on them. The war was over, and he was determined to settle accounts. Saddam's attacks created, in addition to the wave of deaths, a flight of about a half million Kurdish refugees.

The effect of these events on the public and on Congress was electrifying. The outrage and disgust sparked action and ignited an intensification of efforts to pull the plug on US assistance to Saddam Hussein. I myself went to the Senate floor twice demanding tough action.[12] But these efforts were resisted to the bitter end by the Reagan/Bush and Bush/Quayle Administrations. For example, they pulled out all the stops to defeat the Prevention of Genocide Act, after the US Senate had passed it unanimously in September of 1988.

Meanwhile, the US Customs Service was reporting that in 1988, it had marked a notable increase in the activity of Iraq's network of procuring agents and front corporations. A concerted effort was underway to obtain missile technology, chemical weapons technology, and biological weapons technology.[13]

In January 1989, George Bush was sworn in as President. Based on plentiful evidence, he had reason to know that his ongoing policy regarding Iraq was already malfunctioning.

Just last week, we learned of a memorandum written in March, 1989, to Secretary of State Baker, as he prepared to meet with a senior Iraqi official in which the author noted that Iraq continued to cooperate with terrorists, that it was "meddling" in Lebanon, and that it was "working hard at chemical and biological weapons and new missiles."[14] What is especially interesting about this memo is that it notes that in the months preceding this meeting Iraqi oil exports to the US had increased dramatically and on favorable terms. That point raised the question of a quid pro quo sought by the Iraqi officials—cheap oil in exchange for "freer export licensing procedures for high

Footnotes at end of article.

tech." The memo's drafter notes—somewhat critically and impatiently—that export applications were being held up by the Commerce Department, and by the Defense Department, out of concern that the proposed exports could enhance Iraq's military capabilities.

These concerns were well-founded. In April 1989, a nuclear proliferation expert from the Department of Energy reported intelligence indicators that Iraq had a crash program underway to build on atomic bomb.[15] In June, the Defense Intelligence Agency reported that Iraq was running a major European network to procure military goods that were not supposed to be sold.[16] In August, the FBI raided the Atlanta Branch of the Italian Banca Nazionale del Lavoro (BNL) and seized evidence of over $4 billion in illegal loans to Iraq, as well as use of about $2 billion of those funds to buy nuclear and other military technologies. On September 22nd, Assistant Secretary of State John Kelly wrote a memo acknowledging that money coming to Iraq through the Atlanta branch of the BNL did "appear to have been used" to finance acquisition of sensitive military technology.[17] Also in September, the USDA reported kickbacks and possible diversions of US-supplied agricultural funds for military purposes.[18]

Most significant of all, in the same month, the CIA reported to Secretary of State James Baker and other top Bush administration officials that Iraq was clandestinely procuring nuclear weapons technology through a global network of front companies.[19] Now, in the midst of this flood of highly alarming information, on October 2, 1989, President Bush signed a document known as NSD-26, which established policy toward Iraq under his Administration.[20] This document is the benchmark for judging George Bush's record for the direction of American policy toward Iraq in the period that would ultimately lead to war. We have only a partial idea of what is in that document, since the version that was finally released to Congress has been heavily censored. But the core statement of purpose and the fundamental assumptions behind it are clear. And so is the incredibly poor judgment of George Bush.

NSD-26 mandated the pursuit of improved economic and political ties with Iraq on the assumption that Iraqi behavior could be modified by means of new favors to be granted. Perhaps so, if this were a state not under the complete control of a single man whose ruthlessness was already totally apparent. The text of NSD-26 blindly ignores the evidence already at the Administration's disposal of Iraqi behavior in the past regarding human rights, terrorism, the use of chemical weapons, and the pursuit of advanced weapons of mass destruction. Instead it makes a heroic assumption of good behavior in the future, on the basis of an interesting theory—namely, that Iraq would suddenly and completely change its ways out of a fear of economic and political sanctions.

It leaps from the page, that George Bush, both as Vice President and President, had done his utmost to make sure that no such sanctions would ever apply to Saddam Hussein. Consequently, the question is unavoidable: why should Saddam Hussein be concerned about a threat of action in the future from the same man who had resolutely blocked any such action in the past? To the contrary, Saddam had every reason to assume that Bush would look the other way—no matter what he did.

In my view, the Bush Administration was acting in a manner directly opposite to what you would expect with all the evidence it had at the time. Saddam Hussein's nature and intentions were perfectly visible.

In October of 1989, representatives of the Departments of State and Agriculture met to discuss Iraq's diversion of US agricultural credits into the acquisition of US technology for its nuclear weapons program.[21] Later that same month, however, on October 26th, Assistant Secretary of State Kelly sent Secretary Baker a memo jointly written with the State Department's legal counsel, Abe Sofaer, urging that Baker push an additional $1 billion in agricultural loan guarantees for Iraq, notwithstanding the mushrooming scandal surrounding the diversion of BNL loans by Iraq for nuclear purposes.[22]

I will leave to others to debate whether Sofaer's efforts—or those of White House Counsel Boyden Gray's staff—to sound out the intentions of the Atlanta prosecutor constituted a crude form of intervention.[23] My point is that before and after consecrating a policy that tied us hip and thigh to Saddam Hussein, George Bush had all the information he needed to know that he was in deep, deep . . . water. But he persisted, although in November the CIA again reported that Baghdad was shopping everywhere for chemical, biological, and nuclear technologies and for ballistic missile technology.[24] And even though the CIA again reported a link between BNL funding and the Iraq nuclear and missile program,[25] in November the Administration agreed to go ahead with another billion dollars in US taxpayer subsidized loan guarantees to Iraq.[26]

In January of 1990, President Bush issued a determination that exempted Iraq from section 512 of the Foreign Operations Appropriations Act of November 1989 prohibiting further loans to Iraq. On grounds of "national security," the President declared that the Act's prohibition would not apply.[27] And yet, this was the season when the RAND Corporation reported that an estimated 1400 terrorists were operating out of Iraq.[28]

In February 1990, Saddam Hussein called for the removal of US military forces from the Persian Gulf. And yet, the same month, the Administration actually apologized to Saddam for the content of a Voice of America broadcast criticizing Iraq's human rights record.[29] Coddling tyrants is a hallmark of the Bush foreign policy.

March, 1990, brought no improvement, when US and British agents arrested several Iraqis in the act of trying to smuggle nuclear triggering devices into Iraq. In April, Saddam Hussein issued his infamous threat to burn up half of Israel with chemical weapons. Still, Bush toadied up to Saddam.

Also in April, the Federal Reserve Bank of New York noted that BNL money was diverted to purchase nuclear triggers in the United States, which had later been seized by British customs.[30] That same month, British Customs also seized pipe sections heading for Iraq, which were determined to have been parts of a super-gun. Similar shipments were seized in Greece, Turkey, Italy, West Germany and Switzerland.

Yet, on April 12th, at the personal request of Bush, Senators Bob Dole and Alan Simpson—the number one and number two Republican leaders in the Senate—travelled to Baghdad and told Saddam Hussein that President Bush was still ready to veto any sanctions bill that Congress might pass.[31] They added—again at Bush's personal request—the comforting news that the author of the offending voice of America criticism had been fired that same day in an effort to please Saddam.

In April and May, Commerce Under Secretary Dennis Kloske attended two meetings at the White House where he recommended that the U.S. tighten restrictions on exports of high technology, but he was overruled,[32] and the flow of technology from the US continued. As a side-note, when Kloske testified about this before the House Foreign Affairs Subcommittee on International Economic Policy and Trade about a year later, he was fired within forty-eight hours.

May arrives, and a terrorist attack on the public beaches of Tel Aviv was launched and thwarted. It was planned by a Palestinian group operating openly in Baghdad.[33] On May 21, the USDA sent up another warning about diversions of funds from US-guaranteed loans. But on June 15th, 1990, Assistant Secretary of State Kelly told the Senate Foreign Relations Committee that the Administration still opposed any Congressional sanctions against Iraq. And in July, as Iraqi tanks and soldiers massed on the Kuwaiti border, the Senate tried to pass another sanctions bill against Iraq * * * and the Administration opposed it. Not only that, but on the eve of the invasion, the Bush/Quayle Administration kept selling Saddam dual-use technology such as sophisticated computers, flight simulators, and equipment to manufacture gun barrels.[34]

At that very moment, however, high level officials in the Administration, including Secretary of State James Baker, were finally forced to confront what they had known from the outset of Bush's administration: that Iraq had grossly abused the benefits extended to it by Bush. In July, a memo jointly drafted by four senior officers of the Department of State was sent to Secretary Baker and approved by him. According to this memorandum—the existence of which just came to light a few days ago—the Administration acknowledged that "Iraq is actively engaged in developing chemical and biological weapons and ballistic missile systems, and may be seeking to develop nuclear weapons as well. Iraq has been attempting to obtain items to support these proliferation activities from US exporters, in some cases successfully." The memorandum concludes that the time had come for the Administration to "move now on Iraq because of its very active proliferation-related procurement efforts" and because "there is a danger that US exporters could become implicated in these efforts."[35]

Bear in mind that Saddam Hussein was then only one week away from an act of open aggression that would bring us to war. It had taken this long for an awareness of what was going on for years to be acknowledged within the Administration.

Much has been said about the record of our Ambassador to Iraq April Glaspie's famous interview of July 25th with Saddam Hussein. But the Ambassador's servile message was a clear expression of Bush's personal views.[36] Her message was totally in line with US policy as laid down by President Bush in October 1989, and clung to until August 2, 1990, when Iraq invaded, conquered, and annexed Kuwait.

Within a month, our sons and daughters were to be sent to risk their lives facing a threat that had been built up through US technology and US tax dollars by our own President, who now summoned them to battle. In answer to this charge, President Bush has explicitly denied that his policies enhanced Saddam Hussein's nuclear, biological and chemical capabilities.[37] He denied this, not only in an official report to Congress in the fall of 1991, but as recently as June 13th

and July 1st of this year, when Bush said: "We did not enhance Saddam Hussein's nuclear, biological, or chemical weapons capability"[38] But as I have just mentioned, his own Secretary of State knew differently at least as of July 1990, and the actual record of our exports shows the facts rather differently than the President wants to remember them:

Almost 30% of our non-agricultural exports to Iraq between 1985 and 1990 went to the Iraqi military-industrial complex.[39]

Of these exports, there were 162 items that were licensed for sale despite their potential nuclear applications.[40]

The Administration permitted the sale of powerful computers comparable to those used in our own missile test ranges, despite objections from the Department of Defense.[41]

It allowed shipment of high-tech equipment needed for Iraq's Condor II missile, which was to have been able to deliver a nuclear warhead at a range of more than 600 miles.[42]

It allowed for the export of materials needed for the infamous "supergun" project, intended to have the ability to launch nuclear weapons line artillery shalls over hundreds of miles.[43]

Machine tools, lasers and other equipment for the manufacture of rocket casings used in SCUD missiles were sold. When UN inspectors got into Iraq, they found at Saddam Hussein's main nuclear weapons complex a carbide-tipped machine toll factory which had been built with technology and equipment licensed for export by the Bush Administration.[44]

The Administration licensed technology and equipment for fabricating shapes out of glass fiber over the objections of the Department of Defense, which noted that the purchaser was part of the Iraqi military-industrial complex, and that this kind of equipment was needed for a nuclear weapons program. The Administration preferred to blindly accept the importer's ludicrous claim that the equipment would be used to make shower stalls.[45]

Equipment for a "detergent" factory was licensed, yet this same factory was used to make chemical weapons.[46]

17 licenses for the export of bacterial and fungus cultures to Iraq were granted, even though the CIA specifically linked the Iraqi government agencies involved to "biological warfare support and numerous and other military activities."[47]

The UN Special Commission, once it finally got inside Iraq, is reported to have found equipment from eleven American companies in Iraqi missile and chemical weapons plants.[48]

It is astounding to look at the list of Iraqi customers approved by the Administration:

The Ministry of Industry and Military Industrialization (known as MIMI), which was headed by a brigadier general who was Saddam Hussein's son-in-law, and which the CIA identified as "controlling Iraq's nuclear network."[49]

The Saddam State Establishment and Salah Al Din, called in an intelligence report "typical of Iraq's arms production facilities."[50]

Sa'ad 16 identified back in 1986 as a key missile production site, where as much as 40% of the equipment was reported to be US-made.[51]

The Administration even sold Saddam Hussein helicopters for his personal use, equipped with special infra-red guidance and defensive systems.[52]

Incredibly, the Bush Administration knew all along that the chief purchasing agent for much of this material was the head of an Iraqi weapons complex. "The tentacle of the octopus," as one law enforcement official put it, was a US company called Matrix-Churchill. It was a key player in Saddam Hussein's efforts to acquire nuclear and other weapons technologies. The chairman of this so-called "American" corporation was one Safa al-Habobi, who was simultaneously the Director General of the Iraqi Nassr State Enterprise for Mechanical Industries, well-known by our intelligence agencies as a major Iraqi military-industrial complex where missiles and nuclear weapons equipment were manufactured.[53]

There was report after report linking Habobi's firm, Matrix-Churchill, to Iraq's global network of front companies and even back to the Iraqi Ministry of Industry and Military Industrialization (MIMI) and Saddam's son-in-law Hussein Kamal. But the Bush Administration kept issuing licenses.[54]

And as for how Iraq paid for all this when it was already far over its head in debt as the result of the war with Iran and Saddam Hussein's economic policies, a large part of the answer is: on credit in the form of loans guaranteed by the Bush/Quayle Administration. In the fall of 1989, Bush pushed hard to make sure that $1 billion in new loan guarantees were provided to Suddam Hussein.[55] It didn't matter that federal agencies were reporting severe abuses of prior loan guarantees from the United States. In the end, the US taxpayer has been left holding the bag for almost $2 billion of loans to Iraq which will never be repaid.[56] After bailing out the savings and loans, American taxpayers are now being forced by Bush's poor decisions to bail out Saddam.

When it comes time to confront the consequences of these years of serious mistakes, when it came time to confront Saddam Hussein's invasion of Kuwait with an international coalition united in its resolve and purpose, George Bush, all the way up until the moment the combat ended, displayed fortitude and skill. But the chestnuts he pulled from that fire were his own. His policies nurtured Saddam Hussein. He was deaf to information that to any other ear was a fire-bell in the night, ringing clearly that our policies were disastrously wrong.

And incredibly, immediately following the war, President Bush reverted to form. At President Bush's encouragement, an armed resistance to Saddam Hussein sprang up in Iraq. But at the critical moment, it was George Bush's decision to betray that resistance by tolerating Saddam Hussein's use of attack helicopters to put down the rebellions. That was a clear violation of the terms of the ceasefire, and it was a violation we had more than enough power to suppress.

Had we insisted on the terms of the ceasefire, there would have been a much better chance that today we would not be facing Saddam Hussein in power.

Should a man who mistook Saddam Hussein for a docile ally—and who then pursued that error to the point where the lives of hundreds of thousands of Americans had to be put on the line—have a second term as President of the United States? Has George Bush told the truth, the whole truth about a policy that left our nation facing a brutal, murderous dictator? If he will take credit for the victor, will he also take responsibility for the policy that made war inevitable? The answer to these questions is no.

George Bush sent loan guarantees to an oil-rich dictator. George Bush sold dangerous technology to a criminal who was intent on developing and using lethal weapons. George Bush sent secret intelligence reports to a man who, by any stretch of the imagination, could not be trusted. George Bush refused to face the truth or hear the urgent warnings coming from his own Administration. And then, George Bush put American lives on the line in a war that never would have happened except for his mistakes.

In so many ways, George Bush does not fit the requirements of the New World Order his own speechwriters once summoned up. We require a fresh approach from a new leader of vigor and high intelligence, of courage and vision, who believes to the core that the enemies of freedom cannot be anything but the enemies of our country. I think that the people of the United States have and will take the opportunity to select such a leader. Bill Clinton is that man.

FOOTNOTES

[1] Congressional Quarterly Weekly Report, 4/27/91.

[2] 5/21/82 letter from Kenneth Duberstein, White House head of Congressional liaison, to Senator Rudy Boschwitz: "The removal of Iraq from the list of countries supporting international terrorism is intended both to recognize Iraq's improved record and to offer an incentive to continue this positive trend."

Contrast this with statement by Noel Koch, the Defense Department's head of counterterrorism at the time: "No one had any doubts about his [Saddam's] continued involvement with terrorism . . . The real reason was to help them succeed in the war with Iran." [Washington Post, 9/16/90].

[3] New York Times and Washington Post, 8/26/92.

[4] Washington Post, 9/24/92.

[5] Memorandum for Donald Gregg (National Security Assistant to Vice President Bush) from Charles Hill, Executive Secretary to Secretary of State George Shultz, "Subject: Ex-Im Bank Financing for Iraqi Export Pipeline," 6/12/84.

[6] Washington Post, 3/8/83; The Guardian, 3/13/83. The latter identifies the assassin as "a colonel in the Iraqi intelligence service."

[7] Washington Post, 10/16/85.

[8] Acknowledged in State Department memorandum to Secretary Schultz from Frank McNeil, Acting Director of Bureau of Intelligence and Research, "Iraq's Retreat from International Terrorism," 7/1/86. As to the "retreat" referred to in the title, the memo states that it has been "painfully slow."

[9] Memorandum for the Secretary of Defense from Assistant Secretary for International Security Policy Richard Perle. "High Technology Dual Use Exported for Iraq," 7/1/85; see also Memorandum for Under Secretary of Defense for Policy from Assistant Secretary Perle, "Computers for Iraq," 3/10/85.

[10] Memorandum for Donald Gregg (National Security Assistant to Vice President Bush) from Melvyn Levitsky, Executive Secretary to Secretary of State Shultz, "Subject: The Vice President's March 2 Meetings with Iraqi Ambassador Nizar Hamdoon," 2/26/87 [published in Congressional Record, 2/24/92, pp. H 519–520].

[11] Idem.

[12] Congressional Record, 9/12/88, p. S. 12309; Congressional Record, 10/7/88.

[13] 1991 testimony by the US Customs Service to the House Ways and Means Committee, cited in Congressional Record on 8/10/92, p. H 7876.

[14] Memo from Paul J. Hare, Acting Assistant Secretary for Near Eastern and South Asian Affairs, to Secretary Baker, "Subject: Meeting with Iraqi Under Secretary Nizar Hamdun", 3/23/89.

[15] House of Representatives, Committee on Energy and Commerce, Nuclear Nonproliferation, Hearing, 4/24/91.

[16] Los Angeles Times, 8/6/92; Congressional Record, 8/10/92, pp. H 7872–7876.

[17] Memorandum, Assistant Secretary Kelly to Under Secretary Bartholomew, "The BNL Scandal and Trade With Iraq," 9/22/89, included in Congressional Record, 7/21/92, p. H 6345. Also Los Angeles Times, 7/22/92.

[18] Los Angeles Times, 2/25/92

[19] Los Angeles Times, 8/6/92; Congressional Record, 8/10/92, pp. H 7872–7876.

[20] National Security Directive 26, "US Policy Towards the Persian Gulf" addressed to the Vice President, Secretary of State, Secretary of Defense, Assistant to the President for National Security Affairs, et al., 10/2/89.

[21] Memorandum of conversation from Frank Lemay, Special Assistant to the Under Secretary for

Economic Affairs, to Under Secretary McCormack, Legal Advisor Sofaer, Acting Assistant Secretary Jock Covey, et al., "Subject: USDA Comments on Investigations of Iraq and the BNL-Atlanta Scandal," 10/13/89:

"It now appears that, at minimum, elements of the government of Iraq knew of the illegal dealings . . . If smoke indicates fire, we may be facing a four alarm blaze."

[22] Memorandum to Secretary Baker from Assistant Secretary Kelly and Legal Advisor Sofaer, 10/26/89.

[23] New York Times, 7/9/92; Washington Post, 7/9/92.

[24] Los Angeles Times, 7/22/92.

[25] Congressional Record, 9/14/92.

[26] State Department Memorandum, Assistant Secretary Kelly to Under Secretary Kimmitt, "NAC Deputies Meeting on the CCC Program for Iraq," 11/8/89; Letter, Under Secretary of State Eagleburger to Under Secretary of Treasury Robson, 11/8/89; numerous documents included in Congressional Record, 3/2/92, pp. H 858–870; "BNL Chronology," House Banking Committee.

[27] Federal Register (Vol. 55, No. 28), 2/9/90, "Application of the Export-Import Bank Restrictions in Connection with Iraq."

[28] US Congress, House of Representatives, Developments in the Middle East, Hearing before the Subcommittee on Europe and the Middle East of the Committee on Foreign Affairs, 7/31/90; Bruce Hoffmann, The Ultimate Fifth Column; Saddam Hussein, International Terrorism and the Crisis in the Gulf, RAND Corporation Report P–7668, 8/90.

[29] Cable from Secretary of State Baker to Ambassador April Glaspie, 2/27/90; Letter from Ambassador Glaspie to Iraqi Foreign Minister Tariq Aziz, 2/28/90, full texts included in Stanley Kober, Appeasement and the Gulf War, Progressive Policy Institute, 7/92.

[30] Memorandum, Federal Reserve Board of New York, to Mr. Corrigan from Thomas C. Baxter, Jr., "Subject: Lavoro", 4/5/90: "I followed up on your suggestion about a possible connection between BNL and the nuclear triggers that were seized in London. As you suspected, there is a connection."

[31] New Republic, 11/5/90; CQ Weekly Report, 4/27/91.

[32] One meeting on 4/16 and one on 5/29: Source is Memorandum, US Department of Commerce, from Iain S. Baird to Dennis Kloske, "Subject: The NSC and Iraq," included in Congressional Record, 7/21/92, pp. H 6345–6346; also Los Angeles Times, 2/24/92.

[33] US Congress, Developments in the Middle East; Hoffmann, The Ultimate Fifth Column.

[34] Washington Post, 3/11/91.

[35] Memo to Secretary Baker from William Rope, Jock Covey, Michael Matheson and Eugene McAllister, "Subject: Foreign Policy Controls for Proliferation-Related Exports to Iraq", (7/19/90).

[36] Glaspie stated to Saddam that she "carried direct instructions from the President to seek better relations with Iraq." Also, the day before the Glaspie-Saddam meeting, Margaret Tutwiler stated that "we do not have any defense treaties with Kuwait, and there are no special defense or security commitments to Kuwait." Washington Post, 9/12/90; New York Times, 9/23/90.

[37] Bush denials, in addition to those cited below:

Rep. Gonzalez letter to President Bush, 1/31/92, asserting that Bush's report (still secret) submitted to Congress as required by the Iraq Sanctions Act of 1990 concludes that "US firms did not contribute directly to Iraq's conventional and nonconventional capabilities," but Gonzalez asserts that "the report to Congress is clearly inaccurate. In fact, numerous US companies provided critical support to Iraqi weapons programs, including missiles."

Bush's 8/25/92 American Legion speech allegedly warning about "madmen who we cannot let get their finger on the nuclear trigger."

[38] In a press conference in Rio de Janeiro on 6/13/92, Bush said: "Our policy was well-known. We tried to bring Saddam Hussein into the family of nations. That policy was not successful. We did not enhance his nuclear, biological, or chemical weapon capability, a charge recklessly made in this political year."

In an appearance on CBS "This Morning" on 7/1/92, Bush said: "We did not go to enhance his *nuclear*, biological, or chemical capability. I have an executive order out on specifically that. And you have repeated something that isn't true."

[39] Congressional Record, 7/21/92.

[40] Figure by Rep. Sam Gejdenson as cited in Los Angeles Times, 7/2/92.

[41] "Strengthening the Export Licensing System," a report by the House Government Operations Subcommitee on Commerce, Consumer, and Monetary Affairs, 7/2/91.

[42] Congressional Record, 5/18/92, p. H 3373; Congressional Record, 2/3/92, p. H 213.

[43] Washington Post, 2/10/91.

[44] Licensing Mass Destruction: US Exports to Iraq," Wisconsin Project on Nuclear Arms Control report, 6/91; "Strengthening the Export Licensing System," a report by the House Government Operations Subcommittee on Commerce, Consumer and Monetary Affairs, 7/2/91.

[45] Congressional Record, 7/27/92, pp. H 6702–6704.

[46] "Approved Licenses to Iraq," Lists submitted to the House Government Operations Subcommittee on Commerce, Consumer and Monetary Affairs, 3/7/91.

[47] Congressional Record, 7/21/92, p. H 6346.

[48] Washington Post, 7/22/92.

[49] Congressional Record, 8/10/92, p. H 7873.

[50] Congressional Record, 7/21/92, p. H 6342.

[51] DoD opposed sales to SAAD 16 "because of the high likelihood of military end use and the association of the involved companies in sensitive military applications" [DoD memo cited by Elaine Sciolino, The Outlaw State, p. 142.] See also an 8/9/88 DoD Office for Non-Proliferation analysis: "almost all the labs named [at Saad 16] deal with areas applicable to missile research and production" [Timmerman, The Death Lobby, p. 207].

[52] "Approved Licenses to Iraq," Lists submitted to the House Government Operations Subcommittee on Commerce, Consumer and Monetary Affairs, 3/7/91.

[53] New York Times, 7/26/92 and Los Angeles Times, 7/24/92 and 8/7/92.

[54] Idem.

[55] Washington Post, 4/29/92; Los Angeles Times, 2/24/92 and 2/25/92.

[56] Los Angeles Times, 2/25/92.

CHRONOLOGY ON IRAQGATE

1982–90: Despite evidence that Iraq is still supporting terrorism, Baghdad is removed from the terrorist list, a critical decision allowing it to receive billions in U.S. aid and the advanced equipment that Iraq later uses for its nuclear program.[1]

Iraq assists the June 1982 terrorist attack on the Israeli Ambassador in London, setting off the Lebanon war.

In October 1985, Saddam Hussein helps Abu Abbas escape after the Achille Lauro hijacking and murder of American Leon Klinghoffer.

Israel stops a May 1990 Iraqi-backed Palestinian attack off its coast.

By early 1990, Rand Corporation estimates, 1,400 terrorists operating out or Iraq.[2]

U.S. approves $96 million worth of computer exports to front companies for every known nuclear, chemical and missile site in Iraq.[3]

Only after Iraq's invasion of Kuwait does the Administration "determine" that Iraq is again supporting terrorism.[4]

1984–90: As Vice President, Bush twice successfully lobbies Export-Import Bank chairmen to override bank economists and approve nearly $700 million loan guarantees to Iraq.[5] After Bush became President, senior officials in his Administration lobby the Export-Import Bank and USDA to finance billions in new Iraqi projects.[6]

1985–89: As early as 1985, the Defense fears Iraq is diverting technology to its nuclear program.[7] By April 1989, the CIA details Iraqi efforts to obtain nuclear weapons technology from European companies.[8] All told, Saddam Hussein spends $10–20 billion on nuclear weapons and missile technology in the 1980s.[9] A December 1990 memo to Secretary of State Baker admits that: "No one was paying attention to the need to block NCW [nonconventional weapons, or weapons of mass destruction]."[10]

1985–90: Some 410 licenses for $1.5 billion worth of goods with potential nuclear applications are approved by the Reagan and Bush Administrations between 1985–90; 116 are disapproved.[11]

U.N. inspectors examining Iraqi nuclear-weapons facilities find that U.S.-built systems have been reconfigured to help Iraq enrich uranium for nuclear weapons, as the manufacturer had warned in 1988.[12]

American machine tools may be used to build Scud missiles that hit Tel Aviv and kill U.S. troops in Saudi Arabia.[13]

U.S. radar parts may have helped shoot down U.S. aircraft.[14]

1986 Despite the Reagan Administration's official policy of neutrality in the Iran-Iraq war, then-Vice President George Bush relays important, strategic military advice about Iran to Hussein.[15]

1988: State Department official writes: "Even though it was removed from the terrorism list six years ago, [Iraq] had provided sanctuary to known terrorists, including Abu Abbas of Achille Lauro fame."[16]

March 1988: Saddam Hussein uses chemical weapons against Kurdish town of Halabja.

1988: After Iran-Iraq War ends, Saddam Hussein launches further chemical weapons attacks on the Kurds. The Reagan-Bush Administration opposes Senate efforts to impose sanctions on Iraq.

1989: Overriding Defense Department objections, the State Department recommends allowing Hussein to obtain sophisticated equipment to protect his personal airplane and three presidential aircraft.[17]

1989–90: Despite increased warnings inside the Administration that U.S. policy toward Iraq is misdirected, Bush's tilt toward Saddam Hussein continues after the Iran-Iraq war ended. Instead of merely keeping Hussein afloat as a counterweight to Iran, Bush's aid program helps the dictator become a dangerous military power in his own right, able to threaten the very U.S. interests that the program originally was designed to protect.[18]

1989–90: Despite a 1989 Defense Department discovery that an Iraqi front company in Cleveland, Ohio is funnelling millions of dollars of U.S. technology to Iraq's nuclear weapons and ballistic missile programs, the Administration allows it to continue operating for more than a year until after Iraq invades Kuwait.[19] and an Alabama firm is allowed to continue building an important part of Iraq's main nuclear weapons complex.[20]

March 1989: Baker is warned by State Department officials that Iraq is "working hard" on chemical and biological weapons and that terrorists are still operating from Iraq.[21]

April 89: Administration official reports: "Recent evidence indicates that Iraq has a major effort under way to produce nuclear weapons."[22]

June 89: Defense Intelligence Agency reports on Iraq's military procurement network.[23]

Sept. 89: One month before Bush orders closer ties to Baghdad, James Baker is warned in a CIA report that Iraq is developing a "nuclear weapons capability." Although the report lists the specific technology sought by the Iraqis—such as high-speed cameras, X-ray machines, and sophisticated computers—the Administration subsequently allows the technology's export anyway.[24]

Oct. 89: Ten months before Iraq invades Kuwait and at a time when international bankers have cut off virtually all loans to Hussein, Bush signs the secret National Security Directive 26, ordering closer ties with Baghdad and opening the way for massive new aid.[25]

Oct. 89: Because USDA officials—worried about Iraq's poor credit record and misuse of the U.S. agricultural loan guarantee program—are blocking additional aid to Baghdad, Baker phones and successfully lobbies Agriculture Secretary Clayton Yeutter to approve the $1 billion in aid anyway.[26]

Nov. 89: The CIA warns that "Baghdad has created [a] complex procurement networks of holding companies in Western Europe to acquire technology for its chemical, biological, nuclear, and ballistic missile development."[27]

Nov. 89: Even though officials know that Iraq is diverting dual-use equipment—advanced equipment that can be used for both military and civilian purposes—to nuclear weapons technology, the State Department recommends against tightening export licenses.[28]

Jan. 90: Despite new evidence that Iraq is testing ballistic missiles and stealing nuclear weapons technology, Bush waives congressional restrictions on Iraq's use of the Export-Import Bank.[29]

Spring 90: Despite evidence that the Iraqis are working on nuclear arms and other weapons of mass destruction, senior Bush aides continue to override other government officials' concerns, allowing Saddam Hussein to continue buying "dual use" technology.[30]

March 90: Iraqi efforts to smuggle nuclear trigers out of Great Britain is discovered.[31]

April 90: As senior Administration officials work to get him more aid, Hussein brags that he has chemical weapons and threatens to "burn half of Israel."[32]

April 90: For months before Iraq invades Kuwait, the White House blocks Commerce Department efforts to stop the flow of U.S. technology to Iraq. Says one senior offical: "The president does not want to single out Iraq."[33]

May 90: Three months before the Iraqi invasion, the Bush Administration shares intelligence information on Iranian troop movements with Iraq.[34] Some speculate this later helps Iraq to learn to shelter its weapons from U.S. surveillance during Operation Desert Storm.[35]

May 90: As a response to Bush's secret October 1990 directive, the Defense Department and Joint Chiefs of Staff continue to plan a joint military training and exchange program with Iraq.[36]

July 90: As late as one month before the Iraqi invasion, Bush Administration officials continue pushing to deliver another installment of agricultural loan guarantees.[37] Additional dual-use high-technology export licenses are granted.[38]

July 90: Less than a week before Iraq invades Kuwait, Bush opposes congressional efforts to impose sanctions on Iraq.

Aug. 90: On August 2 Iraq invades Kuwait.

Jan. 91: At the start of Desert Storm, Bush cites Iraq's potential to develop and deploy nuclear weapons as one reason for launching the air war instead of continuing economic sanctions. In his televised address to the nation, Bush says: "We are determined to knock out Saddam Hussein's nuclear bomb potential."[39]

Jan. 91: Allied air war against Iraq begins.

Feb. 91: Bush ends land assault against Iraq.

1992: United Nations inspectors discover that Saddam Hussein is much closer to building a nuclear bomb than previously thought. Some experts believe that because of U.S. pre-war aid, Iraq will eventually have a nuclear bomb.[40]

1992: In an apparent violation of post-Desert Storm presidential orders banning aid to Iraq, the Administration pays $416 million to a bank partially owned by Iraq and despite evidence that the bank is helping finance a loan to a shipyard owned by Iraq and Libya. Payment is made after Iraq defaults on the loan it owes the bank.[41]

FOOTNOTES

[1] George Bush on CBS Morning News, July 1, 1992.

[2] Bruce Hoffmann, "The Ultimate Fifth Column: Saddam Hussein, International Terrorism, and the Crisis in the Gulf," Rand Corporation, August 1990.

[3] Gary Milhollin, "Building Saddam Hussein's Bomb," New York Times Magazine, March 8, 1992; Gary Milhollin, Licensing Mass Destruction, A Report of the Wisconsin Project on Nuclear Arms Control, 1991.

[4] Congressional Research Service, "U.S. Policy Towards Iraq: 1980–1990," June 26, 1992.

[5] Doug Frantz and Murray Waas, Los Angeles Times, "Saudi Arms Link to Iraq Allowed," April 18, 1992.

[6] Doug Frantz and Murray Waas, Los Angeles Times, "Bush Secret Effort Helped Iraq Build Its War Machine," February 23, 1992.

[7] Doug Frantz and Murray Waas, Los Angeles Times, "U.S. Documents Dispute Bush on A-Arms Policy," July 2, 1992.

[8] Doug Frantz and Murray Waas, Los Angeles Times, " New Documents Show Bush Aides Favored Helping Iraq," September 4, 1992.

[9] Doug Frantz and Murray Waas, Los Angeles Times, "U.S. Knew Firm Was Iraq's Year Before It Was Closed," July 24, 1992.

[10] Richard Clarke's December 1990 memorandum to Secretary of State James Baker.

[11] "U.S. Knew Firm," supra.

[12] "Building Saddam Hussein's Bomb," supra.; Licensing Mass Destruction, supra.

[13] Licensing Mass Destruction, supra.

[14] Licensing Mass Destruction, supra.

[15] Doug Frantz and Murray Waas, Los Angeles Times, "Bush Tied to '86 Bid to Give Iraq Military Advice," May 7, 1992.

[16] Doug Frantz and Murray Waas, Los Angeles Times, "Bush Had Long History of Support for Iraq Aid," February 24, 1992.

[17] July 18, 1989 State Department memorandum.

[18] Ibid.

[19] "U.S. Knew Firm," supra.

[20] Doug Frantz and Murray Waas, Los Angeles Times, "Iraq Used American-Built Plant to Develop A-Arms," August 7, 1992.

[21] March 23, 1989 State Department memorandum to Secretary Baker.

[22] Doug Frantz and Murray Waas, Los Angeles Times, "High-Tech Aid Flowed as Iraq Built Force," June 29, 1992.

[23] Congressional Record, August 10, 1992.

[24] Doug Frantz and Murray Waas, Los Angeles Times, "Iraq Got U.S. Technology After CIA Warned Baker," July 22, 1992.

[25] Ibid.

[26] Doug Frantz and Murray Waas, Los Angeles Times, "U.S. Loans Indirectly Financed Iraq Military," February 25, 1992.

[27] Doug Frantz and Murray Waas, Los Angeles Times, "CIA Told White House of Iraq's Arms Effort," August 6, 1992. November 6, 1989 CIA report.

[28] "CIA Told White House of Iraq's Arms Effort," supra.

[29] "New Documents Show Bush Aides Favored Helping Iraq," supra.

[30] Ibid.

[31] R. Jeffrey Smith, Washington Post, "Pentagon Sought Exchange With Iraq; 3 Months Before Kuwait Invasion, U.S. Pushed Military Training Plan," August 4, 1992.

[32] Ibid.

[33] "Bush Had Long History," supra.

[34] "U.S. Gave Data," supra.

[35] Doug Frantz and Murray Waas, Los Angeles Times, "U.S. Gave Data to Iraq 3 Months Before Invasion: Persian Gulf: Documents Show Intelligence Sharing With Baghdad Lasted Longer Than Previously Indicated," March 10, 1992.

[36] "Pentagon Sought Exchange With Iraq," supra.

[37] "Bush Secret Effort," supra.

[38] Washington Post, March 11, 1991.

[39] "Iraq Got U.S. Technology," supra.

[40] "Building Saddam Hussein's Bomb," supra.

[41] Doug Frantz and Murray Waas, Los Angeles Times, "U.S. Aid to Gulf Bank Criticized," September 25, 1992.

DUAL USE TECHNOLOGY SOLD TO IRAQ

1985–1990 (EXAMPLES)

30% of U.S. non-agricultural exports to Iraqi military-industrial complex (1985–1990).

Powerful computers used for missile testing.

Technology for the Condor II missile.

Parts for the "Super-gun".

Machine tools, lasers and other equipment used for SCUD–B missile enhancement.

Carbide-tipped machine tool factory used for nuclear weapons.

Glass-fiber "shower stall" factory—really nuclear weapons.

Computers for "detergent" factory—really chemical weapons.

17 licenses for bacterial culture exports to Iraqi agencies known to be involved in biological warfare research.

UN Commission: equipment from 11 U.S. companies found in Iraqi missile and chemical plants.

Computers to MIMI, Flight simulators to Sa'ad 16 on eve of invasion.

TYPICAL CUSTOMERS

Ministry of Industry and Military Industrialization (MIMI): run by Saddam's son-in-law, "controlling Iraq's arms production facilities".

Sa'ad 16 missile complex: a "bad end-user" (DOD).

Mr. BOREN. Mr. President, I strongly support ratification of the treaty on the reduction and limitation of strategic offensive arms. The START Treaty is a real advance in arms control, the first treaty to roll back the level of strategic arms. In a world of increasing instability, much of it within the what was once Soviet territory, it is especially important to reduce and control the weapons that could unleash the horrors of a nuclear war.

I want to speak not as a START supporter, however, but rather as chairman of the Select Committee on Intelligence. As a service to the Foreign Relations Committee and the Senate as a whole, the select committee supports the Arms Control Treaty ratification process by providing its assessment of the monitoring and counterintelligence issues raised by each Arms Control Treaty submitted to the Senate for advice and consent to ratification.

On Friday, September 18, we issued both classified and unclassified reports to the Senate on "capability of the United States to monitor compliance with the START Treaty." The unclassified report was sent to each Member of the Senate and was also published in the CONGRESSIONAL RECORD for that day. We have additional copies here today for interested Members or staff.

Members of the Senate were also invited to examine the select committee's more detailed, classified report, and I encourage every Member, Mr. President, to examine that report today. The report is available upstairs in room S–407 of the Capitol; we can also bring a copy to the Vice President's office, if any Member wishes to examine it there.

This report is the culmination of the committee's work over the last 9 years monitoring the progress of START. The committee has routinely reviewed START progress and addressed START monitoring capabilities in its annual intelligence authorization acts, and has expressed its views on verification issues to the negotiators and other senior level officials both formally and informally.

In preparing this report, committee staff held three on-the-record staff

briefings; reviewed several hundred documents, including both a national intelligence estimate on U.S. capabilities to monitor compliance with START provisions and written statements from the Director and Deputy Director of Central Intelligence; and received answers to nearly 200 formal questions for the record. Committee staff also inspected relevant U.S. monitoring operations to gain a firsthand knowledge of how the intelligence community collects, and how its analysts use, information bearing upon other countries' compliance with arms control agreements signed by the United States.

On July 22 and July 29, the committee held closed hearings on the START Treaty, U.S. monitoring capabilities, the risks and implications of violations by the other parties to the treaty, its implementation, and its counterintelligence and security implications. Testimony was taken at these hearings from officials of the State Department, the Arms Control and Disarmament Agency, the Department of Defense—including the onsite inspection agency—the Joint Staff of the U.S. Armed Forces, and the U.S. intelligence community.

The committee's reports address the START's verification provisions, U.S. collection and analytical capabilities, cooperative measures, evasion scenarios, incentives and disincentives to evade compliance, counterintelligence issues, and implementation concerns.

Mr. President, I would now like to summarize very briefly the key unclassified findings from the committee's classified report.

First, the committee concurs in the judgment of the Director of Central Intelligence and other intelligence community officials that,

> While there are some areas that will be problematic, we are confident that we can monitor most aspects of the treaty well.

Members of the Senate should understand, however, that U.S. intelligence will have less than high confidence in its monitoring of such areas as nondeployed mobile ICBM's, the number of RVS actually carried by some ICBM's and SLBM's, and some provisions relating to cruise missiles and the heavy bombers that carry them.

Second, the START Treaty is not perfectly monitorable. There are both residual uncertainties regarding SOVIET/CIS data on nondeployed missiles and also cheating scenarios—which may be difficult to implement and offer only small advantages to the perpetrator, but do appear feasible if CIS or Russian forces and the industrial facilities that support them were sufficiently determined.

Third, economic decline and reform in the former Soviet Union have combined with the rise of new States there, however, to make major arms development programs increasingly difficult to pursue. It appears unlikely, moreover, that even an aggressive, nationalistic regime in Russia could restore the old order to the degree necessary to significantly increase the prospects for successful cheating on the scale necessary to affect the strategic balance.

Fourth, the decreased threat posed by the U.S.S.R.'s successor States is critical to the committee's general confidence in United States START monitoring capabilities. Were the Soviet Union still the united, aggressive and militarily effective force that it often was in the past, then the current and future limitations of United States monitoring capabilities and the existence of plausible cheating scenarios would prompt much more concern.

Fifth, the committee considers Russian compliance with existing arms control agreements and with measures to guard against the export of sensitive nuclear and missile materials and technology to be important indicators of that country's reliability as an arms control partner. The committee is deeply concerned, therefore, over recent reports regarding Russia's Biological Weapons Program and its implementation of the CFE Treaty. The recent joint United States-British-Russian statement regarding exchanges of information and visits to biological sites, including nonmilitary sites in Russia, is a positive development.

Sixth, due to frictions between some parties to START and to the current state of political and economic flux in the former Soviet Union, the committee considers it likely that some problems will occur in implementing the treaty. The problems most likely to arise would result not from cheating schemes, but from economic or political difficulties within or among the former Soviet parties to the treaty.

Seventh, in the longer run, compliance with START could help to mitigate the prospects for strife among the larger States that have succeeded the Soviet Union. START also provides an arena in which the four Soviet successor States can cooperate with each other and with the United States.

Eighth, the executive branch was hopeful that an agreement among the former Soviet Republics regarding START implementation could be reached likely before the Senate acts on the treaty. The committee urges the Acting Secretary of State to give this matter his personal attention and to impress upon the other parties to start the high priority that the Senate and the U.S. Government as a whole put upon achieving agreement regarding implementation of the START Treaty, the Lisbon protocol and its associated letters.

Ninth, the intelligence community played a significant role in all stages of the START negotiations, probably a greater role than it has in any prior arms treaty negotiation. Intelligence community personnel helped develop the verification measures included in the treaty—including the provisions regarding telemetry from ballistic missile flight-tests.

Tenth, U.S. monitoring of START compliance will be aided substantially by the treaty's verification provisions, especially those regarding telemetry and technical characteristics exhibitions. Important improvements are planned in some relevant intelligence programs, while declining budgets will cause difficulties in others. The committee's fiscal year 1993 intelligence budget authorization actions reflect its concern that U.S. intelligence capabilities remain fully capable of monitoring compliance with START and other arms control treaties.

Eleventh, the Intelligence Committees agrees with the Director of Central Intelligence that cheating scenarios involving the possible covert production and deployment of Mobile ICBM's and other launchers are particularly worrisome. The committee believes that the possible existence of covert, nondeployed mobile missiles must remain an important U.S. intelligence target.

Twelfth, the text of a few START provisions could lead to compliance disputes. Problems with treaty language interpretation are not unique to START, however, and the committee believes that there are no START Treaty text problems that are so serious as to require immediate adjustment.

Thirteenth, the onsite inspection agency is well prepared to implement onsite inspection in the former Soviet Union and escorting of other parties' inspectors in the United States, due to its experience with other arms control treaties and the long time that it has had to locate and train personnel.

Fourteenth, Defense Department and other relevant officials are taking steps to meet the need to guard against Russian or other parties' use of START inspection rights as a cover for illegal intelligence activity. The Committee has been assured that the administration will prepare internal procedures for dealing with special access visits that "will explicitly consider proprietary interests as well as security in our deliberations on requests for special access visits."

Fifteenth, further policy guidance may be necessary to ensure that defense contractor and U.S. Government facilities do not take unnecessary and costly security measures because of the potential for special access visits.

Sixteenth, the committee reserves judgment on the question of whether the overall START verification regime will prove sufficient to monitor Russian compliance with the limits of a new treaty drafted pursuant to the Bush-Yeltsin joint understanding of June 17, 1992. Once the new treaty is

signed and submitted for advice and consent to ratification, the Senate will have to judge it on its own merits.

Mr. MITCHELL addressed the Chair.

The PRESIDING OFFICER. The majority leader is recognized.

UNANIMOUS-CONSENT AGREEMENT

Mr. MITCHELL. Mr. President, I ask unanimous consent that during the remainder of today's session, the following be the only amendment in order, if timely filed and germane, and limited to the following time limitation to be offered to either the treaty or protocol: An amendment by Senator WALLOP numbered 3270, 1 hour, equally divided.

I further ask unanimous consent that when the Senate resumes executive session tomorrow, Wednesday, September 30, at 9 a.m., a vote occur on or in relation to the Wallop amendment No. 3270, without any intervening action or debate; and that following the disposition of the Wallop amendment No. 3270, the treaties be advanced to their various parliamentary stages, up to and including the presentation of the resolution of ratification; and that the committee reported amendment be considered agreed to and treated as original text for the purpose of further amendments, and the following amendments be the only amendments in order, if timely filed and germane, and subject to the following time limitations:

An amendment by Senator PRESSLER, No. 3227, 20 minutes equally divided; an amendment by Senator WALLOP, No. 3283, 30 minutes equally divided; an amendment by Senator WARNER, No. 3243, 20 minutes equally divided; an amendment by Senator WARNER, No. 3240, 1 hour equally divided; further, I ask unanimous consent that a vote occur without any intervening action or debate on the resolution of ratification, as amended, at 9:30 a.m., on Thursday, October 1, 1992. I also ask unanimous consent that prior to the disposition of the final amendment to the resolution of ratification, the Senate resume legislative business only for consideration of routine morning business and legislative items that have been cleared by the two leaders, and that upon disposition of the final amendment to the resolution of ratification, all provisions of rule XXII cease to be in effect.

Mr. WARNER. Mr. President, reserving the right to object, Mr. President, I direct the leader's and other Senators' attention to amendment 3240, on which the Senator from Virginia now has agreed to a lesser time, namely 1 hour, equally divided. It would be my intention, at the appropriate time, Mr. President, to ask unanimous consent that that amendment be amended in such a fashion as I hope it will be acceptable by the administration and, therefore, eventually by the managers of the treaty. So that is the reason I wish to alert Senators that I have agreed to a lesser period of time. I thank the leader.

The PRESIDING OFFICER. Is there objection?

Mr. SPECTER. Reserving the right to object, and I do not think I shall. I want to be certain that the final ratification vote, as I understood the distinguished majority leader, was 9:30 on Thursday.

Mr. MITCHELL. That is correct.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. MITCHELL. Mr. President, if I could explain the effect of this and the situation with respect to votes. Under this agreement, Senator WALLOP will now offer amendment No. 3270, which will be debated this evening, and the vote on that will occur at 9 a.m. That will complete action on amendments to the treaty or protocol. We would then proceed to the consideration of the resolution of ratification, and under this agreement, only four amendments are in order to that. I am advised by the managers that two of them will be accepted; that is, the Pressler amendment, No. 3227, so that will not require a recorded vote; and the Warner amendment, No. 3243, which will not require a recorded vote.

The remaining two amendments, Senator WALLOP's No. 3283, 30 minutes equally divided, will require a vote, if offered; and the Warner amendment, No. 3240, 1 hour equally divided, all in its current form, require a recorded vote.

The Senator knows, as we discussed, that he does not have the right to modify it tomorrow. But he has given notice that he intends to do so, I take it.

Mr. WARNER. That is correct. If that is the case, in all probability, it will be accepted by the managers, and it would negate the necessity for a recorded vote on the 3240.

Mr. MITCHELL. Right, Furthermore, I have discussed this with Senator WARNER, and he has indicated that in whatever form the amendment is offered, whether a vote or not, he will be present at 9:30 tomorrow morning to offer that amendment. Therefore, if it does require a debate and vote, the vote on that is likely to occur around 10:45, I would say, or somewhere in that range, depending upon the length of time consumed in the debate.

Mr. WARNER. Mr. President, that is the agreement I indicated to the majority leader and the Republican leader, and it is acceptable to the Senator from Virginia.

Mr. MOYNIHAN. May I ask of the majority leader, there will be time for just general statements about the treaty tomorrow, will there not?

Mr. MITCHELL. Yes, there will be, and there will be unlimited time this evening, as well.

Mr. MITCHELL. Mr. President, I suggest the absence of a quorum, so that I can review this agreement.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MITCHELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

LEGISLATIVE SESSION

TAX ENTERPRISE ZONES ACT

The PRESIDING OFFICER. Under the previous order, the Senate will return to legislative session and the clerk will report the bill, H.R. 11.

The assistant legislative clerk read as follows:

A bill (H.R. 11) to amend the Internal Revenue Code of 1986 to provide tax incentives for the establishment of tax enterprise zones, and for other purposes.

The Senate resumed consideration of the bill.

The PRESIDING OFFICER. The majority is recognized.

UNANIMOUS-CONSENT AGREEMENT

Mr. MITCHELL. Mr. President, I now ask unanimous consent that notwithstanding the previous order and third reading of the bill, H.R. 11, that it now be in order for Senator BENTSEN to be recognized to offer a first degree amendment containing the text of S. 3274, as introduced, with a second degree Dole amendment in order to the Bentsen amendment; that no other amendments be in order; that the Senate proceed to vote immediately on the Dole amendment followed immediately by a vote on the Bentsen amendment, as amended, with all of the above occurring without intervening action or debate.

The PRESIDING OFFICER. The Senator from Ohio is recognized.

Mr. METZENBAUM. Mr. President, reserving the right to object, I have no intention of objecting. This amendment is going forward. It is somewhat controversial. I have had extensive discussions with the Senator from Texas [Mr. BENTSEN] and the Senator from New York [Mr. MOYNIHAN].

We have received assurances that if we cannot get the matter rectified in the conference the matter in issue would be disposed of and dropped. Under those circumstances, I have no objection. But I do have serious concerns about the language as presently written.

Mr. BENTSEN. Mr. President, the amendment that Senator PACKWOOD and I have sent to the desk is an amendment that addresses critical funding issues in Medicare and Medic-

aid that must be resolved before the end of the year. This amendment contains the same provisions as the Medicare and Medicaid Amendments Act bill we introduced last Friday. Some of the amendment's most critical provisions extend expiring provisions of law for enhanced Medicare payment to small rural Medicare dependent hospitals, regional referral centers, and payment for hemophilia clotting factor for Medicare hospital inpatients. Authorization for the rural health transition grants and other expiring programs would be extended. Failure to enact these provisions before the end of the session will result in sharply reduced Medicare funding for those health care providers least able to weather such financial hardships.

In addition to critical funding issues, this amendment includes a limited number of time-sensitive and high priority issues, such as repealing the prohibition on separate payment for electrocardiograms [EKG's]; reinstating equal payments for new physicians and other practitioners; phasing in expanded coverage for immunosuppressive drugs for transplant patients; broadening coverage for nurse practitioners and physicians' assistants, and tightening fraud and abuse provisions for durable medical equipment. The amendment also includes provisions to enable States to provide comprehensive substance abuse treatment to pregnant women; to permit States to provide Medicaid coverage to more foster children, and to enhance access to childhood immunization services.

Funding the funding necessary to offset spending for critical provisions is a difficult, but necessary task. We are convinced that the savings provisions in this amendment are reasonable. We looked very carefully to find targeted savings without jeopardizing the quality of the care provided to Medicare beneficiaries. The Congressional Budget Office estimates that this amendment complies fully with the pay as you go Budget Act requirements, and that it would not increase the deficit over the 5-year budget window as a whole, nor in any individual year.

For my colleagues who may be concerned about taking up an amendment of this size in the late days of the session, I would like to note that almost half the pages consist of the provisions of S. 3120, the Medicaid Technical Corrections and Clarification Act, which Senator PACKWOOD and I introduced on August 3, 1992. These provisions were included here in order to simplify the legislative drafting of cross-references to the Medicaid statute included in the rest of the bill.

Because so little time remains and it is critical that these provisions be enacted before the end of the session, I urge your support of this important amendment.

Mr. METZENBAUM. Mr. President, on Saturday, the chairman sought unanimous consent to include an amendment to the pending tax bill to make certain changes in Medicare and Medicaid. As I stated at that time, I had great reservations about adopting a 200-page amendment that I had not had an opportunity to review. Since that time, I have reviewed the amendment. I believe the amendment contains a number of important provisions, particularly the provisions protecting Medicare beneficiaries from being charged more than the Medicare limits. But, I also am troubled by certain provisions expanding the use of managed care waivers by the States.

Mr. BENTSEN. I know that my colleague is concerned about a few of the provisions in the amendment. It is my understanding that our staffs have been working together to address the Senator's concerns. Our staffs, along with the staff of Senator MOYNIHAN, have made great progress and I believe that the concerns of the Senator from Ohio can be addressed in conference. I believe that Senator MOYNIHAN shares in that view as well.

Mr. MOYNIHAN. Yes, that is correct.

Mr. METZENBAUM. I thank both of my colleagues for their support and willingness to address these issues. I would like to make sure that the Senator from New York and myself are in agreement that the following changes need to be made in the managed care provisions of the amendment.

As I understand it, the provisions will be changed to ensure that extensions of the 75–25 waiver will only be available to nonprofit HMO's. When a plan seeks renewal of a 75–25 waiver, the Secretary will review the application to ensure that the plan meets quality access and solvency standards, as defined by regulations to be promulgated by the Secretary; all plans must have an adequate grievance process for its enrollees; the Secretary will be required to document the basis upon which a waiver is granted or renewed; requests for waivers from the 75–25 provision must be renewed every 3 years.

Mr. MOYNIHAN. I support the changes that the Senator from Ohio is seeking. As the Senator may know, I introduced legislation that contained many of these same standards. I believe that Medicaid beneficiaries are entitled to the strongest health protections feasible.

Mr. METZENBAUM. I thank both of my colleagues for their willingness to work with me on these issues. It is my understanding that these changes will reflect the Senate's position and that the House will be supportive of these changes. If for any reason these changes are not adopted in conference, I would like the assurance of my colleagues that the Senate will insist that the managed care provisions be dropped.

Mr. BENTSEN. I share the Senator's concern that these provisions be strengthened to adequately protect Medicaid beneficiaries. And he has my assurance that I will use my best efforts to make the changes requested in conference or he has to have the provisions dropped.

Mr. MOYNIHAN. I echo the chairman's commitment.

Mr. METZENBAUM. I thank my colleagues for their support on this issue.

MEDICARE AND MEDICAID AMENDMENT

Mr. PACKWOOD. Mr. President, last Friday, September 25, 1992; the chairman of the Finance Committee, this Senator, and others, introduced a bill to address much needed changes in the Medicare and Medicaid Programs. In order to get those important changes made, we are offering this amendment which is exactly the same as that bill.

My remarks on S. 3274, the Medicare and Medicaid Amendments Act of 1992, were included in the RECORD for September 25, 1992, so I will be brief today.

First, I want to emphasize the importance of passing the provisions in this amendment before we adjourn. Many of the provisions are time sensitive and need action now.

Second, I would remind my colleagues that there are a number of key provisions in the amendment that are important to maintaining access to quality health care in rural America. Several of those provisions are especially important to Oregon.

Finally, let me complement the chairman of the committee, and especially the members of the Finance Committee. They have worked hard together to get this amendment before the Senate.

Mr. MITCHELL. Mr. President, I now ask for yeas and nays on the final passage of H.R. 11.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. MITCHELL. Mr. President, if I might now explain to Senator the current situation, I am advised that the amendment in the first degree by Senator BENTSEN and in the second degree by Senator DOLE will be accepted without the necessity for a recorded vote. Immediately following that, there will then be a recorded vote on H.R. 11. That will be the final rollcall vote of the evening.

Thereafter, the Senate will return to executive session at which time Senator WALLOP will offer his amendment No. 3270 to be debated under the previous order and the vote on this amendment will occur at 9 a.m. tomorrow morning.

I thank our colleagues.

Mr. DOLE. Mr. President, after this amendment I will attempt to get unanimous consent to offer a second amendment. It will be objected to.

Mr. MITCHELL. That is right after this amendment and prior to the vote,

Senator DOLE be recognized to make the unanimous-consent request regarding this bill.

AMENDMENT NO. 3318

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Texas [Mr. BENTSEN] proposes an amendment numbered 3318.

(The text of the amendment is printed in today's RECORD under "Amendments Submitted.")

Mr. ROCKEFELLER. I rise in support of Chairman BENTSEN's Medicare and Medicaid amendment to H.R. 11. I am hopeful that its provisions will make their way to enactment. While any description of the substance in this amendment requires some use of the unique, often murky jargon of health care programs, let me emphasize that this amendment's meaning to the people of this country—to families, to children, and to the elderly—could not be clearer. Each individual aspect of the Medicare and Medicaid Programs can make a fundamental difference in the lives of people we represent. That's why I intend to push hard to turn this amendment, with its many improvements in these programs, into law as soon as possible.

This legislation incorporates a number of vital provisions that I am proud to have sponsored and fought for over the past 2 years. Each of them is the result of careful study, and an attempt to respond to the needs of people who deserve the best possible health care.

To be specific, this package contains provisions that will:

Allow Medicare beneficiaries to take oral cancer chemotherapy drugs in their homes rather than traveling—sometimes long distances—to the hospital or their doctor's office to receive IV treatment; and take other steps to respond to the needs of cancer patients.

Ensure Federal relief for hard-pressed, small rural hospitals;

Allow critical research on Alzheimer's disease to continue in West Virginia and throughout the country;

Restore separate Medicare payments to physicians for EKG's and eliminate reductions in payments to new physicians;

Enhance the States' ability to provide the frail elderly with home and community based care.

Expand Medicare and Medicaid reimbursement for nurse midwives' services, such as gynecological checkups, PAP smears, family planning and well baby care; and

Exempt the Veterans' Administration from Medicaid's best price calculations so that it wil be able to negotiate deeper discounts on the drugs it purchases.

And that is just the short list of items that I have personally worked on which are included in this detailed package. I commend the chairman for the inclusion of these very important health policy advances.

There are other components of this bill that constitute important improvements in our health care delivery system and I'd just like to highlight a few for you—improvements that will give States the option to extend health care to all foster children; funding for special outreach demonstration projects to improve immunization rates for children enrolled in the EPSDT Program. Another demonstration program in the bill will allow 5 to 10 States to provide counseling and assistance to seniors who would probably qualify as qualified Medicare beneficiaries [QMB's]. These are small initiatives that should reap tremendous public health benefits.

As in any piece of legislation, there are some things that I would like to see improved or reworked—items that should be more properly considered, but the day is late and time is short. Let me just note that we will undoubtedly have to revisit some of these provisions in the future.

The future also holds the promise of real, comprehensive health care reform that will provide a critical new context for all our health care policy decisions. I anxiously await that new day of reform and in the interim congratulate those who have worked so hard on these significant incremental steps to respond to immediate needs of deserving Americans, in my own state of West Virginia and nationwide.

AMENDMENT NO. 3319

(Purpose: To provide that certain graduate medical education resident amounts will not be paid until fiscal year 1994 and to provide for a demonstration project to study the effect of providing outreach, assessment, and referral services through medicaid to mentally ill homeless individuals.)

Mr. DOLE. Mr. President, I send a second-degree amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Kansas [Mr. DOLE], for himself, Mr. DANFORTH, and Mr. BOND, proposes an amendment numbered 3319 to amendment No. 3318.

Mr. DOLE. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

In section 137, amend subsection (b) to read as follows:

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to cost reporting periods beginning on or after October 1, 1990, except that for cost reporting periods beginning on or before September 30, 1992, payments required by the amendments made by subsection (a) shall not be made prior to October 1, 1993.

After section 286, insert the following new section:

SEC. 287. DEMONSTRATION PROJECT TO STUDY THE EFFECT OF PROVIDING OUTREACH, ASSESSMENT, AND REFERRAL SERVICES THROUGH MEDICAID TO MENTALLY ILL HOMELESS INDIVIDUALS.

(a) ESTABLISHMENT.—Pursuant to section 1115 of the Social Security Act, the Secretary of Health and Human Services (referred to in this section as the "Secretary") shall provide for demonstration projects to be conducted in no fewer than 1 and no more than 2 States for providing outreach, assessment, and referral services to homeless mentally ill individuals in order to determine the extent to which—

(1) aggressive and repeated efforts to engage such individuals is effective in achieving stable housing arrangements, improving mental health status, and improving overall health status, including the prevention of communicable diseases such as tuberculosis, and

(2) providing a program under title XIX of the Social Security Act for such individuals is an appropriate method for increasing access to medical and social services for such individuals.

(b) REQUIREMENTS ON PROJECTS.—

(1) LOCATION.—Each State conducting a demonstration project under this section shall conduct such project in at least one metropolitan statistical area (as determined by the Bureau of the Census) with a population greater than 1,000,000.

(2) MOBILE OUTREACH TEAMS.—The State shall develop and implement mobile outreach teams to be located within each metropolitan statistical area in which the demonstration project is conducted to—

(A) identify individuals, without regard to whether such individuals are eligible for benefits under title XIX of the Social Security Act, who the mobile outreach teams have reasonable cause to believe may be suffering from a severe mental disorder and who appear to have no permanent residence; and

(B) offer such individuals services, either by providing transport to an assessment-referral center (as described in paragraph (3)) or by providing appropriate assistance to such individuals on site.

If an individual identified under subparagraph (A) refuses such services or assistance from the mobile outreach team and such team has reasonable cause to believe that such individual meets the criteria for involuntary commitment, the team shall provide information on the individual to the appropriate authorities recognized under the State's civil commitment laws.

(3) ASSESSMENT-REFERRAL CENTERS.—The State shall designate assessment-referral centers to be located in each metropolitan statistical area in which the demonstration project is conducted to make available to the individuals identified under paragraph (2)(A)—

(A) services for a period not to exceed 30 days, including—

(i) basic necessities, including clothing, personal hygiene needs, food, blankets, and access to bathing facilities;

(ii) temporary room and board, and referral to appropriate transitional or permanent housing;

(iii) screening and treatment for medical conditions (other than psychiatric conditions), including screening and treatment for tuberculosis, if necessary;

(iv) psychiatric assessments, including assessments regarding alcoholism and drug abuse;

(v) mental health case management services (as defined in section 1915(g)(2) of the Social Security Act);

(vi) emergency psychiatric intervention, if necessary;

(vii) assistance in applying for Federal, State, and local entitlements; and

(viii) referral to other needed services, including employment and job-training services, available in the community;

(B) an individualized treatment plan, developed in cooperation with the individual, for the provision of any necessary mental health services for which payment may be made under the State plan under title XIX of the Social Security Act; and

(C) at the option of the State, any other mental health services for which Federal financial participation is available under title XIX of the Social Security Act, whether or not the service is covered under the State plan.

(4) PRESUMPTIVE ELIGIBILITY PERIOD.—The State may, during a presumptive eligibility period, provide for making available psychiatric and medical services for which payment may be made under the State plan under title XIX of the Social Security Act to individuals described in paragraph (2)(A) through individualized treatment plans.

(c) APPLICATIONS.—

(1) SUBMISSION.—Not later than February 1, 1993, each State desiring to conduct a demonstration project under this section shall prepare and submit to the Secretary an application, in such manner and containing such information as the Secretary may require.

(2) APPROVAL OF APPLICATIONS.—

(A) IN GENERAL.—Not later than June 1, 1993, the Secretary shall approve no fewer than 1 and no more than 2 of the applications submitted under paragraph (1).

(B) CONSIDERATION OF APPLICATIONS.—In considering the applications submitted by States under paragraph (1), the Secretary shall give a preference to States that have—

(i) linkage and access within the State to a metropolitan service-research project for homeless mentally ill people which can provide, for comparative evaluation purposes, experimentally designed research data on the outcomes of providing an outreach and case management program to homeless individuals,

(ii) a structure under which mental health services and substance abuse services are administered in an integrated or coordinated manner,

(iii) mental health and substance abuse rehabilitation services covered under the State medicaid plan, and

(iv) the ability to provide the services listed in subsection (b)(3) beginning no later than October 1, 1993.

(d) DEFINITIONS.—For purposes of this section:

(1) MOBILE OUTREACH TEAM.—The term "mobile outreach team" means a group of individuals designated by the State whose duty it is to seek out homeless persons who are mentally ill and offer them assistance and access to health, mental health, and social services. Such a team shall be comprised of 2 or more people with appropriate training or experience and at least one of whom shall be a qualified mental health professional.

(2) ASSESSMENT-REFERRAL CENTER.—The term "assessment-referral center" means any facility designated by the State which can provide directly, or by direct arrangement with other public or private agencies, the services listed in subsection (b)(3) except that no correctional institution or facility, shall be considered an assessment-referral center for purposes of this paragraph.

(3) SEVERE MENTAL DISORDER.—The term "severe mental disorder" means an illness, disease, organic brain disorder, or other condition which—

(A) substantially impairs an individual's thought, perception of reality, emotional process, or judgment; or

(B) substantially impairs behavior as manifested by recent disturbed behavior, (except that mental retardation, epilepsy, or other developmental disabilities do not, in themselves, constitute a severe mental disorder for purposes of this paragraph).

(4) INDIVIDUALIZED TREATMENT PLAN.—The term "individualized treatment plan" means a plan for an individual brought to an assessment-referral center which shall describe what medical or psychiatric treatment, if any, the individual will receive after leaving the assessment-referral center, as well as any referrals or other services deemed appropriate.

(5) PRESUMPTIVE ELIGIBILITY PERIOD.—The term "presumptive eligibility period" means the period that—

(A) begins with the date—

(i) after which an individualized treatment plan has been developed, and

(ii) on which a qualified provider determines, on the basis of preliminary information, that the individual is otherwise eligible under the State plan under title XIX of the Social Security Act, and

(B) ends with (and includes) the earlier of—

(i) the day on which determination is made with respect to eligibility of the individual for medical assistance under such State plan, or

(ii) the day that is 60 days after the date on which the provider makes the determination referred to in subparagraph (A)(ii).

(e) LIMIT ON FEDERAL SHARE OF EXPENDITURES AND FUNDING.—

(1) LIMIT ON FEDERAL SHARE OF EXPENDITURES.—In conducting the demonstration projects under this section, the Secretary shall limit the total amount of the Federal share of expenses incurred under title XIX of the Social Security Act to no more than $24,000,000.

(2) FEDERAL FUNDING.—The Secretary shall pay to each State conducting a demonstration project under this section for each quarter (beginning on or after October 1, 1993) in which such project is conducted an amount determined in accordance with section 1903(a) of the Social Security Act except that no percentage applied to any category of expenditures incurred by the State in any such quarter shall be less than the State's Federal medical assistance percentage (as defined in section 1905(b) of such Act).

(f) DURATION.—A demonstration project under this section shall be conducted for a period of no more than 5 years plus an additional period of up to 6 months for final evaluation and reporting. The Secretary may terminate a project if the Secretary determines that the State conducting the project is not in substantial compliance with the terms of the application approved by the Secretary under this section.

(g) REPORTS.—Each State conducting a demonstration project shall arrange for an independent evaluation of such project and shall transmit a report on the results of such evaluation to the Secretary not more than 6 months after the conclusion of the project. Such report shall—

(1) evaluate the extent to which the project was successful in assisting homeless mentally ill individuals to—

(A) obtain needed temporary housing as an immediate alternative to homelessness,

(B) obtain mental health treatment and services,

(C) obtain needed substance abuse treatment and services,

(D) obtain and maintain stable, permanent housing,

(E) improve mental health status,

(F) reduce chemical dependency, and

(G) improve health status, including prevention of communicable diseases, and

(2) evaluate the effectiveness and adequacy of title XIX of the Social Security Act for providing access to needed health, mental health, and social services to homeless individuals.

(h) PROVISIONS SUBJECT TO WAIVER.—The Secretary may waive such requirements of the Social Security Act as the Secretary determines to be necessary to carry out the purposes of this section.

MENTALLY ILL HOMELESS STATEMENT

Mr. DANFORTH. Mr. President, the weather is starting to get colder. I cannot bear the thought of reading in the newspaper this winter that a certain homeless man, known to be suffering from a severe mental illness, has frozen to death. The provision I have sought to include in the Medicare and Medicaid Amendments of 1992, which Senator DOLE offered on my behalf, takes a small step to reach out to those with mental illnesses who are living out in the streets.

The Federal Task Force on Homelessness and Severe Mental Illness in a recent report entitled "Outcasts on Main Street" estimates that on any given night, up to 600,000 Americans are literally homeless. Of the homeless, at least one-third suffer from severe mental illnesses. This very vulnerable population is one of the most ill-served and visible groups in our country. Many of them also suffer from substance abuse, physical illness, and other problems.

Senator MOYNIHAN and I introduced a bill, S. 62, to address this problem on the first day of this Congress. We held a very positive hearing on this initiative in the Senate Finance Committee last year. What we learned at the hearing, among other things, is that the mentally ill who are homeless have very few people looking after their welfare. We heard compelling testimony from Lionel Aldridge, a former pro football player for the Green Bay Packers who became homeless after he developed schizophrenia. Had there been extensive outreach services available at the time, he probably would not have spent several years living on the streets.

My proposal today is more limited in scope than the original legislation, which mandated that States cover outreach and assessment services in their Medicaid Program. The provision included in this legislation would create a Medicaid demonstration project in one or two States to provide: First, mobile outreach teams for the homeless mentally ill; second, assessment-

referral centers, or safe havens, for those needing help to stay for up to 30 days to get food, shelter, a bath, clean clothes, medical treatment, psychiatric evaluation and treatment, assistance in applying for benefits, and most importantly: an individual long-term treatment plan; and finally, a presumptive eligibility period, of no longer than 60 days, when that treatment plan can begin to be implemented whether or not a Medicaid eligibility determination has yet been made.

Many of the mentally ill that we see on the streets are eligible for Medicaid, as well as other Federal, State, and local assistance, but have just not been able to gain access to help. Many lack the capacity to know that they need help. The Federal Task Force on Homelessness and Severe Mental Illness reported earlier this year in "Outcasts on Main Street" that the homeless mentally ill need to be helped through a comprehensive program. This task force, convened by Secretary Kemp of the Department of Housing and Urban Development and Secretary Sullivan of the Department of Health and Human Services, has recommended an approach nearly identical to that contained in the Medicaid provision I have sought to include in this package. The task force recommends an integrated program which would provide outreach, safe havens, and access to existing programs and recommends making Federal funds available to encourage such programs.

A 1986 study by the National Institute of Mental Health found that up to 56 percent of the shelter and street population in St. Louis is mentally ill. In response to this crisis, in the spring of 1987 my State of Missouri developed a national model for engaging the mentally ill homeless through outreach and case management. I have worked closely with the State of Missouri in developing the proposal which I have sought to include in the Medicare and Medicaid amendments of 1992 and I have confidence that it is a sound approach that should be tested with Federal support.

Mr. President, it has been said that our goodness is measured in how we treat the most frail and vulnerable among us. Clearly the mentally ill living on the streets deserve our attention and our help. The proposal before us today is a good proposal and I look forward to its enactment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3319) was agreed to.

Mr. DOLE. Mr. President, I move to reconsider the vote.

Mr. BENTSEN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Republican leader.

Mr. DOLE. Mr. President, I now ask unanimous consent that title II of the energy bill entitled "Energy Revenue Provisions" be in order and be accepted.

Mr. METZENBAUM. I object.

The PRESIDING OFFICER. Objection is heard.

ENERGY BILL TAX TITLE

Mr. DOLE. Mr. President, this amendment contains provisions identical to those passed by the Senate on July 30 by a vote of 93 to 3. The provisions constituted the tax title to the energy bill, H.R. 776.

This amendment is not intended to reflect any view of the Senate with respect to the possible success of conferees to H.R. 776 to reach agreement. Rather, it recognizes the importance of the revenue provisions the Senate included with the energy bill as well as the short period of time remaining before the Congress is scheduled to adjourn for the year.

Mr. President, I would like to inform my colleagues that this amendment is supported by the chairman and ranking Republican member of the Senate Energy Committee, who have been working long, arduous hours to reach agreement on the other provisions of the energy bill.

The provisions of this amendment include employer provided transportation benefits, incentives for clean fuel vehicles, credit for electricity produced from renewable resources, the repeal of the alternate minimum tax for depletion and intangible drilling costs for independent producers and royalty owners, a permanent investment credit for solar, geothermal and ocean property, proportionality for alcohol fuels and the tax exempt financing for environmental enhancements of hydroelectric generating facilities.

This list reflects the sound, balanced approach taken by the Senate during consideration of the energy bill, as was indicated by the 93-to-3 vote for that bill. We should not let these provisions become hostage to other matters.

Mr. President, the adoption of this amendment will place the Senate squarely in favor of a national energy policy balanced between all fuel sources whether renewable or not, and balanced between environmental protection and national energy security.

Mr. President, I ask unanimous consent that the title XX, revenue provisions, be printed in the RECORD.

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

At the end of the Committee Amendment, insert:

TITLE XX—ENERGY REVENUE PROVISIONS

SEC. 20101. AMENDMENT OF 1986 CODE.

Except as otherwise expressly provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, 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 1986.

Subtitle A—Energy Conservation and Production Incentives

SEC. 20111. TREATMENT OF EMPLOYER-PROVIDED TRANSPORTATION BENEFITS.

(a) EXCLUSION.—Subsection (a) of section 132 (relating to exclusion of certain fringe benefits) is amended by striking "or" at the end of paragraph (3), by striking the period at the end of paragraph (4) and inserting ", or", and by adding at the end thereof the following new paragraph:

"(5) qualified transportation fringe."

(b) QUALIFIED TRANSPORTATION FRINGE.—Section 132 is amended by redesignating subsections (f), (g), (h), (i), (j), and (k) as subsections (g), (h), (i), (j), (k), and (l), respectively, and by inserting after subsection (e) the following new subsection:

"(f) QUALIFIED TRANSPORTATION FRINGE.—

"(1) IN GENERAL.—For purposes of this section, the term 'qualified transportation fringe' means any of the following provided by an employer to an employee:

"(A) Transportation in a commuter highway vehicle if such transportation is in connection with travel between the employee's residence and place of employment.

"(B) Any transit pass.

"(C) Qualified parking.

"(2) LIMITATION ON EXCLUSION.—The amount of the fringe benefits which are provided by an employer to any employee and which may be excluded from gross income under subsection (a)(5) shall not exceed—

"(A) $60 per month in the case of the aggregate of the benefits described in subparagraphs (A) and (B) of paragraph (1), and

"(B) $145 per month in the case of qualified parking.

"(3) CASH REIMBURSEMENTS.—For purposes of this subsection, the term 'qualified transportation fringe' includes a cash reimbursement by an employer to an employee for a benefit described in paragraph (1). The preceding sentence shall apply to a cash reimbursement for any transit pass only if a voucher or similar item which may be exchanged only for a transit pass is not readily available for direct distribution by the employer to the employee.

"(4) BENEFIT NOT IN LIEU OF COMPENSATION.—Subsection (a)(5) shall not apply to any qualified transportation fringe unless such benefit is provided in addition to (and not in lieu of) any compensation otherwise payable to the employee.

"(5) DEFINITIONS.—For purposes of this subsection—

"(A) TRANSIT PASS.—The term 'transit pass' means any pass, token, farecard, voucher, or similar item entitling a person to transportation (or transportation at a reduced price) if such transportation is—

"(i) on mass transit facilities (whether or not publicly owned), or

"(ii) provided by any person in the business of transporting persons for compensation or hire if such transportation is provided in a vehicle meeting the requirements of subparagraph (B)(i).

"(B) COMMUTER HIGHWAY VEHICLE.—The term 'commuter highway vehicle' means any highway vehicle—

"(i) the seating capacity of which is at least 6 adults (not including the driver), and

"(ii) at least 80 percent of the mileage use of which can reasonably be expected to be—

"(I) for purposes of transporting employees in connection with travel between their residences and their place of employment, and

"(II) on trips during which the number of employees transported for such purposes is

at least ½ of the adult seating capacity of such vehicle (not including the driver).

"(C) QUALIFIED PARKING.—The term 'qualified parking' means parking provided to an employee on or near the business premises of the employer or on or near a location from which the employee commutes to work by transportation described in subparagraph (A), in a commuter highway vehicle, or by carpool. Such term shall not include any parking on or near property used by the employee for residential purposes.

"(D) TRANSPORTATION PROVIDED BY EMPLOYER.—Transportation referred to in paragraph (1)(A) shall be considered to be provided by an employer if such transportation is furnished in a commuter highway vehicle operated by or for the employer.

"(E) EMPLOYEE.—For purposes of this subsection, the term 'employee' does not include an individual who is an employee within the meaning of section 401(c)(1).

"(6) INFLATION ADJUSTMENT.—In the case of any taxable year beginning in a calendar year after 1993, the dollar amounts contained in paragraph (2) (A) and (B) shall be increased by an amount equal to—

"(A) such dollar amount, multiplied by

"(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting 'calendar year 1992' for 'calendar year 1989' in subparagraph (B) thereof.

If any increase determined under the preceding sentence is not a multiple of $5, such increase shall be rounded to the next lowest multiple of $5.

"(7) COORDINATION WITH OTHER PROVISIONS.—For purposes of this section, the terms 'working condition fringe' and 'de minimis fringe' shall not include any qualified transportation fringe (determined without regard to paragraph (2)).''

(c) CONFORMING AMENDMENT.—Subsection (i) of section 132 (as redesignated by subsection (b)) is amended by striking paragraph (4) and redesignating the following paragraphs accordingly.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to benefits provided after December 31, 1992.

SEC. 20112. EXCLUSION OF ENERGY CONSERVATION SUBSIDIES PROVIDED BY PUBLIC UTILITIES.

(a) GENERAL RULE.—Part III of subchapter B of chapter 1 (relating to amounts specifically excluded from gross income) is amended by redesignating section 136 as section 137 and by inserting after section 135 the following new section:

"SEC. 136. ENERGY CONSERVATION SUBSIDIES PROVIDED BY PUBLIC UTILITIES.

"(a) EXCLUSION.—

"(1) IN GENERAL.—Gross income shall not include the value of any subsidy provided by a public utility to a customer for the purchase or installation of any energy conservation measure.

"(2) LIMITATION ON EXCLUSION FOR NONRESIDENTIAL PROPERTY.—In the case of any subsidy provided with respect to any energy conservation measure referred to in subsection (c)(1)(B), only 80 percent of such subsidy shall be excluded from gross income under paragraph (1).

"(b) DENIAL OF DOUBLE BENEFIT.—Notwithstanding any other provision of this subtitle, no deduction or credit shall be allowed for, or by reason of, any expenditure to the extent of the amount excluded under subsection (a) for any subsidy which was provided with respect to such expenditure. The adjusted basis of any property shall be reduced by the amount excluded under subsection (a) which was provided with respect to such property.

"(c) ENERGY CONSERVATION MEASURE.—

"(1) IN GENERAL.—For purposes of this section, the term 'energy conservation measure' means any installation or modification primarily designed to reduce consumption of electricity or natural gas or to improve the management of energy demand—

"(A) with respect to a dwelling unit, and

"(B) on or after January 1, 1994, with respect to property other than dwelling units. The purchase and installation of specially defined energy property shall be treated as an energy conservation measure described in subparagraph (B).

"(2) OTHER DEFINITIONS AND SPECIAL RULES.—

"(A) DEFINITIONS.—For purposes of this subsection—

"(i) SPECIALLY DEFINED ENERGY PROPERTY.—The term 'specially defined energy property' means—

"(I) a recuperator,

"(II) a heat wheel,

"(III) a regenerator,

"(IV) a heat exchanger,

"(V) a waste heat boiler,

"(VI) a heat pipe,

"(VII) an automatic energy control system,

"(VIII) a turbulator,

"(IX) a preheater,

"(X) a combustible gas recovery system,

"(XI) an economizer,

"(XII) modifications to alumina electrolytic cells,

"(XIII) modifications to chlor-alkali electrolytic cells, or

"(XIV) any other property of a kind specified by the Secretary by regulations,

the principal purpose of which is reducing the amount of energy consumed in any existing industrial or commercial process and which is installed in connection with an existing industrial or commercial facility.

"(ii) DWELLING UNIT.—The term 'dwelling unit' has the meaning given such term by section 280A(f)(1).

"(iii) PUBLIC UTILITY.—The term 'public utility' means a person engaged in the sale of electricity or natural gas to residential, commercial, or industrial customers for use by such customers. For purposes of the preceding sentence, the term 'person' includes the Federal Government, a State or local government or any political subdivision thereof, or any instrumentality of any of the foregoing.

"(B) SPECIAL RULES.—

"(i) THIRD-PARTY CONTRACTORS.—If, in connection with the purchase or installation of an energy conservation measure for a customer of a public utility, such public utility provides a subsidy to a person other than the customer, such subsidy shall be excludable under subsection (a) from the gross income of such other person to the extent such subsidy would be so excludable from the gross income of the customer.

"(ii) STATE-SPONSORED PROGRAMS.—A payment by a public utility to a customer for the use of a tax benefit granted to the customer by a State pursuant to a State-sponsored energy conservation program shall be excludable under subsection (a) from the gross income of the customer to the extent such payment would be so excludable if provided as a subsidy by the public utility.

"(d) EXCEPTION.—This section shall not apply to any payment to or from a qualified cogeneration facility or qualifying small power production facility pursuant to section 210 of the Public Utility Regulatory Policy Act of 1978.''

(b) CLERICAL AMENDMENT.—The table of sections for part III of subchapter B of chapter 1 is amended by striking the item relating to section 136 and inserting:

"Sec. 136. Energy conservation subsidies provided by public utilities.

"Sec. 137. Cross reference to other Acts.''

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts received after December 31, 1992.

SEC. 20113. TREATMENT OF CLEAN-FUEL VEHICLES.

(a) DEDUCTION FOR CLEAN-FUEL VEHICLES AND CERTAIN REFUELING PROPERTY.—

(1) IN GENERAL.—Part VI of subchapter B of chapter 1 (relating to itemized deductions for individuals and corporations) is amended by adding after section 179 the following new section:

"SEC. 179A. DEDUCTION FOR CLEAN-FUEL VEHICLES AND CERTAIN REFUELING PROPERTY.

"(a) GENERAL RULE.—There shall be allowed as a deduction an amount equal to the sum of—

"(1) in the case of any qualified clean-fuel vehicle property—

"(A) except as provided in subparagraph (B), the cost of the property, or

"(B) in the case of a vehicle described in subsection (c)(1)(B) which may be propelled by both a clean-burning fuel and any other fuel, an amount equal to the greater of—

"(i) $1,200, or

"(ii) the incremental cost of permitting the use of the clean-burning fuel, plus

"(2) the cost of any qualified clean-fuel vehicle refueling property.

The deduction under the preceding sentence with respect to any property shall be allowed for the taxable year in which such property is placed in service.

"(b) LIMITATIONS.—

"(1) QUALIFIED CLEAN-FUEL VEHICLE PROPERTY.—

"(A) IN GENERAL.—The cost which may be taken into account under subsection (a)(1) with respect to any motor vehicle shall not exceed—

"(i) in the case of a motor vehicle not described in clause (ii) or (iii), $2,000,

"(ii) in the case of any truck or van with a gross vehicle weight rating greater than 10,000 pounds but not greater than 26,000 pounds, $5,000, or

"(iii) $50,000 in the case of—

"(I) a truck or van with a gross vehicle weight rating greater than 26,000 pounds, or

"(II) any bus which has a seating capacity of at least 20 adults (not including the driver),

"(B) PHASEOUT.—In the case of any qualified clean-fuel vehicle property placed in service after December 31, 2001, the limit otherwise applicable under subparagraph (A) shall be reduced by—

"(i) 25 percent in the case of property placed in service in calendar year 2002,

"(ii) 50 percent in the case of property placed in service in calendar year 2003, and

"(iii) 75 percent in the case of property placed in service in calendar year 2004.

"(2) QUALIFIED CLEAN-FUEL VEHICLE REFUELING PROPERTY.—

"(A) IN GENERAL.—The aggregate cost which may be taken into account under subsection (a)(2) with respect to qualified clean-fuel vehicle refueling property placed in service during the taxable year at a location shall not exceed the excess (if any) of—

"(i) $75,000, over

"(ii) the aggregate amount taken into account under subsection (a)(2) by the taxpayer (or any related person or predecessor) with respect to property placed in service at such location for all preceding taxable years.

"(B) RELATED PERSON.—For purposes of this paragraph, a person shall be treated as related to another person if such person bears a relationship to such other person described in section 267(b) or 707(b)(1).

"(C) ELECTION.—If the limitation under subparagraph (A) applies for any taxable year, the taxpayer shall, on the return of tax for such taxable year, specify the items of property (and the portion of costs of such property) which are to be taken into account under subsection (a)(2).

"(c) QUALIFIED CLEAN-FUEL VEHICLE PROPERTY DEFINED.—For purposes of this section—

"(1) IN GENERAL.—The term 'qualified clean-fuel vehicle property' means property which is acquired for use by the taxpayer and not for resale, the original use of which commences with the taxpayer, with respect to which the environmental standards of paragraph (2) are met, and which is described in either of the following subparagraphs:

"(A) RETROFIT PARTS AND COMPONENTS.—Any property installed on a motor vehicle which is propelled by a fuel which is not a clean-burning fuel for purposes of permitting such vehicle to be propelled by a clean-burning fuel—

"(i) if the property is an engine (or modification thereof) which may use a clean-burning fuel, or

"(ii) to the extent the property is used in the storage or delivery to the engine of such fuel, or the exhaust of gases from combustion of such fuel.

"(B) ORIGINAL EQUIPMENT MANUFACTURER'S VEHICLES.—A motor vehicle produced by an original equipment manufacturer and designed so that the vehicle may be propelled by a clean-burning fuel.

"(2) ENVIRONMENTAL STANDARDS.—Property shall not be treated as qualified clean-fuel vehicle property unless—

"(A) the motor vehicle of which it is a part meets any applicable Federal or State emissions standards with respect to each fuel by which such vehicle is designed to be propelled, or

"(B) in the case of property described in paragraph (1)(A), such property meets all applicable Federal and State emissions-related certification, testing, and warranty requirements.

"(3) EXCEPTION FOR QUALIFIED ELECTRIC VEHICLES.—The term 'qualified clean-fuel vehicle property' does not include any qualified electric vehicle (as defined in section 30(c)).

"(d) QUALIFIED CLEAN-FUEL VEHICLE REFUELING PROPERTY DEFINED.—For purposes of this section, the term 'qualified clean-fuel vehicle refueling property' means any property (not including a building and its structural components) if—

"(1) such property is of a character subject to the allowance for depreciation,

"(2) the original use of such property begins with the taxpayer, and

"(3) such property is—

"(A) for the storage or dispensing of a clean-burning fuel into the fuel tank of a motor vehicle propelled by such fuel, but only if the storage or dispensing of the fuel is at the point where such fuel is delivered into the fuel tank of the motor vehicle, or

"(B) for the recharging of motor vehicles propelled by electricity, but only if the property is located at the point where the motor vehicles are recharged.

"(e) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) CLEAN-BURNING FUEL.—The term 'clean-burning fuel' means—

"(A) natural gas,

"(B) liquefied natural gas,

"(C) liquefied petroleum gas,

"(D) hydrogen,

"(E) electricity, and

"(F) any other fuel at least 85 percent of which is 1 or more of the following: methanol, ethanol, any other alcohol, or ether.

"(2) MOTOR VEHICLE.—The term 'motor vehicle' means any vehicle which is manufactured primarily for use on public streets, roads, and highways (not including a vehicle operated exclusively on a rail or rails) and which has at least 4 wheels.

"(3) COST OF RETROFIT PARTS INCLUDES COST OF INSTALLATION.—The cost of any qualified clean-fuel vehicle property referred to in subsection (c)(1)(A) shall include the cost of the original installation of such property.

"(4) RECAPTURE.—The Secretary shall, by regulations, provide for recapturing the benefit of any deduction allowable under subsection (a) with respect to any property which ceases to be property eligible for such deduction.

"(5) PROPERTY USED OUTSIDE UNITED STATES, ETC., NOT QUALIFIED.—No deduction shall be allowed under subsection (a) with respect to any property referred to in section 50(b) or with respect to the portion of the cost of any property taken into account under section 179.

"(6) BASIS REDUCTION.—

"(A) IN GENERAL.—For purposes of this title, the basis of any property shall be reduced by the portion of the cost of such property taken into account under subsection (a).

"(B) ORDINARY INCOME RECAPTURE.—For purposes of section 1245, the amount of the deduction allowable under subsection (a) with respect to any property which is of a character subject to the allowance for depreciation shall be treated as a deduction allowed for depreciation under section 167.

"(g) TERMINATION.—This section shall not apply to any property placed in service after December 31, 2004."

(2) DEDUCTION FROM GROSS INCOME.—Section 62(a) is amended by inserting after paragraph (13) the following new paragraph:

"(14) DEDUCTION FOR CLEAN-FUEL VEHICLES AND CERTAIN REFUELING PROPERTY.—The deduction allowed by section 179A."

(3) CONFORMING AMENDMENTS.—

(A) Section 1016(a) is amended by striking "and" at the end of paragraph (23), by striking the period at the end of paragraph (24) and inserting ", and", and by adding at the end thereof the following new paragraph:

"(25) to the extent provided in section 179A(e)(6)(A)."

(B) The table of sections for part VI of subchapter B of chapter 1 is amended by inserting after the item relating to section 179 the following new item:

"Sec. 179A. Deduction for clean-fuel vehicles and certain refueling property."

(b) CREDIT FOR QUALIFIED ELECTRIC VEHICLES.—

(1) IN GENERAL.—Subpart B of part IV of subchapter A of chapter 1 is amended by inserting after section 29 the following new section:

"SEC. 30. CREDIT FOR QUALIFIED ELECTRIC VEHICLES.

"(a) ALLOWANCE OF CREDIT.—There shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to 15 percent of the cost of any qualified electric vehicle placed in service by the taxpayer during the taxable year.

"(b) LIMITATIONS.—

"(1) PHASEOUT.—In the case of any qualified electric vehicle placed in service after December 31, 2001, the credit otherwise allowable under subsection (a) shall be reduced by—

"(A) 25 percent in the case of property placed in service in calendar year 2002,

"(B) 50 percent in the case of property placed in service in calendar year 2003, and

"(C) 75 percent in the case of property placed in service in calendar year 2004.

"(2) APPLICATION WITH OTHER CREDITS.—The credit allowed by subsection (a) for any taxable year shall not exceed the excess (if any) of—

"(A) the regular tax for the taxable year reduced by the sum of the credits allowable under subpart A and sections 27, 28, and 29, over—

"(B) the tentative minimum tax for the taxable year.

"(c) QUALIFIED ELECTRIC VEHICLE.—For purposes of this section—

"(1) IN GENERAL.—The term 'qualified electric vehicle' means any motor vehicle—

"(A) which is powered primarily by an electric motor drawing current from rechargeable batteries, fuel cells, or other portable sources of electrical current,

"(B) the original use of which commences with the taxpayer, and

"(C) which is acquired for use by the taxpayer and not for resale.

"(2) MOTOR VEHICLE.—For purposes of paragraph (1), the term 'motor vehicle' means any vehicle which is manufactured primarily for use on public streets, roads, and highways (not including a vehicle operated exclusively on a rail or rails) and which has at least 4 wheels.

"(d) SPECIAL RULES.—

"(1) BASIS REDUCTION.—The basis of any property for which a credit is allowable under subsection (a) shall be reduced by the amount of such credit.

"(2) RECAPTURE.—The Secretary shall, by regulations, provide for recapturing the benefit of any credit allowable under subsection (a) with respect to any property which ceases to be property eligible for such credit.

"(3) PROPERTY USED OUTSIDE UNITED STATES, ETC., NOT QUALIFIED.—No credit shall be allowed under subsection (a) with respect to any property referred to in section 50(b) or with respect to the portion of the cost of any property taken into account under section 179.

"(e) TERMINATION.—This section shall not apply to any property placed in service after December 31, 2004".

(2) CONFORMING AMENDMENTS.—

(A) The table of sections for subpart B of part IV of subchapter A of chapter 1 is amended by adding after the item relating to section 29 the following new item:

"Sec. 30. Credit for qualified electric vehicles."

(B) Section 1016(a), as amended by subsection (a)(3), is amended by striking "and" at the end of paragraph (24), by striking the period at the end of paragraph (25) and inserting ", and", and by adding at the end thereof the following new paragraph:

"(26) to the extent provided in section 30(d)(1)."

(C) Section 53(d)(1)(B)(iii) is amended—

(i) by striking "section 29(b)(5)(B) or" and inserting "section 29(b)(6)(B),", and

(ii) by inserting ", or not allowed under section 30 solely by reason of the application of section 30(b)(2)(B)" before the period.

(D) Section 55(c)(2) is amended by striking "29(b)(5)," and inserting "29(b)(6), 30(b)(2),".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after June 30, 1993.

SEC. 20114. CREDIT FOR ELECTRICITY PRODUCED FROM CERTAIN RENEWABLE SOURCES.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 is amended by adding at the end thereof the following new section:

"SEC. 45. ELECTRICITY PRODUCED FROM CERTAIN RENEWABLE RESOURCES.

"(a) GENERAL RULE.—For purposes of section 38, the renewable electricity production credit for any taxable year is an amount equal to the product of—

"(1) 1.5 cents, multiplied by

"(2) the kilowatt hours of electricity—

"(A) produced by the taxpayer—

"(i) from qualified energy resources, and

"(ii) at a qualified facility during the 10-year period beginning on the date the facility was placed in service, and

"(B) sold by the taxpayer to an unrelated person during the taxable year.

"(b) LIMITATIONS AND ADJUSTMENTS.—

"(1) PHASEOUT OF CREDIT.—The amount of the credit determined under subsection (a) shall be reduced by an amount which bears the same ratio to the amount of the credit (determined without regard to this paragraph) as—

"(A) the amount by which the reference price for the calendar year in which the sale occurs exceeds 8 cents, bears to

"(B) 3 cents.

"(2) CREDIT AND PHASEOUT ADJUSTMENT BASED ON INFLATION.—The 1.5 cent amount in subsection (a) and the 8 cent amount in paragraph (1) shall each be adjusted by multiplying such amount by the inflation adjustment factor for the calendar year in which the sale occurs. If any amount as increased under the preceding sentence is not a multiple of 0.1 cent, such amount shall be rounded to the nearest multiple of 0.1 cent.

"(3) CREDIT REDUCED FOR GRANTS, TAX-EXEMPT BONDS, SUBSIDIZED ENERGY FINANCING, AND OTHER CREDITS.—The amount of the credit determined under subsection (a) with respect to any project for any taxable year (determined after the application of paragraphs (1) and (2)) shall be reduced by the amount which is the product of the amount so determined for such year and a fraction—

"(A) the numerator of which is the sum, for the taxable year and all prior taxable years, of—

"(i) grants provided by the United States, a State, or a political subdivision of a State for use in connection with the project,

"(ii) proceeds of an issue of State or local government obligations used to provide financing for the project the interest on which is exempt from tax under section 103,

"(iii) the aggregate amount of subsidized energy financing under a Federal, State, or local program provided in connection with the project, and

"(iv) the amount of any other credit allowable with respect to any property which is part of the project, and

"(B) the denominator of which is the aggregate amount of additions to the capital account for the project for the taxable year and all prior taxable years.

The amounts under the preceding sentence for any taxable year shall be determined as of the close of the taxable year.

"(c) DEFINITIONS.—For purposes of this section—

"(1) QUALIFIED ENERGY RESOURCES.—The term 'qualified energy resources' means—

"(A) wind, and

"(B) closed-loop biomass.

"(2) CLOSED-LOOP BIOMASS.—The term 'closed-loop biomass' means any organic material from a plant which is planted exclusively for purposes of being used at a qualified facility to produce electricity.

"(3) QUALIFIED FACILITY.—The term 'qualified facility' means any facility originally placed in service after December 31, 1993 (December 31, 1992, in the case of a facility using closed-loop biomass to produce electricity), and before July 1, 1999.

"(d) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) ONLY PRODUCTION IN THE UNITED STATES TAKEN INTO ACCOUNT.—Sales shall be taken into account under this section only with respect to electricity the production of which is within—

"(A) the United States (within the meaning of section 638(1)), or

"(B) a possession of the United States (within the meaning of section 638(2)).

"(2) COMPUTATION OF INFLATION ADJUSTMENT FACTOR AND REFERENCE PRICE.—

"(A) IN GENERAL.—The Secretary shall, not later than April 1 of each calendar year, determine and publish in the Federal Register the inflation adjustment factor and the reference price for such calendar year in accordance with this paragraph.

"(B) INFLATION ADJUSTMENT FACTOR.—The term 'inflation adjustment factor' means, with respect to a calendar year, a fraction the numerator of which is the GDP implicit price deflator for the preceding calendar year and the denominator of which is the GDP implicit price deflator for the calendar year 1992. The term 'GDP implicit price deflator' means the most recent revision of the implicit price deflator for the gross domestic product as computed and published by the Department of Commerce before March 15 of the calendar year.

"(C) REFERENCE PRICE.—The term 'reference price' means, with respect to a calendar year, the Secretary's determination of the annual average contract price per kilowatt hour of electricity generated from the same qualified energy resource and sold in the previous year in the United States. For purposes of the preceding sentence, only contracts entered into after December 31, 1989, shall be taken into account.

"(3) PRODUCTION ATTRIBUTABLE TO THE TAXPAYER.—In the case of a facility in which more than 1 person has an interest, except to the extent provided in regulations prescribed by the Secretary, production from the facility shall be allocated among such persons in proportion to their respective interests in the gross sales from such facility.

"(4) RELATED PERSONS.—Persons shall be treated as related to each other if such persons would be treated as a single employer under the regulations prescribed under section 52(b). In the case of a corporation which is a member of an affiliated group of corporations filing a consolidated return, such corporation shall be treated as selling electricity to an unrelated person if such electricity is sold to such a person by another member of such group.

"(5) PASS-THRU IN THE CASE OF ESTATES AND TRUSTS.—Under regulations prescribed by the Secretary, rules similar to the rules of subsection (d) of section 52 shall apply."

(b) CREDIT TO BE PART OF GENERAL BUSINESS CREDIT.—Subsection (b) of section 38 is amended by striking "plus" at the end of paragraph (6), by striking the period at the end of paragraph (7) and inserting ", plus", and by adding at the end thereof the following new paragraph:

"(8) the renewable electricity production credit under section 45(a)."

(c) LIMITATION ON CARRYBACK.—Subsection (d) of section 39 is amended by redesignating the paragraph added by section 11511(b)(2) of the Revenue Reconciliation Act of 1990 as paragraph (1), by redesignating the paragraph added by section 11611(b)(2) of such Act as paragraph (2), and by adding at the end thereof the following new paragraph:

"(3) NO CARRYBACK OF RENEWABLE ELECTRICITY PRODUCTION CREDIT BEFORE EFFECTIVE DATE.—No portion of the unused business credit for any taxable year which is attributable to the credit determined under section 45 (relating to electricity produced from certain renewable resources) may be carried back to any taxable year ending before January 1, 1993."

(d) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1 is amended by adding at the end thereof the following new item:

"Sec. 45. Electricity produced from certain renewable resources."

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after December 31, 1992.

SEC. 20115. REPEAL OF MINIMUM TAX PREFERENCES FOR DEPLETION AND INTANGIBLE DRILLING COSTS OF INDEPENDENT OIL AND GAS PRODUCERS AND ROYALTY OWNERS.

(a) DEPLETION.—

(1) Paragraph (1) of section 57(a) (relating to depletion) is amended by adding at the end thereof the following new sentence: "Effective with respect to taxable years beginning after December 31, 1992, this paragraph shall not apply to any deduction for depletion computed in accordance with section 613A(c).".

(2) Subparagraph (F) of section 56(g)(4) is amended to read as follows:

"(F) DEPLETION.—

"(i) IN GENERAL.—The allowance for depletion with respect to any property placed in service in a taxable year beginning after December 31, 1989, shall be cost depletion determined under section 611.

"(ii) EXCEPTION FOR INDEPENDENT OIL AND GAS PRODUCERS AND ROYALTY OWNERS.—In the case of any taxable year beginning after December 31, 1992, clause (i) (and subparagraph (C)(i)) shall not apply to any deduction for depletion computed in accordance with section 613A(c)."

(b) INTANGIBLE DRILLING COSTS.—

(1) Section 57(a)(2) is amended by adding at the end the following new subparagraph:

"(E) EXCEPTION FOR INDEPENDENT PRODUCERS.—In the case of any oil or gas well—

"(i) IN GENERAL.—In the case of any taxable year beginning after December 31, 1992, this paragraph shall not apply to any taxpayer which is not an integrated oil company (as defined in section 291(b)(4)).

"(ii) LIMITATION ON BENEFIT.—The reduction in alternative minimum taxable income by reason of clause (i) for any taxable year shall not exceed 40 percent (30 percent in case of taxable years beginning in 1993) of the alternative minimum taxable income for such year determined without regard to clause (i) and the alternative tax net operating loss deduction under section 56(a)(4)."

(2) Clause (i) of section 56(g)(4)(D) is amended by adding at the end thereof the following new sentence: "In the case of a

taxpayer other than an integrated oil company (as defined in section 291(b)(4)), in the case of any oil or gas well, this clause shall not apply in the case of amounts paid or incurred in taxable years beginning after December 31, 1992.".

(c) CONFORMING AMENDMENTS.—

(1) Section 56 is amended by striking subsection (h).

(2) Section 56(d)(1)(A) is amended to read as follows:

"(A) the amount of such deduction shall not exceed 90 percent of alternate minimum taxable income determined without regard to such deduction, and".

(3) Section 59(a)(2)(A)(ii) is amended by striking "and the alternative tax energy preference deduction under section 56(h)" and inserting "and section 57(a)(2)(E)".

(4) Section 59A(b)(1) is amended by striking "or the alternative tax energy preference deduction under section 56(h)".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1992.

SEC. 20116. INCREASED BASE TAX RATE ON OZONE-DEPLETING CHEMICALS.

(a) IN GENERAL.—Paragraph (1) of section 4681(b) (relating to amount of tax) is amended by adding at the end thereof the following new subparagraph:

"(D) ADDITIONAL BASE TAX AMOUNT.—The base tax amount for purposes of subparagraph (A) with respect to any sale or use of an ozone-depleting chemical for any calendar year (determined without regard to this subparagraph) shall be increased by the amount determined under the following tables for such calendar year:

"(i) INITIALLY LISTED CHEMICALS.—

"For calendar year:	The base tax amount is increased by:
1992	$0.18
1993	0.10
1994	1.00
1995 and each calendar year thereafter	1.45.

"(ii) NEWLY LISTED CHEMICALS.—

"For calendar year:	The base tax amount is increased by:
1992	$0.48
1993	1.08
1994	0.65
1995 and each calendar year thereafter	1.45."

(b) CONFORMING AMENDMENTS.—

(1) RATES RETAINED FOR CHEMICALS USED IN RIGID FOAM INSULATION.—The table in subparagraph (B) of section 4682(g)(2) (relating to chemicals used in rigid foam insulation) is amended—

(A) by striking "15" and inserting "13.5", and

(B) by striking "10" and inserting "9.6".

(2) FLOOR STOCK TAXES.—

(A) Subparagraph (C) of section 4682(h)(2) (relating to other tax-increase dates) is amended by striking "January 1 of 1991, 1992, 1993, and 1994" and inserting "January 1 of 1991 and 1992, October 1, 1992, and January 1 of 1993 and each calendar year thereafter".

(B) Paragraph (3) of section 4682(h) (relating to due date) is amended—

(i) by inserting "or October 1" after "January 1", and

(ii) by inserting "or March 31 of the suceeding calendar year, respectively," after "such year".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable chemicals sold or used on or after October 1, 1992.

SEC. 20117. TREATMENT OF CERTAIN OZONE DEPLETING CHEMICALS.

(a) TREATMENT OF CERTAIN HALONS.—The table contained in subparagraph (A) of section 4682(g)(2) is amended to read as follows:

"In the case of:	The applicable percentage is: For sales or use during 1992	For sales or use during 1993
Halon-1211	4.5	3.0
Halon-1301	1.4	0.9
Halon-2404	2.3	1.5".

(b) CHEMICALS USED FOR STERILIZING MEDICAL DEVICES.—

(1) IN GENERAL.—Subsection (g) of section 4682 is amended by adding at the end thereof the following new paragraph:

"(4) CHEMICALS USED FOR STERILIZING MEDICAL DEVICES.—

"(A) RATE OF TAX.—

"(i) IN GENERAL.—In the case of—

"(I) any use after September 30, 1992, and before January 1, 1994, of any substance to sterilize medical devices, or

"(II) any qualified sale during such period by the manufacturer, producer, or importer of any substance,

the tax imposed by section 4681 shall be the applicable percentage (determined in accordance with the following table) of the amount of such tax which would (but for this subparagraph be imposed):

"In the case of sales or use during:	The applicable percentage is:
1992	90.3
1993	60.7.

"(ii) QUALIFIED SALE.—For purposes of clause (i), the term 'qualified sale' means any sale by the manufacturer, producer, or importer of any substance—

"(I) for use by the purchaser to sterilize medical devices, or

"(II) for resale by the purchaser to a 2d purchaser for such use by the 2d purchaser.

The preceding sentence shall apply only if the manufacturer, producer, and importer, and the 1st and 2d purchasers (if any) meet such registration requirements as may be prescribed by the Secretary.

"(B) OVERPAYMENTS.—If any substance on which tax was paid under this subchapter is used after September 30, 1992, and before January 1, 1994, by any person to sterilize medical devices, credit or refund without interest shall be allowed to such person in an amount equal to the excess of—

"(i) the tax paid under this subchapter on such substance, or

"(ii) the tax (if any) which would be imposed by section 4681 if such substance were used for such use by the manufacture, producer, or importer thereof on the date of its use by such person.

Amounts payable under the preceding sentence with respect to uses during the taxable year shall be treated as described in section 34(a) for such year unless claim thereof has been timely filed under this subparagraph."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to sales and uses on or after October 1, 1992.

SEC. 20118. PERMANENT EXTENSION OF ENERGY INVESTMENT CREDIT FOR SOLAR, GEOTHERMAL, AND OCEAN PROPERTY.

(a) GENERAL RULE.—Paragraph (2) of section 48(a) (defining energy percentage) is amended—

(1) by striking "Except as provided in subparagraph (B), the" in subparagraph (A) and inserting "The",

(2) by striking subparagraph (B), and

(3) by redesignating subparagraph (C) as subparagraph (B).

(b) OCEAN THERMAL ENERGY.—Subparagraph (A) of section 48(a)(3) is amended by striking "or" at the end of clause (i), by inserting "or" at the end of clause (ii), and by adding at the end the following new clause:

"(iii) equipment, placed in service after June 30, 1992, at either of 2 locations designated by the Secretary after consultation with the Secretary of Energy, which converts ocean thermal energy to usable energy,".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on June 30, 1992.

SEC. 20119. NUCLEAR DECOMMISSIONING FUNDS.

(a) REPEAL OF INVESTMENT RESTRICTIONS.—Subparagraph (C) of section 468A(e)(4) (relating to special rules for nuclear decommissioning funds) is amended by striking "described in section 501(c)(21)(B)(ii)".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1992.

SEC. 20120. ALCOHOL FUELS.

(a) REDUCED RATE OF TAX ON GASOLINE MIXED WITH ALCOHOL.—

(1) IN GENERAL.—Paragraph (1) of section 4081(c) (relating to gasoline mixed with alcohol at refinery, etc.) is amended to read as follows:

"(1) IN GENERAL.—Under regulations prescribed by the Secretary, subsection (a) shall be applied by multiplying the otherwise applicable rate by a fraction the numerator of which is 10 and the denominator of which is—

"(A) 9 in the case of 10 percent gasohol,

"(B) 9.23 in the case of 7.7 percent gasohol, and

"(C) 9.43 in the case of 5.7 percent gasohol,

in the case of the removal or entry of any gasoline for use in producing gasohol at the time of such removal or sale. Subject to such terms and conditions as the Secretary may prescribe (including the application of section 4101), the treatment under the preceding sentence also shall apply to use in producing gasohol after the time of such removal or entry."

(2) CONFORMING AMENDMENTS.—Section 4081(c) is amended—

(A) by striking "6.1 cents a gallon" in paragraph (2) and inserting "an otherwise applicable rate", and

(B) by striking paragraph (4) and inserting the following new paragraph:

"(4) OTHERWISE APPLICABLE RATE.—For purposes of this subsection—

"(A) IN GENERAL.—In the case of the Highway Trust Fund financing rate, the term 'otherwise applicable rate' means—

"(i) 6.1 cents a gallon for 10 percent gasohol,

"(ii) 7.342 cents a gallon for 7.7 percent gasohol, and

"(iii) 8.422 cents a gallon for 5.7 percent gasohol.

In the case of gasohol none of the alcohol in which consists of ethanol, clauses (i), (ii), and (iii) shall be applied by substituting '5.5 cents' for '6.1 cents', '6.88 cents' for '7.342 cents', and '8.08 cents' for '8.422 cents'.

"(B) 10 PERCENT GASOHOL.—The term '10 percent gasohol' means any mixture of gasoline with alcohol if at least 10 percent of such mixture is alcohol.

"(B) 7.7 PERCENT GASOHOL.—The term '7.7 percent gasohol' means any mixture of gaso-

line with alcohol if at least 7.7 percent, but not 10 percent or more, of such mixture is alcohol.

"(B) 5.7 PERCENT GASOHOL.—The term '5.7 percent gasohol' means any mixture of gasoline with alcohol if at least 5.7 percent, but not 7.7 percent or more, of such mixture is alcohol."

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to gasoline removed (as defined in section 4082 of the Internal Revenue Code of 1986) or entered after September 30, 1992.

(b) ALCOHOL FUELS CREDIT MAY OFFSET MINIMUM TAX.—

(1) IN GENERAL.—Subsection (c) of section 38 (relating to limitation based on amount of tax) is amended by adding at the end the following new paragraph:

"(3) ALCOHOL FUELS CREDIT MAY OFFSET MINIMUM TAX.—

"(A) IN GENERAL.—The amount determined under paragraph (1)(A) shall be reduced by the lesser of—

"(i) the portion of the alcohol fuels credit determined under section 40(a) not used against the normal limitation, or

"(ii) 50 percent of the taxpayer's tentative minimum tax for the taxable year.

"(B) PORTION OF THE ALCOHOL FUELS CREDIT NOT USED AGAINST NORMAL LIMITATION.—For purposes of subparagraph (A), the portion of the alcohol fuels credit determined under section 40(a) not used against the normal limitation is the excess (if any) of—

"(i) the portion of the credit under subsection (a) which is attributable to such alcohol fuels credit, over

"(ii) the limitation of paragraph (1) (without regard to this paragraph), reduced by the portion of the credit under subsection (a) which is not so attributable."

(2) EFFECTIVE DATE.—

(A) IN GENERAL.—The amendment made by paragraph (1) shall apply to taxable years beginning after September 30, 1992.

(B) EXCEPTION.—The amendment made by paragraph (1) shall not apply to—

(i) any credit which was determined in a taxable year, or

(ii) any credit which is carried back to a taxable year,

beginning on or before September 30, 1992.

SEC. 20121. DETERMINATION OF INDEPENDENT PRODUCERS.

(a) RETAILERS.—

(1) IN GENERAL.—Section 613A(d)(2) is amended—

(A) by inserting "and sales of natural gas by a regulated public utility" after "users", and

(B) by inserting "and sales of products derived from natural gas by a regulated public utility" after "Defense".

(2) DEFINITION.—Section 613A(d)(2) is amended by adding at the end thereof the following new sentence "For purposes of the first sentence, the term 'regulated public utility' means a utility described in section 7701(a)(33) at least 50 percent of the gross income of which is derived from sources described in subparagraphs (A), (B), and (C) of section 7701(a)(33)."

(b) REFINERS.—Section 613A(d)(4) (relating to certain refiners excluded) is amended to read as follows:

"(4) CERTAIN REFINERS EXCLUDED.—If the taxpayer or 1 or more related persons engage in the refining of crude oil, subsection (c) shall not apply to such taxpayer during any taxable year if the aggregate average daily refinery runs of the taxpayer and such persons for the taxable year exceed 50,000 barrels."

(c) EFFECTIVE DATE.—The amendments made by this section apply to taxable years beginning after December 31, 1992.

SEC. 20122. TAX-EXEMPT FINANCING FOR ENVIRONMENTAL ENHANCEMENTS OF HYDROELECTRIC GENERATING FACILITIES.

(a) IN GENERAL.—Subsection (a) of section 142 (relating to exempt facility bonds) is amended—

(1) by striking "or" at the end of paragraph (10),

(2) by striking the period at the end of paragraph (11) and inserting ", or", and

(3) by adding at the end the following new paragraph:

"(12) environmental enhancements of hydroelectric generating facilities."

(b) DEFINITION AND SPECIAL RULES FOR ENVIRONMENTAL ENHANCEMENTS OF HYDROELECTRIC GENERATING FACILITIES.—

(1) IN GENERAL.—Section 142 is amended by adding at the end the following new subsection:

"(j) ENVIRONMENTAL ENHANCEMENTS OF HYDROELECTRIC GENERATING FACILITIES.—

"(1) IN GENERAL.—For purposes of subsection (a)(12), the term 'environmental enhancements of hydroelectric generating facilities' means property—

"(A) the use of which is related to a federally licensed hydroelectric generating facility owned and operated by a governmental unit, and

"(B) which—

"(i) protects or promotes fisheries or other wildlife resources, including any fish by-pass facility, fish hatchery, or fisheries enhancement facility, or

"(ii) is a recreational facility or other improvement required by the terms and conditions of any Federal licensing permit for the operation of such generating facility.

"(2) USE OF PROCEEDS.—A bond issued as part of an issue described in subsection (a)(12) shall not be considered an exempt facility bond unless at least 80 percent of the net proceeds of the issue of which it is a part are used to finance property described in paragraph (1)(B)(i)."

(2) FINANCED PROPERTY MUST BE GOVERNMENTALLY OWNED.—Subparagraph (A) of section 142(b)(1) (relating to certain facilities must be governmentally owned) is amended by striking "(2) or (3)" and inserting "(2), (3), or (12)".

(3) EXCLUSION FROM VOLUME CAP.—Paragraph (3) of section 146(g) (relating to exception for certain bonds) is amended—

(A) by striking "or (2)" and inserting ", (2), or (12)", and

(B) by striking "and docks and wharves" and inserting ", docks and wharves, and environmental enhancements of hydroelectric generating facilities".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to bonds issued after the date of the enactment of this Act.

Subtitle B—Other Revenue Provisions

SEC. 20131. ELIMINATION OF DEDUCTION FOR CLUB MEMBERSHIP FEES.

(a) IN GENERAL.—Section 162 (relating to trade or business expenses) is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following new subsection:

"(m) CLUB MEMBERSHIP DUES.—No deduction shall be allowed under this chapter for amounts paid or incurred for membership in any club organized for business, pleasure, recreation, or other social purpose."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to dues paid after the date of the enactment of this Act.

SEC. 20132. MODIFICATIONS TO TAX ON INSURANCE POLICIES ISSUED BY FOREIGN INSURERS.

(a) INCREASE IN TAX ON CERTAIN REINSURANCE CONTRACTS.—Paragraph (3) of section 4371 (relating to imposition of tax) is amended to read as follows:

"(3) REINSURANCE.—

"(A) 4 cents on each dollar (or fractional part thereof) of the premium paid on the policy of reinsurance covering any of the contracts taxable under paragraph (1).

"(B) 1 cent on each dollar (or fractional part thereof) of the premium paid on the policy of reinsurance covering any of the contracts taxable under paragraph (2)."

(b) RETENTION OF EXISTING TAX RATE IN CERTAIN CASES; LIMITATION ON TREATY BENEFITS.—

(1) Section 4371 is amended by adding at the end thereof the following new subsection:

"(b) SPECIAL RULES.—

"(1) LOWER RATE ON CERTAIN REINSURANCE PREMIUMS.—Subparagraph (A) of subsection (a)(3) shall be applied with respect to any premium by substituting '1 cent' for '4 cents' if—

"(A) such premium is paid to a foreign insurer or reinsurer which is a resident of a foreign country,

"(B) the insurance income (including investment income) relating to the policy of reinsurance is subject to tax by a foreign country or countries at an effective rate that is substantial in relation to the tax imposed by chapter 1, and

"(C) the risk with respect to which such premium is paid is not reinsured (directly or through a series of transactions) by a resident of another foreign country who does not meet the requirements of subparagraph (B).

"(2) APPLICATION OF RELIEF.—In applying paragraph (1) or any treaty, no person shall be relieved of the requirement to remit any tax imposed by this chapter on any premium unless the parties to the transaction satisfy such requirements as the Secretary may prescribe to ensure collection of tax due on any reinsurance of the risk with respect to which such premium was paid.

"(3) SECRETARIAL AUTHORITY.—

"(A) ENFORCEMENT PROCEDURES.—The Secretary may prescribe regulations setting forth such procedures as the Secretary may deem appropriate to ensure compliance with the requirements of paragraph (1).

"(B) WAIVER.—The Secretary may by regulations waive the requirements of paragraph (1)(C) in such circumstances and subject to such conditions as he may deem appropriate."

(2) Section 4371 is amended by striking "There is hereby" and inserting the following:

"(a) GENERAL RULE.—There is hereby".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to premiums paid after the date of the enactment of this Act but only to the extent allocable to reinsurance for periods after December 31, 1992.

SEC. 20133. TRANS-ALASKA PIPELINE LIABILITY FUND INCOME TAX OFFSET.

Subsection (d) of section 4612 of title 26, United States Code, is amended by inserting the following new sentence before the last sentence of such subsection (d): "If a taxpayer who has paid into such Trans-Alaska Pipeline Liability Fund cannot use such credit on account of the operation of any provision of section 4611(f), then such credit may be taken to offset taxes otherwise due under section 11, in each year to the extent which would have been permissible had the Oil Spill Liability Trust Fund financing rate

imposed by section 4611 not lapsed pursuant to section 4611(f)(2) or expired pursuant to section 4611(f)(1): *Provided*, That no such credit taken under this sentence may be carried back to previous tax years.

Subtitle C—Health Care of Coal Miners

SEC. 20141. SHORT TITLE.

This subtitle may be cited as the "Coal Industry Retiree Health Benefit Act of 1992".

SEC. 20142. FINDINGS AND DECLARATION OF POLICY.

(a) FINDINGS.—The Congress finds that—

(1) the production, transportation, and use of coal substantially affects interstate and foreign commerce and the national public interest; and

(2) in order to secure the stability of interstate commerce, it is necessary to modify the current private health care benefit plan structure for retirees in the coal industry to identify persons most responsible for plan liabilities in order to stabilize plan funding and allow for the provision of health care benefits to such retirees.

(b) STATEMENT OF POLICY.—It is the policy of this subtitle—

(1) to remedy problems with the provision and funding of health care benefits with respect to the beneficiaries of multiemployer benefit plans that provide health care benefits to retirees in the coal industry;

(2) to allow for sufficient operating assets for such plans; and

(3) to provide for the continuation of a privately financed self-sufficient program for the delivery of health care benefits to the beneficiaries of such plans.

SEC. 20143. COAL INDUSTRY HEALTH BENEFITS PROGRAM.

(a) IN GENERAL.—The Internal Revenue Code of 1986 is amended by adding at the end the following new subtitle:

"Subtitle J—Coal Industry Health Benefits

"CHAPTER 99. COAL INDUSTRY HEALTH BENEFITS.

"CHAPTER 99—COAL INDUSTRY HEALTH BENEFITS

"SUBCHAPTER A—Definitions of general applicability.

"SUBCHAPTER B—Combined benefit fund.

"SUBCHAPTER C—Health benefits of certain miners.

"SUBCHAPTER D—Other provisions.

"Subchapter A—Definitions of General Applicability

"Sec. 9701. Definitions of general applicability.

"SEC. 9701. DEFINITIONS OF GENERAL APPLICABILITY.

"(a) PLANS AND FUNDS.—For purposes of this chapter—

"(1) UMWA BENEFIT PLAN.—

"(A) IN GENERAL.—The term 'UMWA Benefit Plan' means a plan—

"(i) which is described in section 404(c), or a continuation thereof; and

"(ii) which provides health benefits to retirees and beneficiaries of the industry which maintained the 1950 UMWA Pension Plan.

"(B) 1950 UMWA BENEFIT PLAN.—The term '1950 UMWA Benefit Plan' means a UMWA Benefit Plan, participation in which is substantially limited to individuals who retired before 1976.

"(C) 1974 UMWA BENEFIT PLAN.—The term '1974 UMWA Benefit Plan' means a UMWA Benefit Plan, participation in which is substantially limited to individuals who retired on or after January 1, 1976.

"(2) 1950 UMWA PENSION PLAN.—The term '1950 UMWA Pension Plan' means a pension plan described in section 404(c) (or a continuation thereof), participation in which is substantially limited to individuals who retired before 1976.

"(3) 1974 UMWA PENSION PLAN.—The term '1974 UMWA Pension Plan' means a pension plan described in section 404(c) (or a continuation thereof), participation in which is substantially limited to individuals who retired in 1976 and thereafter.

"(4) 1992 UMWA BENEFIT PLAN.—The term '1992 UMWA Benefit Plan' means the plan referred to in section 9713A.

"(5) COMBINED FUND.—The term 'Combined Fund' means the United Mine Workers of America Combined Benefit Fund established under section 9702.

"(b) AGREEMENTS.—For purposes of this section—

"(1) COAL WAGE AGREEMENT.—The term 'coal wage agreement' means—

"(A) the National Bituminous Coal Wage Agreement, or

"(B) any other agreement entered into between an employer in the coal industry and the United Mine Workers of America that required or requires one or both of the following:

"(i) the provision of health benefits to retirees of such employer, eligibility for which is based on years of service credited under a plan established by the settlors and described in section 404(c) or a continuation of such plan; or

"(ii) contributions to the 1950 UMWA Benefit Plan or the 1974 UMWA Benefit Plan, or any predecessor thereof.

"(2) SETTLORS.—The term 'settlors' means the United Mine Workers of America and the Bituminous Coal Operators' Association, Inc. (referred to in this chapter as the 'BCOA').

"(3) NATIONAL BITUMINOUS COAL WAGE AGREEMENT.—The term 'National Bituminous Coal Wage Agreement' means a collective bargaining agreement negotiated by the BCOA and the United Mine Workers of America.

"(c) TERMS RELATING TO OPERATORS.—For purposes of this section—

"(1) SIGNATORY OPERATOR.—The term 'signatory operator' means a person which is or was a signatory to a coal wage agreement.

"(2) RELATED PERSONS.—

"(A) IN GENERAL.—A person shall be considered to be a related person to a signatory operator if that person is—

"(i) a member of the controlled group of corporations (within the meaning of section 52(a)) which includes such signatory operator;

"(ii) a trade or business which is under common control (as determined under section 52(b)) with such signatory operator; or

"(iii) any other person who is identified as having a partnership interest or joint venture with a signatory operator in a business within the coal industry, but only if such business employed eligible beneficiaries, except that this clause shall not apply to a person whose only interest is as a limited partner.

A related person shall also include a successor in interest of any person described in clause (i), (ii), or (iii).

"(B) TIME FOR DETERMINATION.—The relationships described in clauses (i), (ii), and (iii) of subparagraph (A) shall be determined as of July 20, 1992, except that if, on July 20, 1992, a signatory operator is no longer in business, the relationships shall be determined as of the time immediately before such operator ceased to be in business.

"(3) 1988 AGREEMENT OPERATOR.—The term '1988 agreement operator' means—

"(A) a signatory operator which was a signatory to the 1988 National Bituminous Coal Wage Agreement,

"(B) an employer in the coal industry which was a signatory to an agreement containing pension and health care contribution and benefit provisions which are the same as those contained in the 1988 National Bituminous Coal Wage Agreement, or

"(C) an employer from which contributions were actually received after 1987 and before July 20, 1992, by the 1950 UMWA Benefit Plan or the 1974 UMWA Benefit Plan in connection with employment in the coal industry during the period covered by the 1988 National Bituminous Coal Wage Agreement.

"(4) LAST SIGNATORY OPERATOR.—The term 'last signatory operator' means, with respect to a coal industry retiree, a signatory operator which was the most recent coal industry employer of such retiree.

"(5) ASSIGNED OPERATOR.—The term 'assigned operator' means, with respect to an eligible beneficiary defined in section 9703(f), the signatory operator to which liability under subchapter B with respect to the beneficiary is assigned under section 9706.

"(6) OPERATORS OF DEPENDENT BENEFICIARIES.—For purposes of this chapter, the signatory operator, last signatory operator, or assigned operator of any eligible beneficiary under this chapter who is a coal industry retiree shall be considered to be the signatory operator, last signatory operator, or assigned operator with respect to any other individual who is an eligible beneficiary under this chapter by reason of a relationship to the retiree.

"(7) BUSINESS.—For purposes of this chapter, a person shall be considered to be in business if such person conducts or derives revenue from any business activity, whether or not in the coal industry.

"(d) ENACTMENT DATE.—For purposes of this chapter, the term 'enactment date' means the date of the enactment of this chapter.

"Subchapter B—Combined Benefit Fund

"Part I—ESTABLISHMENT AND BENEFITS

"Part II—FINANCING

"Part III—ENFORCEMENT

"Part IV—OTHER PROVISIONS

"PART I—ESTABLISHMENT AND BENEFITS

"Sec. 9702. Establishment of the United Mine Workers of America Combined Benefit Fund.

"Sec. 9703. Plan benefits.

"SEC. 9702. ESTABLISHMENT OF THE UNITED MINE WORKERS OF AMERICA COMBINED BENEFIT FUND.

"(a) ESTABLISHMENT.—

"(1) IN GENERAL.—As soon as practicable (but not later than 60 days) after the enactment date, the persons described in subsection (b) shall designate the individuals to serve as trustees. Such trustees shall create a new private plan to be known as the United Mine Workers of America Combined Benefit Fund.

"(2) MERGER OF RETIREE BENEFIT PLANS.—As of February 1, 1993, the settlors of the 1950 UMWA Benefit Plan and the 1974 UMWA Benefit Plan shall cause such plans to be merged into the Combined Fund, and such merger shall not be treated as an employer withdrawal for purposes of any 1988 coal wage agreement.

"(3) TREATMENT OF PLAN.—The Combined Fund shall be—

"(A) a plan described in section 302(c)(5) of the Labor Management Relations Act, 1947 (29 U.S.C. 186(c)(5)),

"(B) an employee welfare benefit plan within the meaning of section 3(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(1)), and

"(C) a multiemployer plan within the meaning of section 3(37) of such Act (29 U.S.C. 1002(37)).

"(4) TAX TREATMENT.—For purposes of this title, the Combined Fund and any related trust shall be treated as an organization exempt from tax under section 501(a).

"(b) BOARD OF TRUSTEES.—

"(1) IN GENERAL.—For purposes of subsection (a), the board of trustees for the Combined Fund shall be appointed as follows:

"(A) one individual who represents employers in the coal mining industry shall be designated by the BCOA;

"(B) one individual shall be designated by the three employers, other than 1988 agreement operators, who have been assigned the greatest number of eligible beneficiaries under section 9706;

"(C) two individuals designated by the United Mine Workers of America; and

"(D) three persons selected by the persons appointed under subparagraphs (A), (B), and (C).

"(2) SUCCESSOR TRUSTEES.—Any successor trustee shall be appointed in the same manner as the trustee being succeeded. The plan establishing the Combined Fund shall provide for the removal of trustees.

"(3) SPECIAL RULES.—

"(A) BCOA.—If the BCOA ceases to exist, any trustee or successor under paragraph (1)(A) shall be designated by the 3 employers who were members of the BCOA on the enactment date and who have been assigned the greatest number of eligible beneficiaries under section 9706.

"(B) FORMER SIGNATORIES.—The initial trustee under paragraph (1)(B) shall be designated by the 3 employers, other than 1988 agreement operators, which the records of the 1950 UMWA Benefit Plan and 1974 UMWA Benefit Plan indicate have the greatest number of eligible beneficiaries as of the enactment date, and such trustee and any successor shall serve until November 1, 1993.

"(c) PLAN YEAR.—The first plan year of the Combined Fund shall begin February 1, 1993, and end September 30, 1993. Each succeeding plan year shall begin on October 1 of each calendar year.

"SEC. 9703. PLAN BENEFITS.

"(a) IN GENERAL.—Each eligible beneficiary of the Combined Fund shall receive—

"(1) health benefits described in subsection (b), and

"(2) in the case of an eligible beneficiary described in subsection (f)(1), death benefits coverage described in subsection (c).

"(b) HEALTH BENEFITS.—

"(1) IN GENERAL.—The trustees of the Combined Fund shall provide health care benefits to each eligible beneficiary by enrolling the beneficiary in a health care services plan which undertakes to provide such benefits on a prepaid risk basis. The trustees shall utilize all available plan resources to ensure that, consistent with paragraph (2), coverage under the managed care system shall to the maximum extent feasible be substantially the same as (and subject to the same limitations of) coverage provided under the 1950 UMWA Benefit Plan and the 1974 UMWA Benefit Plan as of January 1, 1992.

"(2) PLAN PAYMENT RATES.—

"(A) IN GENERAL.—The trustees of the Combined Fund shall negotiate payment rates with the health care services plans described in paragraph (1) for each plan year which are in amounts which—

"(i) vary as necessary to ensure that beneficiaries in different geographic areas have access to a uniform level of health benefits; and

"(ii) result in aggregate payments for such plan year from the Combined Fund which do not exceed the total premium payments required to be paid to the Combined Fund under section 9704(a) for the plan year, adjusted as provided in subparagraphs (B) and (C).

"(B) REDUCTIONS.—The amount determined under subparagraph (A)(ii) for any plan year shall be reduced—

"(i) by the aggregate death benefit premiums determined under section 9704(c) for the plan year, and

"(ii) by the amount reserved for plan administration under subsection (d).

"(C) INCREASES.—The amount determined under subparagraph (A)(ii) shall be increased—

"(i) by any reduction in the total premium payments required to be paid under section 9704(a) by reason of transfers described in section 9705,

"(ii) by any carryover to the plan year from any preceding plan year which—

"(I) is derived from amounts described in section 9704(e)(3)(B)(i), and

"(II) the trustees elect to use to pay benefits for the current plan year, and

"(iii) any interest earned by the Combined Fund which the trustees elect to use to pay benefits for the current plan year.

"(3) QUALIFIED PROVIDERS.—The trustees of the Combined Fund shall not enter into an agreement under paragraph (1) with any provider of services which is of a type which is required to be certified by the Secretary of Health and Human Services when providing services under title XVIII of the Social Security Act unless the provider is so certified.

"(4) EFFECTIVE DATE.—Benefits shall be provided under paragraph (1) on and after February 1, 1993.

"(c) DEATH BENEFITS COVERAGE.—

"(1) IN GENERAL.—The trustees of the Combined Fund shall provide death benefits coverage to each eligible beneficiary described in subsection (f)(1) which is identical to the benefits provided under the 1950 UMWA Pension Plan or 1974 UMWA Pension Plan, whichever is applicable, on July 20, 1992. Such coverage shall be provided on and after February 1, 1993.

"(2) TERMINATION OF COVERAGE.—The 1950 UMWA Pension Plan and the 1974 UMWA Pension Plan shall each be amended to provide that death benefits coverage shall not be provided to eligible beneficiaries on and after February 1, 1993. This paragraph shall not prohibit such plans from subsequently providing death benefits not described in paragraph (1).

"(d) RESERVES FOR ADMINISTRATION.—The trustees of the Combined Fund may reserve for each plan year, for use in payment of the administrative costs of the Combined Fund, an amount not to exceed 5 percent of the premiums to be paid to the Combined Fund under section 9704(a) during the plan year.

"(e) LIMITATION ON ENROLLMENT.—The Combined Fund shall not enroll any individual who is not receiving benefits under the 1950 UMWA Benefit Plan or the 1974 UMWA Benefit Plan as of July 20, 1992.

"(f) ELIGIBLE BENEFICIARY.—For purposes of this subchapter, the term 'eligible beneficiary' means an individual who—

"(1) is a coal industry retiree who, on July 20, 1992, was eligible to receive, and receiving, benefits from the 1950 UMWA Benefit Plan or the 1974 UMWA Benefit Plan, or

"(2) on such date was eligible to receive, and receiving, benefits in either such plan by reason of a relationship to such retiree.

"PART II—FINANCING

"Sec. 9704. Liability of assigned operators.

"Sec. 9705. Transfers.

"Sec. 9706. Assignment of eligible beneficiaries.

"SEC. 9704. LIABILITY OF ASSIGNED OPERATORS.

"(a) ANNUAL PREMIUMS.—Each assigned operator shall pay to the Combined Fund for each plan year beginning on or after February 1, 1993, an annual premium equal to the sum of the following three premiums—

"(1) the health benefit premium determined under subsection (b) for such plan year, plus

"(2) the death benefit premium determined under subsection (c) for such plan year, plus

"(3) the unassigned beneficiaries premium determined under subsection (d) for such plan year.

Any related person with respect to an assigned operator shall be jointly and severally liable for any premium required to be paid by such operator.

"(b) HEALTH BENEFIT PREMIUM.—For purposes of this chapter—

"(1) IN GENERAL.—The health benefit premium for any plan year for any assigned operator shall be an amount equal to the product of the per beneficiary premium for the plan year multiplied by the number of eligible beneficiaries assigned to such operator under section 9706.

"(2) PER BENEFICIARY PREMIUM.—The Secretary of Health and Human Services shall calculate a per beneficiary premium for each plan year beginning on or after February 1, 1993, which is equal to the sum of—

"(A) the amount determined by dividing—

"(i) the aggregate amount of payments from the 1950 UMWA Benefit Plan and the 1974 UMWA Benefit Plan for health benefits (less reimbursements but including administrative costs) for the plan year beginning July 1, 1991, for all individuals covered under such plans for such plan year, by

"(ii) the number of such individuals, plus

"(B) the amount determined under subparagraph (A) multiplied by the percentage (if any) by which the medical component of the Consumer Price Index for the calendar year in which the plan year begins exceeds such component for 1992.

"(3) ADJUSTMENTS FOR MEDICARE REDUCTIONS.—If, by reason of a reduction in benefits under title XVIII of the Social Security Act, the level of health benefits under the Combined Fund would be reduced, the trustees of the Combined Fund shall increase the per beneficiary premium for the plan year in which the reduction occurs and each subsequent plan year by the amount necessary to maintain the level of health benefits which would have been provided without such reduction.

"(c) DEATH BENEFIT PREMIUM.—The death benefit premium for any plan year for any assigned operator shall be equal to the applicable percentage of the amount, actuarially determined, which the Combined Fund will be required to pay during the plan year for death benefits coverage described in section 9703(c).

"(d) UNASSIGNED BENEFICIARIES PREMIUM.—The unassigned beneficiaries premium for any plan year for any assigned operator shall be equal to the applicable percentage of the product of the per beneficiary premium for the plan year multiplied by the number of eligible beneficiaries who are not assigned under section 9706 to any person for such plan year.

"(e) PREMIUM ACCOUNTS; ADJUSTMENTS.—

"(1) ACCOUNTS.—The trustees of the Combined Fund shall establish and maintain 3 separate accounts for each of the premiums described in subsections (b), (c), and (d). Such accounts shall be credited with the premiums received and debited with expenditures allocable to such premiums.

"(2) ALLOCATIONS.—

"(A) ADMINISTRATIVE EXPENSES.—Administrative costs for any plan year shall be allocated to premium accounts under paragraph (1) on the basis of expenditures (other than administrative costs) from such accounts during the preceding plan year.

"(B) INTEREST.—Interest shall be allocated to the account established for health benefit premiums.

"(3) SHORTFALLS AND SURPLUSES.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), if, for any plan year, there is a shortfall or surplus in any premium account, the premium for the following plan year for each assigned operator shall be proportionately reduced or increased, whichever is applicable, by the amount of such shortfall or surplus.

"(B) EXCEPTION.—Subparagraph (A) shall not apply to any surplus in the health benefit premium account or the unassigned beneficiaries premium account which is attributable to—

"(i) the excess of the premiums credited to such account for a plan year over the benefits (and administrative costs) debited to such account for the plan year, but such excess shall only be available for purposes of the carryover described in section 9703(b)(2)(C)(ii) (relating to carryovers of premiums not used to provide benefits), or

"(ii) interest credited under paragraph (2)(B) for the plan year or any preceding plan year.

"(C) NO AUTHORITY FOR INCREASED PAYMENTS.—Nothing in this paragraph shall be construed to allow expenditures for health care benefits for any plan year in excess of the limit under section 9703(b)(2).

"(f) APPLICABLE PERCENTAGE.—For purposes of this section—

"(1) IN GENERAL.—The term 'applicable percentage' means, with respect to any assigned operator, the percentage determined by dividing the number of eligible beneficiaries assigned under section 9706 to such operator by the total number of eligible beneficiaries assigned under section 9706 to all such operators (determined on the basis of assignments as of October 1, 1993).

"(2) ANNUAL ADJUSTMENTS.—In the case of any plan year beginning on or after October 1, 1994, the applicable percentage for any assigned operator shall be redetermined under paragraph (1) by making the following changes to the assignments as of October 1, 1993:

"(A) Such assignments shall be modified to reflect any changes during the period beginning October 1, 1993, and ending on the last day of the preceding plan year pursuant to the appeals process under section 9706(f).

"(B) The total number of assigned eligible beneficiaries shall be reduced by the eligible beneficiaries of assigned operators which (and all related persons with respect to which) had ceased business (within the meaning of section 9701(c)(6)) during the period described in subparagraph (A).

"(g) PAYMENT OF PREMIUMS.—

"(1) IN GENERAL.—The annual premium under subsection (a) for any plan year shall be payable in 12 equal monthly installments, due on the twenty-fifth day of each calendar month in the plan year. In the case of the plan year beginning February 1, 1993, the annual premium under subsection (a) shall be added to such premium for the plan year beginning October 1, 1993.

"(2) DEDUCTIBILITY.—Any premium required by this section shall be deductible without regard to any limitation on deductibility based on the prefunding of health benefits.

"(h) INFORMATION.—The trustees of the Combined Fund shall, not later than 60 days after the enactment date, furnish to the Secretary of Health and Human Services information as to the benefits and covered beneficiaries under the fund, and such other information as the Secretary may require to compute any premium under this section.

"(i) TRANSITION RULES.—

"(1) 1988 AGREEMENT OPERATORS.—

"(A) 1ST YEAR COSTS.—During the plan year of the Combined Fund beginning February 1, 1993, the 1988 agreement operators shall make contributions to the Combined Fund in amounts necessary to pay benefits and administrative costs of the Combined Fund incurred during such year, reduced by the amount transferred to the Combined Fund under section 9705(a) on February 1, 1993.

"(B) DEFICITS FROM MERGED PLANS.—During the period beginning February 1, 1993, and ending September 30, 1994, the 1988 agreement operators shall make contributions to the Combined Fund as are necessary to pay off the expenses accrued (and remaining unpaid) by the 1950 UMWA Benefit Plan and the 1974 UMWA Benefit Plan as of February 1, 1993, reduced by the assets of such plans as of such date.

"(C) FAILURE.—If any 1988 agreement operator fails to meet any obligation under this paragraph, any contributions of such operator to the Combined Fund or any other plan described in section 404(c) shall not be deductible under this title until such time as the failure is corrected.

"(D) PREMIUM REDUCTIONS.—

"(i) 1ST YEAR PAYMENTS.—In the case of a 1988 agreement operator making contributions under subparagraph (A), the premium of such operator under subsection (a) shall be reduced by the amount paid under subparagraph (A) by such operator for the plan year beginning February 1, 1993.

"(ii) DEFICIT PAYMENTS.—In the case a 1988 agreement operator making contributions under subparagraph (B), the premium of such operator under subsection (a) shall be reduced by the amounts which are paid to the Combined Fund by reason of claims arising in connection with the 1950 UMWA Benefit Plan and the 1974 UMWA Benefit Plan as of February 1, 1993, including claims based on the 'evergreen clause' found in the language of the 1950 UMWA Benefit Plan and the 1974 UMWA Benefit Plan, and which are allocated to such operator under subparagraph (E).

"(iii) LIMITATION.—Clause (ii) shall not apply to the extent the amounts paid exceed the contributions.

"(iv) PLAN YEARS.—Premiums under subsection (a) shall be reduced for the first plan year for which amounts described in clause (i) or (ii) are available and for any succeeding plan year until such amounts are exhausted.

"(E) ALLOCATIONS OF CONTRIBUTIONS AND REFUNDS.—Contributions under subparagraphs (A) and (B), and premium reductions under subparagraph (D)(ii), shall be made ratably on the basis of aggregate contributions made by such operators under the applicable 1988 coal wage agreements as of January 31, 1993.

"(2) 1ST PLAN YEAR.—In the case of the plan year of the Combined Fund beginning February 1, 1993—

"(A) the premiums under subsections (a)(1) and (a)(3) shall be 67 percent of such premiums without regard to this paragraph, and

"(B) the premiums under subsection (a) shall be paid as provided in subsection (g).

"(3) STARTUP COSTS.—The 1950 UMWA Benefit Plan and the 1974 UMWA Benefit Plan shall pay the costs of the Combined Fund incurred before February 1, 1993. For purposes of this section, such costs shall be treated as administrative expenses incurred for the plan year beginning February 1, 1993.

"SEC. 9705. TRANSFERS.

"(a) TRANSFER OF ASSETS FROM 1950 UMWA PENSION PLAN.—

"(1) IN GENERAL.—From the funds reserved under paragraph (2), the board of trustees of the 1950 UMWA Pension Plan shall transfer to the Combined Fund—

"(A) $70,000,000 on February 1, 1993,

"(B) $70,000,000 on October 1, 1993, and

"(C) $70,000,000 on October 1, 1994.

"(2) RESERVATION.—Immediately upon the enactment date, the board of trustees of the 1950 UMWA Pension Plan shall segregate $210,000,000 from the general assets of the plan. Such funds shall be held in the plan until disbursed pursuant to paragraph (1). Any interest on such funds shall be deposited into the general assets of the 1950 UMWA Pension Plan.

"(3) USE OF FUNDS.—Amounts transferred to the Combined Fund under paragraph (1) shall—

"(A) in the case of the transfer on February 1, 1993, be used to proportionately reduce the premium of each assigned operator under section 9704(a) for the plan year of the Fund beginning February 1, 1993, and

"(B) in the case of any other such transfer, be used to proportionately reduce the unassigned beneficiary premium under section 9704(a)(3) and the death benefit premium under section 9704(a)(2) of each assigned operator for the plan year in which transferred and for any subsequent plan year in which such funds remain available

Such funds may not be used to pay any amounts required to be paid by the 1988 agreement operators under section 9704(i)(1)(B).

"(4) TAX TREATMENT; VALIDITY OF TRANSFER.—

"(A) NO DEDUCTION.—No deduction shall be allowed under this title with respect to any transfer pursuant to paragraph (1), but such transfer shall not adversely affect the deductibility (under applicable provisions of this title) of contributions previously made by employers, or amounts hereafter contributed by employers, to the 1950 UMWA Pension Plan, the 1950 UMWA Benefit Plan, the 1974 UMWA Pension Plan, the 1974 UMWA Benefit Plan, the 1992 UMWA Benefit Plan, or the Combined Fund.

"(B) OTHER TAX PROVISIONS.—Any transfer pursuant to paragraph (1)—

"(i) shall not be treated as an employer reversion from a qualified plan for purposes of section 4980, and

"(ii) shall not be includible in the gross income of any employer maintaining the 1950 UMWA Pension Plan.

"(5) TREATMENT OF TRANSFER.—Any transfer pursuant to paragraph (1) shall not be deemed to violate, or to be prohibited by, any provision of law, or to cause the settlors, joint board of trustees, employers or any related person to incur or be subject to liability, taxes, fines, or penalties of any kind whatsoever.

"(b) TRANSFERS FROM ABANDONED MINE RECLAMATION FUND.—

"(1) IN GENERAL.—The Combined Fund shall include any amount transferred to the Fund under section 402(h) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1232(h)).

"(2) USE OF FUNDS.—Any amount transferred under paragraph (1) for any fiscal year shall be used to proportionately reduce the unassigned beneficiary premium under section 9704(a)(3) of each assigned operator for the plan year in which transferred.

"SEC. 9706. ASSIGNMENT OF ELIGIBLE BENEFICIARIES.

"(a) IN GENERAL.—For purposes of this chapter, the Secretary of Health and Human Services shall, before October 1, 1993, assign each coal industry retiree who is an eligible beneficiary to a signatory operator which (or any related person with respect to which) remains in business in the following order:

"(1) First, to the signatory operator which—

"(A) was a signatory to the 1978 coal wage agreement or any subsequent coal wage agreement, and

"(B) was the most recent signatory operator to employ the coal industry retiree in the coal industry for at least 2 years.

"(2) Second, if the retiree is not assigned under paragraph (1), to the signatory operator which—

"(A) was a signatory to the 1978 coal wage agreement or any subsequent coal wage agreement, and

"(B) was the most recent signatory operator to employ the coal industry retiree in the coal industry.

"(3) Third, if the retiree is not assigned under paragraph (1) or (2), to the signatory operator which employed the coal industry retiree in the coal industry for a longer period of time than any other signatory operator prior to the effective date of the 1978 coal wage agreement.

"(b) RULES RELATING TO EMPLOYMENT AND REASSIGNMENT UPON PURCHASE.—For purposes of subsection (a)—

"(1) AGGREGATION RULES.—

"(A) RELATED PERSON.—Any employment of a coal industry retiree in the coal industry by a signatory operator shall be treated as employment by any related persons to such operator.

"(B) CERTAIN EMPLOYMENT DISREGARDED.—Employment with—

"(i) a person which is (and all related persons with respect to which are) no longer in business, or

"(ii) a person during a period during which such person was not a signatory to a coal wage agreement,

shall not be taken into account.

"(2) REASSIGNMENT UPON PURCHASE.—If a person becomes a successor of an assigned operator after the enactment date, the assigned operator may transfer the assignment of an eligible beneficiary under subsection (a) to such successor, and such successor shall be treated as the assigned operator with respect to such eligible beneficiary for purposes of this chapter. Notwithstanding the preceding sentence, the assigned operator transferring such assignment (and any related person) shall remain the guarantor of the benefits provided to the eligible beneficiary under this chapter. An assigned operator shall notify the trustees of the Combined Fund of any transfer described in this paragraph.

"(c) IDENTIFICATION OF ELIGIBLE BENEFICIARIES.—The 1950 UMWA Benefit Plan and the 1974 UMWA Benefit Plan shall, by the later of October 1, 1992, or the twentieth day after the enactment date, provide to the Secretary of Health and Human Services a list of the names and social security account numbers of each eligible beneficiary, including each deceased eligible beneficiary if any other individual is an eligible beneficiary by reason of a relationship to such deceased eligible beneficiary. In addition, the plans shall provide, where ascertainable from plan records, the names of all persons described in subsection (a) with respect to any eligible beneficiary or deceased eligible beneficiary.

"(d) COOPERATION BY OTHER AGENCIES AND PERSONS.—

"(1) COOPERATION.—The head of any department, agency, or instrumentality of the United States shall cooperate fully and promptly with the Secretary of Health and Human Services in providing information which will enable the Secretary to carry out his responsibilities under this section.

"(2) PROVIDING OF INFORMATION.—

"(A) IN GENERAL.—Notwithstanding any other provision of law, including section 6103, the head of any other agency, department, or instrumentality shall, upon receiving a written request from the Secretary of Health and Human Services in connection with this section, cause a search to be made of the files and records maintained by such agency, department, or instrumentality with a view to determining whether the information requested is contained in such files or records. The Secretary shall be advised whether the search disclosed the information requested, and, if so, such information shall be promptly transmitted to the Secretary, except that if the disclosure of any requested information would contravene national policy or security interests of the United States, or the confidentiality of census data, the information shall not be transmitted and the Secretary shall be so advised.

"(B) LIMITATION.—Any information provided under subparagraph (A) shall be limited to information necessary for the Secretary to carry out his duties under this section.

"(3) TRUSTEES.—The trustees of the Combined Fund, the 1950 UMWA Benefit Plan, the 1974 UMWA Benefit Plan, the 1950 UMWA Pension Plan, and the 1974 UMWA Pension Plan shall fully and promptly cooperate with the Secretary in furnishing, or assisting the Secretary to obtain, any information the Secretary needs to carry out the Secretary's responsibilities under this section.

"(e) NOTICE BY SECRETARY.—

"(1) NOTICE TO FUND.—The Secretary of Health and Human Services shall advise the trustees of the Combined Fund of the name of each person identified under this section as an assigned operator, and the names and social security account numbers of eligible beneficiaries with respect to whom he is identified.

"(2) OTHER NOTICE.—The Secretary of Health and Human Services shall notify each assigned operator of the names and social security account numbers of eligible beneficiaries who have been assigned to such person under this section and a brief summary of the facts related to the basis for such assignments.

"(f) RECONSIDERATION BY SECRETARY.—

"(1) IN GENERAL.—Any assigned operator receiving a notice under subsection (e)(2) with respect to an eligible beneficiary may, within 30 days of receipt of such notice, request from the Secretary of Health and Human Services detailed information as to the work history of the beneficiary and the basis of the assignment.

"(2) REVIEW.—An assigned operator may, within 30 days of receipt of the information under paragraph (1), request review of the assignment. The Secretary of Health and Human Services shall conduct such review if the Secretary finds the operator provided evidence with the request constituting a prima facie case of error.

"(3) RESULTS OF REVIEW.—

"(A) ERROR.—If the Secretary of Health and Human Services determines under a review under paragraph (2) that an assignment was in error—

"(i) the Secretary shall notify the assigned operator and the trustees of the Combined Fund and the trustees shall reduce the premiums of the operator under section 9704 by (or if there are no such premiums, repay) all premiums paid under section 9704 with respect to the eligible beneficiary, and

"(ii) the Secretary shall review the beneficiary's record for reassignment under subsection (a).

"(B) NO ERROR.—If the Secretary of Health and Human Services determines under a review conducted under paragraph (2) that no error occurred, the Secretary shall notify the assigned operator.

"(4) DETERMINATIONS.—Any determination by the Secretary of Health and Human Services under paragraph (2) or (3) shall be final.

"(5) PAYMENT PENDING REVIEW.—An assigned operator shall pay the premiums under section 9704 pending review by the Secretary of Health and Human Services or by a court under this subsection.

"(6) PRIVATE ACTIONS.—Nothing in this section shall preclude the right of any person to bring a separate civil action against another person for responsibility for assigned premiums, notwithstanding any prior decision by the Secretary.

"(g) CONFIDENTIALITY OF INFORMATION.—Any person to which information is provided by the Secretary of Health and Human Services under this section shall not disclose such information except in any proceedings related to this section. Any civil or criminal penalty which is applicable to an unauthorized disclosure under section 6103 shall apply to any unauthorized disclosure under this section.

"PART III—ENFORCEMENT

"Sec. 9707. Failure to pay premium.

"SEC. 9707. FAILURE TO PAY PREMIUM.

"(a) GENERAL RULE.—There is hereby imposed a penalty on the failure of any assigned operator to pay any premium required to be paid under section 9704 with respect to any eligible beneficiary.

"(b) AMOUNT OF PENALTY.—The amount of the penalty imposed by subsection (a) on any failure with respect to any eligible beneficiary shall be $100 per day in the noncompliance period with respect to any such failure.

"(c) NONCOMPLIANCE PERIOD.—For purposes of this section, the term 'noncompliance period' means, with respect to any failure to pay any premium or installment thereof, the period—

"(1) beginning on the due date for such premium or installment, and

"(2) ending on the date of payment of such premium or installment.

"(d) LIMITATIONS ON AMOUNT OF PENALTY.—

"(1) IN GENERAL.—No penalty shall be imposed by subsection (a) on any failure during any period for which it is established to the satisfaction of the Secretary of the Treasury that none of the persons responsible for such failure knew, or exercising reasonable diligence, would have known, that such failure existed.

"(2) CORRECTIONS.—No penalty shall be imposed by subsection (a) on any failure if—

"(A) such failure was due to reasonable cause and not to willful neglect, and

"(B) such failure is corrected during the 30-day period beginning on the 1st date that any of the persons responsible for such failure knew, or exercising reasonable diligence would have known, that such failure existed.

"(3) WAIVER.—In the case of a failure that is due to reasonable cause and not to willful neglect, the Secretary of the Treasury may waive all or part of the penalty imposed by subsection (a) for failures to the extent that the Secretary determines, in his sole discretion, that the payment of such penalty would be excessive relative to the failure involved.

"(e) LIABILITY FOR PENALTY.—The person failing to meet the requirements of section 9704 shall be liable for the penalty imposed by subsection (a).

"(f) TREATMENT.—For purposes of this title, the penalty imposed by this section shall be treated in the same manner as the tax imposed by section 4980B.

"PART IV—OTHER PROVISIONS

"Sec. 9708. Effect on pending claims or obligations.

"SEC. 9708. EFFECT ON PENDING CLAIMS OR OBLIGATIONS.

"All liability for contributions to the Combined Fund that arises on and after February 1, 1993, shall be determined exclusively under this chapter, including all liability for contributions to the 1950 UMWA Benefit Plan and the 1974 UMWA Benefit Plan for coal production on and after February 1, 1993. However, nothing in this chapter is intended to have any effect on any claims or obligations arising in connection with the 1950 UMWA Benefit Plan and the 1974 UMWA Benefit Plan as of February 1, 1993, including claims or obligations based on the 'evergreen' clause found in the language of the 1950 UMWA Benefit Plan and the 1974 UMWA Benefit Plan. This chapter shall not be construed to affect any rights of subrogation of any 1988 agreement operator with respect to contributions due to the 1950 UMWA Benefit Plan or the 1974 UMWA Benefit Plan as of February 1, 1993.

"Subchapter C—Health Benefits of Certain Miners

"Part I—Individual employer plans

"Part II—1992 UMWA benefit plan

"PART I—INDIVIDUAL EMPLOYER PLANS

"Sec. 9711. Continued obligations of individual employer plans.

"SEC. 9711. CONTINUED OBLIGATIONS OF INDIVIDUAL EMPLOYER PLANS.

"(a) COVERAGE OF CURRENT RECIPIENTS.—The last signatory operator of any individual who, as of February 1, 1993, is receiving retiree health benefits from an individual employer plan maintained pursuant to a 1978 or subsequent coal wage agreement shall continue to provide health benefits coverage to such individual and the individual's eligible beneficiaries which is substantially the same as (and subject to all the limitations of) the coverage provided by such plan as of January 1, 1992. Such coverage shall continue to be provided for as long as the last signatory operator (and any related person) remains in business.

"(b) COVERAGE OF ELIGIBLE RECIPIENTS.—

"(1) IN GENERAL.—The last signatory operator of any individual who, as of February 1, 1993, is not receiving retiree health benefits under the individual employer plan maintained by the last signatory operator pursuant to a 1978 or subsequent coal wage agreement, but has met the age and service requirements for eligibility to receive benefits under such plan as of such date, shall, at such time as such individual becomes eligible to receive benefits under such plan, provide health benefits coverage to such individual and the individual's eligible beneficiaries which is described in paragraph (2). This paragraph shall not apply to any individual who retired from the coal industry after September 30, 1994, or any eligible beneficiary of such individual.

"(2) COVERAGE.—Subject to the provisions of subsection (d), health benefits coverage is described in this paragraph if it is substantially the same as (and subject to all the limitations of) the coverage provided by the individual employer plan as of January 1, 1992. Such coverage shall continue for as long as the last signatory operator (and any related person) remains in business.

"(c) JOINT AND SEVERAL LIABILITY OF RELATED PERSONS.—Each related person of a last signatory operator to which subsection (a) or (b) applies shall be jointly and severally liable with the last signatory operator for the provision of health care coverage described in subsection (a) or (b).

"(d) MANAGED CARE AND COST CONTAINMENT.—The last signatory operator shall not be treated as failing to meet the requirements of subsection (a) or (b) if benefits are provided to eligible beneficiaries under managed care and cost containment rules and procedures described in section 9712(c) or agreed to by the last signatory operator and the United Mine Workers of America.

"(e) TREATMENT OF NONCOVERED EMPLOYEES.—The existence, level, and duration of benefits provided to former employees of a last signatory operator (and their eligible beneficiaries) who are not otherwise covered by this chapter and who are (or were) covered by a coal wage agreement shall only be determined by, and shall be subject to, collective bargaining, lawful unilateral action, or other applicable law.

"(f) ELIGIBLE BENEFICIARY.—For purposes of this section, the term 'eligible beneficiary' means any individual who is eligible for health benefits under a plan described in subsection (a) or (b) by reason of the individual's relationship with the retiree described in such subsection (or to an individual who, based on service and employment history at the time of death, would have been so described but for such death).

"(g) RULES APPLICABLE TO THIS PART AND PART II.—For purposes of this part and part II—

"(1) SUCCESSOR.—The term 'last signatory operator' shall include a successor in interest of such operator.

"(2) REASSIGNMENT UPON PURCHASE.—If a person becomes a successor of a last signatory operator after the enactment date, the last signatory operator may transfer any liability of such operator under this chapter with respect to an eligible beneficiary to such successor, and such successor shall be treated as the last signatory operator with respect to such eligible beneficiary for purposes of this chapter. Notwithstanding the preceding sentence, the last signatory operator transferring such assignment (and any related person) shall remain the guarantor of the benefits provided to the eligible beneficiary under this chapter. A last signatory operator shall notify the trustees of the 1992 UMWA Benefit Plan of any transfer described in this paragraph.

"PART II—1992 UMWA BENEFIT PLAN

"Sec. 9712. Establishment and coverage of 1992 UMWA Benefit Plan.

"SEC. 9712. ESTABLISHMENT AND COVERAGE OF 1992 UMWA BENEFIT PLAN.

"(a) CREATION OF PLAN.—

"(1) IN GENERAL.—As soon as practicable after the enactment date, the settlors shall create a separate private plan which shall be known as the United Mine Workers of America 1992 Benefit Plan. For purposes of this title, the 1992 UMWA Benefit Plan shall be treated as an organization exempt from taxation under section 501(a). The settlors shall be responsible for designing the structure, administration and terms of the 1992 UMWA Benefit Plan, and for appointment and removal of the members of the board of trustees. The board of trustees shall initially consist of five members and shall thereafter be the number set by the settlors.

"(2) TREATMENT OF PLAN.—The 1992 UMWA Benefit Plan shall be—

"(A) a plan described in section 302(c)(5) of the Labor Management Relations Act, 1947 (29 U.S.C. 186(c)(5)),

"(B) an employee welfare benefit plan within the meaning of section 3(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(1)), and

"(C) a multiemployer plan within the meaning of section 3(37) of such Act (29 U.S.C. 1002(37)).

"(b) COVERAGE REQUIREMENT.—

"(1) IN GENERAL.—The 1992 UMWA Benefit Plan shall only provide health benefits coverage to any eligible beneficiary who is not eligible for benefits under the Combined Fund and shall not provide such coverage to any other individual.

"(2) ELIGIBLE BENEFICIARY.—For purposes of this section, the term 'eligible beneficiary' means an individual who—

"(A) but for the enactment of this chapter, would be eligible to receive benefits from the 1950 UMWA Benefit Plan or the 1974 UMWA Benefit Plan, based upon age and service earned as of February 1, 1993; or

"(B) with respect to whom coverage is required to be provided under section 9711, but who does not receive such coverage from the applicable last signatory operator or any related person,

and any individual who is eligible for benefits by reason of a relationship to an individual described in subparagraph (A) or (B). In no event shall the 1992 UMWA Benefit Plan provide health benefits coverage to any eligible beneficiary who is a coal industry retiree who retired from the coal industry after September 30, 1994, or any beneficiary of such individual.

"(c) HEALTH BENEFITS.—

"(1) IN GENERAL.—The 1992 UMWA Benefit Plan shall provide health care benefits coverage to each eligible beneficiary which is substantially the same as (and subject to all the limitations of) coverage provided under the 1950 UMWA Benefit Plan and the 1974 UMWA Benefit Plan as of January 1, 1992.

"(2) MANAGED CARE.—The 1992 UMWA Benefit Plan shall develop managed care and cost containment rules which shall be applicable to the payment of benefits under this subsection. Application of such rules shall not cause the plan to be treated as failing to meet the requirements of this subsection. Such rules shall preserve freedom of choice while reinforcing managed care network use by allowing a point of service decision as to whether a network medical provider will be used. Major elements of such rules may include, but are not limited to, elements described in paragraph (3).

"(3) MAJOR ELEMENTS OF RULES.—Elements described in this paragraph are—

"(A) implementing formulary for drugs and subjecting the prescription program to a rigorous review of appropriate use,

"(B) obtaining a unit price discount in exchange for patient volume and preferred provider status with the amount of the potential discount varying by geographic region,

"(C) limiting benefit payments to physicians to the allowable charge under title XVIII of the Social Security Act, while protecting beneficiaries from balance billing by providers,

"(D) utilizing, in the claims payment function 'appropriateness of service' protocols under title XVIII of the Social Security Act if more stringent,

"(E) creating mandatory utilization review (UR) procedures, but placing the responsibility to follow such procedures on the physician or hospital, not the beneficiaries,

"(F) selecting the most efficient physicians and state-of-the-art utilization management techniques, including ambulatory care techniques, for medical services delivered by the managed care network, and

"(G) utilizing a managed care network provider system, as practiced in the health care industry, at the time medical services are needed (point-of-service) in order to receive maximum benefits available under this subsection.

"(4) LAST SIGNATORY OPERATORS.—The board of trustees of the 1992 UMWA Benefit Plan shall permit any last signatory operator required to maintain an individual employer plan under section 9711 to utilize the managed care and cost containment rules and programs developed under this subsection if the operator elects to do so.

"(5) STANDARDS OF QUALITY.—Any managed care system or cost containment adopted by the board of trustees of the 1992 UMWA Benefit Plan or by a last signatory operator may not be implemented unless it is approved by, and meets the standards of quality adopted by, a medical peer review panel, which has been established—

"(A) by the settlors, or

"(B) by the United Mine Workers of America and a last signatory operator or group of operators.

Standards of quality shall include accessibility to medical care, taking into account that accessibility requirements may differ depending on the nature of the medical need.

"(d) GUARANTEE OF BENEFITS.—

"(1) IN GENERAL.—All 1988 last signatory operators shall be responsible for financing the benefits described in subsection (c), in accordance with contribution requirements established in the 1992 UMWA Benefit Plan. Such contribution requirements, which shall be applied uniformly to each 1988 last signatory operator, on the basis of the number of eligible and potentially eligible beneficiaries attributable to each operator, shall include:

"(A) the payment of an annual prefunding premium for all eligible and potentially eligible beneficiaries attributable to a 1988 last signatory operator,

"(B) the payment of a monthly per beneficiary premium by each 1988 last signatory operator for each eligible beneficiary of such operator who is described in subsection (b)(2) and who is receiving benefits under the 1992 UMWA Benefit Plan, and

"(C) the provision of security (in the form of a bond, letter of credit or cash escrow) in an amount equal to a portion of the projected future cost to the 1992 UMWA Benefit Plan of providing health benefits for eligible and potentially eligible beneficiaries attributable to the 1988 last signatory operator. If a 1988 last signatory operator is unable to provide the security required, the 1992 UMWA Benefit Plan shall require the operator to pay an annual prefunding premium that is greater than the premium otherwise applicable.

"(2) ADJUSTMENTS.—The 1992 UMWA Benefit Plan shall provide for—

"(A) annual adjustments of the per beneficiary premium to cover changes in the cost of providing benefits to eligible beneficiaries, and

"(B) adjustments as necessary to the annual prefunding premium to reflect changes in the cost of providing benefits to eligible beneficiaries for whom per beneficiary premiums are not paid.

"(3) ADDITIONAL LIABILITY.—Any last signatory operator who is not a 1988 last signatory operator shall pay the monthly per beneficiary premium under paragraph (1)(B) for each eligible beneficiary described in such paragraph attributable to that operator.

"(4) JOINT AND SEVERAL LIABILITY.—A 1988 last signatory operator or last signatory operator described in paragraph (3), and any related person to any such operator, shall be jointly and severally liable with such operator for any amount required to be paid by such operator under this section.

"(5) DEDUCTIBILITY.—Any premium required by this section shall be deductible without regard to any limitation on deductibility based on the prefunding of health benefits.

"(6) 1988 LAST SIGNATORY OPERATOR.—For purposes of this section, the term '1988 last signatory operator' means a last signatory operator which is a 1988 agreement operator.

"Subchapter D—Other Provisions

"Sec. 9721. Civil enforcement.

"Sec. 9722. Sham transactions.

"SEC. 9721. CIVIL ENFORCEMENT.

"The provisions of section 4301 of the Employee Retirement Income Security Act of 1974 shall apply to any claim arising out of an obligation to pay any amount required to be paid by this chapter in the same manner as any claim arising out of an obligation to pay withdrawal liability under subtitle E of title IV of such Act. For purposes of the preceding sentence, a signatory operator and related persons shall be treated in the same manner as employers.

"SEC. 9722. SHAM TRANSACTIONS.

"If a principal purpose of any transaction is to evade or avoid liability under this chapter, this chapter shall be applied (and such liability shall be imposed) without regard to such transaction."

(b) AMENDMENTS TO SURFACE MINING ACT.—

(1) EXTENSION OF FEE PROGRAM.—Section 402(b) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1232(b)) is amended by striking "September 30, 1995" and inserting "September 30, 2004".

(2) TRANSFER TO FUND.—Section 402 of such Act (30 U.S.C. 1232) is amended by adding at the end the following new subsection:

"(h) TRANSFER OF FUNDS TO COMBINED FUND.—(1) In the case of any fiscal year beginning on or after October 1, 1995, with respect to which fees are required to be paid under this section, the Secretary shall, as of the beginning of such fiscal year and before any allocation under subsection (g), make the transfer provided in paragraph (2).

"(2) The Secretary shall transfer from the fund to the United Mine Workers of America Combined Benefit Fund established under section 9702 of the Internal Revenue Code of 1986 for any fiscal year an amount equal to the sum of—

"(A) the amount of the interest which the Secretary estimates will be earned and paid to the Fund during the fiscal year, plus

"(B) the amount by which the amount described in subparagraph (A) is less than $70,000,000.

"(3)(A) The aggregate amount which may be transferred under paragraph (2) for any fiscal year shall not exceed the amount of expenditures which the trustees of the Combined Fund estimate will be debited against the unassigned beneficiaries premium account under section 9704(e) of the Internal Revenue Code of 1986 for the fiscal year of the Combined Fund in which the transfer is made.

"(B) The aggregate amount which may be transferred under paragraph (2)(B) for all fiscal years shall not exceed an amount equivalent to all interest earned and paid to the fund after September 30, 1992, and before October 1, 1995.

"(4) If, for any fiscal year, the amount transferred is more or less than the amount required to be transferred, the Secretary shall appropriately adjust the amount transferred for the next fiscal year."

(3) CONFORMING AMENDMENTS.—(A) Section 401(c) of such Act (30 U.S.C. 1231(c)) is amended by striking "and" at the end of paragraph (11), by redesignating paragraph (12) as paragraph (13), and by adding after paragraph (11) the following new paragraph:

"(12) for the purpose described in section 402(h); and".

(B) Section 402(g)(1) of such Act (30 U.S.C. 1232(g)) is amended by striking "Moneys" and inserting "Except as provided in subsection (h), moneys".

Subtitle D—Miscellaneous

SEC. 20151. REMOVAL OF VOLUME CAP FOR CERTAIN HIGH-SPEED RAIL FACILITY BONDS.

(a) IN GENERAL.—Paragraph (4) of section 146(g) (relating to exception for certain bonds) is amended by inserting ", other than any such bond described in subsection (h)(1)" after "rail facilities".

(b) CONFORMING AMENDMENT.—Subsection (h) of section 146 (relating to exception for government-owned solid waste disposal facilities) is amended—

(1) by striking "section 142(a)(6)" in paragraph (1) and inserting "paragraph (6) or (11) of section 142(a)", and

(2) by inserting "AND HIGH-SPEED RAIL" before "FACILITIES" in the heading thereof.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to bonds issued after December 31, 1993.

SEC. 20152. DEDUCTION FOR MOVING EXPENSE.

(a) IN GENERAL.—Paragraph (1) of section 217(c) of the Internal Revenue Code of 1986 (relating to conditions for allowance) is amended by striking "35 miles" each place it appears and inserting "55 miles".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to expenses incurred after January 1, 1993.

SEC. 20153. AMENDMENT TO SECTION 781(a)(1)(B) OF THE TARIFF ACT OF 1930 (19 U.S.C. 1677j(a)(1)(B)).

In section 781(a)(1)(B), the phrase "produced in the foreign country with respect to which such order or finding applies" is deleted and the following new text is inserted in lieu thereof: "supplied by an exporter or producer in the foreign country with respect to which the order or finding applies, from parts or components from suppliers that have historically supplied the parts or components to that exporter or producer, or from parts or components supplied by any party in any foreign country on behalf of such an exporter or producer".

SEC. 20154. AMENDMENT TO SECTION 781(a)(2)(B) OF THE TARIFF ACT OF 1930 (19 U.S.C. 1677j(a)(2)(B)).

In section 781(a)(2)(B), the phrase "produced in the foreign country with respect to which such order or finding described in paragraph (1) applies" is deleted and the phrase "described in subparagraph (1)(B)" is inserted in lieu thereof.

SEC. 20155. AMENDMENT TO SECTION 781(a)(2)(C) OF THE TARIFF ACT OF 1930 (19 U.S.C. 1677j(a)(2)(C)).

In section 781(a)(2)(C), the phrase "produced in such foreign country" is deleted and the phrase "described in subparagraph (1)(B)" is inserted in lieu thereof.

SEC. 20156. AMENDMENT TO SECTION 781(b)(1)(B) OF THE TARIFF ACT OF 1930 (19 U.S.C. 1677j(b)(1)(B)).

The following phrase is inserted after the language of section 781(b)(1)(B)(ii): "or (iii) is supplied by the exporter or producer in any foreign country with respect to which such order or finding applies, or from suppliers that have historically supplied the parts or components to that exporter or producer,".

TITLE XX—REVENUE PROVISIONS

Sec. 20101. Amendment of 1986 Code.

SUBTITLE A—ENERGY CONSERVATION AND PRODUCTION INCENTIVES

Sec. 20111. Treatment of employer-provided transportation benefits.
Sec. 20112. Exclusion of energy conservation subsidies provided by regulated public utilities.
Sec. 20113. Treatment of clean-fuel vehicles.
Sec. 20114. Credit for electricity produced from certain renewable sources.
Sec. 20115. Repeal of minimum tax preferences for depletion and intangible drilling costs of independent oil and gas producers and royalty owners.
Sec. 20116. Increased base tax rate on ozone-depleting chemicals.
Sec. 20117. Treatment of certain ozone depleting chemicals.
Sec. 20118. Permanent extension of energy investment credit for solar, geothermal, and ocean property.
Sec. 20119. Nuclear decommissioning funds.
Sec. 20120. Alcohol fuels.
Sec. 20121. Determination of independent producers.
Sec. 20122. Tax-exempt of financing for environmental enhancements of hydroelectric generating facilities.

Subtitle B—Other Revenue Provisions

Sec. 20131. Elimination of deduction for club membership fees.
Sec. 20132. Modifications to tax on insurance policies issued by foreign insurers.
Sec. 20133. Trans-Alaska pipeline liability fund income tax offset.

Subtitle C—Health Care of Coal Miners

Sec. 20141. Short title.
Sec. 20142. Findings and declaration of policy.
Sec. 20143. Coal industry health benefits program.

Subtitle D—Miscellaneous

Sec. 20151. Removal of volume cap for certain high-speed rail facility bonds.
Sec. 20152. Deduction for moving expense.
Sec. 20153. Amendment to section 781(a)(1)(B) of the Tariff Act of 1930 (19 U.S.C. 1677j(a)(1)(B).
Sec. 20154. Amendment to section 781(a)(2)(B) of the Tariff Act of 1930 (19 1677j(a)(2)(B).
Sec. 20155. Amendment to section 781(a)(2)(C) of the Tariff Act of 1930 (19 U.S.C. 1677j(a)(2)(C).
Sec. 20156. Amendment to section 781(b)(1)(B) of the Tariff Act of 1930 (19 U.S.C. 1677j(b)(1)(B).

The PRESIDING OFFICER. Without objection, the first degree amendment, as amended, is agreed to.

So the amendment (No. 3318), as amended, was agreed to.

Mr. MITCHELL. Mr. President, I move to reconsider the vote.

Mr. BENTSEN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DOLE. Mr. President, there are many meritorious provisions in this bill which make it hard to vote against it.

For starters, the Medicaid and Medicare provisions that we were able to add are critical to physicians, hospitals, and others, particularly in rural areas.

We must repeal the luxury tax—before we sink the remaining few boat builders and before we crash the aircraft industry. The bill also repeals the luxury tax on jewelry and furs. It does not repeal the tax on autos. Personally, I would prefer to see a complete repeal and maybe we can work that out in conference.

We must help our critical areas through urban, rural, and Indian enterprise zones.

Many are relying on the extension of the expiring tax provisions.

And many are awaiting economic growth incentives, particularly the first-time home buyers tax credit and the modifications to the passive loss rules.

But there are at least two provisions that are unacceptable to the President. As I talked about last week, PEP and Pease are no more than a hidden tax rate increase.

As the Republican leader, with my vote I am expressing the views of the President. At least on these two provisions, the President has no choice but to veto the bill.

I cast my vote as a message to the conferees. If we don't fix this bill in conference, there will be no luxury tax repeal, there will be no enterprise zones, no extenders, and no real estate incentives.

I urge my colleagues to call upon the conferees to send a bill to the President that he will be able to sign.

MANAGED CARE AND MEDICAID

Mr. DURENBERGER. Mr. President, over the years health maintenance organizations and other forms of managed care have demonstrated their ability to deliver quality care at reasonable costs. Across the country nearly 600 HMO's have 34 million members, including almost one-third of the California population.

Yet managed care has yet to reach its full potential among Medicaid enrollees. The reason is that State Medicaid programs run into a series of Federal roadblocks when they try to establish managed-care programs. The biggest barrier is the need to receive waivers, a frustrating, time-consuming process. The Minnesota Medicaid program, for example, has used managed care for 20 years, yet needs no less than an act of Congress to continue its program past July 1996.

Minnesota's program demonstrates the benefits of managed care for Medicaid enrollees. It now serves 70,000 Medicaid clients, particularly in the Twin Cities and in Itasca County in northern Minnesota. To assure quality there's annual quality audits, member satisfaction surveys, State standards on access, random reviews of medical records, and many other provisions.

Clients need not suffer the stigma of Medicaid, since their plan identification is the same as that of other enrollees. The plans distribute pamphlets, using plain English, on how to use their services. And they innovate: a case management program for chemically dependent clients, community-based long-term care for enrollees who otherwise would be in a nursing home, a system where a nurse calls clients the day after a visit to ask if they have carried out their treatment plan, free transportation for those who need it.

Mr. President, not one of the points I have just made is true of fee-for-service providers. Though individual physicians, hospitals, and other providers may offer excellent care, the fee-for-service system is one in which there are no quality checks on providers, no coordination of care, and no financial incentives to innovate.

Last November Senator Moynihan and I introduced S. 2077, the Medicaid Managed Care Improvement Act, a long overdue effort to stop discouraging Medicaid managed care. After hundreds of hours consulting with States, providers and consumers, last month we introduced a revised version, S. 3191, that incorporated numerous improvements.

Our legislation enjoyed bipartisan support. Last week the Democratic Governors of New York and Pennsylvania wrote forceful letters urging its passage. President Bush personally endorsed it. The National Governors' Association was united behind it.

S. 3191 would have removed the waiver process and removed the 75/25 rule that limits Medicare and Medicaid enrollees to 75 percent of an HMO's total enrollment. It would have given Medicaid clients the choice of at least two managed care plans, and clients could have changed plans easily. It also would have allowed clients to keep receiving care even when they became temporarily ineligible.

Though we wanted the bill to be included in the package of Medicare and Medicaid improvements in H.R. 11, I

accept Senator BENTSEN'S judgment that our bill was controversial and I understand his good reasons for keeping the package as noncontroversial as possible. And I am pleased that the package includes several provisions that would make it easier for Medicaid clients to benefit from managed care. For example:

States would be able to get waivers to establish primary care case management programs for 3 years initially and 5 years thereafter; currently waivers are limited to 2 years.

It would be easier for HMO's, especially those that operate for profit, to obtain waivers of the 75/25 rule. That measure was designed as an indirect guarantee of quality, but there's no evidence it has done so. Yet it has made it impossible to establish HMO's in neighborhoods with few privately funded clients.

States would be able to extend an enrollee's coverage for 1 month if the person otherwise would be temporarily ineligible for coverage. This has real benefits for continuity of care, which is so important for Medicaid clients. It is also a no-cost item, since it relieves States of considerable paperwork burden.

I believe Senator MOYNIHAN and I can take at least some of the credit for these provisions. I also hope that all the discussion of the last year has helped prepare the way for future action to make managed care available to more Medicaid clients.

Mr. President, as my colleagues well know, any important legislation will attract critics, and our legislation had critics with very specific concerns. But I also sense a nagging discomfort among some people about the whole idea of managed care for Medicaid clients. That is a topic that needs to be addressed.

First, there is concern that managed care reduces access to care. True, managed-care systems discourage clients from seeking care elsewhere. That is part of serving as a medical home and improving continuity of care. And under our bill clients would have had choice where it matters—among plans. Every Medicaid client in managed care would have had a choice of at least two plans—and could have switched plans at any time with little more than a month's notice.

Our current Medicaid system is hardly a gold standard of excellence in access. Congressman ED TOWNS, who represents a part of Brooklyn where one-third of the residents qualify for Medicaid, testified last April that:

> Freedom of choice becomes a meaningless concern when there are few or no providers willing to serve you. * * * Enrollment in a managed care plan, by contrast, can assure that Medicaid residents in Brooklyn and elsewhere have access to physicians whose credentials are carefully evaluated and who are required to be available to their patients on an around-the-clock basis.

Second, there is the feeling that managed care is necessarily worse care than what is available now. This is a remarkable opinion to hold, given the type of fragmented, low-quality care Medicaid clients too often receive now. It is true HMO's have financial incentives to underserve their clients—just as they have financial incentives to prevent illness, to avoid duplication of service, to deliver care efficiently and to find new, more effective ways of caring for their clients.

Because we anticipated this criticism and because we believe in quality assurance, our bill required managed care programs to provide locations, hours and patient/staff ratios at least as good as clients would otherwise have, to have formal quality assurance and grievance systems and to undergo an independent review every year. States would have to have had their own quality assurance systems, including client satisfaction surveys and grievance reviews. Fee-for-service providers don't have to meet any of these standards.

Third, there is the feeling that managed care is so risky that the Federal Government should micromanage any State that includes it in its Medicaid program. But HMO's have been around for decades and have been extensively studied. Thirty-one States have Medicaid managed-care programs, involving HMO's or primary-care case-management programs, with 2.7 million enrollees. The waiver process is appropriate when an idea is new and untested, but that obviously isn't the case here.

Mr. President, though I would have preferred to see S. 3191 debated on the floor of this chamber, I am pleased by the improvements that did make it into H.R. 11. I very much hope we will make further progress in the 103d Congress. It is high time for the Federal Government to stop discouraging States from offering Medicaid clients the benefits of managed care.

Mr. PACKWOOD. Mr. President, in a few minutes we will be voting on the urban aid tax bill.

We spent over a week on this bill on the Senate floor—2 days in August and another 4 days last week. We ended up considering roughly 80 amendments before wrapping things up Saturday.

This bill contains a lot of important provisions that have widespread support in this body:

First, a new enterprise zone program to provide much-needed relief to economically distressed urban and rural areas.

Second, 15-month extension of expired tax programs, such as: the R&D tax credit; the low-income housing tax credit; educational assistance; group legal.

Third, five of the President's seven short-term economic growth proposals, including a tax credit for first-time home buyers.

Fourth, capital gains relief for new venture capital investments.

Fifth, small market health insurance reform.

Sixth, a new child welfare program.

This bill also contains some important provisions for my home State of Oregon:

First, expansion of the Reforestation Trust Fund.

Second, a fix to the Treasury regulations for small woodlot owners that will allow them to prove they are active for the passive loss rules.

As I said on this floor last week, we do not know if the President will sign this bill. We do not know if he will sign any tax bill. We do not know what tax increases, if any, he will accept.

I ask my colleagues on this side of the aisle to move this bill forward. Give us a chance to work with the administration to shape this bill into one that the President may be able to sign. If the President doesn't like the final product, he will not sign it and that will be it. There will be no tax bill.

I wish to thank my colleagues on the Finance Committee for their work on the bill, and especially Chairman BENTSEN who worked hard to keep this bill as bipartisan as possible.

Mr. DURENBERGER. Mr. President, as this bill goes to final passage, I find myself in the unusual situation of liking the bread in this sandwich a lot better than the meat. The title of this bill refers to urban aid, but its most substantial lasting contribution will be in the area of health.

On the tax side of the ledger, I am reluctant to support this bill. In particular, I believe the concept of enterprise zones is fundamentally flawed and will not bring economic development to our Nation's inner cities and rural areas. In my view, the $5.2 billion proposed to be spent on creating 125 enterprise zones would be better spent on job retraining, infrastructure enhancement, and a host of other programs aimed at skill development for the unskilled and undereducated.

I also have concerns about opening the individual retirement account [IRA] door again. And I am especially concerned about the new type of IRA, the so-called back-door IRA which will allow individuals to contribute up to $2,000 to an IRA, receive no tax deduction, and then be allowed to withdraw the money, plus the earnings that built up, tax-free if the money is held in the account for 5 years. In addition, individuals could transfer their current IRA assets, penalty-free, into the back door IRA. I believe the $5.8 billion estimated revenue loss associated with this proposal is far understated.

On the other hand, Mr. President, the bill contains many tax provisions that I believe should be adopted. For example, the bill would allow corporations to calculate the depreciation component of the alternative minimum tax, the so-called alternative current earnings or ACE calculation, in a more fa-

vorable way than is currently permitted. And it provides some relief to the hard hit real estate sector of the economy by easing up the passive loss rules.

All of the expiring provisions including the R&D tax credit, the low-income housing credit, the targeted jobs tax credit, the tax credits for solar and geothermal, mortgage revenue bonds, and first-time farmer bonds will all be extended for more than a year.

I am pleased that the bill repeals the luxury tax on boats, airplanes, jewelry, and fur. This soak-the-rich proposal that evolved out of the 1990 budget agreement never should have been adopted. Another provision that I have long supported is the portion of the bill repealing the 1986 provision that subjected gifts of appreciated property to the alternative minimum tax.

The bill also includes a provision that I have cosponsored for several years that restores the deduction for the adoption of special needs children, and doubles the deduction to $3,000. I tried to save this provision in 1986 and believe that restoration of the deduction is an important accomplishment. Another provision of this bill that I have long been associated with is the provision that allows tax-exempt employers to establish section 401(k) cash or deferred plans.

Furthermore, Mr. President, I am pleased that legislation cosponsored by Senator BUMPERS and myself dealing with child-support is included in this bill along with my amendment that provides equity to employees of airline travel reservation services such as the one operated by Northwest Airlines.

Mr. President, what is most important to me, and the main reason I will vote for this bill, are the health provisions contained herein.

Partisan politicians for years have had a lot to say about health care, but they have found very little they could do about health care. This bill breaks that unfortunate pattern. Because of a genuine spirit of bipartisanship fostered by our chairman, LLOYD BENTSEN, and the combined expertise of many Members who have been studying and working on health care solutions long before it was politically hot, this bill is a major step forward for the health of Americans.

Mr. President, here are some of the most significant areas of progress in this act:

SMALL GROUP INSURANCE REFORM

A majority of America's uninsured and underinsured families are self-employed or work in small businesses. We have seen across the country that the price and coverage of policies offered to these people is a far cry from that available to workers in large- and medium-sized businesses. The language in this bill, which is based on S. 1872, which Senator BENTSEN and I introduced earlier this year, and S. 700, which I introduced last year, will restore equity and affordability to this market.

All companies selling insurance in the "small group market" will be required to offer a basic benefit plan to all small businesses. These packages would be exempt from State mandates, which have added substantially to the cost of insurance by adding coverages which are not essential.

Where you work shouldn't determine if you can get insurance. This bill can help us reach toward that goal.

HEALTH TAX FAIRNESS FOR THE SELF-EMPLOYED

For years we have been working to eliminate for good one of most unfair provisions in the entire tax code. A business gets to deduct 100 percent of the cost of the insurance it provides for its employees. But a farmer, or anyone else who works for him or herself only gets to deduct 25 percent. Not only do they pay more for less coverage, but they get less of a tax break to boot.

This bill gives the self-employed 100 percent deductibility, if not permanently, for the near future.

RURAL HEALTH ASSISTANCE

As a Senator from Minnesota, one of my foremost concerns is the ability of rural citizens to have access to quality care. This bill includes three important provisions toward that end.

We have reauthorized and expanded the Rural Health Transition Grant Program, which I authored in 1987. I am very proud of the fact that this program has already helped 88 Minnesota hospitals with over a million dollars in grants to help them adjust their services and facilities to changing economic conditions. We have now doubled the 1987 authorization level, and tripled the amount that individual hospitals can receive.

And we have extended two other programs which have been invaluable to rural hospitals: Rural Referral Centers and the Medicare Dependent hospitals, both of which adjust Medicare reimbursement rates to better reflect the true value of these hospitals to their communities.

These are hard times for rural hospitals, so these changes are literally the least we can do.

PHYSICIAN PAYMENT REFORM AMENDMENTS

Two years ago we set out to change the way Medicare reimburses physicians so we can get more of the kind of care we want, and where we need it. In this bill we make three necessary adjustments to physician payment: providing fairer reimbursement for the work of anesthesiologists; making sure that EKG interpretation receives proper priority, which was the subject of S. 2914, which Senator ROCKEFELLER and I have introduced; and third, eliminating discriminatory reimbursement cuts on new physicians, which Senator MCCAIN and I have sought to eliminate.

These changes help insure that quality medical service will be available when senior citizens need them.

MANAGED CARE PROMOTION

My Minnesota experience has shown me the value of managed care for simultaneously increasing quality and controlling costs. That's why Senator MOYNIHAN introduced S. 2077 and S. 3191 earlier this year. Borrowing some of the provisions of those measures, this bill will help people on Medicaid take advantage of managed care by adding additional flexibility to state programs to serve this population. Managed-care waivers from Medicaid provisions will be easier to obtain, can be of longer duration and will allow for States to automatically extend coverage for one month for those who would otherwise become temporarily ineligible.

Managed care is part of the answer to our health problem and the Medicaid program is an excellent place to demonstrate its effectiveness.

MINNESOTA IDEAS INCORPORATED

I am particularly pleased that the Finance Committee package recognizes several concerns which were brought to my attention by Minnesota health providers.

The bill deals with an anomaly in the law which jeopardized the continuation of the excellent care provided by the Phillips Eye Institute of Minnesota.

The University of Minnesota, where some of the Nation's foremost organ transplantation work is going on, suggested that Medicare should extend the period of reimbursement for the immunosuppressive drugs so necessary to transplant patients. That has been done in this bill.

I welcome the approval of an extension of the Alzheimer's Disease Demonstration Program, so that the excellent work being done by the Wilder Foundation in Minneapolis can continue.

And the bill's approval of an inflationary update for the dialysis composite rate will prevent hardship in dialysis units across rural America.

Mr. President, America has a long way to go before we can rest on the quality, access and cost of the health care available to our citizens. That is why we cannot afford to let politics set the agenda for action.

This bill doesn't include everything I would have wanted. I wish that the calendar and unfounded controversies had not prevented us from dealing with the ERISA preemption issue which is holding back States like Minnesota who want to expand access. I wish we could have debated and enacted additional Medicaid managed care issues and further benefits for rural health. But I'm very pleased at the progress we have made.

I again wish to thank and credit my chairman for making this happen. I also want to highlight the fact it was

bipartisan cooperation among many members that has helped move us forward.

We have a huge agenda before us in the 103d Congress. The action on this bill gives me confidence that together we can make real progress next year toward the healthier America every one of us seeks.

So, Mr. President, my vote on this tax bill is decided on balance. I have concluded that the good this bill can do for Minnesota exceeds the harm. Politics, in the late Senator Javits' famous formulation, is the art of the possible. By that limited standard, this bill deserves our support.

Mr. ROTH. Mr. President, I rise in support of H.R. 11, the Revenue Act of 1992. And I would like to publicly commend the chairman of the Finance Committee, Senator BENTSEN, as well as the ranking member, Senator PACKWOOD, for a stalwart demonstration of leadership. Together, they successfully moved this bill through the committee to where it stands today—a postitive first step in a much-needed overhaul of America's Tax Code.

Though this bill isn't perfect, I call it a positive step because it does several important things to promote economic growth. The strongest drawback to this bill is an extension of the mistake made in 1990 to raise taxes. I am strongly opposed to this extension of these taxes and I will work hard to remove these disincentives and penalties from this bill in conference.

With that said, there is much to recommend H.R. 11:

First, it creates enterprise zones to rehabilitate economically depressed areas throughout America. It allows for these enterprise zones to be created with as little Government interference as possible, encouraging private enterprise and market values that are fundamental to America's strong economic legacy. What a tremendous transformation this is, from the old, worn-out social policies that stifled self-reliance and engendered ever-increasing dependence on Government.

Second, this bill offers important reforms to health care. One that I am strongly supportive of is the provision that allows self-employed Americans to deduct 100 percent of their health insurance costs.

This, again, is a principle of empowerment—giving Americans what they need to meet their needs. Toward this end, this bill extends fairness to all American risk-takers—those men and women who are the backbone of our economy. This bill allows our farmers, our small businessmen and businesswomen the ability to take ordinary and necessary business deductions for health insurance that have always been allowed for larger business.

Third, H.R. 11 rightly extends expiring tax provisions that are critical to the future competitiveness of America—provisions like the research and development tax credit, mortgage revenue bonds, employer provided education expenses, among others. It also expands the education savings bonds and simplifies the tax law for charitable organizations—another mainstay of our society. I am also happy to see it provide some tax simplification for all taxpayers.

Fourth, this bill finally does away with the luxury excise tax, a tax that I fought vehemently in 1990, and a tax that has proven devastating to many of our industries and workers. Likewise, it contains five of the President's seven growth incentives that he proposed as part of his budget last January. I do wish Congress could have acted more quickly on moving these initiatives, passing them by the March 20 deadline he asked for; as they say, however, better late than never. I hope that in due time we will also be able to come together on a meaningful cut in capital gains taxes as well as investment tax allowances to encourage investment in machinery and equipment by our Nation's manufacturers. Both of these will be fundamental to a strong American economic future.

Finally, Mr. President, I support this bill because it contains what I believe will be a strong instrument in improving our economy. It contains the Bentsen-Roth IRA. I have said much about the virtues of this provision over the last few months. But I don't think it's importance can be overemphasized. Bentsen-Roth puts families first. This is a provision that is good for the home. When so much is being said about family values, this IRA which encourages self-reliance, which allows for penalty-free withdrawals for first-time home purchases, education costs and health care bills, is a strong bipartisan effort to secure those values. With the Bentsen-Roth IRA families have a powerful instrument to take control of their futures—to take control of their futures according to their respective needs and time frame.

Bentsen-Roth is also great for America—for capital formation and investment. In the past, I have cited the figures. Studies show how much capital can be raised for future businesses, for research and development, to rebuild infrastructure, plants, educational institutions and to purchase machinery and equipment. One study, by the respected Lewin/ICF economic group shows that Bentsen-Roth will increase new capital by at least $31 billion in 1995, and by $838 billion by the year 2030. This is what America needs. This same study shows that our gross national product will be at least $75 billion greater by the year 2030, while interest rates would be at least 1.5 percent less, all because Americans will be saving more—encouraged by the incentives provided in Bentsen-Roth.

These are the reasons I'm supporting this bill. There are others. And, as I have said, there are things I would like to see done differently. Most notably, I would like to see those taxes raised in the 1990 bill—taxes that were set to expire in 1995—expire. I think it is deceptive to tell the American people one thing and then to do another. But I believe that even in this flaw we can learn a valuable lesson: We learn that when Congress gets a hold of the taxpayers' money, it seldom, if ever, lets go. That's something we should all keep in mind in the years to come.

For my part, I will continue to press for the elimination of those taxes. I will continue to keep Congress' feet to the fire. But for now, this bill represents a good, bipartisan effort to correct many of the gross deficiencies in our Tax Code. In time, I hope we can get them all.

Mr. BRADLEY. Mr. Speaker, before we pass this bill today, there is one question that I would like each Senator to ponder. Will our country be better off with this tax legislation than without it?

Our Nation is at a crossroads. Our economy is growing so slowly as to make it feel like the recession never ended. We are adjusting to a new era of international competition—an era that offers not only new challenges but tremendous opportunities. And we continue to face a fiscal crisis in the form of a staggering national debt. We can no longer afford to play by the old rules. We can no longer delay leadership.

Mr. President, there are provisions in this bill that I strongly support. I believe the crisis in our cities has come to the point that we have to be open to new policy options. We should combine the best of the left with the best of the right. I would like to commend Chairman BENTSEN for his efforts to fashion an enterprise zone proposal that focuses on job creation and not on rewarding wealthy investors and corporations. I also strongly support the provisions calling for further investments in substance abuse prevention, foster care, job opportunity, and basic skills training programs.

But this is a $30 billion urban aid bill that spends only $5.8 billion on urban aid. The largest share of this spending goes to enterprise zones. But tax breaks alone will do little to change the conditions of our inner-cities and attract business. Companies need to be assured that they will have adequate transportation systems for their goods, that they will be able to ensure the physical security of their workers, and that they will be able to draw upon a well-educated, well-trained work force. To truly change the situation of those living in urban blight, we need to invest significant national resources in transportation, in crime prevention, in public infrastructure, and in human capital. The message this bill sends to our inner cities is that we do not know

what to do, we are not going to think about what to do, and if forced to do something by riots and news coverage, we will conjure up a modest tax break and hope that it works all by itself.

The increase in the number of enterprise zones to 125 only reveals the hollowness of the urban spending amendment which was added to the tax bill. $300 million is to be divided up among 125 cities and 38 social programs—for an average of about $63,000 per program. That is about six slots in the Job Corps. It is a teacher and a half. It is one or two more cops walking the beat in a community policing effort. In my view, this is only token urban assistance.

Still, if this bill had remained just a limited urban aid bill, I could have supported it. Unfortunately, it did not. We spend about as much to extend the so-called expiring provisions as we do on urban assistance. Keeping these provisions in limbo is clearly bad tax policy and the time is long overdue to extend the good ones permanently and let the others expire once and for all. We have also added a new wrinkle to the extenders by linking them up with the section 29 credit—an obsolete energy credit that distorts markets and harms small energy producers throughout the United States. Another $5 billion in the bill goes for simplification, luxury tax repeal, member items, and the like. Some of these measures make sense; others do not.

But the biggest share of the bill goes to the President's growth package. It sees that anytime someone wants to pass a tax break around here, they simply have to cloak it under the title of a "growth" incentive or a "jobs" policy. Does anyone really believe that a $12 billion tax package will spark a $6 trillion economy? Does anyone really believe that a 6-month rebate program for home purchases will create long-term growth? Does anyone really believe that an IRA proposal that will cost billions of dollars in tax revenues in the years outside the budget window will increase our national savings rate?

Mr. President, the reason we are where we are today is that Congress and the President—in our desire to meet the many needs of the American people—find it easier to expand programs and to pass tax breaks than to eliminate programs and to increase taxes. It is important to remember that we can spend money just as easily through the tax code as through the appropriations process. But unlike the appropriations process, tax breaks are not debated every year—they go on and on until we can muster the courage to take on the special interests.

This bill is no different. We will spend $2.1 billion to provide tax relief to wealthy real estate developers. We will spend $1.3 billion to give capital-intensive industry their tax breaks back in the alternative minimum tax. We will spend $1 billion to subsidize a small number of oil and gas producers. And we will spend over $6 billion to give taxpayers in the top 20-percent backloaded, rolled-over IRA's.

The inevitable result of shuffling all this money around is that narrow groups of taxpayers win while the rest of us lose. We pay for the real estate relief by hitting corporate America. We pay for the IRA's by taxing the same group that receives the benefits of the IRA's—robbing Paul to pay Paul. And perhaps most importantly, to the extent that this bill is not fully paid for in the years outside of the budget window, we place an increased burden on the backs of our children and our grandchildren.

Mr. President, at some point, we are going to have to be honest with the American people about what it will really take to create long-term growth. I would like to repeat the alarm message which the General Accounting Office sent us earlier this year. If we continue our current spending and revenue paths, the deficit could reach 20 percent of GNP by the year 2020 and net annual interest costs could rise to over a trillion dollars. Put simply, if we fail to return to fiscal sanity, we risk making the United States a second-rate economic power.

Fiscal accountability should be the minimum standard by which we judge all of our actions in this institution. But, Mr. President, we are not giving the American people a true accounting of the costs of this bill. We set an honesty trap back in 1986 when we did tax reform. If you put loopholes back into the Code, one of two things happen. You either have to increase tax rates or increase the deficit. My fear is that this bill takes the latter approach. With a national debt now over $28,000 per worker, we must stop playing games with the budget rules and with the deficit.

Roughly half of the money we use to pay for this bill is either temporary or comes from one-time speedups in tax collections. We claim to raise $6.6 billion from changes to the corporate and individual estimated tax provisions alone. These are not new revenues, but simply manipulations of the timing of tax receipts. We claim to raise $7.7 billion by extending two provisions passed in the 1990 budget agreement—the so-called Pease and PEP provisions. These also are not new revenues, but rather an extension of current tax liability. And many of the revenue-losing provisions of this bill are jiggered so as to hide their true costs outside of the budget window. The IRA proposal includes backloaded accounts and rollovers that push the costs of the proposal beyond 5 years. The section 29 credit is billed as an 8-month extension, but continues to lose revenue into the next century. The retroactive election provision of the intangibles legislation lets companies purchase tax amnesty at the price of 50 cents on the dollar; this legislation could cost us up to $2 billion per year outside of the budget window. If something is worth doing, Mr. President, then we should be willing to pay for it fully, openly, and honestly.

Mr. President, I look forward to the day when we can get to work on the long-term solutions that we all know we need—solutions that will lead to less consumption, more savings, and more investment. However, because I believe this bill spends too little on our urban crisis and too much on loopholes primarily used by wealthy Americans and corporations—because I believe this bill will add to our budget deficit and harm our prospects for real growth—I cannot vote for it.

Mr. LEAHY. Mr. President, I remember a time when the bill before us was called the urban aid tax bill. President Bush and congressional leaders agreed that our Nation's cities desperately needed help. We decided that relief would be provided to cities in the form of financial aid and tax subsidies.

This past summer, Congress passed the first part of an urban aid package by funding $1.1 billion in small business loans, disaster assistance, and summer jobs.

Today, the second part of that urban aid package—the tax bill—is before us.

Unfortunately, this bill got lost along the way.

Instead of helping our inner cities, this bill is nothing more than a collection of special interest tax breaks and loopholes thrown together under the guise of helping America's cities.

Instead of a helping hand for those in need, this is a handout for well-healed Washington lobbyists. With this bill, for a select few, Christmas arrives 3 months early this year.

Let us look at the facts.

The tax bill before us doles out $32 billion in new tax breaks. Of that, only $5.3 billion goes to help cities.

The lion's share of aid in this bill—over $25 billion—benefits corporations, high-income individuals, and special interests. It has little to do with the revitalization of our cities.

To add insult to injury, this bill will significantly add to the deficit. Sure, the bill is technically paid for over 5 years. However, most of the revenue sources in this bill are temporary while the tax breaks in this bill are permanent. The net result: This bill will add tens of billions to the deficit annually by the turn of the century.

Guess who is going to pay for the deficit increase in this bill. The taxpayers of the United States.

The Federal deficit is gnawing at the foundation of our country. Instead of teaching our children, fixing our bridges, and cleaning up our environment, the Federal Government has to spend nearly $1 out of $5 just to pay

foreign governments, international banks, and others for the interest on the debt.

In 1986, I supported the Tax Reform Act which closed many special interest loopholes in our Tax Code. This bill continues the chipping away of the reforms we made in 1986. And for what? To rebuild our cities?

Expanding tax breaks for those giving charitable gifts to universities will not improve the condition of our cities. Neither will the section 29 tax credits, accelerated depreciation tax breaks, nor easing of passive loss rules.

None of these changes fight poverty in America, rebuild our cities, or make urban areas industrially competitive.

Extending tax credits for research and development, low-income housing, IRAs, and first-time home buyers are all provisions I support. But these provisions do not belong in a tax bill aimed at helping impoverished urban areas.

It is true that the bill contains an enterprise zone provision aimed at aiding the cities. But this provision seems tentative at best.

Enterprise zones are not a panacea to the problems faced by our cities, but they can play a role in promoting urban economic revival. The enterprise zone provisions in this bill provides minimal aid.

If Congress and the administration want to spend $32 billion on urban recovery, there are many better ways to do it. Worker retraining programs, mass transit, public works investment, and increased law enforcement are several examples. All do more for American cities than the tax breaks in this bill.

Last March, the Senate passed an economic recovery tax package containing 80 percent of what the President asked for in his State of the Union Address. Instead of signing the bill to get this country moving, he chose to veto it.

Now, with the election fast approaching, the administration wants a bill it can sign. Unfortunately, this bill will not help the cities nor get the economy going.

It is nothing more than a grab bag of special interest tax breaks.

This is the wrong bill, at the wrong time, for the wrong reasons.

Mr. DODD. Mr. President, the frequency with which we change the tax code is both a blessing and a curse. It is a blessing because it gives us opportunities to correct past mistakes. It is a curse because it gives us a chance to make new ones.

In many ways, we would not need today's bill were it not for past mistakes. The 1986 Tax Reform Act, which I opposed, hobbled the usefulness of individual retirement accounts, a key incentive needed to bolster the national savings rate and our long-term economic health. That same bill also devastated the commercial real estate industry by retroactively repealing the passive loss rules, instead of gradually taking the air out of the speculative bubble created during the early 1980's.

But in correcting these mistakes, we would be doing as grave disservice if we made a whole host of new ones. For example, we should not repeat the history of the 1981 Reagan tax bill, which opened the floodgates to the massive deficits of the 1980's. This bill must do no further harm to a Federal budget already seriously out of kilter.

In this regard, I note that the bill is deficit-neutral over the first 5 years of its life. That is required under the terms of the 1990 Budget Enforcement Act, and rightly so.

Regrettably, the effects of this bill on the deficit after that 5-year period are much less certain. I am concerned by this. If it becomes clear this bill would have further deleterious effect on the deficit, we should revisit it, and should ensure that this legislation remains deficit neutral over the long haul.

Mr. President, we debate this bill at time when Americans, more than anything else, need jobs. The thousands thrown out of work by the current recession need jobs to get back on their feet and get their heads above water. Americans who live in our Nation's cities need jobs to rise above poverty and grasp a better future for themselves and their children.

This bill would put Americans back to work.

It would put people to work by helping to get the economy moving again. For example, the $2,500 first-time home buyer tax credit will help rejuvenate the housing industry and create jobs for builders—even as it helps push those at the margins of home ownership affordability over the top and into a home. Moreover, as I have already alluded, this bill's passive loss provisions will also help create jobs by pushing the commercial real estate industry toward recovery.

This bill would also help set our Nation on a more secure footing for the long term, so that Americans have good-paying jobs in the future.

This is critical because many of our current economic woes are the product of more fundamental structural changes. International economic competition is intensifying, and regrettable, we are losing much of our manufacturing base. My State of Connecticut, for example, has lost one-third of all its manufacturing jobs over the past decade.

The bill's individual retirement account provisions will offer Americans added incentive to save—by restoring the deductability of individual retirement accounts for all Americans, and by creating a new type of Super-IRA account. Boosting the national savings rate will help ensure that American companies have easier access to the capital they need to upgrade their plants and equipment.

H.R. 11's IRA provisions will also bring needed help to millions of middle-income Americans, who have seen their taxes increase and their incomes stagnate over the past decade, even as the cost of housing and higher education skyrocketed. True? Allowing penalty-free withdrawals from IRA's to pay for college or to make a downpayment on a first home will help bring the American dream back within reach for many.

The bill also promotes our Nation's long-term economic health by retroactively extending a series of Tax Code provisions that expired on June 30. These include the targeted jobs, low-income housing, and research and development tax credits, along with the mortgage revenue bond program and the deduction for employer educational assistance.

We need these incentives to promote research and development by U.S. companies, and to encourage the hiring of underprivileged young people. We need them to foster the creation of affordable housing, and to give employees added incentive to get additional work-related education. All of these are important national objectives, and I would hope that all will eventually become permanent features of our Tax Code.

Another important provision of this bill extends the tax credit for development and production of domestic alternative energy sources. This is critically important if efforts to develop sources of energy that preserve the environment are to continue. In my State of Connecticut, for example, companies are working to perfect fuel cells that turn waste methane gas from landfills into electricity, and extension of the credit will be extremely helpful in furthering that research.

Last but certainly not least, Mr. President, H.R. 11 would create 125 enterprise zones. Seventy-five of these will be in cities, and 50 are to be in rural areas. Significantly for Connecticut, 40 of the 75 urban zones are reserved for cities with 500,000 or fewer inhabitants—meaning that the Bridgeports and New Havens and Hartfords of our Nation will not compete directly with New York and Los Angeles for a zone designation.

Enterprise zones are not the panacea for our urban problems, Mr. President, but they will help. We already know that from experience. Connecticut was one of the first States in the Nation to develop an enterprise zone program at the State level, and our 11 zones have seen some major successes.

Over the past decade of its existence, for example, the Hartford zone has seen the investment of $42 million, and the creation of 1,500 jobs. That is without any Federal incentives. The addition of

the Federal component will only enhance the power of these zones to attract jobs back to our cities. And this is needed, because there is no better social program ever created by the mind of man than a job.

Mr. President, while I recognize that the core of this bill is solid and beneficial, I also know that there are a number of extraneous provisions which have climbed on for the ride. I would hope the conferees can tighten the bill in the course of the upcoming conference to produce a bill that merits everyone's support, and I certainly hope the President will join in this effort.

Clearly, this bill is not the only step we must take to build a better economic future for our Nation. We need to balance the budget. We must radically reform our system of elementary and secondary education. We must continue to assist defense-dependent industries and communities as they make the transition to a world of reduced defense spending.

Nevertheless, this bill is a first step as we reorder our priorities. It shifts the emphasis away from consumption, and toward long-term savings and investment. And it will help revitalize our cities. Americans will be better off if this bill passes, Mr. President, and for that reason, I urge my colleagues to support it.

Mr. McCAIN. Mr. President, let me begin by stating that I am opposed to this legislation because it represents what is wrong with our budgetary and fiscal policy. This bad legislation is the product of a bad system.

The system is so flawed that a 60-vote supermajority is required to cut taxes while only requiring a simple majority of 51 votes to raise taxes. The so-called pay-as-you-go provision from the 1990 budget deal separately requires that any revenue-loosing tax cut must be offset by another revenue-raising tax increase. The net effect being an economic wash. Transferring wealth from one group in society to another does not fundamentally increase the wealth or standard of living of that society.

The Congress should not be limited by such a counterproductive legal requirement. We will never stimulate economic growth or jobs by shifting the same dollar around. It is still only one dollar. We need a budgetary and fiscal policy that pays for tax cuts with spending cuts, not just another, but different, tax increase.

The so-called urban aid package ultimately is just another tax increase. We have all learned the hard way what a disaster a tax increase is during a recession or slow-growth period from the 1990 budget deal. I voted against that deal because I thought that tax increases would only stifle economic growth and eliminate job opportunities. And, that's what happened. I am against this fiscal shell game for the same reasons. It will not increase economic growth. It will not add jobs. It will not reduce the deficit. And, it will do little for urban areas.

Despite the lessons we should have learned, H.R. 11 permanently extends failed provisions of the 1990 budget deal. Congress is alone in its belief that we can tax our way to prosperity. I know differently. We cannot, and never will, tax our way to prosperity. Passage of this legislation will only take us one step closer to the economic poor house.

While there are many tax cuts in this legislation that I support, and will continue to support, those tax cuts should not be paid for by tax increases. Tax cuts should be paid for by spending cuts. We must begin reducing the tax burden and the size of government. Both are strangling the life breath out of our economy.

I would like to add that I have been a supporter of tax incentives like enterprise zones as a potent means to expand economic growth and job opportunities. Congress got it half right this time by including various tax incentives, but the bad provisions of the bill outweigh any benefits from the included tax incentives. I hope Congress keeps moving in the right direction toward tax incentives for economic growth, jobs, and opportunity.

I strongly urge my colleagues to vote against this ill-conceived revenue bill.

Mr. GORTON. Mr. President, the tax bill before us today presents another example of Congress again trying to be all things to all special interest groups. I have been around Congress long enough to know, of course, that one Senator's special interest group is another Senator's constituency. And, frankly Mr. President, this bill provides many things to many of my constituencies.

In its totality, however, I must vote against this bill because of four provisions: First, the making permanent of the temporary 1990 budget agreement tax increases; second, the onerous impact of the change in tax estimate procedures on small business; third, the excessive new entitlement program the bill creates; and fourth, the excessively generous and costly individual retirement account expansion contained in the bill.

Before I speak to each of these issues, I want briefly to touch on the provisions of this bill I do support. And, despite my opposition to the legislation before the Senate today, I will support the tax bill if it returns from conference with the House with the appropriate changes.

One of the most appealing provisions of the pending legislation, a provision which directly affects an important constituency of mine, relates to the repeal of the luxury tax. Most specifically, I am concerned about the effects of the luxury tax on the boat building and selling industry in Washington State.

These are large industries in my State. Employers such as Bayliner and Tollycraft employ hundreds of individuals in the State of Washington. After visiting Bayliner, I was so swayed by the plight of that company and its employees that I signed on as a cosponsor of the legislation to repeal this tax. These companies and others have contacted me urging me to do everything I can to repeal this onerous, industry-crippling tax.

I deeply regret that I cannot support the legislative vehicle which overturns the luxury tax on boats. I voted against the imposition of this tax and remain a strong supporter of repealing this tax. I will not, however, support the repeal of the luxury tax on boats at any cost. This bill, unfortunately, exacts far too large of a cost as I will detail later.

Another important provision in H.R. 11 is the provision prohibiting the imposition of the source tax. In brief, this tax is imposed by States on nonresidents' pensions under the dubious rationalization that the retirees worked in the State imposing the tax while accruing their pensions.

This tax by one State on a former resident's pension is a major and unfair irritant to the many individuals who chose the beautiful State of Washington as a place to retire. Residents around my State have contacted me and expressed their frustration at the imposition of this tax. Here also, I am a cosponsor of the legislation which prohibits States from imposing this tax on nonresidents' pension income. But, again I cannot support the vehicle by which the imposition of this tax is prohibited.

Finally, many of my constituents have called to urge my support of those provisions in H.R. 11 generally called the tax extender provisions. As my colleagues are aware, the Congress generally finds some vehicle to extend these tax breaks every year or so. Included among these popular provisions are tax breaks for low-income housing, corporate research and development, a targeted jobs tax credit, mortgage revenue bonds, and employer provided educational assistance.

All of these tax breaks have large constituencies in my State urging me to support passage of this bill. The housing agencies called about the low-income housing tax credit. Many corporations and business contacted me about the R&D tax credit and the employer provided educational assistance. All urged me to pass H.R. 11 because of one important provision or another.

This is no accident. Those who drafted the bill have married these justified provisions with dozens of dubious or bad special provisions which would never pass on their own, hoping that they can become law under cover.

Mr. President, I cannot ignore the fact this is almost a 2,000-page piece of legislation which costs $21 billion in either lost revenue or new expenditures. I support all of those provisions urged on me by my constituents, the boat builders and sellers, the retired senior citizen whose pension is being taxed by his former State's government, or the conglomeration of nonprofit agencies and for-profit businesses that will benefit from the extension of worthy tax breaks. I cannot, however, ignore the larger ramifications of many of the provisions in this bill and will not be bought out or bullied into accepting higher taxes for fear of angering important constituencies.

First, and foremost, I am concerned about either retaining tax increases scheduled to be phased out or increasing taxes during this time of a weak economy. I voted against those taxes which were increased as part of the 1990 budget deal. Among these taxes are: First, extension of the 55 percent top estate and gift tax rate for 5 years; second, extension of the personal exemption phaseout for upper income taxpayers for 1 year; and third, extension of the itemized deduction limitation for upper-income taxpayers for 2 years.

Mr. President, I voted against those taxes then for the same reason I do not want to vote for making them permanent now. The problem is not a lack of revenue; the Federal Government will collect over a $1 trillion this year. These are provisions which I believe are unproductive and detrimental to the economy.

To quote former President Ronald Reagan, "There you go again." Once again the democratically controlled Congress is creating a set of new or expanded programs with the passage of this legislation. And once again, this democratically controlled Congress insists on raising taxes to pay for these new programs rather than prioritizing these needs within the current tax base of the country.

Another provision of the bill of concern to this Senator is not directly a tax increase. The provision, euphemistically called a revenue raiser, is nothing more than an extortion from America's small business owners. As part of this bill, individuals making over $120,000 are required to pay 120 percent of the previous year's tax liability for the current year, or incur large tax penalties.

As we tried to explain during last spring's debate on the Democratic growth package, these people are America's small business owners, incorporated as subchapter S corporations. By law these small business owners must take all of the firms' profit in as personal income.

The National Federation of Independent Business [NFIB] has pointed out that the No. 1 problem confronting small businesses throughout this country is "cash flow." This provision of H.R. 11 without a doubt will complicate and confuse small businesses. These businesses will have accurately to predict the revenues to be generated by their businesses or face onerous and outrageous tax penalties. These businesses will either pay the higher taxes which they don't owe to the Government to avoid these penalties or pay an accountant accurately to predict and report the year's earnings.

In either case, the bottom line for small businesses is that cash flow and their businesses will be hurt by this tax bill. I do not believe that this bill contains provisions of such importance that this Congress should consider further burdening our country's small businesses with regulations of this kind, especially because these new regulations are designed to raise money that the Federal Government is not owed. Primarily, this is an accounting gimmick designed to make the budget deficit look smaller, not actually to increase revenues. In this Senator's view, we should not play these games with people's livelihoods.

The bill before the Senate today, in the name of Urban Aid, also creates a new entitlement. The goal of the program is to improve the delivery of child welfare services. As far as this Senator can tell, this is an entitlement for bureaucrats.

The amount of money is capped at a set amount, approximately $300 to $400 million per year. A positive development in the area of entitlements, I wish all of our entitlements were so capped. In this Senator's view, however, it still represents money that this country does not have and cannot afford to spend.

The administration agrees with the goals of this program, as does this Senator. Improving the delivery of services to children in need is important.

From my standpoint, and that of the administration, however, there are two problems with the provisions in the bill relating to child welfare services. First, the amount of money included in H.R. 11 is significantly greater than the amount of money the administration requested. It only requested $1.3 billion, one time. The program will spend several hundred million dollars a year, permanently.

Second, this proposal is significantly less flexible than what the administration requested. The administration wanted a block-grant States could use in the best way they saw fit. The bill's provision requires the money be used to improve a specific set of child welfare programs.

The final, and in many was most excessive, provisions included in this bill are those related to the expansion of individual retirement accounts. I am a supporter of IRA's and believe that they do provide an appropriate private savings vehicle for retirement for many Americans. But the inclusion of the Bentsen-Roth proposal in this bill goes way beyond what is either appropriate or which this country can reasonably afford given its current budgetary problems.

I am most troubled by three aspects of the $8 billion IRA provisions in the bill. First, some estimates of the outyear budgetary impact of these provisions estimate that the Federal Government may lose $10 to $15 billion per year after the first 5 years. This revenue loss will occur primarily because of the nondeductible but nontaxed interest accumulation of a new special IRA created by the bill.

Second, I believe the proposal is shifting away from an emphasis on savings for retirement. This proposal allows for contributions in the nondeductible IRA to be withdrawn after only 5 years. The proposal also allows for withdrawals for several worthy purchases or expenditures such as first-time homebuyers, education, and/or large medical bills. All of these are important purchases in the life of consumers. But any financial planner will tell you that savings for retirement must be above and beyond these expenditures. We should not be providing such easy access to a pot of money being saved for retirement.

Third, and most importantly, I believe the Federal Government needs to get its financial house in order. Instituting a new program which loses revenue, significant revenue in the outyears, is sending the country's taxpayers a mixed message. It is ridiculous to say to consumers, save, save, save while Uncle Sam continues to borrow and spend, spend, spend.

Mr. President, as I said, I will not support H.R. 11. I cannot justify voting for this bill just because of the few provisions of this bill which I support. I believe my constituents will understand that I must weigh the bill in its totality. And, as I have laid out above, in its totality, this bill does not, and will not, meet its stated goals of urban revitalization or economic growth and creates new entitlements and loses revenue for the Federal Government this country cannot afford.

Mr. SANFORD. Mr. President, I intend to support this tax legislation. It is certainly well intentioned. After the President vetoed the bill passed by the House and Senate last spring, the idea of wide-ranging tax legislation was largely put to rest for this session. The explosion in Los Angeles revived talk of new tax approaches to dealing with investment in inner cities.

In addition, there is broad support in both Houses for two other aspects of this bill, the so-called extenders and repeal of the luxury tax on boats. The tax credits that are expiring have proven track records. They are accomplishing what we want them to do. And most of us agree that they should be

extended. So, this bill contains legislation to extend those credits.

We have also learned from experience that the luxury tax did not accomplish what we wanted. It has almost killed the boat building industry in this country. It has raised very little revenue, and it has put thousands out of work at far greater cost to the U.S. Treasury than any revenue it was even intended to generate. Instead of generating revenues, this ill-conceived tax, which I opposed from the outset, took hard-working, highly skilled taxpayers off the rolls of those who pay taxes and put them on the rolls of those who receive unemployment or take service jobs at minimum wages. So, again, there was broad bipartisan support to repeal that tax.

The real estate industry has been in the doldrums for several years, but this bill extends the depreciable life of real estate which will probably put more construction workers out of work and push real estate values down even further. That, of course, will cause a further erosion in local government tax bases and in the value of portfolios at banks, savings and loans, and other financial institutions.

It is clearly not a perfect bill, but there are some important positive aspects such as the enterprise zones, the extenders, repeal of the luxury tax, the taxpayer bill of rights, a capital gains provision for seed capital for small companies, and IRA's to increase savings in our country.

It also includes a measure to streamline the welfare system that I have worked on with Senator HOLLINGS and others. This provision reduces administrative duplication and promotes better coordination between the Food Stamp, Aid to Families with Dependent Children, and Medicaid Programs.

Mr. President, we need to take a good, hard look at our tax system next year. It has clearly been a very important issue in the Presidential and congressional campaigns this year, and it is the primary fiscal tool the Government has to stimulate the economy. In the interim, this bill accomplishes many of the goals on which there has been little disagreement. I only hope that the President does not, for political reasons, veto this bill. That would have some devastating effects. For example, it would take the boating industry with it. It would eliminate many of the tax incentives in the code for hiring handicapped workers, for undertaking research and development, for employer provided educational assistance, for mortgage revenue bonds, for low-income housing, and for qualified small-issue bonds. In addition, a veto would eliminate both the provision equalizing the tax treatment relating to the deductibility of health insurance for the self-employed and the tax credit for first-time home buyers.

So, Mr. President, I will support this bill for the progress it represents.

Mr. LEVIN. Mr. President, the bill before us today is far from a perfect bill. But, it is good enough of a bill to vote for and send to a conference with the House of Representatives.

During consideration of it on the Senate floor, I voted in favor of the Bumpers amendment to strike the committee bill's requirement that individuals and small businesses make estimated tax payments of 120 percent of last year's liability if they thought they would be unable to accurately project and pay estimated taxes on 90 percent of the current year's tax liability. Many small businesses, in particular, find it difficult to project their income for the current year with a high degree of accuracy because it may depend on economic conditions that are both uncertain and beyond their control. Instead, they find the preceding year's tax liability a firm number upon which they can plan and make their estimated tax payments. It seems to me that what this 120-percent provision in the committee bill is really saying is, "try to do the very difficult; and if you can't do that, then give us (the U.S. Treasury) a large interest free loan." This provision is both overly burdensome and unfair.

Similarly, I voted in favor of the Simon amendment to strike the provision of the committee bill that would allow for the amortiztion of intangibles, including goodwill. It has been argued that this change in the Tax Code will encourage mergers and acquisitions In light of our experience in the 1980's, in which companies were crippled by borrowing to either engage in an acquisition or to fight one off, it would be unwise to make a change in the Tax Code now that could provide a further incentive in that direction. In addition, it is not at all clear what the basis is for the general assumption that the value of goodwill declines with time. I have serious doubts about changing the Tax Code to allow someone to take an economic loss based on such an assumption. In particular, I am troubled by the revenue loss acknowledged in the committee's own documents. By 1997 this provision will be costing the Treasury about $2 billion a year and growing.

It is my hope that these two provisions will be dropped from the bill in conference.

However, it is the many other provisions in this bill that I have long supported which allows me to vote to send this bill to conference in the hopes that it can be improved and sent to the President for his signature. In particular, I am pleased that this bill includes the temporary extension of incentives in the Tax Code for employer-provided educational assistance, for middle- and low-income housing, for research and development, for health insurance for the self-employed, and for job training. I would prefer that these provisions be made permanent because that would give individuals who utilize them the ability to more effectively plan and it would give the Government a more accurate picture of the actual revenue flow into and out of the Treasury over time. But, at a minimum we need to provide for the temporary extensions included in this bill.

I am also pleased that this bill includes a number of provisions that should provide a spark to the economy. Among them are the tax credit for first-time home buyers, the special depreciation allowance in the first year that equipment is purchased, the reform in the passive-loss rules on real estate, and the repeal of the luxury tax on boats, which has been particularly harmful to the boat manufacturers in my State of Michigan.

Furthermore, I believe that the economic development initiatives for distressed areas of our country that are contained in this bill have the potential for demonstrating the usefulness of new approaches to reversing years of decay and decline. Similarly, the foster care and welfare reforms included in this legislation are designed to put the Government on the side of stronger families and less dependency. The health care reforms that were attached by a floor amendment seek to address the problems that small businesses are encountering in providing health care to their employees. I am pleased to see at least some health care proposals enacted this year, although we should act quickly next year on a more comprehensive approach or else what we do today will just lead to cost-shifting among health care recipients.

My greatest frustration with this bill is the same that I felt with regard to the tax legislation that we passed earlier this year and which was vetoed by the President. I believe that this bill represents a missed opportunity for long-term deficit reduction, particularly by not making the wealthiest among us pay their fair share in taxes.

So, on balance, I support this bill. Let us pass it, send it to conference, improve it, and send it to the President. At some point, though, we will need to pass tax legislation that is part of a comprehensive approach to reducing the budget deficit if we are going to protect the long-term economic health of our country and the futures of our children.

DURABLE MEDICAL EQUIPMENT FRAUD AND ABUSE

Mr. SASSER. Mr. President, I support this amendment, and I am particularly pleased to note that it includes Medicare antifraud and abuse amendments which I originally introduced in S. 1736, the Medicare Durable Medical Equipment Patients Protection Act of 1991.

Senate passage of this legislation is the culmination of several months of investigative work by the Senate Budg-

et Committee and by the Senate Committee on Aging looking at the fraudulent and abusive Medicare billing practices of some, not all, medical equipment suppliers. I want to thank the chairman of the Finance Committee, Mr. BENTSEN, and also Mr. PRYOR, chairman of the Aging Committee and a member of the Finance Committee, for working so closely with me and with the Aging Committee ranking minority member, Senator COHEN, to see that this much-needed legislation was included in this amendment.

Mr. President, early in 1991, after a series of articles appeared in the Nashville Tennessean, the Senate Budget Committee began a series of hearings examining fraud and abuse in Medicare reimbursement for durable medical equipment and supplies. We found many problems. Unethical suppliers were forum shopping, searching for Medicare carriers with the highest reimbursement and most generous coverage and utilization policy. They were taking advantage of huge differences in payment rates from one part of the country to another. They were unbundling claims—billing for separate components of small items in order to maximize their payments. We found that some were avoiding detection for fraudulent and abusive billings by hiding behind several supplier numbers. We found some third-party payment agents depositing large caches of equipment and supplies in nursing homes, offering kickbacks to nursing homes for their business, and billing the Medicare program for it all. We heard of aggressive telemarketing schemes in which overpriced and unneeded equipment was sold to Medicare beneficiaries. There was a big problem, Mr. President, and it was clear we were wasting millions of dollars annually.

There has already been some progress on this issue. After our hearings and similar hearings held by the Senate Aging Committee, and after legislation was introduced, the Department of Health and Human Services issued new regulations which when fully implemented will help clean up a lot of this abusive billing. The number of Medicare carriers making payments for durable medical equipment and supplies will be reduced to only four throughout the country. The practice of forum shopping will be eliminated by this and a requirement that billing be based on the Medicare beneficiary's place of residence—so-called ZIP Code billing. In addition, much-needed controls will be placed on the issuance of supplier billing numbers, with new standards which must be met before a supplier can participate in the Medicare Program. These provisions were contained both in my bill and in Senator COHEN'S legislation.

The amendment before us today contains additional antifraud and abuse provisions contained in my earlier bill and in Senator COHEN'S bill which were not addressed by the recent regulations. We do intend to slow down implementation of these reforms already moving ahead. We have worked closely with the Department to achieve this goal, and the additional provisions in this amendment will strengthen, not impede, the progress we have already made.

The items in this amendment would address some additional supplier business standards which must be met in order to obtain a supplier number; require uniform national coverage and utilization review standards for 200 selected items of medical equipment and supplies; subject ostomy, tracheostomy, and urological supplies and surgical dressing and other supplies to national fee limits; prohibit multiple supplier billing numbers; require development of standardized certificates of medical necessity; modify the Medicare antikickback statute to make it clear that certain third-party billing arrangements with nursing homes for equipment and supplies violate the law; protect Medicare beneficiaries from financial liability for unnecessary equipment sold to them by a supplier who has been excluded from Medicare participation; and require a GAO study of the types, volume and utilization of medical equipment and supplies furnished by third-party billers to nursing homes.

Mr. President, I would also like to note that cooperation we have had throughout this process from groups representing ethical durable medical equipment suppliers. These amendments, and our earlier bills, have enjoyed support from the industry throughout this long process. I think that kind of cooperation, and the recognition that there have been some bad practices in the past, will contribute a lot to reducing Medicare waste and abuse.

HIGH MEDICARE HOSPITALS

Mr. MACK. Mr. President, I would like to make some remarks about an issue which was not addressed in the Medicare and Medicaid Amendments Act of 1992, but, nonetheless, is very important to my State and others. I speak of the plight of Medicare-dependent, or high Medicare hospitals. While this legislation addresses the issue of Medicare reimbursement for small rural Medicare dependent hospitals, it does not address the plight of other high Medicare hospitals.

Mr. President, I believe my colleagues are aware of my deep interest in, and concern for, the financial plight of high Medicare hospitals. Many of these hospitals are continuing to experience severely reduced, and in many cases, negative Medicare operating margins. These hospitals have little or no choice but to either cut back on medical personnel or consider the rationing of services. Additionally, when these hospitals attempt to cost shift, they become less competitive and risk losing the few non-Medicare payers they have.

Mr. President, when the Prospective Payment Assessment Commission [ProPAC] made its report to Congress in 1990, it stated the Medicare dependent hospital problem warranted further study. We have not seen this further study take place and I am aware the condition of many of these hospitals in my State and around the country continues to deteriorate. It is time for decisive action by ProPAC and by the Congress.

Mr. GRAHAM. Mr. President, I would like to echo the concerns of my colleague, Senator MACK. We have worked together for several years to address the needs of Medicare dependent facilities in our State and around the country.

As many of my colleagues know, Florida leads the Nation in the number of hospitals classified as high Medicare hospitals. Senator MACK, myself and the Florida Hospital Association would welcome a visit by ProPAC to Florida to study our high Medicare hospitals.

We hope the Congress will be prepared to act on legislation to address the special needs of these Medicare dependent hospitals in the 103d Congress.

Mr. BRADLEY. I agree with the Senators from Florida about the need to address the difficult financial situation faced by hospitals with a high percentage of Medicare patients. The Prospective Payment Review and Assessment Commission [ProPAC] has conducted a preliminary study and confirmed that these hospitals have a harder time financially than other hospitals. Although that study found some of these hospitals may be less efficient than others, the hospitals in New Jersey certainly do not fit that profile. The hospitals in New Jersey have high occupancy, low administrative costs, and provide efficient high quality of care to many of our senior citizens.

One hospital in particular, in Ocean County, NJ, has almost 70 percent of its patient days paid by Medicare. And under the State payment in New Jersey that was used as the model for the Medicare DRG system, we know that Medicare is not paying its full share. This shortfall unfairly punishes hospitals such as the one in Toms River, who are struggling to continue to meet the health care needs for the population they serve.

Unfortunately, during this session, we were unable to pass those provisions sponsored by my colleagues from Florida that would have provided more adequate payment for these hospitals. However, it is my intent to continue to push for an adequate response. I am optimistic, and I look forward to working with my colleagues to achieve our common goal of ensuring high quality

health care for our senior citizens under Medicare.

PHYSICIAN SELF-REFERRAL PROVISIONS MEDICARE AND MEDICAID AMENDMENTS

Mr. ADAMS. I would like to thank the manager of the bill, the esteemed chairman of the Finance Committee, for working with Senators METZENBAUM, BINGAMAN and me, to address our serious concerns regarding section 136 of S. 3274, the Medicare and Medicaid Amendments of 1992, the provisions dealing with the prohibitions on physician self-referrals under Medicare.

As the sponsors of S. 3186, the Ethics in Referrals and Billing Act of 1992, we are seeking to expand the prohibitions on the practices of physicians who refer patients to health entities in which they have a financial interest. We introduced S. 3186 because the evidence is clear that physician self-referrals drive up health care costs and result in unnecessary utilization of services. If we in Congress are serious about health care cost containment and unwarranted procedures, we must build upon the very modest ban on such practices currently in Medicare.

I understand the importance of exceptions to any statutory bans of physician referrals and S. 3186 includes a number of carefully drafted exceptions. I am concerned, however, that the provisions in section 136 unnecessarily broaden the exceptions currently provided for under Medicare.

Mr. METZENBAUM. I share the same concerns that Senator ADAMS has regarding the definition of group practice.

Mr. ADAMS. The most significant of our concerns is the proposed change in the definition of group practice found in section 136(c). I want to emphasize that this change in definition should be dropped; it represents a potentially huge loophole that would change the entire meaning of a group practice by allowing all manner of arrangements with physicians acting as independent contractors on a part-time basis.

Another major concern that I have is the proposed addition of an exception for "services under arrangements" in section 136(a)(6). This language is also much too broad and will likely lead to all kinds of unanticipated financial arrangements that are inconsistent with the intent of the law. This provision should be dropped in conference but if retained, the language must be tightened.

A third concern that I have is that the new exception for rural providers is much too broad. It is not enough that the clinical laboratory furnishing the services is located "in a rural area." At minimum, the provision should ensure that the services provided are provided substantially within the rural area. Otherwise, we can expect that clinics serving largely urban or suburban areas will be located on the edge of a rural area but will, in effect, mostly serve a nonrural area.

Mr. BENTSEN. I thank the Senators from Washington and Ohio for raising their concerns about the physician referral provisions in the bill. They have raised important questions and it is my intent to ensure that they are resolved in conference. I will insist in conference that the part-time and independent contractor issue be resolved in a different manner than changing the definition of group practice. My colleague from Washington also has my assurance that his other concerns about section 136 will be addressed by the Senate in conference and that I will work closely with him to achieve a satisfactory resolution to their concerns.

Mr. ADAMS. I thank the Senator from Texas for his attention to these matters and his commitment to resolving them in conference. I greatly appreciate his effort in ensuring that needed amendments to the Medicare and Medicaid programs are dealt with before we adjourn this Congress.

Mr. METZENBAUM. I also wish to express my appreciation to the Senator from Texas for his assurances that our concerns will be addressed by the Senate in the conference on this legislation.

REPEAL OF REDUCED MEDICARE PAYMENT PROVISION FOR "NEW PHYSICIANS"

Mr. MCCAIN. Mr. President, I want to thank the chairman, Senator BENTSEN, and the ranking member, Senator PACKWOOD for including in this bill legislation I introduced to end an inequity in the Medicare law. S. 2362, which I introduced on March 17, 1992 would eliminate discrimination in Medicare reimbursement practices for physicians. Current practices result in new physicians receiving less reimbursement for the same procedure than physicians who have been practicing for a longer period of time. The bill is identical to legislation sponsored in the House of Representatives by Congressman ED TOWNS.

S. 2362 enjoys the broad, bipartisan support of 32 Senators. I am pleased that the following Senators are cosponsors of S. 2362: Senators BROWN, BURNS, CHAFEE, COCHRAN, COHEN, CRAIG, DASCHLE, EXON, FOWLER, GLENN, GORTON, GRAHAM, GRASSLEY, HARKIN, HATFIELD, HELMS, HOLLINGS, JOHNSTON, KASTEN, LUGAR, MACK, MCCONNELL, MURKOWSKI, NICKLES, PRESSLER, SHELBY, SMITH, STEVENS, WALLOP, WARNER, WIRTH, and WOFFORD.

Specifically, this legislation would repeal the inequitable provision of existing law that reduces Medicare payment to so-called new physicians in their first 4 years of practice. With some limited exceptions, current law reduces the payment base or allowed amount by some 20 percent in the physician's first year of practice, 15 percent in the second year, 10 percent in the third, and 5 percent in the fourth year. My amendment would repeal this discriminatory law.

The rationale behind this law, which was enacted 2 years ago, was to achieve budget savings at the expense of young physicians and physicians new to providing care for Medicare beneficiaries, under the assumption that a new physician's services are of less value—and therefore less worthy of full compensation—than those of more experienced physician. However, the value of these physicians' services, as evidenced by the new Medicare physician payment system which bases reimbursement on a resource-based relative value scale [RBRVS], is not modified based on the experience of the physician providing the care.

Furthermore, the RBRVS assigns a value to each service—and that service does not cost those designated as new physicians any less to perform than physicians who have been in practice for a longer time. Under the current law, the definition of a new physician is so general and so vague that physicians who have served in the military for years, but have not previously billed the Medicare Program, are viewed as new physicians. Payments for their services to Medicare beneficiaries are reduced during the first 4 years of civilian private practice. Clearly, the existing law does not reward these dedicated physicians on a level commensurate with their experience,

The current law reducing payments to new physicians violates the underlying concepts behind the Medicare physician payment reform, which became effective as of January 1, 1992. It also ignores the financial reality facing new physicians of meeting high startup costs associated with building a new practice, and the skyrocketing costs of medical education.

The provisions of the current law serve only to discourage new physicians from certain targeted specialties and providing care for Medicare beneficiaries, as well as causing group practices to steer Medicare beneficiaries away from those physicians defined under the law as new.

Resolving this issue enjoys broad support in this body, and in the medical community. If enacted, it will ensure that all physicians are treated fairly, and corrects the inequities of the current law. Again, I thank the chairman and ranking member for recognizing the need to address this inequity, and pleased this legislation is being included in the underlying bill.

CORPORATE SPONSORSHIP

Mr. FORD. If the distinguished chairman of the committee, Senator BENTSEN, would yield, I wanted to raise an issue with him that is of great concern to several of my constituents. As the chairman is aware, section 8005 of H.R. 11, as reported, relates to the unrelated business income tax [UBIT] treatment of corporate sponsorship arrangements and tax exempt organizations. While I

applaud the chairman's effort to clarify what has become an interpretation nightmare for many of these organizations, I am concerned that the provisions of the Senate Finance bill may be overly restrictive for some tax exempt organizations.

In order to be exempt from UBIT, the Senate bill, as currently drafted, requires that net proceeds from the sponsored event be used for a charitable or educational purpose. However, the bill also provides that the safe harbor rule does not apply in the case where advertising or promotion is provided for the sponsor's products or services.

I am concerned that these provisions may result in certain events in my State being inadvertently subject to UBIT. It would appear that even if the tax exempt organization uses proceeds from a sponsored event consistent with their tax exempt status, or more directly, to forward their own exempt purposes, unless those purposes are charitable or educational in nature, the safe harbor rules will not apply. This is true even though current law does not require these tax exempt organizations to use their funds for charitable purposes.

Further, I am also concerned that the language precluding advertising and promotion of the sponsor's products or services may actually prohibit corporate-sponsored events. A tax exempt organization may be forced to forgo corporate sponsorship out of fear that media coverage and advertising of the event in general will kick the event out of the safe harbor rule.

I am aware that the House-passed provisions governing corporate sponsorship are significantly different from the Senate provisions. In the case of one of my constituents, I believe that the House-passed provisions provide the appropriate relief. I would encourage the distinguished chairman to consider the impact this provision would have on numerous tax exempt organizations which may directly, or indirectly, provide advertising or promotion for a sponsor's product or service, and on organizations which reinvest the proceeds of an event back into the organization to further its own purposes. It is not necessarily clear that such organizations would even be helped by the House-passed provisions.

I would encourage the distinguished chairman to consider this issue in conference.

Mr. McCONNELL. Mr. President, I want to address two technical matters pertaining to corporate sponsorship and the unrelated business income tax. It has come to my attention that language in the Senate version of H.R. 11 would significantly reduce the ability of tax-exempt organizations in my State to carry out events that significantly benefit the community and the industry which they represent.

As I understand it, section 8005 would require tax-exempt organizations to use the net proceeds from sponsorship payments for charitable purposes. This provision could put organizations in my state in a very difficult position.

I would like to point out that only 501(c)(3) organizations are required to use the net proceeds of sponsorship payments for charitable purposes. Current law does not require 501(c) (4), (5) or (6) organizations to use their funds for charitable purposes, but allows these funds to be used to further the exempt purposes of that organization.

I am hopeful that during the conference, members will consider alternatives that would remain consistent with current tax law and permit section 501(c) (4), (5) or (6) organizations to use the net proceeds raised in related events to further their own exempt purposes from which their tax exemption is derived.

In addition, Mr. President, I support the adoption of language contained in H.R. 5645, as passed by the House, regarding the use of corporate sponsorship payments by tax-exempt organizations. I believe that the Senate bill attempts to define too narrowly the forms of recognition which would not be subject to the unrelated business income tax. The House version, on the other hand, would widen the scope of recognition, thus better serving the industries and communities these organizations represent and serve. Without the opportunity to attract adequate funding, we will see a significant drop in the level of charitable contributions from these tax-exempt organizations.

Let me reiterate my support for consistent and fair tax treatment of all tax-exempt organizations. I am hopeful that during the conference on H.R. 11, these important issues will be addressed so that final language will provide a safe harbor exception on the use of sponsorship payments from unrelated business income tax.

Mr. President, I appreciate the chairman's favorable consideration of these issues.

Mr. BENTSEN. I say to my friends from Kentucky, that we are aware of these arguments. As they know, our staff have discussed this issue, in particular the impact this section would have on specific events in Kentucky, and I am aware of the Senator's concerns. The Senators are correct that the provision on corporate sponsorship differs from the House bill, and I can assure them that their concerns are noted and will be considered in the context of the conference on this measure.

Mr. FORD. I thank my good friend for his courtesies and consideration.

SOLE COMMUNITY JUSTICE ACT

Mr. DANFORTH. Mr. President, I would like to direct a question to the distinguished chairman of the Finance Committee, the Senator from Texas, concerning my legislation, S. 2996, the Sole Community Justice Act of 1992. As the chairman knows, I wanted this piece of legislation to be included in S. 3274, the legislation now before the Senate. He and I worked hard to include my bill in this legislation, but unfortunately, estimated revenue and technical constraints prevented action at this time.

I am very concerned that a certain small subgroup of other urban hospitals are not being treated equally with those rural and other urban hospitals that qualify for sole community hospital status. I have been of the view that correcting this inequity will be only of small cost to the Treasury, and the benefits of achieving equity for these hospitals far outweighs the cost of doing so. Unfortunately, certain analysts at the Health Care Financing Administration and the Congressional Budget Office believe the cost will be more substantial than I have been led to believe.

In fact, I have been told that the cost of this provision would be roughly $10 million a year. The Congressional Budget Office has estimated that the cost will be $38 million a year. My question for the chairman is the following: If I can persuade the Congressional Budget Office that the cost is closer to my figure than to theirs or if we pass a bill which is larger in scope next year, will the chairman work with me to have this provision included in the bill which emerges from the Finance Committee?

Mr. BENTSEN. I appreciate how strongly the Senator from Missouri feels about this legislation. I know he understands that the estimated costs prevented its inclusion in this amendment. It is my understanding that the Prospective Payment Assessment Commission is developing a data base that will supply the information needed by the Congressional Budget Office to provide a more accurate estimate of the cost of the Senator's legislation. I will continue to work with him to pursue a solution to the problem his legislation addresses.

Mr. DANFORTH. I thank the distinguished chairman and assure him that I will do everything that I can in the next year to see that all hospitals, whether in rural or other urban areas, which meet the reasonable criteria for sole community hospital status obtain that status.

PROGRESS ON IMPLEMENTATION OF THE ADOPTION AND FOSTER CARE ANALYSIS AND REPORTING SYSTEM

Mr. BINGAMAN. Our Nation's foster care, adoption, and child welfare system remains in dismal condition. Information gathered by the Senate Finance Committee and published in the CONGRESSIONAL RECORD on August 3 reveals that the number of our children in foster care has increased 50 percent in the last 5 years. The system seems to have lost perspective. It fails to acknowledge the fact that it is dealing with the lives of young, fragile, and

often abused or disabled children. They cannot be left to wallow in debilitating conditions while the bureaucracy languidly determines their fate. Children who, when they entered the system were adoptable, leave the system as special needs individuals, often due to physical abuse and emotional distress encountered in their foster environment.

Provisions under title VII, part I of H.R. 11 aim to improve the condition of our foster care, adoption, and child welfare services. Through identification of effective programming, encouragement of pilot programs, and improvement of Federal and State coordination, among other provisions, we attempt to remedy the ills that have rendered the system incapable of handling the dramatically increased numbers of children forced to leave their family homes.

However, the most fundamental problem with our children's services remains the lack of comprehensive data. Without a system of measuring or tracking our foster care, adoption and child welfare problems, we are attempting to devise solutions to problems which are not yet fully identified. In 1986 the chairman of the Finance Committee authored legislation which instructed the Department of Health and Human Services to establish a nationwide system of data collection. Public Law 99-509 gave HHS 5 years to appoint an Advisory Committee, evaluate the steps of establishing a data collection system, report to Congress and promulgate rules. Full implementation was to be completed October 1, 1991.

In the past 6 years, HHS has failed to follow the designated timetable. As evidenced in a June 10 hearing before the Senate Finance Committee, HHS could not provide a satisfactory explanation, but to say that there was a lack of due diligence. Now, HHS says, it has remedied that problem. However, the Secretary's final regulations have yet to be published—nearly 3 years after the established deadline. We have no indication when final implementation will fall into place.

I agree that the provisions contained in H.R. 11 to improve our foster care, adoption and child welfare system are laudable. However, I ask the support of my esteemed colleagues in insisting that HHS place final development of the national data collection system as a top priority. At this point, the thrust of the Department's energies must be in gathering pertinent information from the States. Only then can we reform our woeful—and, frankly, embarassing—national foster care, adoption, and child welfare system.

Quite simply, we are letting our youngest and most helpless American citizens down. It is time to forcefully insist that HHS provide us with a reliable data collection system. Until then, we will continue to wage war against an invisible enemy.

Mr. BENTSEN. I agree with my colleague's assertion that the HHS data collection system must rank as a top priority for the Department. That system, as well as an effective method of review, are paramount to ensuring that our children receive proper and humane treatment within our foster care, adoption, and child welfare system. As I pointed out during our committee hearing on June 10, the long HHS history of giving low priority to these programs must end.

CASUALTY LOSS EXCEPTION TO UNIFORM CAPITALIZATION RULE

Mr. BENTSEN. I would like to engage Senator PACKWOOD in a colloquy. I recall that in 1986, when the Senator was chairman of the Finance Committee, we enacted section 263A of the Tax Code to simplify tax compliance through the use of a set of capitalization rules. These capitalization rules required certain taxpayers, including a taxpayer engaged in the farming business, to capitalize both direct and indirect costs.

At that time, I recall that we also adopted an exception to the capitalization rule, section 263A(d)(2), to provide relief to taxpayers whose plants were lost by reason of freezing temperatures, disease, drought, pests or casualty. As the Senators know, recently many orchards, vineyards, and groves have been destroyed by catastrophic events. Hurricanes Andrew and Iniki not only destroyed homes and devastated buildings, but they also devastated the agricultural industry in southern Florida and Kauai, destroying local citrus groves and nut trees. The damage that has occurred will have a significant impact on the economy and the agricultural industry of those areas.

In addition, recent reports and stories have revealed the widespread infestation of phylloxera in the vineyards of Oregon, California, and Washington. As you know, this aphid-like louse, which is impervious to pesticides, destroys the roots of grapevines. I understand that the only way to eliminate phylloxera is to remove the vines and replant the vineyard with phylloxera-resistant roots. Although the full devastation is unknown, costs associated with replanting and lost production are estimated at $500 to $1 billion in Napa and Sonoma Counties alone. These costs could lead some wineries to go broke.

I am sure that there are many other catastrophic events destroying orchards, vineyards, and groves. Given the extent of recent damage and the economic hardship many of the farming businesses will face, I am concerned that if the exception to section 263A contained in paragraph (d)(2) of that section is interpreted too narrowly, it may have an unforeseen adverse affect on these farming businesses.

Is it the understanding of the Senator from Oregon that we intended the exception to permit taxpayers to deduct all costs otherwise subject to the capitalization requirements in section 263A or 263 if section 263A did not apply?

Mr. PACKWOOD. Yes; it is. The exception to section 263A contained in paragraph (d)(2) of that section is intended to apply to all costs otherwise subject to 263A, or 263 if section 263A does not apply, incurred as a result of freezing temperatures, disease, drought, pests, or casualty. The provision is intended to permit all replanting costs, not just reproductive costs associated with restoring orchards or groves to their original condition to be deductible.

For example, in the case of a citrus grove destroyed by a hurricane, the costs of site preparation, such as removal of old trees, the cost of new trees, and any labor costs incurred in replanting would be deductible under this exception, as would the costs of replacing underground irrigation pipes uprooted because of the storm. Similarly, in the case of vineyards destroyed by phylloxera B, preproductive costs, costs such as replacement vines, replanting of rootstocks, the purchase of trellis and drain tile and irrigation equipment solely to replace equipment, the removal of which was necessitated by the infestation, and the costs of land preparation, would all be deductible for under this exception. Of course, since it was the intention of this exception to place a taxpayer in the same position as before the loss occurred, we would assume the IRS would not permit a taxpayer to upgrade the vineyard, grove or orchard before the loss occurred. Similarly, we should also assume the IRS will prevent a double deduction from occurring under section 165(m).

SECTION 3006 OF H.R. 11

Mr. BOREN. Mr. President, it is my understanding that the bill includes a provision which requires real estate reporting persons, in connection with real estate transactions, to file information returns with the Internal Revenue Service and provide statements to customers regarding the portion of any real property tax credited to the purchaser of a piece of property.

Mr. BENTSEN. The Senator from Oklahoma is correct. This provision seeks to improve taxpayer compliance under existing law relating to the deduction of State and local real property taxes. For example, under current law, an individual selling his or her residence is required to offset any deductions for State and local property taxes by amounts received from the purchaser as reimbursements for such taxes already paid by the seller. In practice, individual taxpayers may fail to offset their deductions by those amounts. Requiring information re-

porting with respect to payments received by individuals selling residential real estate is expected to improve taxpayer compliance in this area. It is expected that this proration information would be provided by the real estate reporting person.

Mr. BOREN. It is my understanding that the chairman recognizes that some transfers made at the time of closing may subsequently be adjusted by, for example, a supplemental payment due to a change in the property tax rate, and that the real estate reporting person may be unable to accurately project actual tax payments made subsequent to the closing. Thus, in some cases, the proration number used may not be the same as the actual real property tax payment. I am sure the chairman can appreciate my interest in this provision; with the current low-interest rates, there are a large number of real estate transactions in Oklahoma.

Mr. BENTSEN. I appreciate my distinguished colleague's comments. It is the committee's expectation that the real estate reporting person will be required to report any real property tax that is treated as tax imposed on the purchaser by reference to specified line items of the HUD–1 form or any comparable form provided at the time of the closing of the transaction. Because the buyer and seller typically are acting at arm's length with respect to amounts affecting the sales proceeds, it is likely that these estimated amounts will be reasonably accurate. It is not expected that collection of additional information after the closing occurs will be required. In light of this, it is not expected that a real estate reporting person, acting in good faith, will be subject to penalties for correctly reporting the appropriate number from the HUD–1 disclosure form or comparable form in a case in which that number is later determined in fact to have been inaccurate. In addition, it is anticipated that Treasury will promptly provide guidance with respect to the reporting requirement in the bill.

Mr. BOREN. I thank the distinguished chairman of the Finance Committee for this clarification.

HEDGING TRANSACTIONS

Mr. DOLE. Mr. President, the Supreme Court's decision in Arkansas Best Corp. versus Commissioner has caused serious disruptions in the ability of farmers, ranchers, and other businesses, both in agriculture and elsewhere in our economy, to use hedging transactions to reduce the risks of doing business. The problem results from a question as to the remaining scope of the Supreme Court's earlier Corn Products decision.

THE PROBLEM

The principal tax problem is a possible claim by the IRS that certain business hedges produce capital losses. A business whose normal operations produce ordinary income is severely disadvantaged if losses from hedges are treated as capital rather than ordinary. The disadvantage results from the fact that capital losses can be deducted only against capital gain and, in the case of individuals, $3,000 of ordinary income.

Under the Internal Revenue Code, a gain or loss is capital rather than ordinary if it results from a sale or exchange of property that is categorized as a capital asset. The Code defines capital asset as property held by the taxpayer whether or not connected with its trade or business. An express exception to this definition is provided for inventory or other property held primarily for sale to customers in the ordinary course of business.

Historically, the loss on short futures contracts used in business hedges has been treated generally as ordinary rather than capital, even though the futures contracts themselves are not inventory nor other property held primarily for sale to customers in the ordinary course of business. There have been various rationales for ordinary treatment. At one time, hedging losses were treated simply as a form of business insurance expense rather than a loss from the sale or exchange of property.

Another rationale, derived from the 1955 decision of the Supreme Court in *Corn Products Refining Co.* v. *Commissioner*, 350 U.S. 46 (1955), is that loss from a sale or exchange of property is ordinary, notwithstanding the inapplicability of any of the express Code exceptions to capital asset status, so long as the transaction arises from the everyday business operations of the taxpayer.

In Corn Products, a corn products manufacturer, to protect itself against increases in the price of corn, entered into long corn futures positions, accepting delivery in some cases and in other cases offsetting its futures positions upon spot purchases of corn. The company reported gains on the futures contracts as capital to take advantage of the more favorable capital gains rates available at that time. The Supreme Court held that Corn Products' futures activities "constituted an integral part of its manufacturing business" and, like other aspects of the taxpayer's business, should give rise to ordinary income or loss rather than capital gain or loss.

The basic tax rules for hedging remained relatively clear for 32 years following the Corn Products decision. Then, the Supreme Court, in Arkansas Best, held that a taxpayer could not claim a ordinary loss from the sale of subsidiary stock that had purportedly been acquired for the purpose of preserving the business reputation of the taxpayer.

Arkansas Best argued that, although the stock of its subsidiary fell within the literal definition of a capital asset, the stock should be treated as an ordinary asset under Corn Products because it was acquired for integral business purposes rather than investment. The Supreme Court disagreed, rejecting the argument that there is an implicit integral business purpose exception, in addition to the express Code exceptions, to the capital asset definition. The Court interpreted Corn Products narrowly as involving an application of the Code's express inventory exception since the futures positions were "an integral part of the taxpayer's inventory purchase system" serving as "substitutes for the corn inventory."

Although Arkansas Best did not involve hedging, the Court's comments on Corn Products have been interpreted by some to apply to business hedges. In particular, some at the IRS read Arkansas Best as treating property as a capital asset, thereby resulting in capital gain or loss upon a sale or exchange, unless the property is inventory or otherwise expressly excepted from the capital asset definition in the Code.

POSSIBLE APPLICATIONS OF ARKANSAS BEST

Since the release of the Arkansas Best opinion, business hedging practices have been subjected to increased IRS audit activity. The audit results vary, depending upon the particular kinds of hedging practices involved and the views of local IRS personnel.

Mr. President, inventory and other hedges, are important risk management tools for farmers and other businesses. The potential for adverse positions taken by the IRS based on a broad reading of Arkansas Best on hedging practices can have a devastating impact on reasonable business activities. Let me list a few examples to emphasize the nature of the problem.

INVENTORY HEDGES

One typical hedge transaction used in the normal course of business is a long inventory hedge. For example, assume that a soybean crusher buys a long soybean futures contract to protect itself against an increase in the price of soybeans to be acquired as part of its raw materials inventory. Even after Arkansas Best, a loss, or gain, of the soybeans futures should be ordinary because the futures are substitutes for an inventory of soybeans just as corn futures served as a substitute for the corn inventory in the Supreme Court's reading of Corn Products.

Similarly, if a cattle producer buys a long futures contract to protect himself against an increase in the price of cattle feed, gain or loss on the futures contract should be ordinary in order to match properly with the ordinary income resulting from the subsequent sale of the cattle.

Another typical hedge transaction is a short inventory hedge. Assume, as in the earlier example, that a cattle

rancher sells a short cattle futures contract to protect himself against a decline in the sales price of his physical cattle. Ordinary treatment is somewhat more problematical for this example, as compared with the long inventory hedge, because a short futures contract is more difficult to fit within the inventory substitute category. Read on its narrowest terms, Arkansas Best could be interpreted as limiting ordinary treatment to long hedges of inventories. Such a narrow reading, however, would ignore the historical context of the Corn Products case. Even before Corn Products, bona fide hedges of long inventory positions through short futures positions or forward sales were generally viewed as nonstatutory exceptions to capital asset treatment.

Often, a farmer, cattle producer, or other business may use combinations of long and short futures contracts to reduce the costs of protecting against the risk of price changes of their production. Additionally, there may not be a perfect match between the quantity of the futures contracts and the physical inventory at any particular point in time. The particular contract months used for hedging purposes may depend upon such factors as the anticipated time for bringing the livestock or other production to market, the contract months in which futures are traded, and the price relationships among contract months. Futures contracts may not even be available for every month in which livestock or other production is to be brought to market or there may be insufficient market liquidity in particular delivery months or commodities. I believe that if the businessman's futures contracts reduce risk of price changes and substitute for past or anticipated production of inventory property, gain or loss with respect to such contracts should be ordinary in character.

On the other hand, futures contracts representing amounts substantially in excess of past or anticipated production may give rise to capital gain or loss. Such contracts may be speculative in nature and not an integral part of the business.

OPTIONS HEDGING STRATEGIES

In addition to the hedging strategies I have described using futures contracts, many farmers and other businessmen use options to hedge against price fluctuations in their business. Let me give a few examples of these types of transactions.

Assume, for instance, a cattle rancher buys a put option on cattle futures at a strike price of $0.70 per pound to protect himself against a decline in cattle prices. As in the case of a short futures contract, a put option does not fit neatly within a inventory substitute category. However, I think it should be clear that ordinary treatment is correct.

Let me give my colleagues a slightly more complicated, but very common example. Assume that the rancher not only buys a put option at a strike price of $0.70 per pound but also sells a call option at a strike price of $0.80 per pound. In effect, the rancher is protecting himself against a decline in cattle prices below $0.70 per pound and is reducing the net cost, that is, premiums paid less premiums received of that price protection by selling the upside cattle price potential in excess of $0.80 per pound. In my opinion, the put and call in this transaction should be considered together and should both result in ordinary treatment. However, it appears that in some instances the IRS is treating the call option as a separate transaction and classifying call gain or loss as capital. This is contrary to the purpose of the transaction as an intrinsic part of the business of cattle production.

RESPONSES TO PROBLEM

It is important for the U.S. economy that our farmers and other businesses be able to manage effectively the financial risks they face. To this end, legitimate hedging activities should not be hindered by tax uncertainty and uneconomic treatment of hedging gains or losses. Business hedges of activities generating ordinary income or loss should also give rise to ordinary income or loss.

Mr. President, I note that in at least two places in the pending legislation, there are provisions which specify the character of gain or loss as ordinary in order to avoid any possibility that Arkansas Best could be used to characterize gain or loss as capital in charter. These provisions are contained in the mark-to-market rules for securities dealers and the mark-to-market rules for certain insurance contracts. It probably would make more sense to enact a generic rule that would provide certainty rather than to single out one or two industries and provide them with statutory assurances.

However, an administrative clarification would help the uneven application of current law. The Treasury Department is well aware of the uncertainties created by Arkansas Best and has listed this issue as a priority for action this year. I also understand that IRS staff may be working on regulations or rulings to address Arkansas Best issues. I would urge that Treasury and IRS move forward with guidance in this area.

Mr. President, the objective of all the parties involved in the process should be the removal of tax impediments to sound business hedging practices. I would like to ask the distinguished chairman of the Finance Committee if he shares my concern about the adverse impact of the uncertainty created by the interpretation of the Arkansas Best decision by some at the IRS and the need to address the issue in some fashion.

Mr. BENTSEN. I thank the distinguished Republican leader for his description of potential problems posed by some interpretations of the scope of the Arkansas Best decision. This is a matter of concern for me as well. You have provided our colleagues with several examples that point out the uncertainty that may be experienced in business hedging transactions—even in transactions that are not speculative in nature but are undertaken to minimize the risks of doing business and are intrinsic to the conduct of that business. Unfortunately, uncertainty in this area can have a dampening effect on taxpayers entering into desirable business hedging transactions. I think this is a significant issue, and it is my hope that appropriate steps can be taken to address this matter.

R&D TAX CREDIT

Mr. RIEGLE. Mr. President, I strongly support the extension of the R&D tax credit that is contained in H.R. 11. I commend the work that the chairman, along with Senators DANFORTH and BAUCUS, have done to promote the credit. Greater investment in research and development is absolutely vital in order to ensure that we are able to compete in the global marketplace and I favor permanent extension of the R&D credit.

Unfortunately, despite our efforts, a variety of factors have caused the level of R&D done in the United States to decline. More and more research is being done overseas by U.S. companies. We must examine ways in which we can do more to promote R&D.

We could significantly improve the credit by encouraging collaborative research and development along the lines of S. 2049, the Cooperative R&D Tax Credit Act of 1991, introduced by my colleague from Connecticut, Senator LIEBERMAN. Legislation like S. 2049 would provide a powerful incentive to industry-led R&D through consortia. This legislation would allow qualified cooperative R&D costs to be eligible for either a 50-percent tax credit or the existing 20-percent tax credit for incremental in-house research.

At the same time, I want to emphasize that cooperative R&D credit would enhance the existing credit.

Mr. DANFORTH. Mr. President, I agree fully with the need to provide strong incentives for R&D. Since 1981, when the credit was first adopted, I have worked with my colleagues to strengthen the credit.

R&D is the down payment on America's future competitiveness. Without adequate R&D, our industries eventually lose the race for discoveries that are the basis for new products, new services, market share, and ultimately, would influence. We cannot let this occur.

One means to increase R&D is to remove the uncertainties of a limited extension by making it permanent. I also

believe that a modification to the credit that would provide a greater reward for industry-led collaborative R&D has considerable merit and should be examined.

There are several policy goals that the current section 41 credit seeks to fulfill. First, the credit is designed to stimulate new research. Second, the credit balances the social rate of return or, in other words, it balances the benefit that is received by society with that benefit that goes to an individual firm. Third, the credit helps to offset similar subsidies provided to business by our economic competitors.

A cooperative R&D tax credit strongly advances these policy goals and, at the same time, encourages the most efficient use of R&D funds. A cooperative credit leverages scarce research dollars, and spreads risks and costs that encourage new research that would not be conducted without this incentive.

Mr. GRASSLEY. I agree in substance with the Senator from Michigan and the Senator from Missouri. United States tax policy should support a cooperative R&D tax credit at a level equal to its importance to industry and to our Nation. A cooperative R&D tax credit would not only help firms compete against one another, but help our industries pull together to meet a broader global challenge.

Mr. LIEBERMAN. It is time that we considered making the R&D tax credit available for collaborative measures. Our system of credits has been helpful in stimulating R&D, but we will be able to better leverage R&D efforts with a credit for collaboration.

The cooperative tax credit should help to increase R&D efforts. My proposal would allow companies to receive a 50-percent flat credit, determined on a nonincremental basis, for contributions to qualified consortia. Qualified cooperative research consortia are those organizations which have five or more contributors and are registered under the National Cooperative Research Act of 1984 [NCRA].

NCRA, the Stevenson-Wydler Technology Act of 1980, the Federal Technology Transfer Act of 1986, and the 1988 Trade Act all increased the incentives for American companies to engage in collaborative research. Approximately 200 industry consortia have been established under NCRA, and new groups continue to form. This credit is a logical step in increasing R&D and encouraging collaborative efforts by American industry.

Mr. BAUCUS. I would like to raise one additional point from the perspective of small business. While the credit was improved by making it available to startup firms, the Tax Code works against small firms by discouraging cooperative research.

While small firms frequently lead in innovation, they often lack the amount of resources needed to learn about and assimilate new processes. By collaborating with large firms, small firms gain access to new technology faster. However, cooperative ventures are classified as outside contract expenses, which are generally only 65 percent creditable, creating a disincentive to collaborate for smaller firms operating within close margins.

A cooperative credit would integrate will with the current goals of our tax policy and would enable firms to better recapture profits from R&D expenses.

Cooperation offers a cost effective alternative to otherwise duplicative R&D such as some R&D conducted to meet safety, environmental, or health standards. The cooperative credit will advance the underlying goals of section 41 by ensuring the research is conducted in the United States.

Mr. BENTSEN. I believe that we should explore all proposals to increase the competitiveness of U.S. industry. One of the key elements of our national strategy must be to pursue a tax policy that encourages cooperative partnerships, especially in research and development and technology transfer. I look forward to examining all tax proposals designed to encourage collaborative research ventures.

REPEALING MANDATORY 20-PERCENT WITHHOLDING ON IRA'S

Mr. HELMS. Mr. President, earlier this month I was made aware of a major problem with the way the most recent extension of unemployment insurance benefits are financed. At issue is a provision of Public Law 102-318, passed by the Senate and enacted into law while I was in Raleigh following heart surgery.

Here is the situation: Approximately $2.1 billion of the cost of extending these benefits was offset by changes in the tax treatment of IRA's, including a mandatory 20 percent withholding on any IRA not rolled over directly from one financial institution to another.

The bottom line, is that these changes in IRA tax treatment will have an adverse impact on retirees and other individuals while not raising the amount of funds initially believed to be the case when Public Law 102-318 was enacted.

Mr. President, I do not care to delay final passage of H.R. 11, so I ask that my complete statement be entered in the RECORD at the conclusion of this colloquy. But, I do feel strongly that this new 20-percent withholding should be repealed and I hope the managers will do what they can to address this problem.

Mr. PACKWOOD. Mr. President, I share the concern of the Senator from North Carolina regarding the new 20-percent withholding provisions. I will be glad to work in the conference to see if this problem can be addressed in some fashion in the conference report. And, if that does not work, I would be glad to work with him and the chairman of the committee [Mr. BENTSEN] to put together hearings when the Congress returns, at which this issue may be examined in a comprehensive fashion.

Mr. BENTSEN. Mr. President, as the Senator from North Carolina knows, this proposal originated in the President's pension simplification proposal. We certainly must make sure that people understand the new provision so that they are not caught unaware. I will be glad to work with both Senators next year to make sure that this provision does not have unintended results on retirement security.

Mr. HELMS. Mr. President, I thank the chairman and ranking member of the Finance Committee for their courtesy.

IRA WITHHOLDING PROVISION

Mr. President, Senators who may not have heard from irate constituents regarding the new 20-percent withholding provision for IRA's may be interested in a brief review of how this new law works. Here is the problem:

First, if you leave your job and go to work for another employer, or find another qualified IRA into which you can transfer your pension, you can avoid government withholding if you ask your employer to transfer your IRA before you leave the job.

Employers in my State tell me that the IRS has yet to tell them what paperwork will be required by the IRS to do this.

But this, Mr. President, is not the biggest problem.

Second, if you leave your job and fail to instruct your employer before you leave to transfer your IRA, you receive upon termination a lump sum check minus 20-percent withholding.

Therefore any employee who leaves his or her job on short notice is going to have the IRS withhold 20 percent of their pension regardless of his or her tax bracket.

Third, let's assume you leave your job, do not tell your employee before you leave to transfer your IRA, and receive your lump sum check for 80 percent of your pension—remember, the IRS takes 20 percent off the top for withholding.

To avoid being taxed for an early withdrawal from your old IRA, you must put 100 percent of your lump sum into another IRA within 60 days of leaving you job. You will be taxed on anything short of the 100 percent you put into the new IRA.

But remember, you do not have in hand 100 percent. You have only 80 percent since the IRS withheld 20 percent.

So in order to avoid being taxed for an IRA withdrawal, you must put the 80 percent into the IRA and add 20 percent—if you have—to that. Otherwise, the IRS will tax you on the 20 percent the IRS withheld as if you made an IRA withdrawal.

Mr. President, this particular problem was brought to my attention by

Mrs. Louise S. Stephenson of Raleigh, NC. Mrs. Stephenson, or "Scottie" as she is known to her friends, is one of the brightest people I know. So, when Scottie believes something the Government is doing is amiss, I take it very seriously.

Indeed, Scottie provided me in a letter giving perhaps the clearest explanation I have yet seen on this problem. I ask unanimous consent that her letter be printed in the RECORD at this point.

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

CAPITOL BROADCASTING CO., INC.,
Raleigh, NC, August 26, 1992.

Senator JESSE HELMS,
Dirksen Senate Office Building,
Washington, DC.

DEAR SENATOR: Thank you so much for putting me in touch with the folks who are trying to deal with the legislation we discussed yesterday. It was very helpful to me to talk with your staff and the staff of the Finance Committee.

As I understood the Finance Committee staffperson, the 20% withholding tax to be imposed on all of our Profit Sharing transactions is "merely a payroll deduction thing—pay as you go." There seems to have been some problems with retirees taking all of their proceeds and not paying income tax—"forgetting" or some such. (God knows there are enough safeguards already in place to deal with this. Every cent is reported to the IRS through estimated tax reports, W-2Ps, etc., to alert them to the existence of a tax liability.) And 20% was selected "because it is somewhere between 15% and 31%, the minimum and maximum tax rates."

These funds are not a new source of tax revenue. The government always gets its share whether it is from the distribution itself, income tax paid the next year, IRA wind-down, or through minimum distributions. The new tax grab puts it up front, it is arbitrary in its amount and, in my opinion, will generate a large increase in IRS refunds the following year. I wonder if this expense was taken into account when the revenue potential was projected? Was the cost of setting up the Washington machinery to administer it deducted from expected returns? Based on my discussion with Finance Committee staff, just about everything in the bill as presently written has to be "fixed" before any of it will work.

In addition to the considerable inconvenience caused to retirees, we have major concerns about distributions to terminating younger employees. John Doe is leaving. He has $15,000 in his retirement account. The law would force us to withhold $3,000 federal income tax regardless of what his actual liability might be—let's say 5% to 10%. He will have to wait until the following year to file for a refund. He will owe 10% penalty, too, for early withdrawal (unless he elects to rollover into an IRA all of his funds prior to termination—something the younger participants rarely do). If he happens to reside in Virginia, there's a law which says we take out Virginia's income tax, too, if the Feds get theirs. He'll be lucky to have $10,000 when the tax dust settles.

Another concern is the employee who wants to buy his own home and he's not terminating. Now he can access all of his 401k money except its earnings if he documents the amount requested as the actual need. Under present law he wouldn't request federal tax withholding because he will have offsetting interest deductions at income tax filing time. He will only have the 10% penalty now imposed for early withdrawal. Under the new law this fellow is going to pay 20% up front and wait maybe as long as 15 months to get it back when he needs it now.

Again, thank you for your good help. I hope we can prevail—just once. Congress needs to encourage retirement plans and stop targeting them as a convenient revenue source. It's a sad state of affairs when unemployment checks become the responsibility of folks retiring from the workforce. The unemployment funding extension is the sixth assault in as many years on our relatively straight-forward Profit Sharing Plan. Enough is enough!

Cordially,

(MRS.) LOUISE S. STEPHENSON,
Member, Administrative Committee,
CBC Cash or Deferred Profit Sharing Plan.

Mr. HELMS. Mr. President, as Mrs. Stephenson points out, this is a disaster waiting to happen. But there is more:

When Congress initially considered this new withholding provision, the Joint Tax Committee estimated it would raise $2.17 billion in fiscal year 1993. However, a closer look at this figure discloses that it is widely optimistic, and that, in reality, the revenue increase will amount to only a fraction of the $2.17 billion estimate.

In fact, David Langer, a consulting actuary in New York, calculated that $2.143 billion in additional tax revenues would require $10.7 billion in IRA distributions subject to the 20-percent withholding. As Mr. Langer points out, this is on the high side. Some people will no doubt figure out the 20-percent withholding may be avoided by either making a direct transfer—option No. 11 mentioned earlier—leaving money in the plan or making periodic withdrawals.

In addition, many individuals who are subjected to the 20 percent withholding will likely be in a lower tax bracket. Indeed, as Scottie pointed out to me the other day, the usual withholding called for by the IRS is only 5 percent.

Those falling below the 20 percent will have their withheld funds refunded when they file taxes for the year. So, the supposed increase in revenue will in fact be but a loan as opposed to a permanent infusion.

Because of the aforementioned factors, Mr. Langer estimates that instead of raising the estimated $2.143 billion, the provision will actually raise only $86 million.

The irony, Mr. President, is that in raising so little money, these new withholding provisions greatly inconvenience employees as well as the businesses on which the burden of implementing these provisions will fall. In fact, David Langer estimates that the cost to businesses of implementing these changes will amount to more than $4 billion over 5 years.

Mr. President, to set the record straight as to the real costs and benefits of the new withholding provisions, I ask unanimous consent that a report on David Langer's study, and a reprint of an interview with Mr. Langer, be printed in the RECORD at the conclusion of my remarks.

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

[From Daily Tax Report, Aug. 4, 1992]

WITHHOLDING, DIRECT TRANSFER AMENDMENTS SEEN COSTING EMPLOYERS OVER $4 BILLION

The total cost to employers of the employee benefit provisions included in the Unemployment Compensation Amendments Act of 1992 (PL 102-318) may amount to more than $4 billion over the five-year budget period, more than double the amount estimated to be gained in revenue from the provisions, a pension actuary estimated.

The Senate and House passed the bill July 2 and it was signed into law by the president July 3 (130 DTR G-5, 7/792). The benefit changes in the law liberalized rollover rules, required qualified plans to permit participants to elect to have any distribution eligible for rollover treatment transferred directly tax-free into an individual retirement account or another qualified plan, and imposed a 20 percent mandatory withholding charge on any distributions not rolled over.

According to David Langer, a consulting actuary with David Langer Co. Inc., New York, the law's approximate start-up costs amount to $1,500 per plan for making plan amendments to allow trustee-to-trustee transfers and for reviewing the plan to ensure compliance with the law, Langer told ENA July 29. The amendments are required as a qualification issue, Langer explained.

Once amendments are made, annual administration of the new requirements may amount to approximately $1,000 a year per plan for additional staff time to carry out the direct transfers and filling out the additional paperwork associated with the direct transfers and the withholding requirements of the law, Langer estimated.

Estimating that there may be roughly 600,000 defined contribution plans and 100,000 defined benefit plans that currently allow lump sum distributions and would therefore have to comply with the law, the total start-up cost would be $1.05 billion and the annual cost of administration would be $0.7 billion, Langer said.

That brings the total cost of compliance with the law to $4.55 billion over the five-year period used by the Joint Committee on Taxation staff to estimate revenue gains and losses from tax laws, Langer said.

The JCT staff estimated that the withholding provisions of the law would result in an increase in revenue to the federal government of $2.17 billion over that same five years. According to Langer, it would have been more efficient and a lot cheaper for plan sponsors had the $2.147 billion in desired additional revenue been raised by a charge of about $15 per year per participant, he said.

RESPONSE

"There's a lot more going on here that is beneficial to the participant"—including an extensive expansion of the ability to roll over funds from one qualified plan to another, a Senate aide told BNA July 31.

"It is a pro-participant proposal," the aide added. "We are forcing the employers to do the work in order to preserve participant retirement savings," the aide said.

Langer also suggests that the $2.147 billion JCT staff revenue estimate might be optimistic. To have $2.143 billion in additional collections in 1993, as estimated by the committee, would require $10.7 billion in distributions that are subject to the 20 percent withholding, Langer asserted.

Langer questioned whether $10.7 billion is a reasonable expectation given that there will be a number of ways to avoid paying the 20 percent withholding, including making a direct transfer (as is intended by the law), leaving money in the plan, or making periodic withdrawals, he explained.

Even if the expectation of having $10.7 billion in distributions subject to withholding is reasonable, Langer questioned whether that money should be counted as revenue. According to Langer, the amount should not be counted as additional federal revenue because it is, in effect, a forced interest-free loan to the Treasury of about one year's duration, he said.

The Treasury may collect $2.143 billion in 1993, but much of what is collected would have to be refunded at the beginning of 1994 when taxpayers file their tax returns, Langer said. The only benefit to the Treasury is the savings from reducing its 1993 sale of Treasury bills, he said. At an approximate 4 percent interest rate, the government would realize a one-time savings of approximately $86 million in 1993, he said.

[From David Langer Co., Inc., Consulting Actuaries, Aug. 10, 1992]

NEW LAW ASKS EMPLOYERS TO SPEND $4.55 BILLION, BUT IT WILL RAISE ONLY $86 MILLION; DETAILED ANALYSIS OF THE NEW 20 PERCENT TAX WITHHOLDING AND ROLLOVER RULES

The new 20% tax withholding and rollover rules are effective starting in 1993. They will require changes in plans and in the materials and explanations given participants under practically all defined contribution plans and many defined benefit plans. The Bureau of National Affairs interviewed David Langer on the cost and revenue aspects of the new law, and a copy of the report that appeared on August 4 in the BNA Daily Tax Report is enclosed. In brief, the Joint Committee on Taxation staff estimated that the law would raise $2.1 billion, but Langer sees only $86 million arising in additional revenue. Further, he predicted that the five year outlay by employers to set up and administer the law would come to $4.55 billion.

We discuss below how distributions are to be treated under the rules, the action to be taken, and problems that, hopefully, will be clarified by technical corrections or regulations.

DETERMINATION OF TYPE OF DISTRIBUTION

Distributions are basically divided into three types. In order to apply the new rollover and tax rules, a plan administrator must first determine the type of the distribution (note that a participant's benefit may consist of more than one type).

Non-taxable distribution: Any payment that is not otherwise includible in gross income, e.g., a return of after-tax employee contributions.

Taxable rolloverable distribution: Any taxable payment that is not part of an annuity of approximately equal amounts payable for life or a period of 10 years or more and that is not a minimum required distribution. These are "eligible rollover distributions".

Taxable non-rolloverable distribution: Either a payment which is part of an annuity for life or for 10 years or more, or any payment that is a minimum required distribution.

TAXES

Under the old law, all taxable distributions were subject to withholding, but a participant could elect to waive withholding. Under the new law, the amount to be withheld depends on the type of taxable distribution. (Non-taxable distributions are, of course, not subject to withholding.)

Rolloverable: 20% withholding is required, unless the participant directs the plan's trustee to transfer the distribution directly to the trustee of an IRA or to a defined contribution plan that allows such transfers.

Non-rolloverable: Old law withholding still applies. Taxes on periodic payments are therefore withheld as if the participant is married with 3 dependents and on non-periodic payments at the rate of 10%. Withholding may be waived or the rate of withholding changed. The old law rules apply to all types of distributions from IRAs.

NOTICES

Plans that provide for benefit payment methods that qualify as eligible rollover distributions must allow a participant to request that the benefit be directly transferred and therefore avoid tax withholding. The Trustees, prior to the date benefits are paid, are to provide participants with a notice stating that unless the participant requests a direct transfer, taxes will be withheld at the 20% rate. The IRS is expected to prescribe model notice language. Forms currently given participants must therefore be revised to include this and eliminate the current waiver of taxes for all but non-rolloverable distributions. The notice should be given to the participant with the benefit election form, so that time is available to make a decision before payment is made.

The notice must also describe the information the participant has to give the plan trustee in order to effect a transfer. The participant must choose an IRA or eligible plan and give the plan trustee payment instructions. According to the Committee report, the trustee is not required to confirm the information. Notices must continue to inform the participant of the right to roll over the distribution within 60 days of payment, if not directly transferred, and when a distribution may be eligible for favorable tax treatment. Participants receiving a non-rolloverable distribution will still have to receive a notice of right to waive or change withholding.

ROLLOVERS

Under the old law, in order to be eligible for a rollover, a distribution had to be in one of the following forms: (a) the entire balance of the participant's account, paid in one tax year due to termination, death, disability, or after attainment of age 59½, or (b) received due to plan termination, or (c) at least 50 percent of the participant's total account payable due to termination, death, or disability.

The new law will simplify rollovers in the following ways:

Any taxable rolloverable distribution can be rolled over (within 60 days of receipt if not directly transferred).

The distribution does not need to be entire balance to the participant's account or paid completely in one tax year.

Complex rules that limited the ability to roll over a lump sum payment were eliminated. It is no longer necessary to combine like plans of an employer in order to determine whether a distribution is the entire balance and therefore eligible for rollover. A distribution can now be rolled over whether or not any benefits were paid prior to, or will be paid after, the distribution, as long as the distribution is not part of an annuity. Many subtle restrictions were eliminated.

ACTION TO BE TAKEN

Employers must do the following:

Revise notices to be given to participants upon termination of employment. Plans must be operated in compliance with the law beginning on January 1, 1993.

Review benefits already in pay status to see if any retiree must be given notices and the withholding levels changed. For example, if benefits are already being paid out over 5 years, the withholding and right to rollover has changed for post-12/31/92 payments.

Amend the plan within the 1994 Plan Year.

Consider announcing the change to participants even though a Summary of Material Modification is not required until the plan is amended.

QUESTIONS AND PROBLEMS

There are many questions and problems that IRS or Congress will have to address before the end of the year.

If part of a benefit payment is a rolloverable distribution and part is non-rolloverable, then each part is subject to different withholding rates, different explanations of rights, and possibly different payees. This can occur, for example if part of a lump sum payout is a minimum required distribution which cannot be rolled over, or if a participant elects an annuity from an employer-provided account and a lump sum from an elective account.

There doesn't seem to be any limit on the number of IRAs a participant can request transfer to, so that the plan trustee may have to make multiple transfers.

If a participant is receiving a monthly or annual benefit over a period under 10 years, does the participant have to be given the required notice and provide new transfer instructions prior to each benefit payment?

If a benefit's value is under $3,500 and the plan provides for automatic pay out, how much time has to be given to the participant to provide transfer directions before the distribution is made with 20 percent withholding?

If a participant does not decide to roll over an eligible distribution until after payment is received, less 20 percent withholding, the participant will lose part of the retirement income that can be rolled over, unless he or she has other funds or can borrow money within the 60 day rollover period to augment the payment up to the amount of the total distribution. In addition, if the 10 percent early withdrawal penalty is applicable, the 20 percent that was withheld may be subject to such penalty.

Example. Mary and Jim each receive a distribution of $50,000 which, after the 20 percent withholding, consists of a check for $40,000 and $10,000 forwarded to IRS. Mary has sufficient assets to open an IRA with the $40,000 check and her own check for $10,000. On her tax return, she will report a rollover of $50,000 and will either reduce the taxes she owes by the $10,000 that was withheld or get it back as a refund. Jim cannot come up with $10,000, so he only rolls over the $40,000 check to an IRA, and on his tax return has a net taxable distribution of $10,000. Assuming a 35 percent tax rate (federal and state) and a 10 percent early withdrawal penalty since he is not age 55, Jim only gets a reduction in taxes due (or a refund) of $5,500. This cannot be rolled over since the 60 days have passed,

so Jim has lost at least $4,500 in tax deferred IRA retirement funds.

The 20 percent withholding is applicable to hardship distributions, although this may have been a drafting mistake. Unless it is changed, plans will have to decide whether to allow for hardship distributions to be "topped-up", since withholding can no longer be waived. Of course, a participant can elect a trustee to trustee transfer to an IRA and then close the IRA while waiving tax withholding. This means, of course, lots more paperwork.

Are Social Security supplements that are payable for less than 10 years eligible rollover distributions or are they part of the pension annuity?

If an outstanding loan becomes a taxable distribution, as can happen upon termination of employment, and the participant cannot repay the outstanding balance, then the balance is subject to 20 percent withholding. If the participant directs the transfer of the rest of the account, how will the withholding be accomplished? The same problem may arise when a distribution includes noncash assets (stock, real estate, etc.)

[From the Kansas City Star, July 25, 1992]

MUCH GRIEF, NOT MUCH REVENUE

(By Jerry Heaster)

The contempt Congress has toward its most productive constituents was underscored recently when it decided to hijack your retirement nest egg if given the chance.

The latest wrinkle in federal tax law involves what is easily the most outrageous congressional action of the year and is yet another reason to clean house on Capitol Hill come November.

In case you haven't heard, here's what happened: When the right honorables needed a way to finance an extension of unemployment benefits, they imposed a 20 percent withholding tax on lump-sum distributions of tax-deferred pension accounts. Many of those most likely to be affected still aren't aware of the ambush Congress has set for them because the tax law change was buried deep in the stories about the jobless-pay extension.

Word is slowly getting out, though, and as it does the firestorm it's creating may eventually rival the protest sparked by an equally outrageous effort in the '80s to impose withholding taxes on interest and dividend payments.

This time, however, the rip-off is even more egregious because it's a fiscal sham. Despite the financial injury many hard-working Americans will suffer from this tax initiative, it is expected to enhance revenue by only a couple of billion bucks.

Whereas the current law allows 60 days for individuals to roll over pension fund distributions into other retirement accounts, the new law requires the employer to complete the transfer directly. Starting next year, if you unwittingly lay hands on the funds personally, you're hurting.

If you get a $50,000 distribution, say, because you change employers or are forced into early retirement, the check will be for only $40,000. But to avoid paying taxes and penalties, all $50,000 you were due must be rolled over into another tax-deferred retirement account.

Since the feds have already taken $10,000 of your nest egg, this means you must come up with the difference out of pocket when doing the rollover. If you don't, the 10 grand you fail to match in the new account not only will be taxed as income but also probably will be hit with an extra penalty tax for early withdrawal. And you'll also have lost the earning power of the $10,000 that's no longer invested.

If you do make up the shortfall on your own to maintain the tax-free integrity of your entire $50,000 nest egg, you'll get a refund when you file your next tax return because you won't be liable for the tax already withheld. This means that while Uncle Sam has had the benefit of an interest-free loan from you for more than a year, he still won't gain any actual extra tax revenue.

Moreover, as potential victims learn how to avoid the withholding by having the money taken care of without it ever coming into their possession, this will further weaken the measure's revenue-enhancement potential.

So why would those elected to represent your best interests create so much grief for so many hard-working, responsible Americans in return for so little in additional revenue? Probably because the 1990 budget agreement mandated that spending increases be offset by spending cuts or revenue enhancements. It's not important, however, for an actual balance to be achieved.

With this device, additional revenue can be estimated to pay for vote-buying largess in an election year even if much of it either never materializes in the first place or ultimately must be refunded if it does.

Do you ever wonder why America can't generate enough savings and investment to fuel economic growth? Wonder no more.

[From Business Week, Aug. 17, 1992]

DON'T ROLL OVER FOR THIS PAYOUT PLOY

Although the rules about payouts when you leave your company are complex, there has been one simple way to shelter lump sums from tax: Roll over the check from the company's pension fund or 401(k) savings plan into an individual retirement account or another eligible plan within 60 days. But after this year, once you receive that check, it will be too late to avoid a stiff new tax bite.

So, you must arrange in advance for your employer to make a trustee-to-trustee transfer to a cooperating bank, brokerage house, or new employer's plan. Otherwise, lump sums will be subject to a 20% withholding rate.

A major concern of tax advisers is "people being unpleasantly surprised," says Bill Fleming in the Hartford office of accountants Coopers & Lybrand. Those who suddenly change jobs or fall victim to cutbacks are the most likely to "get punished" for not knowing the tax rules.

Without a trustee transfer a $100,000 nest egg would mean a check for only $80,000. You still have 60 days to roll it into an IRA, tax-free until withdrawal. But to shelter this full $100,000, you'd have to come up with $20,000 from somewhere else.

If you don't make up the difference within 60 days, the $20,000 will also be subject to regular tax even though your never saw it. And unless you're 59½, you'll face a 10% penalty. Whether you ever get the $20,000 back depends on your total tax bill for the year. For instance, you might be overwithheld in general and get back your $20,000 as part of a refund. Or you could even end up owing more.

TAX TRAP

The congressional rationale is to foster trustee-to-trustee transfers so people will keep lump sums locked away for retirement rather than spend the money once they have a check in hand. But few employers now are set up to handle such transfers, so Congress is "leading you down the path" to having part of the nest egg taxed away, Fleming says.

By making withholding mandatory instead of optional, as it is now, "they actually set out to trap people," says Alan Prigal, a New York tax attorney and consultant to Bender's Federal Tax Week. The change is slated to raise $2.1 billion to help pay for extended unemployment benefits in the first year and nearly nothing after that—when most people presumably will have learned from those who got burned.—DICK JANSSEN.

LEASED EMPLOYEE

Mr. KERRY. Mr. President, I have two questions regarding a clarification of the leased employee provision in the bill.

Mr. BENTSEN. I would be pleased to offer any clarifications.

Mr. KERRY. First, when we considered a similar provision on June 23, 1989, you concurred with my understanding that under the definition of "leased employee" then proposed, the fact that an individual's services are not performed under the control of the intermediary party that arranged for the individual to perform the services for the recipient company does not, by itself, necessarily lead to the conclusion that the individual's services are performed under the control of the recipient company. The services may instead be performed under the control of the individual himself or under the control of an entity other than the intermediary third party or the recipient company. This issue was then, and still remains, particularly important in my State of Massachusetts where a substantial number of workers provide services through brokers as independent contractors. Would my understanding on this point still be correct today under the present bill?

Mr. BENTSEN. Yes; it would be.

Mr. KERRY. Second, the explanation of the bill states that the service recipient must exercise control over a worker for the worker to be considered a leased employee. The explanation also states that the determination is made on all the facts and circumstances. I am concerned that this definition not be extended beyond the original intent of the leased employee provisions to reach certain professionals like attorneys; accountants and actuaries; doctors; and computer programmers, systems analysts, software and hardware engineers; and other similarly skilled professionals who typically are under the general control of the service recipients.

Often the service recipient's establishment of the techniques and methods to be used, and its requirement that work be performed onsite and according to certain stages and timetables, is dictated in many respects by the very nature of the work itself; also there is general direction given as to the results to be obtained. However, this type of general control by service

recipients does not appear to be significant in the overall context of the day-to-day work of these professionals who regularly make substantial use of their own judgment and discretion on matters of importance in the performance of their services, accordingly, this type of general control would not be an important indicator of whether these professionals are leased employees. Is my understanding correct of how the control test would apply to these workers?

Mr. BENTSEN. Yes, it is correct.

ERISA WAIVER STATEMENT

Mr. DURENBERGER. Mr. President, I rise to speak today about the crucial need to find ways to finance health reform.

Mr. President, several weeks ago I introduced legislation, S. 3223—the State Health Care Financing Equity Act. I was joined by my colleague from New Jersey, Senator BRADLEY, and several others. The Durenberger-Bradley bill permits states to waive ERISA preemption requirements for certain limited purposes. The bill provides a narrow exemption for the States to enact equitable financing plans which are directed specifically at expanding access to cost-efficient health care. Period.

Mr. President, I believe that the Federal Government has the responsibility to provide financial security against catastrophic medical expenses to all Americans. Every American should be able to get access to a health plan. If they cannot purchase that plan in the marketplace, the Federal Government should assist them through vouchers, tax credits, or other subsidies.

Unfortunately, Mr. President, the Congress and the President have been unable to reach consensus on a plan for universal access to health care.

Many States, thank goodness, are not waiting for Washington. They are ready to move to help their citizens get access to health care. States have to figure out how to use their limited resources to expand access to care.

However, because of ERISA, States are seriously limited in assessing taxes against what are known as self-insured plans governed exclusively by Federal law.

Many States, including my own State of Minnesota, have found their hands tied. They can only levy taxes against a dwindling number of employers who buy commercial insurance.

What kind of message are we sending to the States? We are saying: if we cannot pass legislation to expand access then you can't either. That is irresponsible.

And it is even more so when we realize that health reform is not a parlor game. The price for failure to act, and our failure to allow the States to act, is being paid in the form of pain and suffering and fear among American families.

In my view, as long as what States are doing is not detrimental to good health care, I am not going to impose what my vote might be on a decision which is theirs to make. Especially when we are unwilling to face up to those same hard choices at the Federal level.

Let me tell you, Mr. President, that there are a lot of strong feelings about this issue of ERISA preemption. I have listened carefully and attentively to many arguments against my bill.

Some have said that my approach would encourage States to rush out and pass provider taxes. But, here are the facts. Twenty two States already impose taxes on hospitals, doctors and other providers for the purpose of financing and subsidizing uncompensated care, State Medicaid programs, and a host of other health programs. It was an unanticipated district court decision last June that threw the legality of provider taxes assessed against self-funded plans in doubt.

States do not rush out and pass taxes of any kind. We in Congress know better than anyone else how hard it is politically to raise taxes at any level of Government. States struggle, as we do in Congress, with political forces that resist tax increases.

Provider taxes, just like cigarette taxes or sales taxes, are legitimate sources of tax revenue for States. It is a State decision. The ERISA law prevents States from assessing nondiscriminatory broad-based taxes on all users of the providers' services. This exception is unfair. Unfair taxation is what we are trying to prevent.

ERISA also prevents a State from taxing the insured to support uninsured. States can levy premium taxes on the commercially insured plans. But, self-insured employers are exempt from these levies as well.

Self-insurance is only a practical alternative for large firms. Thus, the larger companies, who are often the best able to afford these taxes, do not have to pay them. This is unfair.

Self-insured firms also argue that they take care of their own workers; they do not need to take care of anyone else.

In response, first let me say that I recognize the growing efforts to self-insured firms to manage health care costs. Nowhere is this more true than in Minnesota where our self-insured large firms have begun creative alliances with health plans to improve the quality of care their employees receive while reducing the costs of that care. I applaud their efforts.

However, the fact that they provide excellent benefits does not exempt them from certain social responsibilities. The parents who choose to pay for private education for their own children are not exempt from taxes to support public education. The firm that offers scholarships to children of their employees is not exempt from taxes that are used for scholarships and loans for low income individuals.

Mr. President, I am not closed to creative alternatives to my bill. There are better, fairer, wiser ways to finance universal coverage. They are all here in Washington. Restructuring the tax subsidy for employer paid health insurance. Redesigning Medicare to make it more rational, with catastrophic protection, long-term care, and without billions in wasteful Medigap insurance purchases. Replacing Medicaid with low-income premium subsidies.

These issues are deeply divisive. I am enough of a realist to know that we cannot force a decision in the last days of this Congress, particularly on a tax bill which is in itself controversial. Thus, I am not offering my bill, S. 3223, as an amendment on H.R. 11 at this time.

But my message is a warning. ERISA preemption in particular, and health care financing in general, are issues that can no longer be avoided. For too long we have denied that universal access will require new sources of revenues or major reallocation of resources or both.

We will not get health reform without resolving these thorny issues. A first step is to give those States who are already on the front lines of this battle the freedom to succeed.

I am pledging to raise these issues in the earliest days of the new Congress.

We ask unanimous consent that an article from the American Hospital Association News describing the issue and an editorial in the Minneapolis Tribune describing Minnesota's quandary be printed in the RECORD.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

[From AHA News, Sept. 21, 1992]

LATEST STRANGLEHOLD ON STATES' HEALTH CARE REFORM EFFORTS—ERISA

Lawmakers instrumental in crafting legislation aimed at protecting employee pension plans in the early 1970s never realized the can of worms their efforts would open up two decades later.

But states now are fishing for ways to circumvent that legislation, the Employee Retirement Income Security Act of 1974 (ERISA), in their attempts to implement their own health care-reform plans in the face of federal government gridlock.

The legislation, which sets forth federal regulations for all employee-benefit programs, allows states to tax and regulate traditional insurers but prohibits them from requiring employers to provide health care coverage to their workers and from regulating or taxing self-insured employers' plans. Such mandates and taxes are parts of the reform plans proposed by many states. ERISA exemptions can be obtained only with an act of Congress signed by the president.

"[The law] set up to protect employee pension plans is creating chaos in their health plans," said Ken McDonnell, a research analyst for the Washington, DC-based Employee Benefit Research Institute (EBRI).

In fact, ERISA is creating so much of a problem for states that a number of governors have made the pilgrimage to the nation's capital to plead for relief.

"In the absence of national leadership and vision, we must move ahead," Florida Gov. Lawton Chiles said during a recent health-policy forum in Washington. "For some of our citizens, it is a matter of quality of life. For too many, it is a matter of life and death."

Relief for states may come in the form of bills introduced recently in Congress.

Hoping to clear the way for Florida to proceed with is plan to ensure that each of its residents receives basic health care benefits, Chiles is backing a bill sponsored by Sens. Patrick Leahy (D-VT) and David Pryor (D-AR) that would allow 10 states to establish health care demonstration projects with immunity from ERISA and Medicaid rules.

A separate bill introduced by Sen. Dave Durenberger (R-MN) would establish federal ERISA waivers for approved state reform initiatives, allowing the states to impose certain surcharges and state insurance taxes on self-insured employers.

The Bush administration opposes the Leahy/Pryor bill, according to Gail Wilensky, the White House's top adviser on health and welfare issues. The reasons she cited were the bill's proposal to strip the HHS secretary's authority to issue waivers, and the concern that exemption requirements would lead to highly regulated cost-control mechanisms.

On Durenberger's bill, Wilensky said the White House as of last week did not yet have a position.

Durenburger, in comments earlier this year on the House floor said: "ERISA has become a shield behind which self-insured companies can avoid social responsibilities that others must bear. This not why we adopted ERISA."

Many businesses have become self-insured in recent years as a way to bypass many state insurance regulations as well as to reduce administrative expenses and provide consistent health coverage to workers scattered in different states.

Not surprisingly, business leaders—and even labor officials—oppose changes to ERISA. The AFL-CIO, which is a self-insured organization, does not want to see exemptions to ERISA as a means of clearing the way for state health care reform.

"We want to see national health care reform." said Colleen O'Neill, an AFL-CIO spokeswoman. "[We're] against testing in the states because it is putting off the inevitable."

Without changes to ERISA, states' grand attempts at reform would amount to paltry tinkering with state insurance codes.

As EBRI's McDonnell said: "Things like universal health care are out."

States would have to be satisfied with enacting only small-group insurance reforms and approving sales of "bare-bones" health-insurance policies, which bypass state mandates. Although these reforms are themselves significant, a growing number of states have far loftier plans.

But without an ERISA exemption, states could not institute premium taxes to fund insurance pools for high-risk individuals, implement single-payer or "play-or-pay" systems, develop streamlined administrative claims forms and billing systems nor establish negotiated rate systems.

"That's a very significant list," said Carl Volpe, a senior policy analyst for the National Governors' Association (NGA), Washington, DC. "I'd say that states are very limited."

Only Hawaii has been able to do what other states are only now attempting. In striving for universal access, Hawaii has implemented a mandate that all employers, including self-insured businesses, provide workers with coverage.

Hawaii implemented its program before ERISA was enacted and was able to get an exemption written into the law. But the state has not been able to modify its system since 1974 to cover those residents who fall through the cracks.

Now a raft of states are trying to follow Hawaii's lead. Some state officials, including those in Florida, say they have no choice but to seek the necessary ERISA exemptions.

"We can't do what we want to do without an exemption," said Gary Clarke, the state's Medicaid director, "It's critical."

In the meantime, however, other states are attempting to sidestep the law.—CHRISTOPHER J. GEARON.

[From the Star Tribune, Sept. 25, 1992]

THE LEGAL SHADOW OVER MINNESOTACARE

The shadow of a lawsuit lengthened this week over MinnesotaCare, the much-hailed landmark plan for providing health care to the uninsured. Special interests succeeded in quashing an effort led by Minnesota Sen. Dave Durenberger to erase the shadow with an amendment to federal law.

Unless Congress next week miraculously finds that backbone it's long been lacking on health care, MinnesotaCare is in for a treacherous legal journey that could strip it of a primary funding source, a tax on the services of health-care providers.

The lawsuit is the handiwork of the Twin Cities Pipe Trades Welfare Trust, a self-insured health plan for union workers. But the union isn't the real villain in this drama—the federal government is, for denying states any ability to tax self-insured health plans in a manner parallel to commercial health insurance.

The union's beef with MinnesotaCare is that its providers' tax will be passed on in higher costs for the union's health plan (not to mention the many other self-insured plans in the state). That, the union argues, violates the 1974 Federal Employee Retirement Income Security Act, better known as ERISA, which requires that self-insured health plans use their assets only to benefit their own participants.

The union's argument may seem like a reach, but it prevailed in federal court in New Jersey earlier this year. A hospital billings surcharge dedicated to funding health care for the uninsured was struck down as a violation of ERISA. A General Accounting Office specialist told a U.S. Senate panel earlier this month that the pipe trades' suit in Minnesota could have the same result.

Durenberger and Minnesota's junior senator, Paul Wellstone, joined forces to try to protect MinnesotaCare. Their amendment to ERISA would have allowed states to tap self-insured plans to fund programs giving more people access to health care. But they bumped hard into a coalition of unions and major employers who want to block tampering with ERISA's preemption of state control of self-funded health insurance.

The Minnesota senators' experience demonstrates once again why health-care reform is so hard to come by in America. The people who oppose change are rich, powerful and know how to lobby. The people who so desperately need change aren't. The Minnesota Legislature courageously took a stand on the side of the uninsured this spring. Shame on Congress for refusing to do so this fall.

Mr. BENTSEN. I would like to thank my colleague from Minnesota, Senator DURENBERGER, for his introduction of S. 3223, the State Health Care Financing Act, and for his continuing leadership on health care issues in the Senate. The Senator's bill addresses a very important issue of great concern to the States. As he knows, we have already held a hearing on this issue in the Finance Committee.

The Senator from Minnesota has accurately stated my view that I would oppose an effort to offer S. 3223, or any other bill dealing with the ERISA preemption of State laws, as an amendment on H.R. 11. We cannot allow this important bill to be bogged down with controversial amendments at this late date.

I am aware of the importance of the issues that Senator DURENBERGER raises in this bill. This is a matter that the Senate will take up when we reconvene in 1993.

Mr. SEYMOUR. Mr. President, I rise to explain my reason for supporting H.R. 11, the Revenue Act of 1992. I supported passage of the Senate version of this legislation because this measure contains many excellent provisions which if signed into law will be instrumental in reinvigorating the American economy and put us on the road to recovery. However, I voted for this measure with some very strong reservations.

The reason I supported this bill is because there are many provisions of this legislation that will help many facets of our economy, and collectively, our country. Some of these provisions include: measures to help our economically depressed urban, rural, and Indian areas through the creation of 125 enterprize zones, a $2,500 first-time home buyer tax credit and modification of the passive loss rules for real estate to jump-start the economy, reinstatement of individual retirement accounts [IRA's] for everyone and penalty-free withdrawals for reasons of health, education or the purchase of a first home, and repeal of the so-called luxury tax on boats, jewelry, airplanes, furs, and indexation for cars.

My reservations focus on the tax increases in the bill. It is my hope that in conference these increases will be removed. If not, I will revisit this issue and may be disposed to oppose this measure. I would only do this out of concern that tax increases will negate the positive provisions in this bill and prevent the economic recovery that is the intent of this measure.

Mr. MURKOWSKI. Mr. President, I will vote yes tonight on passage of H.R. 11, but I do so only because I hope that the significant problems with this bill, namely the tax increases, can be eliminated in conference while retaining much of the good which this bill has to offer. I will not, of course, support the conference report if it retains the tax increases present in the bill as now drafted.

Mr. President, this bill contains many important provisions, some of which I have been advocating for years. The return of the fully deductible IRA is crucial to getting Americans back in the savings game. The $2,500 first-time home buyer tax credit will help revitalize the American real estate and construction businesses while giving young Americans the opportunity to own their own home, something all Americans deserve. The military IRA rollover provision I introduced will help tens of thousands of departing service people adjust to life outside the military. There are important provisions for enterprize zones, in both the cities and rural parts of America. And, finally, there is important tax relief here for thousands of Alaskans who will not get the tax relief on State education loans that they deserve.

Unfortunately, of course, there are tax increases in this bill as it is now written. I hope and trust that the Members of this body, together with the Members of the other body, will in conference remove those tax raising provisions. This is an important bill, Mr. President, and there are many, many parts of it which deserve to become law. That said, I will not support this bill if it comes out of conference with tax increases. However important may be the good parts of this bill, I do not believe that they justify imposing another tax increase on the backs of Americans, and I will so vote.

Mr. BINGAMAN. Mr. President, I rise to commend the distinguished manager of the bill and chairman of the Finance Committee, Senator BENTSEN, for his leadership on the legislation before us. He has done a yeoman's job over the past several weeks and days in attempting to address the many and diverse concerns raised by my colleagues and me. However, I remain very troubled by one provision of the manager's amendment.

Section 136 of the amendment addresses the very complex issue of physician self-referral and would create a number of exceptions to the current prohibition against this practice in some circumstances. As a cosponsor of S. 3186, the ethics in Referrals and Billing Act, which Senators ADAMS, METZENBAUM, and I introduced earlier this year, I am opposed to any effort that encourages or expands the practice of self-referral.

I am sure the chairman agrees with me when I state that this very complex issue deserves careful, thoughtful attention. The provisions in S. 3274 illustrate the difficulty of attempting to regulate physician self-referral in a piecemeal fashion. I believe S. 3274 creates exemptions that will undermine our efforts to regulate the egregious aspects of self-referral. We cannot afford to address this critical issue in anything less than a comprehensive manner.

I had planned to offer an amendment to strike the troublesome provisions, but at the urging of the chairman, I will not pursue the amendment. I understand the chairman is sympathetic to my concerns, which were also raised by Senator ADAMS and Senator METZENBAUM, and that he will work with us and other concerned colleagues on these issue when the bill is conferenced with the House.

In the past any exception to self-referral prohibitions occurred only after extensive discussion within the Congress and the health industry. This approach developed because of the complexity of this issue. The approach pursued in the manager's amendment, introducing self-referrals provisions with little discussion and examination, lends itself to errors. When we revise physician self-referral provisions we must do so with caution and certainly.

The practice of physician self-referral is a particularly onerous example of the type of increased intensity and volume of health care services that is driving up U.S. health care costs at an alarming rate. Self-referral occurs when a physician enters into a health services joint venture arrangement, thereby gaining a financial interest in an independent health care facility. Joint venture arrangements come in a variety of forms, the most common occurring when a physician makes an investment in a facility that provides physical therapy or rehabilitation programs, diagnostic imaging, radiation therapy, or another type of service to which he or she may refer patients. The benefit to the physician, in terms of income and tax advantages, ranges from small sums to thousands of dollars per year. But one thing remains constant: the success or failure of the joint venture depends on the physician's ability to make patient referrals.

We simply must do all that we can to assure that this practice does not continue if we are ever to achieve cost containment in the U.S. health care system. I thank the chairman for his willingness to address these concerns during the House-Senate conference on H.R. 11.

Mr. MACK. Mr. President, this bill provides real economic hope and opportunity to several sectors of our economy. My constituents in Florida are hurting. They are anxious about their jobs and about the state of the economy. They want action, even if it means taking some risks.

With this bill the horrible luxury tax on boats—the layoff tax—is finally repealed. Since this tax was created, it has caused job losses, harmed businesses and cost the Government revenue. The luxury tax is proof that higher taxes mean fewer jobs, and it will not be missed.

Other elements of this bill will have very significant effects on the real estate industry. These provisions—most notably the modifications of passive loss treatment—are necessary in order to revive the real estate industry from its depression.

The bill will boost economic activity by reducing the litigation costs associated with the amortization of intangibles. It also takes a step toward easing the burden of the alternative minimum tax [AMT] when businesses make productivity-enhancing investments in capital equipment.

Also included in this bill are important provisions that will help provide tax relief to the victims of Hurricane Andrew. Two amendments of mine will allow penalty-free withdrawals from IRA's for reconstructing homes and businesses, and also allow agricultural producers to defer their tax payments without penalty for 1 year in order to help them replant and rebuild their businesses.

In addition, the bill contains a provision to create much-needed enterprise zones which will help spur economic growth in depressed rural areas and inner cities. Under the bill's criteria, hurricane ravaged south Dade County, FL, would be a prime candidate for an enterprise zone classification.

But this bill is not free of warts. There are several key elements—particularly those provisions known as PEP and Pease—which are very damaging to economic growth nationwide. I have assurances that these provisions will be removed in conference. As beneficial as the economic growth elements are, these other provisions must be removed if this bill is to boost the overall health of the economy.

URBAN AID BILL

Mr. KERRY. Mr. President, I support the Urban Aid bill. I do so with somewhat less enthusiasm than I would like, in full knowledge that this measure does not authorize the kind of major investments in urban America that we so urgently need. It is only a downpayment, and a small downpayment at that.

I decided to support the bill after much consideration and only after Senate acceptance of the Kennedy-Riegle amendment which I cosponsored and which targets an additional $2.5 billion to urban areas over the next 5 years. I was swayed by the fact that the current version of the bill includes important provisions that will benefit many Americans—rural, suburban, and urban. H.R. 11 includes a variety of tax incentives, accounting for $5 billion of the total bill's cost of $30 billion, some of which I believe will be helpful in curing our economy of its current malaise. The bill includes the targeted capital gains tax cut for long-term investment in small businesses and the R&D tax credit, both of which will spur the kind of job-creating investment that our economy so desperately needs. It includes, as well, a modification of the

passive loss rules for real estate investors and a provision promoting pension plan investment in real estate. Both of these measures are needed to jump-start our Nation's ailing real estate industry. In addition, this legislation, if signed into law, would end finally the so-called luxury tax on boats which has compounded the devastation of the boat industry brought about by our sick economy.

The urban and social spending in the bill, including the Kennedy-Riegle amendment, accounts for approximately $10.5 of the bill's $30 billion total. The expansion of the JOBS program will enable States to offer additional education and job training opportunities to move welfare recipients toward self-sufficiency. The increase in the asset limits for AFDC recipients will help families break the cycle of dependence by not punishing them for exhibiting the values we talk about in the debate on welfare reform—hard work, thrift, pursuit of educational and job training opportunities, and demonstration of the belief that one's life can be improved. It is my hope, Mr. President, that with the bill's revision of the AFDC asset limit provisions, we will never again hear of young people like Sandra Rosada of Connecticut who was forced to spend several thousand dollars in savings and whose family was required to pay AFDC overpayment charges because Sandra held a job while in high school in order to save the money she earned to pay for college.

The Finance Committee has included important provisions in the bill for family preservation projects, maternal and child health, mental health, substance abuse, and juvenile justice initiatives. The requirements of the Child Support Tax Equity Act have been incorporated in this bill as well, and as a cosponsor of that act, I am pleased that the bill before us recognizes and addresses the problem of parents who fail to pay child support—usually deadbeat dads. Those who have children have a responsibility for the housing, education, health, and security of their children. Failure to pay child support or flight to another State does not change that, and the provisions of this bill will make that less likely.

The Kennedy-Riegle amendment improves on the provisions in the bill for families by authorizing additional funds for programs that are of proven value like Head Start, Youthbuild, and Community Development Block Grants. It also targets about 60 percent of the money on the enterprise zones, that will be created by the bill.

The heart of the bill's urban provisions is the creation of 125 enterprise zones, 75 of which will be located in urban areas. I believe in enterprise zones because I believe that an increased flow of private capital is an essential prerequisite to the revival of urban neighborhoods. A Federal enterprise zone program would supplement existing State programs and create opportunity where existing market conditions and incentives would not.

But clearly, enterprise zones are not sufficient. Expert after expert has testified that a comprehensive approach to urban rebuilding is needed. That includes incentives for the private sector; it also includes investments in education, job training, drug rehabilitation, community policing, and the basic building blocks of community life.

There are those who say we can't afford to make these investments. They say they are a waste of money. They say that joblessness and hopelessness can only be cured when individuals take responsibility for their own lives.

Well, Mr. President, it is true that individuals must take responsibility for their own lives; they must make wise choices; they must demonstrate good values. But we help create the environment within which their choices are made.

And responsibility is not entirely the province of individuals. Over the past 12 years, the Reagan-Bush administrations reduced the Federal share of city expenditures from 17 percent to 6 percent. Where is the responsibility in that?

Over the same period, Federal support for housing, in real terms, dropped by 82 percent; for job training by 63 percent, for community development, by 40 percent, and for social service and community service block grants by 40 percent. What kind of choices were those?

Just this past March, the President vetoed a tax bill that would have given us urban enterprise zones; vetoed the centerpiece of what he now describes as a program to get this country moving again, to create jobs and to bring some real opportunity into our cities.

And now, after successfully limiting the amount and type of urban aid in this bill, the President threatens to veto H.R. 11. His threat comes despite the fact that the bill contains all of the economic growth proposals from his State of the Union Address except for a broad-based capital gains tax cut and it provides funding for 125 enterprise zones for which his Secretary of Housing and Urban Development campaigned so vociferously.

Why? The President vetoed the bill the Congress sent him this spring because it would have taken away a portion—just a portion—of the tax breaks that were given to the richest 1 percent of Americans during the Reagan years. And he threatens to veto this bill because Congress has refused thus far to reopen tax loopholes for the most well off. To protect the wealthiest of the wealthiest, the President is willing to turn his back on urban America and middle America and rural America and everyone else with an interest in getting our economy back on its feet, and an interest in restoring basic fairness to our tax system.

There are those who really do not care much about the problems of cities in America today. They point out that we are now predominately a suburban Nation. They believe they are not affected by the fact that, because of Federal neglect, cities are being forced year-by-year to raise taxes, cut services, and freeze or reduce public hearing. They look at urban residents and instead of understanding or helping, they turn away or lecture or assign blame. And the sad part of it is that many of these people are in the executive branch of the Government of the United States.

One of the reasons the President is in such political trouble today is that he has so clearly lost touch with the day-to-day concerns of the American people. Other than Jack Kemp and Louis Sullivan, there is not a member of this administration who has given any indication of understanding the kinds of choices the average kid or parent faces in our major cities today.

The crisis in our cities did not begin 3 months ago in Los Angeles. It is not a product of the Rodney King verdict. It exists—to a greater or lesser degree—in cities across America. It has been evolving for years. It has not one, but multiple causes. And it threatens literally to destroy America.

Deep down, we know we will not be able to compete internationally if too many of our young people are in jail or on drugs or always in the streets; we will never get out of debt if we must allocate billions more each year to prisons, prosecutions, emergency health care, expanded welfare and food stamps or rebuilding what the desperate among us have destroyed; and we will never have peace of mind as long as so many of us feel the need to seek security through locked doors, high fences, metal detectors, and the purchase of guns.

Deep down, we also know that it does not have to be this way. We have the power to choose a different road.

That choice begins, although it does not end, with money and how we spend it. Let us be clear. There's a fundamental difference between spending billions for something like B-2 bomber and spending the same amount for programs like child immunization and Head Start. It is like the difference between a family saving to send a child to college and that same family splurging on a trip to the Caribbean.

You buy a bomber, you get a bomber. You change the life a young kid who needs help and you get a citizen. How do you measure the savings? How do you count the crimes that might have been committed, but now will not be? How do you put a value on the difference to society of a young person

making responsible choices about school and drugs and sex and that same person making irresponsible choices because he had no access to Head Start, no chance at a job, no opportunity to grow up in a neighborhood with responsible models to emulate?

Mr. President, this bill is not the comprehensive urban investment package that I would have liked to see. It is a minimum response to a major problem. There are also legitimate questions about the unrelated tax cuts in the bill, many of which concern me greatly. But there is too much in this bill that I feel will help our economy for me to vote against it. Obviously, this is an election year and there will be efforts to characterize this bill one way or another for purposes of partisan gain. But I hope amidst all the rhetoric, we will keep sight of a building consensus in this country that I believe is potentially very hopeful.

It may have taken Los Angeles to do it, but I think there is growing agreement that the crisis in our cities affects us all, whether we live in a city, suburb, and rural community; that our response must include incentives for the private sector and a greater effort by government; that individuals must be held accountable for their own choices and actions, but that this does not relieve the Government of its own responsibilities; and that a sustained, broad-based, innovation strategy for responding to the problem is required.

This legislation constitutes only the very first steps of such a strategy, and this debate indicates that the consensus of opinion we need is only starting to form. So let us approve this bill, but let us do so with a minimum of pride in the accomplishment it represents, and a maximum of commitment to carrying forward the job that this measure so modestly and so belatedly begins.

The PRESIDING OFFICER. The question is, Shall the bill, as amended, pass? On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The bill clerk called the roll.

Mr. FORD. I announce that the Senator from Tennessee [Mr. GORE] is necessarily absent.

The PRESIDING OFFICER (Mr. GRAHAM). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 70, nays 29, as follows:

[Rollcall Vote No. 249 Leg.]

YEAS—70

Adams	Cohen	Glenn
Akaka	Conrad	Graham
Baucus	Cranston	Grassley
Bentsen	D'Amato	Harkin
Bingaman	Danforth	Hatfield
Bond	Daschle	Heflin
Boren	DeConcini	Hollings
Breaux	Dodd	Inouye
Bryan	Domenici	Johnston
Bumpers	Durenberger	Kasten
Burdick, Jocelyn	Exon	Kennedy
Byrd	Ford	Kerrey
Chafee	Fowler	Kerry
Kohl	Packwood	Sasser
Lautenberg	Pell	Seymour
Levin	Pressler	Simpson
Lieberman	Pryor	Specter
Mack	Reid	Stevens
Mikulski	Riegle	Thurmond
Mitchell	Robb	Warner
Moynihan	Rockefeller	Wirth
Murkowski	Roth	Wofford
Nickles	Sanford	
Nunn	Sarbanes	

NAYS—29

Biden	Gorton	McConnell
Bradley	Gramm	Metzenbaum
Brown	Hatch	Rudman
Burns	Helms	Shelby
Coats	Jeffords	Simon
Cochran	Kassebaum	Smith
Craig	Leahy	Symms
Dixon	Lott	Wallop
Dole	Lugar	Wellstone
Garn	McCain	

NOT VOTING—1

Gore

So the bill (H.R. 11) as amended, was passed.

Mr. MITCHELL. Mr. President, I move to reconsider the vote.

Mr. DOLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Pursuant to the order of September 28, the Senate insists upon its amendments to the bill, requests a conference with the House of Representatives on the disagreeing votes of the two Houses, and the Chair appoints the following conferees on the part of the Senate:

Mr. BENTSEN, Mr. MOYNIHAN, Mr. BAUCUS, Mr. BOREN, Mr. MITCHELL, Mr. PRYOR, Mr. PACKWOOD, Mr. DOLE, Mr. ROTH, Mr. DANFORTH, and Mr. CHAFEE.

And from the Committees on Banking, Housing and Urban Affairs; the Judiciary; and Labor and Human Resources, for consideration of title VIII of the Senate amendment only, Mr. KENNEDY, Mr. RIEGLE, Mr. BIDEN, Mr. HATCH, and Mr. GRAMM of Texas.

INDEPENDENT COUNSEL REAUTHORIZATION ACT

Mr. MITCHELL. Mr. President, I have previously engaged in discussions with the distinguished Republican leader and the distinguished Senator from Michigan, Senator LEVIN, and my colleague from Maine, Senator COHEN, regarding the bill to reauthorize the Independent Counsel law.

In accordance with our discussions I now ask unanimous consent that the Senate proceed to Calendar Order No. 676, S. 3131, a bill to reauthorize the Independent Counsel law for an additional 5 years and for other purposes.

The PRESIDING OFFICER. Is there objection?

Mr. DOLE. Mr. President, on behalf of a number of Senators on this side I object.

The PRESIDING OFFICER. Objection is heard.

Mr. LEVIN. Mr. President, the Senators that the distinguished Republican leader has referred to have signed a letter. And that letter makes it clear that the effort to bring up the Independent Counsel law reauthorization this year will run into a filibuster. I would just quote two lines from that letter which has been shared with me.

"We are writing to express our vehement opposition * * * and our intent to debate—at length—any attempt to proceed to the bill." And also making reference to "fervent opposition."

So the reality is that we are going to be unable to reauthorize the Independent Counsel law this year. It runs out in December. I think it is a sad day for the country that we will be without this law for at least a month or two.

Senator COHEN and I, I know, are both dedicated to bringing this up and making this effort again next year. The law was put into place as a Watergate reform and the filibuster threat now is killing, at least for the next few months, the most important single Watergate reform on the books, which is the Independent Counsel law.

This was a truly bipartisan effort to reauthorize it. I want to thank the majority leader for his effort to bring this matter up. It thank Senator COHEN for his continuing support of this bill. We will be back next year.

One other thing, I ask unanimous consent that the letter which has been referred to of the 28 Senators as well as two other documents relating to this matter be printed in the RECORD at this point.

Mr. WALLOP. Reserving the right to object, can I inquire of the Senator from Michigan, if the name of the Senator from Wyoming is on that letter?

Mr. LEVIN. It is.

Mr. WALLOP. Because I was going to ask unanimous consent it be added were it not. I have no objection.

Mr. LEVIN. As a matter of fact it is the top name, so the Senator will not be disappointed.

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

U.S. SENATE,
Washington, DC, September 23, 1992.

Hon. ROBERT DOLE,
Republican Leader,
U.S. Senate, Washington, DC.

DEAR BOB: It has come to our attention that the Majority Leader is considering bringing the Independent Counsel Reauthorization to the floor before the Senate adjourns sine die. We are writing to express our vehement opposition to this legislation and our intent to debate—at length—any attempt to proceed to the bill. Should this legislation become the pending business before the Senate, you can anticipate extended debate and amendments including an amendment pertaining to Congressional coverage.

With less than two weeks remaining before the target adjournment date, Congress has precious little time to complete its list of "must pass" legislation: the appropriations bills, assorted conference reports, and presidential vetoes. For the Majority Leader to contemplate straying from this list to pursue contentious and ill-advised bills such as

the reauthorization of the independent counsel law almost defies belief.

With the disgraceful indictment of Caspar Weinberger and the subsequent announcement of the end to Lawrence Walsh's five year, multi-million dollar investigation, this hardly seems the time for Congress hurriedly to consider reauthorization of such pernicious legislation.

Please convey to the Majority Leader our fervent opposition to any effort to bring this controversial bill up at such a late date in the session.

Sincerely,

Malcolm Wallop, Strom Thurmond, Mitch McConnell, Bob Dole, Steve Symms, Bob Smith, Dan Coats, Ted Stevens, Thad Cochran, Orrin Hatch, Larry E. Craig, Richard G. Lugar, Jake Garn, Frank H. Murkowski, Jesse Helms, Trent Lott, Conrad Burns, Connie Mack, Phil Gramm, Al Simpson, Don Nickles, Larry Pressler, Pete V. Domenici, Slade Gorton, John H. Chafee, Kit Bond, John C. Danforth, John Seymour.

[U.S. District Court for the District of Columbia]

UNITED STATES OF AMERICA *v.* CASPAR W. WEINBERGER, DEFENDANT.

(Holding a Criminal Term; Grand Jury 91–1 Sworn in on January 16, 1991)

Violations: Title 18 U.S.C. §1505 (Obstruction of Congress); Title 18 U.S.C. §1001 (False Statement); Title 18 U.S.C. §1621 (Perjury).

INDICTMENT

Count I (Obstruction of Congress)

Introduction

1. From 1981 to November 1987, the defendant, Caspar W. Weinberger, was the Secretary of Defense and a statutory member of the National Security Council ("NSC").

2. At all times relevant to this Indictment, the Secretary of Defense was the head of the Department of Defense ("DoD").

3. At all times relevant to this Indictment, the NSC was a government entity established by the National Security Act of 1947, whose statutory members were the President of the United States, the Vice President, the Secretary of State and the Secretary of Defense. The NSC advised the President on the integration of domestic, foreign and military policies relating to the national security; facilitated cooperation among the military services and other departments and agencies of the government in matters involving the national security; and reviewed, guided and directed foreign intelligence and covert action activities.

4. Beginning with the overthrow of the Shah of Iran on or about January 16, 1979, and the seizure of the United States Embassy in Iran and its staff on November 4, 1979, relations between the United States Government and the Government of Iran were characterized by mutual hostility and tension. At all times relevant to this Indictment, the United States Government embargoed arms sales to Iran. In January 1984, Secretary of State George P. Shultz designated Iran as a sponsor of international terrorism and, thereafter, the United States Government actively urged its allies not to permit the shipment of arms to Iran, in part because of its sponsorship of international terrorism and the continuation of the Iran-Iraq war.

5. In August 1985, Robert C. McFarlane, the Assistant to the President for National Security Affairs, briefed President Ronald Reagan, Secretary Shultz, and the defendant, Caspar W. Weinberger, about an Israeli proposal to sell arms to Iran to obtain the release of Americans held hostage in Lebanon. The defendant, Caspar W. Weinberger, and Secretary Shultz objected to the plan and advised the President against it. This plan and subsequent efforts to obtain the release of the hostages through the sale of arms to Iran became know as the Iran initiative.

6. In August and September of 1985, United States Government officials were informed that Israel had shipped 508 United States-supplied TOW anti-tank missiles to Iran with the expectation that the United States Government would provide Israel with replacement TOW missiles. Following these Israeli TOW shipments to Iran, the Reverend Benjamin Weir, an American held hostage in Lebanon, was released from captivity.

7. On November 9, 1985, Mr. McFarlane told the defendant, Caspar W. Weinberger, about new negotiations with Iranians and Israelis involving the exchange of arms for hostages.

8. On November 10, 1985, Mr. McFarlane told the defendant, Caspar W. Weinberger, that the current proposal involved the release of all American hostages and the transfer to Iran, through the Israelis, of Hawk anti-aircraft missiles.

9. On Tuesday, November 19, 1985, Mr. McFarlane asked the defendant, Caspar W. Weinberger, to try to obtain 500 Hawk missiles for sale to Israel to "pass on" to Iran in return for which five hostages would be released on Thursday, November 21, 1985. Major General Colin L. Powell, the Senior Military Assistant to the defendant, Caspar W. Weinberger, made efforts to determine whether 500 Hawk missiles were available and what legal requirements would apply to the sale. General Powell reported to the defendant, Caspar W. Weinberger, that 500 Hawk missiles could not be sold to Israel or Iran without Congressional notification and that breaking the sale into several packages of 28 Hawks each (to keep the value of each package under a $14 million Congressional notification threshold) would be a clear violation of law. The defendant, Caspar W. Weinberger, provided this information to Mr. McFarlane.

10. On Wednesday, November 20, 1985, the defendant, Caspar W. Weinberger, told Mr. McFarlane that he objected to the sale of arms for hostages. Mr. McFarlane responded that the President had already decided to do it through Israel.

11. Later that day, Wednesday, November 20, 1985, Mr. McFarlane informed the defendant, Caspar W. Weinberger, that the Israelis would sell 120 Hawks to the Iranians, and that there would be a hostage release on Friday, November 22, 1985.

12. On or about Sunday, November 24, 1985, a cargo of 18 Hawk missiles was sent from Israel to Iran. United States Government officials were informed that the Iranians were dissatisfied with the cargo, and additional Hawk missiles were not sent.

13. On December 7, 1985, the defendant, Caspar W. Weinberger, attended a meeting at the White House with President Reagan, Chief of Staff to the President Donald T. Regan, Secretary Shultz, Deputy Director of Central Intelligence John N. McMahon, newly-appointed Assistant to the President for National Security Affairs Vice Admiral John M. Poindexter, and Mr. McFarlane, who recently had resigned his position as Assistant to the President for National Security Affairs. Mr. McFarlane reviewed the development of the Iran initiative up to that point, including the TOW missile shipments prior to the release of the Reverend Weir and the November 1985 Hawk missile shipment. Mr. McFarlane then outlined a plan for additional sales of weapons through Israel to Iran to obtain the release of the remaining American hostages. The defendant, Caspar W. Weinberger, argued that the United States had an embargo in effect that made arms sales to Iran illegal, that the President could not violate the embargo, and that "washing" the transaction through Israel would not make it legal. President Reagan responded that he could answer charges of illegality but that he could not answer the charge that he had passed up a chance to free the hostages.

14. Following the December 7, 1985 meeting, President Reagan sent Mr. McFarlane to London to open negotiations with Iranian and Israeli representatives, without making any United States commitment to transfer arms.

15. On December 10, 1985, following Mr. McFarlane's return from London, the defendant, Caspar W. Weinberger, attended a meeting at the White House with President Reagan, Chief of Staff Regan, Director of Central Intelligence William J. Casey, Admiral Poindexter, and Mr. McFarlane. At the meeting, Mr. McFarlane recommended that no more arms to be sold to Iran, but he also reminded the group that the United States still had to replenish the 500 TOW missiles that Israel had shipped to Iran before the Reverend Weir was released.

16. On January 6, 1986, the defendant, Caspar W. Weinberger, met with Admiral Poindexter, who outlined a new Israeli plan to sell weapons to Iran to obtain the release of the American hostages. The defendant, Caspar W. Weinberger, objected to the plan.

17. On January 7, 1986, the defendant, Caspar W. Weinberger, attended a meeting at the White House with President Reagan, Vice President George Bush, Attorney General Edwin Meese, III, Director Casey and Secretary Shultz. At the meeting, the President favored the plan to sell missiles to Iran, through Israel, in exchange for the release of American hostages.

18. On January 17, 1986, President Reagan formally approved, by Presidential finding, a covert plan in which the United States would sell the weapons to Iran through an American intermediary, rather than through Israel.

19. In furtherance of this plan, during February 1986, 1,000 TOW missiles were sold to Iran.

20. Between May and November 1986, additional weapons and related parts were sold to Iran, and two Americans held hostage in Lebanon were released.

21. In early November 1986, there were public reports that United States Government officials had engaged in arms-for-hostages deals with Iran.

22. On November 10, 1986, the defendant, Caspar W. Weinberger, attended a White House meeting with President Reagan, Vice President Bush, Secretary Shultz, Attorney General Meese, Director Casey, Chief of Staff Regan, Admiral Poindexter, and Acting Deputy Assistant to the President for National Security Affairs Alton G. Keel, Jr. Admiral Poindexter briefed the meeting about operational details of the Iran initiative, but he omitted mention of the November 1985 Hawk missile shipment and did not acknowledge any United States role in or approval of any shipments prior to the Presidential Finding of January 17, 1986.

23. On November 12, 1986, the defendant, Caspar W. Weinberger, attended a briefing for Congressional leaders at the White House with the same officials who attended the No-

vember 10, 1986 meeting. Admiral Poindexter briefed the Congressional leaders about the Iran initiative but, once again, did not acknowledge any United States role in or approval of any 1985 shipments, including the November 1985 Hawk missile shipment. In response to a question by Senate Minority Leader Robert C. Byrd, Admiral Poindexter stated that the initial contacts with the Iranians had been in 1985 but there had been no transfer of material to Iran then because it took time to assess the contacts and issue a Finding.

24. On November 13, 1986, President Reagan addressed the nation and purported to set out the facts about the Iran initiative.

25. On November 19, 1986, President Reagan held a news conference about the Iran initiative. During the news conference President Reagan said "we, as I say, have had nothing to do with other countries or their shipments of arms or doing what they're doing," and he denied that a third country had been involved in shipments of United States arms to Iran. Later that evening, President Reagan acknowledged that, in fact, a third country had been involved. But the President did not disclose that arms shipments had taken place in 1985, that the third country was Israel, or that he had approved any of the 1985 shipments.

26. During the period leading up to November 24, 1986, officials within the White House and other Executive branch agencies expressed repeated concern that the 1985 arms shipments to Iran, and in particular the November 1985 HAWK missile shipment, had been illegal.

27. On or about November 20, 1986, Abraham D. Sofaer, the Legal Adviser of the Department of State, objected to proposed testimony by Director Casey, which stated that no one in the United States Government had contemporaneous knowledge of the November 1985 Hawk missile shipment. Mr. Sofaer was aware of a contemporaneous note from November 1985 indicating that Mr. McFarlane had told Secretary Shultz about the impending shipment. Secretary Shultz supported Mr. Sofaer's efforts to prevent this false testimony.

28. From November 21 until November 24, 1986, Attorney General Meese interviewed some of the United States Government officials who had known about the Iran initiative. One of the central topics in these interviews was the extent of knowledge of United States Government officials of the November 1985 Hawk missile shipment from Israel to Iran.

29. On Sunday, November 23, 1986, Prince Bandar bin Sultan, the Saudi Arabian Ambassador to the United States, met with the defendant, Caspar W. Weinberger. Prince Bandar told the defendant, Caspar W. Weinberger, that during a recent meeting with President Reagan's wife, Nancy Reagan, she had said that she thought Secretary Shultz had been disloyal to the President during the crisis resulting from the revelation of the Iran initiative and that he should be replaced as Secretary of State. Prince Bandar reported that he had then proposed to Mrs. Reagan that the defendant, Caspar W. Weinberger, replace Secretary Shultz, and that Mrs. Reagan had commented favorably on that proposal.

30. On November 24, 1986, Attorney General Meese met at the White House with President Reagan, Vice President Bush, Secretary Shultz, Director Casey, Chief of Staff Regan, Admiral Poindexter and the defendant, Caspar W. Weinberger. Mr. Meese told the group that the November 1985 Israeli Hawk missile shipment may have been illegal, but that the President did not know about the shipment at the time. At the end of the meeting, Mr. Meese asked whether anyone knew of anything else that had not been revealed. No one contradicted Mr. Meese's incorrect statement concerning President Reagan's lack of knowledge, although several of those present, including the defendant, Caspar W. Weinberger, had contrary information.

31. On November 25, 1986, Attorney General Meese announced at a press conference that proceeds generated from mark-ups in the sales of arms to Iran had been diverted to the Nicaraguan democratic resistance, also known as the Contras. In response to a question about the Iran initiative, Mr. Meese said that the President had not been informed about the November 1985 Hawk missile shipment until February 1986.

32. Following the November 25, 1986 press conference, several Congressional Committees conducted investigations and held hearings on these topics.

33. On December 17, 1986, the defendant, Caspar W. Weinberger, testified about the Iran initiative in closed session before the United States Senate Select Committee on Intelligence. With regard to the November 1985 Israeli Hawk missile shipment to Iran, the defendant, Caspar W. Weinberger, testified as follows:

Q. In the period of time from approximately November 16th to November 21st of 1985, the President was in Geneva for the summit meeting with Mr. Gorbachev. And at or about that same time, one of the arms transfers to the Iranians was under way and there is some evidence that there was discussions [sic] at various highest levels relative to that. Do you have any reason to recollect being aware at that particular point in time of discussions?

A. No. I was not in Geneva at those meetings and I did not have any recollection of that. I know that may have been about the time I saw one of these first [intelligence reports] that I mentioned to you earlier. But that was all—my impression was that the plan was not being put forward actively, was no longer being considered. And this was confirmed in my view in the President's reaction at the December 6th [sic—December 7] meeting that I have mentioned.

A. . . . And certainly there was no discussion in that meeting [December 7, 1985] of any transfers that Israel or anybody else had been permitted to make or anything of that kind.

34. For many years, the defendant, Caspar W. Weinberger, took daily notes of his activities. These handwritten notes contain an extensive record of what the defendant, Caspar W. Weinberger, did on a daily basis, and include summaries of telephone conversations and meetings. During 1985 and 1986, the defendant, Caspar W. Weinberger, took nearly 1,700 pages of daily notes. These daily notes contain, among other things, summaries of conversations and meetings described in paragraphs 7–11, 13, 15–17 and 29 of this Count of the Indictment. These notes disclose that in November 1985, in advance of the Hawk missile shipment to Iran, the defendant, Caspar W. Weinberger, was told that President Reagan had authorized the shipment of Hawk missiles to Iran, through the Israelis, in order to obtain the release of American hostages held in Lebanon.

35. During 1985 and 1986 the defendant, Caspar W. Weinberger, also took hundreds of pages of notes during high-level meetings, in addition to the daily notes described in the preceding paragraph. These meeting notes contain, among other things a record of what occurred at meetings described in paragraphs 15–17, 22, 23 and 30 of this count of the Indictment. These meeting notes show that, a few days after the November 1985 Hawk missile shipment, the defendant, Caspar W. Weinberger, informed President Reagan that such arms shipments were illegal, and that one year later, during the meeting of November 24, 1986 described in paragraph 30 above, Attorney General Meese expressed concern that the November 1985 shipment was illegal.

36. On January 6, 1987, the United States Senate, by Senate Resolution 23, established the Select Committee on Secret Military Assistance to Iran and the Nicaraguan Opposition ("Senate Select Committee"). On January 7, 1987, the United States House of Representatives, by House Resolution 12, established the Select Committee to Investigate Covert Arms Transactions with Iran ("House Select Committee"). The two Chambers instructed their respective Committees (collectively, "Select Committees") to work together and charged them with investigating, among other things, any activity of any officer or entity of the United States Government relating to the Iran initiative.

37. On March 11, 1987, the defendant, Caspar W. Weinberger, met with counsel to the Senate Select Committee and DoD General Counsel H. Lawrence Garrett, III. A Senate Select Committee staff memorandum prepared following the meeting states, in relevant part:

"Weinberger offered that some of his recollections of these matters were a bit fuzzy, and added 'I have the deepest sympathy for the President's memory problem.' He then added that he 'should have done what Henry Kissinger did after every meeting, he would dictate a thorough memo of what transpired, which was used in writing his memoirs. For me, after I finish a meeting, I go off to another meeting.' While Weinberger did not expressly deny that he kept diaries or dictated his thoughts about day's events, with these comments he clearly left the impression that he did not make such notes or recordings."

38. On or about April 4, 1987, the Senate Select Committee requested that the DoD produce to it all documents relating to the Iran initiative, including "notes, . . . diaries, . . . or other such records, of attendance at, recollection of, or participation in, . . . any meetings, discussions, conferences, or events pertaining to the Committee's inquiry, prepared by and/or in the possession of" certain individuals, including the defendant, Caspar W. Weinberger.

39. On or about April 14, 1987, the House Select Committee requested that the DoD produce to it all documents relating to the Iran initiative, including "calendars, logs, diaries, appointment books, records of meetings, and handwritten notes keep by or on behalf of" certain individuals, including the defendant, Caspar W. Weinberger.

40. The defendant, Caspar W. Weinberger, ordered the DoD Office of General Counsel to produce to the Select Committees documents responsive to the requests of the Select Committees. The defendant, Caspar W. Weinberger, instructed senior officials in the DoD to comply with the requests, but withheld and concealed his daily notes and, with one exception, his relevant meeting notes. As a result, none of the defendant's, Caspar W. Weinberger's, daily notes and only one of his relevant meeting notes were provided to the Select Committees.

41. On June 17, 1987, members of the Select Committees' staffs took deposition testi-

mony under oath from the defendant, Caspar W. Weinberger, in his office at the Pentagon. DoD General Counsel Garrett and DoD Assistant General Counsel Edward J. Shapiro also attended the deposition. One of the purposes of the questioning was to determine whether the defendant, Caspar W. Weinberger, had kept notes. During the deposition, the defendant, Caspar W. Weinberger, concealed the existence of his daily notes and the extent of notes he had taken during meetings in 1985 and 1986.

42. Pursuant to House Resolution 12, which established the House Select Committee, the June 17, 1987 deposition is deemed to have been taken in the District of Columbia.

43. During the June 17, 1987 deposition, the defendant, Caspar W. Weinberger, made the following statements:

Q. We have gone over a number of meetings?

A. Yes.

Q. Of course, your recollection is better on some and fainter on others.

A. Yes.

Q. Is there any way that you have of making a record of the highlights of meetings of this nature?

A. Now?

Q. No, then.

A. No. there wasn't. I did dictate a memorandum on this particular one [referring to a November 10, 1986 meeting], but I've often said that I understand that Henry Kissinger made a memo of every meeting he ever attended and that enabled him to write his book rapidly. I wish I had done that with day one of the administration. I am usually getting ready for the next meeting and don't have time to write these memorandums. I took notes about this one and dictated this memorandum because it seemed to be important.

Q. Do you ever take notes that are not dictated or make jottings when you get back?

A. Yes, occasionally, but comparatively rarely. I don't know we kept those in any formal way. I don't think they have been filed or labeled. My handwriting is notoriously bad. I have trouble even reading it myself. Occasionally take a few notes, but not really very often.

Q. If there is any chance there are—

A. I think we made this examination and whatever there is is in our so-called C&D, Correspondence and Directives. They have been asked to paw through everything.

Q. Are you aware of any other potential source of—that might be—have made a record that might supplement your memory of some of these meetings?

A. Well, I don't really think of anything. We could paw through everything again. We have done that, I think, pretty well.

44. Thereafter, until he left the DoD, the defendant, Caspar W. Weinberger, withheld the aforementioned notes. Thereafter, he deposited these notes in the Library of Congress in the District of Columbia, where public access to the notes was subject to his exclusive personal control.

45. It was material to the Select Committees' investigations to obtain any written materials, including contemporaneous notes, of the defendant, Caspar W. Weinberger, that contained information relating to what the President and other senior government officials had known or done in connection with proposals to ship arms to Iran in 1985, contributions to the Contras, and other topics within the scope of the investigation of the Select Committees.

The Grand Jury Charges

46. From on or about March 11, 1987, up to and including August 3, 1987, the defendant, Caspar W. Weinberger, acting unlawfully, willfully and knowingly did corruptly influence, obstruct and impede and endeavor to influence, obstruct and impede the due and proper exercise of the power of inquiry of the Select Committees in that, during the aforesaid time period, he caused the DoD not to provide to the Select Committees, in response to their document requests, handwritten notes relating to the Iran initiative and support for the Contras, by

a. withholding his daily notes and all but one of his relevant meeting notes from the Select Committees, and

b. concealing from the Select Committees the existence of these notes while professing to comply with the document requests of the Select Committees,

all with the intent to corruptly influence, obstruct and impede the due and proper exercise of the power of inquiry of the Select Committees.

(In Violation of Title 18, United States Code, Section 1505.)

Count II (False Statement)

1. Paragraphs 1 through 45 of Count I of this Indictment are realleged and incorporated by reference.

2. At all times relevant to this Indictment, the Contras were insurgents engaged in military and paramilitary operations in Nicaragua.

3. From in or about December 1981 until on or about October 11, 1984, the United States Government, acting principally through the CIA, pursuant to written Presidential Findings, had provided the Contras with financial support, arms and military equipment, as well as with supervision and instruction, tactical and other advice, coordination, intelligence and direction.

4. On October 12, 1984, Public Law 98-473 was enacted. It prohibited funds available to the CIA, the DoD, and certain other agencies and entities of the United States from being obligated or expended in support of military or paramilitary operations in Nicaragua, stating in relevant part:

"During fiscal year 1985 no funds available to the Central Intelligence Agency, the Department of Defense, or any other agency or entity of the United States involved in intelligence activities may be obligated or expended for the purpose or which would have the effect of supporting, directly or indirectly, military or paramilitary operations in Nicaragua by any nation, group, organization, movement, or individual."

This provision of law was commonly known as the Boland Amendment.

5. On or about March 13, 1985, General John W. Vessey, Chairman of the Joint Chiefs of Staff, informed the defendant, Caspar W. Weinberger, that Prince Bandar bin Sultan, the Saudi Arabian Ambassador to the United States, had stated that Saudi Arabia was contributing funds to the Contras. The defendant, Caspar W. Weinberger, repeated this information to Mr. McFarlane.

6. On or about March 15, 1985, the defendant, Caspar W. Weinberger, informed Director of Central Intelligence Casey and Deputy Director of Central Intelligence McMahon that he had heard that Prince Bandar had earmarked $25 million for the Contras, in $5 million increments.

7. During the summer of 1986, reports appeared in the press alleging that the Saudis had contributed money to the Contras as part of an informal arrangement connected with the sale of AWACs aircraft to Saudi Arabia. A July 27, 1986, article in the *San Francisco Examiner* cited intelligence sources who stated that the Saudi contribution "was but the latest example of a longstanding practice of financing U.S. covert operations with money set aside from foreign military sales." By letter dated August 12, 1986, Representative Dante B. Fascell, Chairman of the United States House of Representatives Committee on Foreign Affairs, sent a copy of the *San Francisco Examiner* article to the defendant, Caspar W. Weinberger, and asked him in respond to these allegations.

8. The defendant, Caspar W. Weinberger, responded to Congressman Fascell in a letter dated September 4, 1986, which began as follows:

"I am pleased to have the opportunity to respond to your letter of August 12, in which you raise a number of important questions regarding alleged funding of Contra aid through the Foreign Military Sales system. I, too, saw the San Francisco *Examiner* article and regarded the allegation of Saudi funding of U.S. assistance to anti-government forces in Nicaragua as so outlandish as to be unworthy of comment from the Department."

The Grand Jury Charges

9. On June 17, 1987, in a deposition deemed to have been taken in the District of Columbia, the defendant, Caspar W. Weinberger, unlawfully, knowingly and willfully made a material false, fictitious and fraudulent statement to a department or agency of the United States, to wit, the House Select Committee, in a matter within its jurisdiction, to wit, its investigation of the Iran initiative and certain aspects of assistance for the Contras.

10. It was material to the House Select Committee's investigation to determine what the defendant, Caspar W. Weinberger, had known about Saudi Arabian contributions to the Contras.

11. On June 17, 1987, the defendant, Caspar W. Weinberger, appearing as a witness before duly authorized staff of the House Select Committee, made the following statement, knowing it to be false, fictitious and fraudulent:

Q. Do you recall learning at some point that the Saudis or some people connected with the Saudis provided funds for the contras?

A. *No. I don't have any memory of any contra funding or of anything connected with the Saudis that I can remember now.*

12. The above italic material statement made to the duly authorized staff of the House Select Committee by the defendant, Caspar W. Weinberger, was false, fictitious and fraudulent, as the defendant, Caspar W. Weinberger, then and there well knew, in that he had been informed in March 1985 that the Saudi Ambassador was contributing funds to the Contras.

(In Violation of Title 18, United States Code, Section 1001.)

Count III (Perjury)

The Grand Jury Charges

1. Paragraphs 1 through 45 of Count I of this Indictment are realleged and incorporated by reference.

2. On July 31, 1987, in the District of Columbia, the defendant, Caspar W. Weinberger, having duly taken an oath before competent tribunals, to wit, the Select Committees, in a case in which the law of the United States authorizes an oath to be administered, that he would testify truthfully in proceedings before the Select Committees, did willfully and contrary to said oath make a material statement that he did not believe to be true, as hereinafter set forth.

3. It was material to the Select Committees' investigation to determine whether the President and other high-level United States Government officials, including the defendant, Caspar W. Weinberger, knew in November 1985 of a proposed transfer of Hawk missiles from Israel to Iran.

4. At the time and place set forth in paragraph 2 of this Count, the defendant, Caspar W. Weinberger, appearing as a witness under oath before the Select Committees, was asked the following question and gave the following answer, believing the italic material declaration not to be true:

Mr. EGGLESTON: The Committee has also received testimony that on that weekend of November 23 and November 24, [1985] there was a shipment of 18 Hawk missiles from Israel to Iran. This [Exhibit 8] was a paper that was written immediately prior to that time. Let me just ask you: Did you have any knowledge that that transfer was to take place?

Secretary WEINBERGER: *No, I did not.*

5. The above italic material declaration made under oath before the Select Committees by the defendant, Caspar W. Weinberger, was not true, as the defendant, Caspar W. Weinberger, then and there well knew, in that:

a. he had been informed by Mr. McFarlane, on or about November 10, 1985, of a proposal that, in connection with the release of Americans held hostage in Lebanon, Israel would ship Hawk missiles to Iran;

b. he had been asked by Mr. McFarlane, on or about November 19, 1985, to try to get 500 Hawk missiles for transfer to Iran in connection with the release two days later of Americans held hostage in Lebanon;

c. he had been informed by Mr. McFarlane, on or about November 20, 1985, that President Reagan had decided to sell Hawk missiles to Iran through the Israelis; and

d. he had been informed by Mr. McFarlane, on or about November 20, 1985, that Israel would sell 120 Hawk missiles to Iran, and that Americans held hostage in Lebanon would be released two days later.

(In Violation of Title 18, United States Code, Section 1621.)

Count IV (Perjury)

The Grand Jury Charges

1. Paragraphs 1 through 45 of Count I of this Indictment are realleged and incorporated by reference.

2. On July 31, 1987, in the District of Columbia, the defendant, Caspar W. Weinberger, having duly taken an oath before competent tribunals, to wit, the Select Committees, in a case in which the law of the United States authorizes an oath to be administered, that he would testify truthfully in proceedings before the Select Committees, did willfully and contrary to said oath make a material statement that he did not believe to be true, as hereinafter set forth.

3. It was material to the Select Committees' investigation to determine whether the defendant, Caspar W. Weinberger, had contemporaneous knowledge of the Israeli desire and need for the replenishment of weapons that Israel was sending to Iran.

4. At the time and place set forth in paragraph 2 of this Count, the defendant, Caspar W. Weinberger, appearing as a witness under oath before the Select Committees, was asked the following question and gave the following answer, believing the italic material declaration not to be true:

Mr. EGGLESTON: And in addition, there are various documents which are in evidence before the Committee which refer to the Israeli desire and need for replenishment of weapons that the Israelis were sending. Did you know that replenishment was an issue?

Secretary WEINBERGER: *No. I have no memory of that.*

5. The above italic material declaration made under oath before the Select Committees by the defendant, Caspar W. Weinberger, was not true, as the defendant, Caspar W. Weinberger, then and there well knew, in that:

a. he had in November 1985 ascertained the availability of Hawk missiles with which to supply Israel;

b. he had been informed by Mr. McFarlane, on or about November 20, 1985, that President Reagan had decided to provide Hawk missiles to Iran through Israel; and

c. he had been informed, on or before December 10, 1985, that the United States Government still had to replenish 500 TOW missiles to Israel that Israel previously had transferred to Iran.

(In Violation of Title 18, United States Code, Section 1621.)

Count V (False Statement)

The Grand Jury Charges

1. Paragraphs 1 through 45 of Count I of this Indictment are realleged and incorporated by reference.

2. On December 19, 1986, the United States Court of Appeals for the District of Columbia Circuit, Division For the Purpose of Appointing Independent Counsels, appointed Lawrence E. Walsh Independent Counsel with jurisdiction to investigate possible federal criminal violations by United States Government officials "relating in any way" to the Iran initiative and support for the Contras.

3. In or about December 1986, the Independent Counsel was assigned Federal Bureau of Investigation ("FBI") personnel to assist the Independent Counsel in his investigation. Since that time the Independent Counsel and his staff ("Office of Independent Counsel" or "OIC") have interviewed numerous witnesses in connection with his investigation. Such interviews are conducted in the presence of a Special Agent of the FBI who takes contemporaneous notes of the interview and later prepares a report of the witnesses' statements.

4. On October 10, 1990, members of the Independent Counsel's staff and a Special Agent of the FBI interviewed the defendant, Caspar W. Weinberger, in the District of Columbia. During this interview, the defendant, Caspar W. Weinberger, unlawfully, willfully and knowingly made material false, fictitious and fraudulent statements to a department or agency of the United States, to wit, the Office of Independent Counsel, in a matter within its jurisdiction, to wit, an investigation into possible violations of federal criminal law relating to the Iran initiative and support for the Contras.

5. It was material to the Independent Counsel's investigation to determine what written materials the defendant, Caspar W. Weinberger, had created that might contain evidence relating to the Iran initiative and support for the Contras.

6. On October 10, 1990, the defendant, Caspar W. Weinberger, in an interview with members of the Independent Counsel's staff and a Special Agent of the FBI, made the following statements, as recorded in the Special Agent's report of the interview, knowing the underscored material statements to be false, fictitious and fraudulent:

Weinberger stated he had some disagreements with the April, 1988, 302 [the Special Agent's written report of the April 1988 interview]. His first disagreement concerned the sentence on page 2 that stated "He (Weinberger) had a habit of making notes on any piece of paper he could get his hands on." *Weinberger stated this sentence is misleading because it infers that it was his habit to make notes throughout his seven years as Secretary of Defense, which was not the case.*

Weinberger advised that during his first year as Secretary of Defense, from approximately 1981 through 1982, he tried to take some notes when he attended various high-level meetings. Often he would write on the back of pages in the briefing books that were furnished to him for the meetings. At the end of the meeting, he would turn the books in to his staff and they were broken apart so they could reuse the covers.

Weinberger advised that his secretary, Kay Leisz, used to save his notes from these briefing book pages because Weinberger had told her that he wanted to dictate memoranda of the meetings based on them. After about a year, Leisz came up to Weinberger and said, "You're never really gonna dictate from these notes are you?" Weinberger agreed that he was too busy to dictate memoranda from these notes and he gave Leisz permission to discard them. From this point on, Weinberger rarely took notes, and when he did, Leisz never saved them for him, except for rare occasions.

According to Weinberger, after his first year as Secretary of Defense, he did not, as a rule, take any notes when he met with the President or other cabinet members. Weinberger stated that it would have been in "bad form" to take notes when having a private or relatively private discussion with other high-ranking Administration officials. No other cabinet member did so either, as far as Weinberger is aware. Weinberger specifically recalls not taking any notes during his few meetings with the President and other cabinet members when the Iranian arms sales matter was discussed. No notes were taken by any participant of these meetings, as far as Weinberger is aware.

Weinberger was asked which notes or documents he consulted to prepare himself for his testimony concerning the Iran/Contra matter before the Congressional Committees. Weinberger stated he only would have used his notes taken at the November, 1986, Meese briefing, and a copy of the McFarlane memorandum with his marginalia on it. Weinberger is not aware of anything else he could have consulted.

After meetings, Weinberger did not go back to the Pentagon and make a record of the meeting he had just attended, nor did he designate others to do so.

Weinberger stated he did not take notes of his phone conversations.

AC [Associated Counsel] Gillen advised Weinberger that the OIC [Office of Independent Counsel] has a document, contemporaneously written by someone Weinberger would consider credible, which alleges that Weinberger has withheld some of his notes concerning the Iran/Contra matter. Gillen would not identify the author of the document or further describe the document.

Weinberger responded that the allegation is not true and he is distrustful of the document's author and his motivations. Weinberger stated that at an early cabinet meeting, President Reagan instructed everyone to give everything they had to the various investigators, and Weinberger had always followed these instructions. Weinberger stated he is not aware of any of his notes regarding Iran/Contra that have not been turned over. Weinberger stated there may be some over-

sight at DoD or elsewhere concerning the document production, but he has not deliberately withheld anything. Weinberger reiterated that he always instructed his staff and others at DoD to turn over all notes and documents when requested.

7. The above material statements made to a Special Agent of the FBI by the defendant, Caspar W. Weinberger, in the presence of members of the Independent Counsel's staff were false, fictitious and fraudulent, as the defendant, Caspar W. Weinberger, then and there well knew, in that:

a. he had, for years, including nearly seven years as Secretary of Defense, regularly taken daily notes of his meetings and telephone conversations;

b. he had, as Secretary of Defense, taken notes during meetings with the President and other high officials including meetings related to the Iranian arms sales matter, that contained a record of what occurred at those meetings;

c. he had extensive notes that had never been provided to the Independent Counsel or the Select Committees; and

d. these notes contained information relevant to the Independent Counsel's investigation .

(In Violation of Title 18, United States Code, Section 1001.)

LAWRENCE E. WALSH,
Independent Counsel.

The PRESIDING OFFICER. The Senator from Maine.

Mr. COHEN. Mr. President, let me express my, for one, commendation to the Senator from Michigan for his effort to seek reauthorization for this legislation and my regret that Members on this side in particular have seen fit to indicate to the leader that they would not allow a full debate and vote on this measure.

I think all of us are committed to the proposition that justice must be done. Not only must it be done, it must appear to be done. And that is essentially at the core of the legislation known as the Independent Counsel Act.

There is in fact an inherent conflict of interest whenever an allegation is leveled against a high ranking Cabinet official or Executive office official and the Justice Department is then called upon to conduct an investigation to determine the validity of those allegations.

This is clearly the case, for example, when allegations were leveled against Edwin Meese. And he, although a frequent and constant critic of the legislation itself, was the first one to seek the appointment of an independent counsel. And he did so because he knew that if his Justice Department had cleared him of the allegations leveled against him, a cloud would remain upon his name and upon his office. So the appearance of justice would not have been done, even though justice might have been done. So the appearance of justice is just as important as justice itself, in terms of maintaining public support for our judicial system.

There is a proposal that was offered by Members on our side to mandate coverage of every Member of Congress. Let us be fair, because we have included roughly 50 Members of the executive branch, let us mandate all 535 Members of Congress. Without that, the law is unfair.

No. 1, that is completely untrue. Members of Congress already are covered under existing law with the so-called catchall provision.

No. 2, Senator LEVIN and I specifically amended the act to give the Attorney General, the Justice Department specific authority to call upon an independent counsel whenever he or she determined it was in the best interest of justice to do so.

I might point out from a historical point of view, the Justice Department has never hesitated, never hesitated to prosecute a Member of Congress for criminal wrongdoing. Some would say they have even relished in that particular chore. But nonetheless, they have the option of calling upon an independent counsel to carry out that particular burden if they should choose to do so.

What Members on this side tried to do, however, was to mandate coverage for every Member of Congress, no matter whether freshman, senior or leader or either side of the aisle. What that would have done would be not to guarantee coverage but to guarantee a court ruling that it would be unconstitutional.

If ever there was a clear-cut case of an unconstitutional law it would be this: To mandate that whenever an allegation is made against any Member of Congress, no matter how recent or senior, the Justice Department cannot, by law, investigate or prosecute that case. That is a clear violation of the separation-of-powers clause under the Constitution. For the Justice Department and, indeed, Members on our side to argue that it was imperative that we have this provision, let me say it is not only an irony, as I have written with Senator LEVIN, it is a complete canard.

I express my deep regrets that we have come to this point. I think that those on this side should come to rue the day when a member of the Democratic Party, Bill Clinton, might become President of the United States in the next session, they might rue the day they presided over the final rights of this legislation. When an allegation might be leveled against another administration, a Democratic administration, I think there will be calls to have an independent counsel appointed because we could not trust that Justice Department to fully and fairly investigate the allegations.

I hope the Senator from Michigan is true to his words—I know he will be—that this legislation will not fade. We will come back in the next session of Congress and we will reintroduce this and proceed.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The Republican leader.

Mr. DOLE. Mr. President, I will take a minute to indicate I do not take exception to many of the statements made by my colleagues, but I think there comes a time when we have to decide we are going to stop legislating if we are going to have an adjournment. We decided that probably will come on October 5.

This is a very controversial measure, as Members on both sides know. It seemed to many of us, I am not certain the exact number who signed the letter, 29 or 30, that this was not something to be done in an hour, 2 hours, a day or maybe even 2 days. So it seems to me there has not been a final judgment made. What we are saying is that it will not be done this year. That means it probably will be coming up next year, as I am certain it will. We can have full debate. We will have adequate time at that time.

So I hope the letter the Senator from Michigan inserted in the RECORD is received in the right spirit. Sooner or later we have to say this is it. We cannot keep passing everything, even though I know both, the Senator from Michigan worked very hard, as the Senator from Maine, my colleague, Senator COHEN. I respect them for that. I think we have made the right decision.

Mr. MITCHELL addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. MITCHELL. Mr. President, I commend the Senators from Michigan and my friend and colleague from Maine for their diligence and their leadership on this important issue. I wish it were possible to complete action on the measure. I support the legislation. I support them. I agree with their assessment. But under the rules, the distinguished Republican leader has the right to object, as he did, and, therefore, we will not be able to proceed to that measure.

UNANIMOUS-CONSENT REQUEST—H.R. 3371

Mr. MITCHELL. Mr. President, with respect to one other measure, which the distinguished Republican leader and I have discussed many times publicly and privately, it has been our hope and intention and effort to have a vote on the Omnibus Crime Control Act. That is the conference report to accompany H.R. 3371. We have had, I believe, two cloture votes and have been unable to obtain cloture because of opposition to the measure by our Republican colleagues.

It is my hope that we can proceed to have a cloture vote before the end of this session, and my hope had been that we could proceed to the measure this evening, file cloture and then have the cloture vote on Thursday morning under our rules. I have discussed this with the distinguished Republican

leader and, therefore, I now ask unanimous consent that the Senate proceed to the Omnibus Crime Control Act, the conference report to accompany H.R. 3371.

The PRESIDING OFFICER. Is there objection?

Mr. DOLE. Reserving the right to object, and I shall object because the agreement we just entered into would preclude that action at this time. Again, it is my hope if in fact there is another vote it will have to come sometime maybe on Friday if cloture is filed tomorrow, but I hope to Members on this side—nothing has changed. The bill is in the same sorry state it was before the last cloture vote, though there is still ongoing negotiations with the chairman of the committee, Senator BIDEN, with the ranking Republican, Senator THURMOND and with the Attorney General, William Barr.

So there is still some shred of hope they might reach an agreement. In fact, it was our understanding they almost reached an agreement. Then there was a change in the attitude of some with reference to habeas corpus. I do not know the details. But they were very, very close. It is still possible that could be resolved between now and the end of this week. Therefore, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. MITCHELL. Mr. President, I thank my colleague. I yield the floor. I believe we will not proceed to resume consideration of the START Treaty.

EXECUTIVE SESSION

The PRESIDING OFFICER. The Senate will now return to executive session.

TREATY WITH THE UNION OF SOVIET SOCIALIST REPUBLICS ON THE REDUCTION AND LIMITATION OF STRATEGIC OFFENSIVE ARMS (THE START TREATY)—TREATY DOC. NO. 102-20

PROTOCOL TO THE TREATY WITH THE UNION OF SOVIET SOCIALIST REPUBLICS ON THE REDUCTION AND LIMITATION OF STRATEGIC OFFENSIVE ARMS—TREATY DOC. NO. 102-32

The Senate continued with the consideration of the treaty and the protocol.

The PRESIDING OFFICER. Under the previous order, the Senator from Wyoming is recognized.

AMENDMENT NO. 3270

Mr. WALLOP. Mr. President, I call up amendment No. 3270 and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Wyoming [Mr. WALLOP] proposes an amendment numbered 3270.

Mr. WALLOP. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Add at the appropriate place the following:

The Senate's advice and consent to the ratification of the START Treaty is subject to the following condition, which shall be binding upon the President:

"The START Treaty, including the May 23, 1992 Protocol, the two Annexes, six Protocols, Memorandum of Understanding, and Corrigenda, shall not enter into force until the President certifies that all mobile ICBM's, and all launchers for mobile ICBM's, shall be eliminated."

Mr. WALLOP. Mr. President, those of the Senate who have left recognized the Senator from Wyoming did not wish to have this amendment read. Our colleagues, having seen the sign of the last vote today, have fled the Chamber and would not be impressed by reading the rest of the amendment.

Basically, what it does is it calls for a ban on all mobile systems, ICBM's and launchers for multiple ICBM's be eliminated before the treaty, the protocol and the annex come into force.

Mr. President, I will not belabor this debate tonight. There is no one here to read it, listen to it and the RECORD will not be out to read it prior to the Senate's convening to vote upon it tomorrow. But one of the indisputable facts about the START Treaty is that under its terms, the former Soviet Union, the Republic of Russia and the successor States will enjoy a capability that is, as a practical matter, denied the United States, one that readily lends itself to totally undetected noncompliance.

Russia is entitled to deploy not one but two mobile intercontinental ballistic missile systems, the rail mobile SS-24 and the road mobile SS-25. It was demonstrated amply in the war with Iraq, Mr. President, it is exceedingly difficult to detect mobile missiles. In fact, in that perfect environment of the desert, mostly clear skies, very little foliage or any other things, we did not ever once succeed in detecting a mobile missile before it fired. That same cannot be said of the circumstances geographic in the Republic of Russia.

It is worth noting that the degree of difficulty involved in monitoring the former Soviet mobile ICBM's in the woods of Siberia make the job of finding Saddam's more primitive, numerous Scuds deployed in the desert appear trivial. The United States insisted upon and ultimately obtained a Soviet agreement to a complete ban on such missiles of intermediate and shorter range as a part of the INF Treaty.

This Senate will not remember, because it cannot remember from day to day what it does, but this Senate hailed its achievement of eliminating those mobile missiles and its complete ban. The Senate is now about to endorse not only the retention of two classes of mobile missiles but the expansion of one of those from 60, which exist, to 250.

Now, incredibly, when the Congress predictably decided not to approve any funding for the U.S. rail or road mobile ICBM's, the administration did not revisit the question with the Soviets, and as a result, Mr. President, START authorizes the former Soviet Union to deploy substantial numbers of mobile missiles and to maintain, in addition, stocks of as many as 500 of these in the nondeployed status, which just was a matter of little or no concern to the Senators on this floor.

We are unable to verify Russia's compliance with either of these limitations, and I say, Mr. President, it is an absurd and reckless position for the United States to be in. It is especially true if, as I think we have reason to believe, the Russians are already exploiting loopholes in or simply violating the START Treaty with respect to a follow on to the SS-25, so-called Fat Boy missile. Even as we speak, Mr. President, it has been stated on this floor several times during this debate, not denied either in classified session or otherwise, that the Fat Boy missile is a violation of the terms of this treaty before we enter into it. This is the danger that Americans should understand before this Senate rushes down its headlong pursuit of ratification of this treaty.

So, accordingly, I hope my colleagues will join me in an amendment that in one fell swoop eliminates a strategically important de facto inequality of the START Treaty and enhances its verifiability. My amendment would modify START so as to ban mobile ICBM's and their launchers as they have been banned by this Congress on Americans, just as we did for the same and relevant systems in the INF Treaty, which has been spoken of on this floor time and time again as one of the great arms control achievements.

Mr. President, we ought to remember the lesson that we tried to teach ourselves then not forget it at this moment in time as we debate and finally move to the resolution of ratification on this treaty.

Mr. President, I say to my patient colleagues from the Senate Foreign Relations Committee that would conclude the arguments of the Senator from Wyoming with regard to this amendment.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. PELL. I thank the Chair.

Alteration of the limit would be a repudiation of the basic treaty structure and a step towards rejecting the treaty. Such a step also would require renegotiation of the whole treaty with all four successor States—Russia, Ukraine, Byelarus, and Kazakhstan. In my mind, the word "killer amendment" is too strong, but it is a mortal blow amendment and, I believe, the amendment should be rejected, as were the other ones.

In addition, the prospective START II or deMIRVing treaty would eliminate the mobile MIRVed missiles. Land-based mobile missiles with single warheads could then be retained and, thus, this amendment anticipates reductions that are either not yet finalized or not even yet planned. Like earlier amendments, it would have a very deleterious effect on the START Treaty and would be a mortal blow to it.

Mr. LUGAR. Mr. President, I will add to the arguments of the distinguished chairman of the Foreign Relations Committee the fact that some critics of the treaty have complained that the former Soviet Union had mobile missiles and its successors have mobile missiles, but I point out that the United States has one of the best mobile missiles in the world, namely, the Trident II. And I make that point because the question is survivability of our deterrent. In the case of the United States, we gain survivability by moving mobile missiles over vast areas of the high seas. The Russians and the successors of the Soviet Union gained survivability through mobility on land. In both cases, the goal is survivability, a deterrent which is credible to the other side.

I make this point because there is no particular military significance, at least in the judgment of our negotiators, to our having a land mobile missile. Indeed, the administration and Congress have discussed and debated that issue at some length and come to a judgment that is not in our best interest, financially, I suspect, and in view of the other deterrent possibilities that we have.

So, therefore, this is not a fatal flaw, in my judgment, to the treaty but, rather, I point out the degree to which both sides have tried to meet security interests and found this to be satisfactory for many years.

Let me add, just to complete this part of the debate, Mr. President, that mention has been made of verification of mobile missiles and difficulties that are involved. Indeed, throughout the debate on many occasions the question has been the monitoring of Scuds in the gulf war and the difficulties the United States and its allies had in terms of that verification.

I point out, Mr. President, that our confidence in the United States ability to monitor mobile ICBM's is based upon our experience and knowledge derived now for more than 15 years of monitoring such systems in the former Soviet Union. The mobile systems covered under the START Treaty, especially the road mobile SS-25, are similar to the SS-20 system we have successfully monitored under the terms of the INF Treaty.

One factor that contributed to our lack of success during the gulf war was that our national technical resources have been focused historically largely on the threat of the former Soviet Union. This focus did not allow us similar expertise in counting and tracking Iraqi Scud launchers, which, in fact, are smaller and therefore easier to hide. Under START, on the other hand, the inspection provisions give us additional tools to the ones we already have in abundance to monitor mobile missiles that we did not have during the gulf war.

There is a significant difference, Mr. President, between monitoring deployment levels and tactical targeting of deployed mobile missiles. Time-sensitive tactical targeting was a major problem facing us in the gulf war monitoring.

Therefore, Mr. President, I call for defeat of this amendment. I join the distinguished chairman of our committee in underlining that adoption of the amendment would require renegotiation of the entire treaty with all four successor states, and my point is that that is militarily unnecessary and the negotiators have, in fact, fashioned again in this portion an excellent treaty provision.

I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. SIMON. Mr. President, I ask unanimous consent to speak as if in morning business.

The PRESIDING OFFICER. Is there objection?

Mr. LUGAR. Mr. President, reserving the right to object, my impression is that the distinguished Senator from Wyoming, the proposer of the amendment, has left the floor and does not intend to continue the debate. It may very well be that the distinguished Senator from Rhode Island and I are no longer needed for continuing the debate either. It may be possible for time to be yielded back prior to the distinguished Senator from Illinois gaining the floor. I inquire of the——

Mr. SIMON. Mr. President, I have no objection to that. I am sure my colleagues will want to stay and listen to me speak as if in morning business. But on the outside chance that they would not, I certainly accede to their request.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. LUGAR. Mr. President, I am advised by the distinguished chairman that we may also have additional roles, namely in the wrap up of business this evening. Therefore I do not object to the unanimous-consent request of the Senate from Illinois, and we look forward to hearing his statement.

Mr. SIMON addressed the Chair.

The PRESIDING OFFICER. No objection having been entered, the Senator from Illinois is recognized.

MORNING BUSINESS

Mr. SIMON. Mr. President, I ask unanimous consent that there now be a period for morning business with Senators permitted to speak therein.

The PRESIDING OFFICER. Without objection, it is so ordered.

SOUTH DAKOTA HIGHWAYS RANK NO. 2

Mr. PRESSLER. Mr. President, I rise to recognize the fine work of the South Dakota Department of Transportation. A study recently conducted by the University of North Carolina ranked South Dakota's highway system as the second best in the Nation. To establish this ranking, the study analyzed highway spending and the resulting performance of State transportation systems from 1984 to 1990. South Dakota was among the States with the best overall highway and bridge conditions, minimal traffic congestion and low-cost highway repair practices.

South Dakota's Secretary of Transportation, Richard Howard, along with the rest of the members of the South Dakota Department of Transportation and the South Dakota transportation commission deserve to be recognized for their fine work. Their careful planning and solid management skills have created a State highway system virtually unparalleled in the Nation.

Mr. President, in recognition of the great work of the South Dakota Department of Transportation and my State's transportation commission, I ask unanimous consent that an article published in the Pierre, SD, Capital Journal be printed in the RECORD immediately following my remarks.

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

[From the Capital Journal, Sept. 24, 1992]

STUDY RANKS DOT AS SECOND BEST IN NATION

(By Leta Nolan)

A University of North Carolina study has given high marks to South Dakota's Department of Transportation as the second best highway system in the nation.

The study shows that New Mexico, South Dakota, South Carolina, Mississippi, Arkansas and Wyoming had the best overall highway and bridge condition, minimal congestion and low-cost highway repair practices.

The announcement of the study comes on the heels of the announcement that the state will receive an additional $4.3 million in federal aid highway funds for use in 1992. The state is receiving the extra money because it was able to fully obligate the $117.26 million it was originally allocated.

The additional money is given because some states are not able to obligate all of their apportioned funds and these unused funds are then redistributed to states which can obligate the funds.

"Because South Dakota has successfully programmed, designed and let to contract projects to obligate the state's yearly apportionment, South Dakota has received over $20 million of additional funding over the past six years through this redistribution of obligation authority," said Dick Howard, secretary for the transportation department.

The North Carolina study compared the performance of the 50 state highway systems over the past eight years. The goal of the research was to develop measures of performance and to use those measures to identify how states rank in 13 different categories.

The categories include system size, revenues, expenditures, pavement condition, congestion, bridge condition and accidents for the years 1984, 1987, 1989 and 1990. The data is collected from information the states are required to submit to the Federal Highway Administration.

"In South Dakota, our highway construction and maintenance projects don't just happen," said Gov. George Mickelson. "There is a lot of careful, long-range planning and good management.

"We have a five-year construction plan that is constantly evaluated and updated. Credit for South Dakota's high marks in this study should go to the state transportation department and the citizens who serve on our transportation commission."

Howard said part of the department's success was due to an extra 5 cent gas tax created in 1988.

"Thanks to the governor's leadership and the Legislature's support of a 5 cent a gallon increase in fuel tax in 1988, our department has been able to match available federal funds," said Howard. "It has allowed us to keep up with the most needed reconstruction and maintenance of highways and bridges.

"To be rated number two in the nation based on these criteria is high tribute to the dedication and performance of transportation department employees."

The five lowest ranking states in the study were Rhode Island, Arizona, Maryland, California and New York.

ATOMS-FOR-PEACE IN THE 1990'S

Mr. PRESSLER. Mr. President, I was greatly interested in President Bush's recent announcement that the United States has agreed to buy weapons-grade uranium from Russia. Although many of the details must still be worked out, it appears the United States will purchase as much as 500 tons of highly enriched Russian uranium. As one who for many years has supported the concept of turning the uranium in our nuclear weapons into fuel for our powerplants, I applaud the President's decision. It is an excellent step in the direction of nuclear nonproliferation.

In July 1985, I asked the Congressional Research Service to prepare an analysis of the advantages and disadvantages of disposing of surplus nuclear materials from dismantled nuclear warheads by consuming them as fuel in nuclear powerplants. That study was completed in May 1987. The CRS report contains some extremely interesting analyses and findings.

The study considered options for the disposition of both highly enriched uranium and weapons grade plutonium. This is an issue we must consider as both Russia and the United States begin reducing their nuclear weapons arsenals. Destroying only the weapons leaves behind a very dangerous and highly sought commodity—the fissile materials. We must ensure these materials do not end up in the hands of irresponsible governments or terrorists. We do not have many viable disposal options.

We could attempt to permanently store the materials under some kind of national, bilateral, or multilateral control. This option is obviously the easiest, but just as obviously presents serious security risks that weapons grade materials might, at some point in the future, fall into the wrong hands.

Others have suggested, and the CRS report considers, various disposal options, including launching fissile materials into deep space; dissolving the materials and discharging them into the sea where they would be diluted to low levels of concentration; and burying the uranium and plutonium, either in deep seabeds or in deep holes drilled into the Earth. The CRS study concludes each of these options, while possible, appears impractical. In addition, each would be strongly opposed as dangerous to the public health and environmental quality.

The report also properly notes that these options would require throwing away material produced at great cost and with a high potential energy content without getting any economic benefit in return. The CRS study concludes that "[f]or the present * * * indefinite storage of weapons grade uranium or dilution to conventional reactor fuel grade appear to be the most workable alternatives for disposal."

Mr. President, at the time the CRS report was prepared, neither the collapse of the Soviet Union nor the extent of reductions in the nuclear weapons stockpiles of the two countries could be foreseen. Thus, these extremely important factors were not considered in the CRS analysis.

For this reason, I am asking CRS to update the report it completed in 1987 at my request. However, the original version of this study, entitled "Nuclear Material From Dismantled Warheads: What To Do With It and How To Verify Its Disposal," contains considerable information which would be very useful in reaching the policy decisions necessary to turn the most destructive elements of the cold war into energy to fuel a generation of change. For this reason, I ask unanimous consent that the CRS report be printed at this point in the RECORD.

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

[CRS Report for Congress, May 19, 1987]

NUCLEAR MATERIAL FROM DISMANTLED WARHEADS: WHAT TO DO WITH IT AND HOW TO VERIFY ITS DISPOSAL: A PRELIMINARY ANALYSIS

(By Warren H. Donnelly, Senior Specialist, Environment and Natural Resources Policy Division)

SCOPE AND PURPOSE

Senator Larry Pressler requested the Congressional Research Service to compile a report outlining the technical, political and economic advantages of recycling weapons grade nuclear materials into peaceful applications, keeping in mind the example of President Eisenhower's Atoms for Peace proposal of 1953. The following response is intended to bring out the main features of this idea, compare it with Atoms for Peace, list some of the major issues which it raises, and identify realistic advantages and disadvantages. Because the literature is sparse for this particular aspect of arms control and disarmament, the analysis draws heavily upon the experience of the author as the CRS senior specialist primarily concerned since the mid-1970's with ways and means of avoiding further spread of nuclear weapons and the ability to make them. The analysis has had the benefit of consultations with colleagues in the Congressional Research Service, the Office of Technology Assessment and the General Accounting Office, and also with scientists at the Sandia Laboratories, the Argonne National Laboratory and the Brookhaven National Laboratory.

The report addresses a small part of the overall question of how to accomplish deep cuts in strategic nuclear arsenals if these should be agreed upon. It considers what to do with nuclear materials recovered from dismantled warheads and how to verify this disposition. A fundamental assumption is that the salvaged materials should not be used to make other nuclear weapons.

The report is divided into two parts: background and analysis. The background briefly covers the Atoms-for-Peace proposal, the nuclear materials involved, estimates of amounts to be disposed of, the range of options for disposal, disposal by consumption, and a brief description of the commercial nuclear fuel cycle. The analysis identifies options for disposal including permanent and temporary national storage of the nuclear materials, international storage, the use of weapons grade uranium and weapons grade plutonium as fuel. Under these options certain policy issues are examined: verification of consumption, the relation of the disposal options to U.S. nonproliferation policy, and a comparison of the fuel use option with ideas of Atoms-for-Peace. The analysis concludes with a list of advantages and disadvantages of fuel use disposal. A further discussion of the potential utility of IAEA verification capabilities in fuel use disposal of nuclear material from weapons appears in appendix A.

BACKGROUND

Atoms-for-Peace and Nuclear Arms Control

While today it is commonplace to think of President Eisenhower's *Atoms-for-Peace* proposal of December 1953 as intended to promote international cooperation in civil use of nuclear energy, at the time it was seen also as a way to pull the world away from the threat of nuclear war through limiting nuclear arsenals by diverting fissionable material from the manufacture of nuclear weapons to purposes of peace. Since then many have assessed the purposes and accomplishments of his proposal. for example, a comprehensive collection of such judgments appears in papers written to mark the 30th anniversary of *Atoms-for-Peace* at a conference in Washington in December 1983.[1] A leading figure at this conference, Dr. James R. Schlesinger,[2] described the *Atoms-for-Peace* speech as "combining a great leap of faith on Eisenhower's part with a shrewd pragmatism regarding what was immediately achiev-

Footnotes at end of text.

able."[3] For Dr. Schlesinger, the most important promise of President Eisenhower's proposal was its vision. Here was an attempt to reach into and to deal with the future. The greatest achievement of *Atoms-for-Peace* for him was a start in cooperation in arms control and the ultimate winning over of the Soviets:[4]

". . . They were induced to cooperate with the United States and the rest of the world in this area in which we all had common interests. There we see the greatest achievement. It was there that Eisenhower's vision and patience shined through."

Schlesinger recognized some limitations, in retrospect, of Eisenhower's idea. Of these he said:

"The specific measure then proposed for arms control was, however, undoubtedly technically defective. As we would clearly recognize today, its intent was to reduce the stockpiles of nuclear weapons through the diversion of fissionable materials to the new IAEA. At that early date there was a pressing shortage of fissionable material for weapons, even for the United States itself. It was thought then that control over the supply of this indispensable component might provide the leverage through which nuclear armaments could be controlled. In retrospect, it was quite clearly a most inadequate means for controlling nuclear arms. It treated limitations on the supply of fissionable materials as permanent, where these limitations were inherently transitory."

* * * * *

"Nonetheless, what I want to stress about Eisenhower's achievement is that, even in retrospect, the vision of arms control overrides any technical defects in the proposal."

On the whole, President Eisenhower's proposal has had a continuing effect upon political relations between the nuclear weapons states and nonnuclear weapon states alike. The quest for control of this has also provided one of the few continuing common interests between the two superpowers. It has had an immense, if unforeseen, effect on the technology of peaceful uses. Finally, it led to the creation of abiding institutions, most notably, the hopeful edifice that is the International Atomic Energy Agency.[5]

Another commentator, representing a conservative school of thought, Henry Sokolski,[6] observed that many analyses of *Atoms-for-Peace* had failed to consider fully what Eisenhower and the program's original supporter had claimed as its purpose: that it was "a move toward U.S.-Soviet nuclear disarmament through the establishment of an IAEA that would begin to channel fissionable production away from military production and toward peaceful purposes."[7] Even among those few analyst who did mention this objective, it was generally dismissed or underemphasized.

Also at the conference was W. Sterling Cole, an early chairman of the Congressional Joint Committee on Atomic Energy and the first director general of the International Atomic Energy Agency. On the disposal question, he said the only good answer was the one of President Eisenhower, that the recovered material:

". . . should be put to work for benign purposes. We should now do in 1983 what Eisenhower called for in 1953. I believe that President Reagan should now invite the Soviet Union to join with our country in a pledge to convert into nuclear power plant fuels the materials that would be feed for peaceful uses when our two nations came into agreement on arms reduction."[8]

Reason for current interest

For many months, reports of negotiations at Geneva on nuclear arms reduction and the controversies surrounding proposals to reduce strategic nuclear arms have been highly visible in the news. The intense coverage of the 1985 summit meeting at Geneva between General Secretary Gorbachev and President Reagan heightened already substantial public interest in ways and means to reduce the nuclear armaments of the superpowers. In his report to Congress on November 21, 1985, President Reagan spoke of the U.S. proposal of a 50 percent reduction in the most threatening of nuclear weapons, especially those that could carry out a first strike.[9] He spoke also of joint progress of the United States and the Soviet Union in combating together the spread of nuclear weapons.[10] Earlier that day, in the joint U.S.-Soviet statement at Geneva, President Reagan and General Secretary Gorbachev reaffirmed the commitment of their governments to the Non-Proliferation Treaty and their interest in strengthening the non-proliferation regime and in further enhancing the effectiveness of the NPT. They spoke of plans to continue to promote the strengthening of the International Atomic Energy Agency and to support the activities of the agency in implementing safeguards as well as in promoting the peaceful uses of nuclear energy.[11]

Then, in October 1986 came the meeting of President Reagan and General Secretary Gorbachev in Reykjavik, Iceland. Whatever concerns there may be in he outcome of the summit, it produced an American proposal to abolish all offensive ballistic missiles within 10 years. Going further, reports indicate that Mr. Gorbachev said he was willing to eliminate all nuclear weapons of any type, including short-range weapons.[12] If steps are taken towards either proposal, sooner or later many strategic warheads and perhaps other nuclear warheads will have to be dismantled, potentially numbering in the thousands. Such a dismantling would inevitably raise the question of what to do with the weapons grade plutonium and uranium recovered. Depending upon the state of other arms control negotiations, the United States and the Soviet Union might simply use some or all of it to make tactical nuclear weapons, or perhaps recycle it into single warhead missiles if these should be allowed. Such use of recovered nucler materials, however, lies outside the ambit of this analysis. What is addressed here is the disposal of recovered nuclear weapons materials in ways that would prevent its return to the manufacture of new nuclear weapons of any kind.

The nuclear materials involved

Dismantling several thousand warheads would yield nuclear explosive materials totalling many metric tons. Even a small, trial reduction could free several metric tons. If simply stored without inspection to verify there is no diversion (safeguards) in the United States and in the Soviet Union, these materials would remain readily available for reuse in making new warheads.

Dismantling nuclear warheads will produce fissionable and thermonuclear materials. The fissionable materials would include uranium concentrated, or enriched to 90 percent or more in the isotope U-235, and weapons grade plutonium. The thermonuclear materials could include tritium, deuterium and lithium.

Highly enriched uranium does not exist in nature and has to be produced by machines which separate the U-235 atoms from U-238 atoms to increase the U-235 concentration from the 0.7 percent found in nature to 90 percent or more. This is called enrichment. Plutonium too does not exist in nature. Plutonium is made by exposing atoms of uranium-238 to neutrons, which turns the U-238 into plutonium. This neutron irradiation usually is done in a nuclear reactor.[13] The plutonium is recovered from the irradiated uranium or "spent fuel" by chopping it up, dissolving it in strong acids, and chemically separating out the plutonium and the residual uranium. This is called reprocessing.

Turning to the thermonuclear materials from thermonuclear, or "H" bombs, tritium is produced by bombarding lithium-6 with neutrons, usually in a nuclear reactor. Once produced, tritium begins to decay because it is mildly radioactive, decreasing by 5.5 percent yearly.[14] As for lithium, it exists in nature and is a relatively inexpensive material with many industrial uses. The lithium recovered from thermonuclear warheads would probably be in the form of lithium deuteride, a chemical combination of lithium and heavy hydrogen or deuterium. The purpose of the deuterium is to provide additional tritium once it becomes exposed to neutrons from the fissioning plutonium in the trigger of a thermonuclear warhead. Much of the force of an "H" bomb comes from fusion of tritium atoms. Uranium-238 may also be used in some thermonuclear warheads and would be another product from dismantling. While thermonuclear materials from dismantled thermonuclear warheads also would require some kind of verified disposal, this report deals only with weapons grade uranium and plutonium.

Amounts of materials to be disposed of

Amounts of weapons grade uranium or plutonium that might become available for disposal would vary widely depending upon the extent and timing of negotiated cuts, and could range from hundreds of metric tons for the more expansive estimates, to much less for conservative ones. A high estimate might assume, for example, a 50 percent cutback in all of the U.S. and Soviet warheads, including strategic weapons, short range weapons and theatre weapons. If a 1984 estimate of 26,000 warheads in the U.S. stockpile as of 1983 and a planned addition of some 11,000 new warheads by 1988, for a total of 37,700,[15] is reasonable, then a deep cut agreement of 50 percent would lead to dismantling of some 18,800 warheads. If half of these warheads each contained 10 kilograms of plutonium, the amount of this material available for recovery in the United States alone would be 94,000 kilograms, or 94 metric tons.[16] The other warheads in this example would yield about the same amount of weapons grade uranium. An equivalent cut by the Soviet Union presumably could produce comparable amounts, which suggests a total of more than 300 metric tons of fissionable materials ultimately could be available for disposition from a deep cut.

Another high estimate comes from John Taylor of the Electric Power Research Institute and his colleagues, published in early 1985.[17] They estimated some 160 metric tons of weapons grade uranium or plutonium might be available,[18] reasoning as follows:

". . . if the United States and the Soviet Union have, between them, about 50,000 nuclear weapons (a conservative estimate) and if, over some years, they turn in one-third of their arsenals, about 16,000 warheads become available. If these weapons have an average content of 10 kilograms of uranium or its plutonium equivalent, a total of about 160 metric tons equivalent of material could be converted to peaceful purposes."

Much less weapons grade material would need disposal if a cut is limited to strategic

missiles and is less deep. Assuming that 1986 estimates from the Stockholm International Peace Research Institute are reasonably indicative, the number of warheads in the U.S. and Soviet stockpiles for strategic nuclear forces totalled 8,830 for the United States and 9,100 to 17,000 for the Soviet Union, for a combined total of about 18,000 to 35,000 warheads.[19] If a cutback of 20 percent was agreed upon, then the number of warheads to be dismantled could range from 3,600 to 7,000. Also, for purposes of illustration, if each warhead contained 10 kilograms of weapons grade materials, then the amount of nuclear materials recovered could range from 36 to 70 metric tons. Assuming that half of the warheads contained plutonium and the other half uranium-235, the respective amounts of these materials available for disposal would range from 18 to 35 metric tons for each. These amounts would be reduced if the plutonium content of each warhead turns out to be closer to five than to 10 kilograms.

Verification of recovered amounts

Once these nuclear materials are removed from dismantled warheads, they probably would be processed to change their physical shapes and perhaps chemical or metallurgical composition so as not to reveal classified information about bomb design and manufacture. Conversion of metallic plutonium and uranium into oxides would be ideal. The dismantling organizations would present this material to inspectors to verify its nature and quantity.

Theoretical options for disposal of recovered nuclear materials

Deep cuts in present inventories of strategic nuclear weapons would release substantial quantities of weapons grade materials from dismantled warheads. As noted earlier, in principle some of this might be fed back into the nuclear weapons work to produce warheads for short range missiles or other arms not covered by a reduction in strategic weapons. Assuming, however, that the superpower agreement would bar returning some or all of these surplus materials to production of any additional warheads, then the question of what to do with the materials and how to verify their disposition would quickly arise. There are several options, some more feasible and practicable than others. Because lithium, deuterium and uranium-238 that might be recovered are readily available from many other sources, verification of their disposition would be desirable but not essential. Not so for weapons grade uranium and plutonium, which are difficult and expensive to produce and are available from few sources. For this reason, the analysis will focus on disposition of these two materials. Keeping in mind that interim storage of these weapons usable materials probably would be needed for a while pending final disposition, the range of potential disposal options includes the following:

1. *Permanent storage or stockpiling under national, bilateral or multilateral control.*—Once the plutonium or enriched uranium, is recovered from a dismantled warhead, these materials would be stored, either temporarily or permanently. One long term option to keep these materials out of new warheads would be to put them into permanent storage centers in each country. These storage centers could be under national, or joint bilateral control of the United States and the Soviet Union, or perhaps under multilateral control by an international organization. In principle, the nuclear weapons materials could be degraded, as discussed below, so that they could not be directly used to make new warheads without some kind of processing that would cause delays.[20]

2. *Denaturing.*—In principle the plutonium and enriched uranium could be degraded or denatured by mixing with other materials so that they could not be readily reused to make nuclear warheads. The materials could then be stored, as suggested above, or used for fuel. This idea received considerable attention in the early days of nuclear energy, particularly for plutonium. It was central to David Lilenthal's report to Secretary of State Acheson on international control of atomic energy, and appeared again in the first report of the United Nations Atomic Energy Commission in 1946. Enriched uranium can be easily degraded by mixing it with normal uranium to bring down the U-235 concentration below the level of weapons grade materials, i.e. to 20 percent or less. The degraded uranium could be restored to weapons grade only by putting it through enrichment again. Plutonium presents a different story. There are several isotopes of plutonium, with Pu-239 being preferred for weapons use. One could denature weapons grade plutonium by mixing it with plutonium recovered from spent fuel of nuclear power plants, which has enough of the undesirable Pu-240 to make it unsuitable for direct manufacture of warheads. Of course, engineers could design a nuclear explosive to use low quality plutonium, but this would require new development and design. To date none of the nuclear weapons states have used low quality plutonium to make weapons, although there are vague reports that the United States once tested such an explosive.[21] Questions about the usefulness of low grade plutonium usually are advanced in connection with risks that countries which do not have nuclear weapons may at some time wish to use plutonium to make them, or that nuclear terrorists might be able to steal some low grade plutonium or to try to make a bomb. Considering the sophistication of the warheads in the U.S. and Soviet arsenals, it appears doubtful that either would try to cheat upon a dismantling agreement by using denatured or low grade plutonium to make new warheads.[22] This situation could change quickly, however, if laser isotope separation proves to be practicable on an industrial scale.

3. *Disposal into space.*—In theory, powerful rockets could carry nuclear weapons materials into deep space whence they could not be recovered. NASA's space shuttles already have demonstrated a capacity to lift substantial loads into orbit and this technology could be applied to space disposal. However, costs would be very high and there could be risk of major radioactive contamination if a launch had to be aborted soon after liftoff.

4. *Disposal into the sea.*—Nuclear weapons materials could be dissolved and discharged into the seas. The enormous volume of the seas could dilute large quantities of plutonium and uranium to low levels of concentration, probably well below those that would cause concern by scientists about adverse biological effects. On the other hand, strong opposition could be expected from environmental and other public interests groups that vehemently oppose disposal of radioactive wastes into the seas.

5. *Deposit in the deep sea bed.*—Nuclear weapons materials, suitably packaged, could be inserted into the deep sea bed where recovery would be implausible with today's underwater technologies. However, because only comparatively small amounts of plutonium or enriched uranium can be put in a single package—to avoid an unintended chain reaction, many insertions would be needed which would greatly increase costs and complicates possibilities for continuing surveillance to assure that none of the materials are surreptitiously retrieved. Also strong environmental opposition could be expected.

6. *Deposit into the earth.*—Nuclear weapons materials could be placed in deep holes drilled into the earth. Here again, many holes would be needed to avoid unintended nuclear reactions. Also, while recovery of materials from such holes would be difficult, it presumably would be less so than for disposal into the deep sea bed. Again, opposition could be expected with concern about ground water aquifers, public health and environmental effects.

7. *Disposal by consumption.*—Another way to assure weapons grade plutonium or uranium are not reused to make nuclear weapons is to fission the materials in nuclear reactors.[23] Such reactors might be specially built for this purpose, or reactors now used to generate nuclear power.

Disposal by consumption

Of these seven options,the first is the simplest but leaves weapons grade materials at risk of future seizure. The second has little current support. The next four while possible, all appear impractical and all would require throwing away materials produced at great cost and with a high potential energy content without getting any economic benefit in return; all four would be strongly opposed as dangerous to public health and to environmental quality. The last option, disposal by consumption in nuclear reactors, is technically possible and could recover some value from the nuclear weapons materials. However, this use of weapons grade plutonium probably would be opposed by those who argue that anything which encourages or legitimizes commercial use of plutonium as a nuclear fuel unacceptably increases the dangers of further spread of nuclear weapons in non-weapons states and risks that terrorists could seize plutonium for their own malevolent purposes.

The nuclear fuel cycle

Before examining in more detail how nuclear materials from dismantled warheads might be consumed or degraded by use as fuels for nuclear reactors, either in special "burner" reactors or in commercial power reactors, and to provide a common background, there follows a brief description of what is called the nuclear fuel cycle. This widely used term refers to the collection of resources and industrial facilities and operations needed to make, use and dispose of nuclear fuels.

Nuclear reactors release energy in the form of heat produced when the nuclei of the atoms of plutonium or uranium are split i.e. fissioned. The nuclear reactions that produce the heat in this way take place in a reactor. The heat energy can be dissipated into the environment or be used to generate electricity. For the latter, the heat is carried to a boiler to produce steam to drive conventional turbine generators.

Uranium is the nuclear material used as the fuel in current nuclear power stations. However, other possible fuel cycles, notably using plutonium, have been considered.

Uranium ore occurs naturally in the earth's crust and is mined by conventional mining techniques. It is then processed into a form suitable for fuel in a nuclear reactor. Natural uranium contains two main isotopes, uranium-238 and uranium-235. Only the U-235 atoms are useful for fuel. These are

fissionable, i.e. capable of being split, but U-235 accounts for only about 0.7% of natural uranium. Although some reactors are designed to use natural uranium as their fuel, most power reactors in the United States, Europe, the Soviet Union and Japan now use slightly enriched uranium, in which the proportion of U-235 atoms has been artificially increased or 'enriched' to 3-6 percent. Argentina, Canada, India and Pakistan use nuclear power reactors fueled with normal uranium. Consequently, most of the uranium that is mined for nuclear fuel is enriched before it is fabricated into fuel elements for loading into a reactor.

Inside a reactor the U-235 atoms, when split, form lighter elements, known as fission products, some of which are highly radioactive. Some of the U-238 atoms are also transformed in the reactor into heavier elements, also radioactive. The most important of these is plutonium-239, which, like U-235 is fissile and therefore a potential fuel. Indeed some of the plutonium formed within a reactor is then subsequently fissioned and releases energy. About one third of the energy released while the uranium fuel is being irradiated comes from the fission of plutonium.

The heat produced by fission is removed by a cooling agent that passes over the fuel and transfers the heat to steam generators which supply steam to the turbine generator. In some types of reactors, the coolant can be ordinary (light) water or heavy water; in others, gases such as carbon dioxide or helium are used. The largest number of power reactors currently in operation use light water, and are generically referred to as Light Water Reactors (LWRs). There are two main types of LWR: the Pressurized Water Reactor (PWR) and the Boiling Water Reactor (BWR). There are also significant numbers of Heavy Water Reactors (HWRs), particularly in Canada, which has developed the CANDU HWR, and of Gas-Cooled Reactors, particularly in France and the UK.

When the used, or "spent" fuel is discharged from a reactor, it contains unconsumed uranium, radioactive fission products, plutonium and some other heavy elements. Because of continuing emission of heat from its radioactive contents, it is placed in water in storage ponds to be kept cool. When its radioactivity has lessened enough (decayed), the spent fuel can be sent to a reprocessing plant where it is dissolved and chemically processed to extract the unused uranium and plutonium. These materials can be mixed together in their oxide forms (mixed-oxide or MOX) and then fabricated into new fuel elements and recycled to power reactors. When new fuel elements are fabricated in this way they contain a mixture of uranium and plutonium, the plutonium providing the main fissile material in the fuel. At present, no country uses mixed-oxide commercially, although this is ultimately expected in Europe and Japan.

Three different types of fuel cycle are commonly identified depending on whether or not the spent fuel is reprocessed and, if it is, to what type of reactor the uranium and plutonium are recyced:

In the once-through fuel cycle, the spent fuel is not reprocessed but kept in storage ponds until it is sent for permanent disposal, for example by conditioning it and burying it underground in a deep geological repository.

In thermal[24] reactor recycle, the spent fuel is reprocessed and the uranium and plutonium are separated from the fission products which are conditioned, for example by vitrification, and disposed of to a deep geological repository. Both the uranium and the plutonium can then be recycled in new fuel elements for power reactors. (Alternatively, it is possible to recycle only the uranium and to store the plutonium, or vice versa.)

In fast breeder reactor cycle, the spent fuel is similarly reprocessed and the uranium and plutonium fabricated into new fuel elements to drive breeder reactors. Fast breeder reactors (FBRs), produce excess neutrons used to convert U-238 in a "blanket" of depleted uranium into plutonium.[25] Breeders are an efficient way of transforming uranium into plutonium, or of using low quality plutonium (in their cores) to produce high quality plutonium in their blankets.

By suitable operation, such reactors can produce somewhat more plutonium than they consume (hence the name 'breeder').

Both thermal and fast breeder reactor recycle need facilities for the storage of separated plutonium until required for recycle, and arrangements for transport of plutonium between sites, in addition to reprocessing and fuel fabrication plants and the facilities for the storage of disposal of wastes. Transport of separated plutonium is not necessary if the reprocessing and fuel fabrication plants are located on the same site. A diagrammatic representation of the main fuel cycles is given in Fig. 1.

[Figure not reproducible in the RECORD.]

ANALYSIS

Of the several alternatives open for non-weapons use of weapons grade nuclear materials from dismantled strategic or other warheads, storage and consumption appear to be the most practicable. If deep cuts are indeed made, temporary storage under verified conditions would be necessary until final disposal could be undertaken. The timing of final disposal would depend upon the availability of the plant and equipment either for permanent storage or to fabricate the recovered materials into nuclear fuels and put them into use. With this in mind, the idea of storage now will be reviewed, followed by consideration of the idea of consuming, or "burning," the nuclear weapons materials in nuclear reactors and verification of that consumption. The relation of the consumption alternative to U.S. non-proliferation policy will also be discussed, followed by a comparison of this idea with the concepts in Atoms for Peace.

Temporary storage

Once dismantling centers became operational, temporary storage for recovered weapons materials would be needed. Temporary storage could be supplied by the superpowers themselves or by an international organization operating within their territories. Temporary storage in an international center in another country does not appear practicable. The best place for temporary storage would be at the dismantling facility. Here the metallic uranium and plutonium from warheads would be received and stored pending release to final disposal. The storage facilities could also include equipment to convert the metallic materials into oxides which would be better suited for fuel use and would be unfit for direct reuse to make nuclear warheads. If disposal by consumption is chosen, the storage facilities also could include equipment to fabricate the nuclear materials into fuel elements so that only fabricated fuel would be shipped out. This would afford the greatest protection against seizure of nuclear materials in transit. On the other hand, the nuclear fuel industries of both superpowers probably would strongly resist this idea because of questions about their ability to control the quality of the product, particularly if poor quality in fabrication could increase risks of nuclear accidents.

Temporary storage facilities would be to provide a buffer between the flow of nuclear materials from dismantled warheads, which would be driven by the terms of the arms reduction agreement and the demand for these materials for fuel. Since it seems likely that dismantling of warheads could begin well in advance of construction of new or enlarged factories to fabricate the recovered uranium-235 or plutonium fuel, temporary storage would be necessary when the dismantling begins.

Verification at temporary storage facilities would provide specific information about how much nuclear were received from dismantling; and how much left the storage facilities, when, in what form, and for what destination. This information would be verified by sampling, analyses and other measurements.

The idea of international plutonium storage.—The simplest option would be temporarily store the recovered nuclear weapons materials in national storage facilities under bilateral or international control and inspection. An alternative that could give more assurance would be storage in an international center outside of either superpower. Since the late 1970s much attention has been paid to the idea of international plutonium storage (IPS) which could be a model. Although this idea is currently out of official favor, it merits some attention here to show the kinds of questions and issues likely to arise.

The International Atomic Energy Agency has worked on international plutonium storage for years, and it was considered at the U.S. initiated International Nuclear Fuel Cycle Evaluation during 1978 and 1979. No comparable proposals have been made for storage of uranium-225, although the concept should readily apply to this material also.

In 1976, the IAEA Director General initiated a study on the possibility of international plutonium storage as authorized by the Agency's Charter.[26] This produced a report that was circulated to member states in July 1978. The Director General then called together a group of experts to prepare a detailed scheme for international plutonium storage for submission to the IAEA's Board of Governors. Both the U.S. and the U.S.S.R. were active participants. Meanwhile, in October 1977, at the initiative of President Carter, an international Nuclear Fuel Cycle Evaluation was organized to look into proliferation problems. One of its working groups considered reprocessing, plutonium handling and recycle, including international plutonium storage. INFCE's summary report in January 1980 reported the conclusion of this working group that:[27] ". . . a scheme for international storage of plutonium could have important non-proliferation and assurance of supply advantages."

A few months later, in August 1980, international plutonium storage got support at the second conference on the Non-Proliferation Treaty, held in Geneva. Although there was no final declaration from the Conference because of differences over nuclear arms control, an informal draft declaration was circulated on the last day by a broadly representative group of participants. This draft spoke of international plutonium storage as follows:

"The Conference . . . welcomes the work of the IAEA expert group on international plutonium storage, and supports

internationally agreed effective scheme for international plutonium storage on the basis of Article XII A. 5 of the IAEA Statute. The Conference considers that such a scheme for excess plutonium, if well designed, should not jeopardize the promotion of the peaceful uses of nuclear energy, and would make a substantial contribution to non-proliferation as well as to the improvement of the assurance of nuclear supply and the development of common approaches and generally agreed arrangements for international nuclear trade."

Returning now to the IAEA's group of experts, as they continued their meetings the participants broke up into three blocs. By May 1982, India, Argentina and Yugoslavia backed a "minimalist approach"; West Germany, France and the United Kingdom and the United States continued to support a middle ground; while Australia, the Netherlands and Sweden favored maximum controls and proposed to restore many of the original features that had been dropped in earlier compromises. So the final report of the expert group in November 1982 included all three alternatives. Nevertheless, the experts were able to agree that to be generally acceptable, an international plutonium storage scheme should:[28]

Facilitate the development of plutonium-using fuel cycles;

Facilitate the achievement of international non-proliferation objectives;

Not discriminate between States; and

Not interfere with national energy programs.

Elaborating, the experts said:[29]

"An international plutonium storage system should be seen as part of the IAEA safeguards system and not as a new or separate system.

"Proposals for an IPS should use established safeguards to the fullest extent possible. This is a "realistic objective which could be accomplished with no great difficulty.

"Excess separate plutonium deposited with the Agency should be stored in facilities designed as international plutonium stores within the responsible states.

"IPS stores would be located where plutonium normally would be stored in any event, such as at reprocessing plants for mixed oxide fuel fabrication plants.

"Transport of plutonium should be kept to a minimum in view of the physical protection requirements and costs associated with plutonium transport."

Little more has happened since publication of the experts' report, probably because they could not agree upon a single course of action and because of a marked slowdown in development of breeder reactor abroad and a virtual abandonment of breeder development by the Department of Energy in the United States.

Permanent storage of recovered materials.—After temporary storage one final option would be to deposit the materials in some kinds of permanent storage centers, perhaps in permanent national storage centers under bilateral or international supervision or in an international storage center in some other nation. This idea, however, has gotten little support for several reasons:

(1) From the standpoint of non-proliferation policy, it is safer to store plutonium still contained in spent fuel than to store separated plutonium.

(2) The technical difficulties for permanent storage of weapons grade plutonium and uranium could be substantial because the materials have to be stored in small quantities far enough apart to avoid an inadvertent chain reaction, particularly if the storage place might be flooded with water.

(3) If the weapons grade materials were put into permanent storage within the U.S. and the U.S.S.R., neither government could provide absolute assurance to the other, or to third parties, that under some future circumstances one or both might decide to retrieve the materials for weapons use. If the materials were permanently stored in some other state, there would always be some possibility that they might be seized by the host state, or by terrorists or other "subnational" groups, or might get out from under control should there be a revolution or major domestic disorders in the host state.

Use of weapons grade uranium, in principle

Since the early days of nuclear energy, highly enriched uranium has been regarded as a nuclear fuel. Indeed, one early large scale application of nuclear power was in submarines whose nuclear engines used this material. Highly enriched uranium offers substantial technical advantages for reactors for research and for testing; for reactors to produce energy to generate electricity or to supply high temperature process heat; and for compact nuclear power plants. It also was seen as an initial fuel to start up breeder reactors until they could produce enough plutonium to become independent of uranium-235.

On the other hand, it was equally evident from the start of the U.S. wartime Manhattan project that highly enriched uranium was ideally suited for nuclear weapons, and was predictable enough in its nuclear behavior that the first uranium bomb was used in 1945 by the United States without the prior testing which was necessary for the first plutonium bomb.

A complication is the widespread concern that if weapons grade uranium is used to fuel civil power reactors, it might be stolen from fuel fabrication plants, from storage, or from transport by terrorists or criminals who might try to make an atomic bomb. Of the nuclear weapons materials, highly enriched uranium would be the simplest and easiest to use. So if terrorists got hold of some, and this was known to the public, there would be fears that they indeed could make a crude but very dangerous bomb.

Use of weapons-grade uranium, in practice

Weapons grade uranium can be used to produce energy in two ways: it can be used directly to fuel reactors designed for this material; and it can be diluted with normal or depleted uranium[30] to produce fuel of enrichment suitable for conventional nuclear power plants, i.e. about 3–6 percent uranium-235.

Direct use of weapons grade uranium as a nuclear fuel.—At present the largest users of highly enriched uranium for fuel are the nuclear navies of the superpowers and of the United Kingdom and France. Probably it is used to fuel the Soviet fleet of three nuclear powered icebreakers, with a fourth under construction. As for power, only two countries now have nuclear power plants fueled with highly enriched uranium; West Germany and the United States. West Germany has a small demonstration plant of 13 electrical megawatts (MWe) capacity at Julich and small power plant of 296 MWe capacity at Schmeshausen. The United States has one privately owned nuclear power reactor of this kind, the 330 MWe Fort St. Vrain unit. While several public utilities in the western United States had planned to build eight more full sized power reactors fueled with HEU, these projects all have been cancelled or indefinitely deferred.

The Soviet Union has no high temperature gas cooled reactors planned or in operation. Japan has shown some interest in them to supply high temperature process heat, but this interest is far from commercialization. France too has shown little interest while the United Kingdom had one small research unit now out of commission. As for research reactor use, the United States for several years has pushed strongly to change the fuel in these reactors from 90% material to 20% or less as a way to assure that if stolen, this material could not be directly used to make a nuclear explosive.

For the present, then, the use of highly enriched uranium as a reactor fuel is limited to a fairly stable world set of research and testing reactors, naval propulsion for the main nuclear weapons states, and a handful of power reactors. Since existing supplies appear to be adequate, if it were decided to "burn" weapons grade uranium as nuclear fuel, present production would have to be reduced or perhaps shut down until the material from warheads could be used up. This would conflict with U.S. policy to wean operators of large and small research reactors away from highly enriched uranium by developing and demonstrating replacement fuel using no more than 20 percent uranium-235. The driving force for this U.S. policy is concern that terrorists or criminals might be able to steal dangerous amounts of highly enriched uranium from these reactors or from the factories that make fuel for them.

Indirect use to fuel conventional power reactors.—Quite a different alternative would be to dilute weapons grade uranium with normal or depleted uranium to reduce the overall enrichment to 20 percent or less. Low enriched uranium, from 3 to 5 percent, is the regular fuel for most of the world's light water nuclear power reactors, and cannot be directly used to make warheads.

Some economic considerations.—A fundamental question in thinking about using surplus weapons grade uranium as a nuclear fuel, or diluting it to supply low enriched fuel, is reluctance to waste the enrichment already invested in this weapons grade material. Fortunately, diluting weapons grade uranium down to fuel grade would waste less than half of the initial enrichment effort. If 90 percent enrichment uranium is blended back to 3 percent, typical of fuel for pressurized water reactors, only 39 percent of the enrichment effort is lost, which, depending upon the going price for enrichment, could range from about $7,500 to $13,000 per kilogram degraded.[31] The amount of enrichment effort needed to produce a kilogram of various enrichments is shown in table 1.

Some estimates of potential uranium consumption.—As noted earlier, weapons grade uranium could be consumed in two ways: directly as fuel for fast reactors, and indirectly by diluting it to low enrichment for conventional nuclear power reactors.

Turning first to direct use, typically, a high temperature gas cooled reactor could consume about 780 kilograms of highly enriched uranium annually.[32] This is enough for about 52 warheads, assuming 15 kilograms per warhead. However, this type reactor is not yet in commercial use. Over the years, the largest demand for highly enriched uranium for civil power was expected to be to fuel breeder reactors until they could produce enough plutonium to become self sufficient. At present little prospect is seen for commercial breeding for at least several decades.

As for indirect use, a large (1,000 MWe) nuclear power plant using 3 percent enriched uranium at equilibrium conditions would require annually about 21 metric tons of this material.[33] Since one kilogram of highly enriched uranium (90% U-235) can be diluted to supply 30 kilograms of 3 percent material, and assuming 15 kilograms as the nominal amount for a nuclear warhead,[34] a large power reactor could consume annually the nuclear charge from about 46 such warheads. So, these figures suggest that ten large power reactors could annually consume the uranium-235 from almost 500 warheads.

TABLE 1.—SEPARATIVE WORK REQUIRED TO PRODUCE 1 KILOGRAM OF 90 PERCENT U-235

Feed enrichment percent	Separative work SWU/kg product
0.711 (natural)	227
2	118
3	89
3.3	83
4	73
5	62
20	19.8

Notes.—SWU—Separative Work Units Assuming 0.2 percent tails.
Source: deMontmollin.

Conclusion. There are now not enough working power reactors using highly enriched uranium to quickly consume any substantial quantities from dismantled warheads. The material could be used to fuel nuclear navies, although verification could be difficult. Using weapons grade uranium could mean a temporary shutting down of enrichment plants. Also, national sensitivities about the performance of their nuclear fleets probably would make it problematical whether verification could be worked out because the materials accounting could give information about fuel performance. Looking far ahead, if high temperature gas cooled reactors demonstrate their promise, particularly for process heat, then there could be a much greater demand for uranium enriched to 20 percent or more. For the present, however, indefinite storage of weapons grade uranium or dilution to conventional reactor fuel grade appear to be the most workable alternatives for disposal.

Use of weapons grade plutonium, in principle

As with enriched uranium, from the beginning of U.S. work on nuclear power it was expected that plutonium ultimately would be produced and used as a nuclear fuel. This was the reason for developing the breeder reactor which by efficiently transmuting uranium-238 into plutonium can produce more nuclear fuel than it consumes, with the excess plutonium available to fuel conventional power reactors.[35] The driving force behind work on plutonium was an expected world scarcity of uranium, which indeed was in short supply in the early 1950s before the discoveries of large deposits of uranium in the United States, Canada, Africa and Australia. Today's oversupply of uranium was not foreseen.

Looking ahead, there is some difference of opinion about future demand and supply for uranium. While many expect today's surplus of uranium to continue indefinitely, this view was challenged at the World Energy Conference in October 1986 where an analytical team from an energy commission reported that proven world uranium reserves would be exhausted by about 2015 even if breeders are introduced at an accelerated pace. Moreover, a rapid introduction of breeders would delay by only some 17 years the total exhaustion of world uranium resources, including speculative resources.[36] If thinking about nuclear fuel adopts this view, uranium-235 and plutonium from dismantled warheads would be seen as helping to deal with a shortage rather than being a potentially troublesome surplus. If indeed uranium is seen likely to become scarce, this would revive today's dwindling interest in commercial production and use of plutonium. Unfortunately, it may be several decades before estimates of the long term balance between demand and supply for uranium settle down.

Again, as with highly enriched uranium, there is concern that weapons grade plutonium, if used to fuel civil nuclear power plants, might be seized at fabrication plants or from storage, or from transportation by terrorists or criminals. Moreover, if breeders become a commercial reality and were fueled with weapons grade plutonium, they could be operated to produce equally good materials. On the other hand, plutonium from conventional nuclear power plants fueled with weapons grade material would be of low quality unless the plants were operated in an abnormal manner that would be highly visible to any inspector.

Use of plutonium as a nuclear fuel, in practice

As of 1986, some potential commercial fuel use of plutonium was looming on the horizon. Large reprocessing plants in the United Kingdom and in France were producing separated plutonium, and more reprocessing capacity is planned in the United Kingdom, in West Germany and in Japan—although vehemently opposed by some groups in these countries.[37] The most likely use of this plutonium will be in conventional nuclear power plants.

Use in breeders.—Although nuclear breeding was pursued with enthusiasm by the United States until the Carter administration and remains a goal for France, West Germany, the United Kingdom, Japan, India and the Soviet Union, this technology has yet to achieve commercial application in these countries. The only large prototype breeding nuclear power plant outside of the Soviet Union is the French Super Phoenix. While the U.S. Department of Energy is continuing some breeder development and continues to operate DOE's fast flux test reactor, there is no demand here for plutonium for breeders.

Use in conventional powerplants.—Plutonium now accumulating at Europe's reprocessing plants seems likely to be used in conventional power reactors. One factor is costs. The storage charges to hold separated plutonium are high, and will probably increase as low quality plutonium becomes more radioactive with age.[38]

Plutonium has been used experimentally in a few power reactors in the United States, and its use is currently being demonstrated in Europe and Japan. Also there has been some speculation in Argentina and in Canada that adding some plutonium to the unenriched uranium used in their heavy-water type reactors can substantially improve fuel performance.

An industrial base to support recycle already exists in Europe. Belgium, West Germany, France, the United Kingdom, and also Japan, have some industrial ability to fabricate limited amounts of mixed-oxide fuel elements, and have the technology well in hand to build large factories. Nonetheless, commercial use of plutonium in conventional nuclear power plants is still years away, and can be realized only if many economic, security and regulatory problems can be solved.

Several technical points need further comment. In general, plutonium can be substituted for uranium in conventional light water reactors subject to certain constraints. However, in a reactor designed to optimize uranium use, plutonium can replace only up to about a third of the uranium without changes that go beyond redesign of the fuel assemblies. Nonetheless, a "self-generating recycle," appears to be possible wherein at equilibrium a power reactor would produce as much plutonium as it consumes. Under this condition, the uranium requirements are reduced by about a third.[39]

There is an important difference between boiling water reactors (BWRs) and pressurized water reactors (PWRs) because of their different control characteristics. In the pressurized type, the mixed-oxide fuel can be put in about one third of the fuel assemblies. The remaining two thirds can contain only uranium, at a slightly higher enrichment than for normal all-uranium loading. This has a significant impact on fuel cost, since the higher cost of plutonium-fabrication would apply only to about a third of the fuel. In a boiling water reactor, all of the fuel would contain some plutonium, which would increase the total fuel fabrication cost over that for fuel for pressurized water reactors. However, most commercial power plants in the United States are of the pressurized type, and about half of those in the Soviet Union.

Looking ahead.—As for the future, there could be a new demand for plutonium if fast neutron type reactors are shown practicable to generate electricity, or to supply high temperature process heat for metallurgical and other industries. Here again, this use, at best, is years away if it ever materializes.

Some economic considerations.—At present it would be difficult for the U.S. nuclear industry to use plutonium from dismantled U.S. warheads as nuclear fuel. The industry lacks factories able to fabricate plutonium into fuel, and plutonium fuel probably would cost more than that made with conventional low enriched uranium. Since it is unlikely that State public utility commissions would feel bound by Federal policy to permit nuclear power plant operators to increase their rates for electricity to pay the incremental costs of plutonium fuel, some kind of Federal subsidy probably would be needed. In addition, DOE itself might resist the idea because of anticipated loss of sales for its enrichment services because of low enriched uranium displaced by plutonium.

Turning now to the state of the U.S. nuclear industrial base, at one time the United States had several commercial companies able to fabricate mixed oxides of plutonium and uranium into small pellets of which could then be inserted into long tubes that became nuclear fuel elements.[40] Some of this fuel was fabricated for DOE's breeder project and some for a project begun under the Atomic Energy Commission to demonstrate use of plutonium as a supplementary fuel in conventional nuclear power plants. However with the anti-plutonium attitude of the late Ford and the Carter administrations, and with the cancellation of DOE's Clinch River Breeder Reactor Project after Congress refused to continue funds for it in 1983, these facilities have been shut down. Nonetheless, many engineers and technicians with plutonium fabrication experience are still working in the industry. At the moment the only working U.S. facilities for plutonium fabrication experience are those of the Department of Energy. Abroad, the nuclear industries of West Germany and Japan are fabricating plutonium fuel in demonstration quantities and might be willing to expand their capacities.

Turning now to comparative costs of plutonium and conventional uranium fuels, the principal costs for fabricating fuel from surplus weapons plutonium would be the price charged by the government for the plutonium, the cost of converting plutonium metal into the mixture of oxides of uranium and plutonium (MOX) needed for the fuel, the fabrication of the MOX into fuel pellets, and the assembly of these pellets into completed fuel elements. There would also be higher costs for upgraded security to protect the plutonium from theft or seizure.

What price to charge for the plutonium would be a political question. On one hand it could be argued the price should be high enough to recover for the government the cost of producing the plutonium and perhaps for converting it into mixed oxide if the plutonium is released from dismantling in this form. On the other hand, if the disposal idea is given high priority, then a government subsidy via a low price to balance out any cost disadvantage for plutonium would be justifiable.

The production of mixed oxides and their fabrication into fuel pellets is more expensive than the corresponding fabrication of low enriched uranium oxide because of the toxicity and radiation from plutonium.[41] This requires all handling and fabrication of plutonium bearing materials to be done within airtight chambers by remote handling devices. Such process lines are expensive to build and to operate. Also plutonium must be handled in small amounts because of the risks that amounts might accidently accumulate large enough to become a critical assembly which could cause a burst of lethal radiation and perhaps an explosive release of energy.

Any private decision to build a plutonium fuel fabrication plant would also depend upon the kind of assurances the government could give for the duration of plutonium supply. If only a few years assurance could be given, industry would be less confident it could recover its investment than if a reliable supply could be assured for many years. Likewise, a private decision to proceed with plutonium fuel fabrication would also depend upon prospects for favorable action by the NRC on license applications to build and operate such a plant, and also on applications from utilities to use plutonium in their reactors. One prerequisite for such licensing is the completion of the Generic Environmental Impact Statement on Mixed Oxides (The GESMO Report). This report was begun by the NRC and taken to the point of publication in 1976, but further consideration stopped soon after the Carter Administration took office in 1977.

While the Reagan Administration early indicated it did not oppose domestic use of plutonium as a fuel, the NRC has not undertaken to update the report, and has said that this should be done by the Department of Energy which, to date, has not done so. If past experience is a guide, several years would be needed to update and act upon this environmental impact statement, during which time the NRC could not license construction of a new fuel fabrication plant or use of plutonium fuel by a power reactor. Additional time could be required if various public interest groups were to request hearings on the environemntal impact statement or to litigate.

There is an alternative. As noted earlier commercial plutonium fuel fabrication, albeit on a small scale, is available in West Germany, in France and in Japan. So the U.S. utilities could contract with these sources to expand their production capacity and to fabricate U.S. supplied plutonium into fuel pellets, or into complete fuel elements for return to the United States. Even so, NRC action of the environmental impact statement probably would be needed before it could issue licenses to export the plutonium for fabrication abroad and to bring back for use in the United States, unless there was legislation to remove these transactions from NRC jurisdiction.

On the whole, at this time it appears that the costs of plutonium fuel fabrication, questions about the duration of supply, and the difficulties of getting the necessary NRC licenses would not encourage the rule fabrications and the nuclear power utilities to voluntarily use plutonium fuel. However, it is plausible that some combination of government actions could make plutonium use attractive to them. For example, the Federal Government could arrange for the Tennessee Valley authority to use plutonium for fuel in its nuclear power plants since the TVA is a federal entity. This, however, assumes that TVA can overcome its present troubles with the NRC that in effect have shut down all of its nuclear power units, and that TVA could be convinced to change over to plutonium.

As for the Soviet Union, at present it too is not using plutonium as a supplementary nuclear fuel in conventional nuclear power plants and presumably lacks the factories to produce this fuel on a industrial scale. While some might expect that the centralized decision making of the Soviet government would easily enable it to arrange for such factories and fuel use, internal resistance from the Soviet nuclear industry and nuclear power operators would be likely if they were expected to absorb the costs with no adjustments in funds received from Moscow. And with the aftermath of the Chernobyl accident of April 1986 still much in mind, internal opposition could be expected if use of plutonium was seen as raising questions of nuclear safety.

Some estimates of potential plutonium consumption.—Several recent analyses have estimated the amount of plutonium that could be consumed in the generation of nuclear power.[42]

One analysis early in 1985 estimated that about 160 metric tons of plutonium and U-235 might be available from weapons for conversion to peaceful purposes. The plutonium would be enough to fuel 10 large nuclear power plants for 30 years, at an annual consumption rate of about 530 kg of plutonium per reactor.[43] Elaborating, it said:[44]

"Assuming that it is blended to the equivalent of 3 percent enrichment, this would amount to about 5,000 metric tons of reactor fuel, with a value of about $5 billion on today's market. When recycled, the resultant material could fuel 10 large nuclear power plants for 30 years, providing about two trillion kilowatt hours of electricity. This is roughly the total U.S. electricity generation during 1982, or 10 times the total African annual generation." A few months later, an analysis from Princeton University[45] concluded that ten large power reactors within a decade could dispose of all the plutonium currently in U.S., or Soviet weapons.[46] Of this the authors wrote:

". . . One method would be to use the plutonium as fuel in a relatively few heavily safeguarded reactors operated in a "once through" mode (that is, without reprocessing the fuel). Ten large reactors could in this method dispose of all plutonium currently in U.S. and Soviet weapons in a decade."

A recent estimate from DOE's Sandia Laboratories would expect the Soviet type pressurized water reactor, the VVER-100, to consume the equivalent of 40 plutonium warheads yearly, assuming 8 kilograms per warhead. In comparison, the equivalent of 35 warheads per year could be consumed by a typical U.S. type 1000 MWe PWR.[47]

Earlier, more conservative estimates appeared in the final report of the International Nuclear Fuel Cycle Evaluation[48] in 1980 and in the NASAP report of the Department of Energy,[49] also in 1980. These indicated that depending upon how a power reactor is operated, and how much plutonium can be put into the fuel, a large 1000 MWe unit would require about 400 kilograms of plutonium a year, which would mean that one large nuclear power plant could annually consume the plutonium from perhaps 40 to 80 warheads a year. If ten large power reactors were dedicated to this purpose, they could account for 400 to 800 warheads annually. This could be higher if the more optimistic predictions of other analysis prove to be correct.

Conclusion.—As with weapons grade uranium, here too there is now little commercial demand for plutonium to fuel conventional nuclear power plants. While the technology of plutonium recycle is being demonstrated in Europe and in Japan, and work has been done on it in the United States, the disposal of weapons grade plutonium by this route would require construction of industrial scale fuel fabrication plants here or abroad and in the United States would also depend upon the action of the Nuclear Regulatory Commission upon requests from reactor operators for permission to use such fuel. Presumably a similar situation for industrial capabilities exists in the Soviet Union. So at this time if there was an agreement to dismantle many warheads, the recovered plutonium probably would have to be stored for years. Even then, it might have to compete in a future international nuclear fuel market characterized by a surplus of plutonium from commercial reprocessing.

Where the materials could be consumed

The most likely countries in which to consume weapons grade uranium and plutonium from dismantled nuclear warheads would be in the United States and the Soviet Union. France, the United Kingdom and China might become involved if arms reductions included their nuclear arsenals. In principle the superpowers might supply some of these materials to other states to fuel research or power reactors, but it seems unlikely that either would wish to incur risks that their weapons grade materials might wind up in the hands of terrorists or criminals abroad. On the other hand, if the salvaged weapons grade materials are used to generate nuclear power within the U.S. and the USSR, then some of the regularly produced low enriched uranium would become excess and be available for export. However, for the short and mid-terms, there probably will be surplus capacity to produce low enriched uranium and a saturated world market.

For the short term, to 1990, the most likely fate for surplus weapons materials would be storage, assuming that use in new weapons is banned by superpower agreement. Neither the U.S. nor the Soviet Union now need new sources of plutonium or enriched uranium for their civil generation of nuclear power; neither has established commercial plutonium recycle; and neither employs high temperature gas cooled reactors fueled with highly enriched uranium to generate electricity. There will be some continuing demand in both countries for highly enriched

uranium for their nuclear navies, for a few research reactors and perhaps for some research and development. Neither would have time to build special reactors to "burn" the salvaged materials under controlled conditions.

For the mid-term, 1991-2010, there appears little prospect for any notable demand for weapons grade uranium or plutonium to start up commercial breeders. Plutonium recycle could increase depending upon the technical and economic experience with demonstration projects now going on in Europe and Japan, and whether the price charged by the U.S. and USSR to their electricity industry for weapons grade plutonium would undercut that for commercial plutonium from the reprocessing plants in Europe and Japan. Fuel demand for naval propulsion probably would not notably increase. However, requirements for high temperature gas cooled reactors could appear near the turn of the century if this type reactor lives up to its promise, particularly as a source of high temperature process heat, and depending upon the supply and prices of other sources of energy.

Whether or not more or less nuclear materials would go to storage in the mid-term would depend upon the balance between supply from dismantled warheads and other sources versus the demand for nuclear fuel materials approaching weapons grade.

As for the long term, the prospects are hazy. It is not clear whether 25 years hence the dismantling of warheads would still be going on and how much materials would then be available. Nor can one say with confidence what the demand for civil nuclear fuels might be then. Another nuclear accident comparable to Chernobyl would further depress prospects for nuclear power and for nuclear fuels; so too would develop and deployment of competitive new sources of energy. On the other hand, several decades of good safety experience combined with continued political pressures to reduce burning of fossil fuels—because of concern over the greenhouse effect and acid rain, and technical or economic limitations of other energy technologies could notably increase demands for nuclear fuels including materials salvaged from dismantled warheads. So at the time of writing it is not possible to reliably predict whether by the third decade of the next century the dismantling of warheads would still be in progress, and, if so, whether the recovered highly enriched uranium or plutonium would go to long term storage or to commercial use. Table 2 indicates a range of uses.

Of course, as suggested earlier, the superpowers could build special reactors to consume the weapons grade material, and perhaps to convert some of waste heat into electricity. However, such reactors do not now exist. Given the present economic and government deficit situation in the United States, it does not appear plausible that large new public capital and operating costs would be authorized for this purpose, particularly if the recovered nuclear weapons materials could be used by the U.S. electricity industry.

Verification

The great attention given to verification by negotiators—some would say preoccupation—in arms control talks provides reason to expect a strong interest in this matter in negotiation of an agreement on what to do with nuclear materials from dismantled warheads. Here the purpose of verification would be to assure that neither superpower can surreptitiously divert these nuclear weapons materials back to their nuclear weapons works without being detected. This condition which poses several fundamental questions about verification: What would be expected of verification? Where would verification begin? How would it be accomplished? What major factors would affect it? Who would do it?

TABLE 2.—SUMMARY OF WHERE AND HOW SURPLUS NUCLEAR WEAPONS MATERIALS COULD BE CONSUMED

Time	U.S. and U.S.S.R.	Other
Short term: to 1990:		
Breeders	Minor	Minor.
Plutonium recycle.	do	Do.
Marine propulsion, (HEU).	Some, U.S.S.R. only	No.
Special burner reactors.	No	Do.
Storage	Most	Most.
Mid term: 1991-2010:		
Breeders	Minor	Some potential increase.
Plutonium recycle.	Some	Increased.
Marine propulsion (HEU).	Some, U.S.S.R. only	Minor.
HTGCR (HEU) electricity.	Minor	Do.
Process heat	No	No.
Special burner reactors.	Possible but unlikely	
Storage	Most	Most.
Long term: 2011—:		
Breeders	Possible increase	Possible increase.
Plutonium recycle.	do	Do.
Marine propulsion.	do	Do.
HTGCR (HEU) electricity.	do	Do.
Process heat	do	Possible demand.
Storage	Depends upon dismantling rate.	Depends upon dismantling rate.

What would be expected of verification? If the superpowers agree to deep cuts in their nuclear arms, strategic or otherwise, then the purpose of verification would be to assure each side that neither could surreptitiously return weapons grade plutonium or uranium from the dismantled warheads to the backdoors of their weapons work in treaty violating quantities great enough to make an important difference. The detection should be reliable and timely enough to assure that nuclear arsenals could not be quickly increased to give one side or the other a substantial surprise advantage. This assumes, of course, that the respective weapons factories would need only a new supply of nuclear materials to quickly boost production, and does not take into account the practical details of achieving a sudden, substantial increase in manufacture of nuclear war heads. So it would be necessary that quantities of nuclear materials which might possibly be diverted without prompt discovery be small enough as not to affect the military balance between the superpowers. With this in mind, a reasonable verification criteria would be the ability to detect diversion of enough salvaged nuclear material to achieve perhaps a quick ten percent increase in production.[50] The lower the agreed limit upon inventories of weapons, the smaller this amount would be. For example, assuming the U.S. were to agree to cut its inventory of strategic arms from say 2,330 to, perhaps 1,500 weapons, and assuming all of the warheads used plutonium, with 10 kilograms of plutonium per warhead, then some 8,300 kg of plutonium would be released. To suddenly increase the reduced inventory by 10 percent would require 150 new warheads at 10 kilograms of plutonium per warhead, or 1,500 kg. For this example, a verification system should be able to reliably and quickly detect diversion of, say, 1000 kg a metric ton of plutonium. With different assumptions as to cutbacks and the amount to be detected, the sensitivity of the verification system would change. Nonetheless, the criteria to verify no diversion back to warheads would be quite different from that to assure non-nuclear weapons states do not divert enough material to make a few warheads. The present international inspection system for non-weapons states party to the Nuclear Non-Proliferation Treaty defines this "significant quantity" as the amount of material that a state would need to make its first nuclear explosive, taking into account waste and losses, namely 8 kilograms of plutonium, or 25 kilograms of uranium-235 contained in uranium enriched to 20 percent or more, or 8 kilograms of uranium-233.[51] More will be said of this criterion later.

Where would verification begin?—Verification of what is done with nuclear materials from dismantled nuclear warheads could occur in two main places: first, at the place where materials are recovered from warheads; and, second, at places involved in the fabrication and use of the recovered materials. On the whole, the overall system would include the following kinds of nuclear facilities and flows of nuclear materials:[52]

The dismantling place.—The two super powers together could jointly operate a facility, or each could have its own facilities, subject to international or bilateral monitoring, to dismantle or destroy the missiles or other ordinance that have nuclear warheads, dismantle the warheads, collect the highly enriched uranium and or plutonium, and process these materials enough to * * * their previous shapes or compositions from providing information about design of the warheads, i.e. to prevent "reverse engineering." For the warhead dismantling, two things would be verified: first, that the amount of nuclear material recovered corresponds to the amount that should be in the warheads dismantled; and, second, the amounts of these materials to be released from the dismantling facility to storage, or to nuclear fuel fabrication and subsequent use. Inspectors would be present during all dismantling operations to verify the correlation between numbers and types of warheads dismantled and material recovered. This need not involve disclosure of any secret information about warhead design.

What kind of material flows could be expected?—The flows and inventories of nuclear weapons materials, as noted earlier, would depend upon the rate of dismantling of warheads and the readiness of the U.S. and Soviet nuclear industries to use these materials for nuclear fuel.[53] While it is still too early to predict the amounts of plutonium and enriched uranium that might result from deep cuts in weapons inventories, a few examples can illustrate the kinds of material flows that might occur. The annual maximum use of these materials by a large individual nuclear power plant and also by a nuclear power industry of 20 gigawatts (GWe) electrical generating capacity is suggested in table 3. This shows that a large reactor could use the plutonium from 35 to 50 warheads per year, depending upon its design and operation, or the highly enriched uranium from about 36 to 40 warheads annually. The annual corresponding flow for 20 large nuclear power plants typically could consume materials from 800 to 900 warheads per year depending upon conditions. Taking the latter example further, the plutonium to fuel 20 GWe of generation would be about 160 metric tons of mixed uranium-plutonium oxide annually. The flow of materials from release from storage through fabrication and

to delivery for storage at the reactors is shown in Figure 2.

[Figure not reproducible in the RECORD].

TABLE 3.—EXAMPLES OF FLOWS OF NUCLEAR WEAPONS MATERIALS USED FOR CIVIL NUCLEAR FUEL

Type of power reactor	For a single nuclear power plant (1000 Mwe)			
	Warheads per year	Kilograms per year[1]	Warheads per year	Kilograms per year[1]
United States:				
PWR:				
Plutonium	35	280	804	6,432
Uranium-235	36	900	828	20,700
U.S.S.R.:				
VVER 1,000:[2]				
Plutonium	40	321	804	6,432
Uranium-235	41	1,025	824	20,600
RBMK 1,000:[3]				
Plutonium	50	400	900	7,200
Uranium-235	36	900	720	18,000

[1] Assuming 8 kilograms of plutonium per year, and 25 kilograms of highly enriched uranium per warhead (90 percent U-235)

[2] VVER is a graphite moderated, boiling water pressure tube type reactor of the kind involved in the Chernobyl nuclear accident of April 1986. It normally is fueled with low enriched uranium.

[3] RBMK is the standard U.S.S.R. pressurized water reactor and is a successor to the VVER.

Source: J. deMontmollin. Value of fissile material from dismantled warheads as reactor fuel.Working paper. Sandia National Laboratories, May 27, 1986 (Rev. 1) Tables 1 and 3.

In this example, metallic plutonium is converted into mixed oxide and then fabricated into nuclear fuel. A plant to do the same for highly enriched uranium would be similar although not interchangeable. A facility able to produce 160 metric tons of mixed oxide annually would be large enough to achieve some benefits of scale. If the conversion and fabrication processes were at separate locations, interim storage would be needed at each site to cover uncertainties in scheduling and in transportation. For this case, the distribution of the plutonium over the fuel cycle is shown in table 4. Note that of the total, about 5 percent of the plutonium typically would be in transit between facilities, 3 percent in process and the remainder in storage at various locations.

How would verification be accomplished?

There are many ways to verify that valuable or dangerous materials are accounted for. The one following is based on decades of national experience in verifying that civil nuclear materials have not been diverted to make nuclear weapons. The basic idea is straightforward. Records are kept to account for the materials; these accounts are verified by periodic inventories taken independently by the users and by international inspectors; assurance of no diversion between inspections is provided by installation of monitoring equipment and by use of locks and seals to show there has been no unauthorized access to or movement of materials (surveillance) and by physical barriers to keep unauthorized persons away from the materials (containment). For sensitive nuclear materials—plutonium and highly enriched uranium—continuous monitoring probably would be desirable at places where these materials are handled in bulk form. This whole system of accounts, inventories, inspection, surveillance and containment is called "safeguards."

TABLE 4.—ESTIMATED DISTRIBUTION OF MATERIALS OVER THE FUEL CYCLE SHOWN IN FIGURE 1

Stage	Average time, days	Average quantity, Pu (kilograms)
Metal Storage		
Transport	10	218
Conversion:		
Feed storage	60	1,310
Process	5	110
Interim storage	90	1,960

TABLE 4.—ESTIMATED DISTRIBUTION OF MATERIALS OVER THE FUEL CYCLE SHOWN IN FIGURE 1—Continued

Stage	Average time, days	Average quantity, Pu (kilograms)
Fabrication:		
Process	8	181
Product storage	100	2,180
Transport	10	218
Reactor Storage	100	2,180

Source: J. deMontmollin. Verification of peaceful use of reclaimed warhead material. Working paper. Sandia National Laboratories, June 1986, table 1.

Verification of dismantling warheads.—The principal function of verification at a dismantling facility would be to assure that warheads brought there indeed are dismantled, and that the amount of nuclear materials recovered is what it ought to be. In some schemes, the dismantling center could also verify the dismantling of an entire missile or other carrier as well as the warhead itself. However, this analysis is limited to the narrower function of dismantling warheads and recovering their nuclear materials.

Given the sensitivity of the dismantling step, because it would produce substantial amounts of weapons-grade materials in bulk form, continuous surveillance would be expected, with inspectors present during all dismantling operations to verify the correlation between numbers and types of warheads dismantled and materials recovered. One way suggested by some analysts to provide such visual surveillance while at the same time preventing inspectors from gleaning secret information on warheads design and fabrication by observation would be to build an overhead observation gallery in the dismantling area. The inspectors could be close enough to follow the progress of warheads through dismantling, but far enough away not to be able to see secret details.[54] Verfication at the dismantling site also would include sampling and analysis of samples of the recovered nuclear materials to assure they are of the expected purity and composition, and to provide accurate information on the amounts and kinds of materials released from the dismantling facility to off-site storage, or to fuel fabrication and use.

Verification of the fuel fabrication and use.—Once the weapons grade plutonium or uranium are released from the dismantling center, verification that these are not later diverted would be accomplished by a safeguards systems. Considering the sensitivity of the weapons grade plutonium and uranium, the frequency of inspections and the extent of surveillance and containment would be substantially more than that for fabrication and use of nuclear fuels containing low enriched uranium.

In the view of one safeguards expert,[55] and as shown earlier in table 4, because only a small part of the reclaimed weapons materials would be in process at a given time, verification need not require inspection of the process equipment itself. Table 4 indicates that typically only about 3.5 percent of the material released to fuel fabrication would be in process, with the remainder in various interim storage places. So, even without continuous inspection of the fuel fabrication lines, the quantities of nuclear materials involved could be indirectly verified through prior agreement on maximum allowable quantities in process and by analysis of the flow of materials into the plant and of fabricated fuel out of it. This approach would shift the burden of inspections away from production lines and to places where production would not be interrupted or commercial fuel fabrication know-how compromised by inspection. Direct verification of materials in interim stores would be desirable and reasonable. Records and accounts would be set up at the fabrication plants, storage places for bulk materials and for fabricated fuel, and at the power reactors so that a continuing materials balance could be maintained to show that all of the nuclear materials are accounted for.

How frequently the materials balances should be verified and how much uncertainty would be acceptable in comparing inventories with book amounts is an open question. Some uncertainties inevitably occur when materials are converted from one form to another and when they are fabricated into a final product, and taking inventories is a nuisance. The acceptable limits of timeliness of materials balances and acceptable uncertainties probably would be determined more by the risk from undetected diversion on the superpower nuclear arms military balance than by the technical limits of nuclear materials accounting and verification. Where reasonable values could be months and hundreds of kilograms for the fissionable materials involved.[56]

How the basic mechanisms for verification might apply to the dismantling and fabrication phases is suggested in table 5.

Who could do the verification?—Verification that nuclear materials from dismantled warheads are used to fuel nuclear power plants and are not secretly returned to nuclear weapons in violation of arms control agreements would have to be accomplished by effective safeguards with inspectors on site at the dismantling place. These inspectors could be provided by national or joint U.S.-Soviet inspection organizations, or by a new or existing international organization. Table 6 suggests available options.

Each superpower presently has national inspection organizations that could provide inspectors qualified to jointly verify dismantling of nuclear weapons, their warheads, the amounts of materials recovered, the inventories awaiting release, and the releases of such materials to fuel use. Such inspection teams clearly would be under direct control of each superpower and would report to them. Each superpower could choose the inspectors with full knowledge of their technical capabilities. On the other hand, bilateral superpower inspection teams would give little assurance to other states that nuclear materials from their dismantled superpower warheads do not return by mutual connivance to the backdoors of their weapons plants.

TABLE 5.—BASIC MECHANISMS FOR VERIFICATION

Means	Dismantling of warheads	Fabrication of recovered materials into nuclear fuel
Observation (Internal)	Continuous	Periodic.
Records and Accounts	Detailed	Detailed.
Inventory verification:		
Sampling	Yes	Yes.
Analysis	Yes	Yes.
Surveillance	Continuous	Cameras, seals, other devices between inspections.
Containment	Access to facility tightly controlled.	Barriers to prevent unauthorized access and related measures
Inspection (external)	Continuous	Periodic.

TABLE 6.—ORGANIZATIONAL OPTIONS FOR VERIFICATION OF THE DISPOSAL OR USE OF NUCLEAR MATERIALS FROM DISMANTLED WARHEADS

Type organization	Dismantling of weapons	Dismantling of warheads	Interim storage of nuclear material	Use of nuclear material
National inspection	Yes	Yes	No	No
Joint inspection	Yes	Yes	Yes	Perhaps
Third country inspection.	No	Perhaps	Yes	Yes
International inspection:				
A new organization.	No	Perhaps	Yes	Yes
The IAEA	No	Perhaps	Yes	Yes

Another option, in principle, would be for the superpowers to have a neutral third nation provide independent inspection and verification services. Under this option, neither superpower would be bothered with inspectors from the other, however they might not have as much confidence in third-party inspection as in their own direct or joint verification. Also third-party verification would not help with the demands of other states, particularly nonnuclear weapons states, to be assured that the dismantling is real and not a charade.

Another option would be to draw upon well established and demonstrated systems and technologies of the International Atomic Energy Agency to verify nuclear inventories, assure they remain under proper control and accountability in between inspections, and assure they are physically protected from unauthorized access. The IAEA has been such, providing inspection service upon request for many years and has substantially improved its systems and equipment. However, there remains doubt in some circles about the adequacy of IAEA safeguards system to assure timely warning of diversion of small quantities of highly enriched uranium or plutonium.

Still another option would be for the superpowers to arrange with the IAEA, or some new international organization, to provide verification service. In this case, for political reasons it probably would not be wise to have the Agency verify the dismantling of weapons or of warheads. But, it could verify recovered materials held in storage by the superpowers and continue fabrication and use of these materials for nuclear fuel. Since each superpower already has voluntarily agreed to allow the IAEA to inspect some civil nuclear facilities, the principle of inspection and verification has been accepted. If the nuclear material in fuel use were placed in IAEA safeguards, then other states would have some assurance that unresolved discrepancies found by inspection would be reported to the Agency's Board of Governors, and to its membership and the United Nations. On the other hand, to involve the Agency directly in as contentious and sensitive a matter as superpower arms reduction could put it at grave risk. The Agency would have little protection if the superpowers were to disagree over the outcome of an IAEA inspection and were to attack it politically. While over recent years the superpowers have mutually supported the Agency, that was not always the case and the IAEA could be gravely injured if caught in a superpower crossfire. Also, it should not be assumed that other IAEA member states would favor the Agency taking on verification for the superpowers, or that the Agency would wish to run the potential risks involved notwithstanding assurances of superpower support and good intentions. On the whole, the main reason for turning to the IAEA would be to provide assurance both to the superpowers and to other nations that recovered weapons grade nuclear materials released to fuel use are accounted for and are not surreptitiously recycled back into new warheads.

Alternatively, the superpowers and other nuclear power states in principle might band together to create a new international organization to verify their disposal of surplus weapons grade materials. At first blush, however, prospects for this would appear to be dim. First of all, to establish a new international agency given present world conditions and the continuing criticisms of international organizations, would be formidable indeed. It might well require amendment to the non-proliferation treaty, where changes could be blocked by some determined nonaligned states. Second, a new agency would duplicate the safeguards function of the IAEA and would be seen as a major superpower vote of no confidence in the reliability and effectiveness of the Vienna agency. So the superpowers probably would not seriously consider a new agency unless the IAEA itself for some reason should become ineffective in the future.

A limited version of a new international organization would be for the superpowers to set up their own joint operation for mutual verification. While this would be comparatively easy to do, other nations probably would view it as indicating that the superpowers were unconcerned about assuring other countries that U.S. and Soviet surplus weapons grade materials indeed are used for peaceful purposes and not secretly recycled back into their weapons factories.

Relation to U.S. Non-Proliferation Policy

Background.—Toward the end of President Ford's administration, some public interest groups and academics began to revive questions about the risks of commercial production and use of plutonium as a nuclear fuel. They argued that governments of non-nuclear weapons states, or criminals or terrorists might seize this material and try to make it into atom bombs. These doubts were reflected in a flurry of proposed bills in Congress and by President Ford's October 1976 statement on nuclear policy.[57] In this he said the United States should "greatly accelerate its diplomatic initiatives in conjunction with nuclear supplier and consumer nations to control the spread of plutonium and technologies for separating plutonium." He also announced that the United States would no longer regard reprocessing of spent nuclear fuel to produce plutonium as a necessary and inevitable step in the nuclear fuel cycle. Instead, the U.S. should pursue reprocessing and recycling of plutonium in the future only if they were found to be consistent with U.S. international objectives. He called on other nations to join the U.S. in exercising "maximum restraint" in the transfer of reprocessing and enrichment technologies and facilities for at least three years.

President Carter quickly expanded on this theme. In April 1977[58] he announced that the U.S. would defer indefinitely the commercial reprocessing and recycling of plutonium produced in the U.S. nuclear power plants; the U.S. breeder reactor program would be restructured to give greater priority to alternative designs and to defer the date when breeders would be put into commercial operation; nuclear research and development would be redirected into alternative nuclear fuel cycles which did not involve direct access to materials usable for nuclear weapons; the U.S. would continue to embargo the export of equipment or technology for uranium enrichment and reprocessing; and the U.S. would continue discussions with other countries of ways to permit them to achieve their energy objectives while reducing the spread of nuclear explosive capability.

Four years later, President Reagan's incoming administration deemphasized this earlier opposition to commercial plutonium. His statement of July 16, 1981,[59] said that his administration would not ". . . inhibit or set back civil reprocessing and breeder development abroad in nations with advanced nuclear power programs where it does not constitute a proliferation risk." On the other hand, the Reagan administration does oppose the spread of plutonium to states not in this category. This policy continues unchanged.

Meanwhile, concerned U.S. public interest groups and academics have continued to question the wisdom of commercial production and use of plutonium as a nuclear fuel, and to urge that the United States use its influence to dissuade other nations from proceeding with breeder development, reprocessing, and fuel use of plutonium. They would favor the position of the Carter Administration that the nuclear fuel cycle which presents the least risks of further nuclear weapons spread is the one which uses low-enriched uranium for fuel, does not reprocess spent fuel to recover its plutonium, and permanently buries the spent fuel intact. This is called the once-through fuel cycle.

On the other hand, the nuclear industries and governments of France, West Germany, India, Japan and West Germany as well as the Soviet Union all continue to work towards the commercialization of plutonium as a nuclear fuel, although at a slower pace than would have been expected in 1960s. Any current U.S. misgivings about commercial plutonium appear to have had little effect abroad. Highly vocal opposition in France and West Germany may have more effect.

Doubts about plutonium were reflected in views of some members of Congress and in hearings on the Nuclear Non-Proliferation Act of 1978 (NNPA). While the NNPA did not prohibit production and use of plutonium for nuclear power in the United States, Congressional concern was evident in the opening policy statement of the Act, which says:

"The Congress finds and declares that the proliferation of nuclear explosive devices or of the direct capability to manufacture or otherwise acquire such devices poses a grave threat to the security interests of the United States and to continued international progress toward world peace and development."

Also NNPA section 104 which proposed an international nuclear fuel authority, specified that participating states agree not to establish any new enrichment or reprocessing facilities and to place existing facilities under "effective international auspice and inspection." NNPA section 131, which specifies criteria for U.S. approval of reprocessing of U.S. controlled spent fuel abroad, also underscored concern about plutonium by requiring a judgment of the Secretaries of Energy and State that the reprocessing, or transfer of recovered plutonium, will not result in a ". . . significant increase of the risk of proliferation beyond that which exists at the time that approval is requested," and that in making this judgment "foremost consideration" be given to whether or not the reprocessing or retransfer will take place under conditions that will ". . . ensure timely warning to the United States of any diversion well in advance of the time at which the non-nuclear weapon state could transform the diverted material into a nuclear explosive device."

Since then, legislation has been proposed in the 98th and 99th Congresses to further restrict U.S. approvals for reprocessing of spent fuels abroad and use of the plutonium from it. A comprehensive example is H.R. 903, introduced by Mr. Wolpe and 34 cosponsors in January 1985. In it he proposed that Congress find and declare that the spread of highly enriched uranium and separated plutonium, or the direct capability to manufacture or otherwise acquire such materials, poses a grave threat to the security interests of the United States. In effect, the bill would prohibit U.S. approval of reprocessing to obtain plutonium for purposes other than research and development until the congress finds that "effective international safeguards will be applied to reprocessing and to separated plutonium", and that "effective international sanctions" against violation of nonproliferation commitments have been established to deter nonnuclear-weapons states from diverting separated plutonium to the manufacture of nuclear explosive devices.

The House Committee on Foreign Affairs held a hearing on U.S. plutonium use policy in June of 1985.

Implications for proliferation.—Disposing of salvaged weapons grade materials by fissioning them in nuclear power plants in the U.S. and the USSR would appear to be consistent with the views of the Reagan Administration. "Burning" the weapons materials to generate electricity probably would be viewed by world nuclear industries as supporting the proposition that in the long run plutonium will be used as a nuclear fuel and that this can be done within acceptable proliferation risks.

On the other hand, those who favor the restrictions of the Carter Administration to civil use of plutonium probably would argue that international safeguards and other controls remain inadequate to assure that dangerous amounts of commercial plutonium are not stolen or diverted; commercial plutonium is not needed now or in the long run because other energy sources are or will be available and conservation can slow future growth in energy demand; and if salvaged weapons materials is to be disposed of by fissioning, this should be done in special reactors built and dedicated for this purpose, with these reactors and associated facilities subject to international inspection and safeguards. On the other hand, to build and operate such burner reactors would require a large public investment in facilities that would produce nothing to help the U.S. economy. Also it could be argued that if the Soviet Union were to assign much of the salvaged nuclear materials to its breeder reactor development, this would put pressure upon the United States to revive its now disorganized breeder efforts.

Comparison With Atoms for Peace

President Eisenhower proposed in Atoms for Peace in 1953 that the United States and the Soviet Union, as well as other governments, contribute jointly from their stockpiles of normal uranium and fissionable materials to an International Atomic Energy Agency. The ratios of contributions, procedures and other details were to be worked out through private conversations. The Agency would be responsible for the "impounding, storage, and protection of the contributed fissionable and other materials," and would allocate these materials to users. One special purpose would be to provide abundant electrical energy to power-starved areas of the world. While Atoms-for-Peace did not directly mention verification, President Eisenhower alluded to it indirectly, saying: "The ingenuity of our scientists will provide special safe conditions under which . . . fissionable material [donated to the Agency] can be made essentially immune to surprise seizure."

Turning now to comparison of Atoms-for-Peace with a disposal agreement, the United States and the Soviet Union could initially place materials from dismantled warheads in national storage centers, or perhaps in an external international storage center, until they could be fabricated into fuel for use within these countries. It seems unlikely that either superpower would export these materials to fuel nuclear power in other countries. Verification that the materials are used solely for peaceful purposes could be accomplished, as discussed earlier, by a combination of bilateral and IAEA inspection.

Atoms-for-Peace was proposed at a time when civil nuclear power was in its infancy, when commercial nuclear power was yet to be realized, but when great expectations abounded for it. A disposal proposal today would come in a world where nuclear power is well established in major countries contributing overall about 15% of world electricity production and, in some countries, 50% or more. In 1953, conventional wisdom in nuclear circles took for granted the development of breeders and commercial use of plutonium. Today, a slowed growth rate in nuclear power generation, a surplus of enrichment capacity and uranium supplies coupled with high costs of reprocessing and of plutonium fuel fabrication have slowed the drive toward plutonium. The effect of today's surplus of nuclear fuels has been to reduce national concerns over security of that supply. Nonetheless, many restrictive conditions have been attached by some supplier countries to their sale of enrichment and or uranium in the name of non-proliferation policy. These restrictions give some support to the argument that commercial fuel use of plutonium remains a prudent way to reduce national dependence upon uncertain unpredictable foreign suppliers.

In 1953, the technology for plutonium fuel was in gestation. In 1986 its technology is well demonstrated, but is not in commercial application. In 1953, widespread public pressure for nuclear arms control was still beyond the horizon. Indeed, in some quarters nuclear arms were welcomed as a cheap way to protect the national security. Today public pressure for arms control is real in the United States and among some of our allies. Four decades ago, there was no international system to verify that nuclear materials are used only for peaceful purposes. Now an international agency exists with well over a decade of demonstrated performance in inspection and verification in support of the nonproliferation treaty.

In 1953, Atoms for Peace was a radical proposal. It was controversial and it occupied center stage. Today a proposal for verified disposal of nuclear weapons materials as fuel for civil nuclear power probably would take a lesser place with the arms control drama continuing to hold center stage.

Advantages and Disadvantages of Using Materials From Nuclear Warheads To Generate Nuclear Power

Disposing of nuclear materials from dismantled warheads by consuming them in nuclear power reactors has one indisputable arms control advantage. Every atom of uranium-235 and of plutonium so consumed cannot later be used to make more nuclear warheads. Like Humpty Dumpty, once fissioned they cannot be put back together again. Beyond this, perceptions of other advantages and disadvantages are likely to be determined or colored by the fundamental interests of those looking at the idea. Widely different views can be expected within the Administration[60] and from the defense, arms control and nonproliferation communities, the nuclear industry, and the critics of nuclear power. Likewise, differing views can be expected from abroad.

Some technical considerations restated.—Before sketching some of the differing perspectives on disposing of nuclear weapons materials by consumption in nuclear power plants, it is useful to recall some basic technical considerations of the disposal idea.

Ways of using plutonium to fuel nuclear power reactors are well advanced in several countries, and highly enriched uranium can be easily diluted to fuel grade.

Highly enriched uranium once diluted to fuel grade cannot be directly reused to make warheads. It would have to be re-enriched.

The plutonium produced by most conventional nuclear power plants is so poor in quality that none of the nuclear weapons states use it to make warheads. Nonetheless, low quality plutonium could probably be made into very dangerous nuclear explosives.

Breeder reactors which can readily produce high quality plutonium are not now in commercial use and at least a few decades will pass before many are built and operating

Present IAEA safeguards, if fully employed in the United States and the Soviet Union are deemed sensitive enough to detect diversion of amounts of weapons grade materials large enough to permit a notable increase in warhead production by either superpower.

Continued work on reprocessing facilities in several non-nuclear weapons states—particularly West Germany, Japan and India—give reason to expect that many metric tons of low grade plutonium will be separated from spent fuel during the next two decades. If both low and weapons grade materials were used on the same factories to make nuclear fuels, accountability and control for the weapons grade materials could be lost.

Continued progress with laser isotope separation for plutonium would open the way to produce weapons grade material from low grade material. If the superpowers were to build and operate such plants in secret, they could use upgraded plutonium derived nuclear power plants to replace much of the plutonium from warheads turned over to civil fuel use unless there is effective, sensitive and verified accounting for all plutonium separated from spent fuel from power reactors.

On the whole, most questions are likely to be about fuel use of weapons grade plutonium. Corresponding questions about weapons grade uranium could be largely met by quick action to degrade this material to enrichments suitable for fuel use.

Differing arms control viewpoints.—The arms control advocates are of two camps: those who see progress towards nuclear arms control through small steps, and those who prefer a big step forward. For the first, the idea of consuming nuclear weapons materials in nuclear power reactors, particularly if an agreement could be negotiated and a trial demonstration undertaken before deep cuts were settled, would be a constructive step towards the larger goal, and could make its attainment more likely by demonstrating the practicability of verification. They probably would welcome the additional support this step could generate for the non-proliferation treaty and for the IAEA and its safeguards functions. On the other hand, those arms controllers who favor the big step approach

to a deep cut, with disposal to be part of the agreement or to be negotiated later, might well oppose the idea. For some it would be premature at best, and could divert time, attention and technical expertise from the central mutual security issues and their resolution. Moreover, premature negotiations on disposal would give rise to expectations for further progress that could produce a backlash if an agreement on deep cuts did not follow.

Finally, an agreement on disposal could create unjustified hopes that verification could be accomplished for all parts of a nuclear arms control agreement even though verification of disposal would solve only a small part of the overall verification problem.

Differing views of the U.S. defense community.—The U.S. defense community, considering present difficulties of the Department of Energy in maintaining production of new weapons grade plutonium[61] might prefer to use materials from strategic missiles dismantled under a strategic missile arms control agreement to make more warheads for short range missiles or other nuclear weapons not covered by the agreement. This would be contrary to the fundamental idea of Atoms-for-Peace. Their views on the disposal proposal probably would also be colored by their approach to a strategic arms agreement which some might favor as sound and verifiable while others would doubt its reliability. Both camps probably would oppose any proposal, such as the disposal idea, that could divert attention from the central national security issues of an arms control agreement.

Differing non-proliferation viewpoints.—Those concerned with ways to avoid further spread of nuclear weapons probably would welcome the disposal idea because of the support it could generate for the non-proliferation treaty and for the probable inspection and verification functions of the IAEA. Depending upon the timing of diplomatic and practical realization, expected positive effects could help the United States and other major states to get an extension of the NPT in 1995 on terms favorable to their mutual security interests. On the other hand, the impetus given to commercial use of plutonium as a nuclear fuel would be seen, at least in some non-proliferation quarters, as troublesome because the IAEA has yet to complete development of safeguards systems for nuclear facilities handling large amounts of plutonium, and some doubt this will be possible. Also, because technical standards to verify no-diversion in the nuclear weapons states would be less demanding than those for non-weapons states there could be pressures among the latter to downgrade existing IAEA standards, which could increase risks of undetected diversions of plutonium in these states.

Differing nuclear power viewpoints.—The nuclear power part of the Department of Energy and the U.S. nuclear fuel industry and nuclear power plant operators probably would welcome the implicit additional support for nuclear power in this country, but would see little benefit here from using weapons plutonium for commercial fuel, at least until the economics of private reprocessing and fuel fabrication improve enough to compete with low enriched uranium. DOE additionally could be concerned that plutonium fuel would cut its enrichment sales and threaten the economic viability of its enrichment plants. Also the weapons part of DOE and the Defense Department probably would be less favorably inclined, and would presumably favor weapons reuse of nuclear material originally produced for weapons. The nulcear power utilities and the nuclear fuel suppliers probably would not welcome more government intrusion and regulation of an already highly regulated industry, nor would they welcome public controversy over fuel use of plutonium.

Proposals to subsidize plutonium fuel could run into opposition from those seeking to reduce the Federal budget deficit, and controversy could be expected on the pricing of plutonium from the warheads. There could also be concerns that pressures to find increased and more stable funding for IAEA safeguards could lead to some kind of new charge or fee levied on nuclear power generation. The industry probably would show little interest in the safeguards aspects unless they proved costly or awkward to plant owners and operators. DOE, however, probably would seek more funds to increase U.S. technical assistance to IAEA safeguards operations.

The Nuclear Regulatory Commission could have reservations about quick licensing of commercial nuclear fuel fabricators and nuclear power utilities to use plutonium fuel. For one thing, the long delayed generic environmental impact statement on use of mixed oxides would have to be revived and completed as a prerequisite to any licensing actions. This probably would attract intervention and perhaps litigation by critics of nuclear power. Also NRC might have to review and upgrade its standards for physical protection of weapons grade materials if these are to be used in bulk form in increased quantities.

Differing views of nuclear power generation opponents.—Some opponents of nuclear energy in the United States and abroad, seeking principally to avoid terrorist sabotage and "Nth nation proliferation," focus their opposition mainly on the commercial production and use of plutonium for nuclear fuel. They argue that commercial quantities of plutonium in transit, in storage, and in fabrication would unacceptably increase the dangers that terrorists or criminals could seize enough of this material to make crude but destructive nulcear explosives; or that governments of non-weapons states could seize it to make nuclear weapons. From this viewpoint, they would prefer some other way to dispose of the weapons grade plutonium. Degrading weapons grade uranium to fuel grade probably would not give them problems.

Many other nuclear opponents would prefer to shut down existing nuclear power plants and ban future nuclear power generation because of unacceptable dangers they see to public health and safety and of contamination of the environment. For them, the implicit endorsement of nuclear power by the disposal idea would be objectionable, and disposing of weapons grade materials by using it for nuclear fuel would be stoutly resisted. At the moment, this sector of the opposition has not produced its own alternative for disposal of the salvaged weapons materials.

The nuclear opponents in general could be expected to challenge the technical capability of safeguards to give adequate timely warning of small diversions of weapons grade materials. They probably would not agree that technical standards for safeguarding disposal of nuclear weapons materials in the superpowers could be less than those for non-weapons states.

Differing views abroad.—What the lesser nuclear weapons states—the United Kingdom, France and China—might think about the disposal idea is by no means clear. They might welcome it as a step toward the universal goal of nuclear arms control. But they might also wish to see how the idea works before committing themselves to join. As for the non-nuclear weapons states, many probably would welcome the idea as new progress towards the arms control commitments undertaken by the superpowers in the NPT. Even the notable holdout states from the NPT could feel new pressure to make some kind of non-weapons pledge. On the other hand if progress towards arms control were to stop with an agreement on disposal, a backlash could be expected that might endanger extension of the NPT in 1995 on terms preferred by the United States. Also some of the third world states might fear the IAEA would become preoccupied with arms control—which is not one if its statutory functions, and neglect its technical assistance to nuclear energy, both for power and non-power purposes. They might also fear that an arms control role for the agency could give the superpowers reason to further dominate its activities and to divert it from its central purposes of technical assistance; while others might fear for the future of the agency were it to become embroiled in superpower disputes over verification issues.

Conclusion

In sum, the idea of disposing of nuclear materials from dismantled warheads by using them to fuel nuclear power reactors can pose difficulties for both the critics and the supporters of nuclear power. Critics are likely to object to the implied additional endorsement the idea gives to nuclear power and to the idea that plutonium can be used as a nuclear fuel without unacceptably increasing risks that it may be diverted or stolen to make nuclear weapons by governments or by terrorists. While nuclear critics can be expected to favor arms control and reduction, their writings have yet to come to grips with the question of what to do with the materials from dismantled warheads. They might favor some scheme to permanently bury the surplus plutonium with spent fuel so that the intense radiation from the latter would be a formidable barrier to any future attempts to recover that plutonium. U.S. proponents of nuclear power probably would support the fuel conversion idea. Still over recent years the industry has said little about proliferation, being preoccupied with its domestic economic and political survival. However, it might well argue against any further government intervention in the nuclear power business, based on its unhappy experience with national and state regulatory bodies. Nevertheless, nuclear power interests abroad, notably in France and Japan and West Germany, might be more supportive because they still expect to use plutonium as a commercial nuclear fuel.

On the whole, from a technical viewpoint, disposal of surplus nuclear weapons materials by using them as nuclear fuel appears to be practicable. From an economic viewpoint, there are conflicting opinions between those who say costs of producing and using plutonium will not become competitive with uranium, and those who expect plutonium production and fabrication costs to drop as working experience becomes more available and new reprocessing plants are built. The outcome of this argument could influence the economic aspects of disposal in the U.S. From a political viewpoint, the proposal seems likely to trigger another round in Washington of the long running arguments for and against nuclear power, particularly

for commercial production and use of plutonium as a nuclear fuel. Here again, the intensity and outcome of these arguments could influence the U.S. approach both to a disposal policy and to putting it into effect.

APPENDIX A: SOME FURTHER THOUGHTS ON USE OF THE EXPERIENCE AND PERHAPS THE ORGANIZATION OF THE IAEA

For many years, how to verify arms control agreements has been a troublesome question. Consideration of the experience with the Nuclear Non-Proliferation Treaty (NPT) since it took effect in 1970 may be instructive. There has been reasonably successful international inspection to verify that nuclear materials in non-nuclear weapons states party to the treaty are not diverted from peaceful uses to make nuclear weapons or other nuclear explosive devices. The NPT commits its non-weapons members to negotiate safeguards agreements with the International Atomic Energy Agency that specify the purpose, procedures and other details of the inspections.[62] Moreover, the United States, the Soviet Union, the United Kingdom and France all have voluntarily opened some of their civil nuclear installations to international inspection by the IAEA and have negotiated the necessary agreements. The objective of IAEA safeguards for its most widespread system, i.e. that for non-nuclear weapons states party to the nonproliferation treaty, is the "timely detection of diversion of significant quantities of nuclear material from peaceful nuclear activities to the manufacture of nuclear weapons or other nuclear explosive devices or for purposes unknown, and deterrence of such diversion by the risk of early detection."[63] The Agency defines significant quantity as "the approximate quantity of nuclear material in respect to which, taking into account any conversion process involved, the possibility of manufacturing a nuclear explosive device cannot be excluded."[64]

The idea that IAEA inspection experience could be relevant for verification of arms control agreements has been mentioned several times by Dr. Hans Blix, director general of the IAEA. For example, in 1983 he called attention to the inspection system of his agency as the "first and so far only working experiment system of verification." Addressing the Bar Association of the City of New York, he said:

"Verification is the issue on which most disarmament proposals have come to a deadend. In IAEA safeguards we have the first and so far the only working international system of verification. This is the first time that sovereign states have permitted an impartial international organization to send its staff into their territories and to carry out inspection on large and sensitive installations. It is interesting that NWS (nuclear-weapons states) too, including the Soviet Union and the United States, have shown readiness to accept this system on some peaceful installations."[65]

This idea has received recognition in Soviet writing. For example in 1983 a Soviet official in a statement at the United Nations[66] expressed the view that the experience of the IAEA could be used for the verification of specific nuclear disarmament measures. Also in February 1986, Timorbayev, Soviet Deputy Director for International Organizations, said at a press conference in Vienna that his country takes a positive stand on the question of whether the IAEA can play a role in the verification of joint nuclear disarmament. The Agency's "rich experience . . . in safeguards can be usefully employed over many phases of disarmament." The Soviet Union, he said, favors "improvements of such experience."[67] The IAEA in 1986 enthusiastically described the Agency's safeguards system as "the most advanced international arms limitation verification system in existence, providing a higher degree of confidence and security amongst countries that any comparable international arms control system in force or under discussion."[68]

To be realistic, IAEA safeguards experience promises no quick and easy solution to as complicated a matter as verification of nuclear disarmament. Clearly, the Agency's experience would not be uniformly useful or pertinent across the whole range of verification requirements for nuclear arms control and disarmament. Nonetheless, there are some notable undertakings where this experience could offer promises, namely for:

A freeze of production of nuclear weapons materials;

A freeze of production of nuclear warheads;

An agreement to dismantle nuclear warheads and missiles; and

An agreement on how to dispose of weapons grade materials from dismantled warheads.

In thinking about steps to limit and perhaps to decrease inventories of nuclear weapons, it is reasonable to ask whether the IAEA itself could be assigned an operating role. Indeed, the international statute of the Agency contains authority, still largely unused, for it to establish or acquire plant, equipment, and facilities for the receipt, storage and issue of nuclear materials. If political agreements could be reached, this authority might be used to establish IAEA controlled repositories within each superpower to receive nuclear materials in the following forms:

Weapons grade materials recovered from dismantling nuclear warheads;

Working inventories of other weapons grade materials; and

Warheads from dismantled nuclear weapons, while awaiting salvage of their nuclear materials.

While either superpower could easily oust agency staff at such repositories and seize their contents, such acts would be self-announcing and provide early warning of their intention to boost or to resume manufacture of nuclear weapons.

It is one thing to speculate about assigning of new arms control functions to the IAEA. It is quite another to judge the practicability of this idea and what would be needed to bring it to application. Clearly there would be difficulties, risks, and opposition. However, if arms control talks reach a stage where reductions appear likely, then the familiarity of both superpowers with the agency and its workings might give them reason to consider expanding its role, or at least to adapt some of the verification technologies it has developed.

IAEA safeguards and verification.—The IAEA safeguards system is intended to verify that no diversion of safeguarded nuclear material has occurred and that safeguarded nuclear plants are not used to further any military purpose. Safeguarded facilities are visited regularly by agency inspectors, who audit the records and verify the presence of nuclear material through the use of sampling and chemical analysis, nondestructive measuring instruments or other safeguards methods.

The political objectives of safeguards as seen by the IAEA are twofold:[69]

To assure the international community that states are complying with their nonproliferation and other "peaceful use" undertakings; and

To deter the diversion of safeguarded nuclear materials to the production of nuclear explosives or for other military purposes, and the misuse of safeguarded facilities with the aim of producing unsafeguarded nuclear material.

As noted earlier, the technical objective of the agency's principal safeguards system—that for non-weapons NPT members—is defined as "the timely detection of diversion of significant quantities of nuclear material from peaceful nuclear activities to the manufacture of nuclear weapons or other nuclear explosive devices or for purposes unknown and deterrence of such diversion by risk of early detection."[70]

Concerning "significant quantities," the agency says that detection within hours of small amounts is not necessary and cannot reasonably be required. For IAEA purposes, the significant quantity is the approximate amount of nuclear material which could possibly be used to make a nuclear explosive, which is set at about eight kilograms of plutonium or twenty-five kilograms of uranium enriched to more than 20 percent U-235. Similarly, "timely detection" is related to the time required to convert diverted material into parts for a nuclear explosive. This time can range from days to weeks to months or longer depending upon the type and quality of the material diverted and the design of the explosive.

Safeguards depend upon inspection to verify the records and accounts of nuclear materials maintained by safeguarded states. These inspections are supplemented by containment and surveillance. As noted earlier, containment refers to use of physical barriers such as walls, containers, tanks or pipes, to restrict or control the movement of or access to nuclear materials. It can help to reduce the probability that undetected movements of nuclear material or equipment could occur. Surveillance refers to human and instrumental observation to detect undeclared movements of nuclear materials, tampering with containment, fabrication of false information, or tampering with safeguards devices. Surveillance typically may involve the use of tamper-resistant automatic cameras. In some circumstances, full time IAEA inspectors may be present. On the other hand, a working principle of IAEA safeguards is that containment and surveillance measures be designed to minimize intrusion in the work of a nuclear facility.

Strengths of IAEA safeguards.—Like other things in life, IAEA safeguards show both strengths and weaknesses. Looking first at their strengths, the following can be said, particularly from the viewpoint of possible usefulness of safeguards experience for arms control.

First the establishment of IAEA safeguards marks a rare instance of sovereign states inviting an international organization to make inspections within their territories on large and sensitive installations.

Second, and as noted earlier, four of the world's five nuclear weapon states have already invited the agency to inspect some civil nuclear installations within their territories. The Soviet Union, in 1982 declared itself ready to negotiate such a safeguards agreement with the agency. That negotiation is now completed and is expected to result in several Soviet nuclear power plants and other civil nuclear facilities being opened to international inspection. The Agency's Director General points out that "these inspections demonstrate that nuclear

weapons states, too, are prepared to accept inspection in loco of peaceful nuclear activities and that these safeguards do not lead to commercial disadvantage."[71]

Third, IAEA safeguards have been accepted by virtually every state for their nuclear imports. NPT states, have gone farther and have opened all of their peaceful nuclear activities to IAEA inspection.[72]

Fourth, safeguards are seen as a way to build confidence that nonnuclear-weapon states do not use their civil nuclear industries to produce nuclear materials.

Fifth, safeguards are widely accepted as able to sound an alarm of diversions of nuclear materials in amounts that would permit production of a nuclear arsenal, at least for the fuel cycles now in common use.

And, sixth, the agency also has improved the concepts and equipment for containment of nuclear materials and surveillance as supplementary ways to increase confidence that diversions have not occurred.

The limitations of safeguards.—But safeguards also have their limitations, IAEA safeguards have been challenged by critics in the United States and abroad. Indeed, Nunzio J. Palladino, then chairman of the Nuclear Regulatory Commission, in 1982 advised Congress of the Commission's concern that "the IAEA safeguards system would not detect a diversion in at least some types of facilities." In addition, the NRC was not confident that "member states would be notified of a diversion in a timely fashion."[73]

Pointing out limits to safeguards is nothing new. As early as 1946, consultants to the Secretary of State's Committee on Atomic Energy mentioned such limitations. Chaired by David E. Lilienthal, who later became the first chairman of the new U.S. Atomic Energy Commission, the consultants said, in part:

"We have concluded unanimously that there is no prospect of security against atomic warfare in a system of international agreements to outlaw such weapons controlled only by a system which relies on inspection and similar police-like methods.

"We are convinced that if the production of fissionable materials by national governments . . . is permitted, systems of inspection cannot by themselves be made "effective safeguards . . . to protect complying states against the hazards of violations and evasions."[74]

This did not mean the consultants saw no value in inspection, for they wrote:

"It should be emphasized at this point that we do not underestimate the need for inspection as a component, and a vital one in any system of safeguards—in any system of effective international controls."

That IAEA safeguards have limitations is freely acknowledged today. Dr. Hans Blix, the agency's director general, recently called attention to two such limitations, saying:

"Safeguards are at present only exerices in installations producing for peaceful purposes;

"Safeguards are at present always exercised at installations which have been identified by the country inviting the control. The concept of states inviting inspectors to roam freely around a whole territory in search of unreported installations is far less likely to be accepted. Under the NPT the parties do not seem to have felt the need for such far reaching measures, nor are they perhaps indispensable in all disarmament agreements in this era of satellite supervision. There are also such possibilities as the clause in the Tatelolco Treaty permitting verification by challenge."[75]

There are other limitations affecting perceptions of the ability of IAEA safeguards to fulfill their nonproliferation function.

Limitations of IAEA safeguards were discussed at length in congressional hearings following Israel's bombing of Iraq's large research reactor in 1981.[76] A few statements from these hearings illustrates the range of views.

Senator Hart at a hearing of the Senate Committee on Foreign Relations in 1981 illustrated the doubts about safeguards held by some Members of Congress. He said:[77]

"But right now, as they stand, those so-called safeguards are not sufficient to make the world community safe—and they do not guard against the spread of nuclear weapons. The safeguards are little more than a facade, and while they legitimize nuclear trade, they place the world in very great danger from the undetected misuse of nuclear weapons."

His solution was not to abandon the Agency, but to undertake a "concerted and sustained effort" by the United States and other countries to rebuild and strengthen the agency so that the world community would have confidence in its safeguards.[78] Under Secretary of State Richard T. Kennedy, gave the Reagan Administration's view as he testified of such limitations at this hearing, where he said:[79]

"It is important at the outset to understand what IAEA safeguards are and what they are not. They are a critical and indispensable component of the worldwide nonproliferation effort, but they are not the totality of that effort.

"IAEA safeguards are principally a detection and warning, not a prevention or reaction mechanism. The IAEA has no capability to physically prevent diversion, and it has limited enforcement authority. It has no authority or capability to search for nuclear activities away from defined locations. And IAEA safeguards do not involve political judgments by the IAEA as to the dependability or sincerity on nonproliferation commitments by other member states."

"There also are clear limitations on how the IAEA can fulfill the specific tasks with which it is entrusted. The Agency does not have the power, for example, to demand plant shutdowns.

"These points have often been cited as criticisms of the Agency, but these general limitations on the Agency's role are simply facts of international relations, understood from the outset by all concerned. The safeguard system entails a unique compromise of sovereign rights by many nations, and it is certainly no surprise that this compromise is subject to specific limitations."

The Agency's principal response to a diversion would be to inform its members and the United Nations. While the Agency could cut off nuclear assistance that it provides, this generally is regarded as a minor sanction. The results of IAEA inspections are kept secret so there is little public information about the quality and reliability of the inspections or of problems encountered. While the effectiveness of inspections depends upon the quality of records kept by the inspected states, the agency has no authority to set and enforce standards for such records and their keeping. In the same vein, infrequent inspections tend more to verify past records than to provide timely warning of a recent diversion. Critics of nuclear power also argue that IAEA safeguards could not reliably detect small diversions of nuclear materials which if accumulated over time might produce enough material to make a nuclear explosive. They also have noted that since the agency in essence is the creature of its members, experience has shown it can be vulnerable to politicization as some blocs of nations try to make it a forum for problems unrelated to atomic energy.

Prospects for controversy.—Any serious effort to establish a scheme for dismantling nuclear warheads and disposing of the recovered nuclear materials is likely to encounter controversy.

Some will favor exploration of this idea to see what can be done with it. For them, even a few small steps could help to build confidence between the superpowers and could show progress toward the nuclear disarmament envisaged by the NPT. Others could oppose it, perhaps even dismiss it out of hand. For them, to depend upon experience with IAEA safeguards in light of their limitations or the limitations of the agency itself, which could be crushed between intransigent superpowers, would be fraught with dangers. In their view, the Agency's safeguards system might readily be fooled, spoofed, or defeated by either superpower, and especially one without free press and with extensive practices of state secrecy. And the political problems of establishing a new international organization or bringing in the IAEA would be formidable. So the future battle lines of controversy can be anticipated, even now before the potentialities and possibilities of the idea have been explored.

Conclusion.—While it would be unrealistic to think that IAEA experience by itself could provide easy verification of comprehensive nuclear arms control or disarmament commitments, it does seem reasonable to expect this experience could be useful for smaller steps including verification of the dismantling of nuclear warheads; taking custody of specified nuclear weapons materials salvaged from dismantled warheads to assure it is used only for peaceful purposes; or verifying that facilities shut down in a freeze on production of nuclear weapons material remain so. Also it seems reasonable to expect that inspection and safeguards patterned after those of the IAEA could be relied upon to sound the alarm if either superpower should do suspicious things with nuclear materials and facilities subject to inspection. However, the agency's experience to date would provide no confidence that a superpower bent upon secret production could not evade IAEA detection and alarm-sounding. Moreover, there is little confidence that effective international action would follow the sounding of such alarm. Indeed, as noted earlier, concern over adequacy of safeguards and of world response to detection of a diversion was one reason advanced by Israel for its preemptive attack on Iraq's large research reactor in 1981. Nonetheless, the Agency and its safeguards appear to have weathered the tumult caused by the Israeli attack. As evidence, the Third NPT review Conference in its consensus final document, in 1985 said that:

". . . the conviction that IAEA safeguards provide assurance that States are complying with their undertakings and assist States in demonstrating this compliance. They thereby promote further confidence among States and help to strengthen their collective security . . . [playing] a key role in preventing proliferation. . . . Unsafeguarded nuclear activities in non-nuclear-weapon States pose serious proliferation dangers".

FOOTNOTES

[1]The conference on the past, present and future significance of the Atoms for Peace proposal was held in Washington on December 7-8, 1983 at the

Center for Strategic and International Studies, Georgetown University in cooperation with the Department of Energy's Los Alamos National Laboratory. The results were published in 1985 by the Westview Press in: Joseph F. Pilat, Robert E. Pendley and Charles K. Ebinger. Atoms for peace. An analysis after thirty years. Boulder and London: Westview Press, 1985, 299 p.

[2] Dr. Schlesinger served as assistant director and then acting director of the Bureau of the Budget, as chairman of the Atomic Energy Commission, as director of the Central Intelligence Agency, as Secretary of Defense and Secretary of Energy.

[3] James R. Schlesinger. Atoms for peace revisited. *In* Pilat et al., op. cit., p. 5.

[4] Ibid., p. 7.

[5] Ibid., p. 14.

[6] Henry Sokolski is a senior aide to Senator Dan Quayle for international security affairs. Previously, he was a public affairs fellow at the Hoover Institution on War, Revolution, and Peace, Stanford University, as well as special assistant to Senator Gordon J. Humphrey for nuclear energy issues.

[7] H. Sokolski. The Arms control connection. *In* Pilot et al., op. cit. p. 38.

[8] W. Sterling Cole. Beating swords into plowshares . . . finally. *In* Pilat et al., op. cit., p. 265.

[9] The Geneva Summit—Address of the President of the United States. Congressional Record, Nov. 21, 1985, p. H10,499.

[10] Ibid., p. H10499.

[11] Text of the Joint statement as reported in the Washington Post, Nov. 22, 1985, p. A15.

[12] For a comprehensive discussion of U.S. and Soviet proposals at Reykjavik, see The Washington Post, February 16, 1987, pp. A1 and A28. (Article by Don Oberdorfer)

[13] The research may be designed for plutonium production, or may be powerful research and testing reactors, or reactors used in nuclear power plant. In theory other sources of neutrons could be used, such as atomic particle accelerators, or the fusion process. However, in practice reactors provide for cheaper and more convenient neutron supplies than other options to date.

[14] The half-life of tritium i.e. the time for half of the atoms present to decay, is 12.33 years.

[15] Cochran, Thomas B. Arkin, William M. and Hoenig, Milton M. Nuclear weapons databook. Vol. I U.S. nuclear forces and capabilities. Cambridge: Ballinger Publishing Company, 1984, p. 27.

[16] With today's nuclear weapons technologies, plutonium is the favored nuclear material because smaller amounts are needed and, apparently, it is suitable for designs to produce the energy needed to trigger a thermonuclear warhead. The Office of Technology Assessment estimated that 5 to 10 kilograms of plutonium or 15 to 30 kilograms of highly enriched uranium would be needed for a first generation design of a nuclear warhead. (Praeger Publishers, 1977, p. 30).

[17] John Taylor, Ralph Balent, John Barton, and Thomas Shea. Converting nuclear weapons to peaceful use. The Bulletin of the Atomic Scientists, February 1985.

[18] Ibid., p. 38.

[19] Stockholm International Peace Research Institute. World armaments and disarmament. SIPRI yearbook 1986. New York: Oxford University Press, 1986, p. 40 for U.S., and p. 48 for U.S.S.R. stockpiles.

[20] Note, temporary storage probably would be necessary until industrial facilities needed for some of the disposal options could be built and put into operation. So it would be judicious to anticipate and provide for temporary storage for many years, even as long as a decade.

[21] For example, the Office of Technology Assessment in its landmark report on nuclear proliferation in 1977 noted the long history of proposals to denature Pu-239 with Pu-240. Of this OTA said: . . . it has long been believed that a high content of Pu-240, because of its high spontaneous fission rate, renders plutonium unsuitable for use in a nuclear weapon. This is not true. A high content of PU-240 is a complication. Given a free choice, a designer would prefer low Pu-240 material, but all plutonium isotopes can be used directly in nuclear explosives. Again, in discussing possible use of low-grade plutonium to make warheads, OTA said: . . . military useful weapons with reliable nuclear yields in the kiloton range can be constructed with reactor-grade plutonium, using low technology. C.F. U.S. Congress. Office of Technology Assessment. Nuclear Proliferation and Safeguards. New York: Praeger Publishers, 1977, p. 201 and p. 142 respectively.

[22] For a detailed discussion of the effect of plutonium quality upon its usefulness for nuclear weapons, c.f. Justin Bloom. Plutonium grade and the risk of nuclear weapons proliferation: a review of thinking on a troublesome subject. CRS Report No. 85-145, August 1985. pp. 15-19 and pp. 52-54.

[23] In theory, these materials might also be fissioned by exposure to neutrons produced by modern nuclear particle accelerators capable of producing a large flux of neutrons. However, the technology for such machines has yet to be developed for industrial scale use.

[24] A thermal reactor is so called because the neutrons that cause fission have been slowed by collision with a light element in the core of the reactor, so that they are in thermal equilibrium with their surroundings (i.e. they are at the same temperature and therefore have a similar kinetic energy, 0.025 eV at room temperature). A 'fast' reactor uses high-energy neutrons (above 0.1 MeV) which have not been slowed down in this way. The word 'fast' does not therefore refer to its capacity to breed plutonium.

[25] Depleted uranium refers to waste uranium from the enrichment process in which the concentration of U-235 atoms may be about 0.2 percent in comparison with 0.7 percent of normal uranium.

[26] Article XII.A.5 of the international statute of the International Atomic Energy establish the Agency's safeguards function. It provides in part that one right of the Agency with respect to any Agency project or other arrangement where the Agency is requested to apply safeguards is to ". . . require deposit with the Agency of any excess of any special fissionable materials recovered or produced as a by-product over what is needed . . . in order to prevent stock-piling of these materials, provided that thereafter at the request of the member or members concerned special fissionable materials so deposited with the Agency shall be returned promptly to the member or members concerned. . . .

[27] International Nuclear Fuel Cycle Evaluation. INFCE summary volume. Vienna, Austria; International Atomic Energy Agency, 1980, p. 46.

[28] Expert Group on International Plutonium Storage. Report to the Director General, 1 November 1982. Vienna: International Atomic Energy Agency, 1982, IAEA-IPS/ES/140 (Rev. 2), p. 27.

[29] Ibid.

[30] Depleted uranium is a waste from enrichment. This uranium contains much less U-235 than normal uranium. Typically, depleted uranium may have 0.2 percent U-235 in comparison with 0.7 percent for normal.

[31] J. deMontmollin, op. cit., points out that most of the enrichment effort is to bring the uranium-235 content of the product material up to about 3 percent, as is evident in his computations in table 1 above.

[32] According to G.A. Technology Inc., which built the (Fort St. Vrain), this 330 MWe plant requires about 220 kilograms of highly enriched uranium a year when operating at design output. The Department of Energy's report on the Nonproliferation Alternative System Assessment Program (NASA) of 1980 indicates a consumption of about 780 kilograms of highly enriched uranium per gigawatt year of electrical generation. (Vol. 9, p. A-56)

[33] NASA, Vol. 9, p. B8.

[34] U.S. Congress. Office of Technology Assessment. Nuclear proliferation and safeguards. New York: Praeger Publishers, 1977, p. 30.

[35] As noted earlier, uranium-238 can be transmuted into plutonium by exposing it to neutrons. While various kinds of machines can produce neutrons, the only large scale source of comparatively cheap neutrons to date is a nuclear reactor. In the future if a controlled fusion process proves to be feasible, it could supply neutrons to transmute U-238 into plutonium. One recent proposal for this purpose came from scientists at DOE's Brookhaven National Laboratory. Cf. Meyer Steinberg, James R. Powell, and Hiroshi Takahashi. Apex nuclear fuel cycle for production of light water reactor fuel and elimination of radioactive waste. Nuclear technology, Sept. 1982, p. 437.

[36] This rather startling view came from a three year comparison of the probable evolution of world energy needs with that of world reserves—not merely with world production—in order to determine possible zones of stress, both in time and geography, that could upset the world energy system. Coal and uranium were seen destined to play a predominant role in the North, in particular after the year 2020, whereas oil would be relegated to a "decidely secondary role." Based upon consumption forecasts of the commission made in 1983, the situation for uranium would become "rapidly critical since the bulk of the proven and additional reserves will have been extracted before 2030 (2015 for proven reserves alone)." While in theory, rapid use of the breeder would extend the life of uranium reserves, in light of slowness in building breeders, their introduction would not modify the date at which the proven reserves of world uranium are expected to be exhausted (around 2015). For a summary, cf. Nuclear Fuel, October 20, 1986, pp. 10-11.

[37] India has several small reprocessing plants of uncertain performance, Argentina is nearing completion of a small plant, and Pakistan would like to complete such a plant.

[38] It is understood that the French reprocessing company, COGEMA, charges from $2,000 to $3,000 annually for each kilogram of plutonium that it stores, and that this rate may be increased for plutonium that had become more radioactive because of the buildup of the radioisotope Americum-241.

[39] This discussion draws heavily on working paper by J. deMontmollin on "Value of Fissile Material from Dismantled Warheads for Reactor Fuel" dated May 27, 1986. Mr. deMontmollin, now retired, was then a senior scientist at the Sandia National Laboratories.

[40] These commercial facilities for plutonium fabrication included those of Exxon Nuclear in Washington; Kerr-McGee in Idaho; NFS in Tennessee; and Numec in Pennsylvania.

[41] Plutonium is far more toxic chemically than uranium and emits alpha particles which are very damaging to tissues if plutonium enters the body. Another factor is neutron and gamma radiation emission from plutonium which is greater than for uranium. The neutrons come from spontaneous fission of plutonium isotopes Pu-238, -240, and -242, and also from interaction of alpha particles from the plutonium with other elements such as oxygen. The gamma radiation mainly results from decay of Americium-241, a daughter product of Pu-241. Since Am-241 has a much longer (433-yr) half-life, than Pu-241, it tends to build up with time, making the plutonium more radioactive. Weapons-grade plutonium contains about 93 percent of Pu-239, as compared to typically 60% Pu-239 for plutonium from light water type power reactors. Consequently, the presence of the other isotopes that produce the neutron and gamma radiations is much less for weapons grade material than for fuel grade plutonium. The rate of Am-241 buildup, with associated gamma radiation, is a constraint on how long separated commercial plutonium can be stored before it must be chemically processed to remove the American if the plutonium is to be fabricated into fuel. This storage-time limit is much longer for weapon material.

[42] John Taylor, Ralph Balent, John Barton and Thomas Shea. Converting nuclear weapons to peaceful use. Bulletin of the Atomic Scientists, Feb. 1985, pp. 35-38.

[43] One hundred and sixty metric tons of plutonium (p. 43) divided by one hundred reactor years equal 1000 kg/Pu reactor year.

[44] Ibid., p. 38.

[45] Frank Von Hippel, David H. Albright and Barbara G1 Levi. Stopping the production of fissile materials for weapons. Scientific American, Sept. 1985, pp. 40-47.

[46] One hundred metric tons of plutonium (P. 43) divided by one hundred reactor years equal 1000 kg-Pu/reactor year.

[47] de Montmollian, op. cit., p. 7.

[48] International Nuclear Fuel Cycle Evaluation. Reprocessing plutonium handling, recycle. Report on working group 4. Vienna: International Atomic Energy Agency, 1980, p. 52.

[49] Nuclear proliferation and civilian nuclear power. Report of the Nonproliferation Alternative Systems Assessment Program. (NASAP) Volume IX: Reactor and fuel cycle description. U.S. Department of Energy, June 1980. Report DOE/EN-0001/9, p. A-37.

[50] This is a worst case assumption for it assumes that the only constraint to a sudden jump in production is the nuclear material, and not the supply of all the parts and services needed to make the missiles or other weapons delivery systems.

[51] IAEA Safeguards, Aims, Limitations and Achievements. Document IAEA/SG/INF.4, 1983, p. 26.

[52] The following discussion draws heavily upon J. M. deMontmollin, Verification of peaceful use of reclaimed warhead material. Working paper, Sandia National Laboratories, 1986.

[53] For this discussion, use of these materials in other countries is considered impractical.

[54] This idea was partially explored in a draft paper from a project of the Electric Power Research Institute in April 1984 by J. Taylor, R. Balent, J. Barton and T. Shea. However funding ran out and the paper was not taken to final form.

[55] J. deMontmollin of the Sandia National Laboratories.

[56] J. deMontmollin. Verification of peaceful use of reclaimed warhead material. Working paper. Sandia National Laboratories, P. 10.

[57] Nuclear policy. Statement by the President October 28, 1986, (Gerald R. Ford). Weekly Compilation of Presidential Documents, Nov. 1, 1976, pp. 1624–1631.

[58] Nuclear power policy. Statement by the President, (Jimmy Carter), April 7, 1977. Weekly Compilation of Presidential Documents, Apr. 11, 1977, pp. 502–507.

[59] Nuclear Nonproliferation Policy. Statement by the President, July 16, 1981 (Ronald Reagan) Weekly Compilation of Presidential Documents, July 20, 1981, pp. 768–770.

[60] The principal departments and agencies within the Administration likely to have views on the disposal idea include the Departments of Defense, Energy, and State; the Arms Control and Disarmament Agency; and the U.S. Nuclear Regulatory Commission. This analysis, however, does not try to predict their specific positions, for that would depend upon when the idea might be proposed and whether negotiations begin during the Reagan or a subsequent administration.

[61] At the moment there is no plutonium production at DOE's Hanford plant because the N-reactor was shut down after the Chernobyl accident of April 1986 and there is strong opposition to restarting it; and only one of the three production reactors at Savannah River is reported to be producing plutonium—with the other two producing tritium needed to maintain the existing stockpile of thermonuclear weapons.

[62] Safeguards encompasses inspection supplemented by containment (i.e. use of barriers to limit access to nuclear materials) and surveillance (i.e. use of cameras, seals, TV monitoring, etc., to show there has been no unauthorized access to safeguarded materials in between inspections.

[63] The Structure and Content of Agreements between the Agency and States Required in Connection with the Treaty on the Non-Proliferation of Nuclear Weapons. Vienna: International Atomic Energy Agency, INFCIRC/153, June 1972, p. 9.

[64] IAEA Safeguards. Glossary. Vienna: International Atomic Energy Agency, 1980, p. 21. The Agency defines 8 kg of plutonium as a significant quantity, also 25 kg of uranium enriched to more than 20 percent U–235 and 75 kg of uranium enriched to less than 20 percent U–235.

[65] H. Blix, International rules to promote the peaceful atom and prevent proliferation. Remarks. Bar Association of the City of New York, May 19, 1983.

[66] "Statement at the First Committee on the United Nations General Assembly," U.N. document A/C.1/38/PV.3 (provisional), October 17, 1983, p. 71.

[67] Nucleonics Week, Feb. 27, 1986, p. 5.

[68] IAEA Safeguards 1980-1985. A Progress Report. Vienna: International Atomic Energy Agency, 1986, p. i.

[69] *IAEA Safeguards: An Introduction*, Vienna, Austria: International Atomic Energy Agency, 1981, p. 12.

[70] INFCIRC/153, op cit. The agency also has another safeguards system for states not party to the NPT. This system focuses upon nuclear installations that the safeguarded state voluntarily puts under IAEA safeguards, whereas the NPT-type system focuses more upon nuclear materials than upon nuclear facilities. The non-NPT safeguards system applies in countries such as Argentina, Brazil, and India.

[71] "Statement to the Thirty-Seventh Session of the United Nations General Assembly," New York, November 18, 1982.

[72] Notable states that have not agreed to "full scope safeguards" include Argentina, Brazil, India, Israel, Pakistan, and South Africa.

[73] Letter from Nunzio J. Palladino, Chairman of the U.S. Nuclear Regulatory Commission to Honorable Clement Zablocki, Chairman of the Committee on Foreign Affairs, November 27, 1982. In U.S. Congress. House. Committee on Foreign Relations, Subcommittees on International Security and Scientific Affairs and on International Economic Policy and Trade. Hearing. *The International Atomic Energy (IAEA): Improving Safeguards*. March 3 and 18, 1982, p. 193.

[74] *A Report on the International Control of Atomic Energy*, prepared for the Secretary of State's Committee on Atomic Energy by a Board of Consultants, David E. Lilienthal, Chairman. (Washington, D.C.: U.S. Government Printing Office, 1946), pp. 4–5.

[75] Source: IAEA.

[76] Notable among these hearings are those by the Senate Committee on Foreign Relations on the Israeli Air Strike, in June 1981 and on IAEA safeguards, in December 1981; and by the House Committee on Foreign Affairs on the Israeli attack on Iraqi nuclear facilities, in June 1981, and on improving IAEA safeguards, in March 1982.

[77] U.S. Congress. Senate. Committee on Foreign Relations. Hearing. IAEA programs of safeguards. December 2, 1981, p. 9.

[78] Ibid., p. 10.

[79] Ibid., p. 11.

THE DEFICIT PROBLEM

Mr. SIMON. Mr. President, the Washington Post has had for 3 days a series of articles dealing with the problem of the deficit, a problem I might add that the Presiding Officer, the Senator from Florida, has done some work on and has been able to get this Senate to adopt some savings in administrative costs that are not huge but they are at least some small steps in the right direction.

I ask, Mr. President, that these three articles written by Steven Mufson be printed in the RECORD.

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

THE MORTGAGE ON AMERICA: FEDERAL BORROWING BINGE LEAVES A PAINFUL, LASTING ECONOMIC LEGACY

(By Steven Mufson)

Every American family today is making payments on an imaginary second home that it will never enter, a home with phantom bricks, phantom nails and phantom floorboards.

Only the mortgage is real. That mortgage is each family's share of the $4 trillion national debt and for a family of four it comes to $65,000. Richard G. Darman, director of the Office of Management and Budget and one of the architects of the nation's fiscal policies over the past decade, says it's "like a mortgage on a second house—without the house."

The accumulated national debt has quadrupled since 1980 following a series of runaway federal budget deficits—the red ink that results when government spends more than it collects. Never before has the nation's debt increased at this pace during peacetime and rarely even in time of war. The debt increase constitutes perhaps the most lasting economic legacy of the past 12 years of government.

As the debt has soared, so has the cost of paying interest to the people, pension funds, foreigners and corporations that have lent money to the federal government to cover its budget shortfalls. Now, with the net interest charge on the debt reaching $200 billion a year, it is consuming more of the nation's income than at any other time in this century. The payments are now the third-biggest item in the federal budget and soon will rival all military spending.

A large number of economists and small but growing group of lawmakers are pointing to the run-up in national debt and the recurring annual federal budget deficits as a calamity of historic proportions that could after the destiny of the United States.

Sen. Warren Rudman (R-N.H.) calls it a blight that "is eating the fabric, the substance, the values of a country which all of us hold dear."

But however large, the debt is a threat that remains vague and impersonal to most Americans, opinion surveys show. One reason, said Rudman, is a "conspiracy of silence" among Republican and Democratic office holders who fear the tax increases and spending cuts that would be required to shrink the debt.

It is remote for another reason—Americans don't have to face directly the costs of the national debt as they do their mortgages or car payments. But the national debt belongs to all Americans and it is diminishing their standard of living and eating up part of their paychecks as surely as any tax.

PERVASIVE, LASTING IMPACT

The $3 trillion in federal debt added during the 1980s helped shape the decade. It expanded the government's spending for a vast military buildup and put more money in the pockets of Americans who saw tax bills shrink and benefits checks rise.

For a little while, during the roaring '80s, Americans traveled more, dressed better, ate better, drove better cars, listened to better tape decks and spent more on health care than they might have otherwise. Compared with previous decades, however, less money was saved and invested in the future.

During the long economic expansion from 1982 through 1989, most people shrugged off the idea of a day of reckoning. Now an entire era of reckoning has arrived. For the next decade, if not the next generation, every government policy decision—from raising taxes and overhauling the health-care system to restoring American cities and helping the former Soviet republics establish stable capitalist democracies—will be taken in the shadow of the national debt.

Because interest charges on the debt have swelled so high, devouring 40 percent of all revenue raised by the federal individual income tax, almost everything the government does seems to be under constant budget pressures.

Every new governmental plan bumps into a wall of deficit spending, while a sagging roof of debt threatens to squash existing programs. Thus, one group of Americans is pitted against another as they squabble over scarce government resources.

Beyond the interest charges, however, the national debt has other, indirect costs.

One such hidden cost is the higher rate of interest that people must pay on their home mortgages and credit cards because the federal government borrows so much.

Second is a delayed cost. For while the Reagan and Bush administrations and lawmakers have boasted of lowering taxes for Americans, they have actually postponed the reckoning. The future taxes that must be raised to carry the cost of past debts and bring the national debt back into line with the size of the economy are burdens that have been passed on to future generations.

A third is the corrosive effect of the debt on the American economy, which, studies show, is smaller today than it would have been had the nation consumed less and invested more in factories, roads, computers, education and other things that make workers more productive. A smaller economy means smaller paychecks for workers and smaller tax revenues for the federal government.

A HIDDEN RATE RISE

On the same day that a home buyer applies for a mortgage or a business owner seeks a loan, the federal government is borrowing $915 million—the amount the Treasury must raise on an average day to finance this year's $333 billion federal deficit.

The home buyer and the business owner must bid against the government in the mar-

ket for loans, a competition that forces interest rates—the cost of loans—higher than they would be otherwise.

This is true even when interest rates are falling, as they are now. Before the 1980s, long-term interest rates—the rates at which most homeowners and corporations borrow money—often sank as low as the inflation rate during slow economic times. But during this recession, with inflation dropping to slightly more than 3 percent a year, long-term rates have stayed more than four percentage points higher than the inflation rate.

Economists and credit market experts estimate that the huge increase in federal borrowing over the past decade has added anywhere from one-half to four percentage points to today's interest rates.

Consider this example:

A hypothetical couple, the Joneses, bought a house in Takoma Park for $130,000 in 1991. With the help of their parents, they scraped together $30,000 as a down payment and borrowed the rest at an interest rate of 9.25 percent. Together they earn $55,500 a year.

Their mortgage payments come to $823.30 a month.

If the interest rate on their home loan had been as low as 8.25 percent, their monthly payments would have been lower by about $71.60 a month—the rough equivalent of a 10 percent surcharge on their federal income tax.

Like many government taxes, the burden of this hidden tax is not shared equally. Instead of taking from the rich to help the poor, this hidden tax confiscates money from people who are most likely to borrow—mostly young families with houses and children—and gives to those who have money to lend—for example, the wealthy, older Americans who are in or nearing retirement, and foreigners who have lent money to the United States.

THE COST OF DELAY

The enormity of the postponed costs can be measured in a simple way by figuring out how much it would cost taxpayers over the next 12 years to reduce the national debt to the same level it was 12 years ago.

The comparison is best made by measuring the national debt as a portion of the entire yearly output of the nation's offices, factories and farms.

To get back to the 1980 debt level, the United States government would have to levy a roughly 45 percent surcharge on each American's federal income tax bill for each of the next 12 years.

What would it cost the hypothetical Joneses, if the government were to raise taxes enough over the next 12 years to bring the nation's debt back down to the same level it was 12 years ago as a portion of economic output?

The couple would have to pay an extra $3,735 or so every year until the year 2004.

Of course, the United States can't start to pay off the national debt until it stops adding to it. Right now, the debt is growing faster than the economy. To narrow the deficit and reduce the national debt, the government could, for example, phase in a personal income tax surcharge starting at 10 percent next year and rising steadily to 80 percent by the year 2004, according to figures extrapolated from government forecasts.

A payback of that magnitude is inconceivable; it won't and perhaps shouldn't happen. But the increase in the national debt represents money that might have been spent another time for other needs. And the interest payments on that extra debt will continue to constrain future government budgets.

"The single most important lesson of elementary economics that this country must learn," said World Bank chief economist Lawrence H. Summers, "is this: Deficit finance is not an alternative to cutting spending or raising taxes—it is a way of postponing the need for these painful steps."

A more accurate 1988 campaign slogan might have been: no new taxes now, but some whopping big taxes, or spending cuts, later.

No other nation in the world could manage its affairs this way, experts say.

"If we were Great Britain or Australia or Denmark, international financial markets would have brought us up short," said Robert Reischauer, director of the Congressional Budget Office, in recent testimony to the House Budget Committee. "If we were Brazil or some lesser-developed country, the IMF [International Monetary Fund] would have sent a mission to visit with this committee and would have read the riot act to you."

In fact, the IMF does an annual review of the U.S. economy and its contents have been among the best-kept secrets in Washington.

In 1991 the review was diplomatic, but its message clear. Just months after the administration and Congress completed a mammoth five-year deficit reduction agreement with politically painful tax increases and spending cuts, the IMF staff "cautioned against being complacent." It said the United States had to slow down the growth of Social Security and Medicare spending and it said that new taxes were "perhaps unavoidable."

THE SHRUNKEN ECONOMY

Until recently, thrift has been hailed as a virtue. From proverbs such as "a penny saved is a penny earned" to sophisticated looks at return on investment, many Americans have studied the benefit of holding back spending today to earn more money tomorrow.

That standard has not been applied to government.

When an individual or a corporation saves money, the money all goes into what economists call the national savings pool. As long as the money saved isn't stuffed into a mattress, it is invested.

The federal government adds to this savings pool if it runs a surplus and drains from the pool if it runs a deficit. When an individual, a corporation or the federal government borrows money, the money all comes out of that same savings pool.

Like any person or business, the U.S. economy as a whole needs to invest if it is going to grow. That might mean that we spend less now on things we consume—and maybe even have a somewhat small economy now—but in later years the investment will pay off and we will all live better.

The size of the deficit would be less important if the federal government were making more investments that would make tomorrow's economy stronger. But the federal government has been spending less and less on investments in the future—less on education and training, less on public health, less on roads and bridges, and less on research and development.

"Whether a budget deficit is good or bad depends entirely on what the borrowing is used for," argues Robert B. Reich, a professor at Harvard University's John F. Kennedy School of Government and an adviser to Democratic candidate Bill Clinton. "It is bad if we borrow from the future to maintain current living standards; good if we borrow to invest, and invest wisely . . ." Reich said the government is borrowing well over than $300 billion a year, but putting only $121 billion into new public investment.

Government investment includes funding research and development, building bridges and educating children. Government consumption includes the paying of farm subsidies, government salaries or Social Security checks.

Federal investment, broadly defined, declined by 30 percent during the 1980s, according to Summers. Highways wore out faster than they were repaired. Training expenditures declined by two-thirds during a decade in which skills became more important and the pay gap between skilled and unskilled workers widened.

INVESTING IN THE PAST

Today the U.S. government spends more on the past than on the future. For the first time this century, the federal government is spending more on the interest on past debts than on investment.

Reduced investment by the federal government would not matter if people and corporations increased their savings by the same amount. But they haven't. Individual and corporate savings actually dropped during the 1980s, from the 9.6 percent rate that prevailed during the 1960s and 1970s to a 6.6 percent rate in 1989-1990.

That combination of lower private saving and bigger federal budget deficits has forced the United States as a whole to borrow from abroad and sell assets to get money for worthwhile investments. But foreign money has covered only half the shortfall in savings available for investment.

Investment in the U.S. economy during the 1980s has failed to keep pace with levels that prevailed during the 1950s, 1960s, or 1970s. A study by the Federal Reserve Bank of New York says federal deficits account for 70 percent of the decline in investment.

An advertisement of an Isuzu light truck inadvertently boils down the decline in American investment to a sound bite. The ad says the vehicle can go off the road or on the road, and that there really is not that much difference these days. The ad shows a car lurching into an enormous pothole. Having invested little in workers, plants or infrastructure, the U.S. consumer is urged to buy a vehicle made in Japan that is rugged enough to navigate the nation's decaying roads.

"That is as damning a statement of what has happened to the country as anything I've seen," Summers said.

If investments are not made today, then the economy will be smaller tomorrow than it would be otherwise—and each citizen will be somewhat poorer relatively. This is another type of hidden cost from the fiscal policies of the 1980s, and the most difficult to repeal.

SUBTLE EROSION

Because this erosion of living standards happens slowly, most Americans don't notice the effect deficits and lower investment levels have on the economy as a whole.

This is why many economists compare the effect of the debt and deficits to the work of termites, eating away unnoticed at the foundation of the country's economic well-being.

Two economists from the Federal Reserve Bank of New York say the effects already are "striking." The economists, M.A. Akhtar and Ethan S. Harris, said the deficits of the 1980s "cost the nation about 7 percent of its capital stock and 2.5 percent to 3.5 percent of its potential output by 1990."

The nation's capital stock is the total of all the machinery, equipment, buildings and business inventories that contribute to today's production or that generate income.

Translating the Federal Reserve study into dollars and cents, its conclusion suggests that today's economy is about $210 billion smaller than it would have been if the federal budget had been more in balance and if investment had not been siphoned into current consumption.

That means the amount of goods and services produced today is about $800 a year less for every American than it would have been with a more conservative budget policy.

If presidents and Congress had done more to control deficits in the 1980s, there would have been a price for that too: taxes would have been higher and federal spending lower. And the economy might have grown more slowly than it did. But economists agree a more balanced growth in the last decade would have meant a healthier economy today.

"Money that the government doesn't spend doesn't disappear. If the government doesn't borrow money from Wall Street, Wall Street doesn't burn it. It lends it to people to invest in plant and equipment," said Reischauer.

With continued big budget deficits, Reischauer said, "our growth rate will be slower and our living standards in the future will be lower."

Slower growth has ripple effects. Benefits paid to future retirees will come out of a smaller economic pot, meaning that benefits promised today will eat up ever larger portions of tax dollars. The same goes for future interest payments on money the government borrows today.

Thus, the longer the government runs deficits, the harder it becomes to stop running them. Moreover, a smaller economy will have trouble meeting the demands of consumers without inflation.

The smaller economy hits the budget from two sides. While the tax base will provide fewer resources, a more impoverished America will be making more demands for social services, unemployment insurance and other assistance.

"The implications for the national economy of the muddling-through approach [to the deficit] . . . still imply an economy that grows only slowly, with ominous implications for the ability to sustain both the commitments made to the retiring baby boomers and a satisfactory standard of living for the working age population in 2020 and beyond," the General Accounting Office said in a recent report.

The deficit's drag on economic growth calls into question the administration's plan for restoring the federal budget to balance by 1998. That scenario assumes that economy over the next four years will match historic patterns since the end of World War II, with annual growth of 3.2 percent to 4 percent.

But many economists believe that more than a decade of low investment has altered the path of economic growth. The IMF in 1991 estimated that the U.S. economy has a potential growth rate of only 2.5 percent a year.

The IMF said that even if the administration won ratification from Congress of its "pro-growth" initiatives, those measures "appeared unlikely to be sufficient to foster a growth potential as high as envisaged by the administration." Slower growth would mean that the administration's toughest measures are not tough enough.

SLIPPING STATURE?

The final hidden cost of the debt legacy cannot be priced in dollars and cents.

In the early 1980s, President Reagan vowed that he would make the United States "stand tall" again in world affairs. It was an appeal to voters longing for respect after the humiliating taking of American hostages by Iranian militants and with memories of Vietnam still fresh.

Some lawmakers have the nagging feeling that the last 12 years have actually diminished the stature of the United States.

"How are we going to feel as we look at what the economic picture of America is at the end of this century," said Sen. Warren Rudman earlier this year, "with a national debt which at that time will equal the gross national product of all the Third World, with deficits at $800 billion to $1 trillion and foreign governments sitting there with their hands folded and dictating to America the terms and conditions on which they will loan us money to support our past profligacy."

To be sure, the United States still is the world's biggest economic power, with an economy twice as big as Japan's, four times as big as Germany's and larger than the whole European Community. Treasury Secretary Nicholas F. Brady said, "It is time to lay aside the ridiculous myth that the United States is somehow on its way to becoming an economic backwater."

But Summers of the World Bank warns: "A great nation cannot stay great on a shoestring. And the world's largest debtor cannot endure as its largest power. The sheriff cannot ride into town high on his saddle when he is in hock to every one he meets."

Rudman says, "If we were at war I have no doubt that people . . . would rise to the height of patriotism . . . And yet, in a time when we are at war economically, when the security of America is being drained drop by drop, we cannot seem to get it together."

[From the Washington Post, Sept. 28, 1992]

THE MORTGAGE ON AMERICA: ANALYSTS SEE CAUSES OF DEBT CRISIS AS BOTH POLITICAL AND ECONOMIC

(By Steven Mufson)

When Ronald Reagan took office in 1981, he pointed to that year's "runaway deficit of nearly $80 billion" as evidence of a federal budget gone awry. Citing a national debt approaching $1 trillion, he asked Congress, "Can we, who man the ship of state, deny that it is somewhat out of control?"

Today, with the annual deficit and accumulated national debt four times as large, that ship has sprung a giant leak. Reagan may have broken with the "tax-and-spend" policies of the past, but he and Congress embarked on a "spend-and-borrow" program that has thrown the nation's accounts out of balance ever since.

How did this happen? Most economists and lawmakers agree that at the heart of the nation's deficit crisis lies a political failure, as much as an economic one. "Blame is equally shared by everyone—including the American people," said Rep. Leon E. Panetta (D-Calif.), chairman of the House Budget Committee.

Reagan swept into the presidency amid a chaotic domestic economy. Spurred in part by soaring oil prices, inflation had hit 13 percent a year, and the Federal Reserve under Chairman Paul A. Volcker had raised interest rates sharply to throttle back the economy and halt inflation.

Reagan promised to eliminate the deficit, cut taxes and sharply increase military spending, a feat that independent presidential candidate John Anderson said could only be done "with mirrors," and that then-presidential candidate George Bush called "voodoo economics."

Reagan won support for his plan by embracing a theory known as "supply-side" economics that was touted by a small group of economists and journalists. The theory suggested that the federal government could cut tax rates and still get more tax revenue because Americans would work harder, earn more and pay more taxes.

With White House support, Congress passed the Economic Recovery Tax Act of 1981, known as the Kemp-Roth bill; it cut personal income tax rates by 25 percent between October 1981 and July 1983. A big tax increase in 1982 offset some of those cuts.

The idea was, in the words of Harvard University economics professor Benjamin Friedman, "a fairy tale." Though Americans do work somewhat harder when their take-home pay is greater, that extra work is "nowhere near as large as would have been necessary to validate the widely publicized claim that cutting personal tax rates across the board. . . would increase tax revenues," Friedman said.

In fact, despite the economy's vigorous 6.5 percent growth rate following the end of the recession in the last three months of 1982, individual income tax receipts actually fell slightly during 1983 because of the tax rate cuts. In 1984, as the economy continued to grow, tax receipts barely crept back to the levels of 1982.

Not everyone who supported the tax cuts believed the "supply side" theory. Reagan's first budget director, David A. Stockman, wanted to roll back welfare programs, and he supported the big tax cut because he believed that the specter of gigantic budget deficits would force Washington "to dismantle its bloated, wasteful and unjust spending enterprises or risk national ruin."

A WATERSHED DEAL

Faced with public demands for lower taxes and big government spending the Reagan administration and Congress struck a Faustian bargain—and adopted both. The result: huge budget deficits.

"It was like taking a bite of the apple," said Robert Glauber, who was undersecretary of the Treasury for finance in the Bush administration until he returned to teach at Harvard this year. "When Reagan cut taxes and Congress didn't meet it by cutting spending and the next day still dawned, that was a watershed."

What happened was reminiscent of the plot of a Maxwell Anderson play called "Both Your Houses." Anderson, a popular playwright during the 1930s, concocted a tale about an idealistic young member of Congress named McLean who gets appointed to the appropriations committee. Appalled by the government spending process, McLean loads the bill down with what he believes to be an absurd number of pork barrel projects in an effort to shame Congress into rejecting the spending bill. Of course, the bill sails through both houses.

As the play ends, the country is worse off than if McLean never came to Washington. And the tragicomic ending lends meaning to the title of the play, which echoes the dying words of Mercutio in Shakespeare's "Romeo and Juliet": "A plague on both your houses!" he said. "They have made worms' meat of me."

"Ronald Reagan provided conservative cover to increase the deficit and Democrats were not that big on reducing the deficit to begin with," says Panetta. And it came just as the Federal Reserve had jacked up interest rates to quash inflation, forcing the federal government to borrow at a very high cost.

The rollback in federal taxes also came just as rapid growth of medical costs and the needs of a growing population of elderly Americans were driving up the cost of Social Security, Medicare and Medicaid. Spending under those programs rose automatically every year without new legislation. To stop that growth, Congress needed to act. Instead Democrats, and many Republicans, defended the programs as ardently as Reagan defended tax cuts and military spending.

The Reagan administration's failure to adopt new taxes while continuing big spending was "a willful act of ignorance and grotesque irresponsibility," Stockman later wrote in an indictment of his own role in fashioning the federal budget.

In 1986, Stockman urged Democratic and Republican politicians to "together . . . tell the American people that a few ideologues made a giant mistake, and that the government the public wants will require greater sacrifices in the future in the form of the new taxes which must be levied."

VOTER RELUCTANCE

But sacrifice is not a popular political platform. Tax rebellions have put politicians on the defensive, from California, where voters in 1978 endorsed a rollback of state taxes in Proposition 13, to Massachusetts, where voters in 1980 backed the property tax-cutting Proposition 2½, to Fairfax and Prince Georges counties, where taxpayers led rebellions in the spring of 1990.

In presidential campaigns, voters have not rewarded candidates who spell out how they plan to cut the federal deficit. As a result, many politicians say that voters, who also went deep into debt in their personal finances, bear responsibility for the big deficit spending of the 1980s.

John Anderson's message of fiscal responsibility helped him gather just 7 percent of the vote in 1980. Walter Mondale, the losing candidate in 1984, told voters that he would combine spending cuts and tax increases to cut the deficit. "Everyone in this race, including Mr. Reagan, is going to raise taxes," Mondale said. "The question is how are they going to be raised."

Mondale underestimated just how much debt the economy, the White House, Congress and the American public could swallow. Four years later, tough measures to combat the deficit still hadn't been taken. While Democratic nominee Michael Dukakis stressed that more debt was accumulated under eight years of the Reagan presidency than during the first 200 hundred years of American independence, George Bush rode to victory promising "no new taxes."

HINT OF NEW TAXES

After the election, Bush's budget director, Richard G. Darman, hinted in congressional testimony that new taxes might be needed. Darman and other Bush advisers believed that if Bush waited until the fall of 1990, he could sign on to new taxes without suffering the wrath of voters. Darman advocated a budget summit of White House officials and congressional leaders at which new taxes would wind up in a deal by "immaculate conception" without Bush taking political blame.

But Bush's pledge made negotiations to eliminate the budget deficit virtually impossible. For months during 1990, Democrats waited for Bush to renounce his pledge before starting serious talks.

"There were a lot of scars left from the Mondale campaign," said Panetta, the House Budget Committee chairman. "Reagan made taxes a dirty word, though he had raised some taxes. Politically, the Republican Party turned it into a real hammer in race after race and members of Congress became sensitive to raising taxes without the president's cover."

Republicans also wanted to force Democrats to back away from supporting costly Medicare and Medicaid programs, in the past powerful weapons in Democratic campaigns.

Once Democratic leaders and the White House sat down seriously, they confronted the consequences of years of delay. Interest payments on the national debt had soared, meaning deeper cuts in programs were needed to reduce the deficit.

An initial bargain endorsed by the White House and Democratic congressional leaders failed to collect a majority of votes from lawmakers of either party, and marked a split in the Republican Party that still dogs the president. Right-wing Republicans have never forgiven Bush or Darman for what they see as a betrayal on taxes. As the bickering dragged on, the government briefly ran out of cash and shut down, and Bush's public approval ratings plunged to new lows.

Earlier in 1990, Darman had said a budget summit could produce a "big fix" for the deficit. And in the end, lawmakers came up with ways to cut nearly $500 billion from the next five years' projected deficits.

But that still left a government facing enormous deficits. Even as lawmakers defended the deal, they knew the deficit would set new records.

An element of despair set in. A joke told during the 1990 budget negotiations between congressional leaders and the Bush administration went like this:

President Bush, then-secretary of state James A. Baker and Federal Reserve Chairman Alan Greenspan are playing a round of golf when there is suddenly a clap of thunder, a bolt of lightning and God appears at the ninth hole. He offers to answer any questions they have.

Baker asks, "When will there be lasting peace in the Middle East?" God replies, "Not in your lifetime."

Greenspan asks, "When will inflation hit zero percent?" God replies, "Not in your lifetime."

Bush asks, "When will the Federal budget be balanced?" God replies, "Not in My lifetime."

TWO-SIDED STALEMATE

The big budget deal in 1990 failed to remove either the political or economic barriers to solving the deficit problem.

The annual budget deficit is still pushing up the national debt at a mind-boggling pace; $1 billion a day, $41.7 million an hour, $11,574 a second. The Government borrows more money every year than is saved by all American households.

While the national debt held by the public grew by about $1.3 trillion under Reagan, it has grown by more than $1 trillion under Bush. The problem remains structural: The Federal Government collects $18.90 in tax revenue for every $100 in economic output, but it spends $22.90, according to the General Accounting Office, Congress's auditors. Spending is slightly higher than historical levels and taxes are about the same.

The political stalemate remains too.

The "no new taxes" pledge still haunts the Bush administration. Conservative Republicans and voters blame the President for breaking the pledge, though few people could name the taxes that were raised under the agreement. (It added 10 cents a gallon to the price of gasoline, imposed luxury taxes on boats and jewelry, raised the Medicare tax for people earning between $55,500 and $120,000 a year and raised the top marginal tax rate to 31 percent from 28 percent on top income earners.)

In 1990, Panetta said that for years "we thought somehow we could have it all—we could cut taxes, raise defense spending, raise benefits—and the bill would never come due." At the time, he and other lawmakers thought the budget deal marked the end of that era of illusion.

But in the 1992 campaign, illusions are back.

"I think I have finally figured it out after 11 years," Rudman said earlier this year. "And that is that we are afraid to level with the American people because they have been lied to for so long. Maybe 'lie' is a strong word. . . . Maybe we have simply not told them the whole truth."

"This is not a question of the real economy," said a European director of the International Monetary Fund. "This is a question of the political system: that no one is able to explain to people that they should raise taxers."

Though the nation's fiscal imbalance has rarely reached such a critical point, the failure of lawmakers to impose taxes in an attempt to curry favor with voters is a problem as old as the republic.

Slightly more than 200 years ago, as the Constitutional Convention approached and as populist state governments were wildly printing money and repudiating debts, Alexander Hamilton appealed for Americans to recognize the need for taxes. Two centuries later, his plea retains its note of urgency.

"How is it possible that a government half supplied . . . can provide for the security, advance the prosperity or support the reputation of the commonwealth?" said Hamilton, who became the first secretary of the Treasury. "How can it ever possess either energy or stability, dignity or credit, confidence at home or respectability abroad? How can its administration be anything else than a succession of expedients, temporizing, impotent, disgraceful?"

[From the Washington Post, Sept. 28, 1992]

ECONOMISTS ARGUE OVER SIZE OF THE BUDGET DEFICIT PROBLEM

(By Steven Mufson)

A few economists believe that big budget deficits do not matter, or that their dangers are overblown. They range from economists on the left, such as Robert Heilbroner of the New School of Social Research in New York, who want the government to keep up social spending and insurance programs, to Paul Craig Roberts, who would have the government institute new tax cuts to stimulate the economy.

Left and right meet, however, when they try to explain, as Heilbroner once put it, that "to worry about the present size of the debt is to magnify a mouse into a monster. It is simply a false alarm."

Jeff Faux, president of the liberal Economic Policy Institute, argues that if rapid deficit reduction is made the highest priority, the resulting budget cuts and tax increases would inevitably cause higher unemployment for some period of time.

"They say we need to sacrifice, but for how long? Five years? Ten years?" Faux asked. Noting that advocates of rapid deficit reduction frequently speak about its impact on the next generation, Faux argued that certain budget cuts—in education and job training, for example—might be even worse for the next generation.

"You don't help your children by denying them the money to go to school so they can pay less taxes in 10 years," Faux said.

Jude Wanniski, one of the founding fathers of supply-side economics, says tax cuts in the face of the budget deficit are a risk government should be willing to take to create economic growth. "Either the risks are taken by the government, or they're taken by the people," Wanniski said.

Jeff Bell, another early supply-sider and the author of "Populism and Elitism," said elites tend to worry more about the deficit than do average voters.

Those who minimize the dangers of the debt make their cases in several ways:

Argument: The national debt—113.9 percent of gross domestic product, 117 percent of gross national product—was bigger than the entire annual output of the U.S. economy after World War II; now it's only 53 percent of the economy's output.

Rebuttal: Most mainstream economists reply that the national debt is only 51.3 percent of GDP if one excludes the money owed to the Social Security trust fund. Including that money, the federal government's debt comes to nearly 68 percent of GDP. While the money owed to the Social Security trust fund is usually not included in debt owed "to the public," a huge portion of the public is expecting to get that money in retirement benefits a few years from now. It also is an obligation of the government, even though default carries more political than economic repercussions.

In addition, while it is true that the national debt was bigger when measured against the size of the economy at the end of World War II, the interest cost on the national debt has never been bigger. At the end of World War II, the United States spent 1.9 percent of GDP on interest, and now it spends 3.4 percent. That difference translates into an extra $90 billion in spending in 1992.

In the wake of the Great Depression, the government borrowed money at cheap rates. Today the government borrows money at rates two to four times as high as it did during World War II. Now interest payments consume a gigantic portion of the current budget, squeezing other areas of spending.

Moreover, much of the money borrowed during World War II went into expanding the industrial capacity of the country. Today, much of the government is a checkcashing operation, cashing checks paid in taxes and issuing checks to pay individuals' health, retirement or veterans' benefits. Most of this won't help the economy grow any faster in the future.

Finally, the needs of the country were different then. At that time, there was no need to start saving to pay for a huge growth in the number of retirees.

Argument: We can grow out of the deficit.

Rebuttal: Economists have a simple rule of thumb. The country's debt should not grow faster than the economy grows. That way, the portion of national income used to pay the interest on debt does not grow. The only exceptions should be wartime or times of economic crisis.

But the national debt, fueled by record annual budget deficits, is growing faster than the economy.

Without adjusting for inflation, the economy has been growing an average of 4.6 percent a year during the Bush administration while the national debt has grown at a rate of 14.2 percent a year. Even without counting the cost of savings and loan bailout, the national debt has been growing at a rate of more than 12.5 percent a year.

At the current rate, the national debt will hit 78.3 percent of GDP by 1997 and more than 89 percent by 2002, according to forecasts by the Congressional Budget Office.

Argument: We owe the money to ourselves.

Rebuttal: We owe *most* of it to ourselves. If we didn't, the economy would have screeched to a halt long ago. But we do owe 15 percent to 20 percent to foreigners and that includes much of the debt that pays the highest interest rates. That means tens of billions of dollars a year, or about one dollar out of every $100 in output, leaves the country altogether. This drains money needed for saving and investment.

Borrowing money from abroad hasn't been sufficient to make up for the savings and investment dollars the federal government is sucking out of the economy. As a result, private business is selling off assets to foreigners who have enough money to make needed investments here.

In other words, federal government borrowing has forced the United States to sell off chunks of the economy to foreigners. The United States has gone from being the largest creditor nation to largest debtor. That is like saying that the largest business in the world has sold off more than 10 percent of its shares to foreign investors while continuing to pay out big dividends to shareholders.

Interest payments that go to American citizens and institutions and stay inside the U.S. economy are less worrisome than those that go to foreigners.

But there are important social consequences to the growing debt we owe to ourselves. It both redistributes income toward wealthy individuals and institutions and places more of the burden of investment, education, health and other programs on private individuals while the government's spending is increasingly devoted to paying interest.

Most of the national debt is owned by big banks, financial institutions and wealthy individuals. The interest payments on the debt therefore effectively redistribute money from ordinary working people to the top income earners and big financial centers in America.

Argument: We are never going to pay it back. We'll just roll the debt over.

Rebuttal: In the early 1800s, the United States came close to paying off its debt. No one expects that to happen again.

Still, the debts incurred already represent opportunities lost to do other things with the money spent. And to the extent that federal spending is squeezed in the future to keep the national debt from growing, past debts represent future opportunities squandered.

Nothing shows that more than the current economic slowdown. The United States continues to roll over its debt, but to keep it from getting out of hand it has been impossible to cut taxes or boost spending to stimulate the sluggish economy.

So how big should the deficit be?

Most economists say that the deficit ideally should be much smaller or that the federal government should even be running a small surplus in order to save up money needed to pay retirement benefits when the baby-boom generation starts to retire early in the next century.

"I think we ought to be aiming for a small surplus in the budget, around 1 percent of GNP," said Charles Schultze, who was chairman of President Jimmy Carter's Council of Economic Advisers. He cautions that it would be insanity to get to that target in one swoop, but believes the federal budget should move gradually in that direction.

Murray Weidenbaum, President Reagan's first Council of Economic Advisers chairman, said the appropriate level is "lower than it is now." He said that "in an ideal world we ought to run a surplus because we are a low-saving society." In other words, because private individuals and corporations do not save and invest as much as they should, the federal government should compensate.

But Weidenbaum cautioned that "talking about a zero deficit is like talking about 4 percent unemployment. It is so far off in the future that it deflects you from current reality."

He said that if the deficit could be reduced to $50 billion—a little less than 1 percent of GNP—"it would no longer be a pressing problem in a $6 trillion economy."

Michael J. Boskin, chairman of Bush's Council of Economic Advisers, said that "ideally the government should be running slight budget surpluses" because of the country's low savings rate. But he adds, "We have such a long way to go to get there, we just have to start to move in that direction."

[From the Washington Post, September 28, 1992]

U.S. PREFERS TO PRESCRIBE, RATHER THAN TAKE, TOUGH ECONOMIC MEDICINE

(By Steven Mufson)

When it comes to the ailing Russian economy or Third World nations, the United States is quick to back International Monetary Fund prescriptions.

But when it comes to taking a dose of the same medicine, the United States is reluctant.

The language of the 1991 IMF report on the U.S. economy is diplomatic, but its message is clear.

The IMF takes a dim view of mammoth U.S. budget deficits, which, it says, are slowing down the economy's long-term potential for growth.

The fund recommends sterner discipline on spending and increases in taxes. And it says that the Bush administration's oft-touted "pro-growth initiatives" won't substitute for tough fiscal measures.

The IMF's updated 1992 report contains a similar message and discusses some possible solutions, including a 5 percent value-added tax.

The reports are generally kept secret, but a copy of last year's report still sheds light on long-running fiscal policy debates.

Last year's report was written just months after Congress and the White House had completed a five-year agreement designed to reduce projected deficits by $500 billion.

The IMF, however, "cautioned against being complacent." Even after subtracting one-time hits like the recession and the savings and loan industry cleanup, the IMF estimated that the federal government still had a deficit equal to about 3 percent of what the U.S. economy produces. That outstrips exceeds IMF standards for a major industrial nation like the United States and exceeds what Bush administration official estimates concluded at the time.

The Bush administration told the IMF that it would take more steps to rein in the deficit after fiscal 1993. The next fiscal year starts Oct. 1, so the delay would put off action until after the 1992 presidential election.

But the IMF warned that "there was a danger that a delay in action could well be followed by further delays, with increasingly important long-term consequences."

The fund and the Bush administration differed on taxes. The IMF staff said that while spending restraint was preferable, new taxes were "perhaps unavoidable." The IMF cited "a number of possible measures." These in-

cluded closing tax loopholes, ending tax subsidies and raising gasoline or other energy taxes.

But just as the Bush administration has ducked the tax issue with the American electorate, it evaded it with the IMF. The U.S. delegation "appeared reluctant to get into a detailed discussion at this time on these issues which they felt could be explored with greater relevance at a somewhat later stage," the IMF report said.

During the election campaign, top administration officials such as Treasury Secretary Nicholas F. Brady and Budget Director Richard G. Darman have been even more adamant in rejecting tax increases to cut the deficit.

The American obstinacy is thick with irony. This year the IMF and major economic powers, including the United States, are threatening to cut off international loans and aid to countries such as Poland and Russia for running excessive government budget deficits.

The IMF is demanding that Poland and Russia reduce their deficits to 5 percent of economic output or less. The U.S. deficit forecast for the current fiscal year is 5.7 percent of economic output. The U.S. delegation's failure to cooperate is a luxury associated with the size of the United States; it is big enough to write the rules of the IMF and to violate them at the same time—at least for a while.

But the IMF warned that the result would be a smaller economy and slower growth. The Bush administration told the IMF that it believed the U.S. economy could grow at about 3 percent a year. Darman, director of the Office of Management and Budget, recently repeated that claim, saying the U.S. economy's growth path was around 3.2 percent.

But the IMF said the potential growth of the economy has slowed to about 2.5 percent a year, largely because low national savings rates and big budget deficits were cutting into investment.

"That the adverse consequences of low U.S. national saving will not be felt strongly right away because of the existing economic slack should not obscure the advantage of prompt action," the fund said.

[From the Washington Post, Sept. 29, 1992]

THE MORTGAGE ON AMERICA: POLITICIANS WAVERING ON DEBT CRISIS ISSUE

(By Steven Mufson)

Of all the federal government's commitments, none is more sacred than its promise to assist the country's elderly citizens with payments from the Social Security retirement fund.

Not even this pledge, however, can escape the twin realities of a federal budget far out of balance and a growing population of retirees whose claims on scarce tax dollars will collide with the government's other spending priorities.

Michael J. Boskin, chairman of President Bush's Council of Economic Advisers, warned in 1986 that "a confrontation between workers and retirees will arise [involving trillions of dollars] that will create the greatest polarization along economic lines in our society since the Civil War."

Six years later, the costs of a decade of escalating budget deficits and federal debt are even more clear. The deep spending cuts and new taxes needed to close the budget gap threaten to pit the old against the young, the healthy against the sick, cities against suburbs and rich against poor.

In the heat of the election campaign, neither President Bush nor Gov. Bill Clinton has gone very far in talking about the choices that loom ahead.

In Ross Perot's words, the national debt "is like a crazy aunt we keep down in the basement. All the neighbors know she's there, but nobody wants to talk about her."

While tax increases may be "unavoidable" as remedies to the nation's debt and deficit problems, according to the International Monetary Fund, Bush has dangled the prospect of new tax reduction, including an across-the-board cut and tax breaks for small businesses, real estate developers, first-time home buyers, savers and investors.

And while "entitlement" programs—Medicare, Medicaid, Social Security, veterans payments, student loans and farm price supports—make up the lion's share of government spending, Clinton has mentioned practically no cuts in those programs. Bush has talked about a target to limit growth of those programs, but he has not spelled out how he plans to hit that target.

At the other extreme stands Perot who proposes to slash government spending or increase taxes by $754 billion over the next five years, a staggering sum that could throw the already weak economy into a much deeper crisis, according to economists.

"I think it would be bad policy to do austerity in full force without paying attention to the rest of the economy," said James Tobin, a Nobel Prize-winning economist at Yale University. "There are times for austerity and this is not one of them."

A time for budget austerity will come, however, said Tobin. Once the economy recovers, Tobin would favor a budget deficit of about $150 billion (excluding Social Security funding), less than half current deficit levels.

CLEAR CHOICES

While the choices for making these cuts may be politically explosive, they are not mysterious. Every year, the Congressional Budget Office publishes a widely ignored book of options about how to reduce the deficit. This year it ran to 350 pages.

The biggest deficit reduction options on lists such as the CBO's include:

A higher gasoline tax.

Americans pay less than a third as much as Europeans do for gasoline. Every penny increase in the gasoline tax would raise $1 billion. A 50-cent increase would raise $50 billion a year and cut down on energy consumption, while still leaving the United States with the cheapest gasoline in the world. Low-income commuters would suffer the most. The average motorist would pay about $300 a year more in gasoline taxes.

Perot would increase the tax by 10 cents in each of the next five years. Neither Bush nor Clinton favor future gasoline tax increases.

Slow down the rapid increase in "entitlement spending."

These programs do not require any new annual appropriation by Congress, and they grow automatically as more people qualify for benefits by meeting the requirements of age or income levels.

The combination of retirement payments, unemployment insurance, food stamps, Medicare and Medicaid—plus interest payments on the national debt, which also grow automatically—will account for 58 percent of all federal spending next year.

When Bush and others talk about cutting entitlements, though, most often they are using a euphemism for reductions in health care spending for the elderly and the poor.

These are the fastest-growing parts of the budget. Medicare and Medicaid spending are projects to grow from $198 billion this year to $349 billion in 1997 as the populations of the elderly and needy expand. Squeezing payments to doctors and hospitals won't be enough. Most proposals for cutting government spending mean requiring that poor and elderly recipients pay more for their own health care.

KEEPING GROWTH DOWN

Bush says he wants to keep the growth of Medicare spending down to the rate of increase in population plus inflation. That would require $145.8 billion in spending cuts over five years. But in his 1993 budget, Bush proposed cuts totaling only one-tenth that much. Clinton said he plans unspecified cost controls. Perot would make the elderly pay 35 percent of the cost of their benefits and extend the existing 1.45 percent tax to all income. Currently the tax only applies to the first $130,200 in income.

Tax a bigger portion of Social Security benefits.

Senior citizens who make more than $25,000 a year as individuals or $32,000 a year as couples pay taxes on half of their Social Security benefits. Raising that portion to 85 percent of benefits would affect 18 percent of retirees and raise about $30 billion over five years. Such treatment would be similar to the taxation of private pensions.

Impose a value-added tax, or VAT.

This is a form of sales tax used in more than 50 countries that taxes the total value of sales of all businesses. It allows firms to claim a credit for taxes paid on their purchases of goods so that they are not taxed twice. If it excluded food, housing and medical care, a 5 percent VAT would raise about $70 billion a year. It would discourage consumption and boost investment, which economists say would help the economy. But it is a regressive tax that places a heavy burden on the poor.

Eliminate waste and political "pork barrel" spending.

This is the most talked-about and most elusive of the measures to reduce the budget.

It is elusive because the entire domestic discretionary spending budget—including the more than a dozen government departments and agencies usually accused of wasteful pork barrel spending—make up just 15 percent of all government spending.

A 10 percent across-the-board cut would save $22.6 billion a year, but it would hurt programs ranging from space exploration to Head Start, from federal law enforcement to tax collection, from the National Park Service to aid to the District of Columbia.

Cut military spending.

Bush plans a gradual decrease in military spending. Clinton would cut an additional 5 percent. Perot would fall close to Clinton's target. He wants $40 billion less military spending than Bush does over the next five years.

So far, the numbers offered by the main candidates don't add up.

Bush's promise of new tax cuts would be costly: Even a 1 percentage point cut in personal income tax rates would reduce government revenue by about $25 billion a year. In addition, Bush's proposal to permit people to earmark part of their tax dollars to slow the growth of the national debt could cost as much as $50 billion a year. And he would need more than $30 billion a year to pay for his health plan, according to administration estimates.

To do these things while keeping the deficit from growing would take $400 billion to $770 billion in spending cuts over the next five years. But Bush has proposed setting a target that would require no more than $290 billion in spending cuts over five years to

cap the growth of Medicare, Medicaid and other entitlement programs.

To protect Social Security, honor interest due on the national debt and protect his military spending proposals, Bush would have to trim nearly 25 percent of all other federal spending to cover his new tax cuts and reduce the deficit, according to Office of Management and Budget figures.

Clinton promises ambitious new federal spending programs with a cost of $219 billion over four years—not including the unspecified tab for his universal health insurance plan. While he describes in detail how he would pay for the programs other than health, he does not do much else to trim the federal budget deficit beyond where it would be without any change in government policy.

CLINTON'S BLUEPRINT

Clinton says that the government could save billions by operating more efficiently and collect much more in taxes by a more aggressive enforcement policy toward foreign corporations. But many experts say he exaggerates the potential revenue gains.

Harvard University economics professor Martin Feldstein, a former Reagan administration economic adviser, said Clinton's plans would make the budget deficit $26 billion bigger than it would be otherwise by 1996.

The problem for the candidates—and the electorate—boils down to choices. The failure to make those choices is a choice by default. And that could lead to other, still tougher issues involving deficits and debt.

One strategy for easing the debt burden is for policy makers to tolerate higher levels of inflation. That would cause the purchasing power of the dollar to shrink and that would make it cheaper for future governments to repay old debts.

But inflation would damage the economy in many ways, straining the banking system, hurting workers whose wages can not keep up with rising prices and punishing people who had been thrifty and had saved money in the past.

A second issue is whether to bite into the Social Security trust fund, a huge government account that takes in payroll taxes from employers and employees and pays out benefits to Social Security recipients. Right now, the fund shows a surplus—it has more money than it currently needs. That surplus will be needed when the baby-boom generation hits retirement age in about 20 years.

But the surplus is being spent to help the government handle today's debts.

MONEY BEING LENT

To keep up the appearance that Social Security is an insurance fund, the bookkeepers at the Office of Management and Budget say that the money paid into the fund is being "lent" to the federal government. And about $1 trillion of the federal government's $4 trillion accumulated debt is owed to Social Security and other trust funds. But there are no assets—no stock or bond certificates—in the Social Security trust fund; only the government's commitment to make good on the benefits it has promised future retirees.

Though defaulting on national debt owed to the public would cause economic chaos worldwide, the federal government can essentially "default" on part of the debt owed to the Social Security trust fund by cutting back on benefits paid to future retirees. It can raise the retirement age, as it did under the 1983 agreement, or it can slow down the cost-of-living adjustments to benefits.

One senior Bush administration official views this as inevitable. Without such changes, Social Security payments will grow from $275 billion this year to $500 billion by the turn of the century.

"When the baby-boom generation retires . . . hard-pressed workers will certainly resist tax increases of 5, 10 or 15 percentage points" that will be needed to pay for previously promised retirement benefits, Boskin, Bush's economic adviser, wrote in 1986. "The larger elderly population, meanwhile, will push for these tax increases to finance not only existing benefits, but also new ones."

The way the trust fund is being managed dramatizes critics' accusations that it is no trust fund at all but a spending program in which working people support the elderly now—and count on receiving similar support when they retire. Reducing future benefits would undermine support for the Social Security tax.

A third issue is the relentless pressure of rising health care costs. So far the candidates talk mostly of expanding health programs to cover the 40 million or so Americans who do not have insurance. But if debt and deficit control were the top priority, government would have to be reducing coverage, not expanding it.

Many political leaders doubt that the country can swallow the measures needed to cure the budget imbalance, especially when political leaders continue to offer magic fixes such as exaggerated promises of growth or the illusion of eliminating waste, as Perot initially put it, "without breaking a sweat."

"Many complain about wasteful projects and foreign aid," said Sen. Warren B. Rudman (R-N.H.). "But if we eliminate all domestic discretionary spending—not the wasteful parts, but all of it—and all foreign aid in this fiscal year, we would still be left with a deficit of over $150 billion, an amount considered inconceivable a short 10 years ago when I came to the Senate."

TWO CONTRARY NOTIONS

The difficulty of coming to grips with the nation's deficits force Americans to confront two contrary notions of government: government as the problem and as the problem-solver.

According to the broad vision of President Reagan, government was the problem. Tax reduction and limiting the role of government would invigorate the private sector and a growing economy would help all, he said. Bush during his campaign has echoed that theme, though neither he nor Reagan always lived up to it. Now Clinton is putting forward a vision of a more activist government.

No matter which one takes the country forward, their agenda will be shaped by the constraints of the nation's annual deficits and a legacy of debt.

[From the Washington Post, Sept. 29, 1992]

THE MORTGAGE ON AMERICA: AS AN ISSUE, THE DEFICIT DOESN'T PLAY IN PEORIA, POLITICAL PROS WARN

(By E.J. Dionne, Jr.)

There is a very good reason President Bush and Bill Clinton have not made deficit reduction the central issue of their campaigns: To do so, say poll takers and political strategists, would be something close to political suicide.

It's not that voters dismiss the deficit as unimportant. It's that they see deficit reduction as being far less vital to them personally than getting the economy to grow and to create more jobs. For many voters, the link between deficit reduction and job growth is obscure or nonexistent.

Voters, the public opinion specialists say, also are wary of candidates who call for "sacrifice," since they strongly suspect the sacrifice will be asked of them, but not of everybody else. And after a long recession, many voters—especially those of modest means—think they have already been asked to sacrifice too much.

Finally, the electorate is so skeptical about the workings of government that many in its ranks think that much of what the government does is wasteful. In five Washington Post/ABC News polls conducted in 1990 and 1991, voters said that an average of 46 cents of every dollar the federal government collects in taxes is wasted.

Therefore, a great many voters do not believe politicians who say that deficit reduction would require either cutting popular programs or raising taxes.

The result, said Karlyn Keene, a resident fellow and public opinion specialist at the American Enterprise Institute, is that the Republicans before 1980 and the Democrats since then have always failed when they made the deficit a central theme of their campaigns.

"The Republicans beat the Democrats over the head with it for years and it didn't work," she said. "The Democrats then beat the Republicans over the head with it, and that didn't work either."

It should therefore not be surprising, she said, that neither former Massachusetts senator Paul Tsongas in the Democratic primaries nor Ross Perot, at least in the first phase of his campaign, had much success with the deficit issue.

"People can't relate to it," Keene said of the deficit. "It's too big. It doesn't touch their lives personally. It's one of those big numbers and it's hard to wrap your arms around it. And nobody knows how to deal with it."

Linda DiVall, a Republican poll taker, said she regularly advises the candidates she works for to stay away from talking about entitlement cuts to balance the budget. "I say to Republican candidates: 'As a challenger, you cannot afford to deal with the whole question of entitlements. . . . the Democrats will eat your lunch if you try that early on."

Mark Mellman, a Democratic poll taker, said that if a candidate told him that he wanted to call for big tax increases to cut the deficit, he would reply: "You ought to do what you believe is important, but you're going to lose."

"There's a fundamental 'dissensus' in this country on how to achieve deficit reduction, and no politician, whether running for president, senator or Congress, wants to walk into the middle of that kind of dissensus." Mellman said. "Given a choice between running on an 80-20 issue or a 50-50 issue, people will campaign on an 80-20 issue every time."

Both DiVall and Mellman believe it is possible to create a consensus for deficit reduction, but only after a politician is elected and develops the trust of the electorate. "Until somebody forges a consensus on this—and it takes presidential leadership to forge a consensus on deficit reduction—it's not going to happen," Mellman said.

Robert Shapiro, an economic adviser to Clinton, believes deficit reduction should be an important presidential goal, but argues that candidates are quite rational not to make the deficit the highlight of their economic message.

"A candidate who just says, 'I'll raise your taxes and cut your benefits,' is saying, 'You may be in tough shape but that's not the

most important thing to me, something else is the most important thing to me,'" Shapiro said. "You have to make clear to people that what you're worried about is that they're in tough shape."

The polls suggest that this analysis is correct. A New York Times-CBS News Poll published last week, for example, asked voters: "What one issue do you wish the candidates would talk about most?" The survey found that 46 percent named the economy or unemployment, 8 percent listed health care, and 7 percent listed education. The deficit came next at just 6 percent.

Still, the deficit is an important issue to political elites—the people who appear on television shows and write op-ed columns—and also to Ross Perot. So candidates cannot deal with it lightly.

Thus, Gene Sperling, a Clinton economic adviser, may have come up with the most politically savvy approach yesterday after meeting with Perot and his supporters in Dallas.

"We showed them how committed we are," Sperling said, "to getting the deficit down without hurting economic growth." Just about nobody disagrees with that.

Mr. SIMON. Mr. President, I rise to enter these articles in the RECORD because, Mr. President, in 2 days the next fiscal year begins. In the next fiscal year, you will be interested, we will have these expenditures: For defense, this is in outlays, $291 billion; for Social Security, $300 billion; and gross interest, $307 billion. This next fiscal year for the first time in the Nation's history interest will be the No. 1 expenditure of the Federal Government.

It is a milestone, unfortunately an unhappy milestone, in the history of this country.

Let me just comment briefly on what Mr. Mufson says in two of the three articles. He quotes Lawrence H. Summers, the World Bank chief economist, saying:

> The single most important lesson in elementary economics that this country must learn is this: Deficit finance in not an alternative to cutting spending or raising taxes—it is a way of postponing the need for these painful steps.

"A more accurate 1988 campaign"—this is no longer quoting him but quoting the article itself of Mr. Mufson—"slogan might have been: No new taxes now, but some whopping big taxes, or spending cuts, later."

Then also, Mr. Mufson says:

> Today the U.S. Government spends more on the past than on the future. For the first time this century, the Federal Government is spending more on the interest on past debts than on investment.

I might add that is using net interest rather than gross interest. I think the figure that should be used is gross interest, as our colleague from South Carolina, Senator HOLLINGS, has pointed out several times. For net interest, we subtract the interest earned by the Social Security trust funds, and the other trust funds. The real interest expenditure by the Federal Government is the gross interest expenditure.

He also says:

> Because this erosion of living standards happens slowly, most Americans don't notice the effect deficits and lower investment levels have on the economy as a whole.
>
> That is why many economists compare the effect of the debt and deficit to the work of termites, eating away unnoticed at the foundation of the country's economic well-being.

Later he quotes Robert Reischauer, head of the Congressional Budget Office, "Money that the Government does not spend does not disappear. If the Government does not borrow money from Wall Street, Wall Street does not burn it. It lends it to people to invest in plant and equipment," said Reischauer. "With continued big budget deficits," Reischauer said, "our gross rate will be slower and our living standard in the future will be lower."

The New York Federal Reserve study shows very clearly that the deficits of the past decade have eroded substantially our gross national product. It quotes our colleague, Senator WARREN RUDMAN, as saying:

> If we were at war, have no doubt that people would rise to the height of patriotism, and yet in a time when we are at war economically, when the security of America is being drained drop by drop, we cannot seem to get it together.

I think that is the reality, and it is the reason frankly I think we have to have a balanced budget amendment because we clearly do not have the discipline here to handle things ourselves.

Then in the second article, Mr. Mufson quotes our colleague in the House, Congressman LEON PANETTA. He says, "Blame is equally shared by everyone—including the American people."

Let me add as a former journalist, I think blame is also shared by the media for not pointing out what is happening. The General Accounting Office study for example that came out in June with its dramatic forecasts hardly made a newspaper in the country.

I recognize some of those statistics look dull. But we need to reappraise where we are. I hope for example the editors of the Washington Post will read this, and reconsider their opposition to a balanced budget amendment. The reality is we need that.

The second article talking about David Stockman, the former Budget Director, says in 1986 Stockman urged Democratic and Republican politicians to, "together * * * tell the American people that a few ideologues made a giant mistake, and that the Government the public wants will require greater sacrifices in future in the form of the new taxes which must be levied."

There is no question we are going to have to both cut spending and increase revenues. That is not fun for a politician to talk about. But those are the realities that we have to face.

In addition to the second article, Mr. President, is the article written by Steven Mufson where E.J. Dionne, Jr., helped on it, "Economists Argue Over Size Of The Budget Deficit Problem."

I could go on go on in greater detail, but the reality is these articles point out vividly why we have to change our habits. I frankly do not think we are going to change them significantly without a balanced budget amendment.

I see on the floor our distinguished colleague from Nebraska, Senator EXON. I remember when Senator EXON had that amendment to reduce the defense authorization $1 billion. We struggled and we finally did it. But that is out of an almost $300 billion budget. We have to do better.

TRIBUTE TO JOSEPH RAUH, JR.

Mr. SIMON. I want to pay tribute to someone who died recently. I had the privilege of attending a memorial ceremony for him, memorial ceremony is perhaps not the right word. But it was a tribute to Joseph Rauh, Jr., who was a remarkable leader in this country, who led on civil rights and fighting for the powerless. He was as selfless a person as I have ever met. He was unpretentious. He enjoyed life to its fullest.

He was not listed as a public servant in the tradition of having a title like Senator or something like that. But he was as much a public servant as anyone I have ever known.

He was a remarkable human being. We shall all miss him.

TRIBUTE TO SENATOR METZENBAUM

Mr. SIMON. Mr. President, I want to pay tribute to one of our colleagues in the Senate, Senator METZENBAUM.

We just passed the tax bill. It had some very good things in it. It had some very bad things in it.

One of the things that I oppose is granting goodwill to corporations that buy up other corporations. That was defeated. I had 19 votes for my amendment, which is maybe more than I expected.

What I did not include in my amendment was a retroactive feature that says that corporations that want to settle on lawsuits with the IRS can pay back 25 cents on the dollar. HOWARD METZENBAUM stood here Saturday and waited and waited and waited and, finally, because there were not enough votes around here to pass anything and because the chief sponsors of the bill know what a bulldog HOWARD METZENBAUM is, they agreed to 50 percent; 50 percent is too much, Mr. President, but that difference between 25 percent and 50 percent will save hundreds of millions of dollars to the taxpayers—perhaps billions of dollars.

HOWARD METZENBAUM is listed as a liberal in the usual categories. HOWARD METZENBAUM has probably saved more money for the taxpayers of this Nation than any single Member of the Senate.

I have to say I am exceedingly proud to serve in this body with someone who is as courageous and as dogged as HOWARD METZENBAUM is.

Mr. President, I think my colleague from Nebraska wishes to speak at this point. But I do not see him on the floor right now.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. LUGAR. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LUGAR. Mr. President, in an attempt to bring to a conclusion the amendment on which the Senate was focused prior to the intercession of the distinguished Senator from Illinois, I yield back all of the time on our side, and I am authorized by the distinguished proponent of the amendment, Senator WALLOP, to yield back all his time, so that we have completed action on the amendment.

The PRESIDING OFFICER. All time has been yielded back.

Mr. WALLOP. In fact, the agreement, by unanimous consent, is that a vote pertaining to this amendment would occur at 9 a.m. tomorrow morning.

The PRESIDING OFFICER. The Senator from Indiana is correct.

Mr. LUGAR. I simply note, for the benefit of all Senators, and especially the leadership on both sides of the aisle, the distinguished Senator from Wyoming [Mr. WALLOP] did not ask for the yeas and nays and indicated to me as he departed he would not be asking for the yeas and nays.

So, at this moment, a vote is to occur at 9 a.m., but the yeas and nays have not been called for.

Mr. President, I yield the floor.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. SIMON. Mr. President, I ask unanimous consent that the Senate proceed to executive session to consider the following nominations:

Calendar 797 and Calendar 798. I further ask unanimous consent that the nominees be confirmed en bloc, that any statements appear in the RECORD as if read, that the motion to reconsider be laid upon the table, en bloc, and that the President be immediately notified of the Senate's action.

The PRESIDING OFFICER. without objection, it is so ordered.

The nominations, considered and confirmed en bloc, are as follows:

THE JUDICIARY

Dennis G. Jacobs, of New York to be U.S. circuit judge for the second circuit vice Wilfred Feinberg, retired.

Anita A. Brody, of Pennsylvania, to be U.S. district judge for the Eastern District of Pennsylvania.

Mr. SIMON. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be discharged from further consideration of the following nominations from the Coast Guard on lists beginning with Thomas B. Rodino, Roger W. Bogue, Adeste F. Fuentes, and Robert J. Fuller, and that the Senate proceed to immediate consideration of the nominations.

I further ask unanimous consent that the nominations be confirmed, en bloc, that any statements appear in the RECORD as if read, that the motion to reconsider be laid upon the table, en bloc; that the President be immediately notified of the Senate's action; and that the Senate return to legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

The nominations, considered and confirmed en bloc, are as follows:

The following Regular officers of the United States Coast Guard for promotion to the grade of captain:

THOMAS B. RODINO
WILLIAM A. MCDONOUGH, JR.
JEFFREY T. PECK
JOSEPH G. MILO
LARRY M. WILSON
JAMES B. WILLIS
CHARLES E. BILLS
DONALD E. ESTES
DONALD P. MONTORO
WILLIAM J.WILKINSON, III
RONALD D. RECK
JAMES W. UNDERWOOD
BRUCE W. PLATZ, JR.
RICHARD F. CARLSON
DAVID B. PASCOE
WILLIAM T. HORAN
JOHN G. WITHERSPOON
ALVIN A. SARRA, JR.
DENNIS C. BOSSO
RAYMOND E. MATTSON
GREGG W. SUTTON
PAUL C. GOLDEN
MICHAEL W. MASTENBROOK
DENNIS M. MAGUIRE
JOSEPH T. KUCHIN
TIMOTHY J. FLANAGAN
NORMAN S. PORTER
MICHAEL B. SLACK
GAETANO MARTINI
BRUCE I. MERCHANT
WILLIAM A. CASSELS
LEONARD F. BOSMA
WILLIAM S. DAVIS
JACK L. BURI
ROGER T. ARGALAS
LARRY A. DOYLE
BRIAN G. BASEL
LAIRD H. HAIL
DENNIS G. BECK
RICHARD R. MEAD
GARY L. FRAGO
DENNIS M. EGAN
BIENVENIDO ABILES
THOMAS P. DOLAN
RICHARD A. KNEE
JAMES W. NORTON
EDWARD J. PEAK
THOMAS H. GILMOUR
WILLIAM H. WISSMAN
ARTHUR E. CROSTICK
JOSEPH A. STIMATZ
NORMAN B. HENSLEE
DENNIS D. ROME
EDMOND P. THOMPSON
TERRY W. NEWELL
RONALD C. GONSKI
THOMAS J. MEYERS
THOMAS G. LANDVOGT
HAROLD B. MORTON
LAWRENCE G. BRUDNICKI
JAMES M. ALDERSON
FREDRIC R. GILL
JIMMY NG
WALTER G. JOHNSON
THOMAS D. YEAROUT
CHARLES B. WILLIAMS
CLAY A. FUST
JAMES F. MCENTIRE, JR.
HENRY F. BALEY, IV
ERROLL M. BROWN
JOHN W. WHITEHOUSE
ALAN D. SUMMY
JOSEPH H. JONES, JR.
TIM B. DOHERTY
WAYNE H. OGLE
EDWIN E. ROLLISON, JR.
EDWARD E. PAGE
BRADLEY J. NIESEN
ROBERT D. INNES, JR.
KENNETH T. VENUTO

The following Regular officers of the United States Coast Guard for promotion to the grade of commander:

ROGER W. BOGUE
GEORGE R. TURNER, JR.
DWIGHT G. HUTCHINSON, III
ROBERT A. KUHN
THEODORE A. HOLLOMAN
GEOFFREY L. ABBOTT
DAVID G. WILDER, II
JAMES R. LACHOWICZ
JAMES D. WILLIAMSON
JEFFRY G. WAY
CARL A. CRAMPTON
SHAWN W. SMITH
BURTON E. CARR
JOHN P. CURRIER
WAYNE E. JUSTICE
WILLIAM R. WEBSTER
ERIC A. NICOLAUS
FLOYD G. LYSSY
ROBERT T. WRIGHT
PAUL R. GAUTHIER, JR.
ROBERT O. SMITH
CHARLES J. DICKENS
VICTOR M. POUNDS, JR.
HOWARD P. RHOADES
ROBERT D. ALLEN
JODY A. BRECKENRIDGE
RUSSELL N. TERRELL
GREGORY F. ADAMS
WILLIAM L. ROSS
BEVERLY G. KELLEY
REX M. TAKAHASHI
HOHN H. SIEMENS
RUBEN H. ARREDONDO
PAUL J. BERGMAN
ERNEST J. FINK
KEITH E. GRANT
MARION J. LEWANDOWSKI
WILLIAM R. PERRIN
ROBERT E. DUNN
LEONARD P. DEUTSCHMANN, JR.
PATRICK K. GREGORY
JOSEPH M. TOUZIN
JAMES A. FAVERO
JOHN W. SCHOEN
JAMES M. MCCOY
WILLIAM S. CHEEVER
DONALD R. GOLDSTEIN
THOMAS H. BRIGGS
JAMES A. DALE
COLLIN S. CAMPBELL
TIMOTHY L. BELTZ
WILLIAM A. KELSEY
DAVID G. WESTERHOLM
JOHN M. HOLMES
PETER J. HOPKINSON
KAY L. HICKMAN
RICHARD C. SIMONSON
BRIAN M. SALERNO
CYNTHIA A. COOGAN
MICHAEL G. WALLACE
ERNEST L. DELBUENO, JR.
RANDOLPH C. HELLAND
KIRK A. DAVIS
JOHN A. SCHOTT, JR.
GARY F. GREENE
STEPHEN L. WILHELM
GEORGE E. HOWE
THOMAS W. SPARKS
GREGORY T. JONES
JERRY K. THORUSEN
THOMAS P. LEVEILLE
JAY D. MAHAFFEY
LAWRENCE C. VOSE
JOSEPH E. WIGGINS
CATHERINE M. MCNALLY
BLAINE D. HORROCKS
MICHAEL N. POWERS
PETER L. SEIDLER, II
ALAN L. PEEK
PHILLIP J. HEYL
ROBIN K. KUTZ
PHILIP E. COLETTI
EDMUND MARMOL
ROGER D. GIBSON
JAMES S. ANGERT
RICHARD F. BESELER
DAVID T. GLENN
BRIAN S. WHITE
JOHN E. HARRINGTON
JAMES B. HALL
JOSEPH L. NIMMICH
RAYMOND E. SEEBALD
KEVIN E. SCHUMACHER
DONALD E. WILT, II
JAMES M. HASS, IV
ROBERT J. MORRISON, JR.
ALBERT L. BARCO, IV
GERALD R. WHEATLEY
DAVID P. PEKOSKE
ROBERT M. ELSENER
ROBERT J. QUIRK
PAUL F. ZUKUNFT
ARTHUR O. HALVORSON
RICHARD P. YATTO
JEFFREY Q. GAMBLE
JEROME A. ILTIS
MICHAEL R. MOORE
DANIEL R. BROWN
MICHAEL D. FARRELL
ROBERT S. BRANHAM
KENNETH M. BRADFORD
EDWARD S. CARROLL
RONALD B. HOFFMAN
DALE E. WALKER
KEITH G. JOHNSON
CRAIG E. BONE
ROBERT L. MCLAUGHLIN
LARRY E. JAEGER
SCOTT E. HARTLEY
ROBERT L. LACHOWSKY
KENNETH ARMSTRONG
GEORGE H. TEUTON, III
WILLIAM G. SHULTZ
KEVIN P. JARVIS
THOMAS R. RICE
MARK J. CAMPBELL
ERNEST W. FOX
JOHN C. MIKO
BURTON S. RUSSELL
MICHAEL P. SELAVKA
DOUGLAS D. WHITMER
KEITH D. CAMERON
EDWARD D. NELSON
THEODORE P. MONTGOMERY
MARK P. THOMAS
WILLIAM B. BAKER
DANIEL C. SLYKER
DAVID S. BRIMBLECOM
JOHN E. DEJUNG
BRUCE A. DRAHOS
ROBERT C. PARKER
CURTIS L. GUNN
MICHAEL B. KARR
RONALD E. KILROY
LOUIS R. SKORUPA
MARTIN L. PHILLIPS
JOHN J. O'BRIEN, JR.
DENNIS J. HAISE
JAMES T. POTDEVIN
FRANCIS X. O'BYRNE, JR.
JOSEPH J. OCKEN
KENNETH E. SCHOLZ
PAUL S. NEELD
JOHN S. BURHOE
THOMAS A. TANSEY
JEFFREY A. KARONIS
HUGH F. SAGE
DAVID M. ILLUMINATE
LISTON A. JACKSON
WILLIAM L. CAREY
MICHAEL J. BRENNAN
FRANCIS L. SHELLEY, III

The following Regular officers of the United States Coast Guard for promotion to the grade of lieutenant commander:

ADESTE F. FUENTES
LAWRENCE J. MUSARRA
THOMAS P. VIETEN
JAMES A. SARTUCCI
JODY B. TURNER
KENNETH J. THORKILDSEN
GERALD A. DEMETRIFF
DANIEL R. MACLEOD
MELISSA A. WALL
RICHARD A. CURRIER
ROBERT M. WILKONS
WILLIAM H. DAUGHDRILL
SCOTT M. POLLOCK
CURTIS A. SPRINGER
ROBERT M. PALATKA
TIMOTHY G. JOBE
CHRISTIAN BROXTERMAN
STEPHEN G. KINNER, JR.
SCOTT C. SCHLEIFFER
RICKEY W. GEORGE
ELMO L. ALEXANDER, II
ROBERT D. CASTLE, JR.
MARK E. LICKERS
WALTER T. HUNNINGS
JOHN J. COOK
MARK A. ROSE
JOHN F. KAPLAN
TIMOTHY M. CLOSE
PAMELA A. RUSSELL
WILLIAM T. DEVEREAUX
STEVEN A. MUNSON
MATTHEW J. GLOMB
DAVID C. ELY
STEPHAN A. BILLIAN
MARK E. BUTT
PETER S. SIMONS
THADDEUS G. SLIWINSKI
GREGORY W. BUIE
STEVEN R. CORPORON
KRISTIN J. ARNOLD
WILLIAM J. REICKS
STEPHEN E. FLYNN
JAMES Y. POYER
VINCE S. SEDWICK
PETER S. MARSH
EUGENE F. CUNNINGHAM
JOSEPH E. MIHELIC
LOUISE A. STEWART
STEVEN E. CARLSON
PAUL H. TINGLEY
SAMUEL R. WATKINS
MICHAEL C. COSENZA
RAYMOND J. PETOW
DANIEL J. MCCLELLAN
ARTHUR C. WALSH
MICHAEL R. KELLEY
JOHN A. WATSON
DAVID A. DURHAM
LEONARD R. RADZIWANOWICZ
MICHAEL N. PARKS
CRAIG A. BENNETT
DOUGLAS G. RUSSELL
THOMAS R. HALE
GEORGE P. HANNIFIN
JAMES L. MCDONALD
KEVIN M. O'DAY
WILLIAM J. DIEHL
TERRY A. BICKHAM
MORRIS B. STEWART
EDMUND H. TUPAY
BRIAN D. KELLEY
THOMAS F. ATKIN
MICHAEL F. FLANAGAN
JOSEPH A. SERVIDIO
JOSEPH P. SEEBALD
EDWARD W. GREINER
MARC L. DEACON
JEFFREY S. HAMMOND
JOHN M. WEBER
CHARLEY L. DIAZ
DAVID A. CULVER
FRED M. MIDGETTE
ROSS E. BRYANT
MARK J. DANDREA
THOMAS R. GREENE
JEFFREY C. GOOD
DREW A. RAMBO
JEFFREY S. GRIFFIN
WILLAIM M. RANDALL
CHARLES A. MATHIEU
EVAN Q. KAHLER
SANDRA L. STOSZ
RICHARD L. ARNOLD

GEORGE P. CUMMINGS
FRED T. WHITE
ANDREW J. BERGHORN
KIMBERLY J. DAISHER
STEPHEN P. METRUCK
VINCENT B. ATKINS
THOMAS S. MORRISON
THOMAS A. ABBATE
ROGER E. DUBUC, JR.
KEVIN S. WELLS
JOHN S. EARLY
ROBERT S. HOLZMAN
MICHAEL E. LEHOCKY
NORMAN S. SELLEY
EDWARD SINCLAIR
MARK A. TORRES
THOMAS S. KUHANECK
DOUGLAS A. BLAKEMORE
DAVID R. CALLAHAN
WILLIAM F. MCMEEKIN
MICHAEL E. SULLIVAN
KARL R. BALDESSARI
LANCE O. BENTON
ROBERT G. MUELLER
KEVIN B. ASBURY
DAVID H. BOYD
GEGORY A. TAYLOR
DENNIS S. OTOSHI
RICHARD L. WHARTON
HAL R. SAVAGE, JR.
RUDY T. HOLM
KENNETH K. MOORE
THOMAS C. HICKMAN
MATHEW D. BLIVEN
SCOTT BURLINGAME
TODD GENTILE
VINCENT WILCZYNSKI
RICHARD K. MURPHY
KIRK E. HILES
EUGENE GRAY
JOHN J. JENNINGS
BRIAN K. WRIGHT
ROBERT M. PYLE
THOMAS D. WADE
KEVIN H. MILLER
GILBERT E. TEAL
RICHARD H. SCHLATTER, JR.
JAME E. RENDON
JOHN P. PHILBIN
KARL H. CALVO
TERRY D. GILBREATH
ROBERT M. DIEHL
RODERICK L. SMITH
SHELDON B. BLUE
LIAM J. SLEIN
JOHN J. MACALUSO
SCOTT P. LAROCHELLE
MICHAEL A. TEKESKY
PATRICK H. KNOWLES
THOMAS M. CULLEN
GERARD R. DOSTIE
JAMES A. SWEET
NICHOLAS J. STAGLINAO
ROBERT F. FINLEY
JOHN L. STURTZ
DAVID J. SWATLAND
BRIAN J. MARVIN
SARAH J. KRUPA
JOSEPH C. SINNETT
JAMES B. ROBBINS
KENNETH D. NORRIS
MICHAEL J. BACA
PAUL J. RODEN
ERIC D. HULTMARK
PAUL L. HUMPHREYS
MARK L. PORVAZNICK
MICHAEL F. LEONARD
CHARLES JAGER
JAMES J. O'CONNOR
PAUL A. STEWARD
JAMES B. KIDWELL
ERIC J. MOSHER
JACQUELINE A. STAGLIANO
MARY K. JAGER
PETER J. BERGERON
BRYAN J. SEALE
PETER J. ZOHORSKY
PAUL F. GUINEE
DOUGLAS J. SMITH
ANTHONY J. PALAZZETTI
THOMAS J. VITULLO
EDWARD P. NAGLE
SCOTT W. ROBERT
CHARLES V. STRANGFELD
STEVEN L. HUDSON
ALAN M. MARSILIO
STEVEN L. KOSKA
LISA R. TAMBLINGSONRICE
JENNIFER E. LAY
EDWARD P. SEEBALD
CHRISTOPHER E. ROBERTS
ORLANDO A. ARENAS
GREGG R. FONDACABE
ROBERT S. WALTERS
CHARLES R. DUDLEY
RANDALL D. JOHNSON
DAVID D. SIMMS
RICHARD G. EHRET
JAY E. MANTHORNE
RONALD E. KAETZEL
GARY R. COLLINS
EDWARD D. ZACHARIAS
PERRY J. COLBURN
DAVID A. FLAGG
STEVEN R. BAUM
LYLE A. RICE
PAUL J. CORMIER
JOSEPH M. HANSON
PAUL D. WALTON
JAMES B. MCPHERSON
SPENCER L. BYRUM
STEPHEN M. WHEELER
JOHN C. OWENS
RICHARD G. BRUNKE
LEONARD L. RITTER, JR.
MICHAEL J. FOLEY
MARK M. CAMPBELL
FRED R. CALL, III
CHRISTOPHER W. DOANE
KEITH D. WARD
MICHAEL A. HAMEL
PEYTON M. COLEMAN
STEVEN C. TAYLOR
JERRY R. WILSON
THOMAS E. ATWOOD
WILLIAM L. KASPAREK
THOMAS G. EDMONDS
JOSEPH J. LISKO
ROBERT F. SALMON
OSCAR L. RAY
JAMES P. GROSSMAN
JOSEPH S. PUNTINO
MICHAEL D. DAWE
LOYD A. GUTHRIE
TERRENCE M. MURPHY
MICHAEL T. DEBETTENCOURT
FRANK M. REED, JR.
KIMBERLY J. DAVIS
THOMAS M. HEITSTUMAN
MICHAEL E. KENDALL
TROY DEGROOT
MARK F. BOEHM
SHELBY R. KIRK
STEPHEN M. HICKOK
THOMAS H. ENGLISH
ROBERT L. MCALLISTER
CHARLES O. BOLL, JR.
ROBERT L. DESH
DANIEL B. ABEL
RICHARD T. GROMLICH
LINCOLN D. STROH
MATTHEW E. CUTTS
KEITH G. CURRAN
KEITH A. TAYLOR
JAMES W. SEEMAN
MARK R. HIGGINS
FREDERICK W. TUCHER
KRISTY L. PLOURDE
ROBERT V. FOGEL
RICHARD D. BELISLE
MAURA S. VASSAR
DAVID H. GORDNER
PAUL E. WIEDENHOEFT
JOHN C. O'DELL
WILLIAM H. TIMBS, JR.
KARL L. SCHULTZ
BRUCE L. TONEY
TERRY A. BOYD
EDWIN B. THIEDEMAN
JEFFREY S. LEE
KINGSLEY J. KLASSAN
LAWENCE E. CORNWELL
STEVEN J. O'MALLEY
MARK J. FALLER

The following Regular and Reserve officers of the United States Coast Guard to be permanent commissioned officers in the grade of lieutenant:

MARK E. MARRO
CHRISTOPHER N. HOGAN
ROBERT R. DUBOIS
COSMIN THEODORE
SEAN A. MCBREARTY
ERIC P. CHRISTENSEN
LOUIS M. MAGYAR
WALTER A. WESTIN
JAMES D. JENKINS, IV
WILLIAM J. BOEH
MARC P. LEBEAU
KRISTIN A. WILLIAMS

The following Regular officers of the United States Coast Guard of the permanent commissioned teaching staff at the Coast Guard Academy for promotion to the grade of commander:

ROBERT J. FULLER
RICHARD J. HARNETT

The following Regular officers of the United States Coast Guard of the permanent commissioned teaching staff at the Coast Guard Academy for promotion to the grade of lieutenant commander:

LUCRETIA A. FLAMMANG
MICHAEL A. ALFULTIS
JONATHAN C. RUSSELL

The following cadet of the United States Coast Guard Academy for appointment to the grade of ensign:

CARRIE M. STOFFEL

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will now return to legislative session.

REQUIRING A WAITING PERIOD BEFORE PURCHASING A HANDGUN

The PRESIDING OFFICER. The clerk will read the bill S. 3282 for the second time.

The assistant legislative clerk read as follows:

A bill (S. 3282) to amend title 18, United States Code, to require a waiting period before the purchase of a handgun.

Mr. SIMON. Mr. President, I object to further proceedings on this bill.

The PRESIDING OFFICER. Under rule XIV, the bill will be placed on the calendar.

Mr. SIMON. I thank the Chair.

PERMANENT RECORD CHANGE ON H.R. 11

Mr. SIMON. Mr. President, I ask unanimous consent that the permanent RECORD be changed with respect to action on two amendments to H.R. 11 to reflect that the Sanford amendment No. 3191 be a modification of the Cochran amendment No. 3190 and not a complete substitute.

The PRESIDING OFFICER. Without objection, it is so ordered.

FEDERAL FIRE PREVENTION AND CONTROL ACT AUTHORIZATION

Mr. SIMON. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 622, S. 1690, the U.S. Fire Administration reauthorization.

The PRESIDING OFFICER. The bill will be stated by title.

The legislative clerk read as follows:

A bill (S. 1690) to authorize appropriations for activities under the Federal Fire Prevention and Control Act of 1974, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Commerce, Science, and Transportation, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Fire Administration Authorization Act of 1992".

TITLE I—UNITED STATES FIRE ADMINISTRATION

SEC. 101. AUTHORIZATION OF APPROPRIATIONS.

Section 17(g)(1) of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2216(g)(1)) is amended—

(1) by striking "and" at the end of subparagraph (B);

(2) by striking the period at the end of subparagraph (C) and inserting in lieu thereof a semicolon; and

(3) by adding at the end the following new subparagraphs:

"(D) $25,550,000 for the fiscal year ending September 30, 1992;

"(E) $26,521,000 for the fiscal year ending September 30, 1993; and

"(F) $27,529,000 for the fiscal year ending September 30, 1994.".

SEC. 102. PRIORITY ACTIVITIES OF THE UNITED STATES FIRE ADMINISTRATION.

(a) PRIORITY ACTIVITIES.—In expending funds appropriated pursuant to the amendments made by section 101 of this Act, the United States Fire Administration shall give priority to—

(1) reducing the incidence of residential fires, especially in residences of the very old, the very young, or the disabled in urban and rural areas, through the development and dissemination of public education and awareness programs, through arson research and technical assistance programs, and through research and development on new technologies;

(2) working with State fire marshals and other State level fire safety offices to identify fire problems that are national in scope;

(3) disseminating information about the activities and programs of the United States Fire Administration to State and local fire services;

(4) enhancing the residential sprinkler programs, including research, demonstration activities, and technical assistance to the public and private sectors;

(5) enhancing research into sprinkler programs in areas or structures with limited or no domestic water supply;

(6) through the National Fire Academy, enhancing the residential and field program in support of State level training programs, particularly those that support the volunteer fire service; and

(7) strengthening programs that help protect the lives and safety of fire and emergency medical services personnel, including research into causes of death and injuries, research and development on new technologies to mitigate and prevent injuries, dissemination of information, and technical assistance to State and local fire departments.

(b) REPORT TO CONGRESS.—The United States Fire Administration shall, within 1 year after the date of enactment of this Act, submit a report to the Congress on the activities undertaken pursuant to subsection (a)(1).

SEC. 103. REPORT ON IMPLEMENTATION OF HOTEL AND MOTEL FIRE SAFETY ACT OF 1990.

The United States Fire Administration shall, within 6 months after the date of enactment of this Act, report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives on its progress in implementing the Hotel and Motel Fire Safety Act of 1990 (Public Law 101-391; 104 Stat. 747), including amendments made by that Act. The report shall specify the nature of expenditures made as of the date of the report, as well as including an estimate of the costs and a specific schedule for implementation.

SEC. 104. LISTINGS OF DESIGNATED PLACES OF PUBLIC ACCOMMODATION.

Section 28 of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2224) is amended—

(1) by striking "CERTIFIED" in the section heading; and

(2) in subsection (a)—

(A) by inserting "(acting through its Governor or the Governor's designee)" immediately after "each State" wherever it appears; and

(B) by striking "the Governor of the State or his designee certifies".

SEC. 105. FIRE PREVENTION AND CONTROL GUIDELINES FOR PLACES OF PUBLIC ACCOMMODATION.

(a) EXCEPTIONS FOR CERTAIN AUTOMATIC SPRINKLER SYSTEMS.—Section 29 of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2225) is amended by redesignating subsections (b) and (c) as subsections (c) and (d), respectively, and by inserting immediately after subsection (a) the following new subsection:

"(b) EXCEPTIONS.—(1) The requirement described in subsection (a)(2) shall not apply to a place of public accommodation affecting commerce with an automatic sprinkler system installed before October 25, 1992, if the automatic sprinkler system is installed in compliance with an applicable standard (adopted by the governmental authority having jurisdiction, and in effect, at the time of installation) that required the placement of a sprinkler head in the sleeping area of each guest room.

"(2) The requirement described in subsection (a)(2) shall not apply to a place of public accommodation affecting commerce to the extent that such place of public accommodation affecting commerce is subject to a standard that includes a requirement or prohibition that prevents compliance with a provision of National Fire Protection Association Standard 13 or 13-R. In such a case, the place of public accommodation affecting commerce is exempt only from that specific provision.".

(b) DEFINITIONS.—Section 29 of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2225) is amended by adding at the end of subsection (d), as redesignated by this section, the following new paragraph:

"(3) The term 'governmental authority having jurisdiction' means the Federal, State, local, or other governmental entity with statutory or regulatory authority for the approval of fire safety systems, equipment, installations, or procedures within a specified locality.".

TITLE II—NATIONAL FALLEN FIREFIGHTERS FOUNDATION

SEC. 201. SHORT TITLE.

This title may be cited as the "National Fallen Firefighters Foundation Act".

SEC. 202. ESTABLISHMENT AND PURPOSES OF FOUNDATION.

(a) ESTABLISHMENT.—There is established the National Fallen Firefighters Foundation (hereafter in this title referred to as the "Foundation"). The Foundation is a charitable and nonprofit corporation to be organized under the laws of the State of Maryland and is not an agency or establishment of the United States.

(b) PURPOSES.—The purposes of the Foundation are—

(1) primarily to encourage, accept, and administer private gifts of property for the benefit of the National Fallen Firefighters' Memorial and the annual memorial service associated with it;

(2) to provide financial assistance to families of fallen firefighters for transportation to and lodging at non-Federal facilities during the annual memorial service;

(3) to assist State and local efforts to recognize firefighters who die in the line of duty; and

(4) to provide scholarships and other financial assistance for educational purposes and job training for the spouses and children of fallen firefighters.

SEC. 203. BOARD OF DIRECTORS OF THE FOUNDATION.

(a) ESTABLISHMENT AND MEMBERSHIP.—

(1) VOTING MEMBERS.—The Foundation shall have a governing Board of Directors (hereafter in this title referred to as the "Board"), which shall consist of nine voting members, of whom—

(A) one member shall be an active volunteer firefighter;

(B) one member shall be an active career firefighter;

(C) one member shall be a Federal firefighter; and

(D) six members shall have a demonstrated interest in the fire service.

(2) NONVOTING MEMBER.—The Administrator of the United States Fire Administration of the Federal Emergency Management Agency (hereafter in this title referred to as the "Administrator") shall be an ex officio nonvoting member of the Board.

(3) STATUS OF BOARD MEMBERS.—Appointment to the Board shall not constitute employment by, or the holding of an office of, the United States for the purposes of any Federal law.

(4) COMPENSATION.—Members of the Board shall serve without compensation.

(b) APPOINTMENT AND TERMS.—Within 3 months after the date of enactment of this Act, the Administrator shall appoint the voting members of the Board. The voting members shall be appointed for terms of 6 years, except that the Administrator, in making the initial appointments to the Board, shall appoint—

(1) three members to a term of 2 years;

(2) three members to a term of 4 years; and

(3) three members to a term of 6 years.

(a) VACANCY.—A vacancy on the Board shall be filled within 60 days in the manner in which the original appointment was made.

(d) CHAIRMAN.—The Chairman shall be elected by the Board from its voting members for a 2-year term.

(e) QUORUM.—A majority of the current membership of the Board shall constitute a quorum for the transaction of business.

(f) MEETINGS.—The Board shall meet at the call of the Chairman at least once a year. If a member of the Board misses three consecutive meetings, that individual may be removed from the Board and that vacancy filled in accordance with subsection (c).

(g) GENERAL POWERS.—

(1) ACTIONS BY THE BOARD.—The Board may complete the organization of the Foundation by—

(A) appointing no more than two officers or employees;

(B) adopting a constitution and bylaws consistent with this title; and

(C) undertaking other such acts as may be necessary to carry out this title.

(2) LIMITATION.—Officers and employees may not be appointed until the Foundation has sufficient funds to pay for their services.

(h) OFFICERS AND EMPLOYEES.—

(1) STATUS.—Officers and employees of the Foundation shall not be considered Federal employees, shall be appointed without regard to title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

(2) MAXIMUM SALARY.—No officer or employee may receive pay in excess of the annual rate of basic pay prescribed for level GS-15 of the General Schedule under section 5107 of title 5, United States Code.

SEC. 204. RIGHTS AND OBLIGATIONS OF THE FOUNDATION.

(a) IN GENERAL.—The Foundation—

(1) shall have perpetual succession;

(2) may conduct business throughout the several States, territories, and possessions of the United States;

(3) shall have its principal offices in the State of Maryland; and

(4) shall at all times maintain a designated agent authorized to accept service of process for the Foundation.

(b) SEAL.—The Foundation shall have an official seal selected by the Board which shall be judicially noticed.

(c) POWERS.—To carry out its purposes under section 202, the Foundation shall have, in addition to the powers otherwise given it under this title, the usual powers of a corporation acting as a trustee in the State of Maryland, including the power—

(1) to accept, receive, solicit, hold, administer, and use any gift, devise, or bequest, either absolutely or in trust, of real or personal property or any income therefrom or other interest therein;

(2) to sue and be sued, and complain and defend itself in any court of competent jurisdiction, except that the members of the Board shall not be personally liable, except for gross negligence;

(3) unless otherwise required by the instrument of transfer, to sell, donate, lease, invest, or otherwise dispose of any property or income therefrom;

(4) to enter into contracts and other arrangements with public agencies and private organizations and persons and to make such payments as may be necessary to carry out its functions; and

(5) to do any and all acts necessary and proper to carry out the purposes of the Foundation.

SEC. 205. ADMINISTRATIVE SERVICES AND SUPPORT.

The Administrator may provide personnel, facilities, and other administrative services to the Foundation and shall require and accept reimbursements for such personnel, facilities, and services that shall be deposited in the Treasury to the credit of the appropriations then current and chargeable for the cost of providing such services.

SEC. 206. VOLUNTEER STATUS.

The Administrator may accept, without regard to the Federal civil service classification laws, rules, or regulations, the services of the Foundation, the Board, and the officers and employees of the Board, without compensation from the United States Fire Administration, as volunteers in the performance of the functions authorized under this title.

SEC. 207. AUDITS, REPORT REQUIREMENTS, AND PETITION OF ATTORNEY GENERAL FOR EQUITABLE RELIEF.

(a) AUDITS.—For purposes of the Act entitled "An Act to provide for audit of accounts of private corporations established under Federal law", approved August 30, 1964 (36 U.S.C. 1101 et seq.), the Foundation shall be treated as a private corporation established under Federal law.

(b) REPORT.—The Foundation shall, within 4 months after the end of each fiscal year, prepare and submit to the appropriate committees of the Congress a report of the Foundation's proceedings and activities during such year, including a full and complete statement of its receipts, expenditures, and investments.

(c) RELIEF FOR CERTAIN FOUNDATION ACTS OR FAILURES TO ACT.—If the Foundation—

(1) engages in, or threatens to engage in, any act, practice, or policy that is inconsistent with the purposes set forth in section 202(b); or

(2) refuses, fails, or neglects to discharge its obligations under this title, or threatens to do so,

the Attorney General may petition in the United States District Court for the District of Colum-

bia for such equitable relief as may be necessary or appropriate.

SEC. 208. IMMUNITY OF THE UNITED STATES.

The United States shall not be liable for any debts, defaults, acts, or omissions of the Foundation nor shall the full faith and credit of the United States extend to any obligation of the Foundation.

S 1690 RS——2

AMENDMENT NO. 3320

(Purpose: To make an amendment in the nature of a substitute)

Mr. SIMON. Mr. President, I send the Bryan substitute amendment to the desk for immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Illinois [Mr. SIMON], for Mr. BRYAN, proposes an amendment numbered 3320.

Mr. SIMON. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

In lieu of the matter proposed to be inserted by the Committee amendment to the bill, insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Fire Administration Authorization Act of 1992".

TITLE I—UNITED STATES FIRE ADMINISTRATION

SEC. 101. AUTHORIZATION OF APPROPRIATIONS.

Section 17(g)(1) of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2216(g)(1)) is amended—

(1) by striking "and" at the end of subparagraph (B);

(2) by striking the period at the end of subparagraph (C) and inserting in lieu thereof a semicolon; and

(3) by adding at the end the following new subparagraphs:

"(D) $25,550,000 for the fiscal year ending September 30, 1992;

"(E) $26,521,000 for the fiscal year ending September 30, 1993; and

"(F) $27,529,000 for the fiscal year ending September 30, 1994.".

SEC. 102. PRIORITY ACTIVITIES OF THE UNITED STATES FIRE ADMINISTRATION.

(a) PRIORITY ACTIVITIES.—In expending funds appropriated pursuant to the amendments made by section 101 of this Act, the United States Fire Administration shall give priority to—

(1) reducing the incidence of residential fires, especially in residences of the very old, the very young, or the disabled in urban and rural areas, through the development and dissemination of public education and awareness programs, through arson research and technical assistance programs, and through research and development on new technologies;

(2) working with State Fire Marshals and other State level fire safety offices to identify fire problems that are national in scope;

(3) disseminating information about the activities and programs of the United States Fire Administration to State and local fire services;

(4) enhancing the residential sprinkler programs, including research, demonstration activities, and technical assistance to the public and private sectors;

(5) enhancing research into sprinkler programs in areas or structures with limited or no domestic water supply;

(6) through the National Fire Academy, enhancing the residential and field program in support of State level training programs, particularly those that support the volunteer fire service; and

(7) strengthening programs that help protect the lives and safety of fire emergency medical services personnel, including research into causes of death and injuries, research and development of new technologies to mitigate and prevent injuries, dissemination of information, and technical assistance to State and local fire departments.

(b) REPORT TO CONGRESS.—The United States Fire Administration shall, within 1 year after the date of enactment of this Act, submit a report to the Congress on the activities undertaken pursuant to subsection (a)(1).

SEC. 103. REPORT ON IMPLEMENTATION OF HOTEL AND MOTEL FIRE SAFETY ACT OF 1990.

The United States Fire Administration shall, within 6 months after the date of enactment of this Act, report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives on its progress in implementing the Hotel and Motel Fire Safety Act of 1990 (Public Law 101-391; 104 Stat. 747), including amendments made by that Act. The report shall specify the nature of expenditures made as of the date of the report, as well as including an estimate of the costs and a specific schedule for implementation.

SEC. 104. LISTINGS OF DESIGNATED PLACES OF PUBLIC ACCOMMODATION.

Section 28 of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2224) is amended—

(1) by striking "CERTIFIED" in the section heading; and

(2) in subsection (a)—

(A) by inserting "(Act through its Governor or the Governor's designee)" immediately after "each State" wherever it appears; and

(B) by striking "the Governor of the State or his designee certifies".

SEC. 105. FIRE PREVENTION AND CONTROL GUIDELINES FOR PLACES OF PUBLIC ACCOMMODATION.

(a) EXCEPTIONS FOR CERTAIN AUTOMATIC SPRINKLER SYSTEMS.—Section 29 of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2225) is amended by redesignating subsections (b) and (c) as subsections (c) and (d), respectively, and by inserting immediately after subsection (a) the following new subsection:

"(b) EXCEPTIONS.—(1) The requirement described in subsection (a)(2) shall not apply to a place of public accommodation affecting commerce with an automatic sprinkler system installed before October 25, 1992, if the automatic sprinkler system is installed in compliance with an applicable standard (adopted by the governmental authority having jurisdiction, and in effect, at the time of installation) that required the placement of a sprinkler head in the sleeping area of each guest room.

"(2) The requirement described in subsection (a)(2) shall not apply to a place of public accommodation affecting commerce to the extent that such place of public accommodation affecting commerce is subject to a standard that includes a requirement or prohibition that prevents compliance with a provision of National Fire Protection Association Standard 13 or 13-R. In such a case, the place of public accommodation affecting commerce is exempt only from that specific provision.".

(b) DEFINITIONS.—Section 29 of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2225) is amended by adding at the end of subsection (d), as redesignated by this section, the following new paragraph:

"(3) The term 'governmental authority having jurisdiction' means the Federal, State, local, or other governmental entity with statutory or regulatory authority for the approval of fire safety systems, equipment, installations, or procedures within a specified locality.".

SEC. 106. FIRE SAFETY SYSTEMS IN FEDERALLY ASSISTED BUILDINGS.

(a) AMENDMENT.—The Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2201 et seq.) is amended by adding at the end the following new section:

"SEC. 31. FIRE SAFETY SYSTEMS IN FEDERALLY ASSISTED BUILDINGS.

"(a) DEFINITIONS.—For purposes of this section, the following definitions apply:

"(1) The term 'affordable cost' means the cost to a Federal agency of leasing office space in a building that is protected by an automatic sprinkler system or equivalent level of safety, which cost is no more than 10 percent greater than the cost of leasing available comparable office space in a building that is not so protected.

"(2) The term 'automatic sprinkler system' means an electronically supervised, integrated system of piping to which sprinklers are attached in a systematic pattern, and which, when activated by heat from a fire—

"(A) will protect human lives by discharging water over the fire area, in accordance with the National Fire Protection Association Standard 13, 13D, or 13R, whichever is appropriate for the type of building and occupancy being protected, or any successor standard thereto; and

"(B) includes an alarm signaling system with appropriate warning signals (to the extent such alarm systems and warning signals are required by Federal, State, or local laws or regulations) installed in accordance with the National Fire Protection Association Standard 72, or any successor standard thereto.

"(3) The term 'equivalent level of safety' means an alternative design or system (which may include automatic sprinkler systems), based upon fire protection engineering analysis, which achieves a level of safety equal to or greater than that provided by automatic sprinkler systems.

"(4) The term 'Federal employee office building' means any office building in the United States, whether owned or leased by the Federal Government, that is regularly occupied by more than 25 full-time Federal employees in the course of their employment.

"(5) The term 'housing assistance'—

"(A) means assistance provided by the Federal Government to be used in connection with the provision of housing, that is provided in the form of a grant, contract, loan, loan guarantee, cooperative agreement, interest subsidy, insurance, or direct appropriation; and

"(B) does not include assistance provided by the Secretary of Veterans Affairs; the Federal Emergency Management Agency; the Secretary of Housing and Urban Development under the single family mortgage insurance programs under the National Housing Act or the homeownership assistance program under section 235 of such Act; the National Homeownership Trust; the Federal Deposit Insurance Corporation under the affordable housing program under section 40 of the Federal Deposit Insurance Act; or the

Resolution Trust Corporation under the affordable housing program under section 21A(c) of the Federal Home Loan Bank Act.

"(6) The term 'hazardous areas' means those areas in a building referred to as hazardous areas in National Fire Protection Association Standard 101, known as the Life Safety Code, or any successor standard thereto.

"(7) The term 'multifamily property' means—

"(A) in the case of housing for Federal employees or their dependents, a residential building consisting of more than 2 residential units that are under one roof; and

"(B) in any other case, a residential building consisting of more than 4 residential units that are under one roof.

"(8) The term 'prefire plan' means specific plans for fire fighting activities at a property or location.

"(9) The term 'rebuilding' means the repairing or reconstructing of portions of a multifamily property where the cost of the alternations is 70 percent or more of the replacement cost of the completed multifamily property, not including the value of the land on which the multifamily property is located.

"(10) The term 'renovated' means the repairing or reconstructing of 50 percent or more of the current value of a Federal employee office building, not including the value of the land on which the Federal employee office building is located.

"(11) The term 'smoke detectors' means single or multiple station, self-contained alarm devices designed to respond to the presence of visible or invisible particles of combustion, installed in accordance with the National Fire Protection Association Standard 74 or any successor standard thereto.

"(12) The term 'United States' means the States collectively.

"(b) FEDERAL EMPLOYEE OFFICE BUILDINGS.—(1)(A) No Federal funds may be used for the construction or purchase of a Federal employee office building of 6 or more stories unless during the period of occupancy by Federal employees the building is protected by an automatic sprinkler system or equivalent level of safety. No Federal funds may be used for the construction or purchase of any other Federal employee office building unless during the period of occupancy by Federal employees the hazardous areas of the building are protected by automatic sprinkler systems or an equivalent level of safety.

"(B)(i) Except as provided in clause (ii), no Federal funds may be used for the lease of a Federal employee office building of 6 or more stories, where at least some portion of the federally leased space is on the sixth floor or above and at least 35,00 square feet of space is federally occupied, unless during the period of occupancy by Federal employees the entire Federal employee office building is protected by an automatic sprinkler system or equivalent level of safety. No Federal funds may be used for the lease of any other Federal employee office building unless during the period of occupancy by Federal employees the hazardous areas of the entire Federal employee office building are protected by automatic sprinkler systems or an equivalent level of safety.

"(ii) The first sentence of clause (i) shall not apply to the lease of a building the construction of which is completed before the date of enactment of this section if the leasing agency certifies that no suitable building with automatic sprinkler systems or an equivalent level of safety is available at an affordable cost.

"(iii) Within 3 years after such date of enactment, and periodically thereafter, the Comptroller General shall audit a selection of certifications made under cause (ii) and report to Congress of the results of such audit.

"(2) Paragraph (1) shall not apply to—

"(A) a Federal employee office building that was owned by the Federal Government before the date of enactment of this section;

"(B) space leased in a Federal employee office building if the space was leased by the Federal Government before such date of enactment;

"(C) space leased on a temporary basis for not longer than 6 months;

"(D) a Federal employee office building that becomes a Federal employee office building pursuant to a commitment to move Federal employees into the building that is made prior to such date of enactment; or

"(E) a Federal employee office building that is owned or managed by the Resolution Trust Corporation.

Nothing in this subsection shall require the installation of an automatic sprinkler system or equivalent level of safety by reason of the leasing, after such date of enactment, of space below the sixth floor in a Federal employee office building.

"(3) No Federal funds may be used for the renovation of a Federal employee office building of 6 or more stories that is owned by the Federal Government unless after that renovation the Federal employee office building is protected by an automatic sprinkler system or equivalent level of safety. No Federal funds may be used for the renovation of any other Federal employee office building that is owned by the Federal Government unless after that renovation the hazardous areas of the Federal employee office building are protected by automatic sprinkler systems or an equivalent level of safety.

"(4) No Federal funds may be used for entering into or renewing a lease of a Federal employee office building of 6 or more stories that is renovated after the date of enactment of this section, where at least some portion of the federally leased space is on the sixth floor or above and at least 35,000 square feet of space is federally occupied, unless after that renovation the Federal employee office building is protected by an automatic sprinkler system or equivalent level of safety. No Federal funds may be used for entering into or renewing a lease of any other Federal employee office building that is renovated after such date of enactment of this section, unless after that renovation the hazardous areas of the Federal employee office building are protected by automatic sprinkler systems or an equivalent level of safety.

"(c) HOUSE.—(1)(A) No Federal funds may be used for the construction, purchase, lease, or operation by the Federal Government of housing in the United States for Federal employees or their dependents unless-

"(i) in the case of a multifamily property acquired or rebuilt by the Federal Government after the date of enactment of this section, the housing is protected, before occupancy by Federal employees or their dependents, by an automatic sprinkler system (or equivalent level of safety) and hard-wired smoke detectors; and

"(ii) in the case of any other housing, the housing, before—

"(I) occupancy by the first Federal employees (or their dependents) who do not occupy such housing as of such date of enactment; or

"(II) the expiration of 3 years after such date of enactment, whichever occurs first, is protected by hard-wired smoke detectors.

"(B) Nothing in this paragraph shall be construed to supersede any guidelines or requirements applicable to housing for Federal employees that call for a higher level of fire safety protection than is required under this paragraph.

"(2)(A)(i) Housing assistance may not be used in connection with any newly constructed multifamily property, unless after the new construction the multifamily property is protected by an automatic sprinkler system and hard-wired smoke detectors.

"(ii) For purposes of clause (i), the term 'newly constructed multifamily property' means a multifamily property of 4 or more stories above ground level—

"(I) that is newly constructed after the date of enactment of this section; and

"(II) for which (a) housing assistance is used for such new construction, or (b) a binding commitment is made, before commencement of such construction, to provide housing assistance for the newly constructed property.

"(iii) Clause (i) shall not apply to any multifamily property for which, before such date of enactment, a binding commitment is made to provide housing assistance for the new construction of the property or for the newly constructed property.

"(B)(i) Except as provided in clause (ii), housing assistance may not be used in connection with any rebuilt multifamily property, unless after the rebuilding the multifamily property complies with the chapter on existing apartment buildings of National Fire Protection Association Standard 101 (known as the Life Safety Code), as in effect at the earlier of (I) the time of any approval by the Department of Housing and Urban Development of the specific plan or budget for rebuilding, or (II) the time that a binding commitment is made to provide housing assistance for the rebuilt property.

"(ii) If any rebuilt multifamily property is subject to, and in compliance with, any provision of a State or local fire safety standard or code that prevents compliance with a specific provision of National Fire Protection Association Standard 101, the requirement under clause (i) shall not apply with respect to such specific provision.

"(iii) For purposes of this subparagraph, the term 'rebuilt multifamily property' means a multifamily property of 4 or more stories above ground level—

"(I) that is rebuilt after the last day of the second fiscal year that ends after the date of enactment of this section; and

"(II) for which (a) housing assistance is used for such rebuilding, or (b) a binding commitment is made, before commencement of such rebuilding, to provide housing assistance for the rebuilt property.

"(C) After the expiration of the 180-day period beginning on the date of enactment of this section, housing assistance may not be used in connection with any other dwelling unit, unless the unit is protected by a hard-wired or battery-operated smoke detector. For purposes of this subparagraph, housing assistance shall be considered to be used in connection with a particular dwelling unit only if such assistance is provided (i) for the particular unit, in the case of assistance provided on a unit-by-unit basis, or (ii) for the multifamily property in which the unit is located, in the case of assistance provided on a structure-by-structure basis.

"(d) REGULATIONS.—The Administrator of General Services, in cooperation with the United States Fire Administration, the National Institute of Standards and Technology, and the Department of Defense,

within 2 years after the date of enactment of this section, shall promulgate regulations to further define the term 'equivalent level of safety', and shall, to the extent practicable, base those regulations on nationally recognized codes.

"(e) STATE AND LOCAL AUTHORITY NOT LIMITED.—Nothing in this section shall be construed to limit the power of any State or political subdivision thereof to implement or enforce any law, rule, regulation, or standard that establishes requirements concerning fire prevention and control. Nothing in this section shall be construed to reduce fire resistance requirements which otherwise would have been required.

"(f) PREFIRE PLAN.—The head of any Federal agency that owns, leases, or operates a building or housing unit with Federal funds shall invite the local agency or voluntary organization having responsibility for fire protection in the jurisdiction where the building or housing unit is located to prepare, and biennially review, a prefire plan for the building or housing unit.

"(g) REPORTS TO CONGRESS.—(1) Within 3 years after the date of enactment of this section, and every 3 years thereafter, the Administrator of General Services shall transmit to Congress a report on the level of fire safety in Federal employee office buildings subject to fire safety requirements under this section. Such report shall contain a description of such buildings for each Federal agency.

"(2) Within 10 years after the date of enactment of this section, each Federal agency providing housing to Federal employees or housing assistance shall submit a report to Congress on the progress of that agency in implementing subsection (c) and on plans for continuing such implementation.

"(3)(A) The National Institute of Standards and Technology shall conduct a study and submit a report to Congress on the use, in combination, of fire detection systems, fire suppression systems, and compartmentation. Such study shall—

"(i) quantify performance and reliability for fire detection systems, fire suppression systems, and compartmentation, including a field assessment of performance and determination of conditions under which a reduction or elimination of 1 or more of those systems would result in an unacceptable risk of fire loss; and

"(ii) include a comparative analysis of compartmentation using fire resistive materials and compartmentation using noncombustible materials.

"(B) The National Institute of Standards and Technology shall obtain funding from non-Federal sources in an amount equal to 25 percent of the cost of the study required by subparagraph (A). Funding for the National Institute of Standards and Technology for carrying out such study shall be derived from amounts otherwise authorized to be appropriated, for the Building and Fire Research Center at the National Institute of Standards and Technology, not to exceed $750,000. The study shall not commence until receipt of all matching funds from non-Federal sources. The scope and extent of the study shall be determined by the level of project funding. The Institute shall submit a report to Congress on the study within 30 months after the date of enactment of this section.

"(h) RELATION TO OTHER REQUIREMENTS.—In the implementation of this section, the process for meeting space needs in urban areas shall continue to give first consideration to a centralized community business area and adjacent areas of similar character to the extent of any Federal requirement therefore.".

(b) EFFECTIVE DATE.—Subsection (b) of section 31 of the Federal Fire Prevention and Control Act of 1974, as added subsection (a) of this section, shall take effect 2 years after the date of enactment of this Act.

TITLE II—NATIONAL FALLEN FIREFIGHTERS FOUNDATION

SEC. 201. SHORT TITLE.

This title may be cited as the "National Fallen Firefighters Foundation Act".

SEC. 202. ESTABLISHMENT AND PURPOSES OF FOUNDATION.

(a) ESTABLISHMENT.—There is established the National Fallen Firefighters Foundation (hereafter in this title referred to as the "Foundation"). The Foundation is a charitable and nonprofit corporation to be organized under the laws of the State of Maryland and is not an agency or establishment of the United States.

(b) PURPOSES.—The purposes of the Foundation are—

(1) primarily to encourage, accept, and administer private gifts of property for the benefit of the National Fallen Firefighters' Memorial and the annual memorial service associated with it;

(2) to provide financial assistance to families of fallen firefighters for transportation to and lodging at non-Federal facilities during the annual memorial service;

(3) to assist State and local efforts to recognize firefighters who die in the line of duty; and

(4) to provide scholarships and other financial assistance for educational purposes and job training for the spouses and children of fallen firefighters.

SEC. 203. BOARD OF DIRECTORS OF THE FOUNDATION.

(a) ESTABLISHMENT AND MEMBERSHIP.—

(1) VOTING MEMBERS.—The Foundation shall have a governing Board of Directors (hereafter in this title referred to as the "Board"), which shall consist of nine voting members, of whom—

(A) one member shall be an active volunteer firefighter;

(B) one member shall be an active career firefighter;

(C) one member shall be a Federal firefighter; and

(D) six members shall have a demonstrated interest in the fire service.

(2) NONVOTING MEMBER.—The Administrator of the United States Fire Administration of the Federal Emergency Management Agency (hereafter in this title referred to as the "Administrator") shall be an ex officio nonvoting member of the Board.

(3) STATUS OF BOARD MEMBERS.—Appointment to the Board shall not constitute employment by, or the holding of an office of, the United States for the purposes of any Federal law.

(4) COMPENSATION.—Members of the Board shall serve without compensation.

(b) APPOINTMENT AND TERMS.—Within 3 months after the date of enactment of this Act, the Administrator shall appoint the voting members of the Board. The voting members shall be appointed for terms of 6 years, except that the Administrator, in making the initial appointments to the Board, shall appoint—

(1) three members to a term of 2 years;

(2) three members to a term of 4 years; and

(3) three members to a term of 6 years.

(c) VACANCY.—A vacancy on the Board shall be filled within 60 days in the manner in which the original appointment was made.

(d) CHAIRMAN.—The Chairman shall be elected by the Board from its voting members for a 2-year term.

(e) QUORUM.—A majority of the current membership of the Board shall constitute a quorum for the transaction of business.

(f) MEETINGS.—The Board shall meet at the call of the Chairman at least once a year. If a member of the Board misses three consecutive meetings, that individual may be removed from the Board and that vacancy filled in accordance with subsection (c).

(g) GENERAL POWERS.—

(1) ACTIONS BY THE BOARD.—The Board may complete the organization of the Foundation by—

(A) appointing no more than two officers or employees;

(B) adopting a constitution and bylaws consistent with this title; and

(C) undertaking other such acts as may be necessary to carry out this title.

(2) LIMITATION.—Officers and employees may not be appointed until the Foundation has sufficient funds to pay for their services.

(h) OFFICERS AND EMPLOYEES.—±

(1) STATUS.—Officers and employees of the Foundation shall not be considered Federal employees, shall be appointed without regard to title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

(2) MAXIMUM SALARY.—No officer or employee may receive pay in excess of the annual rate of basic pay prescribed for level GS–15 of the General Schedule under section 5107 of title 5, United States Code.

SEC. 204. RIGHTS AND OBLIGATIONS OF THE FOUNDATION.

(a) IN GENERAL.—The Foundation—

(1) shall have perpetual succession;

(2) may conduct business throughout the several States, territories, and possessions of the United States;

(3) shall have its principal offices in the State of Maryland; and

(4) shall at all times maintain a designated agent authorized to accept service of process for the Foundation.

(b) SEAL.—The Foundation shall have an official seal selected by the Board which shall be judicially noticed.

(c) POWERS.—To carry out its purposes under section 202, the Foundation shall have, in addition to the powers otherwise given it under this title, the usual powers of a corporation acting as a trustee in the State of Maryland, including the power—

(1) to accept, receive, solicit, hold, administer, and use any gift, devise, or bequest, either absolutely or in trust, of real or personal property or any income therefrom or other interest therein;

(2) to sue and be sued, and complain and defend itself in any court of competent jurisdiction, except that the members of the Board shall not be personally liable, except for gross negligence;

(3) unless otherwise required by the instrument of transfer, to sell, donate, lease, invest, or otherwise dispose of any property or income therefrom;

(4) to enter into contracts and other arrangements with public agencies and private organizations and persons and to make such payments as may be necessary to carry out its functions; and

(5) to do any and all acts necessary and proper to carry out the purposes of the Foundation.

SEC. 205. ADMINISTRATIVE SERVICES AND SUPPORT.

The Administrator may provide personnel, facilities, and other administrative services

to the Foundation and shall require and accept reimbursements for such personnel, facilities, and services that shall be deposited in the Treasury to the credit of the appropriations then current and chargeable for the cost of providing such services. Notwithstanding any other provision of law, Federal personnel and stationery shall not be used to solicit funding for the Foundation.

SEC. 206. VOLUNTEER STATUS.

The Administrator may accept, without regard to the Federal civil service classification laws, rules, or regulations, the services of the Foundation, the Board, and the officers and employees of the Board, without compensation from the United States Fire Administration, as volunteers in the performance of the functions authorized under this title.

SEC. 207. AUDITS, REPORT REQUIREMENTS, AND PETITION OF ATTORNEY GENERAL FOR EQUITABLE RELIEF.

(a) AUDITS.—For purposes of the Act entitled "An Act to provide for audit of accounts of private corporations established under Federal law", approved August 30, 1964 (36 U.S.C. 1101 et seq.), the Foundation shall be treated as a private corporation established under Federal law.

(b) REPORT.—The Foundation shall, within 4 months after the end of each fiscal year, prepare and submit to the appropriate committees of the Congress a report of the Foundation's proceedings and activities during such year, including a full and complete statement of its receipts, expenditures, and investments.

(c) RELIEF FOR CERTAIN FOUNDATION ACTS OR FAILURES TO ACT.—If the Foundation—

(1) engages in, or threatens to engage in, any act, practice, or policy that is inconsistent with the purposes set forth in section 202(b); or

(2) refuses, fails, or neglects to discharge its obligations under this title, or threatens to do so, the Attorney General may petition in the United States District Court for the District of Columbia for such equitable relief as may be necessary or appropriate.

SEC. 208. IMMUNITY OF THE UNITED STATES.

The United States shall not be liable for any debts, defaults, acts, or omissions of the Foundation nor shall the full faith and credit of the United States extend to any obligation of the Foundation.

Mr. BRYAN. Mr. President, as chairman of the Commerce Committee Consumer Subcommittee, and a cochairman of the congressional fire service caucus, I am pleased to present for consideration by the full Senate S. 1690, legislation to reauthorize the U.S. Fire Administration.

Fire safety is an issue of enormous importance to our country. Statistics show that the United States has one of the worst fire problems of any country in the industrialized world. Each year over 6,000 Americans are killed, and an additional 30,000 suffer injuries in our Nation's fires. More than 2.4 million fires are reported in the United States every year, and it is believed that approximately 20 million more are unreported. These cost the American public $30 billion a year.

The U.S. Fire Administration was created in 1974 to address the Nation's fire problem. The Administration was created to assist State and local officials with fire prevention and control. The agency's activities include training programs for local firefighters, and public education programs.

The substitute I am offering today includes provisions reported by the Commerce Committee earlier this year. First, it seeks to provide the Federal Fire Administration with the necessary funding to carry out its much needed programs. The legislation authorizes funding for fiscal years 1992 through 1994. It also requires the Fire Administration to give priority to several issues and programs, including: First, the reduction of the incidence of residential fires, especially in residences of the young and elderly; second, strengthening programs that help protect the lives and safety of fire and emergency medical services personnel; and third, enhancing residential sprinkler programs. In addition, the legislation requires the Fire Administration to report to Congress on its progress in implementing the Hotel and Motel Fire Safety Act of 1990. That act was passed by the Congress to encourage the installation of sprinklers and smoke detectors in hotel and motel facilities, and thereby improve the fire safety of public accommodations.

The substitute also includes provisions reported by the Commerce Committee from S. 1698, legislation to establish the Fallen Firefighters Foundation. The Foundation is to be established for the benefit of the families of fallen firefighters. The foundation would be authorized to provide assistance to the families of fallen firefighters, including assistance to families to attend the annual memorial service at the National Firefighter Memorial in Emmitsburg, MD, and scholarships and financial assistance to the children and spouses of fallen firefighters who seek to further their education or job training.

The Foundation is to be governed by a board of directors of nine members, who are to be appointed by the U.S. Fire Administrator. The Board members are to include volunteer, career, and Federal firefighters, and other representatives from the fire service community. The Foundation is to be established as an independent organization, and will include members of the fire service, including volunteer, career, and Federal firefighters. The legislation bars any Federal funding of the Foundation, and the substitute makes clear that no Federal personnel and stationery are to be used to solicit funds for the Foundation.

In addition, the substitute includes the text of H.R. 3360, legislation that would require the installation of fire sprinklers in certain federally owned and constructed facilities.

This legislation, Mr. President, is important for the improvement of the Nation's fire protection efforts. I ask for the unanimous support of my colleagues.

Mr. HOLLINGS. Mr. President. As chairman of the Commerce Committee, I am pleased to express my support for S. 1690, legislation to reauthorize the U.S. Fire Administration [USFA]. The USFA was established to address our Nation's fire problem, and is vital in our overall effort to reduce the number of fire-related injuries and deaths that occur in our Nation each year.

In this regard, USFA works actively with State and local fire departments in developing programs to enhance public education about fire safety, and to provide training and educational programs for members of the fire service. Thus, passage of this legislation is not only necessary for the reauthorization of the USFA but also to provide the needed support and assistance to the brave men and women in our Nation's fire service. I, therefore, ask that my colleagues give their full support to this reauthorization bill.

Mr. SARBANES. Mr. President, I want to express my strong support for the measure which is currently before the Senate.

S. 1690 reauthorizes the programs of the U.S. Fire Administration and the National Fire Academy. Since these organizations were established in the Federal Fire Prevention and Control Act of 1974 they have played an important role in reducing the loss of life and property due to fire.

I am very pleased that the bill before us includes the language of S. 1698, legislation I authored to establish a National Fallen Firefighters Foundation. I want to thank Senator HOLLINGS and Senator BRYAN as well as their Republican colleagues, Senator DANFORTH and Senator GORTON, for their leadership in bringing this Foundation bill before the Senate.

Mr. President, establishment of a National Fallen Firefighters Foundation will help our Nation honor the approximately 100 firefighters who die in the line of duty each year.

These heroes are recognized by a simple yet stirring monument on the grounds of the National Fire Academy in Emmitsburg, MD. The memorial is a bronze Maltese cross, a traditional symbol of the fire service, atop a limestone pyramid. It is surrounded by plaques listing the firefighters who have died each year since the memorial was dedicated in 1981.

As my colleagues will recall, Congress has approved a joint resolution that I introduced to designate this striking monument as the official national memorial to volunteer and career firefighters who die in the line of duty. In 1990 that resolution became Public Law 101-347.

Each October, during Fire Prevention Week, a memorial service is held at the monument that honors all of the career and volunteer firefighters who were killed in the line of duty during the previous year. I have just sent to each

of my colleagues a letter inviting them to participate in this year's service which will be held on Sunday, October 11. More than 1,000 family members and fellow firefighters will gather on the Fire Academy campus to honor the 105 firefighters from 37 different States who died serving their communities during 1991.

Mr. President, the Foundation established by this bill would allow individuals and organizations to support both the memorial and the annual service with voluntary donations. Assuming that the Foundation raised more money than was needed for those primary purposes, my bill would permit financial help for the families of fallen firefighters such as educational scholarships and assistance with the cost of traveling to Maryland for the annual service. At the same time, the Foundation could use funds to assist with the planning, design, and construction of local memorials around our Nation honoring fallen firefighters.

The Foundation would be a charitable corporation run by a Board of Directors that would include at least one volunteer firefighter, one career firefighter, and one Federal firefighter. The Board would be appointed by the Administrator of the U.S. Fire Administration. Once sufficient funds were raised, the Board would be able to hire no more than two staff members.

In order to further limit administrative expenses, it is my intention that the Foundation would have its office on the Fire Academy campus. The Fire Administrator would provide office space, personnel, and other administrative support to the Foundation. The Administrator could accept reimbursement from the Foundation for the associated expenses.

Mr. President, I want to note that this bill has been strongly endorsed by the National Fire Academy Board of Visitors, the International Association of Fire Fighters, the National Volunteer Fire Council, the International Association of Arson Investigators, the National Fire Protection Association, the International Society of Fire Service Instructors, and by my friends in the Maryland State Firemen's Association.

At this time, Mr. President, I want to commend the 21 Senators who are cosponsors of S. 1698. I also want to thank Representative BEVERLY BYRON who introduced a House companion measure that has the bipartisan support of 65 Members.

I again thank the committee for including the National Fallen Firefighters Foundation in this bill and I urge adoption of the reauthorization.

Mr. GORTON. Mr. President, I am happy to offer my support for the passage of S. 1690, the Federal Fire Prevention Act, which has been modified to include several important fire safety measures. This bill has been greatly strengthened by the incorporation of H.R. 3360, the Federal Fire Safety Act of 1992. Consequently, the bill now includes provisions which enhance fire safety in new and renovated Federal office buildings, housing for Federal employees, and federally funded housing and rental assistance programs. These important safety measures will, undoubtedly, save the lives of many who work and live in Federal buildings and housing structures.

This bill has the support of many fire officials in Washington State and across the country because of the important safety and fire prevention measures which it encourages. By passing this legislation the Senate has taken an important step toward protecting our citizens from the devastation of fire.

Mr. JEFFORDS. Mr. President, the days before a Congress adjourns are often very frantic. For my colleague, Senator BRYAN, and I, this has definitely been true as we each try to complete important legislative initiatives. I am glad that my colleague and I were able to work together on this initiative.

There has been much said about Congress and the gridlock, but in this instance, I think a number of Members of both bodies deserve recognition for rising above gridlock. First, I want to commend Senator BRYAN. Without his assistance, firefighters' families would not be receiving the protection that they now will be. Second, I want to thank my colleagues on the Senate Commerce Committee for their recent efforts and the Labor and Human Resources Committee for their support over the last 2 plus years.

Next, I would like to thank my colleagues in the House. This bill would not have gone forward without the support of several Members of Congress. BILL FORD, BILL GOODLING, CASS BALLENGER, JOE GAYDOS, and PAUL HENRY of the Education and Labor Committee, I believe, deserve a special thanks. As the chairman, ranking member, and members of the authorizing committee, this bill would not have gone forward without their blessing. They did not have to give their support, but they did. I believe firefighters and their families owe much to these gentlemen.

I also want to thank GEORGE BROWN and BOB WALKER, the chairman and ranking member of the House Science Committee, and their fellow committee members RICK BOUCHER, MARILYN LLOYD, and SHERRY BOEHLERT. These individuals know the value of good science. At a critical time, they lent their support to this effort. I, and firefighters everywhere, owe these individuals a debt of gratitude.

As is true every Congress at this time of year, there is tremendous stress. Given the late hour, any amendment can seem troublesome until there has been time to review the issue at hand. Once my colleague and I had an opportunity to meet, we quickly worked things out.

The amendment itself enjoys broad support. Twelve of my colleagues have cosponsored the initiative, the Workers' Family Protection Act.

I want to thank Senators METZENBAUM, REID, LIEBERMAN, CHAFEE, D'AMATO, CONRAD, GORE, DODD, SASSER, MOYNIHAN, GLENN, and LEVIN.

What problem does the amendment address? It addresses the problem of workers inadvertently carrying toxic materials out of the workplace on their clothing into their homes. Exposure to family members results sometimes with disastrous results. Spouse and children have died from such exposure. Health officials estimate that 1 million families may be threatened, and firefighter's families may be at the greatest risk.

Let me cite a few case studies.

In Arizona, a 3-year-old girl died from liver cancer resulting from arsenic exposure in the home. Her father worked with arsenic at a copper smelter. In Hawaii, pesticide workers had 10 times the levels of arsenic in their homes than nonpesticide workers' homes.

In Kentucky, workers at a laundry contaminated their homes with asbestos as as result of removing insulation at work. They asked their employer for permission to change their clothes at work before going home and were told no. Then they were fired when their homes were found to be contaminated. Auto workers in Michigan have had their homes contaminated with asbestos, as have North Carolina textile workers, Mississippi paper mill and shipyard workers, and Florida airport workers. Many people have died as a result of home exposure to asbestos.

Lead has been found in homes many, many times as a result of workplace exposure. Home contamination incidents involving lead have occurred in Minnesota, South Carolina, Oregon, Iowa, Alabama, Indiana, Texas, Pennsylvania, North Carolina, Kentucky, New Jersey, Colorado, Tennessee, Virginia, and my home State of Vermont. The dangers of lead are well known, but did my colleagues know that the blood from newborn babies umbilical cords have significantly higher blood lead levels when the fathers work with lead than when the fathers are not involved with lead? I have found documented cases where babies had to be hospitalized because of home exposure to workplace lead.

These are not the only contaminants that have been transported from the workplace to the home. Mercury, PCB's, dioxins, pesticides, even radionuclides from the workplace have been found in homes. Wives of PCB workers, for example, have been found to have PCB's in their blood, for example.

Many cases where family members have died or have been permanently injured have been documented. Children have even been poisoned by exposure to contaminants left by the previous occupant of a home or by their parents before they were even born. I have even found cases of home contamination dating back to the 1930's in most States of the Union. Thus, to my colleagues, this is a problem that most certainly affects your constituents.

Numerous studies have been done showing a relationship between a parents' occupation and cancer in their children. Exposure to workplace chemicals in the home is one hypothesized exposure route. Given that this problem was identified as early as 1935, in Pennsylvania I might add, its well passed time we starting addressing it.

So what does this bill do? This bill simply asks the five agencies with some responsibility for preventing or responding to home contamination to work together on a scientifically sound strategy to first assess the scope of the problem, and then to act to prevent future incidents. Special consideration is given to the family members of firefighters as they are often neglected by other occupational safety programs.

The National Institutes for Occupational Safety and Health, or NIOSH, is given the lead role. NIOSH is to collect the available information on this problem. I plan to make my files on this subject available to NIOSH to assist in this effort.

Then, experts from various professions, from industrial hygiene to medicine, are to review this information and determine what if any data gaps exist and how best to fill these data gaps. This strategy for assessing the problem is then to be peer reviewed, finalized, and implemented.

As you can imagine, home contamination is a very volatile and sensitive issue. Thus, I understand the work that the sponsors of the underlying bill have accomplished. Consensus on tough issues is tough.

This amendment, however, is a responsible approach to addressing this problem. It is supported by both labor and industry. Neither I nor to my knowledge any of my colleagues know the extent of this problem. This approach will provide the answers we need.

Once again, I thank my colleagues for their assistance and hope firefighters across the country will let them know how much their efforts are appreciated.

AMENDMENT NO. 3321 TO AMENDMENT NO. 3320

(Purpose: To require the Director of the National Institute for Occupational Safety and Health to conduct a study of the prevalence and issues related to contamination of workers' homes with hazardous chemicals and substances transported from their workplace and to issue or report on regulations to prevent or mitigate the future contamination of workers' homes)

Mr. LUGAR. Mr. President, I send an amendment to the desk on behalf of Mr. JEFFORDS and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Indiana [Mr. LUGAR] proposes an amendment numbered 3321 to Amendment No. 3320.

Mr. LUGAR. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place, insert the following new section:

SEC.—.WORKERS' FAMILY PROTECTION

(a) SHORT TITLE.— This section may be cited as the "Workers' Family Protection Act".

(b) FINDINGS AND PURPOSES.—

(1) FINDINGS.—Congress finds that—

(A) hazardous chemicals and substances that can threaten the health and safety of workers are being transported out of industries on workers' clothing and persons:

(B) these chemicals and substances have the potential to pose an additional threat to the health and welfare of workers and their families;

(C) additional information is needed concerning issues related to employee transported contaminant releases; and

(D) additional regulations may be needed to prevent future releases of this type.

(2) PURPOSE.— It is the purpose of this section to—

(A) increase understanding and awareness concerning the extent and possible health impacts of the problems and incidents described in paragraph (1);

(B) prevent or mitigate future incidents of home contamination that could adversely affect the health and safety of workers and their families.

(C) clarify regulatory authority for preventing and responding to such incidents; and

(D) assist workers in redressing and responding to such incidents when they occur.

(c) EVALUATION OF EMPLOYEE TRANSPORTED CONTAMINANT RELEASES.

(1) STUDY.—

(A) IN GENERAL.— Not later than 18 months after the date of enactment of this Act, The Director of the National Institute for Occupational Safety and Health (hereafter in this section referred to as the "Director"), in cooperation with the Secretary of Labor, the Administrator of the Environmental Protection Agency , the Administrator of the Agency for Toxic Substances and Disease Registry, and the heads of other Federal Government agencies as determined to be appropriate by the Director, shall conduct a study to evaluate the potential for, the prevalence of, and the issues related to the contamination of workers' homes with hazardous chemicals and substances, including infectious agents, transported from the workplace of such workers.

(B) MATTERS TO BE EVALUATED.— In conducting the study and evaluation under subparagraph (A), the Director shall—

(i) conduct a review of past incidents of home contamination through the utilization of literature and of records concerning past investigations and enforcement actions undertaken by—

(I) the National Institute for Occupational Safety and Health;

(II) the Secretary of Labor to enforce the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.);

(III) States to enforce occupational safety and health standards in accordance with section 18 of such Act (29 U.S.C. 667); and

(IV) other government agencies (including the Department of Energy and the Environmental Protection Agency), as the Director may determine to be appropriate;

(ii) evaluate current statutory, regulatory, and voluntary industrial hygiene or other measures used by small, medium and large employers to prevent or remediate home contamination;

(iii) compile a summary of the existing research and case histories conducted on incidents of employee transported contaminant releases, including—

(I) the effectiveness of workplace housekeeping practices and personal protective equipment in preventing such incidents;

(II) the health effects, if any, of the resulting exposure on workers and their families;

(III) the effectiveness of normal house cleaning and laundry procedures for removing hazardous materials and agents from workers; home and personal clothing;

(IV) indoor air quality, as the research concerning such pertains to the fate of chemicals transported from a workplace into the home environment; and

(V) methods for differentiating exposure health effects and relative risks associated with specific agents from other sources of exposure inside and outside the home;

(iv) identify the role of Federal and State agencies in responding to incidents of home contamination;

(v) prepare and submit to the Task Force established under paragraph (2) and to the appropriate committees of Congress, a report concerning the results of the matters studied or evaluated under clauses (i) through (iv); and

(iv) study home contamination incidents and issues and worker and family protection policies and practices related to the special circumstances of firefighters and prepare and submit to the appropriate committees of Congress a report concerning the findings with respect to such study.

(2) DEVELOPMENT OF INVESTIGATIVE STRATEGY.—

(A) TASK FORCE.—Not later than 12 months after the date of enactment of this Act the Director shall establish a working group, to be known as the "Workers' Family Protection Task Force". The Task Force shall—

(i) be composed of not more than 15 individuals to be appointed by the Director from among individuals who are representative of workers, industry, scientists, industrial hygienists, the National Research Council, and government agencies, except that not more than one such individual shall be from each appropriate government agency and the number of individuals appointed to represent industry and workers shall be equal in number;

(ii) review the report submitted under paragraph (1)(B)(v);

(iii) determine, with respect to such report, the additional data needs, if any, and the need for additional evaluation of the scientific issues related to and the feasibility of developing such additional data; and

(iv) if additional data are determined by the Task Force to be needed, develop a recommended investigative strategy for use in obtaining such information.

(B) INVESTIGATIVE STRATEGY.—

(i) CONTENT.—The investigative strategy developed under subparagraph (A)(iv) shall identify data gaps that can and cannot be filled, assumptions and uncertainties associated with various components of such strategy, a timetable for the implementation of such strategy, and methodologies used to gather any required data.

(ii) PEER REVIEW.—The Director shall publish the proposed investigative strategy under subparagraph (A)(iv) for public comment and utilize other methods, including technical conferences or seminars, for the purpose of obtaining comments concerning the proposed strategy.

(iii) FINAL STRATEGY.—After the peer review and public comment is conducted under clause (ii), the Director, in consultation with the heads of other government agencies, shall propose a final strategy for investigating issues related to home contamination that shall be implemented by the National Institute for Occupational Safety and Health and other Federal agencies for the period of time necessary to enable such agencies to obtain the information identified under subparagraph (A)(iii).

(C) CONSTRUCTION.—Nothing in this section shall be construed as precluding any government agency from investigating issues related to home contamination using existing procedures until such time as a final strategy is developed or from taking actions in addition to those proposed in the strategy after its completion.

(3) IMPLEMENTATION OF INVESTIGATIVE STRATEGY.—Upon completion of the investigative strategy under subparagraph (B)(iii), each Federal agency or department shall fulfill the role assigned to it by the strategy.

(d) REGULATIONS.—

(1) IN GENERAL.—Not later than 4 years after that date of enactment of this Act, and periodically thereafter, the Secretary of Labor, based on the information developed under subsection (c) and on other information available to the Secretary, shall—

(A) determine if additional education about, emphasis on, or enforcement of existing regulations or standards is needed and will be sufficient, or if additional regulations or standards are needed to protect workers and their families from employee transported releases of hazardous materials; and

(B) prepare and submit to the appropriate committees of Congress a report concerning the results of such determination.

(2) ADDITIONAL REGULATIONS OR STANDARDS.—If the Secretary of Labor determines that additional regulations or standards are needed under paragraph (1), the Secretary shall promulgate such regulations or standards as determined to be appropriate not later than 3 years after such determination.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated, from sums otherwise authorized to be appropriated, for each fiscal year such sums as may be necessary to carry out this section.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3321) was agreed to.

The PRESIDING OFFICER. The question is on agreeing to the amendment, as amended.

The amendment (No. 3320) as amended, was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to engrossed for a third reading, was read the third time.

FEDERAL FIRE PREVENTION AND CONTROL ACT OF 1974

Mr. SIMON. Mr. President, I ask unanimous consent the Commerce Committee be discharged from further consideration of H.R. 2042, the House companion, and that the Senate then proceed to its immediate consideration, that all after the enacting clause be stricken and the text of S. 1690, as amended, be inserted in lieu thereof, that the bill be deemed read the third time, passed, and the motion to reconsider be laid on the table.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

So the bill (H.R. 2042) was deemed read the third time, and passed.

Mr. SIMON. Mr. President, I ask unanimous consent that Calendar 622, be indefinitely postponed.

The PRESIDING OFFICER. Without objection, it is so ordered.

PARTNERSHIPS FOR WILDLIFE ACT

Mr. SIMON. Mr. President, I ask unanimous consent that the Environment and Public Works Committee be discharged from further consideration of S. 1491, the Partnerships for Wildlife Act and that the Senate then proceed to its immediate consideration.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (S. 1491) to establish a partnership among the United States Fish and Wildlife Service, the States, and private organizations and individuals to conserve the entire diverse array of fish and wildlife species in the United States and to provide opportunities for the public to enjoy these fish and wildlife species through nonconsumptive activities.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 3322

(Purpose: To clarify and amend certain provisions)

Mr. SIMON. Mr. President, I send to the desk an amendment on behalf of Senator MITCHELL and Senator CHAFEE and ask for its for immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Illinois [Mr. SIMON] for Mr. MITCHELL (for himself and Mr. CHAFEE) proposes an amendment numbered 3322.

Mr. SIMON. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 9, line 22, subsection (d) is amended to read as follows:

"(d) LIMITATIONS ON FEDERAL PAYMENT.—The amount of appropriated Federal funds provided from the Fund by the Secretary to any designated State agency with respect to any fiscal year to carry out an eligible wildlife conservation and appreciation project under this section—

"(1) may not exceed $250,000.00;

"(2) may not exceed one third of the total project cost for that fiscal year;

"(3) may not exceed 40 percent of the total project cost for that fiscal year if designated State agencies from two or more States cooperate in implementing such a project;

"(4) may not be used to defray the administrative cost of State programs; and

"(5) may not exceed the State share of the cost of implementing such a project.".

On page 10, lines 17 and 18, strike "if such an agency diverts revenue form activities it regulates" and insert "if revenue derived from activities regulated by such an agency is diverted".

On page 11, line 12, immediately before the semi-colon insert", of which not more than 4 per centum shall be available to the Secretary and the National Fish and Wildlife Foundation to defray the costs of administering this Act and evaluating wildlife conservation and appreciation projects".

On page 11, line 20, paragraph (4) is amended to read as follows:

"(4) Of the total amount provided from the Fund to assist a State in carrying out a wildlife conservation and appreciation project under subsection (a) of this section, at least 50 per centum shall have been donated to the Fund by the National Fish and Wildlife Foundation.".

On page 12, line 4, strike the word "wholly".

The PRESIDING OFFICER. Is there debate on the amendment?

Mr. MITCHELL. Mr. President, many songbird species that nest in this country and winter in Central and South America are declining. In the eastern United States, several of these species already are protected under the Endangered Species Act, and another 44 are showing signs of being in trouble.

Many other fish and wildlife species not traditionally pursued by hunters or anglers, sometimes called nongame wildlife, also are declining. For instance, there has been a nationwide de-

crease in the numbers of frogs and salamanders. The reasons for the decline of those species and many others are unknown. At the same time, the research and management programs that are necessary to reverse these declines and to prevent others are not being undertaken.

That is why I introduced the Partnerships for Wildlife Act, along with Senator CHAFEE. It will encourage badly needed wildlife research, management, conservation and appreciation projects through development of Federal-State-private partnerships.

Of the approximately 2,600 species of native fish and wildlife in the United States, about 80 percent are not considered to be game species. These species, from the cardinals and robins that visit our bird feeders to the puffins and pelicans that frequent our coasts, represent a rich recreational and cultural resource of the American people.

Despite the popularity of wildlife, however, it is obvious that we are doing too little to conserve most species. The U.S. Fish and Wildlife Service has prepared a list of 30 migratory bird species that warrant concern because of population declines, small population sizes, or habitat limitations. Eleven of these species are found in Maine.

In addition, there are over 275 fish and wildlife species officially classified as federally threatened or endangered. Many, if not all, of them would have escaped this perilous status if there had been programs in place to monitor and conserve them.

Continuing to pay inadequate attention to the full diversity of our wildlife will inevitably lead to the population declines of more species until they reach dangerously low levels where they, too, must be protected by the Endangered Species Act. At that point, the task of rebuilding a species' numbers is likely to be far less successful and far more costly.

The U.S. Fish and Wildlife Service, the 50 State fish and wildlife agencies and private organizations and businesses have all played important roles in the effort to sustain wildlife. But even greater achievements are possible if these efforts are made in concert with one another.

Partnerships in fish and wildlife conservation, such as the North American Wetlands Conservation Act, have proven to be remarkably successful. In its first 2 years, that law has stimulated over 200 partnerships resulting in $142 million to conserve more than 600,000 wetland acres.

The Partnerships for Wildlife Act seeks to forge similar cooperative efforts to conserve many neglected species of fish and wildlife and to provide greater opportunities for the public to enjoy these resources. And, although not yet enacted, this legislation already has begun to work. Earlier this year, at a hearing before the Environmental Protection Subcommittee, L.L. Bean in Freeport, ME, became the first private business to indicate its willingness to participate as a future partner in carrying out this legislation.

Under the Partnerships for Wildlife Act, the Federal Government, the States, and private businesses and organizations would each pay one-third of the cost of carrying out fish and wildlife conservation and appreciation projects. Consequently, the more than $6 million in Federal funding provided by the bill each year will be matched by at least $12 million in State and private funds.

Up to $250,000 in Federal funds, and at least an equal amount from private sources, will be available each year to help any State fish and wildlife agency inventory and monitor fish and wildlife species and their habitats, identify and potential threats to these species and their habitats, and provide opportunities for the public to view, learn about, and otherwise enjoy fish and wildlife. In Maine, these funds will benefit wildlife such as the box turtle and roseate tern, which have been designated as endangered and threatened, respectively, under State law, but not under the Federal Endangered Species Act.

I hope that my colleagues will join Senator CHAFEE and I in supporting enactment of the Partnerships for Wildlife Act. There are important economic, recreational, and educational reasons to encourage wildlife conservation and appreciation, but the most important reason, in my judgment, is that an abundant, diverse and healthy supply of fish and wildlife improves the quality of life for the American people.

Mr. CHAFEE. Mr. President, I rise in strong support of S. 1491 the Partnerships for Wildlife Act and would like to commend Senator MITCHELL for introducing this bill and for his continued leadership on fish and wildlife issues.

As we look toward preserving our natural heritage it is important to recognize the value of the diversity of plant and animal life that are integral components of our native environment.

This bill will help support efforts to conserve the 80 percent of our fish and wildlife species that are not currently protected under any law. It is my hope that through research, education, management, and conservation efforts we can prevent these species from ever becoming threatened or endangered.

This measure incorporates a partnership concept for nongame fish and wildlife conservation. It is modeled after the partnerships that been utilized very effectively to preserve wetlands under the North American Wetlands Conservation Act, which was also authored by Senator MITCHELL.

In addition, since 1986, the National Fish and Wildlife Foundation has matched $22 million in congressional appropriations with $40 million in non-Federal donations. That is a pretty good return—almost 2 to 1—and has been used to fund over 540 partnership projects to improve our plant, fish, and wildlife resources.

The remarkable success of public/private partnerships is due to the cooperative efforts of dedicated people from private businesses, conservation organizations, and State and Federal Government agencies. It is also indicative of widespread public support for preservation of our natural environment and concern for the decline of many fish and wildlife species.

The U.S. Fish and Wildlife Service reports that 98 million adults, more than one-half of the adult population of this country, participated in fish and wildlife related activities in 1991—contributing $59.5 billion to the national economy. Last year more than 76 million Americans enjoyed non-consumptive wildlife related activities such as feeding birds, observing and photographing wildlife.

The wildlife conservation and appreciation fund, established by this legislation, will help the public and private sectors work side-by-side to preserve native biological diversity and to provide many more opportunities for Americans to share in the enjoyment of our fish and wildlife species in their natural habitat.

The PRESIDING OFFICER. Without objection, the amendment is agreed to.

So the amendment (No. 3322) was agreed to.

Mr. SIMON. Mr. President, I move to reconsider the vote.

Mr. LUGAR. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. If there are no further amendments to be proposed, without objection, the bill is deemed read a third time.

Is there any further debate?

Without objection, the bill is passed.

So the bill (S. 1491), as amended, was passed; as follows:

S. 1491

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Partnerships for Wildlife Act".

SEC. 2. FINDINGS.

The Congress finds the following:

(1) Three-fourths of all American children and adults participate in wildlife-related recreational activities other than hunting, fishing and trapping.

(2) In 1985, Americans spent over $14 billion on non-consumptive wildlife-related recreation.

(3) The United States and Canada are inhabited by approximately two thousand six hundred vertebrate species of native fish and wildlife, which have provided food, clothing, and other essentials to a rapidly expanding human population.

(4) Over 80 percent of vertebrate fish and wildlife species in North America are not harvested for human use.

(5) The continued well-being of this once-abundant fish and wildlife resource, and even the very existence of many species, is in peril.

(6) In 1987, the United States Fish and Wildlife Service reported that forty-five common migratory bird species, which are not hunted, had exhibited significant declines in abundance, and that thirteen of these species have experienced widespread, systematic declines of 46.9 percent during a twenty-year study period.

(7) There have been nationwide declines in frogs and other amphibians.

(8) Over two hundred and seventy-five of vertebrate fish and wildlife species in the United States are now officially classified as threatened or endangered by the Federal Government.

(9) During the past decade, fish and wildlife species, including invertebrates, were added to the rapidly growing list of threatened and endangered species in North America at the average rate of over one per month.

(10) Currently, eighty-two species of invertebrates in the United States are listed as threatened or endangered under the Endangered Species Act, and another nine hundred and fifty-one United States invertebrate species are candidates for listing under that Act.

(11) Proper management of fish and wildlife, before species become threatened or endangered with extinction, is the key to reversing the increasingly desperate status of fish and wildlife.

(12) Proper fish and wildlife conservation includes not only management of fish and wildlife species taken for recreation and protection of endangered and threatened species, but also management of the vast majority of species which fall into neither category.

(13) Partnerships in fish and wildlife conservation, such as the Federal Aid in Wildlife Restoration Program, the Federal Aid in Sport Fish Restoration Program, and the North American Wetlands Conservation Act have benefitted greatly the conservation of fish and wildlife and their habitats.

(14) A program that encourages partnerships among Federal and State governments and private entities to carry out wildlife conservation and appreciation projects would benefit all species of fish and wildlife through such activities as management, research, and interagency coordination.

(15) Many States, which are experiencing declining revenues, are finding it increasingly difficult to carry out projects to conserve the entire array of diverse fish and wildlife species and to provide opportunities for the public to associate with, enjoy, and appreciate fish and wildlife through nonconsumptive activities.

SEC. 3. PURPOSES.

The purposes of this Act are to establish a partnership among the United States Fish and Wildlife Service, designated State agencies, and private organizations and individuals—

(1) to carry out wildlife conservation and appreciation projects to conserve the entire array of diverse fish and wildlife species in the United States and to provide opportunities for the public to use and enjoy these fish and wildlife species through nonconsumptive activities;

(2) to enable designated State agencies to respond more fully and utilize their statutory and administrative authorities by carrying out wildlife conservation and appreciation projects; and

(3) to encourage private donations, under the leadership of the National Fish and Wildlife Foundation, to carry out wildlife conservation and appreciation projects.

SEC. 4. DEFINITIONS.

As used in this Act—

(1) The terms "conserve" and "conservation" means to use, and the use of, such methods and procedures which are necessary to ensure, to the maximum extent practicable, the well being and enhancement of fish and wildlife and their habitats for the educational, aesthetic, cultural, recreational, scientific, and ecological enrichment of the public. Such methods and procedures may include, but are not limited to, any activity associated with scientific resources management, such as research, census, law enforcement, habitat acquisition, maintenance, development, information, education, population manipulation, propagation, technical assistance to private landowners, live trapping, and transplantation.

(2) The term "designated State agency" means the State fish and wildlife agency, which shall be construed to mean any department, or any division of any department of another name, of a State that is empowered under its laws to exercise the functions ordinarily exercised by a State fish and wildlife agency.

(3) The term "fish and wildlife" means wild members of the animal kingdom that are in an unconfined state.

(4) The term "Fund" means the Wildlife Conservation and Appreciation Fund established under section 5(f) of this Act.

(5) The term "National Fish and Wildlife Foundation" means the charitable and nonprofit corporation established under section 2 of the National Fish and Wildlife Foundation Establishment Act (16 U.S.C. 3701).

(6) The term "nonconsumptive activities" means fish and wildlife associated activities other than harvesting of fish and wildlife and includes, but is not limited to, photographing, observing, learning about, or associating with, fish and wildlife.

(7) The term "Secretary" means the Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service.

(8) The term "wildlife conservation and appreciation project" means a project which is directed toward nonconsumptive activities or toward the conservation of those species of fish and widlife that—

(A) are not ordinarily taken for recreation, fur, or food; except that if under applicable State law, any fish and wildlife may be taken for recreation, fur, or food in some but not all, areas of the State, a wildlife conservation and appreciation project may be directed toward the conservation of any of such fish and wildlife within any area of the State in which such taking is not permitted;

(B) are not listed as endangered species or threatened species under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1543); and

(C) are not marine mammals within the meaning of section 3(5) of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1362(5)).

SEC. 5. WILDLIFE PARTNERSHIP PROGRAM.

(a) IN GENERAL.—The Secretary shall provide the amounts available in the Fund to designated State agencies on a matching basis to assist in carrying out wildlife conservation and appreciation projects that are eligible under subsection (b) of this section.

(b) ELIGIBLE PROJECTS.—The following wildlife conservation and appreciation projects shall be eligible for matching funds from the Fund:

(1) inventory of fish and wildlife species;

(2) determination and monitoring of the size, range and distribution of populations of fish and wildlife species;

(3) identification of the extent, condition, and location of the significant habitats of fish and wildlife species;

(4) identification of the significant problems that may adversely affect fish and wildlife species and their significant habitats;

(5) actions to conserve fish and wildlife species and their habitats; and

(6) actions of which the principal purpose is to provide opportunities for the public to use and enjoy fish and wildlife through nonconsumptive activities.

(c) PROJECT STANDARDS.—The Secretary shall not provide funding to carry out an eligible wildlife conservation and appreciation project unless the Secretary determines that such a project—

(1) is planned adequately to accomplish the stated objective or objectives;

(2) utilizes accepted fish and wildlife management principles, sound design and appropriate procedures;

(3) will yield benefits pertinent to the identified need at a level commensurate with project costs;

(4) provides for the tracking of costs and accomplishments related to the project;

(5) provides for monitoring, evaluating, and reporting of the accomplishment of project objectives; and

(6) complies with all applicable Federal environmental laws and regulations.

(d) LIMITATIONS ON FEDERAL PAYMENT.—The amount of appropriated Federal funds provided from the Fund by the Secretary to any designated State Agency with respect to any fiscal year to carry out an eligible wildlife conservation and appreciation project under this section—

(1) may not exceed $250,000;

(2) may not exceed one third of the total project cost for that fiscal year;

(3) may not exceed 40 percent of the total project cost for that fiscal year if designated State agencies from two or more States cooperate in implementing such a project;

(4) may not be used to defray the administrative cost of State programs; and

(5) may not exceed the State share of the cost of implementing such a project.

(e) FORM OF STATE SHARE.—The share of the cost of carrying out eligible projects under this section shall be from a non-Federal source and shall not be in the form of an in-kind contribution.

(f) ELIGIBILITY OF DESIGNATED STATE AGENCIES.—No designated State agency shall be eligible to receive matching funds from the Wildlife Conservation and Appreciation Fund if revenue derived from activities regulated by such an agency is diverted for any purpose other than the management and conservation of fish and wildlife. Such revenue shall include, but not be limited to, all income from the sale of hunting, fishing and trapping licenses; all income from nongame checkoff systems; all income from the sale of waterfowl, habitat conservation, and other stamps that are requisite for engaging in certain activities regulated by the designated State agency; all income from the sale of any commodities and products by the designated State agency from lands and waters administered by the State for fish and wildlife purposes; and all funds apportioned to the designated State agency under the Federal Aid in Wildlife and Sport Fish Restoration Programs.

(g) ESTABLISHMENT OF FUND.—(1) The Secretary shall establish the Fund, which shall consist of amounts deposited into the Fund

by the Secretary under paragraph (2) of this subsection.

(2) The Secretary shall deposit into the Fund—

(A) amounts appropriated to the Secretary for deposit to the Fund, of which not more than 4 percent shall be available to the Secretary and the National Fish and Wildlife Foundation to defray the costs of administering this Act and evaluating wildlife conservation and appreciation projects; and

(B) amounts received as donations from the National Fish and Wildlife Foundation or other private entities or persons for deposit to the Fund.

(3) The Secretary may accept and use donations from the National Fish and Wildlife Foundation and other private entities or persons for purposes of assisting States under this section.

(4) Of the total amount provided from the Fund to assist a State in carrying out a wildlife conservation and appreciation project under subsection (a) of this section, at least 50 percent shall have been donated to the Fund by the National Fish and Wildlife Foundation.

(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Fund and to the Secretary for each of fiscal years 1992 through 1995 not to exceed $6,250,000 to match the amount of contributions made to the Fund by the National Fish and Wildlife Foundation.

Mr. SIMON. Mr. President, I move to reconsider the vote.

Mr. LUGAR. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMERICAN FOLKLIFE CENTER APPROPRIATIONS

Mr. SIMON. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 5058, a bill to authorize appropriations for the American Folklife Center for fiscal year 1993, just received from the House, that the bill read deemed read three times, passed, and the motion to reconsider laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

So the bill (H.R. 5058) was deemed read a third time and passed.

NATIONAL RAILROAD PASSENGER CORPORATION AUTHORIZATION ACT

Mr. SIMON. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on H.R. 4250.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the House disagree to the amendment of the Senate to the bill (H.R. 4250) entitled "An Act to authorize appropriations for the National Railroad Passenger Corporation, and for other purposes," and ask a conference with the Senate on the disagreeing votes of the two Houses thereon.

Ordered, That Mr. Dingell, Mr. Swift, Mr. Slattery, Mr. Lent, and Mr. Ritter be the managers of the conference on the part of the House.

Mr. SIMON. Mr. President, I move that the Senate insist on its amendment, agree to the request of a conference, and that the Chair be authorized to appoint conferees on the part of the Senate.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to, and the Chair appointed Mr. HOLLINGS, Mr. EXON, and Mr. DANFORTH, conferees on the part of the Senate.

CALENDAR

Mr. SIMON. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar Nos. 681 and 740 en bloc; that the bills be considered read for the third time, passed, and the motions to reconsider en bloc the passage of the bills be laid on the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

U.S. COMMISSION ON CIVIL RIGHTS AUTHORIZATION ACT

The bill (H.R. 5399) to amend the United States Commission on Civil Rights Act of 1983 to provide an authorization of appropriations, was considered, ordered to be engrossed for a third reading, read the third time, and passed.

U.S. COMMISSION ON CIVIL RIGHTS AUTHORIZATION

Mr. SIMON. As chairman of the Judiciary Committee Subcommittee on the Constitution, I am pleased to support H.R. 5399, legislation to set the fiscal year 1993 authorization for the U.S. Commission on Civil Rights at $8.27 million.

Last year at this time, Senator ORRIN HATCH and I drafted a 3 year extension of the Civil Rights Commission. Today, H.R. 5399, authored by the chairman of the House authorizing subcommittee, DON EDWARDS of California, increases the Commission's authorization from the current level to $8.27 million.

This authorization amount gives the Commission an inflation increase on nonsalary items, a cost of living increase, and an allotment for moving expenses. While I would prefer to see all of the Commission's resources go into substantive civil rights matters, the Commission is being forced to move because of what the General Services Administration has disclosed are unsafe conditions in its current building.

From my perspective, the amount set in this bill, while lower than the administration's request for the Civil Rights Commission this year, represents not only an increase in authorization amount but an increase in faith and trust in the Commission's work and accomplishments.

This year, for example, the Commission produced an extensive written report of the Civil Rights Issues Facing Asian Americans in the 1990s. This excellent report, widely heralded throughout Asian-American communities nationwide, documents the socioeconomic status of this growing population. The Commission also completed an additional report entitled, "Prospects & Impact of Losing State and Local Agencies from the Federal Fair Housing System.

Legislatively, the Commission made recommendations to Congress in support of the 1991 Civil Rights Act, testified in strong support of the Voting Rights Act Language Assistance Amendments of 1992, made formal comments to the EEOC disagreeing with its proposed policy guidance on the applicability of damage provisions to pending charges and pre-Act conduct in the implementation of the Civil Rights Act, and opposed the administration's proposal on minority scholarships.

The Commission has committed itself to a major programmatic focus on the broad ranging topic of "Racial and Ethnic Tensions in American Communities: Poverty, Inequality, and Discrimination." The goal of this effort is to focus national attention in the next 3 to 5 years on the state of ethnic and racial relations, the causes of the worsening tensions throughout our communities and the continuing need to find solutions to what has aptly been termed a national tragedy. The Commission has already held three fact-finding hearings, including one in the city of Chicago, to examine civil rights concerns of Hispanics and how communities can work together.

The Commission continues to address significant issues in the area of civil rights. We all need to pay closer attention on these pressing matters and I am pleased that the Commission is playing a role. I will continue to monitor the Commission's progress and work in the upcoming fiscal year.

FAIR HOUSING RIGHTS AMENDMENTS ACT

The bill (S. 1697) to amend title IX of the Civil Rights Act of 1968 to increase the penalties for violating the fair housing provisions of the Act, and for other purposes, was considered, ordered to be engrossed for a third reading, read the third time, and passed; as follows:

S. 1697

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Fair Housing Rights Amendments Act of 1991".

SEC. 2. PENALTIES FOR ACTS OF VIOLENCE OR INTIMIDATION.

Section 901 of the Act entitled "An Act to prescribe penalties for certain acts of vio-

lence or intimidation, and for other purposes", approved April 11, 1968 (known as the 'Civil Rights Act of 1968'; Public Law 90-284; 42 U.S.C. 3631), is amended to read as follows:

"SEC. 901. PREVENTION OF INTIMIDATION IN FAIR HOUSING CASES.

"(a) UNLAWFUL ACTS.—It shall be unlawful to use force or threat of force, whether or not acting under color of law, to willfully injure, intimidate, or interfere with, or attempt to injure, intimidate, or interfere with—

"(1) any person because of the race, color, religion, sex, handicap, familial status, or national origin of the person and because the person is or has been selling, purchasing, renting, financing, occupying, or contracting or negotiating for the sale, purchase, rental, financing, or occupation of any dwelling, or applying for or participating in any service, organization, or facility relating to the business of selling or renting dwellings; or

"(2) any person because the person is, or has been, or in order to intimidate the person or any other person or any class of persons from—

"(A) participating, without discrimination on account of race, color, religion, sex, handicap, familial status, or national origin, in any of the activities, services, organizations, or facilities described in paragraph (1) of this section; or

"(B) affording another person or class of persons opportunity or protection so to participate; or

"(3) any citizen because the citizen is, or has been, or in order to discourage the citizen or any other citizen from lawfully aiding or encouraging other persons to participate, without discrimination on account of race, color, religion, sex, handicap, familial status, or national origin, in any of the activities, services, organizations, or facilities described in paragraph (1), or participating lawfully in speech or peaceful assembly opposing any denial of the opportunity so to participate.

"(b) PENALTIES.—Whoever commits an act described in subsection (a)—

"(1) shall be fined not more than $100,000, or imprisoned not more than 1 year, or both;

"(2) that results in bodily injury shall be fined not more than $250,000, or imprisoned not more than 10 years, or both;

"(3) that results in death shall be subject to imprisonment for any term of years or for life; and

"(4) that results in property damage exceeding the sum of $100, or uses or attempts to use fire in committing the act, or uses or carries a firearm while committing the act, shall be fined not more than $250,000, or imprisoned not more than 5 years, or both.

"(c) DEFINITIONS.—As used in this section:

"(1) FAMILIAL STATUS.—The term 'familial status' has the meaning given the term in section 802.

"(2) FIREARM.—The term 'firearm' has the meaning given the term in section 921(a)(3) of title 18, United States Code.

"(3) HANDICAP.—The term 'handicap' has the meaning given the term in section 802.

"(4) BODILY INJURY.—The term 'bodily injury' has the meaning given the term in section 1515(a)(5) of title 18, United States Code."

EXECUTIVE SESSION

TREATY WITH THE UNION OF SOVIET SOCIALIST REPUBLICS ON THE REDUCTION AND LIMITATION OF STRATEGIC OFFENSIVE ARMS (THE START TREATY)—TREATY DOC. NO. 102-20

PROTOCOL TO THE TREATY WITH THE UNION OF SOVIET SOCIALIST REPUBLICS ON THE REDUCTION AND LIMITATION OF STRATEGIC OFFENSIVE ARMS—TREATY DOC. NO. 102-32

The Senate continued with the consideration of the treaty and the protocol.

Mr. LUGAR. Will the Chair inform me of the number of the amendment that we were just debating?

The PRESIDING OFFICER. The amendment by the Senator from Wyoming is amendment numbered 3270.

Mr. LUGAR. I ask for the yeas and nays on amendment numbered 3270.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. LUGAR. For the information of all Senators, my understanding is that vote will occur, without previous business, at 9 a.m. tomorrow morning.

The PRESIDING OFFICER. The Senate will now return to legislative session.

LEGISLATIVE SESSION

Mr. EXON. Mr. President, I ask unanimous consent that I be permitted to proceed as if in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

UNDERCHARGE EQUITY ACT

Mr. EXON. I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 592, S. 1675, the Undercharge Equity Act.

The PRESIDING OFFICER. Is there objection?

Mr. LUGAR. Mr. President, on behalf of a Member on our side of the aisle, I object.

The PRESIDING OFFICER. Objection is heard.

(Mr. WOFFORD assumed the chair.)

Mr. EXON. Mr. President, I intend to talk on this subject for some period of time.

Let me start out by saying that on a truly bipartisan basis, we have been trying—so far without success—to get up this undercharge matter for transportation that is causing great, great concern.

This measure came unanimously out of the Commerce Committee. We have had it cleared on both sides of the aisle on one or two occasions. And then, in the last 10 days or so, we have experienced the rolling hold. And everybody in this body knows what a rolling hold is. Maybe some of the people listening do not know what a rolling hold is.

A rolling hold is any Member of the U.S. Senate, if he is contacted by a special interest group or someone else, has the right to have an objection raised to the matter of bringing up the bill.

I just went through the exercise of doing that in the prescribed manner and, of course the matter was objected to on that side of the aisle.

Sooner or later, if we are ever going to eliminate the logjams, if we are going to eliminate serious matters that we find ourselves in from time to time that these days are best described as a gridlock, then we are going to have to make lots and lots of changes, including changes in the Senate rules that allow Senators to place holds on bills at will, especially when it is an organized effort by powerful forces outside of this body simply calling on the telephone and saying, "I object to such and such a measure, and would you put a hold on it?" So Senators, for reasons best known to themselves, put holds on the bill.

In this particular instance, the rolling hold has been most typical. There were four or five or six Senators on this side of the aisle that had placed holds on the bill. We tracked that down. And, finally, we would get one Senator to eliminate his hold on the bill. We would be ready to pass it and then, boom, up jumps another Senator that had been called by a special interest group to put a hold on the bill.

No longer than 15 minutes ago, in the well of the Chamber, I had a discussion with Senator BURNS from Montana, who is a very important member of the Surface Transportation Subcommittee under the Commerce Committee. He assured me that Senator KASTEN, who is the ranking Republican member of the Surface Transportation Subcommittee, had indicated that the matter had been thoroughly cleared on the Republican side of the aisle.

We had agreed that we would allow this to come up in the wrapup tonight and place it into law.

Why is this important? It is important because the undercharge matter is causing great disruption, especially to small businesses throughout the country.

I want to say that I support the Undercharge Equity Act of 1992. A great deal of work and negotiations have gone into this very important piece of legislation.

For those who are not familiar with the current undercharge crisis, I will attempt to briefly summarize exactly what the problems are and how this measure would correct them. I will simply say that, unless we can pass this bill, there remains a very ominous cloud which hangs over thousands of

Americans' businesses, both large businesses and small businesses.

In the heyday of the Reagan-Bush area of trucking deregulation, the Interstate Commerce Commission did a less than vigorous job of enforcing the requirement that trucking companies file their tariffs. At the same time, competition in the trucking business heated up. Discounting and low rates became rampant. Throughout the 1980's, trucking firms, both small and large, went out of business. Trustees of those bankrupt firms then went searching for some deep pockets to enlarge the assets of the bankrupt company.

The trustees came up an intriguing legal theory and attempted to collect from former customers of these bankrupt trucking firms. What they were talking about was the difference between the amount that was billed and paid and the amount of the last tariff that was on file with the Interstate Commerce Commission, which we generally called the ICC.

These claims became known as undercharges. It is as if you flew from Washington, DC, to Omaha for $200, and 3 years later, after you had paid your bill, after you had completed the transaction, you received another bill for $100 after the airline that you flew in went bankrupt.

In 1990, in somewhat of a surprising decision, known as the Maislin case, the U.S. Supreme Court ruled that the trustees could seek such reimbursement. The Court also sent a clear message to the Congress to legislatively address the inequities of this situation that were very much apparent to all.

Soon after the Supreme Court case, the Surface Transportation Subcommittee which I chair, held hearings. And not long after that I proposed legislation to virtually wipe out all undercharge claims. That legislation was stopped in the closing days of the 101st Congress.

Much has been said and much has been done. The current efforts to enact this Trucking Undercharge Equity Act as a freestanding bill have been stymied in the Congress again and again and again. And the stymieing is even more important at this particular juncture, as we try to end the session here in the next few days.

Also I would tell you, Mr. President, the people of responsibility in similar committees on the other side of the Hill, in the House of Representatives, are awaiting the passage of this bill so they can take proper action in the closing days of this session on their side of the Hill as well.

In the 102d Congress, I again introduced legislation and the subcommittee, with my colleagues on the Commerce Committee, attempted to find an equitable solution to this problem. After extensive discussions with all parties, the Senate Commerce Committee approved the Undercharge Equity Act which, rather than dismiss all claims, sought to craft an equitable settlement.

This equitable approach does not full satisfy anyone involved, which I would suggest is typical of some kind of reaching a consensus or a compromise. This equitable approach does not fully satisfy me, the Teamsters Union, the trucking companies, or all of the members on the Subcommittee of Surface Transportation.

But it does take an important step in the right direction. It does not fully destroy the interests of anyone involved with whom we have consulted, hours and hours and days and days.

Simply put, the legislation offers shippers two choices to settle undercharge claims. They can take their case to the Interstate Commerce Commission for a determination of rate reasonableness, or they can elect to utilize an expedited settlement procedure, based on a percentage of the prescribed bill.

Following the committee action I conducted another extended negotiation session with Senators ADAMS and WELLSTONE, who were concerned about the potential creditors in the undercharge cases. As a result of these discussions, we reached a consensus amendment which would provide shippers an equitable opportunity to dispose of these claims.

Under the settlement formula, small businesses would be relieved of any undercharged liability. Large truckload shippers would be given the option of settling for 10 percent of the equitable undercharge and large less-than-truckload shippers would be given an option of settling for 20 percent of the equitable undercharge.

Those who chose not to settle could litigate their liabilities through a rate reasonableness determination by the Interstate Commerce Commission.

This compromise is fair, it is just, it is the only thing we can do now, and it must be passed. The alternative to this legislation is to let the status quo stand. The status quo is untenable for all concerned, for shippers and, more important, for the Nation's economy. A dark cloud of billions of dollars—let me repeat, Mr. President—a dark cloud of billions of dollars of undercharge liabilities hangs over thousands of these businesses. For creditors, especially workers owed back wages and pension funds, any meaningful recovery is rapidly being eaten away by legal accounting, auditing, and lobbying collections, and over and over again the system repeats itself. The unemployed workers, the widows and orphans will not likely gain any benefit if undercharged cases are not addressed by the Congress.

The current situation only enriches the middleman. If the Congress does not act, only the pockets of the lawyers and the accountants and the lobbyists will be filled to overflowing. The undercharge equity bill is the best hope for all involved. For shippers it offers an opportunity to put the undercharge crisis behind them, and for creditors to offer certain settlement with minimal overhead expense.

Mr. President, we do not have the luxury to delay on this matter until next year. Many former customers of these bankrupt trucking companies will themselves soon face bankruptcy. Potential liabilities will also have an adverse impact on the availability of credit for firms caught in this unfair nightmare. Now is the time to act. I have offered a compromise in reason and in good faith. I ask my colleagues to embrace the hard work of the Commerce Committee and that of Senators ADAMS and WELLSTONE and myself and support the passage of the Undercharge Equity Act.

Mr. President, I simply point out that cosponsors of this amendment include the ranking Republican on the Subcommittee on Commerce, Senator KASTEN, and also an important member of that same subcommittee, Senator, BURNS, of the State of Montana.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. EXON. Mr. President, I ask unanimous consent that the order for the quorum can be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. EXON. Mr. President, this is somewhat of a complicated issue, and to better explain how important this is, I would like to at this time read some newspaper stories that have come out on this matter so that the other Members of the U.S. Senate who have not been involved in this recognize what a critical problem we have here and why we have to solve it. I am reading now from a story regarding this proposal from the Washington Post of June 16, 1992. The headline is: "Law Lets Trucking Firms Raise Rates Retroactively." Subhead line: "Loophole Results in Flood of Revised Bills."

Dale Miller is a small business owner who makes fun things. With 70 employees and about $10 million a year in business, his New Berlin, Pa., company, Playworld Systems Inc., is not a giant of industry, but it does make a comfortable profit.

Last August, however, a thick envelope arrived from a lawyer in California that upset Miller's comfortable world. According to the attorney, the playground equipment manufacturer owed more than $500,000 to a bankrupt trucking company, Transcon Inc.

Miller had just entered the new twilight zone of transportation, in which attorneys for bankrupt truck lines are sending bills to hundreds of thousands of customers for billion of dollars in services they had already paid for. The practice, which got a low-key start a few years ago, has mushroomed in the last year. And the Supreme Court said that while it's unfair, it's legal.

That is why, Mr. President, this is a priority matter and I am going to do everything that I can to insist that the Senate act on and stay away from these special-interest groups outside this body who are blocking a measure which most of the Members of this Senate would vote for given an opportunity to do so.

Like other surprised business owners around the country, Miller had dealt honestly with the trucking company, agreeing on freight rates and paying his bills promptly. He had done nothing illegal or improper. But now, someone was saying: Sorry, we've found a loophole in the law and you actually owe a lot more.

"If we continue to exist, we're going to be at an incredible disadvantage," said Miller, who has already paid his own lawyer $30,000 to fight the charge. "The frustrating thing is we didn't do anything wrong."

The problem was created by the Motor Carrier Act of 1980, which was supposed to deregulate the trucking industry, but which left the job only half complete.

Attorneys have discovered that an internal conflict in the law allows trucking companies to retroactively charge the highest rate on file with the Interstate Commerce Commission (ICC), rather than lower rates they negotiated with their customers.

It is the equivalent of a bankrupt airline telling passengers who bought discount tickets that they now must pay full fare for a trip taken years ago, something that cannot happen because airline deregulation was more complete.

Attorneys for the bankrupt truck lines and the Teamsters Union say they are merely harvesting the assets of the bankrupt firms in an effort to repay creditors, including drivers who lost back wages and severance pay when lines closed.

But ICC Chairman Edward J. Philbin said that the "over charge" problem may become the largest matter ever to come before the commission.

That is a pretty big statement, but it is a very truthful one.

It threatens serious economic dislocations and bankruptcies for many firms, he said.

While the problem has been around a few years, its sudden severity caught everyone by surprise, including the ICC and the Bush administration. President Bush has ordered a review of all federal regulations that affect business, but the White House has paid almost no attention to the undercharge problem.

This is how the situation came about:

The Motor Carrier Act of 1980 only partly deregulated the trucking industry. It allowed more truck lines to be formed and made it easier to offer lower rates, but it also required the new rates to be filed with the ICC. The commission considers these filings, totaling as many as 1.5 million a year, to be a useless anachronism, just taking up space and the time of employees who merely open envelopes and file the paper away.

As competition increased, some major truck lines went bankrupt. Auditors for the bankrupt firms discovered that these lines often failed to file the new rates. They began sending shippers bills for the difference between the rate they paid and the maximum rate actually on file at the ICC.

The ICC declared the practice "unreasonable" and ordered it stopped. But the Supreme Court ruled in 1990 that despite the unfairness of the practice, it was legal, and only Congress could change it.

Let me deviate from the story now, if I might just a minute. The Supreme Court, the Interstate Commerce Commission, almost everyone who has looked at this and any reasonable person would agree that this practice is one that has to be stopped. But the Supreme Court even said in 1990 that despite the unfairness of the practice it was legal and only the Congress could change it.

That is what we are about here tonight, Mr. President. That is what we are about here in trying to do the people's work. The people's work in this case is the people who have been taken advantage of, as Mr. Miller, from the State of Pennsylvania, as I mentioned earlier, and hundreds and thousands of other large and small businesses just like Mr. Miller.

Also, I would certainly say that the ICC declared the practice unreasonable. The Supreme Court has said it is unreasonable. And they asked us to do something about it. It is about time we do, Mr. President, rather than to go through the shenanigans of holds, and holds, and holds that have been placed on this measure to keep it from becoming law.

Armed with the Supreme Court ruling, lawyers and collection agents are scouring the records of bankrupt motor carriers to find these "undercharges." They also have discovered legal challenges to rates that actually were filed, claiming the wrong rate was charged or that the rate was filed in an illegal form.

"It's like a vigilante operation," said Richard B. Felder, head of the ICC office of legal counsel.

Suddenly, the problem mushroomed from $500 million in claims in 1989 to between $1 billion and $2 billion in 1990 and now to potentially billions more.

Now, I am going to read that paragraph again because I think better than anything else, Mr. President, it should wake up the Senate and the House of Representatives that this is something which must be changed. I am going to read it again.

Suddenly, the problem mushroomed from $500 million in claims in 1989 to between $1 billion and $2 billion in 1990 and now to potentially billions more.

"Any shipper who uses a common carrier is in peril," said Stanton Sender, head of a group of shippers called the Coalition for an Undercharge Relief Bill (CURB).

The ICC says that undercharges have become so profitable that, in a few isolated cases, small trucking firms have sought bankruptcy court protection because they could collect more that way than by continuing normal operations.

"There are companies that think they're worth more dead than alive," Felder said.

The largest undercharge so far appears to be an $8 million bill to Ford Motor Co.; the smallest, a $100 bill to a homeowner who had a couch delivered COD.

Eastman Kodak Co. and International Business Machines Corp. are among the companies that have received huge bills. But hundreds of thousands of others, large and small, have been hit with surprise bills. In the Transcon bankruptcy alone, more than $1 billion has been charged to more than 370,000 former customers.

One of them is Rep. Cass Ballenger (R-N.C.), owner of Plastic Packaging Inc. of Hickory, N.C., who received a bill for $18,000. Ballenger is a member of the House Public Works and Transportation Committee, and said he will recuse himself when the committee votes on an undercharge bill. But that doesn't prevent him from having an opinion.

"As far as I'm concerned, it was unreal, unfair ruling by the court," he said. "But you know who's going to get it? Not the creditors. It's the lawyers. When the lawyers and accountants get together, you're lucky to get a nickel. It's a rip-off."

Like almost every aspect of this situation, there even is a dispute over how much money may be involved. The ICC puts the potential risk at $32 billion. But the attorneys for the bankrupt shippers scoff at that estimate, although they acknowledge the total claims will be "big."

Joseph L. Steinfeld Jr. of the Washington law firm Sims, Walker & Steinfeld called the $32 billion figure a "fabrication," and said the ICC itself is to blame for the problem because it did not enforce the law. Steinfeld is also a spokesman * * * the Creditors' Alliance to Preserve Freight Undercharge Assets.

"You can't live in a system where the policemen don't police," he said, charging that the ICC allowed cutthroat competition that drove many trucking firms out of business.

There is also disagreement over how much the bankrupt firms will actually get from the billings. The ICC estimates that 55 percent to 80 percent of everything collected will go to lawyers and collection agents.

Steinfeld said the ICC figure is too high. For example, he said the Transcon trustees will get 35 percent of the first $20 million collected, but 65 percent to 80 percent of what is collected above that.

"The mass amount of legal fees [is] being enjoyed now by the defense attorneys, who are charging by the hour," Steinfeld said. "We are working on contingency."

Certainly those who are alarmed by the huge possibility of what this act is trying to straighten out are obviously very much concerned because it is money out of their pockets.

The Senate and House committees are preparing bills to address the undercharge legislation.

Let me add a comment right here. The Senate and House are preparing bills. That is the undercharge bill that I tried to introduce with an objection from the Republican side a few moments ago.

On the House side, there has been no decision, as of the time this was written, as of last June, as I would say it has been now, on what approach to take.

Respresentative NORMAN MINETA, Democrat of California, chairman of the House Public Works and Surface Transportation Subcommittee, tried to bring all parties together to draft a compromise but he failed.

Mr. President, although Mr. MINETA failed at that time, I think Representative MINETA has made some great strides recently. We have not failed on the Senate side. We reported out a bill unanimously. After it came on file here

for consideration, there were concerns in many quarters about this, and it is best evidence for the fact that the rolling poll that took place over a number of days has come down to this hold tonight after all were assured on both sides of the aisle about half hour ago that the measure would not be objected to.

This is a matter of fairness. It is a matter of equity. It is a matter of trying to save those businesses that were cited, including the one in Pennsylvania that was quoted extensively in the article from the Washington Post that I just read and others.

What we have now out there in the marketplace today with regard to shipping rates is total chaos. You have shippers like Mr. Miller from Pennsylvania who has to ship his goods to make any money. If he ships his goods though he does not know, and has no way of knowing, whether the rate quoted him by the carrier at that time is the right rate or whether they will come back on him again for the thousands and thousands of dollars that they claim were undercharged.

I suppose you could argue, Mr. President, that in very large companies like the Ford Motor Co. and others, IBM, that certainly they have large shipping departments that have an intimate knowledge of what the rates are, what the rates should be, and what the rates are on file at the Interstate Commerce Commission. But even they get taken from time to time.

Some people have said, oh, yes, that is just like those big businesses. They will go out and do anything that they have to do to ship their merchandise from their factory at the best possible rate. I suspect that is a part of the free enterprise system. I suspect that most of us would, unless we know we were violating the law, take the cheapest bid that was given to us in good faith.

But even if the big companies should have the knowledge with their departments to figure this out, obviously that is not the case, Mr. President, with the thousands and thousands and millions of small businessmen around this country, or the person who is not even in business, who had a sofa delivered c.o.d. to his front door. Those are the people that have no way of knowing what rate is filed. And if you have a trucking company about to go broke I suspect to maintain cash flow they might go out in a very willy-nilly fashion and get a ridiculous rate, if you will, to haul some goods just for the cash flow possibility.

This is a very serious matter. As far as commerce is concerned in the United States, we are trying to move on this. We thought after all the work that had been done, all the hearings that had been held, all of the compromises that had been entered into, after the measure came to the floor, and reported out of the Commerce Committee, we had lengthy discussions with the Senator WELLSTONE from Minnesota, and others, including Senator METZENBAUM from Ohio who wanted to take a look at this; we had meetings with the shippers, with the Teamsters Union; with everybody they could think of. And we came forth with an amendment that I indicated earlier was not the first choice of anyone but it was a workable compromise, and would go a long way to solve this problem.

After having done all that, after having worked on this for months and months and months, after going through agonizing holds on this side of the aisle, after having been assured by Members on that side of the aisle time and time again, it is all clear over here, just get it cleared on the Democratic side, I was able to accomplish that this evening, really this morning, I tried to come over and get this bill introduced this morning, and passed. But at that time, of course, you know we were tied up on the debate on the START Treaty that was interrupted here only a few moments ago.

Mr. President, there are other matters that I would like to enter into the RECORD at this time. In addition to the matters that I have read, I ask unanimous consent to have a June 16 article by the Wall Street Journal printed in the RECORD.

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

FIGHT OVER FREIGHT—FAILED TRUCKING FIRMS ARE TRYING TO RECOUP DISCOUNTS THEY GAVE

(By Laurie McGinley and Daniel Machalaba)

If it were a Stephen King novel, it might be called "Dunning From the Living Dead."

Across the country, companies that ship products by truck have received letters from bankruptcy trustees for scores of trucking companies demanding reimbursement for steep price discounts once granted by the dead haulers. "It's like buying a car for $3,000 less than the sticker price and two years later getting a bill for $3,000," fumes Ron Rittenmeyer, a vice president of PepsiCo Inc.'s Frito Lay unit, which has already shelled out $100,000 to pay the so-called freight-undercharge claims.

The U.S. Supreme Court and a federal court in California have ruled many past discounts to be illegal. The Interstate Commerce Commission estimates that potential demands by lawyers for trucking companies, dead and alive, could cost shippers as much as $32 billion if the California ruling is upheld on appeal. The trustees say the ICC estimate is wildly exaggerated, but shippers charge that lawyers are using strong-arm tactics to try to squeeze out every dime for every transaction that might have been illegal under the decisions.

A TOUGH CHOICE

After Stanley Works, a tool maker, sent a lawyer for now-defunct PIE Nationwide Inc. $19,000 for outstanding freight bills last fall, for example, the estate's attorney returned the check uncashed. Then came an ultimatum: The New Britain, Conn., company could settle for $90,000 or face an audit of 32,000 old freight bills that might raise the total by $4 million. "Talk about high pressure," complains Harry Vosganian, Stanley's shocked transportation director. "They say, 'Pay us $90,000 now or $4 million later. It was ridiculous."

Lawyers for the trustees see it differently. Paul Taylor, a Bloomington, Minn., attorney who represents several defunct carriers, says critics "are viewing this from a moral standpoint. We are looking at it from a legal standpoint." Moreover, Lloyd Whitaker, PIE's trustee, describes the Stanley settlement offer as "a good deal" for Stanley. The trustees also say shippers are at fault for pressuring trucking companies for discounts that drove many of them into bankruptcy.

The Senate Commerce Committee will consider legislation today aimed at easing some of the shippers' problems. But the outlook for congressional action isn't bright on what has become one of the nastiest high-stakes business battles raging through the courts and Congress.

TEAMSTERS INVOLVED

Giving political muscle to the bankrupt trucking estates is the International Brotherhood of Teamsters, whose members, as well as employee health, welfare and pension funds, are owed tens of millions of dollars by deceased trucking outfits. Their opponents include hundreds of thousands of U.S. companies that ship goods and the ICC, whose chairman, Edward Philbin, has described the collection efforts as a "fur ball" in the agency's throat.

The stakes are huge. In a single case—that of the defunct Transcon Lines of Los Angeles—the trustee has sued more than 340,000 companies seeking hundreds of millions of dollars—possibly as much as $1 billion—in undercharge payments.

Major corporations are big targets for the trustees. American Telephone & Telegraph Co. has been hit for $4.5 million in undercharge claims, and Goodyear Tire & Rubber Co. for $6.8 million. A spokeswoman for General Motors Corp., the nation's biggest shipper, says trustees are "doing a wholesale dump" of claims on the auto maker. Bill Huie, director of corporate transportation at NCH Corp., an Irving, Texas, manufacturer of industrial maintenance products, says the trustees' demands are "nothing but an unethical and unwarranted grab for money that does not belong to them."

SMALL FIRMS HIT

Small businesses, which have limited budgets for attorney fees, also are being hit. They range from Industries for the Blind Inc. in Milwaukee, for $26,000, to Candle Artisans Inc. in Washington, N.J., for $8,600. Some say their very survival is threatened. Dale Miller, who manufactures playground equipment in New Berlin, Pa., faces a $500,000 claim from Transcon that he plans to fight in court. "Where am I going to come up with that kind of money?" asks Mr. Miller, who says he has already spent $30,000 on lawyers.

The undercharge battle grows out of the arcane world of trucking regulation dating back to 1935. Carriers file official freight rates in the form of tariffs with the ICC. They don't have to charge the official list prices, but they must file any discounted prices they do charge customers. The goal of the filed rate doctrine—which is a kind of "truth-in-shipping" mandate—is to allow all shippers to know what's being charged so everyone gets fair treatment.

In 1980, Congress deregulated the trucking industry, but only partly; it eliminated roadblocks to new competitors but retained the requirement that rates be filed at the com-

mission. New entrants flooded into the business, and many existing truck lines extended their reach. In the competitive fever—and under intense pressure from many shippers—carriers doled out discounts of 40%, 50% and more from official rates. Sometimes they didn't bother to file the discounts at the ICC. And they often filed the discounts but used numerical codes to identify their customers, a practice approved by the commission, whose officials say the codes aided computerization of rates.

Strained by the new competition, thousands of trucking companies failed. When trustees for scores of the companies discovered that discounted rates had never been filed with the ICC, they began trying * * * those rates were the only ones on file. The ICC barred the collections as an "unreasonable practice," a move denounced by bankruptcy trustees as a ploy by deregulation-minded commissioners to undermine the filed-rate doctrine.

Then, in 1990, in a decision that shocked shippers, the Supreme Court decided that the unfiled rates were illegal and that the estates were entitled to the full rates. But the resulting litigation was only a ripple compared with what was to come.

CALIFORNIA DECISION

Last November, a federal district court judge in California agreed with the Transcon trustee that even the tariffs filed at the ICC were invalid. Judge Irving Hill ruled that because Transcon used coded entries without a key to decipher them, it was, in effect, making secret agreements in violation of the filed-rate doctrine. The ICC has appealed the ruling.

Judge Hill's decision sparked an explosion of claims. It includes Transcon's filing of the lawsuits against 340,000 companies, although the serving of the complaints has been stayed pending an appeals-court decision. It also threw the collection efforts of PIE, the defunct Jacksonville, Fla., trucking company, into higher gear. Mr. Whitaker, the PIE trustee, says the estate already has sent balance-due notices totaling more than $300 million in undercharges. Shippers' attorneys fear the amount could go as high as $1 billion.

The PIE estate sent coded shippers dunning letters saying a federal court had ruled "substantially similar tariffs are unlawful." But the letters didn't note that the decision was being appealed. "It makes it sound as though this is settled law, and it's not," says Richard Felder, an ICC official.

Teams of auditors and collection attorneys for failed trucking companies are poring over stacks of old freight records—more than 25 million at PIE alone—to identify potential undercharge claims. Besides pressing legal theories to expand their claims, many estates hire collection teams on hefty contingency fees that consume a lot of the money brought in.

LAWYERS' TACTICS CRITICIZED

Fueling the controversy are the tactics of some lawyers involved in the cases. After Judge Hill's decision on the shipper codes, Christopher Ashworth, a Los Angeles attorney who was working for Transcon, wrote some shippers saying that, in light of the ruling, their account might be reaudited to disallow all discounts from May 1987 until the spring of 1990, when Transcon went out of business. He gave "random" examples of how the claims might increase; one showed a rise to $29,000 from $1,200.

"What he was doing was playing with figures for the purpose of browbeating people into paying up," says Mary Kay Reynolds, a Los Angeles attorney who is defending hundreds of shippers against the undercharge claims. Ms. Reynolds, in filings in a California appeals court, says Mr. Ashworth bragged that the harshly worded letter was getting results, "since checks were coming in and piling up two feet on his paralegal's" desk.

Leonard Gumport, the Transcon trustee, declines to comment other than to say that in February Mr. Ashworth withdrew from the case by mutual agreement and has been replaced by Joseph Steinfeld, a Washington attorney. Mr. Ashworth didn't respond to telephone calls seeking comment, but David Epstein, a partner at his law firm, says the record shows that "the trustee and counsel acted properly."

Many shippers complain about what they see as a breach of faith. In September 1990, Al De Benny, then a PIE account manager, seemed to arrive with good tidings at the loading dock of one of his customers, Paratherm Corp. * * * Paratherm's maximum discount off published tariff rates to 50% from 48%, Mr. De Benny informed John Fuhr, Paratherm's president. "I was trying to reward him for giving us the business," Mr. De Benny says. "He could have gotten that discount from the larger carriers, but he hung in with us."

But last April, Paratherm, a manufacturer of heat-transfer fluid, was served with a lawsuit brought by the PIE estate. The suit alleged that the discounts were illegal and demanded that Paratherm pay $21,232.96 in balance-due bills.

"This is a real scourge," says Mr. Fuhr, who plans to fight the suit in U.S. Bankruptcy Court in Jacksonville. "We don't know from one minute to the next if the sheriff will attach our forklift or inventory * * *."

* * * The trustees and their lawyers deny being unfair. They contend that they won't put any company out of business, but that the shippers, especially big ones, are far from innocent. "The shippers thought they got a bargain and now they are having to pay the piper and they don't like it," Mr. Whitaker, the PIE trustee, says.

The carnivorous approach by some shippers during the 1980s also hurt the workers, the Teamsters say. More than 160,000 Teamsters members lost jobs because of bankruptcies following the partial deregulation of the industry, and many haven't been hired by other carriers, the union says.

"Recovery of these undercharges represents the only realistic chance of the former employees of bankrupt motor carriers to recover any of their unpaid wages and severance pay owed them, not to mention the retirement pay they worked for all their lives," says Ronald Carey, general president of the Teamsters. In the Tanscon case alone, the former employees are owed more than $23 million in back wages and vacation pay, while the pension, health and welfare funds are owed another $20 million.

Even some shippers believe their colleagues are paying the price for their aggressive playing of trucker against trucker to get lower rates. E.D. Root, director of logistics at the Libbey-Owens-Ford subsidiary of Pilkington PLC, says, "All they could see was price reduction, and they didn't do their financial homework to determine the financial stability of the carrier. In a sense, they brought it on themselves."

Mr. Root says he avoided all but a handful of undercharge claims by slashing the list of truck carriers doing business with Libbey-Owens-Ford to only three (of the largest and strongest truck lines) from 543 five years ago. He says that some 40 of the lines that used to haul freight for the Toledo, Ohio, company have failed. Many other shippers now are switching their freight to contracts, which don't have to be filed at the ICC, and are requiring more documentation from carriers.

ICC CRITICIZED

The trustees castigate the ICC as well, saying its scorn of regulation inspired shippers and carriers to ignore the law. Now, the trustees say, the ICC is trying to block their legitimate collection efforts. The lawyers also say the ICC is trying to scare people into thinking the problem is bigger than it is. The $32 billion liability estimate "is so ludicrous as to be hallucinogenic," says Mr. Steinfield, the Transcon attorney.

ICC officials dismiss the argument that they unwittingly brought on the undercharge mess by refusing to enforce regulations. "We must rely on voluntary compliance" with tariff rules, Chairman Philbin says. "We can't send an enforcement agent into every one of the offices" of thousands of carriers.

The trustees also contend the shippers pressured the carriers to switch to codes to hide discounts. But many shippers say that they didn't even realize they had a code and that, even if they had, they wouldn't have thought much about it, given the ICC's endorsement of the practice.

Others say they are being dunned for things they never shipped. American Electronic Components Inc., of Elkhart, Ind., says PIE initially claimed $4,000, saying the company got too big a discount because the product shipped was actually semiconductors, which command a higher rate, and not electrical switches, as slated in the tariff. "But we have never even produced semiconductors, so we couldn't possibly have shipped them," says George Bucklen, the company's secretary.

Some shippers say they are even being billed by mistakes made by the former carrier. PIE gave Dillard Department Stores Inc. a 57% discount, according to James Cherry, assistant general counsel for the Little Rock, Ark, retailer, but erred in its filing with the ICC, saying Dillard was getting a 47% discount. Now PIE's attorneys are dunning Dillard $350,000 for the difference. "It wasn't our fault," says Mr. Cherry.

* * * truck operations without going bankrupt and sent out balance-due bills to its customers. For several months in the fall of 1990. A-Line Ltd, a Philadelphia trucking outfit owned by L. Robert Tannenbaum, sent out claims to some customers in the Midwest and on the West Coast while still soliciting freight business from other customers. "Once it got to Philadelphia that we were billing people [for undercharges], it was a one-way street to going out of business," says Stephen Leib, former vice president of sales of A-Line.

Soon, A-Line was involved almost totally in filing undercharge claims. "A-Line stopped operating a truck company and became a factory for undercharge billings," says Mr. Leib, who left A-Line in October 1990. He denies any involvement in the undercharge claims and has since helped his former customers defend themselves against A-Line's claims. "It was like an assembly line. They printed the bills, packaged them and sent them out," he says.

Harvey Luterman, an attorney who has represented A-Line against shipper countersuits, says, "A-Line was doing what

it was supposed to do under the law." He says that the approximately $1.1 million A-Line has collected in claims so far will help pay $4.5 million owed its creditors, not enrich Mr. Tannenbaum.

Mr. EXON. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. EXON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. EXON. Mr. President, as chairman of the Surface Transportation Subcommittee, I rise to offer an amendment in the nature of a substitute to S. 1675, the Undercharge Equity Act of 1992. Over the past several years, the escalating undercharge crisis facing our Nation's trucking industry has eroded the competitiveness of carriers, shippers, and labor alike. The blizzard of legal claims against shippers based on the unfiled or allegedly unlawful past tariff rates of a number of major trucking companies now in bankruptcy has consumed tremendous institutional resources in both the public and the private sectors. In comparison to the heavy burden imposed on the Nation's businesses, our courts and the Interstate Commerce Commission [ICC], this sharp dispute has apparently yielded little recovery to out-of-work trucking company employees, underfunded pension funds, and other creditors seeking recovery of undercharge claims.

The legislation I am offering today is in the nature of a substitute to S. 1675, the Undercharge Equity Act of 1992, reported by the Commerce Committee earlier this year. I very much appreciate the continued commitment of Senator KASTEN, the ranking member of the Surface Transportation Subcommittee, and Senator BURNS to passing remedial undercharge legislation, as well as the more recent contribution of Senators ADAMS and WELLSTONE in forging the compromise bill we now consider.

As submitted, the substitute amendment to S. 1675 would establish a statutory procedure for resolving eligible undercharge disputes and will promote equitable settlement of such claims. I would note that the subcommittee first held a hearing on this subject in July 1990, less than a month after the Supreme Court decision in Maislin Industries versus Primary Steel which invalidated the ICC's then-current policy holding undercharge claims to be an unreasonable practice under the Interstate Commerce Act. Following that hearing, I introduced S. 2933, in the 101st Congress, to resolve the undercharge issue. The Commerce Committee promptly reported this legislation to the full Senate, but Congress adjourned before voting on the matter despite my efforts to secure passage.

In the 102d Congress, I again introduced undercharge legislation, S. 1675, cosponsored by Senators KASTEN and BURNS. In September 1991, the Surface Transportation Subcommittee held a hearing on the economic regulation of the motor carrier industry, and the subcommittee heard further testimony on the growing extent of the undercharge problem and on various proposed legislative solutions in addition to S. 1675. After extended discussions among all affected parties, the Commerce Committee considered, at its executive session on June 16, 1992, an amendment in the nature of a substitute to S. 1675 and ordered the measure reported by voice vote, without objection.

The substitute amendment establishes a statutory procedure for resolving disputes resulting from efforts by trustees for bankrupt motor carriers or nonhousehold goods forwarders to collect additional amounts for past transportation provided, in certain instances where the agreed-upon rate or charge was not properly or timely filed in a tariff with the ICC as required under the Interstate Commerce Act. The legislation treats small shippers, defined as concerns meeting Small Business Administration [SBA] criteria specially, by absolving them of all undercharge liability for claims meeting the threshold standard established.

For shippers not meeting the applicable SBA criteria, the substitute amendment permits these larger business concerns to satisfy applicable undercharge claims pursuant to a statutory formula, depending upon whether the shipment at issue was a less-than truckload [LTL] shipment of 10,000 pounds or less, or a truckload [TL] shipment of more than 10,000 pounds. For LTL shipments, the amendment permits the shipper to satisfy the applicable undercharge claim by payment of 20 percent of the difference between the carrier's or forwarder's legally applicable tariff rate or charge and the rate or charge originally billed and collected. TL shippers may similarly satisfy applicable undercharge claims by payment of 10 percent of this difference.

The substitute amendment preserves existing statutory rights and remedies of shippers, who may decline to satisfy the under charge claim sought pursuant to the formula and instead challenge the reasonableness of the legally applicable rate or charge being claimed in addition to the rate or charge originally billed and collected. The ICC shall determine such reasonableness challenges within one year after such challenge. The substitute amendment also requires the ICC to resolve disputes concerning legally applicable rates within one year after the dispute arises.

When a shipper proceeds under a rate reasonableness challenge, the amendment requires that shipper to post a surety bond or establish an interest bearing escrow account in the amount of the otherwise applicable statutory settlement amount—20 percent of the under charge sought for LTL claims; 10 percent of the undercharge sought for TL claims. No further payment from the shipper shall be due until the ICC resolves the pending reasonableness challenge. The substitute amendment establishes a 2-year statute of limitations—reduced to 18 months 1 year after enactment on the filing of undercharge claims and provides for the future sunset of the undercharge resolution procedure.

The undercharge litigation crisis admits of no easy solutions. It is a complicated issue now being fought out—expensively and unproductively—in the ICC and in the courts. The substitute amendment I am offering today results from an extended dialog on the undercharge issue in the Commerce Committee and among the Members of this body and represents a fair and equitable solution to this difficult problem. Let us put the undercharge disputes now raging behind us. I urge my colleagues to join me in voting to approve this important measure.

Mr. KASTEN. I am pleased to join with Senators EXON and BURNS in moving forward on this legislation to solve the problems associated with unfiled tariff rates in the trucking industry. It should be noted, however, that there is another issue related to the undercharge crisis looming on the horizon that may require the Senate's attention. Bankruptcy trustees in California and Florida have argued that the trustee for a bankrupt trucking company can unilaterally invalidate its own tariffs filed with the Interstate Commerce Commission [ICC] in order to collect additional money from shippers. These claims are against shippers who, in good faith, entered agreements that they thought were entirely proper under the law and ICC rules. I would like to ask the chairman of the Surface Transportation Subcommittee, Senator EXON, if he has any thoughts about this issue.

Mr. EXON. The substitute addresses undercharge claims resulting from tariff rates or charges not timely or properly filed. I understand that in a number of instances, motor carrier bankruptcy trustees have asserted that coded rates in a carrier's tariff legally filed at the ICC were unlawful and therefore invalid. I am aware that the Ninth Circuit Court of Appeals partially reversed a lower district court in the Transcon Lines case, ruling that carriers, or their bankruptcy trustees, lacked standing to pursue any retroactive remedy based on the filing of an allegedly unlawful rate. The parties in that case have appealed this decision,

and trustees in other cases, including the P*I*E Nationwide case in Jacksonville, FL, are pursuing similar theories and billing shippers in an attempt to collect additional undercharges beyond those already sought for unfiled rates.

Mr. KASTEN. as you have noted, the substitute amendment to S. 1675 as reported by the committee provides a mechanism for resolving claims involving rates that were not properly or timely filed. The theory being pursued by the bankruptcy trustee in the Transcon case is that coded tariffs are not duly filed, that is, were not properly or timely filed. Thus, I believe the bill, as amended, addresses these types of claims, including challenges to coded tariffs. Does the senior Senator from Nebraska share this view?

Mr. EXON. Yes, I agree with my colleague from Wisconsin on this point.

Mr. KASTEN. I would also like to inquire about the treatment of small shippers and large shippers in this legislation. It is my understanding that small shippers, as defined in the bill, would be entirely exempt from paying undercharge claims. Shippers not meeting the small shipper criteria would have the option of settling these claims for 10 percent of the amount claimed on truckload shipments and 20 percent of the amount claimed for less-than-truckload shipments. No shipper would be required to settle a case for any amount. Rather, shippers would have the option of pursuing their cases before the ICC. Is that your understanding?

Mr. EXON. That is correct. We have taken care to preserve a shipper's right to pursue before the ICC all rights and remedies existing under current law.

Mr. KASTEN. Thank you for clarifying those issues.

Mr. EXON. Mr. President, we have been awaiting word while I have been discussing this measure from Senators who are off of the Senate floor somewhere, to see if we can possibly get the hold lifted. I must say that that is out of the question as of now. Senators have placed holds on bills and gone off somewhere else to do their thing. They know full well that when you do that, you tie up the Senate.

I guess I can stand here and talk all night if I thought it would help the cause. But, thus far, it has not. There are further negotiations, I understand, going on now about the measure, and we intend to have discussions on this during, before, and after the rollcall vote that is scheduled for 9 a.m. in the morning.

With that understanding, then I think little more can be accomplished tonight, except that I hope that maybe someone will read in the RECORD the statements that I have made here tonight and the additional material that has been added thereto. I hope that all of the Senators will recognize that particularly there are small businessmen all over the United States who are crying out to see whether or not the U.S. Senate is able to stand up for those small business interests, or whether they just do not care.

Therefore, I think it best if we put this off until tomorrow. I will be trying again to get a unanimous-consent on this. I have no quarrel whatsoever with bringing it to a vote, if we can bring it to a vote. But everybody should understand you cannot have a vote on a measure until the measure is allowed to be presented at the desk, so that it is formally before the body.

That is impossible at this time. I will make every effort in the morning to try and straighten this out. Hopefully, we will, in an expeditious fashion, pass the measure before additional holds are placed on the bill.

ANNUAL REPORT OF THE NATIONAL INSTITUTE OF BUILDING SCIENCES—MESSAGE FROM THE PRESIDENT—PM-281

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Small Business:

To the Congress of the United States:

In accordance with the requirements of section 809 of the Housing and Community Development Act of 1974, as amended (12 U.S.C. 1701j-2(j)), I transmit herewith the 15th annual report of the National Institute of Building Sciences for fiscal year 1991.

GEORGE BUSH.

THE WHITE HOUSE, *September 29, 1992.*

ANNUAL REPORT ON THE STATE OF SMALL BUSINESS—MESSAGE FROM THE PRESIDENT—PM-282

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Small Business:

To the Congress of the United States:

It is my pleasure to submit my third annual report on the state of small business. America's small business owners are individuals with countless new ideas, employers and workers who produce a vast array of goods and services, taxpayers who pay many of the bills, and economic pioneers who help decide the future direction of our economy. In their endless variety, small firms help create a flexible, diverse, and lively marketplace.

For generations, entrepreneurial business owners have been in the forefront of the dynamic economic changes that continually revitalize our democracy. In the early days of our Republic, small business innovators led the way in developing more productive farming technologies. Greater agricultural productivity eventually freed other entrepreneurs to develop and commercialize new manufacturing processes. These processes and manufactured products set a new standard for America—and for the world. But America's small business innovators did not stop there. They started another revolution by anticipating and responding quickly to the demands that grew out of the new, higher standard of living—demands for services and sophisticated new information technologies.

Small businesses have made important contributions to the economy, not only by introducing new products and processes and creating jobs, but also by making the economy more adaptive and flexible—by retaining workers longer during recessions and hiring workers earlier as expansions begin.

There is no doubt that 1991 was not an easy year for the American economy or for small business. The recession that began in the third quarter of 1990 carried over into 1991. Business formation rates were down, and business closings were up. The flow of financing slowed as banks and businesses grew more cautious about business expansions.

Yet in this recession, as in other economic downturns, small businesses continued to function as a source of jobs, creating many of the new jobs in the economy. Rather than lay off workers, many small firms tightened their belts in other areas. And they continued to innovate, introduce new products, and contribute to their communities.

Our economy has begun to grow again. Still, small firms face difficult challenges in the months and years ahead. The truth is that health care costs are too high and the unmet need for health coverage is great in small businesses. And of all employers, small businesses are least able to afford the expensive mandates that have been advocated by some. The proposal I presented to the Congress would not resort to mandates, but would build on the strengths of our private health care system to make health insurance affordable for America's workers and their families.

Adjustments occurring in our financial institutions have made it difficult for many worthy small businesses to find the capital they need to start up or expand. Therefore, my Administration is taking steps to encourage investment in business ventures in a number of ways. I have proposed that the Congress cut the capital gains tax so that investors will have an incentive to buy into new ventures. Another proposal I have made is to create an investment tax allowance that would assist in starting new firms.

And we can encourage some new investment by adapting programs that

are already underway. For example, the Small Business Administration is working with banks to implement innovative loan programs that are channeling funds to smaller firms in some of the most economically depressed areas.

Another obstacle that can stand in the way of small firm growth is too much regulation. My Administration this year instituted a moratorium on new Federal regulations to give Federal agencies a chance to review and revise their rules. And we are looking at ways to improve our regulatory process over the long term so that regulations will accomplish their original purpose without unduly hindering economic growth.

We also need to encourage innovation—such as that exhibited by thousands of small high technology firms—by making the research and experimentation tax credit permanent. My Administration is committed to exploring the promise of new technologies.

This report documents the increasing, healthy diversity of our small business community, as minority- and women-owned businesses enter the marketplace in record numbers. I want to keep encouraging that diversity through our Federal procurement programs.

I also want to see more of the Nation's economically depressed communities reap the benefits of business growth. To that end, I have asked the Congress to pass my enterprise zone legislation, which will provide incentives to businesses that start up in specially designated areas, particularly in inner cities.

Looking to the future, it is clear that we need to improve our educational system so that America's workers, particularly in small firms, will be in a better position to compete in a more and more sophisticated global marketplace. My America 2000 education strategy is designed to give parents, teachers, and communities more freedom and flexibility in designing education programs to meet their needs—and to make America the world's leader in education.

Many of these proposals for economic recovery and growth are being enacted now; others will require action by the Congress. I am committed to working with the Members of Congress to develop and enact a broad economic plan we can all live with. These combined actions will help small business to move ahead to create the economic revolutions that will lead us into the 21st century.

GEORGE BUSH.

THE WHITE HOUSE, *September 29, 1992.*

MESSAGES FROM THE HOUSE

ENROLLED BILLS SIGNED

At 5:53 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the Speaker has signed the following enrolled bills:

H.R. 1435. An act to direct the Secretary of the Army to transfer jurisdiction over the Rocky Mountain Arsenal, Colorado, to the Secretary of the Interior.

H.R. 2967. An act to amend the Older Americans Act of 1965 to authorize appropriations for fiscal years 1992 through 1995; to authorize a 1993 National Conference on Aging; to amend the Native Americans Programs Act of 1974 to authorize appropriations for fiscal years 1992 through 1995, and for other purposes.

H.R. 5428. An act making appropriations for military construction for the Department of Defense for the fiscal year ending September 30, 1993, and for other purposes.

H.R. 5630. An act to amend the Head Start Act to expand services provided by Head Start programs; to expand the authority of the Secretary of Health and Human Services to reduce the amount of matching funds required to be provided by particular Head Start agencies; to authorize the purchase of Head Start facilities; and for other purposes.

At 6:57 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following bills, each without amendment:

S. 1880. An act to amend the District of Columbia Spouse Equity Act of 1988;

S. 3007. An act to authorize financial assistance for the construction and maintenance of the Mary McLeod Bethune Memorial Fine Arts Center; and

S. 3095. An act to restore and clarify the Federal relationship with the Jena Band of Choctaws of Louisiana.

The message also announced that the House has agreed to the following concurrent resolutions, each without amendment:

S. Con. Res. 112. A concurrent resolution to authorize printing of "Thomas Jefferson's Manual of Parliamentary Practice", as prepared by the Office of the Secretary of the Senate; and

S. Con. Res. 127. A concurrent resolution to express the sense of the Congress that women's soccer should be a medal sport at the 1996 centennial Olympic games in Atlanta, Georgia.

The message further announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3508) to amend the Public Health Service Act to revise and extend certain programs relating to the education of individuals as health professionals, and for other purposes.

The message also announced that the House has passed the bill (S. 1530) to authorize the integration of employment, training, and related services provided by Indian tribal governments; with an amendment, in which it requests the concurrence of the Senate.

The message further announced that the House has passed the following bills, each with amendments, in which it requests the concurrence of the Senate:

S. 792. An act to reauthorize the Indoor Radon Abatement Act of 1988, and for other purposes; and

S. 1392. An act to strengthen the authority of the Federal Trade Commission regarding fraud committed in connection with sales made with a telephone, and for other purposes.

The message further announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

S. 2588. An act to provide for the conservation and management of Weakfish, and for other purposes;

S. 3475. An act to assist business in providing women with opportunities in apprenticeship and nontraditional occupations;

S. 3476. An act to establish the Commission on the Advancement of Women in the Science and Engineering Work Forces;

S. 3703. An act to authorize the conveyance to the Columbia Hospital for Women of certain parcels of land in the District of Columbia, and for other purposes;

H.R. 4096. An act to amend title 11, District of Columbia Code, to increase the maximum amount in controversy permitted for cases under the jurisdiction of the Small Claims and Conciliation Branch of the Superior Court of the District of Columbia;

H.R. 4281. An act to designate the Federal building and courthouse at 5th and Ross Streets in Santa Ana, California, as the "Ronald Reagan Federal Building and Courthouse";

H.R. 5486. An act to clarify the law enforcement authority of law enforcement officers of the United States Fish and Wildlife Service;

H.R. 5555. An act to provide for increased preinspection at foreign airports, to make permanent the visa waiver pilot program, and to provide for expedited airport immigration processing;

H.R. 5605. An act to authorize and direct land ownership consolidation in the Cedar River Watershed, Mt. Baker-Snoqualmie National Forest, Washington;

H.R. 5809. An act to authorize the Secretary of the Interior to construct and operate an interpretive center for the Ridgefield National Wildlife Refuge in Clark County, Washington;

H.R. 5822. An act to designate the United States Court of Appeals Building located at 125 South Grand Avenue in Pasadena, California, as the "Richard H. Chambers United States Court of Appeals Building";

H.R. 5831. An act to designate the Federal building located at Main and Church Streets in Victoria, Texas, as the Martin Luther King, Jr. Federal Building";

H.R. 5874. An act to establish a Wetlands Center at the Port of Brownsville, Texas, and for other purposes;

H.R. 5954. An act to amend the Rural Electrification Act of 1936 to clarify the status of the Rural Telephone Bank and its accounting policies, and for other purposes;

H.R. 5983. An act to establish in the Government Printing Office a means of enhancing electronic access to a wide range of Federal electronic information;

H.R. 5990. An act to amend the Federal Water Pollution Control Act to provide for assessments of contaminated sediments at areas of concerns in the Great Lakes, and for other purposes;

H.R. 6000. An act to redesignate Springer Mountain National Recreation Area as "Ed Jenkins National Recreation Area"; and

H.R. 6014. An act to designate certain land in the State of Missouri owned by the United

States and administered by the Secretary of Agriculture as part of the Mark Twain National Forest.

At 8 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that pursuant to clause 6(f) of rule X, the Speaker makes the following appointments to fill vacancies occasioned by the death of Representative Jones of North Carolina in the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the amendment of the House to the amendment of the Senate to the bill (H.R. 429) entitled "An Act to amend certain Federal Reclamation laws to improve enforcement of acreage limitations, and for other purposes":

As an additional conferee from the Committee on Merchant Marine and Fisheries, for consideration of titles II through VI, IX, XXX, and XXXIV of the House amendment to the Senate amendment, and titles II through VI, IX, XXXIII, XXXIV, XXXVI, and XXXVIII of the Senate amendment to the House amendment to the Senate amendment, and modifications committed to conference: Representative LIPINSKI.

As an additional conferee from the Committee on Merchant Marine and Fisheries for consideration of titles I, VII, XI, and XVIII through XX of the House amendment to the Senate amendment, and titles I, VII, XI, XII, XIV, XV, XIX, and XX of the Senate amendment to the House amendment to the Senate amendment, and modifications committed to conference: Representative HUGHES.

The message also announced that pursuant to clause 6(f) of Rule X, the Speaker makes the following appointments to fill vacancies occasioned by the death of Representative Jones of North Carolina in the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 776) entitled "An Act to provide for improved energy efficiency":

As an additional conferee from the Committee on Merchant Marine and Fisheries, for consideration of title XXIV and section 1607 of the House bill, and title XII of the Senate amendment, and modifications committed to conference: Representative CARPER.

As an additional conferee from the Committee on Merchant Marine and Fisheries, for consideration of sections 205, 1602, and 1701(b) of the House bill, and title XXI and sections 5204, 5302, 5304, and 11103 of the Senate amendment, and modifications committed to conference: Representative HUGHES.

The message further announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 4481. An Act to amend title 10, United States Code, to revise and standardize the provisions of law relating to appointment, promotion, and separation of commissioned officers of the reserve components of the Armed Forces, to consolidate in a new subtitle the provisions of law relating to the reserve components, and for other purposes;

H.R. 5118. An Act to exchange lands within the State of Utah, between the United States and the State of Utah;

H.R. 5548. An Act to direct the Secretary of Agriculture to convey certain lands to the town of Taos, New Mexico;

H.R. 5853. An Act to designate segments of the Great Egg Harbor River and its tributaries in the State of New Jersey as components of the National Wild and Scenic Rivers System;

H.R. 5906. An Act to regulate advertising and related commercial activities on the National Park System, and for other purposes; and

H.R. 6004. An Act to amend the Federal Water Pollution Control Act to extend the deadline by which permits for discharges for municipal and industrial stormwater discharges are required until October 1, 1994.

MEASURES REFERRED

The following bills were read the first and second times by unanimous consent, and referred as indicated:

H.R. 2588. An act to provide for the conservation and management of Weakfish, and for other purposes; to the Committee on Commerce, Science, and Transportation.

H.R. 3475. An act to assist business in providing women with opportunities in apprenticeship and nontraditional occupations; to the Committee on Labor and Human Resources.

H.R. 3476. An act to establish the Commission on the Advancement of Women in the Science and Engineering Work Forces; to the Committee on Commerce, Science, and Transportation.

H.R. 3703. An act to authorize the conveyance to the Columbia Hospital for Women of certain parcels of land in the District of Columbia, and for other purposes;

H.R. 4096. An act to amend title 11, District of Columbia Code, to increase the maximum amount in controversy permitted for cases under the jurisdiction of the Small Claims and Conciliation Branch of the Superior Court of the District of Columbia; to the Committee on Governmental Affairs.

H.R. 4281. An act to designate the Federal building and courthouse at 5th and Ross Streets in Santa Ana, California, as the "Ronald Reagan Federal Building and Courthouse"; to the Committee on Environmental and Public Works.

H.R. 4481. An act to amend title 10, United States Code, to revise and standardize the provisions of law relating to appointment, promotion, and separation of commissioned officers of the reserve components of the Armed Forces, to consolidate in a new subtitle the provisions of law relating to the reserve components, and for other purposes; to the Committee on Armed Services.

H.R. 5486. An act to clarify the law enforcement authority of law enforcement officers of the United States Fish and Wildlife Service; to the Committee on Environment and Public Works.

H.R. 5548. An act to direct the Secretary of Agriculture to convey certain lands to the town of Taos, New Mexico; to the Committee on Energy and Natural Resources.

H.R. 5555. An act to provide for increased preinspection at foreign airports, to make permanent the visa waiver pilot program, and to provide for expedited airport immigration processing; to the Committee on the Judiciary.

H.R. 5605. An act to authorize and direct land ownership consolidation in the Cedar River Watershed, Mt. Baker-Snoqualmie National Forest, Washington; to the Committee on Energy and Natural Resources.

H.R. 5809. An act to authorize the Secretary of the Interior to construct and operate an interpretive center for the Ridgefield National Wildlife Refuge in Clark County, Washington; to the Committee on Environment and Public Works.

H.R. 5822. An act to designate the United States Court of Appeals Building located at 125 South Grand Avenue in Pasadena, California, as the "Richard H. Chambers United States Court of Appeals Building"; to the Committee on Environment and Public Works.

H.R. 5831. An act to designate the Federal building located at Main and Church Streets in Victoria, Texas, as the "Martin Luther King, Jr. Federal Building"; to the Committee on Environment and Public Works.

H.R. 5874. An act to establish a Wetlands Center at the Port of Brownsville, Texas, and for other purposes;

H.R. 5906. An act to regulate advertising and related commercial activities in the National Park System, and for other purposes; to the Committee on Energy and Natural Resources.

H.R. 5954. An act to amend the Rural Electrification Act of 1936 to clarify the status of the Rural Telephone Bank and its accounting policies, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

H.R. 5983. An act to establish in the Government Printing Office a means of enhancing electronic access to a wide range of Federal electronic information; to the Committee on Rules and Administration.

H.R. 5990. An act to amend the Federal Water Pollution Control Act to provide for assessments of contaminated sediments at areas of concerns in the Great Lakes, and for other purposes; to the Committee on Environment and Public Works.

H.R. 6000. An act to redesignate Springer Mountain National Recreation Area as "Ed Jenkins National Recreation Area"; to the Committee on Energy and Natural Resources.

H.R. 6004. An act to amend the Federal Water Pollution Control Act to extend the deadline by which permits for discharges for municipal and industrial stormwater discharges are required until October 1, 1994; to the Committee on Environment and Public Works.

H.R. 6014. An act to designate certain land in the State of Missouri owned by the United States and administered by the Secretary of Agriculture as part of the Mark Twain National Forest; to the Committee on Agriculture, Nutrition, and Forestry.

MEASURES PLACED ON THE CALENDAR

The following bill was read the second time, and placed on the calendar:

S. 3282. A bill to amend title 18, United States Code, to require a waiting period before the purchase of a handgun.

The following bills were read the first and second times by unanimous consent, and placed on the calendar:

H.R. 5118. An act to exchange lands within the State of Utah, between the United States and the State of Utah; and

H.R. 5853. An act to designate segments of the Great Egg Harbor River and its tributaries in the State of New Jersey as components of the National Wild and Scenic Rivers System.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communication was laid before the Senate, together with accompanying papers, reports, and documents, which was referred as indicated:

EC-3965. A communication from the Secretary of Energy, transmitting, pursuant to law, a report entitled "Comprehensive Report to Congress Clean Coal Technology Program, Self-Scrubbing Coal: An Integrated Approach to Clean Air"; to the Committee on Energy and Natural Resources.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. GLENN, from the Committee on Governmental Affairs, with an amendment in the nature of a substitute and an amendment to the title:

S. 20. A bill to provide for the establishment and evaluation of performance standards and goals for expenditures in the Federal budget, and for other purposes (Rept. No. 102-429).

• Mr. GLENN. Mr. President, improving governmental performance and accountability is very important, particularly in these times of public distrust and dissatisfaction with Government. Thus, I am pleased to rise today to ask my colleagues support for S. 20, the Government Performance and Results Act of 1992.

This legislation comes to the Senate from the Governmental Affairs Committee, which I chair, as the Glenn-Roth substitute for a bill originally offered by my good friend Senator ROTH, the ranking minority member of the Governmental Affairs Committee. The notion of performance measurement, however, is certainly not new. The Chief Financial Officers Act of 1990, which I view as one of my major legislative accomplishments as chair of the Governmental Affairs Committee, mandates the systematic measurement of performance. The current legislation builds on that mandate to establish a concrete set of steps to make performance measurement a reality.

The present legislation is based on a year of very productive work:

The committee has held two informative hearings;

GAO has studied performance measurement in Federal Agencies and in other countries—in Canada, Britain, Australia, and New Zealand;

OMB has surveyed State and local governments, initiated inter-agency task forces and pilot projects, and through the CFO Act, has begun requiring that agencies develop and report on performance measures; and

Other agencies, OMB staff, the National Academy of Public Administration, and a number of academic experts have also consulted with committee staff on this issue.

Out of this effort, we have arrived at what I think is an excellent bill to start developing a workable system for holding Government accountable for program results.

The American people have a right to know what they are getting for their tax dollars. With performance measurement, I believe we can start showing the public how that money is spent—and how it could be better spent. Considering the country's growing dissatisfaction with the Federal Government, this is a worthy goal for us—in Congress, and in the Governmental Affairs Committee.

The bill creates a step-by-step process to implement performance measurement. Step one is the development of multiyear strategic plans which will define the broad mission and objectives of the agencies and their programs. Step two is the preparation of annual performance plans which will detail how the agencies will measure the performance of their programs and what target levels of performance they will be striving to achieve. Step three is the submission of annual performance reports, in which the agencies will explain whether they have met their target levels and, if not, why not. And step four will test whether program performance and accountability can be increased through increased management flexibility and through performance-based budgeting. These steps will take place over the next 10 years, first through pilot projects, and then once Congress approves their continued use, they will continue on a permanent basis.

This step by step process will take place with due deliberation and evaluation and should give us all—agencies, OMB, Congress, and the American public—ample opportunity to assess the value of performance measurement.

I know OMB and GAO are excited about performance measurement, and I believe the American people will be pleased when they see what this legislation delivers—objective understandable information about how the American taxpayer's money is spent.

Let me touch on a provision the bill does not contain—that is the requirement of qualification standards for political appointee positions.

While I believe S. 20 provides the framework to make government more effective, I think its success will depend, to a large extent, on the quality of the people who will be directing this effort. In the vast majority of cases, these people will be political appointees. Many of them, unfortunately, will lack the qualifications necessary to successfully discharge this and other responsibilities. I believe that this is a significant problem. Without top-notch people in place to direct performance measurement, you will never achieve the meaningful reforms this bill hopes to foster—making Government more responsive and accountable to the public.

I see this issue as one of the key problems facing Government today, one which has contributed to the erosion of public faith and confidence in the workings of our system. I know first-hand, from meetings with my fellow Ohioans, that there is a pervasive distrust of Government, as a capable and competent institution, able to effectively respond to the concerns Americans have. Incidents like the HUD scandal, where certain high-level appointees who, by their own admission, had no housing skills whatsoever, used the public exchequer to reward political cronies, only serve to further undermine Government's credibility and integrity.

That is why I feel it is important to address the issue of political appointee qualifications, and help ensure that those who administer the public trust meet basic standards of competence and relevant experience. That's the least the American people deserve from Government, and should rightfully expect.

During the committee's review of S. 20, I had considered offering an amendment to make public the position descriptions and qualification requirements for certain top policy-making political positions. I have been assured by the White House Office of Presidential Personnel and the Office of Personnel Management that position descriptions and qualifications requirements do exist and are used in selecting candidates for appointive positions. In fact, I have seen some of these samples. It makes sense, then, that if this is being done already, why not make them public? In that manner, all can see what duties are attached to these positions, and what qualifications are required to carry out those duties.

Having this information available in a central place would be useful to this and future administrations in finding and screening candidates. It would help our citizens assess the performance of their appointive, but non-elected, officials.

After some thought on this, however, and recognizing that this debate was, unfortunately, turning partisan in nature, I withdrew this amendment. I did not want to jeopardize all that we had worked out on S. 20.

I intend to revisit both the issues of Government reform and political appointees next year. To me, the two are intertwined. And while S. 20 takes a first step, we will look at broader and more comprehensive solutions next Congress.

So while I feel that there is more to be done, I am very pleased that we

have been able to work out the differences and report out this very important piece of legislation. The legislation before the Senate today provides an excellent first step at fleshing out the performance measurement requirements in the chief financial officers act and at getting Government on the road to measuring up to its goals and purposes. It has the potential to encourage meaningful improvements in Government performance and to begin to restore the confidence of the American people in their Government. Mr. President, I would urge its favorable consideration by the Senate.

By Mr. BENTSEN, from the Committee on Finance, with an amendment in the nature of a substitute and an amendment to the title:

H.R. 5643. A bill to amend the Internal Revenue Code of 1986 with respect to the treatment of certain amounts received by operators of licensed cotton warehouses (Rept. No. 102-430).

By Mr. BOREN, from the Select Committee on Intelligence:

Special report entitled "Capability of the United States to Monitor Compliance with the START Treaty" (Rept. No. 102-431).

By Mr. JOHNSTON, from the Committee on Energy and Natural Resources:

Report to accompany the bill (S. 1879) to authorize the adjustment of the boundaries of the South Dakota portion of the Sioux Ranger District of Custer National Forest, and for other purposes (Rept. No. 102-432).

Report to accompany the bill (S. 2397) to expand the boundaries of Yucca House National Monument in Colorado, to authorize the acquisition of certain lands within the boundaries, and for other purposes (Rept. No. 102-433).

Report to accompany the bill (H.R. 2859) to direct the Secretary of the Interior to conduct a study of the historical and cultural resources in the vicinity of the city of Lynn, Massachusetts, and make recommendations on the appropriate role of the Federal Government in preserving and interpreting such historical and cultural resources (Rept. No. 102-434).

Report to accompany the bill (S. 1990) to authorize the transfer of certain facilities and lands in the Wenatchee National Forest, Washington (Rept. No. 102-435).

Report to accompany the bill (S. 2749) to grant a right of use and occupancy of a certain tract of land in Yosemite National Park to George R. Lange and Lucille F. Lange, and for other purposes (Rept. No. 102-436).

Report to accompany the bill (S. 2577) to provide for the exchange of certain Federal lands within the State of Utah, between the State of Utah and the Secretary of the Interior (Rept. No. 102-437).

By Mr. JOHNSTON, from the Committee on Energy and Natural Resources, with an amendment in the nature of a substitute and an amendment to the title:

S. 2006. A bill to establish the Fox River National Heritage Corridor in Wisconsin, and for other purposes (Rept. No. 102-438).

By Mr. KENNEDY, from the Committee on Labor and Human Resources, with an amendment in the nature of a substitute:

S. 492. A bill to amend the National Labor Relations Act to give employers and performers in the live performing arts, rights given by section 8(e) of such Act to employers and employees in similarly situated industries, to give to such employers and performers the same rights given by section 8(f) of such Act to employers and employees in the construction industry, and for other purposes (Rept. No. 102-439).

By Mr. INOUYE, from the Select Committee on Indian Affairs, with amendments:

S. 3157. A bill to provide for a National Native American Veterans' Memorial (Rept. No. 102-440).

By Mr. INOUYE, from the Select Committee on Indian Affairs, with amendments and an amendment to the title:

H.R. 2144. A bill to provide restoration of the Federal trust relationship with and assistance to the terminated tribes of California Indians and the individual members thereof; to extend Federal recognition to certain Indian tribes in California; to establish administrative procedures and guidelines to clarify the status of certain Indian tribes in California; to establish a Federal Commission on policies and programs affecting California Indians; and for other purposes (Rept. No. 102-441).

By Mr. INOUYE, from the Select Committee on Indian Affairs, with an amendment in the nature of a substitute:

S. 2977. A bill to establish within the Bureau of Indian Affairs a program to improve the management of rangelands and farmlands and the production of agricultural resources on Indian lands, and for other purposes (Rept. No. 102-442).

By Mr. INOUYE, from the Select Committee on Indian Affairs, with amendments:

S. 3155. A bill to establish the National Indian Policy Research Institute (Rept. No. 102-443).

S. 3237. A bill to amend the Indian Self-Determination and Education Assistance Act (Rept. No. 102-444).

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. BOND:

S. 3283. A bill to suspend temporarily the duties on Pentetreotide in bulk form and lypholized kit form; to the Committee on Finance.

By Mr. ADAMS (for himself and Mr. GORTON):

S. 3284. A bill to authorize United States participation in the Cascadia Corridor Commission; to the Committee on Foreign Relations.

By Mr. RIEGLE (for himself, Mr. GARN, Mr. GRAHAM, Mr. MACK, Mr. BREAUX, Mr. INOUYE, and Mr. AKAKA):

S. 3285. A bill to facilitate recovery from recent disasters by providing greater flexibility for depository institutions and their regulators, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. SEYMOUR:

S. 3286. A bill to amend the Endangered Species Act of 1973 to provide for a loan program for States and political subdivisions of States; to the Committee on Environment and Public Works.

By Mr. FORD:

S. 3287. A bill to authorize the construction of the Cumberland Mountain Trail in the State of Kentucky and the State of Virginia, to require a study of the establishment of the Cumberland National Recreation Area, and for other purposes; to the Committee on Energy and Natural Resources.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. PRYOR (for himself and Mr. GRAHAM):

S. Res. 353. A resolution expressing the sense of the Senate the Democratic and Republican Presidential candidates and Vice Presidential Candidates should debate before the election of November 3, 1992; to the Committee on Rules and Administration.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. ADAMS (for himself and Mr. GORTON):

S. 3284. A bill to authorize U.S. participation in the Cascadia Corridor Commission; to the Committee on Foreign Relations.

UNITED STATES PARTICIPATION IN THE CASCADIA CORRIDOR COMMISSION

• Mr. ADAMS. Mr. President, I am pleased to introduce, along with Senator GORTON, legislation authorizing the establishment of a Cascadia Corridor Commission. Similar legislation was introduced in the House last Friday by the Washington delegation and Representative RON WYDEN of Oregon.

The goal of the Commission will be to coordinate planning by State, local, provincial and Federal officials that affects the urban corridor along Interstate 5 and Highway 99. This corridor runs from Vancouver, BC to Eugene, OR.

Over the past decade, and in particular since the signing of the United States-Canada Free-Trade Agreement, the volume of commerce and traffic along I-5/Highway 99 has greatly increased. Numerous regional associations have sprung up among the Pacific Northwest States and the bordering Canadian Provinces, looking at a variety of trade and cultural issues. None of the existing organizations, however, has the breadth of focus or the degree of government involvement that the Cascadia Commission will.

The strength of the Cascadia Commission concept will be its mandate to explore regional coordination across a variety of related disciplines: trade, environment, transportation, and urbanization. The membership of the Commission will include private citizens as well as Federal, State, Provincial and local officials from Oregon, Washington, and British Columbia. It will be an advisory panel and will have no legal authority.

It is vitally important that decisionmakers in the Pacific Northwest begin to work more closely with their Canadian counterparts. Environmental quality, transportation infrastructure, trade and communications are truly transborder issues in our region and should be treated as such.

I commend the work of our colleagues in the House in moving the

Cascadia Corridor Commission concept forward and hope that the Senate will also be able to approve legislation authorizing the Commission before we recess for the year.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 3284

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

SECTION 1. AUTHORIZATION OF UNITED STATES PARTICIPATION.

The United States is authorized to participate in the Cascadia Corridor Commission, which shall be established as a bilateral advisory commission, in coordination with the Government of Canada and State, provincial, and local governments in the urbanized Cascadia region along Interstate 5/Highway 99 from Vancouver, British Columbia, (including Vancouver Island) to Eugene, Oregon.

SEC. 2. FUNCTIONS OF CASCADIA CORRIDOR COMMISSION.

(a) AUTHORITY.—The Commission is authorized to—

(1) establish a forum to coordinate consideration of regional issues in the Cascadia region by representatives from the private sector, nonprofit organizations, and local, state, provincial, regional, and national governments; and

(2) not later than 2 years after its establishment, develop a strategy for environmentally sound economic development in the Cascadia region and submit such plan to the Congress, the Canadian Parliament, the legislature of British Columbia, and the State legislatures of Oregon and Washington.

(b) LIMITATION.—The Commission shall be authorized to function only in an advisory capacity and shall have no authority concerning any local, State, or Federal agency or government.

(c) QUORUM.—A majority of each of the delegations from Oregon, Washington, and Canada shall constitute a quorum, but a lesser number may hold hearings. The Commission may act by a majority vote of each delegation.

SEC. 3. STRATEGY.

In addition to such other issues as the Commission may determine to address, the strategy under section 2(a)(2) shall consider the following issues:

(1) Environmental management.

(2) Urban development.

(3) Transportation.

(4) Communications.

(5) Education.

SEC. 4. UNITED STATES DELEGATION TO COMMISSION.

The United States delegation to the Cascadia Corridor Commission shall be composed as follows:

(1) 1 member appointed by the President, who shall be a nonvoting member.

(2) A Washington State delegation.

(3) An Oregon delegation.

SEC. 5. AUTHORIZATION OF APPROPRIATIONS.

(a) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Commission for fiscal years 1993 and 1994 a total of $800,000 to enable it to carry out its duties and functions consistent with this Act. Appropriations are authorized to remain available until expended.

(b) LIMITATION.—Amounts obligated and expended pursuant to the authorization of appropriations under subsection (a) may not exceed one-fourth of the total expenditures of the Commission for each fiscal year.●

● Mr. GORTON. Mr. President, since the United States-Canada Free-Trade Agreement was enacted 3 years ago, the Pacific Northwest and Western Canada have enjoyed a tremendous growth in trade. Both Washington State and Oregon have increased their exports to Canada by 50 percent since 1987, with total exports to Canada now accounting for more than 25,000 jobs in the two States.

But the increased trade has also brought rapid growth. The area which runs from Vancouver, BC to Eugene, OR—what we call the Cascadia Corridor—is now experiencing extensive urbanization. Increased traffic could soon clog our infrastructure and limit the region's economic potential. Mismanagement of our natural resources could deprive the area of employment opportunities and some of its quality of life.

Unfortunately, the problem of controlling this growth is made more difficult by the international boundary which divides the Cascadia Corridor. For example, we know that increased development in British Columbia will create congestion in Washington State. But the two areas are governed by a complex array of governmental agencies that hinders efforts to plan effectively for such growth.

Today Senator ADAMS and I are introducing a bill which will authorize the creation of a commission to study and make recommendations on the proper management of growth in the Cascadia region. This much-needed bill will help fill the gaps between our two governments and encourage the type of cooperation demanded of the growth shared by our two countries.●

By Mr. RIEGLE (for himself, Mr. GARN, Mr. GRAHAM, Mr. MACK, Mr. BREAUX, Mr. INOUYE, and Mr. AKAKA):

S. 3285. A bill to facilitate recovery from recent disasters by providing greater flexibility for depository institutions and their regulators, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

DEPOSITORY INSTITUTIONS DISASTER RELIEF ACT OF 1992

●Mr. RIEGLE. Mr. President, today, for myself and Senators, GARN, GRAHAM, MACK, BREAUX, INOUYE, and AKAKA, I introduce the Depository Institutions Disaster Relief Act of 1992, a revised version of the bill I introduced on September 23 as S. 3266.

This legislation is intended to facilitate reconstruction in the wake of several recent disasters, including Hurricanes Andrew and Iniki and the Los Angeles riots.

Let me briefly outline the bill's main provisions.

Section 2 authorizes regulators to make exceptions to appraisal requirements in disaster areas. The exceptions could last for up to 3 years after the disaster. The 3-year limit applies to the period in which depository institutions could make loans without complying with normal appraisal requirements—not to the maturity of the loans. Thus, for example, regulators could permit institutions to make 30-year loans without having to obtain an appraisal after the exception expired.

Section 3 authorizes regulators to make exceptions to the Truth in Lending Act and the Expedited Funds Availability Act. This supplements regulator's existing exception authority. For example, section 125(d) of the Truth in Lending Act lets the Federal Reserve Board make exceptions to homeowners' 3-day right of rescission. Section 604(d) of the Expedited Funds Availability Act provides exceptions to key rules under that Act in the case of "any emergency condition beyond the control of the receiving depository institution." Those two exception provisions respond to many of the practical concerns we have heard. Whether to use section 3 to make additional exceptions is up to the Board, which must weigh the benefits and costs of any such exceptions. Exceptions could last for up to one year after the date of the disaster or date of enactment, whichever came first.

Section 4 lets regulators accommodate extraordinary asset growth—resulting from the deposit of insurance proceeds—at institutions whose deposit-taking centers on areas of intense physical devastation. Specifically, regulators could permit such an institution, when calculating its leverage limit—capital divided by total assets—to exclude asset increases attributable to the deposit of insurance proceeds and governmental assistance. As used in section 4, the term leverage limit encompasses what regulators refer to as the leverage ratio and the critical capital level.

To qualify for the exception, the institution would need to have its main office in such an area, draw at least 60 percent of its deposits from customers in the area, be adequately capitalized before the disaster, and have an acceptable plan for managing the deposit influx. Regulators would also need to find that the exclusion comports with the objective of avoiding or minimizing loss to the FDIC. The exclusions could last for up to 18 months after the date of enactment.

Section 5 enables regulators to amend their regulations without having to follow the Administrative Procedure Act. For example, regulators would not have to go through notice-and-comment procedures. Regulators could also exempt depository institutions from other publication requirements—such as newspaper notices for

opening or closing branches. This flexibility would last for 180 days after enactment.

Section 5 expedites the procedure for using existing authority or authority granted under provisions of the bill. Except for allowing exceptions to publication requirements, section 5 grants no new substantive authority to make exceptions. Nor does it otherwise alter substantive rules. It simply allows regulators to speed up the process.

Section 6 clarifies and strengthens the community-development authority of national banks and State member banks.

Section 7 expresses the sense of the Congress that regulators should encourage depository institutions in disaster areas to meet the financial services needs of their communities.

Section 8 specifies that the act does not limit regulator's existing authority.

This bill grants appropriate relief without compromising safety and soundness.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 3285

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Depository Institutions Disaster Relief Act of 1992".

SEC. 2. APPRAISAL REQUIREMENTS.

Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3331 et seq.) is amended by adding at the end the following new section:

"SEC. 1123. EMERGENCY EXCEPTIONS FOR DISASTER AREAS.

"(a) IN GENERAL.—Each Federal financial institutions regulatory agency may, by regulation or order, make exceptions to this title, and to standards prescribed pursuant to this title, for transactions involving institutions for which the agency is the primary Federal regulator, with respect to real property located within a disaster area if the agency—

"(1) makes the exception not later than 30 months after the date on which the President determines, pursuant to section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, that a major disaster exists in the area; and

"(2) determines that the exception—

"(A) would facilitate recovery from the major disaster; and

"(B) is consistent with safety and soundness.

"(b) 3-YEAR LIMIT ON EXCEPTIONS.—Any exception made under this section shall expire not later than 3 years after the date of the determination referred to in subsection (a)(1).

"(c) PUBLICATION REQUIRED.—Any Federal financial institutions regulatory agency shall publish in the Federal Register a statement that—

"(1) describes any exception made under this section; and

"(2) explains how the exception—

"(A) would facilitate recovery from the major disaster; and

"(B) is consistent with safety and soundness.

"(d) DISASTER AREA DEFINED.—For purposes of this section, the term 'disaster area' means an area in which the President, pursuant to section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, has determined that a major disaster exists.".

SEC. 3. TRUTH IN LENDING ACT; EXPEDITED FUNDS AVAILABILITY ACT.

"(a) TRUTH IN LENDING ACT.—During the 180-day period beginning on the date of enactment of this Act, the Board of Governors of the Federal Reserve System may make exceptions to the Truth in Lending Act for transactions within an area in which the President, pursuant to section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, has determined that a major disaster exists, if the Board determines that the exception can reasonably be expected to produce benefits to the public that outweigh possible adverse effects.

"(b) EXPEDITED FUNDS AVAILABILITY ACT.—During the 180-day period beginning on the date of enactment of this Act, the Board of Governors of the Federal Reserve System may make exceptions to the Expedited Funds Availability Act of 1987 for depository institution offices located within an area referred to in subsection (a) of this section if the Board determines that the exception can reasonably be expected to produce benefits to the public that outweigh possible adverse effects.

"(c) TIME LIMIT ON EXCEPTIONS.—Any exception made under this section shall expire not later than the earlier of—

(1) 1 year after the date of enactment of this Act; or

(2) 1 year after the date of the Presidential determination referred to in subsection (a).

(d) PUBLICATION REQUIRED.—The Board of Governors of the Federal Reserve System shall publish in the Federal Register a statement that—

(1) describes any exception made under this section; and

(2) explains how the exception can reasonably be expected to produce benefits to the public that outweigh possible adverse effects.

SEC. 4. DEPOSIT OF INSURANCE PROCEEDS.

(a) IN GENERAL.—The appropriate Federal banking agency may, by order, permit an insured depository institution, during the 18-month period beginning on the date of enactment of this Act, to subtract from the institution's total assets, in calculating compliance with the leverage limit prescribed under section 38 of the Federal Deposit Insurance Act, an amount not exceeding the qualifying amount attributable to insurance proceeds, if the agency determines that—

(1) the institution—

(A) had its principal place of business within an area in which the President, pursuant to section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, has determined that a major disaster exists, on the day before the date of that determination;

(B) derives more than 60 percent of its total deposits from persons who normally reside within, or whose principal place of business is normally within, areas of intense devastation caused by the major disaster (such as that portion of Dade County, Florida, south of Kendall Drive and east of Everglades National Park, as damaged by Hurricane Andrew);

(C) was adequately capitalized (as defined in section 38 of the Federal Deposit Insurance Act) before the major disaster; and

(D) has an acceptable plan for managing the increase in its total assets and total deposits; and

(2) the subtraction is consistent with the purpose of section 38 of the Federal Deposit Insurance Act.

(b) DEFINITIONS.—For purposes of this section:

(1) APPROPRIATE FEDERAL BANKING AGENCY.—The term "appropriate Federal banking agency" has the same meaning as in section 3 of the Federal Deposit Insurance Act.

(2) INSURED DEPOSITORY INSTITUTION.—The term "insured depository institution" has the same meaning as in section 3 of the Federal Deposit Insurance Act.

(3) LEVERAGE LIMIT.—The term "leverage limit" has the same meaning as in section 38 of the Federal Deposit Insurance Act.

(4) QUALIFYING AMOUNT ATTRIBUTABLE TO INSURANCE PROCEEDS.—The term "qualifying amount attributable to insurance proceeds" means the amount (if any) by which the institution's total assets exceed the institution's average total assets during the calendar quarter ending before the date of the Presidential determination referred to in subsection (a)(1)(A), because of the deposit of insurance payments or governmental assistance made with respect to damage caused by, or other costs resulting from, the major disaster.

SEC. 5. BANKING AGENCY PUBLICATION REQUIREMENTS.

(a) IN GENERAL.—During the 180-day period beginning on the date of enactment of this Act, a qualifying regulatory agency may take any of the following actions with respect to depository institutions or other regulated entities whose principal place of business is within, or with respect to transactions or activities within, an area in which the President, pursuant to section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, has determined that a major disaster exists, if the agency determines that the action would facilitate recovery from the major disaster:

(1) PROCEDURE.—Exercising the agency's authority under provisions of law other than this section without complying with—

(A) any requirement of section 553 of title 5, United States Code; or

(B) any provision of law that requires notice or opportunity for hearing or sets maximum or minimum time limits with respect to agency action.

(2) PUBLICATION REQUIREMENTS.—Making exceptions, with respect to institutions or other entities for which the agency is the primary Federal regulator, to—

(A) any publication requirement with respect to establishing branches or other deposit-taking facilities; or

(B) any similar publication requirement.

(b) PUBLICATION REQUIRED.—A qualifying regulatory agency shall publish in the Federal Register a statement that—

(1) describes any action taken under this section; and

(2) explains the need for the action.

(c) QUALIFYING REGULATORY AGENCY DEFINED.—For purposes of this section, the term 'qualifying regulatory agency' means:

(1) the Board of Governors of the Federal Reserve System;

(2) the Comptroller of the Currency;

(3) the Director of the Office of Thrift Supervision;

(4) the Federal Deposit Insurance Corporation;

(5) the Financial Institutions Examination Council;

(6) the National Credit Union Administration; and

(7) with respect to chapter 53 of title 31, United States Code, the Secretary of the Treasury.

SEC. 6. COMMUNITY DEVELOPMENT AUTHORITY OF BANKS.

(a) NATIONAL BANKS.—Section 5136 of the Revised Statutes (12 U.S.C. 24) is amended by adding at the end the following new paragraph:

"Eleventh.—To make investments designed primarily to promote the public welfare, including the welfare of low- and moderate-income communities or families (such as by providing housing, services, or jobs). A national banking association may make such investments directly or by purchasing interests in an entity primarily engaged in making such investments. An association shall not make any such investment if the investment would expose the association to unlimited liability. The Comptroller of the Currency shall limit an association's investments in any 1 project and an association's aggregate investments under this paragraph. An association's aggregate investments under this paragraph shall not exceed an amount equal to the sum of 5 percent of the association's capital stock actually paid in and unimpaired and 5 percent of the association's unimpaired surplus fund, unless the Comptroller determines by order that the higher amount will pose no significant risk to the affected deposit insurance fund, and the association is adequately capitalized. In no case shall an association's aggregate investments under this paragraph exceed an amount equal to the sum of 10 percent of the association's capital stock actually paid in an unimpaired and 10 percent of the association's unimpaired surplus fund.".

(b) STATE MEMBER BANKS.—Section 9 of the Federal Reserve Act (12 U.S.C. 321-338) is amended by adding at the end the following new paragraph:

"State member banks may make investments designed primarily to promote the public welfare, including the welfare of low- and moderate-income communities or families (such as by providing housing, services, or jobs), to the extent permissible under State law, and subject to such restrictions and requirements as the Board of Governors of the Federal Reserve System may prescribe by regulation or order. A bank shall not make any such investment if the investment would expose the bank to unlimited liability. The Board shall limit a bank's investments in any 1 project and a bank's aggregate investments under this paragraph. A bank's aggregate investments under this paragraph shall not exceed an amount equal to the sum of 5 percent of the bank's capital stock actually paid in and unimpaired and 5 percent of the bank's unimpaired surplus fund, unless the Board determines by order that the higher amount will pose no significant risk to the affected deposit insurance fund, and the bank is adequately capitalized. In no case shall a bank's aggregate investments under this paragraph exceed an amount equal to the sum of 10 percent of the bank's capital stock actually paid in an unimpaired and 10 percent of the bank's unimpaired surplus fund.".

SEC. 7. SENSE OF THE CONGRESS.

It is the sense of the Congress that the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, and the National Credit Union Administration should encourage depository institutions in areas affected by such major disasters as Hurricane Andrew, Hurricane Iniki, and the Los Angeles civil unrest to meet the financial services needs of their communities.

SEC. 8. OTHER AUTHORITY NOT AFFECTED.

Nothing in this Act limits the authority of any department or agency under any other provision of law.

• Mr. BREAUX. Mr. President, I rise today to cosponsor legislation which will ease credit requirements for lenders aiding victims of Hurricanes Andrew and Iniki as well as victims of future disasters. Mr. President, thousands of people in Florida, Louisiana, and Hawaii are trying to rebuild their lives in the face of natural disasters which have left their homes and businesses destroyed. This legislation recognizes that rules and regulations written for normal times are inhibiting banks from providing critical services—particularly credit services—to these ravaged communities.

The Depository Institutions Disaster Relief Act of 1992 would grant Federal banking agencies discretion to modify or waive certain specified regulatory constraints—after full consideration of safety and soundness demands—that interfere with the flow of banking services to emergency or major disaster areas. The area would have to be declared a disaster area by the President in order for regulators to modify or waive the specified regulatory requirements.

For example, the banking laws generally require that an appraisal be conducted in connection with most loan transactions that are secured by real estate. Compliance with this rule by traditional appraisal methods is virtually impossible—and unnecessary—when entire neighborhoods have been destroyed.

Mr. President, adequate credit and other banking services are never needed more than in times of emergency or major disaster. This legislation will provide that needed assistance to disaster victims as well as protect the integrity of our Nation's banking laws. I urge my colleagues to join me in support of this very important legislation.•

• Mr. GRAHAM. Mr. President, I am pleased to join my colleagues, Senators MACK, BREAUX, INOUYE, AKAKA, RIEGLE, and GARN in cosponsoring the Depository Institutions Disaster Relief Act of 1992. This bill is intended to encourage the financial institution regulators to recognize and assist financial institutions located in emergency areas due to natural disasters like hurricanes and typhoons. The bill will also encourage financial institutions serving disaster areas to meet the financial service needs of their devastated communities.

Secretary BRADY started the ball rolling on the idea for this bill when he visited the hurricane ravaged area in south Florida and met with representatives of the financial community. At that time the financial institutions expressed their concerns about whether they would be able to lend in their communities and what they themselves were facing. The institutions located in the devastated area and which principally served that area were in the process of surveying the damage to their facilities, seeking shelter for their employees and trying to get power to their buildings.

Florida financial institutions and a representative from the Florida comptroller's office were so concerned about the difficult situation they found themselves in that they personally came to Washington to share with Congress the challenges they were facing every day. Fortunately, the Congress was sympathetic and realized that the financial institutions in the affected communities would play a vital role in rebuilding south Florida by making the critically needed credit available.

The Depository Institutions Disaster Relief Act would apply only to an area declared to be a Presidential emergency; in addition the Stafford Act would have to be in effect. The regulators must still maintain the safety and soundness of the affected financial institutions; however the bill would give financial regulators the ability to waive certain regulatory requirements.

Among the requirements that could be waived are the appraisal requirements. In normal times, current financial standards require appraisals on property before a financial institution can make a loan. However, in a disaster area, like those hit by Hurricanes Andrew and Iniki, it is hard to meet these appraisal requirements due to the destruction.

The bill also waives the capital requirements for financial institutions to make allowance for the spikes in the measurement of capital going into a financial institution from insurance proceeds and going out as the financial institution lends for the rebuilding effort. The bill also gives the regulators the discretion to waive for 1 year the Administrative Procedures Act, the Truth-in-Lending Act and the Expedited Funds Availability Act.

Finally the bill includes a sense of the Congress to encourage the financial regulators to encourage the financial institutions to meet the financial needs of their devastated communities.

Mr. President, I would like to express my sincere thanks to my colleagues and their staffs, and representatives from the Treasury Department and the financial regulators, for all the hard work they have put in on this bill. In particular, I would like to thank Rick Carnell, a fellow Floridian, who has developed an appreciation for the impact of Hurricane Andrew on south Florida.•

By Mr. HOLLINGS:

S. 3286. A bill to amend the Endangered Species Act of 1973 to provide for a loan program for States and political subdivisions; to the Committee on Environment and Public Works.

ENDANGERED SPECIES ACT OF 1973 AMENDMENTS

•Mr. HOLLINGS. Mr. President, for years Congress has mandated costly regulations on States and municipalities. Nowhere has this been more true than in the realm of environmental legislation. Congress seems to believe that it can purify air, clean water, and protect wildlife simply by passing laws.

As the former mayor of Anaheim, I can tell you that simply instructing a State or municipal government to address a problem is not a solution. The Federal Government must provide the necessary assistance to ensure the locality has the ability to comply.

It is for this very reason that today I am introducing the Endangered Species Community Impact Assistance Act.

My bill will facilitate the implementation of a new ambitious multispecies habitat effort currently being conducted in California. The effort is intended to move from single species habitat conservation planning to natural community conservation planning. The approach, known as bioregionalism acknowledges the interconnection between ecosystems and species, establishing habitat conservation programs that serve an entire ecosystems and all their species as opposed to simply protecting one plant or animal.

Traditionally, both State agencies and the U.S. Fish and Wildlife Service have viewed compliance with the Endangered Species Act as a single species issue. When the U.S. Fish and Wildlife Service determines that a species is threatened with extinction, it lists the species and establishes a recovery plan.

Invariably, this system is reactive. The Government only gets involved when a species is on the brink of extinction, at which point the Fish and Wildlife Service typically must take radical action to prevent the species from going extinct.

Such inaction, followed by frantic overreaction, has not only had a devastating impact on many local and regional economies, but has also done little for the very plants and animals the Endangered Species Act is designed to protect.

California, on both the State and local level, is trying something new. Instead of waiting for rare species to be listed, or attempting to deal with listed species one at a time, the State has established a project to identify priorities and set aside habitat that is shared by a host of different listed and candidate species.

Through such a holistic, multispecies approach, it is hoped that California can forestall the otherwise inevitable progression of species listings. Each of these listings limits the ability of State and local governments to make rational public policy decisions—invariably to the detriment of California's economy.

Setting aside wildlife habitat before such a crisis is reached can dramatically lessen the damage not only to the wildlife species but also local economies. Unfortunately, in today's bleak economic climate, State and local governments cannot afford to be proactive.

The purchase of significant habitat acreage is very expensive. States and municipalities which are interested in setting aside such habitat, have to borrow the money. The cost of the principal and the interest combined is often more than any single government entity can afford. Without adequate funding, the land cannot be set aside, and everyone suffers.

The Endangered Species Impact Assistant Act addresses this problem. The act gives the Secretary of the Interior the authority to enter into agreements with local governments to provide interest free loans for the acquisition of habitat for rare and endangered species. Once the local or State government has paid off the principal, the Secretary has the discretion to take title to the land without further expense.

Mr. President, this bill makes economic and environmental sense, and I am hopeful that it can be used as a sound starting point for the much-needed discussion of endangered species impact assistance for States, counties, and municipalities when the Endangered Species Act is brought before the Senate for reauthorization next year.•

ADDITIONAL COSPONSORS

S. 15

At the request of Mr. BIDEN, the name of the Senator from North Dakota [Mrs. BURDICK] was added as a cosponsor of S. 15, a bill to combat violence and crimes against women on the streets and in homes.

S. 1777

At the request of Mr. ADAMS, the names of the Senator from South Dakota [Mr. DASCHLE] and the Senator from Arkansas [Mr. PRYOR] were added as cosponsors of S. 1777, a bill to amend the Public Health Service Act to establish the authority for the regulation of mammography services and radiological equipment, and for other purposes.

S. 1862

At the request of Mr. GRAHAM, the name of the Senator from Minnesota [Mr. WELLSTONE] was added as a cosponsor of S. 1862, a bill to amend the National Wildlife Refuge System Administration Act of 1966 to improve the management of the National Wildlife Refuge System, and for other purposes.

S. 2033

At the request of Mr. DASCHLE, the name of the Senator from Kentucky [Mr. FORD] was added as a cosponsor of S. 2033, a bill to expand the exclusion of services of election officials and workers from social security earnings.

S. 2362

At the request of Mr. MCCAIN, the name of the Senator from New York [Mr. MOYNIHAN] was added as a cosponsor of S. 2362, a bill to amend title XVIII of the Social Security Act to repeal the reduced Medicare payment provision for new physicians.

S. 2407

At the request of Mr. SEYMOUR, the name of the Senator from Tennessee [Mr. GORE] was added as a cosponsor of S. 2407, a bill to amend the Board for International Broadcasting Act of 1973 to establish a program for radio broadcasting to the peoples of Asia.

S. 2810

At the request of Mr. GRASSLEY, the name of the Senator from Kentucky [Mr. MCCONNELL] was added as a cosponsor of S. 2810, a bill to recognize the unique status of local exchange carriers in providing the public switched network infrastructure and to ensure the broad availability of advanced public switched network infrastructure.

At the request of Mr. GORE, the name of the Senator from Iowa [Mr. HARKIN] was added as a cosponsor of S. 2810, supra.

S. 2813

At the request of Mr. GORE, the name of the Senator from South Carolina [Mr. HOLLINGS] was added as a cosponsor of S. 2813, a bill to establish in the Government Printing Office an electronic gateway to provide public access to a wide range of Federal databases containing public information stored electronically.

S. 2841

At the request of Mr. D'AMATO, the names of the Senator from Delaware [Mr. ROTH] and the Senator from Kansas [Mr. DOLE] were added as cosponsors of S. 2841, a bill to provide for the minting of coins to commemorate the World University Games.

S. 2941

At the request of Mr. BUMPERS, the name of the Senator from Connecticut [Mr. DODD] was added as a cosponsor of S. 2941, a bill to provide the Administrator of the Small Business Administration continued authority to administer the Small Business Innovation Research Program, and for other purposes.

S. 3117

At the request of Mr. DASCHLE, his name was added as a cosponsor of S. 3117, a bill to amend title XVIII of the Social Security Act to enhance certain payments made to Medicare-dependent, small rural hospitals.

S. 3183

At the request of Mr. DASCHLE, the name of the Senator from Hawaii [Mr.

INOUYE] was added as a cosponsor of S. 3183, a bill to amend the Public Health Service Act to provide a comprehensive program for the prevention of Fetal Alcohol Syndrome, and for other purposes.

S. 3195

At the request of Mr. GLENN, the name of the Senator from Illinois [Mr. DIXON] was added as a cosponsor of S. 3195, a bill to require the Secretary of the Treasury to mint coins in commemoration of the 50th anniversary of the U.S. involvement in World War II.

S. 3221

At the request of Mr. LAUTENBERG, the names of the Senator from Ohio [Mr. GLENN] and the Senator from Illinois [Mr. SIMON] were added as cosponsors of S. 3221, a bill to deny most-favored-nation status to Serbia and Montenegro unless certain conditions are met.

SENATE JOINT RESOLUTION 3

At the request of Mr. KENNEDY, the name of the Senator from North Dakota [Mrs. BURDICK] was added as a cosponsor of Senate Joint Resolution 3, a joint resolution proposing an amendment to the Constitution of the United States relative to equal rights for women and men.

SENATE JOINT RESOLUTION 260

At the request of Mr. COCHRAN, the name of the Senator from South Dakota [Mr. PRESSLER] was added as a cosponsor of Senate Joint Resolution 260, a joint resolution designating the week of October 18, 1992, through October 24, 1992, as "National School Bus Safety Week."

SENATE JOINT RESOLUTION 278

At the request of Mr. DODD, the names of the Senator from Kansas [Mrs. KASSEBAUM], the Senator from Maryland [Ms. MIKULSKI], the Senator from Michigan [Mr. RIEGLE], the Senator from Rhode Island [Mr. CHAFEE], the Senator from Kentucky [Mr. FORD], the Senator from Indiana [Mr. COATS], and the Senator from New Jersey [Mr. LAUTENBERG] were added as cosponsors of Senate Joint Resolution 278, a joint resolution designating the week of January 3, 1993, through January 9, 1993, as "Braille Literacy Week."

SENATE JOINT RESOLUTION 311

At the request of Mr. SEYMOUR, the names of the Senator from Michigan [Mr. LEVIN], the Senator from Louisiana [Mr. JOHNSTON], and the Senator from Montana [Mr. BAUCUS] were added as cosponsors of Senate Joint Resolution 311, a joint resolution designating February 21, 1993, through February 27, 1993, as "American Wine Appreciation Week," and for other purposes.

SENATE JOINT RESOLUTION 315

At the request of Mr. SEYMOUR, the names of the Senator from New Jersey [Mr. LAUTENBERG], the Senator from Wisconsin [Mr. KASTEN], and the Senator from Utah [Mr. GARN] were added as cosponsors of Senate Joint Resolution 315, a joint resolution to designate September 16, 1992, as "National Occupational Therapy Day."

SENATE JOINT RESOLUTION 327

At the request of Mr. BRYAN, the names of the Senator from California [Mr. SEYMOUR], the Senator from Nebraska [Mr. EXON], the Senator from South Carolina [Mr. HOLLINGS], and the Senator from Wisconsin [Mr. KOHL] were added as cosponsors of Senate Joint Resolution 327, a joint resolution to designate October 8, 1992, as "National Firefighters Day."

SENATE JOINT RESOLUTION 328

At the request of Mr. COCHRAN, the names of the Senator from California [Mr. SEYMOUR] and the Senator from Pennsylvania [Mr. SPECTER] were added as cosponsors of Senate Joint Resolution 328, a joint resolution to acknowledge the sacrifices that military families have made on behalf of the Nation and to designate November 23, 1992, as "National Military Families Recognition Day."

AMENDMENT NO. 3217

At the request of Mr. PACKWOOD, the name of the Senator from Washington [Mr. GORTON] was added as a cosponsor of Amendment No. 3217 proposed to H.R. 11, a bill to amend the Internal Revenue Code of 1986 to provide tax incentives for the establishment of tax enterprise zones, and for other purposes.

SENATE RESOLUTION 353—RELATIVE TO THE PRESIDENTIAL DEBATES

Mr. PRYOR (for himself and Mr. GRAHAM) submitted the following resolution; which was referred to the Committee on Rules and Administration:

S. RES. 353

Whereas American taxpayers currently fund presidential campaigns through a one dollar check-off on their Federal income tax form;

Whereas the Democratic and Republican presidential nominees will each receive roughly $75,000,000 in taxpayers' dollars to fund their campaigns through the 1992 general election;

Whereas the American electorate deserves to be presented with the opportunity to watch and listen to the candidates exchange views face-to-face on the issues of the day;

Whereas presidential debates have been a part of every Presidential campaign for the past 16 years;

Whereas the American public has come to expect formal debates as an integral part of the presidential election process;

Whereas Democrats and Republicans alike agree in the importance of debates and showed their interest by having the Democratic and Republican National Committees collaborate in 1987 to establish the Commission on Presidential Debates, a bipartisan group; and

Whereas in 1988, 160,000,000 Americans expressed their interest in seeing candidates debate by watching the two Presidential and one Vice Presidential debates that the Commission sponsored: Now, therefore, be it *Resolved*, That it is the sense of the Senate that—

(1) the American people fund the campaigns of the major party candidates, and they have a right to expect formal Presidential and Vice Presidential debates; and

(2) the Democratic and Republican Presidential candidates and Vice Presidential candidates should debate before the election of November 3, 1992.

Mr. PRYOR. Mr. President, American taxpayers currently fund the Presidential campaigns through a $1 check-off on their Federal income tax form. This year the Democratic and Republican Presidential nominees will each receive roughly $75 million in taxpayers' money to fund their campaigns through the 1992 general election.

What I am introducing at this time is a very simple sense-of-the-Senate resolution. It is a very simple resolution saying that it is the American public funds that fund the Presidential campaigns and the American people deserve to see formal Presidential and Vice Presidential debates before the election on November 3, 1992.

Today, as we know, was supposed to have been a day for a second Presidential debate in Louisville, KY. Like its predecessor in Michigan, the Louisville debate was canceled, to my understanding, because President Bush declined to attend.

Mr. President, this simple resolution simply states that the United States Senate is going on record supporting the Presidential debates to go forward so that the American people can see the position each candidate is taking.

Not since the campaign of 1972 have the American people been deprived of Presidential debates. They have come to expect debates and they deserve them.

If American taxpayers are going to foot much of the bill for Presidential campaigns, the least a candidate can do in return is give 2 hours of his time to tell the American people where he stands in a face-to-face debate.

Accordingly, today I am offering a sense-of-the-Senate resolution which would simply put the Senate on record in favor of Presidential debates.

This resolution reads as follows: Resolved that it is the sense-of-the-Senate that: First, the American people fund the campaigns of the major party candidates, and they have a right to expect formal Presidential and Vice Presidential debates; and second, the Democratic and Republican Presidential candidates and Vice Presidential candidates should debate before the election of November 3, 1992.

It is as simple as that—the Senate wants debates.

Today, I stand on the floor of the greatest deliberative body in the world, the site of innumerable debates on the important issues of the day. This resolution is a simple way for the Senate to stand in unison in favor of a simple and noncontroversial concept: the can-

didates for President and Vice-President have a responsibility to the American public to debate.

It is my understanding that today at 5 p.m. another deadline is set to expire for both candidates to accept a debate from the bipartisan commission on Presidential debates. If one of the candidates declines to debate, later this week I will offer a sense-of-the-Senate resolution stating that any candidate refusing to accept the commission's offer to debate should return the Federal campaign funds that they have received, or will receive. The American public pays for these elections with their tax dollars, and they expect debates in return. That later resolution will make another simple statement: if you do not want public debates, give back the public tax dollars you have taken.

I hope I do not have to submit that resolution. I hope both candidates will accept the bipartisan commission's offer for a public debate, but if that bipartisan offer is spurned, I will be back later this week to offer my second resolution.

AMENDMENTS SUBMITTED

START TREATY

WALLOP EXECUTIVE AMENDMENT NO. 3317

Mr. WALLOP proposed an amendment to the resolution of ratification to the Treaty between the United States and the Union of Soviet Socialist Republics on the Reduction and Limitation of Strategic Offensive Arms, as follows:

Add at the appropriate place the following:

The Senate's advice and consent to the ratification of the START Treaty is subject to the following condition, which shall be binding upon the President:

"The START Treaty, including the May 23, 1992 Protocol, the two Annexes, six Protocols, Memorandum of Understanding, and Corrigenda, shall not enter into force until the President certifies that all MIRVed ICBMs, and all launchers for MIRVed ICBMs, shall be eliminated in accordance with the agreement in the Joint Understanding on deep cuts of June 17, 1992, signed by the President of the United States of America and the President of the Russian Federation."

TAX EQUITY ACT

BENTSEN AMENDMENT NO. 3318

Mr. BENTSEN proposed an amendment to the bill H.R. 11, to amend the Internal Revenue Code of 1986 to provide tax incentives for the establishment of tax enterprise zones, and for other purposes; as follows:

On page 1811, after line 9, insert the following new titles:

TITLE—AMENDMENTS TO MEDICARE PROGRAM

SECTION 100. SHORT TITLE; REFERENCES.

(a) SHORT TITLE.—This title, and titles and may be cited as the "Medicare and Medicaid Amendments Act of 1992".

(b) REFERENCES TO SOCIAL SECURITY ACT.—Except as otherwise specifically provided, whenever in this title, and titles and , an amendment is expressed in terms of an amendment to or repeal of a section or other provision, the reference shall be considered to be made to that section or other provision of the Social Security Act.

(c) REFERENCES TO OBRA.—In this title, and titles and , the terms "OBRA-1986", "OBRA-1987", "OBRA-1989", and "OBRA-1990" refer to the Omnibus Budget Reconciliation Act of 1986 (Public Law 99-509), the Omnibus Budget Reconciliation Act of 1987 (Public Law 100-203), the Omnibus Budget Reconciliation Act of 1989 (Public Law 101-239), and the Omnibus Budget Reconciliation Act of 1990 (Public Law 101-508), respectively.

SUBTITLE A—PROVISIONS RELATING TO PART A

PART I—EXTENSION OF EXPIRING PROVISIONS

SEC. 101. EXTENSION OF REGIONAL REFERRAL CENTER CLASSIFICATION.

(a) IN GENERAL.—Section 6003(d) of OBRA-1989 is amended by striking "1992" and inserting "1994".

(b) RECLASSIFICATION DECLINATION ALLOWED.—If any hospital fails to qualify as a regional referral center under section 1886(d)(5)(C) of the Social Security Act as a result of a decision by the Medicare Geographic Classification Review Board under section 1886(d)(10) of such Act with respect to such hospital's application for a change in geographic classification for fiscal year 1993, the Secretary of Health and Human Services shall—

(1) notify such hospital of such failure to qualify,

(2) provide an opportunity for such hospital to decline such reclassification, and

(3) administer the Social Security Act with respect to such hospital from October 1, 1992, until the effective date of the declination as if the decision by the Review Board had not occurred.

(c) NO STANDARDIZED AMOUNT ADJUSTMENT.—The Secretary of Health and Human Services shall not revise the standardized amounts pursuant to subsections (d)(3)(B) and (d)(8)(D) of section 1886 of the Social Security Act to account for hospitals which decline reclassification under subsection (b).

(d) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as if included in the enactment of OBRA-1989.

SEC. 102. MEDICARE-DEPENDENT, SMALL RURAL HOSPITALS.

(a) IN GENERAL.—Section 1886(d)(5)(G) of the Social Security Act (42 U.S.C. 1395ww(d)(5)(G)) is amended—

(1) by amending clause (i) to read as follows:

"(i) In the case of a subsection (d) hospital which is a medicare-dependent, small rural hospital, payment under paragraph (1)(A) for discharges occurring before October 1, 1994, shall be—

"(I) for any cost reporting period beginning on or after April 1, 1990, and before April 1, 1993, the amount determined under clause (ii); and

"(II) for any cost reporting period beginning on or after April 1, 1993, the amount determined under clause (ii) by substituting '50 percent' for '100 percent'.";

(2) by redesignating clauses (ii) and (iii) as clauses (iii) and (iv), respectively; and

(3) by inserting after clause (i) the following new clause:

"(ii) The amount determined under this clause is the sum of—

"(I) the amount determined under paragraph (1)(A)(iii), and

"(II) 100 percent of the excess (if any) of—

"(aa) the hospital's target amount for the cost reporting period, as defined in subsection (b)(3)(D), over

"(bb) the amount determined under paragraph (1)(A)(iii).".

(b) RECLASSIFICATION DECLINATION ALLOWED.—If any hospital fails to qualify as a medicare-dependent, small rural hospital under section 1886(d)(5)(G)(i) of the Social Security Act as a result of a decision by the Medicare Geographic Classification Review Board under section 1886(d)(10) of such Act with respect to such hospital's application for a change in geographic classification for fiscal year 1993, the Secretary of Health and Human Services shall—

(1) notify such hospital of such failure to qualify,

(2) provide an opportunity for such hospital to decline such reclassification, and

(3) administer the Social Security Act with respect to such hospital from October 1, 1992, until the effective date of the declination as if the decision by the Review Board had not occurred.

(c) NO STANDARDIZED AMOUNT ADJUSTMENT.—The Secretary of Health and Human Services shall not revise the standardized amounts pursuant to subsections (d)(3)(B) and (d)(8)(D) of section 1886 of the Social Security Act to account for hospitals which decline reclassification under subsection (b).

SEC. 103. EXTENSION OF RURAL HEALTH TRANSITION GRANT PROGRAM.

Section 4005(e)(9) of OBRA-1987, as amended by section 6003(g)(1)(B) of OBRA-1989, is amended—

(1) by striking "1989 and" and inserting "1989,"; and

(2) by striking "1992" and inserting "1992 and $30,000,000 for each of the fiscal years 1993 through 1997".

SEC. 104. EXTENSION OF ESSENTIAL ACCESS COMMUNITY HOSPITAL PROGRAM.

(a) IN GENERAL.—Section 1820(k) (42 U.S.C. 1395i-4(k)) is amended by striking "1990, 1991, and 1992" and inserting "1990 through 1995".

(b) CLARIFICATION OF CRITERIA.—Section 1820(f)(1)(F) (42 U.S.C. 1395i-4(f)(1)(F)) is amended by striking "72 hours" and all that follows through "conditions)" and by inserting "an average of 72 hours".

SEC. 105. EXTENSION OF PASS THROUGH PAYMENT FOR HEMOPHILIA INPATIENTS.

(a) IN GENERAL.—Section 6011(d) of OBRA-1989 is amended by striking "2 years after the date of enactment of this Act" and inserting "September 30, 1994".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as if included in the enactment of OBRA-1989.

SEC. 106. EXTENSION OF RURAL HOSPITAL DEMONSTRATION.

Section 4008(i)(1) of OBRA-1990 is amended by adding at the end the following new sentence: "The Secretary shall continue any such demonstration project until at least December 31, 1995.".

PART II—MISCELLANEOUS PART A AMENDMENTS

SEC. 107. WAGE INDEX HOLD HARMLESS PROTECTION.

(a) IN GENERAL.—Section 1886(d)(8)(C)(iii) (42 U.S.C. 1395ww(d)(8)(C)(iii)) is amended by adding at the end the following new sentence: "In the case of an urban area in a State that has—

"(I) a wage index below the wage index for rural areas in such State, or

"(II) no rural areas,

such an application or decision may not result in a reduction of that urban area's wage index.

(b) URBAN STANDARDIZED AMOUNT ADJUSTED.—For discharges occurring on or after the effective date of this section and before October 1, 1993, the Secretary of Health and Human Services shall adjust the urban standardized amount by a factor of 0.999321.

(c) UPDATING STANDARDS.—Section 1886(d)(8)(B) (42 U.S.C. 1395ww(d)(8)(B)) is amended—

(1) by striking "(B)" and inserting "(B)(i)",

(2) by inserting "most recently available" before "standards" each place it appears,

(3) by striking "published in the Federal Register on January 3, 1980", and

(4) by adding at the end the following new clause:

"(ii) If a hospital was previously reclassified under this paragraph based on standards for Metropolitan Statistical Areas (and New England County Metropolitan Areas) published in the Federal Register on January 3, 1980, and the hospital is located in a rural county under the most recently available standards for designating Metropolitan Statistical Areas, the Secretary shall treat the hospital as being located in the urban metropolitan statistical area to which the greatest number of workers in the county commute.".

(d) EFFECTIVE DATE.—The amendments made by this section shall be apply to discharges occurring on or after the date which is 30 days after the date of the enactment of this Act.

SEC. 108. SUPERVISION OF HOSPITAL TREATMENT BY PSYCHOLOGISTS.

Section 1861(e)(4) (42 U.S.C. 1395x) is amended by inserting ", or, in the case of inpatients receiving qualified psychologist services (as defined in subsection (ii)), may be under the care of a clinical psychologist to the extent permitted under State law" after "physician".

SEC. 109. DELAY IN RECOUPMENT.

(a) IN GENERAL.—The Secretary of Health and Human Services (hereafter in this section referred to as the "Secretary") may not, on or after the date of the enactment of this Act and before April 1, 1993, recoup from or otherwise reduce payments to hospitals with respect to alleged overpayments made to such hospitals with respect to a waiver granted by the Secretary to a State under section 1886(c) of the Social Security Act.

(b) INFORMATION MADE AVAILABLE.—Prior to undertaking a recoupment, the Secretary shall make available to the State and the hospitals in the State all relevant information used by the Secretary to determine the amount of the alleged overpayments, including—

(A) the cost reports submitted by the hospitals during the relevant cost reporting period, and

(B) the methodology used by the Secretary to determine the amount of payments that would have been made under title XVIII of the Social Security Act to hospitals in the State in the absence of the waiver.

SEC. 110. SKILLED NURSING FACILITY WAGE INDEX.

(a) IN GENERAL.—Within one year of the date of the enactment of this Act, the Secretary of Health and Human Resources shall begin to collect data on employee compensation and paid hours of employment in skilled nursing facilities for the purpose of constructing a skilled nursing facility wage index adjustment to the routine service cost limits required under section 1888(a)(4) of the Social Security Act.

(b) PROPAC REPORT.—The Prospective Payment Assessment Commission shall, by March 1, 1993, study and report to the Congress on the impact of applying routine cost limits for skilled nursing facilities on a regional basis.

Subtitle B—Provisions Relating to Part B

PART I—PAYMENT FOR PHYSICIANS' SERVICES

SEC. 111. PERMITTING SEPARATE PAYMENT FOR INTERPRETATION OF ELECTROCARDIOGRAMS.

(a) IN GENERAL.—Section 1848(b) (42 U.S.C. 1395w-4(b)) is amended by striking paragraph (3).

(b) DEVELOPMENT OF SEPARATE FEE SCHEDULE AMOUNTS FOR ELECTROCARDIOGRAM INTERPRETATIONS.—

(1) IN GENERAL.—The Secretary of Health and Human Services (hereafter in this subsection referred to as the "Secretary") shall make separate payment, under the fee schedule established under section 1848 of the Social Security Act (42 U.S.C. 1395w-4), for the interpretation of electrocardiograms performed or ordered to be performed as part of or in conjunction with a visit to or a consultation with a physician.

(2) ADJUSTMENT OF VISIT AND CONSULTATION RELATIVE VALUES.—The Secretary shall adjust the relative values established for medical visits and consultations under part 415 of title 42 of the Code of Federal Regulations, so as not to include relative value units for electrocardiogram interpretation in the relative value for medical visits and consultations.

(3) ADJUSTMENT OF FEE SCHEDULES.—The Secretary shall adjust—

(A) the fee schedule amounts which are determined under section 1848(a)(2)(A) of the Social Security Act (42 U.S.C. 1395w-4(a)(2)(A)) and used in application of the special rules for 1993, 1994, and 1995, under section 1848(a)(2)(B) of such Act (42 U.S.C. 1395w-4(a)(2)(B)), and

(B) the relative values for all services established under section 1848(b) of such Act (42 U.S.C. 1395w-4(b)),

to reflect the separate payment for electrocardiogram interpretations under paragraph (1) so as not to increase or decrease expenditures under such section as determined without regard to paragraph (1).

(c) EFFECTIVE DATE.—The amendment made by subsection (a) and the provisions of subsection (b) shall apply to services furnished on or after January 1, 1993.

SEC. 112. REPEAL OF REDUCED MEDICARE PAYMENT PROVISION FOR NEW PRACTITIONERS.

(a) PHYSICIANS.—Section 1848(a) (42 U.S.C. 1395w-4(a)) is amended by repealing paragraph (4).

(b) OTHER PRACTITIONERS.—Section 1842(b)(4) (42 U.S.C. 1395u(b)(4)) is amended by striking subparagraph (F).

(c) BUDGET NEUTRALITY.—The Secretary of Health and Human Services shall provide that in carrying out the amendments made by subsections (a) and (b) that payments under section 1848 of the Social Security Act are no greater or lesser than what such payments would have been but for the provisions of this Act.

(d) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall apply with respect to physicians' services furnished on or after January 1, 1993.

SEC. 113. BASING MEDICARE PAYMENTS FOR ANESTHESIA SERVICES ON ACTUAL TIME.

(a) PHYSICIANS' SERVICES.—Section 1848(b)(2)(B) (42 U.S.C. 1395w-4(b)(2)(B)) is amended by adding at the end the following: "Notwithstanding any other provision of law, for anesthesia services furnished on or after January 1, 1993, and before January 1, 1997, the Secretary may not modify the methodology in effect as of January 1, 1992, for determining the amount of time that may be billed for such services under this section.".

(b) SERVICES OF CERTIFIED REGISTERED NURSE ANESTHETISTS.—Section 1833(l)(1)(B) (42 U.S.C. 1395l(l)(1)(B)) is amended by adding at the end the following: "Notwithstanding any other provision of law, for anesthesia services furnished on or after January 1, 1993, and before January 1, 1997, the Secretary may not modify the methodology in effect as of January 1, 1992, for determining the amount of time that may be billed for such services under this subsection.".

(c) STUDY ON TIME REPORTED FOR ANESTHESIA SERVICES.—

(1) CONTENTS OF STUDY.—The Comptroller General of the United States (hereafter in this section referred to as the "Comptroller General") shall—

(A) study the actual time reported for anesthesia services furnished under title XVIII of the Social Security Act for high-volume surgical procedures,

(B) compare the actual time reported for a procedure during 1991 with the time reported for the same procedure during each of the 4 succeeding years,

(C) evaluate the extent to which the actual time reported for a procedure has increased or decreased during such period, and

(D) determine (to the extent practicable)—

(i) whether any increases or decreases identified under subparagraph (C) are the result of changes in patterns of medical practice, physician responses to reductions in payments for anesthesia services, or other factors, and

(ii) the effect of such increases or decreases on the total amount expended under title XVIII of the Social Security Act for anesthesia services.

(2) DESIGN OF STUDY.—The Comptroller General shall consult with the Physician Payment Review Commission (hereafter in this section referred to as the "Commission") in designing the study required under paragraph (1).

(3) REPORTS.—

(A) INTERIM REPORT.—The Comptroller General shall transmit an interim report on the progress of the study to the Commission, the Committee on Finance of the Senate and the Committee on Ways and Means and the Committee on Energy and Commerce of the House of Representatives not later than July 1, 1994.

(B) FINAL REPORT.—The Comptroller General shall report the results of the study to the Commission and the Committees referred to in subparagraph (A) not later than July 1, 1996.

(4) EVALUATION OF REPORTS BY THE COMMISSION.—The Commission shall evaluate each report required under paragraph (3) and transmit comments on the report to the Committees referred to in paragraph (3)(A) not later than 90 days after the report is received by the Commission.

SEC. 114. REFINEMENT OF GEOGRAPHIC ADJUSTMENT FACTOR FOR MEDICARE PHYSICIANS' SERVICES.

(a) DEADLINE FOR INITIAL REVIEW AND REVISION.—Section 1848(e)(1)(C) (42 U.S.C. 1395w-

4(e)(1)(C)) is amended by adding at the end the following: "The first such review and revision shall apply to services furnished on or after January 1, 1994, and shall be based on the most recent data on practice expenses, malpractice expenses, and physicians' work effort.".

(b) AUTHORITY TO ADJUST INDEX VALUE FOR INPUT COMPONENT UNDER CERTAIN CIRCUMSTANCES.—

(1) IN GENERAL.—Section 1848(e)(1) (42 U.S.C. 1395w-4(e)(1)) is amended—

(A) in subparagraph (A), by striking "(B) and (C)" and inserting "(B), (C), and (D)";

(B) by redesignating subparagraph (C) as subparagraph (D); and

(C) by inserting after subparagraph (B) the following:

"(C) SPECIAL ADJUSTMENT TO CORRECT FOR UNIQUE LOCAL CIRCUMSTANCES.—The Secretary may adjust the value assigned to an input component of an index in a fee schedule area if the Secretary determines that the value that would otherwise apply in such area does not accurately reflect the relative costs of such input for such area because of unique local circumstances.".

(2) CONFORMING AMENDMENT.—Section 1848(i)(1)(D) (42 U.S.C. 1395w-4(i)(1)(D)) is amended by inserting "(including any adjustment under subparagraph (C) thereof)" after "subsection (e)".

(c) REPORT ON REVIEW PROCESS.—Not later than April 1, 1993, the Secretary of Health and Human Services (hereafter in this subsection referred to as the "Secretary") shall study and report to the Committee on Finance of the Senate and the Committee on Ways and Means and the Committee on Energy and Commerce of the House of Representatives on—

(1) the data necessary to review and revise the indices established under section 1848(e)(1)(A) of the Social Security Act (42 U.S.C. 1395w-4(e)(1)(A)), including—

(A) the shares allocated to physicians' work effort, practice expenses (other than malpractice expenses), and malpractice expenses;

(B) the weights assigned to the input components of such shares; and

(C) the index values assigned to such components;

(2) any limitations on the availability of data necessary to review and revise such indices at least every three years;

(3) ways of addressing such limitations, with particular attention to the development of alternative data sources for input components for which current index values are based on data collected less frequently than every three years; and

(4) the costs of developing more accurate and timely data sources.

(d) STUDY ON LOW-VOLUME ADJUSTMENT IN ISOLATED AREAS.—

(1) IN GENERAL.—Not later than July 1, 1993, the Physician Payment Review Commission shall study and report to the Committee on Finance of the Senate and the Committees on Ways and Means and Energy and Commerce of the House of Representatives on the feasibility and desirability of providing for a special adjustment to the index value of the medical equipment and supplies input component of the index used under section 1848(e) of the Social Security Act (42 U.S.C. 1395w-4(e)) with respect to services described in paragraph (2).

(2) DESCRIPTION OF SERVICES.—Services described in this paragraph are services—

(A) furnished by a physician who practices in an isolated area;

(B) requiring the presence of expensive medical equipment and supplies in the physician's office; and

(C) with respect to which the cost per service of operating the equipment is increased because of the low volume of patients of such physician.

SEC. 115. EXTRA BILLING.

(a) APPLICATION OF EXTRA-BILLING LIMITS.—

(1) ENFORCEMENT.—Paragraph (1) of section 1848(g) (42 U.S.C. 1395w-4(g)) is amended to read as follows:

"(1) LIMITATION ON ACTUAL CHARGES.—

"(A) NO BILLING IN EXCESS OF LIMITING CHARGES.—A nonparticipating physician who does not accept payment on an assignment-related basis for physicians' services furnished with respect to an individual enrolled under this part may not bill or collect an actual charge in excess of the limiting charge described in paragraph (2) for such services.

"(B) NO LIABILITY FOR EXCESS CHARGES.—No person is liable for payment of any amounts billed in excess of the amount permitted under subparagraph (A).

"(C) REFUND OF EXCESS CHARGES.—If a physician bills or collects an amount that exceeds by at least one dollar the applicable limiting charge for a service furnished to an individual enrolled under this part, the physician shall on a timely basis—

"(i) refund the full amount collected in excess of the limiting charge,

"(ii) if there is an outstanding balance owed to the physician for other items and services and furnished to the individual, reduce this balance by the amount of the excess charge and refund any amount in excess of the outstanding balance, or

"(iii) if the physician has not yet collected such excess charges, reduce the actual charge billed for the service to the amount permitted under subparagraph (A).

"(D) TIMELINESS OF REFUND.—

"(i) IN GENERAL.—A refund (or reduction) under subparagraph (C) is considered to be made on a timely basis if the full refund (or notice to the individual of reduced outstanding balance or reduced charge, as applicable) is made within 30 days after a carrier notifies the physician that the limiting charge has been exceeded.

"(ii) RESPONSE TO CARRIER'S DETERMINATION.—In the case of a physician who, within 30 days after the carrier notifies the physician that the limiting charge has been exceeded, submits to the carrier documentation supporting application of a different limiting charge to the service furnished, a refund (or reduction) under subparagraph (C) is considered to be made on a timely basis if the full refund (or notice to the individual of reduced outstanding balance or reduced charge, as applicable) is made within 15 days after the carrier notifies the physician following review of such documentation that the limiting charge has been exceeded.

"(E) SANCTIONS.—If a physician—

"(i) knowingly and willfully bills for services in violation of subparagraph (A),

"(ii) collects for services in violation of subparagraph (A) on a repeated basis, or

"(iii) fails to comply with subparagraph (C),

the Secretary may apply sanctions against the physician in accordance with section 1842(j)(2) and apply paragraph (4) of section 1842(j) in the same manner as such paragraph applies to such section.".

(2) APPLICATION OF EXTRA-BILLING LIMITS TO PHYSICIANS' SERVICES FURNISHED BY ANY PERSON.—

(A) IN GENERAL.—Section 1848(g) (42 U.S.C. 1395w-4(g)) is amended—

(i) in paragraph (1), as amended by subsection (a) of this section—

(I) in subparagraph (A), by inserting "or nonparticipating supplier or other person (as defined in section 1842(i)(2))" after "nonparticipating physician",

(II) in subparagraph (C), by inserting ", supplier, or other person" after "physician" each place it appears,

(III) in subparagraph (D), by inserting ", supplier, or other person" after "physician" each place it appears, and

(IV) in subparagraph (E), by inserting ", supplier, or other person" after "physician" each place it appears, and by inserting before the period at the end the following: "and any reference in such section to a physician is deemed to include a reference to a supplier or other person under this subparagraph"; and

(ii) in paragraph (2)(C), by inserting "or for nonparticipating suppliers or other persons" after "nonparticipating physicians".

(B) CONFORMING DEFINITION.—Section 1842(i)(2) (42 U.S.C. 1395u(i)(2)) is amended—

(i) by striking ", and the term" and inserting "; the term", and

(ii) by inserting before the period at the end the following: "; and the term 'nonparticipating supplier or other person' means a supplier or other person (excluding a provider of services) that is not a participating physician or supplier (as defined in subsection (h)(1))".

(C) ADDITIONAL CONFORMING AMENDMENTS.—Section 1848 (42 U.S.C. 1395w-4) is amended—

(i) in subsection (a)(3)—

(I) in the heading, by inserting "AND SUPPLIERS" after "PHYSICIANS", and

(II) by inserting "or a nonparticipating supplier or other person" after "nonparticipating physician", and

(ii) in subsection (j)(3), by inserting ", except for purposes of subsection (g)," after "tests and".

(b) DETERMINATIONS BY CARRIERS REGARDING APPLICABLE LIMITING CHARGES FOR PHYSICIAN SERVICES.—Section 1842(b)(3) (42 U.S.C. 1395u(b)(3)) is amended—

(1) by striking "and" at the end of subparagraph (G);

(2) by striking "and" at the end of subparagraph (H); and

(3) by inserting after subparagraph (H), the following new subparagraph:

"(I) will, for claims that are not paid on an assignment-related basis—

"(i) determine, prior to making payment, whether the amount billed for physicians' services furnished with respect to an individual enrolled under this part exceeds the limiting charge applicable under section 1848(g)(2);

"(ii) notify the physician, supplier, or other person within 30 days of any determination that the amount billed exceeds by at least one dollar the limiting charge applicable under section 1848(g)(2) and provide an opportunity for the physician supplier or other person to respond;

"(iii) notify the physician, supplier, or other person, within 30 days of the receipt of a response, of the carrier's determination with respect to such response regarding whether the limiting charge applicable under section 1848(g)(2) has been exceeded; and

"(iv) include limiting charge information in the explanation of medicare benefits that is sent to an individual enrolled under this part after the submission of an unassigned claim on an individual's behalf which exceeds the limiting charge by at least one dollar; and".

(c) CLARIFICATION OF MANDATORY ASSIGNMENT RULES FOR CERTAIN PRACTITIONERS.—

(1) IN GENERAL.—Section 1842(b) (42 U.S.C. 1395u(b)) is amended by adding at the end the following new paragraph:

"(19)(A) Payment for any service furnished by a practitioner described in subparagraph (C) or a service incident to such practitioner's service and for which payment may be made under this part under section 1833(a)(1) may only be made under this part on an assignment-related basis.

"(B) Except for deductible and coinsurance amounts applicable under this part, a practitioner described in subparagraph (C) may not bill for an individual or other person any service described in subparagraph (A). No person is liable for payment of any amounts billed for such a service in violation of subparagraph (A). If a practitioner (or other person billing for a service on behalf of the practitioner) knowingly and willfully bills for such a service in violation of subparagraph (A), the Secretary may apply sanctions against the practitioner (or such other person) in the same manner as the Secretary may apply sanctions against a physician in accordance with subsection (j)(2) in the same manner as such subsection applies with respect to a physician. Paragraph (4) of subsection (j) shall apply in this subparagraph in the same manner as such paragraph applies to such subsection.

"(C) A practitioner described in this subparagraph is any of the following:

"(i) A physician assistant, nurse practitioner, or clinical nurse specialist (as defined in section 1861(aa)(5)).

"(ii) A certified registered nurse anesthetist (as defined in section 1861(bb)(2)).

"(iii) A certified nurse-midwife (as defined in section 1861(gg)(2)).

"(iv) A clinical social worker (as defined in section 1861(hh)(1)).

"(v) A clinical psychologist (as defined by the Secretary for purposes of section 1861(ii)).".

(2) CONFORMING AMENDMENTS.—

(A) Section 1833 (42 U.S.C. 1395l) is amended—

(i) in subsection (l)(5)—

(I) by striking subparagraph (B), and

(II) by redesignating subparagraph (C) as subparagraph (B),

(ii) by striking subsection (p), and

(iii) in subsection (r)—

(I) by striking subparagraph (3), and

(II) by redesignating subparagraph (4) as subparagraph (3).

(B) Section 1842(b)(12) (42 U.S.C. 1395u(b)(12)) is amended by striking subparagraph (C).

(C) Section 1833(a)(1) (42 U.S.C. 1395l(a)(1)) is amended—

(i) by striking "and" at the end of subparagraph (N),

(ii) by adding "and" at the end of subparagraph (O), and

(iii) by adding at the end the following new subparagraph:

"(P) with respect to services described in clauses (i), (ii), and (iv) of section 1861(s)(2)(K), the amounts paid shall be 80 percent of the lesser of the actual charge for the service or the amount determined under section 1842(b)(12)(A)(ii);".

(d) MONITORING OF CHARGES IN EXCESS OF LIMITING CHARGE.—Section 1848(g)(6) (42 U.S.C. 1395w-4(g)(6)) is amended in subparagraph (B), by striking "report to the Congress" and inserting "report to the Congress regarding the charges described in subparagraph (A)(i), including the extent to which actual charges exceed limiting charges, the number and types of services involved, and the average amount of excess charges".

(e) ESTABLISHMENT OF MEDICARE BENEFICIARY ADVISORY COUNCIL.—Title XVIII (42 U.S.C. 1395 et seq.) is amended by inserting after section 1889 the following new section:

"SEC. 1890. MEDICARE BENEFICIARY ADVISORY COUNCIL.

"(a) APPOINTMENT OF MEMBERS.—The Secretary shall appoint, based on nominations submitted by organizations representing elderly and disabled populations, a Medicare Beneficiary Advisory Council (hereafter in this section referred to as the 'Council') to be composed of 15 individuals who are entitled to benefits under part A or who are enrolled under part B.

"(b) MEETINGS.—The Council shall meet once during each calendar quarter to discuss proposed regulations, carrier manual instructions, and any other issues with a direct or indirect impact on delivery, cost, quality, or expansion of medicare services. To the extent feasible and consistent with statutory deadlines, such consultation shall occur before the publication of such proposed changes.

"(c) REIMBURSEMENT OF EXPENSES.—Members of the Council shall be entitled to receive reimbursement of expenses and per diem in lieu of subsistence in the same manner as other members of advisory councils appointed by the Secretary are provided such reimbursement and per diem under this title.".

(f) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to services furnished on or after January 1, 1993.

(2) COUNCIL.—The amendment made by subsection (e) shall take effect on the date of the enactment of this Act.

PART II—MISCELLANEOUS PART B AMENDMENTS

SEC. 121. DURABLE MEDICAL EQUIPMENT.

(a) DEFINITION OF MEDICAL EQUIPMENT AND SUPPLIES.—

(1) IN GENERAL.—Section 1861 (42 U.S.C. 1395x) is amended by adding at the end the following new subsection:

"MEDICAL EQUIPMENT AND SUPPLIES

"(oo) The term 'medical equipment and supplies' means—

"(1) durable medical equipment (as defined in section 1861(n));

"(2) prosthetic devices (as described in section 1861(s)(8));

"(3) orthotics and prosthetics (as described in section 1861(s)(9));

"(4) home dialysis supplies and equipment (as described in section 1861(s)(2)(F));

"(5) surgical dressings and other devices (as described in section 1861(s)(5));

"(6) immunosuppressive drugs (as described in section 1861(s)(2)(J)); and

"(7) such other items as the Secretary may determine.".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to items furnished on or after January 1, 1993.

(b) DEVELOPMENT AND APPLICATION OF NATIONAL STANDARDS FOR SUPPLIERS OF MEDICAL EQUIPMENT AND SUPPLIES.—Section 1834 (42 U.S.C. 1395m) is amended by adding at the end the following new subsection:

"(i) REQUIREMENTS FOR ISSUANCE AND RENEWAL OF SUPPLIER NUMBERS FOR SUPPLIERS OF MEDICAL EQUIPMENT AND SUPPLIES.—

"(1) PAYMENT.—No payment may be made under this part after July 1, 1993, for items furnished by a supplier of medical equipment and supplies (as defined in section 1861(oo)) unless such supplier meets the national standards specified by the Secretary and possesses a valid supplier number.

"(2) REVISED STANDARDS.—

"(A) IN GENERAL.—The Secretary shall, by no later than January 1, 1995, in consultation with representatives of suppliers of medical equipment and supplies, carriers, and consumers, revise the national standards for suppliers of medical equipment and supplies to include the requirements listed in subparagraph (B).

"(B) STANDARDS DESCRIBED.—The requirements listed in this subparagraph are that suppliers of medical equipment and supplies shall—

"(i) comply with all applicable State and Federal licensure and regulatory requirements;

"(ii) maintain a physical facility on an appropriate site;

"(iii) have proof of appropriate liability insurance; and

"(iv) meet such other requirements as the Secretary may specify.

"(C) APPLICABILITY OF REVISED STANDARDS.—Beginning after December 31, 1994, each supplier of medical equipment and supplies applying for a supplier number or renewing such supplier's supplier number shall meet the revised standards described in this paragraph.".

(c) CERTIFICATES OF MEDICAL NECESSITY.—

(1) IN GENERAL.—Section 1834 (42 U.S.C. 1395m), as amended by subsection (b), is amended—

(A) in subsection (a), by striking paragraph (16), and

(B) by adding at the end the following new subsection:

"(j) CERTIFICATES OF MEDICAL NECESSITY.—

"(1) STANDARDIZED CERTIFICATES.—Not later than July 1, 1993, the Secretary shall, in consultation with carriers under this part, develop one or more standardized certificates of medical necessity (as defined in paragraph (3)) for medical equipment and supplies (as defined in section 1861(oo) other than paragraphs (4), (6), and (7)). If a certificate of medical necessity is required by the Secretary, such standardized certificates shall—

"(A) be completed by each physician who prescribes such medical equipment and supplies for any beneficiary under this part, and

"(B) be transmitted to the supplier and then to the carrier processing the claim for payment for such medical equipment and supplies under this part.

"(2) PROHIBITION AGAINST DISTRIBUTION BY SUPPLIERS OF CERTIFICATES OF MEDICAL NECESSITY.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), a supplier of medical equipment and supplies described in paragraph (1) may not distribute to physicians or to individuals entitled to benefits under this part for commercial purposes any completed or partially completed certificates of medical necessity.

"(B) EXCEPTION FOR CERTAIN BILLING INFORMATION.—Subparagraph (A) shall not apply with respect to a certificate of medical necessity to the extent that such certificate contains only information completed by the supplier of medical equipment and supplies identifying such supplier and the beneficiary to whom such medical equipment and supplies are furnished, a description of such medical equipment and supplies, any product code identifying such medical equipment and supplies, and any other administrative information identified by the Secretary. In the event a supplier provides a certificate of

medical necessity containing information permitted under this subparagraph, such certificate shall also contain the supplier's charge and the fee schedule amount for the medical equipment or supplies being furnished prior to distribution of such certificate to the physician.

"(C) PENALTY.—Any supplier of medical equipment and supplies who knowingly and willfully distributes a certificate of medical necessity in violation of subparagraph (A) is subject to a civil money penalty in an amount not to exceed $1,000 for each such certificate of medical necessity so distributed. The provisions of section 1128A (other than subsections (a) and (b)) shall apply to civil money penalties under this subparagraph in the same manner as they apply to a penalty or proceeding under section 1128A(a).

"(3) DEFINITION.—For purposes of this subsection, the term 'certificate of medical necessity' means a form or other document containing information required by the Secretary to be submitted to show that a covered item is reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member.".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply with respect to certificates of medical necessity on or after January 1, 1993.

(d) COVERAGE AND REVIEW CRITERIA FOR CERTAIN MEDICAL EQUIPMENT AND SUPPLIES.—Section 1834 (42 U.S.C. 1395m), as amended by subsection (c), is amended by adding at the end the following new subsection:

"(k) COVERAGE AND REVIEW CRITERIA.—

"(1) DEVELOPMENT AND ESTABLISHMENT.—Not later than July 1, 1993, the Secretary, in consultation with representatives of suppliers of medical equipment and supplies (as defined in section 1861(oo) other than paragraphs (4), (6), and (7)), individuals enrolled under this part, and appropriate medical specialty societies, shall develop and establish uniform national coverage and utilization review criteria for 200 items of medical equipment and supplies (as so defined) selected in accordance with the standards described in paragraph (2). The Secretary shall publish the criteria as part of the instructions provided to fiscal intermediaries and carriers under this part and no further publication, including publication in the Federal Register, shall be required.

"(2) STANDARDS FOR SELECTING ITEMS SUBJECT TO CRITERIA.—The Secretary may select an item for coverage under the criteria developed and established under paragraph (1) if the Secretary finds that—

"(A) the item is frequently purchased or rented by beneficiaries;

"(B) the item is frequently subject to a determination that such item is not medically necessary; or

"(C) the coverage or utilization criteria applied to the item (as of the date of the enactment of this subsection) is not consistent among carriers.

"(3) ANNUAL REVIEW AND EXPANSION OF ITEMS SUBJECT TO CRITERIA.—The Secretary shall annually review the coverage and utilization of items of medical equipment and supplies to determine whether items not included among the items selected under paragraph (1) should be made subject to uniform national coverage and utilization review criteria, and, if appropriate, shall develop and apply such criteria to such additional items.

"(4) REPORT ON EFFECT OF UNIFORM CRITERIA ON UTILIZATION OF ITEMS.—Not later than January 1, 1994, the Secretary shall submit a report to the Committee on Ways and Means and the Committee on Energy and Commerce of the House of Representatives and the Committee on Finance of the Senate analyzing the impact of the uniform criteria established under paragraph (1) on the utilization of items of medical equipment and supplies by individuals enrolled under this part.".

(e) PROHIBITION AGAINST MULTIPLE SUPPLIER NUMBERS.—

(1) IN GENERAL.—Section 1834 (42 U.S.C. 1395m), as amended by subsection (d), is amended by adding at the end the following new subsection:

"(l) PROHIBITION AGAINST MULTIPLE SUPPLIER NUMBERS FOR SUPPLIERS OF MEDICAL EQUIPMENT AND SUPPLIES.—The Secretary may not issue more than one supplier number to any supplier of medical equipment and supplies (as defined in section 1861(oo)) unless the issuance of more than one number is appropriate to identify subsidiary or regional entities under the supplier's ownership or control.".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to items furnished on or after July 1, 1993.

(f) DEFINITION OF INDUCEMENTS AS KICKBACKS CLARIFIED.—

(1) IN GENERAL.—Section 1128B(b)(3)(B) (42 U.S.C. 1320a-7b(b)(3)(B)) is amended by inserting before the semicolon "(except that in the case of a contract supply arrangement between a skilled nursing facility and a supplier of medical supplies and equipment (as defined in section 1861(oo) other than paragraphs (4), (6), and (7)), such employment shall not be considered bona fide to the extent that it includes tasks of a clerical and cataloging nature in transmitting to suppliers assignment rights of individuals eligible for benefits under part B of title XVIII, or performance of warehousing or stock inventory functions)".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply with respect to services furnished on or after January 1, 1993.

(g) LIMITATION ON BENEFICIARY LIABILITY.—

(1) IN GENERAL.—Section 1879 (42 U.S.C. 1395pp) is amended by adding at the end the following new subsection:

"(h) If a supplier of medical equipment and supplies (as defined in section 1861(oo))—

"(1) furnishes an item or service to a beneficiary for which no payment may be made by reason of section 1834(i);

"(2) furnishes an item or service to a beneficiary for which payment is denied in advance under section 1834(a)(15);

"(3) is excluded from participation under this title; or

"(4) furnishes an item or service to a beneficiary for which payment is denied under section 1862(a)(1);

any expenses incurred for items and services furnished to an individual by such a supplier on an unassigned basis shall be the responsibility of such supplier. The individual shall have no financial responsibility for such expenses and the supplier shall refund on a timely basis to the individual (and shall be liable to the individual for) any amounts collected from the individual for such items or services, unless the supplier informs the individual in advance that payment under this part will not be made for the item or services and the individual agrees to pay for the item or service.".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to items or services furnished on or after July 1, 1993.

(h) TREATMENT OF NEBULIZERS AND ASPIRATORS AS MISCELLANEOUS ITEMS OF DURABLE MEDICAL EQUIPMENT.—

(1) IN GENERAL.—Section 1834(a)(3)(A) (42 U.S.C. 1395m(a)(3)(A)) is amended by striking "ventilators, aspirators, IPPB machines, and nebulizers" and inserting "ventilators and IPPB machines".

(2) PAYMENT FOR SUPPLIES RELATING TO NEBULIZERS AND ASPIRATORS.—Section 1834(a)(7)(A) (42 U.S.C. 1395m(a)(7)(A)) is amended by striking "and" at the end of clause (v), by striking the period at the end of clause (vi) and inserting "; and", and by inserting after clause (vi) the following new clause:

"(vii) In the case of supplies to be used in conjunction with a nebulizer or aspirator for which payment is made under this paragraph, payment shall be in accordance with paragraph (2) of this subsection.".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to items furnished on or after January 1, 1993.

(i) PAYMENT FOR OSTOMY SUPPLIES, TRACHEOSTOMY SUPPLIES, UROLOGICALS, SURGICAL DRESSINGS, AND OTHER MEDICAL SUPPLIES.—

(1) IN GENERAL.—Section 1834(h)(1) (42 U.S.C. 1395m(h)(1)) is amended by adding at the end the following new subparagraph:

"(E) EXCEPTION FOR CERTAIN ITEMS.—Payment for ostomy supplies, tracheostomy supplies, urologicals, surgical dressings, and other medical supplies shall be made in accordance with subparagraphs (B) and (C) of section 1834(a)(2) (except that in the case of surgical dressings, the national limited payment amount shall be computed based on local payment amounts using average reasonable charges for the six-month period ending June 30, 1992, increased by the covered item update for 1993).".

(2) EFFECTIVE DATES.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the amendment made by paragraph (1) shall apply with respect to items furnished on or after January 1, 1993.

(B) SURGICAL DRESSINGS AND OTHER MEDICAL SUPPLIES.—The amendment made by paragraph (1) with respect to surgical dressings and other medical supplies shall apply to items supplied on or after July 1, 1993.

(j) FREEZE IN REASONABLE CHARGES FOR PARENTERAL AND ENTERAL NUTRIENTS, SUPPLIES, AND EQUIPMENT DURING 1993.—In determining the amount of payment under part B of title XVIII of the Social Security Act during 1993, the charges determined to be reasonable with respect to parenteral and enteral nutrients, supplies, and equipment may not exceed the charges determined to be reasonable with respect to such nutrients, supplies, and equipment during 1992.

(k) STUDIES.—

(1) SUPPLIES AND SERVICES IN NURSING FACILITIES.—The Comptroller General of the United States shall conduct a study and report to the Congress no later than January 1, 1994, on the types, volume, and utilization of services and supplies furnished under contract or under arrangement with suppliers to individuals eligible for benefits under title XVIII of the Social Security Act residing in skilled nursing facilities and nursing facilities.

(2) DESCRIPTIONS RELATING TO CERTAIN CODES.—The Comptroller General of the United States shall conduct a study beginning no earlier than July 1, 1993, and report to the Congress no later than January 1, 1994, on—

(A) whether changes made by the Department of Health and Human Services to the

descriptions relating to the codes for medical equipment and supplies (as defined in section 1861(oo) of the Social Security Act other than paragraphs (4), (6), and (7))—

(i) accurately reflect the items being furnished under such codes, and

(ii) are sufficiently explicit to distinguish between items of varying quality and price, and

(B) recommendations for additional changes that would improve the descriptions relating to the codes for such items.

SEC. 122. AMENDMENT TO DEFINITION OF CERTIFIED NURSE-MIDWIFE.

(a) IN GENERAL.—Section 1861(gg)(2) (42 U.S.C. 1395x(gg)(2)) is amended by striking ", and performs services in the area of management of the care of mothers and babies throughout the maternity cycle".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to services furnished on or after January 1, 1994.

SEC. 123. PAYMENT UNDER THE FEE SCHEDULE FOR SERVICES FURNISHED BY A CERTIFIED REGISTERED NURSE ANESTHETIST WHO IS MEDICALLY DIRECTED.

(a) IN GENERAL.—Section 1833(l)(4)(B) (1395l(l)(4)(B)) is amended to read as follows:

"(B) Except as provided in subparagraph (D), the conversion factor used to determine the amount paid under the fee schedule under this subsection for services furnished on or after January 1, 1992, and before January 1, 1997, by a certified registered nurse anesthetist who is medically directed shall be $10.75.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to services furnished on or after January 1, 1993.

SEC. 124. ALZHEIMER'S DISEASE DEMONSTRATION PROJECTS.

Section 9342 of OBRA-1986 is amended—

(1) in subsection (c)(1), by striking "4 years" and inserting "5 years",

(2) in subsection (d)(1), by striking "fourth year" and inserting "fifth year", and

(3) in subsection (f), by striking "$55,000,000" and "$3,000,000" and inserting "$58,000,000" and "$5,000,000", respectively.

SEC. 125. DESIGNATION OF CERTAIN HOSPITALS AS EYE OR EYE AND EAR HOSPITALS.

(a) IN GENERAL.—Section 1833(i)(3) (42 U.S.C. 1395l(i)(3)) is amended—

(1) by striking the last sentence of subparagraph (B); and

(2) by adding at the end the following new subparagraph:

"(C)(i) In the case of a hospital that—

"(I) makes application to the Secretary and demonstrates that it specializes in eye services or eye and ear services (as determined by the Secretary),

"(II) receives more than 30 percent of its total revenues from outpatient services, and

"(III) on October 1, 1987—

"(aa) was an eye specialty hospital or an eye and ear specialty hospital, or

"(bb) was operated as an eye or eye and ear unit of a general acute care hospital which, on the date of the application described in subclause (I), operates less than 20 percent of the beds that the hospital operated on October 1, 1987, and has sold or otherwise disposed of a substantial portion of the hospital's other acute care operations,

the cost proportion and ASC proportion in effect under subclauses (I) and (II) of subparagraph (B)(ii) for cost reporting periods beginning in fiscal year 1988 shall remain in effect for cost reporting periods beginning on or after October 1, 1988, and before January 1, 1995.

"(ii) For purposes of this subparagraph the term 'eye or eye and ear unit' means a physically separate or distinct unit containing separate surgical suites devoted solely to eye or eye and ear services.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to services furnished on or after January 1, 1993.

SEC. 126. EXTENSION OF CAP ON PAYMENTS FOR INTRAOCULAR LENSES.

(a) IN GENERAL.—Section 4151(c)(3) of OBRA-1990 is amended by striking "December 31, 1992" and inserting "December 31, 1994".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall be effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1990.

SEC. 127. EXPANDED COVERAGE FOR PHYSICIAN ASSISTANTS, NURSE PRACTITIONERS, AND CLINICAL NURSE SPECIALISTS.

(a) PHYSICIAN ASSISTANTS.—Section 1861(s)(2)(K)(i) (42 U.S.C. 1395x(s)(2)(K)(i)) is amended by striking "(I) in a hospital" and all that follows through "shortage area".

(b) NURSE PRACTITIONERS AND CLINICAL NURSE SPECIALISTS.—Section 1861(s)(2)(K)(iii) (42 U.S.C. 1395x(s)(2)(K)(iii)) is amended—

(1) by inserting "(I)" before "in a rural area", and

(2) by inserting ", (II) in any other area, in the case of services furnished by nurse practitioners other than services furnished to an inpatient of a hospital, or (III) in any other area, in the case of services furnished by clinical nurse specialists other than services furnished to an inpatient of a hospital, skilled nursing facility or nursing facility (as defined in section 1919(a)), and" after "section 1886(d)(2)(D))".

(c) CONFORMING AMENDMENTS.—

(1) Section 1832(a)(2)(B)(iv) (42 U.S.C. 1395k(a)(2)(B)(iv)) is amended by striking "provided in a rural area (as defined in section 1886(d)(2)(D))" and inserting "described in section 1861(s)(2)(K)(iii)".

(2) Section 1833(a)(1)(O) (42 U.S.C. 1395l(a)(1)(O)) is amended by striking "provided in a rural area".

(3) Section 1833(r)(1) (42 U.S.C. 1395l(r)(1)) is amended by striking "provided in a rural area".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to services furnished on or after January 1, 1994.

SEC. 128. ORAL CANCER DRUGS.

(a) UNIFORM MEDICARE COVERAGE OF ANTICANCER DRUGS.—Section 1861(t) (42 U.S.C. 1395x(t)) is amended—

(1) by inserting "(1)" after "(t)";

(2) by striking "(m)(5) of this section" and inserting "(m)(5) and paragraph (2)"; and

(3) by adding at the end thereof the following new paragraph:

"(2)(A) For purposes of paragraph (1) the term 'drugs' includes any drugs or biologics used in an anticancer chemotherapeutic regimen for a medically accepted indication as described in subparagraph (B).

"(B) The term 'medically accepted indication' means any use of a drug included under paragraph (1) which is approved by the Food and Drug Administration, which appears in one or more of the following: *Annals of Internal Medicine, Blood, Journal of Clinical Oncology, Journal of National Cancer Institute, Lancet*, and *New England Journal of Medicine*; or which is included (or approved for inclusion) in one or more of the following compendia: the American Hospital Formulary Service-Drug Information, the American Medical Association Drug Evaluations and the United States Pharmacopoeia-Drug Information.".

(b) COVERAGE OF CERTAIN SELF-ADMINISTERED ANTICANCER DRUGS.—Section 1861(s)(2) (42 U.S.C. 1395(s)(2)) is amended—

(1) by striking "and" at the end of subparagraph (O);

(2) by adding "and" at the end of subparagraph (P); and

(3) by adding at the end the following new subparagraph:

"(Q) oral drugs prescribed for use in an anticancer chemotherapeutic regimen, for a medically indicated use (as described in subsection (t)(2)), if such drugs contain the same active ingredient that would be covered pursuant to subparagraph (A) or (B);".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to items furnished on or after January 1, 1993.

Subtitle C—Provisions Relating to Parts A and B

SEC. 131. MEDICARE SELECT.

(a) AMENDMENTS TO PROVISIONS RELATING TO MEDICARE SELECT POLICIES.—

(1) PERMITTING MEDICARE SELECT POLICIES IN ALL STATES.—Subsection (c) of section 4358 of OBRA-1990 is hereby repealed.".

(2) REQUIREMENTS OF MEDICARE SELECT POLICIES.—Section 1882(t)(1) (42 U.S.C. 1395ss(t)(1)) is amended to read as follows:

"(1)(A) If a medicare supplemental policy meets the 1991 NAIC Model Regulation or 1991 Federal Regulation and otherwise complies with the requirements of this section except that—

"(i) the benefits under such policy are restricted to items and services furnished by certain entities (or reduced benefits are provided when items or services are furnished by other entities), and

"(ii) in the case of a policy described in subparagraph (C)(i)—

"(I) the benefits under such policy are not one of the groups or packages of benefits described in subsection (p)(2)(A),

"(II) except for nominal copayments imposed for services covered under part B of this title, such benefits include at least the core group of basic benefits described in subsection (p)(2)(B), and

"(III) an enrollee's liability under such policy for physician's services covered under part B of this title is limited to the nominal copayments described in subclause (II),

the policy shall nevertheless be treated as meeting those standards if the policy meets the requirements of subparagraph (B).

"(B) A policy meets the requirements of this subparagraph if—

"(i) full benefits are provided for items and services furnished through a network of entities which have entered into contracts or agreements with the issuer of the policy,

"(ii) full benefits are provided for items and services furnished by other entities if the services are medically necessary and immediately required because of an unforeseen illness, injury, or condition and it is not reasonable given the circumstances to obtain the services through the network,

"(iii) the network offers sufficient access,

"(iv) the issuer of the policy has arrangements for an ongoing quality assurance program for items and services furnished through the network,

"(v)(I) the issuer of the policy provides to each enrollee at the time of enrollment an explanation of—

"(aa) the restrictions on payment under the policy for services furnished other than by or through the network,

"(bb) out of area coverage under the policy,

"(cc) the policy's coverage of emergency services and urgently needed care, and

"(dd) the availability of a policy through the entity that meets the 1991 Model NAIC Regulation or 1991 Federal Regulation without regard to this subsection and the premium charged for such policy, and

"(II) each enrollee prior to enrollment acknowledges receipt of the explanation provided under subclause (I), and

"(vi) the issuer of the policy makes available to individuals, in addition to the policy described in this subsection, any policy (otherwise offered by the issuer to individuals in the State) that meets the 1991 Model NAIC Regulation or 1991 Federal Regulation and other requirements of this section without regard to this subsection.

"(C)(i) A policy described in this subparagraph—

"(I) is offered by an eligible organization (as defined in section 1876(b)),

"(II) is not a policy or plan providing benefits pursuant to a contract under section 1876 or an approved demonstration project described in section 603(c) of the Social Security Amendments of 1983, section 2355 of the Deficit Reduction Act of 1984, or section 9412(b) of the Omnibus Budget Reconciliation Act of 1986, and

"(III) provides benefits which, when combined with benefits which are available under this title, are substantially similar to benefits under policies offered to individuals who are not entitled to benefits under this title.

"(ii) In making a determination under subclause (III) of clause (i) as to whether certain benefits are substantially similar, there shall not be taken into account, except in the case of preventive services, benefits provided under policies offered to individuals who are not entitled to benefits under this title which are in addition to the benefits covered by this title and which are benefits an entity must provide in order to meet the definition of an eligible organization under section 1876(b)(1)."

(b) RENEWABILITY OF MEDICARE SELECT POLICIES.—Section 1882(q)(1) (42 U.S.C. 1395ss(q)(1)) is amended:

(1) by striking "(1) Each" and inserting "(1)(A) Except as provided in subparagraph (B), each";

(2) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively; and

(3) by adding at the end the following new subparagraph:

"(B)(i) In the case of a policy that meets the requirements of subsection (t), an issuer may cancel or nonrenew such policy with respect to an individual who leaves the service area of such policy; except that, if such individual moves to a geographic area where such issuer, or where an affiliate of such issuer, is issuing medicare supplemental policies, such individual must be permitted to enroll in any medicare supplemental policy offered by such issuer or affiliate that provides benefits comparable to or less than the benefits provided in the policy being canceled or nonrenewed. An individual whose coverage is canceled or nonrenewed under this subparagraph shall, as part of the notice of termination or nonrenewal, be notified of the right to enroll in other medicare supplemental policies offered by the issuer or its affiliates.

"(ii) For purposes of this subparagraph, the term 'affiliate' shall have the meaning given such term by the 1991 NAIC Model Regulation.".

(c) CIVIL PENALTY.—Section 1882(t)(2) (42 U.S.C. 1395ss(t)(2)) is amended—

(1) by striking "(2)" and inserting "(2)(A)";

(2) by redesignating subparagraphs (A), (B), (C), and (D) as clauses (i), (ii), (iii), and (iv), respectively;

(3) in clause (iv), as redesignated—

(A) by striking "paragraph (1)(E)(i)" and inserting "paragraph (1)(B)(v)(I); and

(B) by striking "paragraph (1)(E)(ii)" and inserting "paragraph (1)(B)(v)(II)";

(4) by striking "the previous sentence" and inserting "this subparagraph"; and

(5) by inserting at the end the following new subparagraph:

"(B) If the Secretary determines that an issuer of a policy approved under paragraph (1) has made a misrepresentation to the Secretary or has provided the Secretary with false information regarding such policy, the issuer is subject to a civil money penalty in an amount not to exceed $100,000 for each such determination. The provisions of section 1128A (other than the first sentence of subsection (a) and other than subsection (b)) shall apply to a civil money penalty under this subparagraph in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).".

(d) EFFECTIVE DATES.—

(1) NAIC STANDARDS.—If, within 6 months after the date of the enactment of this Act, the National Association of Insurance Commissioners (hereafter in this subsection referred to as the "NAIC") makes changes in the 1991 NAIC Model Regulation (as defined in section 1882(p)(1)(A) of the Social Security Act) to incorporate the additional requirements imposed by the amendments made by this section, section 1882(g)(2)(A) of such Act shall be applied in each State, effective for policies issued to policyholders on and after the date specified in paragraph (3), as if the reference to the Model Regulation adopted on June 6, 1979, were a reference to the 1991 NAIC Model Regulation (as so defined) as changed under this paragraph (such changed Regulation referred to in this subsection as the "1993 NAIC Model Regulation").

(2) SECRETARY STANDARDS.—If the NAIC does not make changes in the 1991 NAIC Model Regulation (as so defined) within the 6-month period specified in paragraph (1), the Secretary of Health and Human Services (hereafter in this subsection as the "Secretary") shall promulgate a regulation and section 1882(g)(2)(A) of the Social Security Act shall be applied in each State, effective for policies issued to policyholders on and after the date specified in paragraph (3), as if the reference to the Model Regulation adopted in June 6, 1979, were a reference to the 1991 NAIC Model Regulation (as so defined) as changed by the Secretary under this paragraph (such changed Regulation referred to in this subsection as the "1993 Federal Regulation").

(3) DATE SPECIFIED.—

(A) IN GENERAL.—Subject to subparagraph (B), the date specified in this paragraph for a State is the earlier of—

(i) the date the State adopts the 1993 NAIC Model Regulation or the 1993 Federal Regulation, or

(ii) 1 year after the date the NAIC or the Secretary first adopts such regulations.

(B) ADDITIONAL LEGISLATIVE ACTION REQUIRED.—In the case of a State which the Secretary identifies, in consultation with the NAIC, as—

(i) requiring State legislation (other than legislation appropriating funds) in order for medicare supplemental policies to meet the 1993 NAIC Model Regulation or the 1993 Federal Regulation, but

(ii) having a legislature which is not scheduled to meet in 1994 in a legislative session in which such legislation may be considered, the date specified in this paragraph is the first day of the first calendar quarter beginning after the close of the first legislative session of the State legislature that begins on or after January 1, 1994. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

SEC. 132. REDUCTION IN PAYMENT FOR ERYTHROPOIETIN PROVIDED TO PATIENTS WITH END STAGE RENAL DISEASE.

(a) IN GENERAL.—Section 1881(b)(11)(B)(ii)(I)) (42 U.S.C. 1395rr(b)(11)(B)(ii))(I) is amended—

(1) by striking "1991" and inserting "1993", and

(2) by striking "$11" and inserting "$10".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to services furnished on or after January 1, 1993.

SEC. 133. APPLICATION TO RENAL DIALYSIS FACILITIES OF PROVISIONS UNDER THE MEDICARE AND MEDICAID PROGRAMS RELATING TO ADVANCE DIRECTIVES.

(a) MEDICARE PROGRAM.—Section 1866(a)(1)(Q) (42 U.S.C. 1395cc(a)(1)(Q)) is amended by striking "and hospice programs" and inserting "hospice programs, and renal dialysis facilities".

(b) MEDICAID PROGRAM.—Section 1902(a)(57) (42 U.S.C. 1396(a)(57)) is amended by striking "hospice program" and inserting "hospice program, renal dialysis facility".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to services furnished on or after January 1, 1993.

SEC. 134. EXTENSION OF SECONDARY PAYOR PROVISIONS FOR INDIVIDUALS WITH END STAGE RENAL DISEASE.

Section 1862(b)(1)(C) (42 U.S.C. 1395y(b)(1)(C)) is amended—

(1) by striking "18-month" and inserting "24-month", and

(2) by adding at the end the following new sentence "Effective for items and services furnished after January 1, 1996, and on or before January 1, 1998, clauses (i) and (ii) shall be applied by substituting '18-month' for '12-month' each place it appears.".

SEC. 135. EXPANSION OF IMMUNOSUPPRESSIVE DRUG BENEFIT.

Subparagraph (J) of section 1861(s)(2) of the Social Security Act (42 U.S.C. 1395x(s)(2)) is amended by striking "within 1 year after the date of the transplant procedure;" and inserting "within, in the case of calendar year—

"(i) 1993 and 1994, 12 months,

"(ii) 1995, 24 months,

"(iii) 1996, 30 months, and

"(iv) 1997 and thereafter, 36 months,

after the date of the transplant procedure;".

SEC. 136. CLARIFICATION OF EXCEPTIONS TO PROHIBITED PHYSICIAN REFERRALS.

(a) IN GENERAL.—Section 1877(b) (42 U.S.C. 1395nn(b)) is amended—

(1) by inserting "or buildings" after "building" each place it appears in paragraph (2)(A)(ii);

(2) by striking "centralized provision" in paragraph (2)(A)(ii)(II) and inserting "provision of all or a portion";

(3) by inserting "under a billing number assigned to the group practice" after "member" in paragraph (2)(B);

(4) by adding at the end of paragraph (2) the following new sentence: "Such requirements may not have the effect of prohibiting the group's clinical laboratory services from

accepting referrals from outside sources as authorized by State law and section 353 of the Public Health Service Act";

(5) by inserting "or a tax-exempt health services entity, wholly owned by, operated by, or affiliated with one or more not-for-profit, tax-exempt hospitals," after "hospital" in paragraph (4); and

(6) by redesignating paragraph (5) as paragraph (8) and by inserting after paragraph (4) the following new paragraphs:

"(5) RURAL PROVIDERS.—In the case of clinical laboratory services if the laboratory furnishing the services is in a rural area (as defined in section 1886(d)(2)(D)).

"(6) SERVICES UNDER ARRANGEMENTS.—In the case of clinical laboratory services provided by a group practice laboratory under arrangements described in section 1861(w), if—

"(A) the arrangement is for identifiable services;

"(B) the amount of the remuneration under the arrangement is consistent with the fair market value of the services; and

"(C) the remuneration provided under the arrangement would be considered to be commercially reasonable even if no referrals were made between the parties.

"(7) SHARED LABORATORY FACILITIES.—In the case of clinical laboratory services furnished by a laboratory which is—

"(A) owned by a university, a medical school, or an organization or hospital which is exempt from taxation under section 501(a) of the Internal Revenue Code of 1986 by reason of section 501(c)(3) of such Code and which operates an approved medical training program; and

"(B) used in common under a written arrangement with a group practice whose physician-members constitute all or substantially all of the active medical and teaching staff of such university, medical school, organization or hospital.".

(b) RENTAL OF EQUIPMENT.—Section 1877(e)(1) (42 U.S.C. 1395nn(e)(1)) is amended—

(1) by inserting "or equipment" after "space" the first three places it appears; and

(2) by inserting "OR EQUIPMENT" after "SPACE" in the heading.

(c) DEFINITION OF GROUP PRACTICE.—Section 1877(h)(4) (42 U.S.C. 1395nn(h)(4)) is amended—

(1) by inserting "providing services in an entity" after "two or more physicians";

(2) by striking "in the name of" in subparagraph (B) and inserting "under a billing number assigned to";

(3) by inserting ", or, in the case of a not-for-profit corporation, previously determined consistent with such corporation's articles of incorporation and bylaws" after "group" in subparagraph (C);

(4) by inserting ", except that such standards may not have the effect of prohibiting the retention of physicians on a part-time basis as independent contractors if the group qualifies to receive payment for such physician's services under section 1842(b)(6)" after "regulation" in subparagraph (D); and

(5) by inserting "university, medical school, or" before "hospital" in the last sentence.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the enactment of section 6204 of the Omnibus Budget Reconciliation Act of 1989.

SEC. 137. GRADUATE MEDICAL EDUCATION RESIDENT AMOUNTS.

(a) IN GENERAL.—Section 1886(h)(2)(E) (42 U.S.C. 1395ww(h)(2)(E)) is amended—

(1) by striking "In the case" and inserting the following:

"(i) NO MEDICAL RESIDENCY PROGRAM.—In the case"; and

(2) by adding at the end of subparagraph (E) the following new clause:

"(ii) ONLY PRIMARY CARE RESIDENCY PROGRAM.—In the case of a hospital that in a cost reporting period beginning in fiscal year 1984 had a primary care residency training program as its only approved residency program and that had an FTE resident amount in its cost reporting period beginning in fiscal year 1984 of less than $10,000, the Secretary shall provide for an approved FTE resident amount as the Secretary determines to be appropriate, based on approved FTE resident amounts for comparable programs.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to cost reporting periods beginning on or after October 1, 1992.

SEC. 138. HOSPICE NOTIFICATION.

(a) BY HOME HEALTH AGENCY.—Section 1891(a)(1) (42 U.S.C. 1395bbb(a)(1)) is amended by adding at the end the following new paragraph:

"(H) The right to be fully informed orally and in writing (in advance of coming under the care of the agency) of the individual's option to choose hospice care (as defined in section 1861(dd)(1)), and a description of such care, if—

"(i) a hospice providing services under this title is located within the agency's geographic area, or

"(ii) it is common practice to refer patients to such hospices located outside the geographic area.'.'

(b) BY SKILLED NURSING FACILITY.—Section 1819(c)(1)(B) (42 U.S.C. 1395i-3(c)(1)(B)) is amended by striking "and" at the end of clause (ii), by striking the period at the end of clause (iii) and inserting "; and", and by inserting adding after clause (iii) the following new clause:

"(iv) inform each resident, orally and in writing, prior to or at the time of admission, of the resident's option to choose hospice care (as defined by section 1861(dd)(1)), and a description of such care, if—

"(I) a hospice providing services under this title is located within the facility's geographic area; or

"(II) it is common practice to refer patients to such hospices located outside the geographic area.".

(c) BY HOSPITAL.—Section 1861(ee)(2)(D) (42 U.S.C. 1395x(ee)(2)(D)) is amended by inserting ", including hospice services," after "post-hospital services".

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 139. SOCIAL HEALTH MAINTENANCE ORGANIZATIONS.

(a) EXTENSION OF CURRENT WAIVERS.—Section 4018(b) of OBRA-1987 is amended—

(1) in paragraph (1) by striking "December 31, 1995" and inserting "December 31, 1998"; and

(2) in paragraph (4) by striking "March 31, 1996" and inserting "March 31, 1999".

(b) EXPANSION OF DEMONSTRATIONS.—Section 2355 of the Deficit Reduction Act of 1984 is amended—

(1) in the last sentence of subsection (a) by striking "12 months" and inserting "36 months"; and

(2) in subsection (b)(1)(B)—

(A) by striking "or" at the end of clause (iii); and

(B) by redesignating clause (iv) as clause (v) and inserting after clause (iii) the following new clause:

"(iv) integrating acute and chronic care management for patients with end-stage renal disease through expanded community care case management services (and for purposes of a demonstration project conducted under this clause, any requirement under a waiver granted under this section that a project disenroll individuals who develop end-stage renal disease shall not apply);".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the enactment of OBRA-90.

SEC. 140. INTEREST PAYMENTS.

With respect to claims received in the 12-month period beginning October 1, 1992, sections 1816(c)(2)(B)(ii)(IV) and 1842(c)(2)(B)(ii)(IV) of the Social Security Act shall be applied by substituting "30 calendar days" for "24 calendar days" and "17 calendar days".

TITLE II—AMENDMENTS TO MEDICAID PROGRAM

Subtitle A—Technical Corrections

SEC. 201. EFFECTIVE DATE.

Except as otherwise provided, the amendments made by this subtitle shall take effect as if included in the enactment of OBRA-1990.

SEC. 202. CORRECTIONS RELATING TO SECTION 4401 (REIMBURSEMENT FOR PRESCRIBED DRUGS).

(a) SECTION 1903.—

(1) IN GENERAL.—Paragraph (10) of section 1903(i) (42 U.S.C. 1396b(i)), as inserted by section 4401(a)(1)(B) of OBRA-1990, is amended to read as follows:

"(10)(A) with respect to covered outpatient drugs unless—

"(i) there is a rebate agreement in effect under section 1927 with respect to such drugs;

"(ii) section 1927(a)(3) applies; or

"(iii) section 1927(j) applies; and

"(B) with respect to an innovator multiple source drug (as defined in section 1927(k)) dispensed on or after July 1, 1991, if, under applicable State law, a less expensive multiple source drug could have been dispensed, unless reimbursement for such innovator multiple source drug is at or below the upper payment limit for the drug dispensed;".

(2) CONFORMING AMENDMENT.—The section heading of section 4401(a)(1) of OBRA-1990 is amended by striking "**AND DRUG USE REVIEW**".

(b) SECTION 1902.—Section 1902(a)(54) (42 U.S.C. 1396a(a)(54)), as inserted by section 4401(a)(2)(C) of OBRA-1990, is amended—

(1) in subparagraph (A) by striking "1927(k)(6)" and inserting "1927(k)"; and

(2) by striking "reporting requirements" and all that follows through "1927" and inserting "requirements of section 1927".

(c) SECTION 1927.—(1) Section 1927(a) (42 U.S.C. 1396r-8(a)), as inserted by section 4401(a)(3) of OBRA-1990, is amended—

(A) in paragraph (1)—

(i) by amending the second sentence to read as follows: "Any such agreement entered into prior to April 1, 1991, shall be deemed to have been entered into on January 1, 1991, and the amount of the rebate under such agreement shall be calculated as if the agreement had been entered into on January 1, 1991.", and

(ii) in the third sentence, by striking "March" and inserting "April";

(B) in paragraph (2)—

(i) by striking "first", and

(ii) by striking the period at the end and inserting the following: ", except that such paragraph (and section 1903(i)(10)) shall not apply to drugs dispensed before April 1, 1991,

if the Secretary determines that there were extenuating circumstances with respect to the first calendar quarter of 1991.".

(C) by amending paragraph (3) to read as follows:

"(3) AUTHORIZING PAYMENT FOR DRUGS NOT COVERED UNDER REBATE AGREEMENTS.—Paragraph (1) and section 1903(i)(10) shall not apply to the dispensing of a covered outpatient drug if—

"(A) the State has made a determination that the availability of such drug is essential to the health of beneficiaries under the State plan;

"(B) the drug has been given a rating of 1-A by the Food and Drug Administration; and

"(C)(i) the physician has obtained approval for the use of the drug in advance of dispensing such drug in accordance with a prior authorization program described in subsection (d)(4), or

"(ii) the Secretary has reviewed and approved the State's determination under subparagraph (A).'"; and

(D) in paragraph (4)—

(i) by striking "in compliance with" and inserting "in effect under", and

(ii) by striking "coverage of the manufacturer's drugs" and inserting "ingredient costs of the manufacturer's covered outpatient drugs covered".

(2) Section 1927(b) (42 U.S.C. 1396r-8(b)), as inserted by section 4401(a)(3) of OBRA-1990, is amended—

(A) in paragraph (1)(A)—

(i) by striking "each calendar quarter (or periodically in accordance with a schedule specified by the Secretary)" and inserting "for a rebate period", and

(ii) by striking "dispensed under the plan during the quarter (or other period as the Secretary may specify)" and inserting "dispensed after December 31, 1990, for which payment was made under the State plan for such period";

(B) in paragraph (2)(A)—

(i) by striking "calendar quarter" and "the quarter" and inserting "rebate period" and "the period", respectively,

(ii) by striking "dosage units" and inserting "units of each dosage form and strength and package size",

(iii) by inserting "after December 31, 1990, for which payment was made" after "dispensed", and

(iv) by striking "during" and inserting "for";

(C) in paragraph (3)(A)—

(i) in clause (i), by striking "quarter" each place it appears and inserting "rebate period under the agreement",

(ii) in clause (i), by striking the open parenthesis before "for" and the close parenthesis after "drugs",

(iii) in clause (i), by striking "subsection (c)(2)(B)) for covered outpatient drugs" and inserting "subsection (c)(1)(C)) for each covered outpatient drug", and

(iv) in clause (ii), by inserting a comma after "this section" and after "1990";

(D) in paragraph (3)(B)—

(i) by striking "$100,000" and inserting "$10,000",

(ii) by striking "about charges or prices", and

(iii) by striking "or knowingly provides false information";

(E) in paragraph (3)(C)—

(i) in clause (i)—

(I) by striking "increased by", and

(II) by striking ", and, if" and inserting ". If",

(ii) in clause (ii), by striking "under this section" and inserting "under this section, or a wholesaler or direct seller,",

(iii) in clause (ii), by inserting "under subparagraph (A) or (B)" after "provides false information", and

(iv) in clause (ii), by striking "Such civil money penalties are" and inserting "Any such civil money penalty shall be";

(F) in paragraph (3)(D), by striking "wholesaler," the first time it appears and inserting "wholesaler or the"; and

(G) in paragraph (4)(B)—

(i) in clause (ii), by striking "such period" and inserting "the calendar quarter beginning at least 60 days",

(ii) in clause (ii), by striking "of the notice" and all through "the agreement)." and inserting "the manufacturer provides notice to the Secretary.",

(iii) by redesignating clause (iii) as clause (iv) and inserting after clause (ii) the following new clause:

"(iii) NOTICE TO STATES.—In the case of a termination under this subparagraph, the Secretary shall provide notice of such termination to the States within not less than 30 days before the effective date of such termination.", and

(iv) by adding at the end the following new sentence: "Failure of a State to provide any advance notice of such a termination as required by regulation shall not affect the State's right to terminate coverage of the drugs affected by such termination as of the effective date of such termination.".

(3) Section 1927(c) (42 U.S.C. 1396r-8(c)), as inserted by section 4401(a)(3) of OBRA-1990, is amended—

(A) by amending paragraph (1) to read as follows:

"(1) BASIC REBATE FOR SINGLE SOURCE DRUGS AND INNOVATOR MULTIPLE SOURCE DRUGS.—

"(A) IN GENERAL.—Except as provided in paragraph (2), the amount of the rebate for a rebate period with respect to each dosage form and strength of a single source drug or an innovator multiple source drug shall be equal to the product of—

"(i) the total number of units of each dosage form and strength paid for under the State plan in the period reported by the State under subsection (b)(2), and

"(ii) subject to subparagraph (B)(ii), the greater of—

"(I) the difference between the average manufacturer price and the best price (as defined in subparagraph (C)) for the dosage form and strength of the drug, or

"(II) the minimum rebate percentage (specified in subparagraph (B)(i)) of such average manufacturer price,

for the period.

"(B) RANGE OF REBATES REQUIRED.—

"(i) MINIMUM REBATE PERCENTAGE.—For purposes of subparagraph (A)(ii)(II), the 'minimum rebate percentage' for rebate periods beginning—

"(I) before January 1, 1993, is 12.5 percent, and

"(II) after December 31, 1992, is 15 percent.

"(ii) TEMPORARY LIMITATION ON MAXIMUM REBATE AMOUNT.—In no case shall the amount applied under subparagraph (A)(ii) for a rebate period beginning—

"(I) before January 1, 1992, exceed 25 percent of the average manufacturer price, or

"(II) after December 31, 1991, and before January 1, 1993, exceed 50 percent of the average manufacturer price.

"(C) BEST PRICE DEFINED.—For purposes of this section, the term 'best price' means, with respect to a single source drug or innovator multiple source drug of a manufacturer, the lowest price available from the manufacturer to any wholesaler, retailer, provider, nonprofit or for-profit entity, or governmental entity within the United States (excluding depot prices and single award contract prices, as defined by the Secretary, of any agency of the Federal Government). The term 'best price' shall be inclusive of cash discounts, free goods, volume discounts, and rebates (other than rebates under this section) and shall be determined without regard to special packaging, labeling, or identifiers on the dosage form or product or package, and shall not take into account prices that are merely nominal in amount.";

(B) by amending paragraph (2) to read as follows:

"(2) ADDITIONAL REBATE FOR SINGLE SOURCE AND INNOVATOR MULTIPLE SOURCE DRUGS.—

"(A) 1991 THROUGH 1993.—The amount of the rebate for a rebate period beginning before January 1, 1994, with respect to each dosage form and strength of a single source drug or an innovator multiple source drug, is increased by an amount equal to the product of—

"(i) the total number of units of such dosage form and strength dispensed after December 31, 1990, for which payment was made under the State plan for the period reported by the State under subsection (b)(2), and

"(ii) the amount (if any) by which—

"(I) the average manufacturer price for the dosage form and strength of the drug for the period, exceeds

"(II) the average manufacturer price for such dosage form and strength for the calendar quarter beginning July 1, 1990, increased by the percentage by which the average of the consumer price indices for all urban consumers (U.S. city average) for months during the rebate period exceeds such index for September 1990.

In the case of a covered outpatient drug approved by the Food and Drug Administration after October 1, 1990, subclause (II) of clause (ii) shall be applied by substituting 'the first full calendar quarter after the drug was marketed' for 'the calendar quarter beginning July 1, 1990' and 'the month prior to the first month of the first full calendar quarter after the drug was marketed' for 'September 1990'.

"(B) AFTER 1993.—Except as provided in subparagraph (D), the amount of the rebate for a rebate period beginning after December 31, 1993, is increased by an amount equal to the product of—

"(i) the total number of all units of the single source and innovator multiple source drugs of a manufacturer for which payment was made under the State plan for the period reported by the State under subsection (b)(2), and

"(ii) the amount (if any) by which—

"(I) the current weighted average manufacturer price (as defined in subparagraph (C)(i)) for the single source and innovator multiple source drugs of the manufacturer for the period, exceeds

"(II) the base weighted average manufacturer price for such drugs of such manufacturer (as defined in subparagraph (C)(ii)).

"(C) WEIGHTED AVERAGE MANUFACTURER PRICE DETERMINATIONS.—

"(i) CURRENT WEIGHTED AVERAGE MANUFACTURER PRICE DEFINED.—For purposes of subparagraph (B), and except as provided in subparagraph (D), the term 'current weighted average manufacturer price' means, with respect to a rebate period, the amount described in clause (iii) divided by the amount described in clause (iv).

"(ii) BASE WEIGHTED AVERAGE MANUFACTURER PRICE.—For purposes of subparagraph (B), and except as provided in subparagraph

(D), the term 'base weighted average manufacturer price' means, with respect to a rebate period, the amount described in clause (iii) (by substituting in subclause (I) of such clause 'the average manufacturer price for each drug for the calendar quarter beginning July 1, 1990, increased by the percentage by which the average of the consumer price indices for all urban consumers (U.S. city average) for months during the rebate period exceeds such index for September 1990 (or, in the case of a covered outpatient drug approved for marketing after October 1, 1990, as of the first full calendar quarter after the drug was marketed, increased by the percentage by which the average of the consumer price indices for all urban consumers (U.S. city average) for months during the rebate period exceeds such index for the first full month of the first full calendar quarter after the drug was marketed)' for 'the average manufacturer price for each drug for such period'), divided by the amount described in clause (iv).

"(iii) TOTAL DOLLAR VOLUME (BASED ON CURRENT PRICE AND CURRENT DISPENSING).—The amount described in this clause for a manufacturer for a rebate period is the sum of the products (for all single source and innovator multiple source drugs of the manufacturer for which payment was made under State plans for the period) of—

"(I) the average manufacturer price for each such drug for such period, and

"(II) the total number of units of each such drug paid for under the State plans for the period.

"(iv) TOTAL UNITS PAID FOR.—The amount described in this clause for a manufacturer for a rebate period is the sum of the total number of units of the single source and innovator multiple source drugs of the manufacturer paid for under State plans for the period.

"(D) EXCLUSION OF CERTAIN NEW DRUGS.—

"(i) IF UNDUE HARDSHIP.—The Secretary may exclude certain drugs approved by the Food and Drug Administration on or after October 1, 1990, from the calculation of the weighted average manufacturer price under subparagraph (C) if the manufacturer demonstrates, through a petition in a form and manner prescribed by the Secretary, that undue hardship on the manufacturer would result if the drug is included in the calculation. The Secretary may promulgate guidelines to restrict the conditions under which the Secretary may consider such petitions.

"(ii) DETERMINATION OF REBATE FOR EXCLUDED DRUGS.—If a drug is excluded under clause (i) from the calculation of a rebate, the amount of the additional rebate with respect to that drug shall be determined as specified in subparagraph (A).

"(E) USE OF ALTERNATIVE FORMULA.—For rebate periods beginning during the 2-year period beginning July 1, 1991, the Secretary shall compare the total amount of additional rebates under subparagraph (A) to such total amount if subparagraph (B) applied to such rebate periods. Based on such comparison, the Secretary may propose and utilize an alternative formula for the purpose of calculating the additional rebate."; and

(C) by amending paragraph (3) to read as follows:

"(3) REBATE FOR OTHER DRUGS.—

"(A) IN GENERAL.—The amount of the rebate paid to a State for a rebate period with respect to each dosage form and strength of covered outpatient drugs (other than single source drugs and innovator multiple source drugs) shall be equal to the product of—

"(i) the applicable percentage (as described in subparagraph (B)) of the average manufacturer price for the dosage form and strength for the period, and

"(ii) the total number of units of such dosage form and strength dispensed after December 31, 1990, for which payment was made under the State plan for the period reported by the State under subsection (b)(2).

"(B) APPLICABLE PERCENTAGE DEFINED.—For purposes of subparagraph (A)(i), the 'applicable percentage' for rebate periods beginning—

"(i) before January 1, 1994, is 10 percent, and

"(ii) after December 31, 1993, is 11 percent.".

(4)(A) Section 1927(d) (42 U.S.C. 1396r-8(d)), as inserted by section 4401(a)(3) of OBRA-1990, is amended—

(i) in paragraph (1)—

(I) in subparagraph (A), by striking "(6)" and "(5)" and inserting "(5)" and "(4)", respectively, and

(II) in subparagraph (B)(i), by striking "(k)(6)" and inserting "subsection (k)(5)";

(ii) in paragraph (2)—

(I) in subparagraph (A), by striking "anorexia or weight gain" and inserting "weight gain or loss", and

(II) by inserting after subparagraph (K) the following new subparagraph:

"(L) other drugs specified by the Secretary pursuant to paragraph (3).";

(iii) in paragraph (3)—

(I) by striking "The Secretary shall" and inserting "Subject to paragraph (5), the Secretary shall",

(II) by striking "(except with respect" and all that follows through "of this paragraph)",

(III) by striking "described in paragraph (2)", and

(IV) by inserting "described in paragraph (2)" after "medical uses,";

(iv) by striking paragraph (4) and by redesignating paragraphs (5) through (7) as paragraphs (4) through (6);

(v) in paragraph (4), as so redesignated, by striking "(k)(6)" and inserting "(k)(5)";

(vi) in paragraph (5), as so redesignated—

(I) by striking "for coverage" and inserting "from coverage"; and

(II) by striking "any new biological or drug" and inserting "any biological or drug which is a new chemical or molecular entity";

(vii) in paragraph (6), as so redesignated, by striking "provided" and inserting "if"; and

(viii) by striking the second sentence of paragraph (6), as so redesignated, by striking paragraph (8), and by inserting the following:

"(7) CONSTRUCTION WITH RESPECT TO FRAUD AND ABUSE.—Nothing in this section shall be construed to restrict the authority of a State to apply sanctions under this Act against any person or organization for fraud or abuse.".

(B) Section 1927(d)(4) (42 U.S.C. 1396r-8(d)(4)), as redesignated by subparagraph (A)(iv), shall first apply to drugs dispensed on or after July 1, 1991.

(5) Section 1927(e) (42 U.S.C. 1396r-8(e)), as inserted by section 4401(a)(3) of OBRA-1990, is amended to read as follows:

"(e) DENIAL OF FEDERAL FINANCIAL PARTICIPATION IN CERTAIN CASES.—Section 1903(i)(10)(B) shall apply to payments made by the Secretary to a State under section 1903 with respect to innovator multiple source drugs dispensed on or after July 1, 1991.".

(6) Section 1927(f) (42 U.S.C. 1396r-8(f)), as inserted by section 4401(a)(3) of OBRA-1990, is amended to read as follows:

"(f) PHARMACY REIMBURSEMENT LIMITS.—

"(1) NO REDUCTIONS IN REIMBURSEMENT LIMITS.—

"(A) IN GENERAL.—During the period beginning on January 1, 1991, and ending on December 31, 1994—

"(i) a State may not reduce the payment limits established by regulation under this title with respect to the ingredient cost of a covered outpatient drug or the dispensing fee for such a drug below the limits in effect as of January 1, 1991, and

"(ii) except as provided in paragraph (2), the Secretary may not change the regulations under sections 447.331 through 447.334 of title 42, Code of Federal Regulations, in effect on November 5, 1990, governing the limits described in clause (i).

"(B) SPECIAL RULE.—If a State is not in compliance with the regulations described in subparagraph (A)(ii), subparagraph (A)(i) shall not apply to such State until such State is in compliance with such regulations.

"(2) ESTABLISHMENT OF UPPER PAYMENT LIMITS FOR CERTAIN MULTIPLE SOURCE DRUGS.—The Secretary shall establish an upper limit on the amount of payment which is eligible for Federal financial participation under this title for each multiple source drug for which the Food and Drug Administration has rated at least 3 formulations of such drug as therapeutically and pharmaceutically equivalent, regardless of whether all the formulations of such drug are rated as so equivalent.".

(7) Section 1927(g) (42 U.S.C. 1396r-8(g)), as inserted by section 4401(a)(3) of OBRA-1990, is amended to read as follows:

"(g) DRUG USE REVIEW.—

"(1) REQUIREMENT FOR DRUG USE REVIEW PROGRAM.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), each State shall provide, by not later than January 1, 1993, for a drug use review program for covered outpatient drugs which—

"(i) meets the requirements of paragraph (2), and

"(ii) assures that prescriptions for such drugs are appropriate, medically necessary, and not likely to result in adverse medical results.

"(B) TREATMENT OF NURSING FACILITIES.—A State is not required in such State's drug use review program to provide for drug use review with respect to drugs dispensed to residents of nursing facilities which are in compliance with the requirements of subsections (b)(4)(A)(iii) and (c)(1)(D) of section 1919.

"(2) REQUIREMENTS OF PROGRAM.—

"(A) PROSPECTIVE DRUG USE REVIEW.—

"(i) IN GENERAL.—Each drug use review program shall provide for a review of drug therapy before each prescription is filled or delivered to an individual receiving benefits under this title. The review shall be designed to identify potential drug therapy problems due to therapeutic duplication, drug-disease contraindications, drug interactions (including serious interactions with nonprescription or over-the-counter drugs), incorrect drug dosage or duration of drug treatment, drug-allergy interactions, and clinical abuse or misuse.

"(ii) STANDARDS FOR COUNSELING BY PHARMACISTS.—As part of the prospective drug use review program of a State, applicable State law shall establish standards for counseling by pharmacists of individuals receiving benefits under this title. Such standards shall include, at a minimum, the following:

"(I) The pharmacist must offer to discuss (in person, face-to-face whenever practicable, or through access to a telephone service

which is toll free for long-distance calls) with each individual receiving benefits under this title or caregiver of such individual who presents a prescription, matters which in the exercise of the pharmacist's professional judgment (consistent with State law respecting the provision of such information), the pharmacist deems significant, which may include the following:

"(aa) The name and description of the medication.

"(bb) The dosage form, dosage, route of administration, and duration of drug therapy.

"(cc) Special directions and precautions for preparation, administration and use by the patient.

"(dd) Common severe side or adverse effects or interactions and therapeutic contraindications that may be encountered, including their avoidance, and the action required if they occur.

"(ee) Techniques for self-monitoring drug therapy.

"(ff) Proper storage.

"(gg) Prescription refill information.

"(hh) Action to be taken in the event of a missed dose.

"(II) A reasonable effort must be made by the pharmacist to obtain, record, and maintain at least the following information regarding individuals receiving benefits under this title:

"(aa) Name, address, telephone number, date of birth, (or age) and gender.

"(bb) Individual history where significant, including disease state or states, known allergies and drug reactions, and a comprehensive list of medications and relevant devices.

"(cc) Pharmacist comments relevant to the individual's drug therapy.

Nothing in this clause shall be construed as requiring a pharmacist to provide consultation when an individual receiving benefits under this title or caregiver of such individual refuses such consultation.

"(B) RETROSPECTIVE DRUG USE REVIEW.—The program shall provide, through mechanized drug claims processing and information retrieval systems (approved by the Secretary under section 1903(r)) or otherwise, for the ongoing periodic examination of claims data and other records in order to identify patterns of fraud, abuse, gross overuse, or inappropriate or medically unnecessary care, among physicians, pharmacists and individuals receiving benefits under this title, or associated with specific drugs or groups of drugs.

"(C) STANDARDS.—

"(i) IN GENERAL.—The program shall, on an ongoing basis, assess data on drug use against explicit standards determined by the State (using the sources described in clause (ii) as the basis for determining the standards for such assessment). Such assessment shall include monitoring for therapeutic appropriateness, overutilization and underutilization, appropriate use of generic products, therapeutic duplication, drug-disease contraindications, drug-drug interactions, incorrect drug dosage or duration of drug treatment, and clinical abuse or misuse, and introduce remedial strategies in order to improve the quality of care and to conserve program funds or personal expenditures.

"(ii) SOURCES.—The sources described in this clause are the American Hospital Formulary Service Drug Information, the United States Pharmacopeia-Drug Information, the American Medical Association Drug Evaluations, and the peer-reviewed medical literature.

"(D) EDUCATION AND INTERVENTION.—The program shall provide for, either directly or through contracts with accredited health care educational institutions, State medical societies or State pharmacists' associations or societies or other organizations as specified by the State, and using data provided by the State drug use review board on common drug therapy problems—

"(i) ongoing educational outreach programs to educate practitioners on common drug therapy problems with the aim of improving prescribing or dispensing practices; and

"(ii) ongoing interventions for physicians and pharmacists targeted toward common drug therapy problems or individuals identified in the course of retrospective drug use reviews performed under this subsection, including, in appropriate instances, at least the following:

"(I) written, oral, or electronic reminders containing patient-specific or drug-specific (or both) information and suggested changes in prescribing or dispensing practices, communicated in a manner designed to ensure the privacy of patient-related information;

"(II) use of face-to-face discussions between health care professionals who are experts in rational drug therapy and selected prescribers and pharmacists who have been targeted for educational intervention, including discussion of optimal prescribing, dispensing, or pharmacy care practices, and followup face-to-face discussions; and

"(III) intensified review or monitoring of selected prescribers or dispensers.

"(3) STATE DRUG USE REVIEW BOARD.—

"(A) ESTABLISHMENT.—Each State shall establish a drug use review board (hereafter in this paragraph referred to as the 'DUR Board'). The State shall disseminate information to physicians and pharmacists within the State concerning the duties and powers of the DUR Board and the basis for its standards.

"(B) MEMBERSHIP.—The members of the DUR Board shall include health care professionals who have recognized knowledge and expertise in one or more of the following:

"(i) The clinically appropriate prescribing of covered outpatient drugs.

"(ii) The clinically appropriate dispensing and monitoring of covered outpatient drugs.

"(iii) Drug use review, evaluation, and intervention.

"(iv) Medical quality assurance.

The membership of the DUR Board shall be made up of at least ⅓ but no more than 51 percent licensed and actively practicing physicians and at least ⅓ licensed and actively practicing pharmacists.

"(C) RESPONSIBILITIES.—The DUR Board shall—

"(i) approve the standards and criteria for drug use review;

"(ii) recommend policies and procedures for the prospective and retrospective drug use review, education, and interventions required by this subsection;

"(iii) compile data on common drug therapy problems; and

"(iv) evaluate the effectiveness of the drug use review program in improving the quality of drug therapy and make recommendations for modifications as necessary.

"(4) ANNUAL REPORT.—Each State shall submit an annual report to the Secretary which shall include a description of the nature and scope of the drug use review program, a summary of the interventions used, and an assessment of the impact of such interventions on improving quality of care. Such report shall also include an estimate of the cost savings resulting from the operation of such program.

"(5) RESPONSIBILITY OF SECRETARY.—By July 1 of each year beginning with 1994, the Secretary shall submit an annual report to the Congress evaluating the effectiveness of States' drug use review programs utilizing each State's annual report.".

(8) Section 1927(h)(2)(A) (42 U.S.C. 1396r-8(h)(2)(A)), as inserted by section 4401(a)(3) of OBRA-1990, is amended by inserting "develops or" before "acquires".

(9) Section 1927(i)(2) (42 U.S.C. 1396r-8(i)(2)), as inserted by section 4401(a)(3) of OBRA-1990, is amended—

(A) by striking subparagraph (C); and

(B) by redesignating subparagraphs (D), (E), and (F) as subparagraphs (C), (D), and (E), respectively.

(10) Section 1927(j) (42 U.S.C. 1396r-8(j), as inserted by section 4401(a)(3) of OBRA-1990, is amended to read as follows:

"(j) EXEMPTION FOR CERTAIN HEALTH MAINTENANCE ORGANIZATIONS AND HOSPITALS.—

"(1) IN GENERAL.—Except as provided in paragraph (2), the requirements of this section shall not apply with respect to covered outpatient drugs dispensed by—

"(A) a health maintenance organization; or

"(B) a hospital that dispenses covered outpatient drugs using a drug formulary system, and bills the plan no more than the hospital's purchasing costs for covered outpatient drugs (as determined under the State plan).

"(2) CONSTRUCTION IN DETERMINING BEST PRICE.—Nothing in paragraph (1) shall be construed as excluding amounts paid by the entities described in such paragraph for covered outpatient drugs from the determination of the best price (as defined in subsection (c)(1)(C)) for such drugs.".

(11) Section 1927(k) (42 U.S.C. 1396r-8(k)), as inserted by section 4401(a)(3) of OBRA-1990, is amended—

(A) in paragraph (1)—

(i) by striking "calendar quarter" and inserting "rebate period", and

(ii) by inserting before the period at the end the following: ", after deducting customary prompt pay discounts";

(B) in paragraph (2)—

(i) in the matter before clause (i) of subparagraph (A), strike "paragraph (5)" and insert "subparagraph (D)";

(ii) in subparagraph (A)—

(I) in clause (i), by striking "for safety and effectiveness" and by striking "or which is approved under section 505(j) of such Act"; and

(II) by striking "and" at the end thereof;

(iii) in subparagraph (B)—

(I) in clause (i), by striking "prescription," and inserting "prescription;";

(II) in clause (ii), by striking ", and" and inserting "; and"; and

(III) by striking "and" at the end thereof;

(iv) by striking the period at the end of subparagraph (C) and inserting "; and"; and

(v) by adding at the end the following new subparagraph:

"(D) a drug which may be sold without a prescription (commonly referred to as an 'over-the-counter drug'), if the drug is prescribed by a physician (or other person authorized to prescribe under State law).";

(C) in paragraph (3)—

(i) in subparagraph (E), by striking "**** emergency room visits",

(ii) in subparagraph (F), by striking "sevices" and inserting "services and services provided by an intermediate care facility for the mentally retarded",

(iii) in subparagraph (H), by inserting "services" after "dialysis",

(iv) in the matter following subparagraph (H), by striking "which is used" and insert-

ing "for which a National Drug Code number is not required by the Food and Drug Administration or a drug or biological used", and

(v) in the matter following subparagraph (H), by inserting "as defined in paragraph (5)" after "indication";

(D) by striking paragraph (4) and redesignating paragraphs (5), (6), and (7) as paragraphs (4), (5), and (6), respectively;

(E) by amending paragraph (4), as so redesignated, to read as follows:

"(4) MANUFACTURER.—The term 'manufacturer' means, with respect to a covered outpatient drug, the entity holding legal title to or possession of the National Drug Code number for such drug.";

(F) in paragraph (5), as so redesignated, by striking ", which appears" and all that follows and inserting "or which is listed in any of the sources described in subsection (g)(2)(C)(ii).";

(G) in paragraph (6), as so redesignated—

(i) in subparagraph (A)(i), by striking "calendar quarter" and inserting "rebate period",

(ii) in subparagraph (A)(i), by striking "paragraph (5)" and inserting "paragraph (2)(D)",

(iii) in subparagraph (A)(ii), by striking "an original new" and inserting "a new",

(iv) in subparagraph (A)(ii), by inserting "or product licensing application" after "application",

(v) in subparagraph (A)(iv), by striking "an original new" and inserting "a new",

(vi) in subparagraph (A)(iv), by inserting "or product licensing application" after "application",

(vii) in subparagraph (A)(iv), by striking "distributers" and inserting "distributors",

(viii) in subparagraph (C)(i), by striking "pharmaceuutically" and inserting "pharmaceutically", and

(ix) in subparagraph (C)(iii), by striking ", provided that" and inserting "if"; and

(H) by inserting after paragraph (6), as redesignated, the following new paragraph:

"(7) REBATE PERIOD.—The term 'rebate period' means, with respect to an agreement under subsection (a), a calendar quarter or other period specified by the Secretary with respect to the payment of rebates under such agreement.".

(12) Section 1927 (42 U.S.C. 1396r-8), as inserted by section 4401(a)(3) of OBRA-1990, is further amended by adding at the end the following:

"(l) MAXIMUM ALLOWABLE COST LIMITATIONS.—This section shall not supersede or affect provisions relating to maximum allowable cost limitations for payment by States for covered outpatient drugs, and rebates under this section shall be made without regard to whether or not payment by the State for such drugs is subject to such limitations or the amount of such cost limitations.".

(d) FUNDING.—Section 4401(b)(2) of OBRA-1990 is amended by striking the semicolon and all that follows and inserting a period.

(e) DEMONSTRATION PROJECTS.—Section 4401(c)(1) of OBRA-1990 is amended—

(1) in subparagraph (A), by striking "1992" and inserting "1993";

(2) in subparagraph (A), by striking "10" and inserting "5"; and

(3) in subparagraph (C), by striking "regiment" and inserting "regimen".

(f) STUDIES.—Section 4401(d) of OBRA-1990 is amended—

(1) in paragraph (1)(A), by striking "other institutional facilities," and inserting "nursing facilities, intermediate care facilities for the mentally retarded,";

(2) in paragraph (1)(B), by striking "under this subsection" and inserting "under this paragraph";

(3) in paragraph (1)(B)(i), by striking "under this section" and inserting "under section 1927 of the Social Security Act";

(4) in paragraph (1)(B)(ii)—

(A) by striking "drug use review" the second time it appears and inserting "the type of drug use review that is", and

(B) by striking "under this section" and inserting "under such section";

(5) in paragraph (1)(B)(iii), by striking "under this title" and inserting "under title XIX of the Social Security Act";

(6) in paragraph (1)(C), by striking "May 1, 1991" and inserting "May 1, 1992";

(7) in paragraph (2), by striking "an annual report" and inserting "a report";

(8) in paragraph (3)—

(A) in subparagraph (A), by striking ", acting in consultation with the Comptroller General,",

(B) by indenting subparagraph (B) an additional 2 ems, and

(C) in subparagraph (B), by striking "December 31, 1991, the Secretary and the Comptroller General" and inserting "June 1, 1993, the Secretary";

(9) in paragraph (4)(A), by striking "each" and by striking the semicolon and inserting a comma;

(10) in paragraph (4)(B), by striking "December 31, 1991" and inserting "January 1, 1993";

(11) in paragraph (5)—

(A) by striking "Secretary of Health and Human Services" and inserting "Comptroller General",

(B) by striking "under this title" and inserting "under State medicaid programs", and

(C) by striking the second sentence and inserting the following new sentence: "The Comptroller General shall report to the Congress on the study not later than January 1, 1993."; and

(12) in paragraph (6), by striking "1 year after the date of enactment of this subsection" and inserting "January 1, 1993".

SEC. 203. CORRECTIONS RELATING TO SECTION 4402 (ENROLLMENT UNDER GROUP HEALTH PLANS).

Section 4402(b) of OBRA-1990 is amended by striking "1903(u)(1)(C)(iv) (42 U.S.C. 1396b(u)(1)(C)(iv))" and inserting "1903(u)(1)(D)(iv) (42 U.S.C. 1396b(u)(1)(D)(iv))".

SEC. 204. CORRECTIONS RELATING TO SECTION 4501 (LOW-INCOME MEDICARE BENEFICIARIES).

(a) Section 1902(a)(10)(E)(iii) (42 U.S.C. 1396a(a)(10)(E)(iii)), as added by section 4501(b)(3) of OBRA-1990, is amended by striking "cost sharing" and inserting "cost-sharing".

(b) Section 1905(p)(4)(B) (42 U.S.C. 1396d(p)(4)(B)), as amended by section 4501(c)(1) of OBRA-1990, is amended by striking "1902(a)(10)(E)(iii)" and inserting "section 1902(a)(10)(E)(iii)".

SEC. 205. CORRECTIONS RELATING TO SECTION 4601 (CHILD HEALTH).

(a) Section 1902(a)(10)(A)(i)(VII) (42 U.S.C. 1396a(a)(10)(A)(i)(VII)), as added by section 4601(a)(10)(A)(iii) of OBRA-1990, is amended by striking "family;" and inserting "family; and".

(b) Section 1902(l) (42 U.S.C. 1396a(l)), as amended by section 4601(a)(1)(C) of OBRA-1990, is amended—

(1) in paragraph (1)(C), by striking "children" after "(C)";

(2) in paragraph (3), by striking "(a)(10)(A)(i)(VII),," and inserting "(a)(10)(A)(i)(VII),"; and

(3) in paragraph (4)(B), by inserting a comma before "(a)(10)(A)(i)(VI),".

(c) Section 1925 (42 U.S.C. 1396r-6), as amended by section 4601(a) of OBRA-1990, is amended—

(1) in subsection (a)(3)(C), by striking "(i)(VI)" and inserting "(i)(VI),", and

(2) in subsection (b)(3)(C)(i), by striking "(i)(IV) (i)(VI) (i)(VII), ," and inserting "(i)(IV), (i)(VI), (i)(VII),".

SEC. 206. CORRECTIONS RELATING TO SECTION 4602 (OUTREACH LOCATIONS).

(a) Section 1902(a)(55) (42 U.S.C. 1396a(a)(55)), as added by section 4602(a)(3) of OBRA-1990, is amended—

(1) in the matter preceding subparagraph (A)—

(A) by striking "subsection" and inserting "paragraph", and

(B) by striking "(a)" each place it appears; and

(2) in subparagraph (A), by striking "1905(1)(2)(B)" and inserting "1905(l)(2)(B)".

(b) Section 1902(l)(1) (42 U.S.C. 1396a(l)(1)) is amended by striking "who are not described in any of subclauses (I) through (III) of subsection (a)(10)(A)(i) and".

SEC. 207. CORRECTIONS RELATING TO SECTION 4604 (PAYMENT FOR HOSPITAL SERVICES FOR CHILDREN UNDER 6 YEARS OF AGE).

(a) Section 1902(a)(10) (42 U.S.C. 1396a(a)(10)) is amended in clause (X) in the matter following subparagraph (F) by striking "under one year of age" and inserting "under 6 years of age".

(b) Section 1902(s) (42 U.S.C. 1396a(s)), as added by section 4604(a) of OBRA-1990, is amended to read as follows:

"(s) In order to meet the requirements of subsection (a)(56), the State plan must provide that payments to hospitals under the plan for inpatient services furnished to infants who have not attained the age of 1 year (or, in the case of such an individual who is an inpatient on his first birthday, until such individual is discharged) shall—

"(1) if made on a prospective basis (whether per diem, per case, or otherwise) provide for an outlier adjustment in payment amounts for medically necessary inpatient hospital services involving exceptionally high costs or exceptionally long lengths of stay;

"(2) not be limited by the imposition of day limits; and

"(3) not be limited by the imposition of dollar limits (other than dollar limits resulting from prospective payments as adjusted pursuant to paragraph (1)).".

(c) Section 1923(a)(2)(C) (42 U.S.C. 1396r-4(a)(2)(C)) is amended by striking "provided on or after July 1, 1989," and all that follows and inserting the following: "involving exceptionally high costs or exceptionally long lengths of stay—

"(i) for individuals under 1 year of age, in the case of services provided on or after July 1, 1989, and on or before June 30, 1991; and

"(ii) for individuals under 6 years of age, in the case of services provided on or after July 1, 1991.".

SEC. 208. CORRECTIONS RELATING TO SECTION 4703 (PAYMENT ADJUSTMENTS FOR DISPROPORTIONATE SHARE HOSPITALS).

(a) Section 1923(c) (42 U.S.C. 1396r-4(c)) is amended—

(1) in paragraph (2), by striking "paragraph (b)(3)" and inserting "subsection (b)(3)";

(2) by striking the period at the end of paragraph (3)(B) and inserting a comma; and

(3) in the third sentence, by striking "the payment adjustment described in paragraph (2)" and inserting "a payment adjustment described in paragraph (2) or (3)".

(b) Effective December 22, 1987, section 1923(d)(2)(A)(ii) (42 U.S.C. 1396r-4(d)(2)(A)(ii)) is amended by striking "the date of the enactment of this Act" and inserting "December 22, 1987".

(c) Section 4703(d) of OBRA-1990 is amended by striking "412(a)(2)" and inserting "4112(a)(2)".

SEC. 209. CORRECTIONS RELATING TO SECTION 4704 (FEDERALLY-QUALIFIED HEALTH CENTERS).

(a) Clause (ix) of section 1903(m)(2)(A) (42 U.S.C. 1396b(m)(2)(A)), as added by section 4704(b)(1)(C) of OBRA-1990, is amended—

(1) by striking "of such center" the first place it appears;

(2) by striking "federally qualified" and inserting "Federally-qualified"; and

(3) by moving such clause 2 ems to the left.

(b) Section 1903(m)(2)(B) (42 U.S.C. 1396b(m)(2)(B)), as amended by section 4704(b)(2) of OBRA-1990, is amended by striking "except with respect to clause (ix) of subparagraph (A)," and inserting "(except with respect to clause (ix) of such subparagraph)".

(c) Section 1905(l)(2) (42 U.S.C. 1396d(l)(2)), as amended by section 4704(c) of OBRA-1990, is amended—

(1) in subparagraph (A)—

(A) by striking "Federally-qualififed" and inserting "Federally-qualified", and

(B) by striking "an patient" and inserting "a patient", and

(2) in subparagraph (B)—

(A) in the matter preceding clause (i), by striking "a entity" and inserting "an entity",

(B) by striking "or" at the end of clause (i),

(C) by striking the semicolon at the end of clause (ii)(II) and inserting a comma,

(D) by moving clause (ii) 4 ems to the left,

(E) by striking the comma at the end of clause (iii) and inserting ", or", and

(F) by striking "and includes an outpatient health program" and all that follows through "for good cause shown." and inserting the following:

"(iv) is an outpatient health program or facility operated by a tribe or tribal organization under the Indian Self-Determination Act (Public Law 93-638).

In applying clause (iii), the Secretary may waive any requirement referred to in such clause for up to 2 years for good cause shown.".

SEC. 210. CORRECTIONS RELATING TO SECTION 4708 (SUBSTITUTE PHYSICIANS).

Section 1902(a)(32)(C) (42 U.S.C. 1396a(a)(32)(C)), as added by section 4708(a)(3) of OBRA-1990, is amended to read as follows:

"(C) payment may be made to a physician for physicians' services (and services furnished incident to such services) furnished by a second physician to patients of the first physician if (i) the first physician is unavailable to provide the services; (ii) the services are furnished pursuant to an arrangement between the two physicians that (I) is informal and reciprocal, or (II) involves per diem or other fee-for-time compensation for such services; (iii) the services are not provided by the second physician over a continuous period of more than 60 days; and (iv) the claim form submitted to the carrier for such services includes the second physician's unique identifier (provided under the system established under subsection (x)) and indicates that the claim meets the requirements of this clause for payment to the first provider.".

SEC. 211. CORRECTIONS RELATING TO SECTION 4711 (HOME AND COMMUNITY CARE FOR FRAIL ELDERLY).

(a) Section 1929 (42 U.S.C. 1396t), as added by section 4711(b) of OBRA-1990, is amended—

(1) in subsection (c)(2)(F), by moving the second sentence 2 ems to the right;

(2) in subsection (d)(2)(F)(ii), by striking "they manage" and inserting "it manages";

(3) in subsection (d)(2)(F)(iii), by inserting "the agency or organization" after "(iii)";

(4) in subsection (e)(2)(B), by striking "fiscal year 1989" and inserting "fiscal year 1990";

(5) in subsection (f)(1), by striking "Community care" and inserting "community care";

(6) in subsection (g)(1)—

(A) by striking "SETTINGS" and inserting "SETTING"; and

(B) in subparagraph (B), by striking "setting." and inserting "setting in which home and community care under this section is provided.";

(7) in subsection (g)(2), by striking "community care" the second, third, and fourth place it appears and inserting "home and community care";

(8) in subsection (h)(1)—

(A) by amending subparagraph (A) to read as follows:

"(A) a nonresidential setting that serves 8 or more individuals; or"; and

(B) in subparagraph (B)—

(i) by striking "more than 8" and inserting "8 or more"; and

(ii) by inserting "(other than merely board)" after "personal services";

(9) in subsection (h)(2), by striking "community care" the second and third place it appears and inserting "home and community care";

(10) in the first sentence of subsection (j)(1)(A), by striking "the State may terminate the provider's participation under the State plan and may provide in addition for a civil money penalty" and inserting "the State may provide for a civil money penalty and, in addition, may terminate the provider's participation under the State plan";

(11) in the first sentence of subsection (j)(2)(B), by striking "the Secretary may terminate the provider's participation under the State plan and may provide, in addition, for a civil money penalty under subparagraph (C)" and inserting "the Secretary may provide for a civil money penalty under subparagraph (C) and, in addition, terminate the provider's participation under the State plan";

(12) in subsection (k)(1)(A)(i)—

(A) by striking "(d)(2)(E)" and inserting "(d)(2)", and

(B) by striking "settings," and inserting "settings),";

(13) in subsection (l), by striking "State wideness" and inserting "Statewideness";

(14) in subsection (m)—

(A) in paragraph (1), by striking "The amount of funds" and inserting "Except as provided in paragraph (5), the amount of funds",

(B) in paragraph (2)—

(i) by striking "Individual Community Care Plan" and inserting "individual community care plan", and

(ii) by striking "an election period is the period of 4 or more calendar quarters" and inserting "an election period is a Federal fiscal year (or in the case of States described in paragraph (4)(C)(ii), the period beginning on April 1, 1993, and ending on September 30, 1993)",

(C) by amending paragraph (4) to read as follows:

"(4) ALLOCATION OF MEDICAL ASSISTANCE.—

"(A) IN GENERAL.—All of the funds available to be expended under paragraph (1) during a fiscal year shall be available as Federal medical assistance to the States electing to provide services under this section during such fiscal year.

"(B) GENERAL ALLOCATION FORMULA.—For each fiscal year, beginning with fiscal year 1994, a State which has provided a notice to the Secretary under paragraph (6)(A) shall be allocated an amount of the funds that may be expended under paragraph (1) for such fiscal year equal to the product of—

"(i) the total amount of funds that may be expended under paragraph (1) for such fiscal year; and

"(ii) the amount determined by dividing—

"(I) the number of individuals age 65 or older residing in such State during such fiscal year, by

"(II) the total number of individuals age 65 or older residing in all States which have submitted notices to the Secretary under such paragraph during such fiscal year.

"(C) SPECIAL ALLOCATION FORMULA FOR FISCAL YEAR 1993.—

"(i) FIRST 6-MONTH PERIOD.—For the period beginning on October 1, 1992, and ending on March 31, 1993, each State for which a State plan amendment to provide home and community care under this section has been approved by the Secretary as of the date of enactment of the Medicare and Medicaid Amendments Act of 1992 shall be allocated an amount of the funds available under paragraph (1) for fiscal year 1993 equal to the product of—

"(I) $65,000,000; and

"(II) the amount determined by dividing—

"(aa) the number of individuals age 65 or older residing in such State during such fiscal year, by

"(bb) the total number of individuals age 65 or older residing in all States which are providing home and community care under this section on the date of enactment of such Act.

"(ii) SECOND 6-MONTH PERIOD.—For the period beginning on April 1, 1993, and ending on September 30, 1993, a State which has provided a notice to the Secretary under paragraph (6)(B) shall be allocated an amount of the funds available under paragraph (1) for fiscal year 1993 equal to the amount such State would receive under the formula set forth in subparagraph (B) by substituting—

"(I) '(6)(B)' for '(6)(A)', and

"(II) '$65,000,000' for 'the total amount of funds that may be expended under paragraph (1) for such fiscal year'.

"(D) REALLOCATION OF FUNDS.—

"(i) FORMULA FOR REALLOCATION.—

"(I) GENERAL RULE.—Except as provided in subclause (II), within 60 days after the end of each fiscal year, beginning with fiscal year 1993, the Secretary shall pay to each State which provided services under this section during such fiscal year an amount equal to the product of—

"(aa) the total amount of funds that may be expended under paragraph (1) for such fiscal year which remain available at the end of such fiscal year; and

"(bb) the amount determined by dividing the unavailable Federal amount (as defined in clause (ii)) for such State by the total unavailable Federal amount for all the States which provided services under this section during such fiscal year.

"(II) SPECIAL RULE.—The amount determined for payment to a State under sub-

clause (I) shall not exceed the unavailable Federal amount for such State.

"(ii) DEFINITION.—For purposes of this subparagraph, the term 'unavailable Federal amount' means the excess of—

"(I) the amount a State would have received in Federal medical assistance based on such State's expenditures for services provided under this section but for the allocation under subparagraph (B), over

"(II) the amount of Federal medical assistance allocated to such State under subparagraph (B).", and

(D) by adding at the end the following new paragraphs:

"(5) CARRYOVER OF FUNDS TO NEXT FISCAL YEAR.—Beginning with fiscal year 1993, any funds available under paragraph (1) for a fiscal year which remain available after the application of subparagraphs (B), (C), and (D) of paragraph (4) shall be available under paragraph (1) to be expended in the following fiscal year.

"(6) NOTICE TO STATES OF AMOUNTS AVAILABLE FOR ASSISTANCE.—

"(A) IN GENERAL.—

"(i) NOTICE TO SECRETARY.—In order to receive Federal medical assistance for expenditures for home and community care under this section for any fiscal year (beginning with fiscal year 1994), a State shall submit not later than 3 months before the beginning of such fiscal year a notice to the Secretary of its intention to provide such care.

"(ii) NOTICE TO STATES.—Not later than 2 months before the beginning of each fiscal year (beginning with fiscal year 1994), the Secretary shall notify each State that has submitted a notice to the Secretary under clause (i) for the fiscal year of the amount of Federal medical assistance that will be available to the State for such fiscal year (as established under paragraph (4)(B)).

"(B) SPECIAL RULE FOR FISCAL YEAR 1993.—

"(i) NOTICE TO SECRETARY.—In order to receive Federal medical assistance for expenditures for home and community care under this section for the period beginning on April 1, 1993, and ending on September 30, 1993, a State shall submit not later than March 1, 1993, a notice to the Secretary of its intention to provide such care.

"(ii) NOTICE TO STATES.—Not later than April 1, 1993, the Secretary shall notify each State that has submitted a notice to the Secretary under clause (i) for the period beginning on April 1, 1993, and ending on September 30, 1993, of the amount of Federal medical assistance that will be available to the State for such period (as established under paragraph (4)(C)(ii)).."; and

(15) by adding at the end the following new subsection:

"(n) COMMUNITY CARE SETTING DEFINED.—In this section, the term 'community care setting' means a small community care setting (as defined in subsection (g)(1)) or a large community care setting (as defined in subsection (h)(1)).".

(b) Section 1905(r)(5) (42 U.S.C. 1396d(r)(5)) is amended by striking "1905(a)" and inserting "subsection (a) (other than services described in paragraph (22) or (23) of such subsection)".

(c) Section 4711(f) of OBRA-1990 is amended by striking "Act" each place it appears and inserting "section".

SEC. 212. CORRECTIONS RELATING TO SECTION 4712 (COMMUNITY SUPPORTED LIVING ARRANGEMENTS).

(a) Section 1930 (42 U.S.C. 1396u), as added by section 4712(b)(2) of OBRA-1990, is amended—

(1) in subsection (b)—

(A) by striking "title the term," and inserting "title, the term",

(B) by striking "guardian" and inserting "guardian or", and

(C) by striking "3 other" and inserting "3";

(2) in subsection (d)—

(A) in the matter preceding paragraph (1), by striking "program," and inserting "program", and

(B) in the second sentence, by striking "plan" each place it appears and inserting "program"; and

(3) in subsection (i), by striking "FUNDS" and inserting "FUNDS".

(b) Section 4712(c) of OBRA-1990 is amended—

(1) in paragraph (1), by inserting "of section 1930 of the Social Security Act" after "subsection (h)"; and

(2) in paragraph (2), by striking "this section" and inserting "such section".

SEC. 213. CORRECTION RELATING TO SECTION 4713 (COBRA CONTINUATION COVERAGE).

(a) Section 1902(a)(10) (42 U.S.C. 1396a(a)(10)) is amended in the matter following subparagraph (F)—

(1) by striking "; and (XI)" and inserting ", (XI)";

(2) by striking "individuals, and (XI)" and inserting "individuals, and (XII)"; and

(3) by striking "COBRA continuation premiums" and inserting "COBRA premiums".

(b) Section 1902(u)(3) (42 U.S.C. 1396a(u)(3)), as added by section 4713(a)(2) of OBRA-1990, is amended by striking "title VI" and inserting "part 6 of subtitle B of title I".

SEC. 214. CORRECTION RELATING TO SECTION 4716 (MEDICAID TRANSITION FOR FAMILY ASSISTANCE).

Section 4716(a) of OBRA-1990 is amended by striking "AMENDMENTS.—Subsection (f) of section" and inserting "IN GENERAL.—Section".

SEC. 215. CORRECTIONS RELATING TO SECTION 4721 (PERSONAL CARE SERVICES).

Section 1905(a)(7) (42 U.S.C. 1396d(a)(7)), as amended by section 4721(a) of OBRA-1990, is amended to read as follows:

"(7)(A) home health services; and (B) personal care services which are (i) prescribed by a physician for an individual in accordance with a plan of treatment, (ii) provided by an individual who is qualified to provide such services and who is not a member of the individual's family, (iii) supervised by a registered nurse, (iv) furnished in a home or other location, and (v) furnished to an individual who is not an inpatient or resident of a nursing facility;".

SEC. 216. CORRECTIONS RELATING TO SECTION 4723 (MEDICAID SPEND-DOWN OPTION).

Section 1903(f)(2) (42 U.S.C. 1396b(f)(2)), as amended by section 4723(a) of OBRA-1990, is amended by striking "to the State, provided that" and inserting "to the State if".

SEC. 217. CORRECTIONS RELATING TO SECTION 4724 (OPTIONAL STATE DISABILITY DETERMINATIONS).

Section 1902(v) (42 U.S.C. 1396a(v)), as added by section 4724 of OBRA-1990, is amended—

(1) by striking "(v)(1)" and inserting "(v)"; and

(2) by striking "of the Social Security Act".

SEC. 218. CORRECTION RELATING TO SECTION 4732 (SPECIAL RULES FOR HEALTH MAINTENANCE ORGANIZATIONS).

Section 1903(m)(2)(F)(i) (42 U.S.C. 1396b(m)(2)(F)(i)), as amended by section 4732(b)(2)(B) of OBRA-1990, is amended by striking "or" before "with an eligible organization".

SEC. 219. CORRECTIONS RELATING TO SECTION 4744 (FRAIL ELDERLY WAIVERS).

(a) Section 1924(a)(5), as added by section 4744(b)(1) of OBRA-1990, is amended by striking "1986." and inserting "1986 or a waiver under section 603(c) of the Social Security Amendments of 1983.".

(b) Section 603(c) of the Social Security Amendments of 1983 is amended—

(1) by striking "(c)" and inserting "(c)(1)";

(2) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B); and

(3) by adding at the end the following new paragraph:

"(2) Section 1924 of the Social Security Act shall apply to any individual receiving services from an organization receiving a waiver under this subsection.".

SEC. 220. CORRECTIONS RELATING TO SECTION 4745 (LOW INCOME FAMILIES DEMONSTRATION PROJECT).

Section 4745(e)(1) of OBRA-1990 is amended by adding at the end the following new sentence: "Such sums as may be available under the limitations set forth in this paragraph for fiscal years 1993 and 1994 shall be available until expended.".

SEC. 221. CORRECTIONS RELATING TO SECTION 4747 (COVERAGE OF HIV-POSITIVE INDIVIDUALS).

Section 4747 of OBRA-1990 is amended—

(1) in subsection (a), by striking "subsection (c)" and inserting "subsection (b)";

(2) in subsection (b)(2)—

(A) by striking "preventative" each place it appears and inserting "preventive", and

(B) by adding a period at the end of subparagraph (J);

(3) in subsection (c)(1)—

(A) by striking "subsection (c)" and inserting "subsection (b)", and

(B) by striking "paragraphs (1) and (2) of";

(4) in subsection (d)—

(A) by striking "paragraph (3)" and inserting "subsection (b)", and

(B) by striking "paragraph (1)" and inserting "subsection (a)"; and

(5) in subsection (f), by adding at the end the following new sentence: "Such sums as may be available under the limitation set forth in this paragraph for fiscal year 1993 shall be available until expended.".

SEC. 222. CORRECTION RELATING TO SECTION 4751 (ADVANCED DIRECTIVES).

Section 1903(m)(1)(A) (42 U.S.C. 1396b(m)(1)(A)), as amended by section 4751(b)(1) of OBRA-1990, is amended—

(1) by striking "1902(w)" and inserting "1902(w) and"; and

(2) by striking "1902(a)" and inserting "1902(w)".

SEC. 223. CORRECTIONS RELATING TO SECTION 4752 (PHYSICIANS' SERVICES).

(a) The paragraph (58) of section 1902(a) (42 U.S.C. 1396a(a)) added by section 4752(c)(1)(C) of OBRA-1990 is amended by striking "subsection (v)" and inserting "subsection (x)".

(b) Section 1903(i)(14)(A)(i) (42 U.S.C. 1396b(i)(14)(A)(i)) is amended to read as follows:

"(i) is certified in family practice or pediatrics by the medical specialty board recognized by the American Board of Medical Specialties for family practice or pediatrics or is certified in general practice or pediatrics by the medical specialty board recognized by the American Osteopathic Association,".

(c) Subparagraphs (A) and (B) of section 1903(i)(14) (42 U.S.C. 1396b(i)(14)) added by section 4752(e)(2) of OBRA-1990 are each amended—

(1) by striking "or" at the end of clause (v);

(2) by redesignating clause (vi) as clause (vii); and

(3) by inserting after clause (v) the following new clause:

"(vi) delivers such services in the emergency department of a hospital participating in the State plan approved under this title, or".

SEC. 224. CORRECTIONS RELATING TO SECTION 4801 (NURSING HOME REFORM).

(a) Section 1919(b)(3)(C)(i)(I) (42 U.S.C. 1396r(b)(3)(C)(i)(I)), as amended by section 4801(e)(3) of OBRA-1990, is amended by striking "not to exceed" before "14 days".

(b) Section 1919(b)(5)(D) (42 U.S.C. 1396r(b)(5)(D)), as amended by section 4801(a)(4) of OBRA-1990, is amended by striking the comma before "or a new competency evaluation program.".

(c) Section 1919(b)(5)(G) (42 U.S.C. 1396r(b)(5)(G)) is amended by striking "or licensed or certified social worker" and inserting "licensed or certified social worker, registered respiratory therapist, or certified respiratory therapy technician".

(d) Section 1919(f)(2)(B)(i) (42 U.S.C. 1396r(f)(2)(B)(i)) is amended by striking "facilities," and inserting "facilities (subject to clause (iii)),".

(e) Section 1919(f)(2)(B)(iii)(I)(c) (42 U.S.C. 1396r(f)(2)(B)(iii)(I)(c)) is amended by striking "clauses" each place it appears and inserting "clause".

(f) Section 1919(g)(3)(C) (42 U.S.C. 1396r(g)(3)(C)) is amended by striking "1903(a)(2)(D)" and inserting "1903(a)(2)(C)".

(g) Section 1919(g)(5)(B) (42 U.S.C. 1396r(g)(5)(B)) is amended by striking "paragraphs" and inserting "paragraph".

(h) Section 4801(a)(6)(B) of OBRA-1990 is amended—

(1) by striking "The amendments" and inserting "(i) The amendments";

(2) by redesignating clauses (i) through (v) as subclauses (I) through (V); and

(3) by adding at the end the following new clause:

"(ii) Notwithstanding clause (i) and subject to section 1919(f)(2)(B)(iii)(I) of the Social Security Act (as amended by subparagraph (A)), a State may approve a training and competency evaluation program or a competency evaluation program offered by or in a nursing facility described in clause (i) if, during the previous 2 years, none of the subclauses of clause (i) applied to the facility.".

SEC. 225. OTHER TECHNICAL CORRECTIONS.

(a) Section 1905(o)(1)(A) (42 U.S.C. 1396d(o)(1)(A)) is amended—

(1) in the first sentence, by striking "intermediate care facility services" and inserting "for nursing facility services or intermediate care facility services for the mentally retarded"; and

(2) in the second sentence, by striking "or intermediate care facility" and inserting "(for purposes of title XVIII), a nursing facility, or an intermediate care facility for the mentally retarded".

(b) Section 1915(d) (42 U.S.C. 1396n(d)) is amended—

(1) by striking "skilled nursing facility or intermediate care facility" each place it appears in paragraphs (1), (2)(B), and (2)(C) and inserting "nursing facility";

(2) in paragraph (2)(B)(i), by striking "skilled nursing or intermediate care facility" and inserting "nursing facility";

(3) in paragraph (5)(A), by striking "under" the first place it appears and inserting "(or, in the case of waiver years beginning on or after October 1, 1990, with respect to nursing facility services and home and community-based services) under"; and

(4) in paragraph (5)(B)—

(A) in clause (i), by striking "furnished" and inserting "(or, with respect to waiver years beginning on or after October 1, 1990, for nursing facility services) furnished"; and

(B) in clause (iii)(I), by striking "(regardless" and inserting "(or, with respect to waiver years beginning on or after October 1, 1990, which comprise nursing facility services) (regardless".

(c)(1) Section 1924(h)(1)(A) (42 U.S.C. 1396r-5(h)(1)(A)) is amended to read as follows:

"(A)(i) is in a medical institution or nursing facility; or

"(ii) is described in section 1902(a)(10)(A)(ii)(VI) (except that for purposes of subsection (d), such term shall include such individual only if the State elects to apply such subsection to the individual); and".

(2) The amendments made by this subsection shall apply to home or community-based services furnished on or after January 1, 1993.

SEC. 226. CORRECTIONS TO DESIGNATIONS OF NEW PROVISIONS.

(a) PARAGRAPHS ADDED TO SECTION 1902(a).—Section 1902(a) (42 U.S.C. 1396a(a)) is amended—

(1) by striking "and" at the end of paragraph (54);

(2) in the paragraph (55) inserted by section 4602(a)(3) of OBRA-1990, by striking the period at the end and inserting a semicolon;

(3) by redesignating the paragraph (55) inserted by section 4604(b)(3) of OBRA-1990 as paragraph (56), by transferring and inserting it after the paragraph (55) inserted by section 4602(a)(3) of such Act, and by striking the period at the end and inserting a semicolon;

(4) by placing paragraphs (57) and (58), inserted by section 4751(a)(1)(C) of OBRA-1990, immediately after paragraph (56), as redesignated by paragraph (3);

(5) in the paragraph (58) inserted by section 4751(a)(1)(C) of OBRA-1990, by striking the period at the end and inserting "; and"; and

(6) by redesignating the paragraph (58) inserted by section 4752(c)(1)(C) of OBRA-1990 as paragraph (59) and by transferring and inserting it after the paragraph (58) inserted by section 4751(a)(1)(C) of such Act.

(b) PARAGRAPHS ADDED TO SECTION 1903(i).—Section 1903(i) (42 U.S.C. 1396b(i)), as amended by section 2(b)(2) of the Medicaid Voluntary Contribution and Provider-Specific Tax Amendments of 1991, is amended—

(1) by redesignating the paragraph (12) inserted by section 4752(a)(2) of OBRA-1990 as paragraph (11), by transferring and inserting it after the paragraph (10) inserted by section 4401(a)(1)(B) of OBRA-1990, and by striking the period at the end and inserting a semicolon;

(2) by redesignating the paragraph (14) inserted by section 4752(e) of OBRA-1990 as paragraph (12), by transferring and inserting it after paragraph (11), as redesignated by paragraph (2), and by striking the period at the end and inserting "; or"; and

(3) by redesignating the paragraph (11) inserted by section 4801(e)(16)(A) of OBRA-1990 as paragraph (13) and by transferring and inserting it after paragraph (12), as redesignated by paragraph (3), and by striking "; or" and inserting a period.

(c) PARAGRAPHS ADDED TO SECTION 1905(a).—

(1) IN GENERAL.—Section 1905(a) (42 U.S.C. 1396d(a)) is amended—

(A) by striking "and" at the end of paragraph (21);

(B) in paragraph (24), by striking the comma at the end and inserting "; and"; and

(C) by redesignating paragraphs (22), (23), and (24) as paragraphs (24), (22), and (23), respectively, and by transferring and inserting paragraph (24), as so redesignated, after paragraph (23), as so redesignated.

(2) CONFORMING AMENDMENTS.—(A) Effective July 1, 1991, section 1902(a)(10)(C)(iv) (42 U.S.C. 1396a(a)(10)(C)(iv)), as amended by section 4755(c)(1)(A) of OBRA-1990, is amended by striking "through (21)" and inserting "through (23)".

(B) Effective July 1, 1991, section 1902(j) (42 U.S.C. 1396a(j)), as amended by section 4711(d)(1) of OBRA-1990, is amended by striking "through (22)" and inserting "through (24)".

(d) FINAL SECTIONS.—Section 1928 (42 U.S.C. 1396s), as redesignated by section 4401(a)(3) of OBRA-1990, is amended—

(1) by transferring such section to the end of title XIX; and

(2) by redesignating such section as section 1932.

SEC. 227. CORRECTIONS RELATING TO SECTION 4008 (CONFORMING AMENDMENTS TO MEDICARE).

(a) Section 1819(b)(5)(D) (42 U.S.C. 1395i-3(b)(5)(D)), as amended by section 4008(h)(1)(D) of OBRA-1990, is amended by striking the comma before "or a new competency evaluation program.".

(b) Section 1819(b)(5)(G) (42 U.S.C. 1395i-3(b)(5)(G)) is amended by striking "or licensed or certified social worker" and inserting "licensed or certified social worker, registered respiratory therapist, or certified respiratory therapy technician".

(c) Section 1819(f)(2)(B)(i) (42 U.S.C. 1395i-3(f)(2)(B)(i)) is amended by striking "facilities," and inserting "facilities (subject to clause (iii)),".

(d) Section 1819(f)(2)(B)(iii)(I)(c) (42 U.S.C. 1395i-3(f)(2)(B)(iii)(I)(c)) is amended by striking "clauses" each place it appears and inserting "clause".

(e) Section 1819(g)(5)(B) (42 U.S.C. 1395i-3(g)(5)(B)) is amended by striking "paragraphs" and inserting "paragraph".

(f) Section 4008(h)(1)(F)(ii) of OBRA-1990 is amended—

(1) by striking "The amendments" and inserting "(I) The amendments";

(2) by striking "nursing facility" each place it appears and inserting "skilled nursing facility";

(3) by redesignating subclauses (I) through (V) as clauses (aa) through (ee); and

(4) by adding at the end the following new subclause:

"(II) Notwithstanding subclause (I) and subject to section 1819(f)(2)(B)(iii)(I) of the Social Security Act (as amended by clause (i)), a State may approve a training and competency evaluation program or a competency evaluation program offered by or in a skilled nursing facility described in subclause (I) if, during the previous 2 years, clause (aa), (bb), (cc), (dd), or (ee) of subclause (I) did not apply to the facility.".

Subtitle B—Other Amendments to Medicaid Provisions

PART I—SUBSTANCE ABUSE PROVISIONS

SEC. 231. EXCEPTION TO IMD EXCLUSION FOR QUALIFIED COMPREHENSIVE SUBSTANCE ABUSE TREATMENT PROGRAMS.

(a) EXCEPTION TO IMD EXCLUSION.—Section 1905(a) (42 U.S.C. 1396d(a)) is amended in subparagraph (B) of the matter following paragraph (24), by inserting ", other than care and services (excluding room and board) for any individual who is participating in a qualified comprehensive substance abuse treatment program under title IV and who would be eligible for medical assistance under this title but for the application of

this subparagraph" after "institution for mental diseases".

(b) WAIVER AUTHORITY.—The Secretary of Health and Human Services shall waive the requirements of section 1902(a)(1) of the Social Security Act (relating to statewideness) and section 1902(a)(10)(B) of such Act (relating to the amount, duration, and scope of benefits) to the extent the Secretary determines that a waiver of such requirements is necessary and appropriate to enable a State to establish a comprehensive substance abuse treatment program described in title IV of such Act.

(c) EFFECTIVE DATE.—The amendments made by subsection (a) and the provisions of subsection (b) shall apply to services furnished on or after July 1, 1993.

SEC. 232. COVERAGE OF ALCOHOLISM AND DRUG DEPENDENCY RESIDENTIAL TREATMENT SERVICES.

(a) MEDICAID COVERAGE OF ALCOHOLISM AND DRUG DEPENDENCY RESIDENTIAL TREATMENT SERVICES FOR PREGNANT WOMEN, CARETAKER PARENTS, AND THEIR CHILDREN.—

(1) COVERAGE OF ALCOHOLISM AND DRUG DEPENDENCY RESIDENTIAL TREATMENT SERVICES.—

(A) OPTIONAL COVERAGE.—Section 1905 (42 U.S.C. 1396d), as amended by section 231, is further amended—

(i) in subsection (a)—

(I) by striking "and" at the end of paragraph (23);

(II) by redesignating paragraph (24) as paragraph (25); and

(III) by inserting after paragraph (23) the following new paragraph:

"(24) alcoholism and drug dependency residential treatment services (to the extent allowed and as defined in section 1931); and"; and

(ii) in subparagraph (B) of the matter following paragraph (25), as redesignated—

(I) by striking "room and board" and inserting "room and board, unless such payment is for services authorized under paragraph (24) to an individual described in section 1931(e)"; and

(II) by striking "title IV" and inserting "title IV or who is receiving alcoholism and drug dependency residential treatment services under paragraph (24)".

(B) ALCOHOLISM AND DRUG DEPENDENCY RESIDENTIAL TREATMENT SERVICES DEFINED.—Title XIX (42 U.S.C. 1396 et seq.) is amended by adding at the end the following new section:

"ALCOHOLISM AND DRUG DEPENDENCY RESIDENTIAL TREATMENT SERVICES

"SEC. 1931. (a) ALCOHOLISM AND DRUG DEPENDENCY RESIDENTIAL TREATMENT SERVICES.—The term 'alcoholism and drug dependency residential treatment services' means, subject to subsection (d), all the required services described in subsection (b) provided—

"(1) in a coordinated manner (either directly or through arrangements with public and nonprofit private entities or, for medical services, through arrangements with licensed practitioners or federally qualified health centers or, with respect to such services provided to individuals eligible to receive services in Indian Health Facilities, through or under arrangements with the Indian Health Service or a tribal or Indian organization that has entered into a contract with the Secretary under section 450(g) of the Indian Self-Determination and Education Assistance Act or section 1652 of the Indian Health Care Improvement Act) by a residential treatment facility that meets the requirements of subsection (c); and

"(2) pursuant to an individualized treatment plan prepared by the facility for each individual, which plan—

"(A) states specific objectives necessary to meet the individual's needs,

"(B) describes the services to be provided to the individual to achieve those objectives,

"(C) is established in consultation with the individual and reflects the preferences of the individual,

"(D) is periodically reviewed and (as appropriate) revised by the staff of the facility in consultation with the individual, and

"(E) is established in a manner which promotes the active involvement of the individual in the development of the plan and its objectives.

"(b) REQUIRED SERVICES DEFINED.—For purposes of subsection (a), the required services described in this subsection are as follows:

"(1)(A) Individual, group, and family counseling, addiction education and treatment, provided pursuant to individualized treatment plans, including opportunity for involvement in Alcoholics Anonymous and Narcotics Anonymous,

"(B) parenting skills training,

"(C) education concerning prevention of HIV infection, and

"(D) assessment of each individual's need for domestic violence counseling and sexual abuse counseling and provision of such counseling where needed.

Services under this paragraph shall be provided in a cultural context that is appropriate to the individuals and in a manner that ensures that the individuals can communicate effectively, either directly or through interpreters, with persons providing services.

"(2) Room and board in a structured environment with on-site supervision 24 hours a day.

"(3) Therapeutic child care or counseling for children of individuals in treatment.

"(4) Assisting parents in obtaining access to—

"(A) developmental services (to the extent available) for their preschool children,

"(B) public education for their school-age children, including assistance in enrolling them in school, and

"(C) public education for parents who have not completed high school.

"(5) Facilitating access to prenatal and postpartum health care for women, to pediatric health care for infants and children, and to other health and social services where appropriate and to the extent available, including services under title V, services and nutritional supplements provided under section 17(i) of the Child Nutrition Act of 1986, services provided by federally qualified health centers, outpatient pediatric services, well-baby care, and early and periodic screening, diagnostic, and treatment services (as defined in section 1905(r)).

"(6) Ensuring supervision of children during times their mother or, if applicable, their caretaker parent, is in therapy or engaged in other necessary health or rehabilitative activities.

"(7) Planning for and counseling to assist reentry into society, including referrals to appropriate educational, vocational, and other employment-related programs (to the extent available), referrals to appropriate outpatient treatment and counseling after discharge (which may be provided by the same program, if available and appropriate) to assist in preventing relapses, transitional housing, and assistance in obtaining suitable affordable housing and employment upon discharge.

"(8) Continuing specialized training for staff in the special needs of residents and their children, designed to enable such staff to stay abreast of the latest and most effective treatment techniques.

"(c) FACILITY REQUIREMENTS.—The requirements of this subsection with respect to a facility are as follows:

"(1) The State has determined that the facility is able to provide (either directly or through arrangements with public and nonprofit private entities or, for medical services, through arrangements with licensed practitioners or federally qualified health centers or, with respect to such services provided to individual's eligible to receive services in Indian Health Facilities, through or under arrangements with the Indian Health Service or with a tribal or Indian organization that has entered into a contract with the Secretary under section 450(g) of the Indian Self-Determination and Education Assistance Act or section 1652 of the Indian Health Care Improvement Act) all the services described in subsection (b) and, except for Indian Health Facilities, meets all applicable State licensure or certification requirements for a facility of that type.

"(2)(A) Subject to subparagraph (B), the facility or distinct part thereof provides room and board and such facility is not licensed as a hospital and does not have more than 40 beds (including beds occupied by children).

"(B) The requirement under subparagraph (A) that a facility not be a hospital may be waived by the Secretary, if the Secretary finds that such facility is located in an Indian Health Service area and that such facility is the only, or one of the only, facilities available in such area to provide services under this section.

"(3) With respect to a facility providing the services described in subsection (b) to an individual eligible to receive services in Indian Health Facilities, such a facility demonstrates (as required by the Secretary) an ability to meet the special needs of Indian and Native Alaskan women.

"(d) LIMITATIONS ON COVERAGE.—(1) Subject to paragraph (2), services described in subsection (b) shall be covered in the amount, duration and scope therapeutically required for each eligible individual in need of such services, as determined by the State.

"(2) A State plan may limit coverage of alcoholism and drug dependency residential treatment services to a period of not less than 1 year. This paragraph shall not be construed as requiring a State plan to cover such services for any individual beyond the period for which such services are therapeutically required for that individual.

"(3) An assessment of an individual specified in subsection (e) seeking alcoholism and drug dependency residential treatment services shall be performed by the State to determine whether the individual is in need of alcoholism or drug dependency treatment services and, if so, the treatment setting (such as inpatient hospital, nonhospital residential, or outpatient) that is most appropriate in meeting the individual's health and therapeutic needs and the needs of the individual's dependent children, if any.

"(e) ELIGIBLE INDIVIDUALS DEFINED.—A State plan shall limit coverage under the plan of alcoholism and drug dependency residential treatment services under section 1905(a)(24) to the following individuals otherwise eligible for medical assistance under this title:

"(1) Women during pregnancy, and until the end of the 12th month following the termination of the pregnancy.

"(2) Children of a woman described in paragraph (1).

"(3) At the option of a State, caretaker parents and children of such parents.

"(f) OVERALL CAP ON MEDICAL ASSISTANCE AND PER-STATE BED LEVELS.—

"(1) IN GENERAL.—Federal expenditures with respect to alcoholism and drug dependency residential treatment services under this section shall be limited to the lesser of expenditures related to—

"(A) the total number of beds allocated by the Secretary for such services in any year under paragraph (3); or

"(B) 350 beds.

"(2) PARTICIPATION BY STATES.—

"(A) APPLICATIONS.—In order to receive Federal medical assistance for expenditures for alcoholism and drug dependency residential treatment services under this section beginning with fiscal year 1994, a State shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary shall determine.

"(B) SELECTION BY THE SECRETARY.—During fiscal year 1993, the Secretary shall evaluate the applications described in subparagraph (A) and shall select no fewer than 5, and no more than 15, States to provide alcoholism and drug dependency residential treatment services under this section.

"(3) ALLOCATION OF BEDS.—

"(A) INITIAL ALLOCATION.—Not later than July 1, 1993, the Secretary shall allocate a number of beds with respect to alcoholism and drug dependency residential treatment services under this section to each State selected by the Secretary under paragraph (2)(B) based on the need for such beds as demonstrated in the application submitted by such State under paragraph (2)(A) and notify such State of such allocation.

"(B) ADDITIONAL ALLOCATIONS.—If the number of beds allocated by the Secretary under subparagraph (A) is less than 350, the Secretary shall continue to solicit and evaluate applications from States and shall select additional States to provide alcoholism and drug dependency residential treatment services under this section until 350 beds have been allocated.

"(g) MAINTENANCE OF STATE FINANCIAL EFFORT.—No payment shall be made to a State under section 1903 in a State fiscal year for alcoholism and drug dependency residential treatment services unless the State provides assurances satisfactory to the Secretary that the State is maintaining State expenditures for such services at a level that is not less than the average annual level maintained by the State for such services for the 2-year period preceding such fiscal year.

"(h) FEDERAL FINANCIAL PARTICIPATION.—The Secretary shall make Federal funds available for alcoholism and drug dependency residential treatment services beginning on October 1, 1993.".

(2) PAYMENT BASIS.—Section 1902(a)(13) (42 U.S.C 1396a(a)(13)) is amended—

(A) by striking "and" at the end of subparagraph (E),

(B) by adding "and" at the end of subparagraph (F), and

(C) by adding at the end the following new subparagraph:

"(G) for payment for alcoholism and drug dependency residential treatment services which the State finds, and makes assurances satisfactory to the Secretary, are reasonable and adequate to meet the costs which must be incurred by efficiently and economically operated facilities in order to provide all the services listed in section 1931(b) in conformity with applicable State and Federal laws, regulations, and quality and safety standards and to assure that individuals eligible for such services have reasonable access to such services;".

(3) CONFORMING AMENDMENTS.—

(A) CLARIFICATION OF OPTIONAL COVERAGE FOR SPECIFIED INDIVIDUALS.—Section 1902(a)(10) (42 U.S.C. 1396a(a)(10)) is amended, in the matter following subparagraph (F)—

(i) by striking "and (XII)" and inserting "(XII)", and

(ii) by inserting before the semicolon at the end the following: ", and (XIII) the making available of alcoholism and drug dependency residential treatment services to individuals described in section 1931(e) shall not, by reason of this paragraph (10), require the making of such services available to other individuals".

(B) CONTINUATION OF LIMITED MEDICAID ELIGIBILITY FOR PREGNANT WOMEN FOR 12 MONTHS FOLLOWING END OF PREGNANCY.—Section 1902 (42 U.S.C. 1396a) is amended—

(i) in subsection (e)(5)—

(I) by striking "(5) A woman" and inserting "(5)(A) Except as provided in subparagraph (B), a woman"; and

(II) by adding at the end the following new subparagraph:

"(B) A woman who, while pregnant, received alcoholism and drug dependency residential treatment services under section 1931, shall continue to be eligible for such services for a period of up to 12 months following the termination of such pregnancy, if such services are provided on a continuous basis during a period beginning during such pregnancy."; and

(ii) in subsection (l)(1)(A), by striking "the pregnancy)" and inserting "the pregnancy, or in the case of women receiving alcoholism and drug dependency residential treatment services under section 1931, for a period of up to 12 months following the termination of such pregnancy, if such services are provided on a continuous basis during a period beginning during such pregnancy)".

(C) REDESIGNATIONS.—Section 1902 (42 U.S.C. 1396a) is further amended—

(i) in subsection (a)(10)(C)(iv), by striking "(23)" and inserting "(24)", and

(ii) in subsection (j), by striking "(24)" and inserting "(25)".

(4) ANNUAL EDUCATION AND TRAINING IN INDIAN HEALTH SERVICE AREAS.—The Secretary of Health and Human Services in cooperation with the Indian Health Service shall conduct, on at least an annual basis, training and education in each of the 12 Indian Health Service areas for tribes, Indian organizations, residential treatment providers, and State health care workers regarding the availability and nature of residential treatment services available in such areas under the provisions of this Act.

(b) TRANSITION.—The Secretary of Health and Human Services shall not take any compliance, disallowance, penalty, or other regulatory action against a State under title XIX of the Social Security Act with regard to alcoholism and drug dependency residential treatment services (as defined in section 1931(a) of such Act) made available under such title on or after October 1, 1993, before the date the Secretary issues final regulations to carry out the amendments made by this section, if the services are provided under its plan in good faith compliance with such amendments.

PART II—CHILD IMMUNIZATION PROVISIONS

SEC. 241. BULK VACCINE PURCHASING SYSTEMS FOR INCREASED VACCINATION OF MEDICAID ENROLLED CHILDREN.

(a) STATE MEDICAID BULK PURCHASING SYSTEMS.—Section 1902 (42 U.S.C. 1396a) is amended—

(1) in subsection (a)—

(A) by striking "and" at the end of paragraph (58);

(B) by striking the period at the end of paragraph (59) and inserting "; and"; and

(C) by inserting after paragraph (59) the following new paragraph:

"(60) provide for the establishment and operation of a vaccine replacement system (as described in section 1905(t)(1)), unless—

"(A) the State operates a universal vaccine distribution system (as described in section 1905(t)(2)), or

"(B) the State demonstrates to the satisfaction of the Secretary that a vaccine replacement system (as described in section 1905(t)(1)) would not be appropriate or cost-effective in the State."; and

(2) by adding at the end the following new subsection:

"(z) A State which establishes and operates a vaccine replacement system (as described in section 1905(t)(1)) under subsection (a)(60) shall not be precluded from making payments to providers on a fee-for-service basis for the provision of immunization services.".

(b) PAYMENTS TO STATES FOR MEDICAID BULK PURCHASING SYSTEMS.—Section 1903(a) (42 U.S.C. 1396b(a)) is amended—

(1) by redesignating paragraph (7) as paragraph (8); and

(2) by inserting after paragraph (6) the following new paragraph:

"(7) an amount equal to 75 percent of the sums expended during such a quarter which occurs within any 4-quarter period during the period beginning October 1, 1993, and ending April 1, 1995, with respect to costs incurred during such quarter which are attributable to developing and establishing a vaccine replacement system (as defined in section 1905(t)(1)) or a universal vaccine distribution system (as defined in section 1905(t)(2)) with respect to individuals eligible for medical assistance under a State plan under this title; plus".

(c) DEFINITION.—Section 1905 (42 U.S.C. 1396d) is amended by adding at the end the following new subsection:

"(t) VACCINE REPLACEMENT SYSTEM AND UNIVERSAL VACCINE DISTRIBUTION SYSTEM.—

"(1) VACCINE REPLACEMENT SYSTEM.—The term 'vaccine replacement system' means a State program which purchases childhood vaccines on behalf of entities providing medical assistance to individuals eligible for such medical assistance under the State plan under this title at prices negotiated by the Centers for Disease Control childhood immunization program (or at a lower price, if available) and provides such vaccines free of charge to such entities for administration to such individuals.

"(2) UNIVERSAL VACCINE DISTRIBUTION SYSTEM.—The term 'universal vaccine distribution system' means a State program under which vaccines are purchased in bulk on behalf of public and private entities providing routine immunization services in the State and provided, at no charge, to such entities.".

(d) GUIDELINES RELATED TO VACCINE REPLACEMENT SYSTEMS.—Not later than April 1, 1994, the Secretary shall issue guidelines for the operation of any vaccine replacement system established by a State under section

1902(a)(60) of the Social Security Act which shall include standards for the safe storage and distribution of childhood vaccines.

(e) COMPLIANCE.—Each State with a State plan under subsection (a) of section 1902 of the Social Security Act shall comply with paragraph (60) of such subsection no later than October 1, 1994.

(f) EFFECTIVE DATE.—The amendments made by subsections (a), (b), and (c), and the provisions of subsections (d) and (e), shall be effective on the date of the enactment of this section.

SEC. 242. REIMBURSEMENT TO VACCINE MANUFACTURERS.

(a) IN GENERAL.—Section 1902(a)(32) (42 U.S.C. 1396a(32)) is amended—

(1) by striking "and" at the end of subparagraph (B);

(2) by striking the period at the end of subparagraph (C) and inserting "; and"; and

(3) by adding at the end the following new subparagraph:

"(D) nothing in this paragraph shall be construed to prevent the making of such a payment to a manufacturer of a vaccine under a contract with the State, pursuant to which the manufacturer—

"(i) supplies without charge doses of vaccines to providers administering such vaccines to individuals eligible to receive medical assistance under the State plan,

"(ii) replaces such vaccines as needed, and

"(iii) charges the State agency the price under the most recent bid (determined once such bid price is made public) submitted by the manufacturer to the Centers for Disease Control with respect to the Centers for Disease Control childhood immunization program, plus a reasonable fee to cover shipping and handling of returns for doses administered by providers to individuals eligible to receive medical assistance under the State plan.".

(b) AGREEMENTS WITH THE STATE.—Section 1902(a)(27) (42 U.S.C. 1396a(a)(27)) is amended—

(1) by striking "under the State plan" and inserting "under the State plan and with any entity that is a manufacturer of a vaccine under a contract with the State under section 1902(a)(32)(E)"; and

(2) by striking "such person or institution" each place it appears and inserting "such person, institution, or entity".

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to services furnished on or after January 1, 1993.

SEC. 243. IMMUNIZATION OUTREACH DEMONSTRATION PROGRAM.

(a) ESTABLISHMENT.—The Secretary of Health and Human Services (hereafter referred to in this section as the "Secretary") shall establish a demonstration program to enable States to establish innovative immunization outreach demonstration programs.

(b) ELIGIBLE STATES.—To be eligible to participate in the demonstration program under this section a State shall prepare and submit to the Secretary an application, at such time, in such manner, and containing such information as the Secretary may require.

(c) APPROVAL OF APPLICATIONS.—The Secretary shall review and approve such applications submitted under subsection (b) as the Secretary determines appropriate.

(d) USE OF AMOUNTS.—Immunization outreach programs established under the demonstration program shall include—

(1) contacting parents concerning the immunization of children eligible for medical assistance under the State plan under title XIX of the Social Security Act,

(2) tracking the immunization status of such children, and

(3) such other activities as determined appropriate by the Secretary.

(e) REPORTS.—A State participating in the demonstration program conducted under this section shall annually prepare and submit to the Secretary a report with respect to the outreach activities conducted by such State under this section which shall include such information as the Secretary may require.

(f) LIMITS ON EXPENDITURES AND FUNDING.—

(1) IN GENERAL.—In conducting the demonstration program under this section, the Secretary shall limit the total amount of the Federal share of expenses incurred under title XIX of the Social Security Act to no more than $10,000,000 for fiscal years 1994 through 1997.

(2) NO INCREASE IN FEDERAL MEDICAL ASSISTANCE PERCENTAGE.—Payments to a State under this section with respect to expenditures made by such State under this section may not exceed the Federal medical assistance percentage (as defined in section 1905(b) of the Social Security Act) of such expenditures.

(g) REPORT.—Not later than September 30, 1998, the Secretary shall prepare and submit to the appropriate committees of Congress a report concerning the demonstration program established under this section.

PART III—MANAGED CARE WAIVER PROVISIONS

SEC. 251. MODIFICATION OF FREEDOM-OF-CHOICE WAIVERS.

(a) IN GENERAL.—Section 1915(b) (42 U.S.C. 1396n(b)) is amended by striking "(b)" and inserting "(b)(1)", by redesignating paragraphs (1), (2), (3), and (4) as subparagraphs (A), (B), (C), and (D), respectively, and by adding at the end the following new paragraphs:

"(2) A waiver under this subsection shall be for an initial term of 3 years and, upon the request of a State, shall be extended for additional 5-year periods, unless the Secretary determines that a shorter period is appropriate.

"(3) The Secretary shall not grant a waiver under this subsection to restrict an individual's freedom of choice of provider with respect to an entity which is paid on a risk basis if such entity is responsible for the provision (directly or through arrangements with providers of services) of—

"(A) inpatient hospital services and any other service described in paragraph (2), (3), (4), (5), or (7) of section 1905(a), or

"(B) any three or more of the services described in such paragraphs,

unless there is a choice of at least two such entities in an area and an individual has a choice between such entities.".

(b) CONFORMING AMENDMENT.—Section 1915(h) (42 U.S.C. 1396n(h)) is amended by inserting "(b)," before "(c)".

SEC. 252. WAIVER OF 75/25 RULE.

(a) IN GENERAL.—Section 1903(m)(2)(D) (42 U.S.C. 1396b(m)(2)(D)) is amended to read as follows:—

"(D)(i) In the case of a health maintenance organization that is a public or private entity, the Secretary may waive or modify the requirement described in subparagraph (A)(ii) if—

"(I) the entity is located in a medically underserved area;

"(II) the Secretary determines that the entity is unlikely to achieve compliance with such requirement without the expenditure of significant resources that would detract from the entity's ability to provide or improve patient care; and

"(III) the Secretary determines, pursuant to regulations issued by the Secretary, that the entity is likely to provide, or in the case of renewals, has provided and will continue to provide to individuals served by the entity, the access to and quality of care that would be available to such individuals if such individuals were not served by such entity.

"(ii) With respect to any private entity that is granted a waiver or modification under clause (i), the Secretary shall conduct an annual review of such entity's financial stability and provisions against the risk of insolvency. The Secretary shall publish the results of each annual review (in a manner that does not reveal any proprietary information). If the Secretary determines that such entity is not financially stable or has not made adequate provision against the risk of insolvency, the Secretary shall revoke such waiver or modification.

"(iii) Except as provided in clause (ii), a waiver under this subparagraph shall be for an initial term of 3-years and, upon the request of a State, shall be extended for additional 5-year periods, unless the Secretary determines that a shorter period is appropriate.".

(b) EXISTING WAIVERS.—Any waivers or modifications of the requirement under subsection (m)(2)(A)(ii) of section 1903 of the Social Security Act granted under subsection (m)(2)(D) of such section as in effect on the day before the effective date of this section shall continue in effect until such waivers expire.

(c) EFFECTIVE DATE.—The amendment made by subsection (a) and the provisions of subsection (b) shall be effective upon the issuance by the Secretary of Health and Human Services of the regulations described in section 1903(m)(2)(D)(i)(III) of the Social Security Act.

SEC. 253. ROLLING ONE MONTH CONTINUOUS ELIGIBILITY FOR INDIVIDUALS ENROLLED IN AN HMO OR PCCM.

(a) IN GENERAL.—Section 1902(e)(2) (42 U.S.C. 1396a(e)(2)) is amended by adding at the end the following new subparagraph:

"(C) The State plan may provide, notwithstanding any other provision of this title, that an individual shall be deemed to continue to be eligible for benefits under this title until the end of the month in which such individual would (but for this paragraph) lose such eligibility because of excess income or resources, if such individual is enrolled with an entity described in subparagraph (A) or a primary care case management system operating under a waiver under section 1915(b).".

(b) EFFECTIVE DATE.—The amendments made by this section shall be effective on January 1, 1993.

SEC. 254. ENHANCED MATCH RELATED TO QUALITY REVIEW.

(a) IN GENERAL.—Section 1903(a)(3)(C) (42 U.S.C. 1396b(a)(3)) is amended—

(1) by striking "organization or by" and inserting "organization, by"; and

(2) by striking "1902(d)" and inserting "1902(d), or by another organization approved by the Secretary which is unaffiliated with the State government or with any entity with a contract under subsection (m)".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to reviews conducted on or after January 1, 1993.

SEC. 255. STATEWIDE WAIVER FOR CERTAIN COUNTY ADMINISTERED PROGRAMS.

(a) IN GENERAL.—Section 1915 (42 U.S.C. 1396n) is amended by adding at the end the following new subsection:

"(i) In the case of a State which has a managed care system to be operated by the political subdivisions within the State, the Secretary is authorized to approve, based on a

single application, a series of waivers of the applicable provisions of section 1902 (in accordance with the requirements of subsection (b)) to authorize the State to approve managed care plans to be operated by such subdivisions. The Secretary shall approve such waivers only if the application contains a description of all the managed care models to be implemented by the political subdivisions within the State and documentation showing that such models have been established by State laws or regulations.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall be effective on the date of the enactment of this section.

SEC. 256. EXTENSION OF A CERTAIN MEDICAID HEALTH MAINTENANCE ORGANIZATION WAIVER.

The Secretary of Health and Human Services (hereafter referred to in this section as the "Secretary") may retroactively to October 1, 1991, extend until January 31, 1994, the waiver of the requirement described in section 1903(m)(2)(A)(ii) of the Social Security Act, granted to the District of Columbia Chartered Health Plan, Inc., if the Secretary determines that such entity has made and continues to make reasonable efforts and progress towards achieving compliance with such requirement contained in such Act.

PART IV—HOME AND COMMUNITY-BASED SERVICES WAIVER PROVISIONS

SEC. 261. ELIMINATION OF REQUIREMENT OF PRIOR INSTITUTIONALIZATION WITH RESPECT TO HABILITATION SERVICES FURNISHED UNDER A WAIVER FOR HOME OR COMMUNITY-BASED SERVICES.

(a) IN GENERAL.—Section 1915(c)(5) (42 U.S.C. 1396n(c)(5)) is amended in the matter preceding subparagraph (A) by striking ", with respect to individuals who receive such services after discharge from a nursing facility or intermediate care facility for the mentally retarded".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to services furnished after January 1, 1993.

SEC. 262. PAYMENTS FOR SERVICES ARRANGED THROUGH PRIVATE NONPROFIT ENTITIES OR PUBLIC ENTITIES.

(a) IN GENERAL.—Section 1902(a)(32) (42 U.S.C. 1396a(a)(32)), as amended by section 242, is further amended—

(1) by striking "and" at the end of subparagraph (C);

(2) by striking the period at the end of subparagraph (D) and inserting "; and"; and

(3) by adding at the end the following new subparagraph:

"(E) in the case of services arranged through any private nonprofit entity or public entity under subsection (c), (d), or (g) of section 1915, payments made by such entity to providers of services shall be permitted if—

"(i) such entity maintains a clear system of records demonstrating that payments made are for services required under the individual's plan of care; and

"(ii) providers paid by such entity could otherwise receive payments under the State plan;

"(iii) the services for which payment is made by such entity are services covered under waivers granted to the State under subsection (c), (d), or (g) of section 1915;

"(iv) the services for which payment is made by such entity were furnished to individuals eligible to receive services under waivers granted to the State under subsection (c), (d), or (g) of section 1915; and

"(v) such entity does not retain any portion of the payment.".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to payments for medical assistance for calendar quarters beginning on or after January 1, 1993.

SEC. 263. AGREEMENTS WITH PRIVATE NONPROFIT ENTITIES AND PUBLIC ENTITIES ARRANGING FOR HOME AND COMMUNITY-BASED SERVICES.

(a) IN GENERAL.—Section 1902(a)(27) (42 U.S.C. 1396a(a)(27)), as amended by section 242, is further amended by striking "1902(a)(32)(E)" and inserting "1902(a)(32)(E) or a private nonprofit entity or public entity that arranges for home or community-based services under subsection (c), (d), or (g) of section 1915"; and

(b) EFFECTIVE DATE.—The amendments made by this section apply to services furnished on or after January 1, 1993.

SEC. 264. FREEDOM OF CHOICE RESTRICTION FOR CASE MANAGEMENT SERVICES WITH RESPECT TO HOME OR COMMUNITY-BASED SERVICES.

(a) DISCRETIONARY WAIVER PROGRAM FOR INDIVIDUALS OTHERWISE REQUIRING INSTITUTIONALIZATION.—The first sentence of section 1915(c)(3) (42 U.S.C. 1396n(c)(3)) is amended by striking the period at the end and inserting the following: ", and may include a waiver of the requirements of section 1902(a)(23) (relating to individual choice of providers) with respect to the provision of case management services in order to ensure that case managers for individuals receiving home or community-based services are capable of ensuring that such individuals receive needed services, if the State provides assurances satisfactory to the Secretary that a waiver of such requirements will not substantially limit access to such services.".

(b) MANDATORY WAIVER PROGRAM FOR INDIVIDUALS 65 OR OLDER OTHERWISE REQUIRING INSTITUTIONALIZATION.—The first sentence of section 1915(d)(3) (42 U.S.C. 1936n(d)(3)) is amended by striking the period at the end and inserting the following: ", and may include a waiver of the requirements of section 1902(a)(23) (relating to individual choice of providers) with respect to the provision of case management services in order to ensure that case managers for individuals receiving home or community-based services are capable of ensuring that such individuals receive needed services, if State provides assurances satisfactory to the Secretary that a waiver of such requirements will not substantially limit access to such services.".

(c) EFFECTIVE DATE.—The amendments made by this section shall be effective on the date of the enactment of this Act.

SEC. 265. RELIEF FROM THIRD PARTY LIABILITY REQUIREMENTS WHEN COST EFFECTIVE.

(a) IN GENERAL.—Section 1902(a)(25)(B) (42 U.S.C. 1396a(a)(25)(B)) is amended to read as follows—

"(B) that in any case where such a legal liability is found to exist after medical assistance has been made available, the State or local agency will seek reimbursement for such assistance to the extent of such legal liability, unless—

"(i) the amount of reimbursement the State can reasonably expect to recover for medical assistance furnished to an individual does not exceed the costs of such recovery, or

"(ii) with respect to case management services, the State demonstrates to the satisfaction of the Secretary that it is not cost-effective in the aggregate to seek such recovery with respect to such services furnished to individuals covered under the State plan, using methods specified by the Secretary which shall include a demonstration that such services are not generally covered by health insurers in the State;".

(b) EFFECTIVE DATE.—The amendments made by this section shall be effective on January 1, 1993.

SEC. 266. STATE EXPENDITURES FOR MEDICAL ASSISTANCE WITH RESPECT TO HOME AND COMMUNITY-BASED SERVICES PROVIDED UNDER A WAIVER.

(a) IN GENERAL.—Section 1915(d)(5)(B) (42 U.S.C. 1396n(d)(5)(B)) is amended—

(1) in clause (i), by striking "times the number of years" and inserting "compounded annually for years"; and

(2) in clause (ii), by striking "times the number of years" and inserting "compounded annually for years".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall be effective as if included in the enactment of the OBRA-87.

PART V—ELIGIBILITY PROVISIONS

SEC. 271. OPTIONAL COVERAGE FOR FOSTER CHILDREN.

(a) IN GENERAL.—Section 1902(a)(10)(A)(ii) (42 U.S.C. 1396a(a)(10)(A)(ii)) is amended—

(1) by striking "or" at the end of subclause (X),

(2) by striking the semicolon at the end of subclause (XI) and inserting "; or"; and

(3) by adding at the end the following new subclause:

"(XII) who are described in subclause (IX) and subsection (aa);".

(b) DESCRIPTION OF CHILDREN IN FOSTER HOMES, GROUP HOMES, OR PRIVATE INSTITUTIONS.—Section 1902 (42 U.S.C. 1396a), as amended by section 241, is further amended by adding at the end the following new subsection:

"(aa) Individuals described in this subsection are children who have been placed in foster care, including children placed under the auspices of a public child welfare agency, children placed by a private agency under contract to a public agency, and children placed by a licensed private child welfare agency.".

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall become effective with respect to payments under title XIX of the Social Security Act for calendar quarters beginning on or after July 1, 1993.

SEC. 272. QUALIFIED MEDICARE BENEFICIARIES OUTREACH DEMONSTRATION PROJECTS.

(a) IN GENERAL.—The Secretary of Health and Human Services (hereafter in this section referred to as the "Secretary") shall provide for the establishment of demonstration projects in no fewer than 5 and no more than 10 States for the purpose of providing information, counseling, and assistance to individuals who are likely to be eligible for benefits as qualified medicare beneficiaries (as defined in section 1905(p)(1) of the Social Security Act (42 U.S.C. 1396d(p)(1)), qualified disabled and working individuals as defined in section 1905(s) of such Act (42 U.S.C. 1396d(s)), and individuals described in section 1902(a)(10)(E)(iii) of such Act (42 U.S.C. 1396a(a)(10)(E)) (in this section referred to as "eligible individuals").

(b) APPLICATIONS.—

(1) IN GENERAL.—

(A) SUBMISSION.—Each State desiring to conduct a demonstration project under this section shall prepare and submit to the Secretary an application, at such time, in such manner, and containing such information (in addition to the information required under subparagraph (B)) as the Secretary may require.

(B) CONTENTS OF APPLICATION.—As part of an application submitted under subparagraph (A), a State shall submit a plan for an information, counseling, and assistance program. Such program shall—

(i) establish or improve upon an information, counseling, and assistance program that provides counseling and assistance to eligible individuals to assist such individuals in applying for medicare cost-sharing (as defined in section 1905(p)(3) of the Social Security Act (42 U.S.C. 1396d(p)(3));

(ii) provide for acceptance of applications for medicare cost-sharing and information, counseling, and assistance at sites described in subsection (c);

(iii) establish a system of referral to appropriate Federal or State departments or agencies for assistance with problems related to enrollment in and full implementation of such medicare cost-sharing program;

(iv) provide for a sufficient number of staff positions (including volunteer positions) necessary to provide the services of the information, counseling, and assistance program;

(v) provide for the collection and dissemination of timely and accurate enrollment information to staff members;

(vi) provide for training programs for staff members (including volunteer staff members);

(vii) provide for the coordination of the exchange of enrollment information between the staff of departments and agencies of the State government and the staff of the information, counseling, and assistance program;

(viii) make recommendations concerning consumer issues and complaints related to such enrollment to agencies and departments of the State government and the Federal Government responsible for providing such medicare cost-sharing;

(ix) establish an outreach program to provide the enrollment information and counseling described in clause (i) and the assistance described in clause (iii) to eligible individuals; and

(x) demonstrate, to the satisfaction of the Secretary, an ability to provide the services required under this subsection.

(2) APPROVAL OF APPLICATIONS.—The Secretary shall approve no fewer than 5 and no more than 10 of the applications submitted under paragraph (1)(B).

(c) ADMINISTRATION.—The State shall operate the information, counseling, and assistance program in locations other than State welfare offices, including Social Security Administration offices, facilities operated by Area Agencies on Aging, senior centers, and other locations determined by the Secretary in consultation with the State.

(d) MAINTENANCE OF EFFORT.—Any funds appropriated for the activities under this section shall supplement, and shall not supplant, funds that are expended for similar purposes under any Federal, State, or local program.

(e) ANNUAL APPLICANT REPORT.—A State that conducts a demonstration project under this section shall, not later than 180 days after the date on which such project begins, and for each year in which such project is conducted, issue a report to the Secretary that includes information concerning—

(1) the number of individuals served by the information, counseling, and assistance program of such State; and

(2) the problems that eligible individuals encounter in enrolling for medicare cost-sharing.

(f) REPORT TO CONGRESS.—Not later than 2 years after the first demonstration project under this section begins, and for each year in which a project is conducted under this section, the Secretary shall issue a report to the Committee on Finance of the Senate, the Special Committee on Aging of the Senate, the Committee on Ways and Means of the House of Representatives, the Committee on Energy and Commerce of the House of Representatives, and the Select Committee on Aging of the House of Representatives that—

(1) summarizes the allocation of funds under this section and the expenditure of such funds;

(2) outlines the problems that eligible individuals encounter in enrolling for medicare cost-sharing as reported by the States in the reports submitted to the Secretary under subsection (e);

(3) makes recommendations that the Secretary determines to be appropriate to address the problems described in paragraph (2); and

(4) evaluates the effectiveness of counseling programs established under this program, and makes recommendations regarding continued authorization of funds for these purposes.

(g) DURATION.—A demonstration project provided under this section shall be conducted for a period not to exceed 3 years. The Secretary may terminate a project if the Secretary determines that the State conducting the project is not in substantial compliance with the terms of the application approved by the Secretary under this section.

(h) LIMITS ON EXPENDITURES AND FUNDING.—

(1) IN GENERAL.—In conducting the demonstration projects under this section, the Secretary shall limit the total amount of the Federal share of expenses incurred under title XIX of the Social Security Act to no more than $15,000,000 for fiscal years 1994 through 1997.

(2) NO INCREASE IN FEDERAL MEDICAL ASSISTANCE PERCENTAGE.—Payments to a State under this section with respect to expenditures made by such State under this subsection may not exceed the Federal medical assistance percentage (as defined in section 1905(b) of the Social Security Act) of such expenditures.

SEC. 273. EXTENSION OF CERTAIN DEMONSTRATION PROJECTS.

(a) DEMONSTRATION PROJECTS EXTENDING MEDICAID TO PREGNANT WOMEN AND CHILDREN NOT OTHERWISE ELIGIBLE.—

(1) IN GENERAL.—Section 6407 of OBRA-89 is amended—

(A) in subsection (d), by striking "3 years" and inserting "5 years";

(B) in subsection (f), by striking "$10,000,000 in each of fiscal years 1990, 1991, and 1992" and inserting "$30,000,000 for fiscal years 1990 through 1996"; and

(C) in subsection (g)(2), by striking "January 1, 1994" and inserting "one year after the termination of the demonstration projects".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall take effect as if included in the enactment of OBRA-89.

(b) DEMONSTRATION PROJECTS TO STUDY EFFECT OF ALLOWING STATES TO EXTEND MEDICAID COVERAGE TO CERTAIN LOW-INCOME FAMILIES NOT OTHERWISE ELIGIBLE.—

(1) EXTENSION OF DEMONSTRATION.—

(A) IN GENERAL.—Section 4745 of OBRA-90 is amended—

(i) in subsection (d), by striking "shall commence not later than July 1, 1991 and shall be conducted for a 3-year" and inserting "shall be conducted for a period not to exceed 5 years";

(ii) in paragraph (1) of subsection (e), by striking "$12,000,000 in each of fiscal years 1991, 1992, and 1993, and to no more than $4,000,000 in fiscal year 1994" and inserting "$40,000,000 for fiscal years 1991 through 1997"; and

(iii) in paragraph (2) of subsection (f) by striking "January 1, 1995" and inserting "one year after the termination of the projects".

(B) EFFECTIVE DATE.—The amendments made by paragraph (1) shall take effect as if included in the enactment of OBRA-90.

(2) ADDITION OF CERTAIN PROJECTS ON A SUBSTATE BASIS.—

(A) IN GENERAL.—Section 4745 of OBRA-90, as amended by paragraph (1), is amended—

(i) by amending paragraph (1) of subsection (a) to read as follows:

"(a) DEMONSTRATION PROJECTS.—

"(1) IN GENERAL.—

"(A) PROJECTS CONDUCTED ON A STATEWIDE BASIS.—Except as provided in subparagraph (B)(ii), the Secretary of Health and Human Services (hereafter referred to in this section as the "Secretary") shall enter into agreements with no fewer than 3 and no more than 4 States submitting applications under this section for the purpose of conducting demonstration projects to study the effect on access to, and costs of, health care of eliminating the categorical eligibility requirement for medicaid benefits for certain low-income individuals.

"(B) PROJECTS CONDUCTED ON A SUBSTATE BASIS.—

"(i) IN GENERAL.—Except as provided in clause (ii), in entering into agreements with States under this section, the Secretary shall provide that at least 1 and no more than 2 of the projects are conducted on a substate basis.

"(ii) CERTAIN SUBSTATE PROJECTS.—

"(I) IN GENERAL.—In addition to the demonstration projects conducted under subparagraph (A) and clause (i), the Secretary shall provide that no more than 3 projects are conducted on a substate basis in substate areas with—

"(aa) a per capita income that does not exceed 70 percent of the national average per capita income, as determined by the Department of Commerce, and

"(bb) an unemployment rate, as determined by the employment statistics of the applicable State, that is not less than 125 percent of the national average unemployment rate, as determined by the Bureau of Labor Statistics,

at the time the applications required under subclause (II) are submitted.

"(II) SUBMISSION OF APPLICATIONS.—Each State desiring to conduct a demonstration project on a substate basis under this clause shall submit an application to the Secretary at such time and in such manner as the Secretary shall determine.

"(III) APPROVAL OF APPLICATIONS.—The Secretary shall review the applications submitted under subclause (II) and approve no fewer than 2 and no more than 3 such applications. The Secretary shall begin making Federal funds available for the projects approved under this subclause no later than April 1, 1993.

"(IV) SELECTION OF SUBSTATE AREAS.—In approving applications under subclause (III), the Secretary shall give a preference to remote communities—

"(aa) in which the health services delivery infrastructure is poorly developed,

"(bb) in which the residents face significant health risks due to lack of adequate public services,

"(cc) in which there is a health risk relating to communicable diseases or parasites, and

"(dd) in which the State or local government is prepared to make a financial contribution to the project in addition to such State's share of expenditures under title XIX of the Social Security Act.";

(ii) in subsection (e)(1), by adding at the end the following new subparagraph:

"(C) In addition to the amounts referred to in subparagraph (A), the Secretary shall make available $10,000,000 for fiscal years 1993 through 1997 for the Federal share of benefits paid and expenses incurred under title XIX of the Social Security Act for projects conducted under subsection (a)(1)(B)(ii).''; and

(iii) in paragraph (1) of subsection (f) by adding after subparagraph (C) the following new flush sentence:

"In addition to the issues described in subparagraphs (A), (B), and (C), for each substate project conducted under subsection (a)(1)(B)(ii), the Secretary shall provide an evaluation to determine the effect of the project with respect to whether the expanded availability of benefits under the medicaid program for the individuals residing in a community is effective in helping the community to develop a viable health care infrastructure.".

(B) EFFECTIVE DATE.—The amendments made by this paragraph shall be effective on the date of the enactment of this section.

SEC. 274. PERIODS OF INELIGIBILITY FOR NURSING FACILITY SERVICES.

(a) IN GENERAL.—The last sentence of section 1917(c)(1) (42 U.S.C. 1396p(c)(1)) is amended to read as follows: "The period of ineligibility shall—

"(A) be equal to the lesser of—

"(i) 30 months, or

"(ii)(I) the total uncompensated value of the combined amount of all transferred resources, divided by

"(II) the average cost to a private patient at the time of the application, of nursing facility services in the State or, at State option, in the community in which the individual is institutionalized, and

"(B) begin upon the discovery by the State that resources have been transferred.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to resources transferred on or after January 1, 1993.

PART VI—OTHER PROVISIONS

SEC. 281. DRUG PRICE REBATE AGREEMENTS.

(a) MEDICAID REBATE AGREEMENTS.—

(1) MINIMUM REBATE PERCENTAGES INCREASED.—Section 1927(c)(1)(B)(i) (42 U.S.C. 1396r-8(c)(1)(B)(i)) is amended—

(A) by amending subclause (II) to read as follows:

"(II) after December 31, 1992, and before January 1, 1994, is 15.7 percent," and

(B) by adding at the end the following new subclauses:

"(III) after December 31, 1993, and before January 1, 1995, is 15.4 percent,

"(IV) after December 31, 1994, and before January 1, 1996, is 15.2 percent, and

"(V) after December 31, 1995, is 15.1 percent.".

(2) MODIFICATION OF BEST PRICE DEFINITION.—Section 1927(c)(1)(C) (42 U.S.C. 1396r-8(c)(1)(C)) is amended—

(A) by striking "For purposes of this section" and inserting "(i) For purposes of this section",

(B) by inserting "supply schedule prices or prices paid by any entity described in clause (ii), and" after "excluding", and

(C) by adding at the end the following new clause:

"(ii) An entity described in this clause is—

"(I) a Federally qualified health center (as defined in section 1905(l)(2)(B),

"(II) an alcohol or drug treatment entity or mental health entity receiving assistance under title V or title XIX of the Public Health Service Act;

"(III) a family planning project described in section 1001 of the Public Health Service Act;

"(IV) an entity receiving assistance under title XXVI of the Public Health Service Act;

"(V) a black lung clinic authorized under the Public Health Service Act;

"(VI) a clinic that treats sexually transmitted diseases and is authorized under section 318 of the Public Health Service Act;

"(VII) an entity receiving funds to provide primary health services to residents of public housing under section 340A of the Public Health Service Act;

"(VIII) a non-Federal entity authorized under the Indian Self-Determination Act;

"(IX) a tuberculosis clinic receiving assistance under section 317(j)(2) or 317(k)(2) of the Public Health Service Act; or

"(X) a satellite entity of any of the entities described in subclauses (I) through (IX).

This clause shall apply to an entity only if such entity is principally engaged in the purpose for which funding is provided under the Public Health Service Act. An entity with respect to which funds are provided under the Public Health Service Act and which is a distinct part of a larger organization (whether or not it is legally distinct) shall be treated as a separate entity for purposes of this clause.

(3) ADDITIONAL DEFINITIONS.—Section 1927(k) (42 U.S.C. 1396r-8(k)) is amended by adding at the end thereof the following new paragraph:

"(8) SUPPLY SCHEDULE.—The term 'supply schedule' means Group 65 of the Federal Supply Schedule.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to calendar quarters beginning on or after January 1, 1993.

SEC. 282. CLARIFICATION OF COVERAGE OF CERTIFIED NURSE-MIDWIFE SERVICES PERFORMED OUTSIDE THE MATERNITY CYCLE.

(a) IN GENERAL.—Section 1905(a)(17) (42 U.S.C. 1396d(a)(17)) is amended by inserting before the semicolon at the end the following: ", and without regard to whether or not the services are concerned with the management of mothers and newborns throughout the maternity cycle".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to services furnished on or after October 1, 1993.

SEC. 283. CRITERIA FOR MAKING DETERMINATIONS OF DENIAL OF PAYMENT TO STATES.

(a) IN GENERAL.—Section 1903 (43 U.S.C. 1396b) is amended by adding at the end the following new subsection:

"(x)(1) In any case in which the Secretary proposes to disallow under section 1116(d) a claim by a State under this section and the State exercises its right of reconsideration under section 1116(d), the Departmental Appeals Board established in the Department of Health and Human Services shall, if such Board upholds the basis for the disallowance, determine whether the amount of the disallowance should be reduced. In making this determination, the Board shall take into account (to the extent the State makes a showing) factors which shall include, but not be limited to—

"(A) whether the basis of the disallowance was procedural in nature;

"(B) whether the amount of the disallowance is proportionate to the error or deficiency on which the disallowance is based;

"(C) whether the basis of the disallowance constitutes noncompliance that prevented or materially affected the provision of appropriate services of recipients eligible under this title; or

"(D) whether Federal guidance with respect to the action that is the basis for the proposed disallowance was insufficient and the State made good faith efforts to conform its action to the intent of the applicable Federal statute or regulation.

"(2) No disallowance shall be taken or upheld if action of the State on which the disallowance would be based is consistent with its approved State plan.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to disallowances made after the date of the enactment of this Act and shall take effect without regard to the promulgation of implementing regulations.

SEC. 284. CERTIFICATION OF ADDITIONAL PAYMENT TO PUERTO RICO UNDER MEDICAID.

Section 1108(c)(1) (42 U.S.C. 1308(c)(1)) is amended by striking "and (C) $79,000,000 for fiscal year 1990 (and each succeeding fiscal year)" and inserting "(C) $79,000,000 for fiscal years 1990, 1991, 1992, and 1993, (D) $89,000,000 for fiscal year 1994, (E) $91,000,000 for fiscal years 1995 and 1996, and (F) $94,000,000 for fiscal year 1997 (and each succeeding fiscal year)".

SEC. 285. EXPENDITURES FOR COMMUNITY SUPPORTED LIVING ARRANGEMENTS SERVICES.

(a) IN GENERAL.—Section 1930(j) (42 U.S.C. 1396u(j)) is amended by striking ", and for fiscal years thereafter such sums as provided by Congress", and by adding at the end the following new sentence: "Beginning with fiscal year 1993, any funds available under this paragraph for a fiscal year which remain available at the end of the fiscal year shall be available to be expended in the following fiscal year."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall be effective as if included in the enactment of the OBRA-1990.

SEC. 286. NATIVE HAWAIIAN HEALTH CENTERS.

(a) IN GENERAL.—Section 1905(l)(2)(B)(iv) (42 U.S.C. 1396d(l)(2)(B)(iv)) is amended by striking the period at the end and inserting "or is a native Hawaiian health center operated under the Native Hawaiian Health Care Act of 1988.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to services furnished on or after October 1, 1992.

TITLE III—MISCELLANEOUS AMENDMENTS

SEC. 301. EVALUATIONS OF MATERNAL AND CHILD HEALTH SERVICES BLOCK GRANT PROGRAMS.

(a) IN GENERAL.—Section 502 (42 U.S.C. 702) is amended by adding at the end the following new subsection:

"(e) During any fiscal year when the amount appropriated under section 501(a) is not less than the amount authorized under such section, such portion of the appropriations for that fiscal year under such section as the Secretary may determine, but not exceeding 1 percent thereof, shall be available for evaluations to be conducted by the Secretary (directly or by grants or contracts) of the programs for which such appropriations are made and, in the case of allotments from any such appropriations, the amount avail-

able for allotments shall be reduced accordingly.".

(b) INCREASE IN AUTHORIZATION OF APPROPRIATIONS.—Section 501(a) (42 U.S.C. 701(a)) is amended in the matter preceding paragraph (1), by striking "$686,000,000 for fiscal year 1990" and inserting "$686,000,000 for fiscal years 1990, 1991, and 1992, and $692,860,000 for fiscal year 1993".

(c) ADDITIONAL RESPONSIBILITIES FOR ENTITY ADMINISTERING PROGRAM.—Section 509(a) (42 U.S.C. 709(a)) is amended—

(1) by striking "and" at the end of paragraphs (6) and (7);

(2) by striking the period at the end of paragraph (8) and inserting "; and"; and

(3) by adding at the end the following new paragraph:

"(9) program evaluations as described in section 502(e).".

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

DANFORTH (AND BOND) AMENDMENT NO. 3319

Mr. DOLE (for Mr. DANFORTH, for himself and Mr. BOND) proposed an amendment to amendment No. 3318 proposed by Mr. BENTSEN to the bill H.R. 11, supra, as follows:

In section 137, amend subsection (b) to read as follows:

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to cost reporting periods beginning on or after October 1, 1990, except that for cost reporting periods beginning on or before September 30, 1992, payments required by the amendments made by subsection (a) shall not be made prior to October 1, 1993.

After section 286, insert the following new section:

SEC. 287. DEMONSTRATION PROJECT TO STUDY THE EFFECT OF PROVIDING OUTREACH, ASSESSMENT, AND REFERRAL SERVICES THROUGH MEDICAID TO MENTALLY ILL HOMELESS INDIVIDUALS.

(a) ESTABLISHMENT.—Pursuant to section 1115 of the Social Security Act, the Secretary of Health and Human Services (referred to in this section as the "Secretary") shall provide for demonstration projects to be conducted in no fewer than 1 and no more than 2 States for providing outreach, assessment, and referral services to homeless mentally ill individuals in order to determine the extent to which—

(1) aggressive and repeated efforts to engage such individuals is effective in achieving stable housing arrangements, improving mental health status, and improving overall health status, including the prevention of communicable diseases such as tuberculosis, and

(2) providing a program under title XIX of the Social Security Act for such individuals is an appropriate method for increasing access to medical and social services for such individuals.

(b) REQUIREMENTS ON PROJECTS.—

(1) LOCATION.—Each State conducting a demonstration project under this section shall conduct such project in at least one metropolitan statistical area (as determined by the Bureau of the Census) with a population greater than 1,000,000.

(2) MOBILE OUTREACH TEAMS.—The State shall develop and implement mobile outreach teams to be located within each metropolitan statistical area in which the demonstration project is conducted to—

(A) identify individuals, without regard to whether such individuals are eligible for benefits under title XIX of the Social Security Act, who the mobile outreach teams have reasonable cause to believe may be suffering from a severe mental disorder and who appear to have no permanent residence; and

(B) offer such individuals services, either by providing transport to an assessment-referral center (as described in paragraph (3)) or by providing appropriate assistance to such individuals on site.

If an individual identified under subparagraph (A) refuses such services or assistance from the mobile outreach team and such team has reasonable cause to believe that such individual meets the criteria for involuntary commitment, the team shall provide information on the individual to the appropriate authorities recognized under the State's civil commitment laws.

(3) ASSESSMENT-REFERRAL CENTERS.—The State shall designate assessment-referral centers to be located in each metropolitan statistical area in which the demonstration project is conducted to make available to the individuals identified under paragraph (2)(A)—

(A) services for a period not to exceed 30 days, including—

(i) basic necessities, including clothing, personal hygiene needs, food, blankets, and access to bathing facilities;

(ii) temporary room and board, and referral to appropriate transitional or permanent housing;

(iii) screening and treatment for medical conditions (other than psychiatric conditions), including screening and treatment for tuberculosis, if necessary;

(iv) psychiatric assessments, including assessments regarding alcoholism and drug abuse;

(v) mental health case management services (as defined in section 1915(g)(2) of the Social Security Act);

(vi) emergency psychiatric intervention, if necessary;

(vii) assistance in applying for Federal, State, and local entitlements; and

(viii) referral to other needed services, including employment and job-training services, available in the community;

(B) an individualized treatment plan, developed in cooperation with the individual, for the provision of any necessary mental health services for which payment may be made under the State plan under title XIX of the Social Security Act; and

(C) at the option of the State, any other mental health services for which Federal financial participation is available under title XIX of the Social Security Act, whether or not the service is covered under the State plan.

(4) PRESUMPTIVE ELIGIBILITY PERIOD.—The State may, during a presumptive eligibility period, provide for making available psychiatric and medical services for which payment may be made under the State plan under title XIX of the Social Security Act to individuals described in paragraph (2)(A) through individualized treatment plans.

(c) APPLICATIONS.—

(1) SUBMISSION.—Not later than February 1, 1993, each State desiring to conduct a demonstration project under this section shall prepare and submit to the Secretary an application, in such manner and containing such information as the Secretary may require.

(2) APPROVAL OF APPLICATIONS.—

(A) IN GENERAL.—Not later than June 1, 1993, the Secretary shall approve no fewer than 1 and no more than 2 of the applications submitted under paragraph (1).

(B) CONSIDERATION OF APPLICATIONS.—In considering the applications submitted by States under paragraph (1), the Secretary shall give a preference to States that have—

(i) linkage and access within the State to a metropolitan service-research project for homeless mentally ill people which can provide, for comparative evaluation purposes, experimentally designed research data on the outcomes of providing an outreach and case management program to homeless individuals,

(ii) a structure under which mental health services and substance abuse services are administered in an integrated or coordinated manner,

(iii) mental health and substance abuse rehabilitation services covered under the State medicaid plan, and

(iv) the ability to provide the services listed in subsection (b)(3) beginning no later than October 1, 1993.

(d) DEFINITIONS.—For purposes of this section:

(1) MOBILE OUTREACH TEAM.—The term "mobile outreach team" means a group of individuals designated by the State whose duty it is to seek out homeless persons who are mentally ill and offer them assistance and access to health, mental health, and social services. Such a team shall be comprised of 2 or more people with appropriate training or experience and at least one of whom shall be a qualified mental health professional.

(2) ASSESSMENT-REFERRAL CENTER.—The term "assessment-referral center" means any facility designated by the State which can provide directly, or by direct arrangement with other public or private agencies, the services listed in subsection (b)(3) except that no correctional institution or facility, shall be considered an assessment-referral center for purposes of this paragraph.

(3) SEVERE MENTAL DISORDER.—The term "severe mental disorder" means an illness, disease, organic brain disorder, or other condition which—

(A) substantially impairs an individual's thought, perception of reality, emotional process, or judgment; or

(B) substantially impairs behavior as manifested by recent disturbed behavior, (except that mental retardation, epilepsy, or other developmental disabilities do not, in themselves, constitute a severe mental disorder for purposes of this paragraph).

(4) INDIVIDUALIZED TREATMENT PLAN.—The term "individualized treatment plan" means a plan for an individual brought to an assessment-referral center which shall describe what medical or psychiatric treatment, if any, the individual will receive after leaving the assessment-referral center, as well as any referrals or other services deemed appropriate.

(5) PRESUMPTIVE ELIGIBILITY PERIOD.—The term "presumptive eligibility period" means the period that—

(A) begins with the date—

(i) after which an individualized treatment plan has been developed, and

(ii) on which a qualified provider determines, on the basis of preliminary information, that the individual is otherwise eligible under the State plan under title XIX of the Social Security Act, and

(B) ends with (and includes) the earlier of—

(i) the day on which determination is made with respect to eligibility of the individual for medical assistance under such State plan, or

(ii) the day that is 60 days after the date on which the provider makes the determination referred to in subparagraph (A)(ii).

(e) LIMIT ON FEDERAL SHARE OF EXPENDITURES AND FUNDING.—

(1) LIMIT ON FEDERAL SHARE OF EXPENDITURES.—In conducting the demonstration projects under this section, the Secretary shall limit the total amount of the Federal share of expenses incurred under title XIX of the Social Security Act to no more than $24,000,000.

(2) FEDERAL FUNDING.—The Secretary shall pay to each State conducting a demonstration project under this section for each quarter (beginning on or after October 1, 1993) in which such project is conducted an amount determined in accordance with section 1903(a) of the Social Security Act except that no percentage applied to any category of expenditures incurred by the State in any such quarter shall be less than the State's Federal medical assistance percentage (as defined in section 1905(b) of such Act).

(f) DURATION.—A demonstration project under this section shall be conducted for a period of no more than 5 years plus an additional period of up to 6 months for final evaluation and reporting. The Secretary may terminate a project if the Secretary determines that the State conducting the project is not in substantial compliance with the terms of the application approved by the Secretary under this section.

(g) REPORTS.—Each State conducting a demonstration project shall arrange for an independent evaluation of such project and shall transmit a report on the results of such evaluation to the Secretary not more than 6 months after the conclusion of the project. Such report shall—

(1) evaluate the extent to which the project was successful in assisting homeless mentally ill individuals to—

(A) obtain needed temporary housing as an immediate alternative to homelessness,

(B) obtain mental health treatment and services,

(C) obtain needed substance abuse treatment and services,

(D) obtain and maintain stable, permanent housing,

(E) improve mental health status,

(F) reduce chemical dependency, and

(G) improve health status, including prevention of communicable diseases, and

(2) evaluate the effectiveness and adequacy of title XIX of the Social Security Act for providing access to needed health, mental health, and social services to homeless individuals.

(h) PROVISIONS SUBJECT TO WAIVER.—The Secretary may waive such requirements of the Social Security Act as the Secretary determines to be necessary to carry out the purposes of this section.

FEDERAL FIRE PREVENTION AND CONTROL APPROPRIATIONS ACT

BRYAN AMENDMENT NO. 3320

Mr. SIMON (for Mr. BRYAN) proposed an amendment to the bill S. 1690 to authorize appropriations for activities under the Federal Fire Prevention and Control Act of 1974, and for other purposes, as follows:

In lieu of the matter proposed to be inserted by the Committee amendment to the bill, insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Fire Administration Authorization Act of 1992".

TITLE I—UNITED STATES FIRE ADMINISTRATION

SEC. 101. AUTHORIZATION OF APPROPRIATIONS.

Section 17(g)(1) of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2216(g)(1)) is amended—

(1) by striking "and" at the end of subparagraph (B);

(2) by striking the period at the end of subparagraph (C) and inserting in lieu thereof a semicolon; and

(3) by adding at the end the following new subparagraphs:

"(D) $25,550,000 for the fiscal year ending September 30, 1992;

"(E) $26,521,000 for the fiscal year ending September 30, 1993; and

"(F) $27,529,000 for the fiscal year ending September 30, 1994.".

SEC. 102. PRIORITY ACTIVITIES OF THE UNITED STATES FIRE ADMINISTRATION.

(a) PRIORITY ACTIVITIES.—In expending funds appropriated pursuant to the amendments made by section 101 of this Act, the United States Fire Administration shall give priority to—

(1) reducing the incidence of residential fires, especially in residences of the very old, the very young, or the disabled in urban and rural areas, through the development and dissemination of public education and awareness programs, through arson research and technical assistance programs, and through research and development on new technologies;

(2) working with State Fire Marshals and other State level fire safety offices to identify fire problems that are national in scope;

(3) disseminating information about the activities and programs of the United States Fire Administration to State and local fire services;

(4) enhancing the residential sprinkler programs, including research, demonstration activities, and technical assistance to the public and private sectors;

(5) enhancing research into sprinkler programs in areas or structures with limited or no domestic water supply;

(6) through the National Fire Academy, enhancing the residential and field program in support of State level training programs, particularly those that support the volunteer fire service; and

(7) strengthening programs that help protect the lives and safety of fire emergency medical services personnel, including research into causes of death and injuries, research and development of new technologies to mitigate and prevent injuries, dissemination of information, and technical assistance to State and local fire departments.

(b) REPORT TO CONGRESS.—The United States Fire Administration shall, within 1 year after the date of enactment of this Act, submit a report to the Congress on the activities undertaken pursuant to subsection (a)(1).

SEC. 103. REPORT ON IMPLEMENTATION OF HOTEL AND MOTEL FIRE SAFETY ACT OF 1990.

The United States Fire Administration shall, within 6 months after the date of enactment of this Act, report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives on its progress in implementing the Hotel and Motel Fire Safety Act of 1990 (Public Law 101-391; 104 Stat. 747), including amendments made by that Act. The report shall specify the nature of expenditures made as of the date of the report, as well as including an estimate of the costs and a specific schedule for implementation.

SEC. 104. LISTINGS OF DESIGNATED PLACES OF PUBLIC ACCOMMODATION.

Section 28 of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2224) is amended—

(1) by striking "CERTIFIED" in the section heading; and

(2) in subsection (a)—

(A) by inserting "(Act through its Governor or the Governor's designee)" immediately after "each State" wherever it appears; and

(B) by striking "the Governor of the State or his designee certifies".

SEC. 105. FIRE PREVENTION AND CONTROL GUIDELINES FOR PLACES OF PUBLIC ACCOMMODATION.

(a) EXCEPTIONS FOR CERTAIN AUTOMATIC SPRINKLER SYSTEMS.—Section 29 of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2225) is amended by redesignating subsections (b) and (c) as subsections (c) and (d), respectively, and by inserting immediately after subsection (a) the following new subsection:

"(b) EXCEPTIONS.—(1) The requirement described in subsection (a)(2) shall not apply to a place of public accommodation affecting commerce with an automatic sprinkler system installed before October 25, 1992, if the automatic sprinkler system is installed in compliance with an applicable standard (adopted by the governmental authority having jurisdiction, and in effect, at the time of installation) that required the placement of a sprinkler head in the sleeping area of each guest room.

"(2) The requirement described in subsection (a)(2) shall not apply to a place of public accommodation affecting commerce to the extent that such place of public accommodation affecting commerce is subject to a standard that includes a requirement or prohibition that prevents compliance with a provision of National Fire Protection Association Standard 13 or 13-R. In such a case, the place of public accommodation affecting commerce is exempt only from that specific provision.".

(b) DEFINITIONS.—Section 29 of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2225) is amended by adding at the end of subsection (d), as redesignated by this section, the following new paragraph:

"(3) The term 'governmental authority having jurisdiction' means the Federal, State, local, or other governmental entity with statutory or regulatory authority for the approval of fire safety systems, equipment, installations, or procedures within a specified locality.".

SEC. 106. FIRE SAFETY SYSTEMS IN FEDERALLY ASSISTED BUILDINGS.

(a) AMENDMENT.—The Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2201 et seq.) is amended by adding at the end the following new section:

"SEC. 31. FIRE SAFETY SYSTEMS IN FEDERALLY ASSISTED BUILDINGS.

"(a) DEFINITIONS.—For purposes of this section, the following definitions apply:

"(1) The term 'affordable cost' means the cost to a Federal agency of leasing office space in a building that is protected by an automatic sprinkler system or equivalent level of safety, which cost is no more than 10 percent greater than the cost of leasing available comparable office space in a building that is not so protected.

"(2) The term 'automatic sprinkler system' means an electronically supervised, inte-

grated system of piping to which sprinklers are attached in a systematic pattern, and which, when activated by heat from a fire—

"(A) will protect human lives by discharging water over the fire area, in accordance with the National Fire Protection Association Standard 13, 13D, or 13R, whichever is appropriate for the type of building and occupancy being protected, or any successor standard thereto; and

"(B) includes an alarm signaling system with appropriate warning signals (to the extent such alarm systems and warning signals are required by Federal, State, or local laws or regulations) installed in accordance with the National Fire Protection Association Standard 72, or any successor standard thereto.

"(3) The term 'equivalent level of safety' means an alternative design or system (which may include automatic sprinkler systems), based upon fire protection engineering analysis, which achieves a level of safety equal to or greater than that provided by automatic sprinkler systems.

"(4) The term 'Federal employee office building' means any office building in the United States, whether owned or leased by the Federal Government, that is regularly occupied by more than 25 full-time Federal employees in the course of their employment.

"(5) The term 'housing assistance'—

"(A) means assistance provided by the Federal Government to be used in connection with the provision of housing, that is provided in the form of a grant, contract, loan, loan guarantee, cooperative agreement, interest subsidy, insurance, or direct appropriation; and

"(B) does not include assistance provided by the Secretary of Veterans Affairs; the Federal Emergency Management Agency; the Secretary of Housing and Urban Development under the single family mortgage insurance programs under the National Housing Act or the homeownership assistance program under section 235 of such Act; the National Homeownership Trust; the Federal Deposit Insurance Corporation under the affordable housing program under section 40 of the Federal Deposit Insurance Act; or the Resolution Trust Corporation under the affordable housing program under section 21A(c) of the Federal Home Loan Bank Act.

"(6) The term 'hazardous areas' means those areas in a building referred to as hazardous areas in National Fire Protection Association Standard 101, known as the Life Safety Code, or any successor standard thereto.

"(7) The term 'multifamily property' means—

"(A) in the case of housing for Federal employees or their dependents, a residential building consisting of more than 2 residential units that are under one roof; and

"(B) in any other case, a residential building consisting of more than 4 residential units that are under one roof.

"(8) The term 'prefire plan' means specific plans for fire fighting activities at a property or location.

"(9) The term 'rebuilding' means the repairing or reconstructing of portions of a multifamily property where the cost of the alternations is 70 percent or more of the replacement cost of the completed multifamily property, not including the value of the land on which the multifamily property is located.

"(10) The term 'renovated' means the repairing or reconstructing of 50 percent or more of the current value of a Federal employee office building, not including the value of the land on which the Federal employee office building is located.

"(11) The term 'smoke detectors' means single or multiple station, self-contained alarm devices designed to respond to the presence of visible or invisible particles of combustion, installed in accordance with the National Fire Protection Association Standard 74 or any successor standard thereto.

"(12) The term 'United States' means the States collectively.

"(b) FEDERAL EMPLOYEE OFFICE BUILDINGS.—(1)(A) No Federal funds may be used for the construction or purchase of a Federal employee office building of 6 or more stories unless during the period of occupancy by Federal employees the building is protected by an automatic sprinkler system or equivalent level of safety. No Federal funds may be used for the construction or purchase of any other Federal employee office building unless during the period of occupancy by Federal employees the hazardous areas of the building are protected by automatic sprinkler systems or an equivalent level of safety.

"(B)(i) Except as provided in clause (ii), no Federal funds may be used for the lease of a Federal employee office building of 6 or more stories, where at least some portion of the federally leased space is on the sixth floor or above and at least 35,00 square feet of space is federally occupied, unless during the period of occupancy by Federal employees the entire Federal employee office building is protected by an automatic sprinkler system or equivalent level of safety. No Federal funds may be used for the lease of any other Federal employee office building unless during the period of occupancy by Federal employees the hazardous areas of the entire Federal employee office building are protected by automatic sprinkler systems or an equivalent level of safety.

"(ii) The first sentence of clause (i) shall not apply to the lease of a building the construction of which is completed before the date of enactment of this section if the leasing agency certifies that no suitable building with automatic sprinkler systems or an equivalent level of safety is available at an affordable cost.

"(iii) Within 3 years after such date of enactment, and periodically thereafter, the Comptroller General shall audit a selection of certifications made under cause (ii) and report to Congress of the results of such audit.

"(2) Paragraph (1) shall not apply to—

"(A) a Federal employee office building that was owned by the Federal Government before the date of enactment of this section;

"(B) space leased in a Federal employee office building if the sapce was leased by the Federal Government before such date of enactment;

"(C) space leased on a temporary basis for not longer than 6 months;

"(D) a Federal employee office building that becomes a Federal employee office building pursuant to a commitment to move Federal employees into the building that is made prior to such date of enactment; or

"(E) a Federal employee office building that is owned or managed by the Resolution Trust Corporation.

Nothing in this subsection shall require the installation of an automatic sprinkler system or equivalent level of safety by reason of the leasing, after such date of enactment, of space below the sixth floor in a Federal employee office building

"(3) No Federal funds may be used for the renovation of a Federal employee office building of 6 or more stories that is owned by the Federal Government unless after that renovation the Federal employee office building is protected by an automatic sprinkler system or equivalent level of safety. No Federal funds may be used for the renovation of any other Federal employee office building that is owned by the Federal Government unless after that renovation the hazardous areas of the Federal employee office building are protected by automatic sprinkler systems or an equivalent level of safety.

"(4) No Federal funds may be used for entering into or renewing a lease of a Federal employee office building of 6 or more stories that is renovated after the date of enactment of this section, where at least some portion of the federally leased space is on the sixth floor or above and at least 35,000 square feet of space is federally occupied, unless after that renovation the Federal employee office building is protected by an automatic sprinkler system or equivalent level of safety. No Federal funds may be used for entering into or renewing a lease of any other Federal employee office building that is renovated after such date of enactment of this section, unless after that renovation the hazardous areas of the Federal employee office building are protected by automatic sprinkler systems or an equivalent level of safety.

"(c) HOUSING.—(1)(A) No Federal funds may be used for the construction, purchase, lease, or operation by the Federal Government of housing in the United States for Federal employees or their dependents unless—

"(i) in the case of a multifamily property acquired or rebuilt by the Federal Government after the date of enactment of this section, the housing is protected, before occupancy by Federal employees or their dependents, by an automatic sprinkler system (or equivalent level of safety) and hard-wired smoke detectors; and

"(ii) in the case of any other housing, the housing, before—

"(I) occupancy by the first Federal employees (or their dependents) who do not occupy such housing as of such date of enactment; or

"(II) the expiration of 3 years after such date of enactment, whichever occurs first, is protected by hard-wired smoke detectors.

"(B) Nothing in this paragraph shall be construed to supersede any guidelines or requirements applicable to housing for Federal employees that call for a higher level of fire safety protection than is required under this paragraph.

"(2)(A)(i) Housing assistance may not be used in connection with any newly constructed multifamily property, unless after the new construction the multifamily property is protected by an automatic sprinkler system and hard-wired smoke detectors.

"(ii) For purposes of clause (i), the term 'newly constructed multifamily property' means a multifamily property of 4 or more stories above ground level—

"(I) that is newly constructed after the date of enactment of this section; and

"(II) for which (a) housing assistance is used for such new construction, or (b) a binding commitment is made, before commencement of such construction, to provide housing assistance for the newly constructed property.

"(iii) Clause (i) shall not apply to any multifamily property for which, before such date of enactment, a binding commitment is made to provide housing assistance for the new construction of the property or for the newly constructed property.

"(B)(i) Except as provided in clause (ii), housing assistance may not be used in con-

nection with any rebuilt multifamily property, unless after the rebuilding the multifamily property complies with the chapter on existing apartment buildings of National Fire Protection Association Standard 101 (known as the Life Safety Code), as in effect at the earlier of (I) the time of any approval by the Department of Housing and Urban Development of the specific plan or budget for rebuilding, or (II) the time that a binding commitment is made to provide housing assistance for the rebuilt property.

"(ii) If any rebuilt multifamily property is subject to, and in compliance with, any provision of a State or local fire safety standard or code that prevents compliance with a specific provision of National Fire Protection Association Standard 101, the requirement under clause (i) shall not apply with respect to such specific provision.

"(iii) For purposes of this subparagraph, the term 'rebuilt multifamily property' means a multifamily property of 4 or more stories above ground level—

"(I) that is rebuilt after the last day of the second fiscal year that ends after the date of enactment of this section; and

"(II) for which (a) housing assistance is used for such rebuilding, or (b) a binding commitment is made, before commencement of such rebuilding, to provide housing assistance for the rebuilt property.

"(C) After the expiration of the 180-day period beginning on the date of enactment of this section, housing assistance may not be used in connection with any other dwelling unit, unless the unit is protected by a hardwired or battery-operated smoke detector. For purposes of this subparagraph, housing assistance shall be considered to be used in connection with a particular dwelling unit only if such assistance is provided (i) for the particular unit, in the case of assistance provided on a unit-by-unit basis, or (ii) for the multifamily property in which the unit is located, in the case of assistance provided on a structure-by-structure basis.

"(d) REGULATIONS.—The Administrator of General Services, in cooperation with the United States Fire Administration, the National Institute of Standards and Technology, and the Department of Defense, within 2 years after the date of enactment of this section, shall promulgate regulations to further define the term 'equivalent level of safety', and shall, to the extent practicable, base those regulations on nationally recognized codes.

"(e) STATE AND LOCAL AUTHORITY NOT LIMITED.—Nothing in this section shall be construed to limit the power of any State or political subdivision thereof to implement or enforce any law, rule, regulation, or standard that establishes requirements concerning fire prevention and control. Nothing in this section shall be construed to reduce fire resistance requirements which otherwise would have been required.

"(f) PREFIRE PLAN.—The head of any Federal agency that owns, leases, or operates a building or housing unit with Federal funds shall invite the local agency or voluntary organization having responsibility for fire protection in the jurisdiction where the building or housing unit is located to prepare, and biennially review, a prefire plan for the building or housing unit.

"(g) REPORTS TO CONGRESS.—(1) Within 3 years after the date of enactment of this section, and every 3 years thereafter, the Administrator of General Services shall transmit to Congress a report on the level of fire safety in Federal employee office buildings subject to fire safety requirements under this section. Such report shall contain a description of such buildings for each Federal agency.

"(2) Within 10 years after the date of enactment of this section, each Federal agency providing housing to Federal employees or housing assistance shall submit a report to Congress on the progress of that agency in implementing subsection (c) and on plans for continuing such implementation.

"(3)(A) The National Institute of Standards and Technology shall conduct a study and submit a report to Congress on the use, in combination, of fire detection systems, fire suppression systems, and compartmentation. Such study shall—

"(i) quantify performance and reliability for fire detection systems, fire suppression systems, and compartmentation, including a field assessment of performance and determination of conditions under which a reduction or elimination of 1 or more of those systems would result in an unacceptable risk of fire loss; and

"(ii) include a comparative analysis of compartmentation using fire resistive materials and compartmentation using noncombustible materials.

"(B) The National Institute of Standards and Technology shall obtain funding from non-Federal sources in an amount equal to 25 percent of the cost of the study required by subparagraph (A). Funding for the National Institute of Standards and Technology for carrying out such study shall be derived from amounts otherwise authorized to be appropriated, for the Building and Fire Research Center at the National Institute of Standards and Technology, not to exceed $750,000. The study shall not commence until receipt of all matching funds from non-Federal sources. The scope and extent of the study shall be determined by the level of project funding. The Institute shall submit a report to Congress on the study within 30 months after the date of enactment of this section.

"(h) RELATION TO OTHER REQUIREMENTS.—In the implementation of this section, the process for meeting space needs in urban areas shall continue to give first consideration to a centralized community business area and adjacent areas of similar character to the extent of any Federal requirement therefore.".

(b) EFFECTIVE DATE.—Subsection (b) of section 31 of the Federal Fire Prevention and Control Act of 1974, as added subsection (a) of this section, shall take effect 2 years after the date of enactment of this Act.

TITLE II—NATIONAL FALLEN FIREFIGHTERS FOUNDATION

SEC. 201. SHORT TITLE.

This title may be cited as the "National Fallen Firefighters Foundation Act".

SEC. 202. ESTABLISHMENT AND PURPOSES OF FOUNDATION.

(a) ESTABLISHMENT.—There is established the National Fallen Firefighters Foundation (hereafter in this title referred to as the "Foundation"). The Foundation is a charitable and no profit corporation to be organized under the laws of the State of Maryland and is not an agency or establishment of the United States.

(b) PURPOSES.—The purposes of the Foundation are—

(1) primarily to encourage, accept, and administer private gifts of property for the benefit of the National Fallen Firefighters' Memorial and the annual memorial service associated with it;

(2) to provide financial assistance to families of fallen firefighters for transportation to and lodging at non-Federal facilities during the annual memorial service;

(3) to assist State and local efforts to recognize firefighters who die in the line of duty; and

(4) to provide scholarships and other financial assistance for educational purposes and job training for the spouses and children of fallen firefighters.

SEC. 203. BOARD OF DIRECTORS OF THE FOUNDATION.

(a) ESTABLISHMENT AND MEMBERSHIP.—

(1) VOTING MEMBERS.—The Foundation shall have a governing Board of Directors (hereafter in this title referred to as the "Board"), which shall consist of nine voting members, of whom—

(A) one member shall be an active volunteer firefighter;

(B) one member shall be an active career firefighter;

(C) one member shall be a Federal firefighter; and

(D) six members shall have a demonstrated interest in the fire service.

(2) NONVOTING MEMBER.—The Administrator of the United States Fire Administration of the Federal Emergency Management Agency (hereafter in this title referred to as the "Administrator") shall be an ex officio nonvoting member of the Board.

(3) STATUS OF BOARD MEMBERS.—Appointment to the Board shall not constitute employment by, or the holding of an office of, the United States for the purposes of any Federal law.

(4) COMPENSATION.—Members of the Board shall serve without compensation.

(b) APPOINTMENT AND TERMS.—Within 3 months after the date of enactment of this Act, the Administrator shall appoint the voting members of the Board. The voting members shall be appointed for terms of 6 years, except that the Administrator, in making the initial appointments to the Board, shall appoint—

(1) three members to a term of 2 years;

(2) three members to a term of 4 years; and

(3) three members to a term of 6 years.

(c) VACANCY.—A vacancy on the Board shall be filled within 60 days in the manner in which the original appointment was made.

(d) CHAIRMAN.—The Chairman shall be elected by the Board from its voting members for a 2-year term.

(e) QUORUM.—A majority of the current membership of the Board shall constitute a quorum for the transaction of business.

(f) MEETINGS.—The Board shall meet at the call of the Chairman at least once a year. If a member of the Board misses three consecutive meetings, that individual may be removed from the Board and that vacancy filled in accordance with subsection (c).

(g) GENERAL POWERS.—

(1) ACTIONS BY THE BOARD.—The Board may complete the organization of the Foundation by—

(A) appointing no more than two officers or employees;

(B) adopting a constitution and bylaws consistent with this title; and

(C) undertaking other such acts as may be necessary to carry out this title.

(2) LIMITATION.—Officers and employees may not be appointed until the Foundation has sufficient funds to pay for their services.

(h) OFFICERS AND EMPLOYEES.—±

(1) STATUS.—Officers and employees of the Foundation shall not be considered Federal employees, shall be appointed without regard to title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to chapter 51 and

subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

(2) MAXIMUM SALARY.—No officer or employee may receive pay in excess of the annual rate of basic pay prescribed for level GS-15 of the General Schedule under section 5107 of title 5, United States Code.

SEC. 204. RIGHTS AND OBLIGATIONS OF THE FOUNDATION.

(a) IN GENERAL.—The Foundation—

(1) shall have perpetual succession;

(2) may conduct business throughout the several States, territories, and possessions of the United States;

(3) shall have its principal offices in the State of Maryland; and

(4) shall at all times maintain a designated agent authorized to accept service of process for the Foundation.

(b) SEAL.—The Foundation shall have an official seal selected by the Board which shall be judicially noticed.

(c) POWERS.—To carry out its purposes under section 202, the Foundation shall have, in addition to the powers otherwise given it under this title, the usual powers of a corporation acting as a trustee in the State of Maryland, including the power—

(1) to accept, receive, solicit, hold, administer, and use any gift, devise, or bequest, either absolutely or in trust, of real or personal property or any income therefrom or other interest therein;

(2) to sue and be sued, and complain and defend itself in any court of competent jurisdiction, except that the members of the Board shall not be personally liable, except for gross negligence;

(3) unless otherwise required by the instrument of transfer, to sell, donate, lease, invest, or otherwise dispose of any property or income therefrom;

(4) to enter into contracts and other arrangements with public agencies and private organizations and persons and to make such payments as may be necessary to carry out its functions; and

(5) to do any and all acts necessary and proper to carry out the purposes of the Foundation.

SEC. 205. ADMINISTRATIVE SERVICES AND SUPPORT.

The Administrator may provide personnel, facilities, and other administrative services to the Foundation and shall require and accept reimbursements for such personnel, facilities, and services that shall be deposited in the Treasury to the credit of the appropriations then current and chargeable for the cost of providing such services. Notwithstanding any other provision of law, Federal personnel and stationery shall not be used to solicit funding for the Foundation.

SEC. 206. VOLUNTEER STATUS.

The Administrator may accept, without regard to the Federal civil service classification laws, rules, or regulations, the services of the Foundation, the Board, and the officers and employees of the Board, without compensation from the United States Fire Administration, as volunteers in the performance of the functions authorized under this title.

SEC. 207. AUDITS, REPORT REQUIREMENTS, AND PETITION OF ATTORNEY GENERAL FOR EQUITABLE RELIEF.

(a) AUDITS.—For purposes of the Act entitled "An Act to provide for audit of accounts of private corporations established under Federal law", approved August 30, 1964 (36 U.S.C. 1101 et seq.), the Foundation shall be treated as a private corporation established under Federal law.

(b) REPORT.—The Foundation shall, within 4 months after the end of each fiscal year, prepare and submit to the appropriate committees of the Congress a report of the Foundation's proceedings and activities during such year, including a full and complete statement of its receipts, expenditures, and investments.

(c) RELIEF FOR CERTAIN FOUNDATION ACTS OR FAILURES TO ACT.—If the Foundation—

(1) engages in, or threatens to engage in, any act, practice, or policy that is inconsistent with the purposes set forth in section 202(b); or

(2) refuses, fails, or neglects to discharge its obligations under this title, or threatens to do so, the Attorney General may petition in the United States District Court for the District of Columbia for such equitable relief as may be necessary or appropriate.

SEC. 208. IMMUNITY OF THE UNITED STATES.

The United States shall not be liable for any debts, defaults, acts, or omissions of the Foundation nor shall the full faith and credit of the United States extend to any obligation of the Foundation.

JEFFORDS AMENDMENT NO. 3321

Mr. LUGAR (for Mr. JEFFORDS) proposed an amend to amendment No. 3320 proposed by Mr. BRYAN to the bill S. 1690, supra, as follows:

At the appropriate place, insert the following new section:

SEC.— WORKERS' FAMILY PROTECTION

(a) SHORT TITLE.— This section may be cited as the "Workers' Family Protection Act".

(b) FINDINGS AND PURPOSES.—

(1) FINDINGS.—Congress finds that—

(A) hazardous chemicals and substances that can threaten the health and safety of workers are being transported out of industries on workers' clothing and persons:

(B) these chemicals and substances have the potential to pose an additional threat to the health and welfare of workers and their families;

(C) additional information is needed concerning issues related to employee transported contaminant releases; and

(D) additional regulations may be needed to prevent future releases of this type.

(2) PURPOSE.— It is the purpose of this section to—

(A) increase understanding and awareness concerning the extent and possible health impacts of the problems and incidents described in paragraph (1);

(B) prevent or mitigate future incidents of home contamination that could adversely affect the health and safety of workers and their families.

(C) clarify regulatory authority for preventing and responding to such incidents; and

(D) assist workers in redressing and responding to such incidents when they occur.

(c) EVALUATION OF EMPLOYEE TRANSPORTED CONTAMINANT RELEASES.

(1) STUDY.—

(A) IN GENERAL.— Not later than 18 months after the date of enactment of this Act, The Director of the National Institute for Occupational Safety and Health (hereafter in this section referred to as the "Director"), in cooperation with the Secretary of Labor, the Administrator of the Environmental Protection Agency , the Administrator of the Agency for Toxic Substances and Disease Registry, and the heads of other Federal Government agencies as determined to be appropriate by the Director, shall conduct a study to evaluate the potential for, the prevalence of, and the issues related to the contamination of workers' homes with hazardous chemicals and substances, including infectious agents, transported from the workplace of such workers.

(B) MATTERS TO BE EVALUATED.—In conducting the study and evaluation under subparagraph (A), the Director shall—

(i) conduct a review of past incidents of home contamination through the utilization of literature and of records concerning past investigations and enforcement actions undertaken by—

(I) the National Institute for Occupational Safety and Health;

(II) the Secretary of Labor to enforce the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.);

(III) States to enforce occupational safety and health standards in accordance with section 18 of such Act (29 U.S.C. 667); and

(IV) other government agencies (including the Department of Energy and the Environmental Protection Agency), as the Director may determine to be appropriate;

(ii) evaluate current statutory, regulatory, and voluntary industrial hygiene or other measures used by small, medium and large employers to prevent or remediate home contamination;

(iii) compile a summary of the existing research and case histories conducted on incidents of employee transported contaminant releases, including—

(I) the effectiveness of workplace housekeeping practices and personal protective equipment in preventing such incidents;

(II) the health effects, if any, of the resulting exposure on workers and their families;

(III) the effectiveness of normal house cleaning and laundry procedures for removing hazardous materials and agents from workers; home and personal clothing;

(IV) indoor air quality, as the research concerning such pertains to the fate of chemicals transported from a workplace into the home environment; and

(V) methods for differentiating exposure health effects and relative risks associated with specific agents from other sources of exposure inside and outside the home;

(iv) identify the role of Federal and State agencies in responding to incidents of home contamination;

(v) prepare and submit to the Task Force established under paragraph (2) and to the appropriate committees of Congress, a report concerning the results of the matters studied or evaluated under clauses (i) through (iv); and

(iv) study home contamination incidents and issues and worker and family protection policies and practices related to the special circumstances of firefighters and prepare and submit to the appropriate committees of Congress a report concerning the findings with respect to such study.

(2) DEVELOPMENT OF INVESTIGATIVE STRATEGY.—

(A) TASK FORCE.—Not later than 12 months after the date of enactment of this Act the Director shall establish a working group, to be known as the "Workers' Family Protection Task Force". The Task Force shall—

(i) be composed of not more than 15 individuals to be appointed by the Director from among individuals who are representative of workers, industry, scientists, industrial hygienists, the National Research Council, and government agencies, except that not more than one such individual shall be from each appropriate government agency and the

number of individuals appointed to represent industry and workers shall be equal in number;

(ii) review the report submitted under paragraph (1)(B)(v);

(iii) determine, with respect to such report, the additional data needs, if any, and the need for additional evaluation of the scientific issues related to and the feasibility of developing such additional data; and

(iv) if additional data are determined by the Task Force to be needed, develop a recommended investigative strategy for use in obtaining such information.

(B) INVESTIGATIVE STRATEGY.—

(i) CONTENT.—The investigative strategy developed under subparagraph (A)(iv) shall identify data gaps that can and cannot be filled, assumptions and uncertainties associated with various components of such strategy, a timetable for the implementation of such strategy, and methodologies used to gather any required data.

(ii) PEER REVIEW.—The Director shall publish the proposed investigative strategy under subparagraph (A)(iv) for public comment and utilize other methods, including technical conferences or seminars, for the purpose of obtaining comments concerning the proposed strategy.

(iii) FINAL STRATEGY.—After the peer review and public comment is conducted under clause (ii), the Director, in consultation with the heads of other government agencies, shall propose a final strategy for investigating issues related to home contamination that shall be implemented by the National Institute for Occupational Safety and Health and other Federal agencies for the period of time necessary to enable such agencies to obtain the information identified under subparagraph (A)(iii).

(C) CONSTRUCTION.—Nothing in this section shall be construed as precluding any government agency from investigating issues related to home contamination using existing procedures until such time as a final strategy is developed or from taking actions in addition to those proposed in the strategy after its completion.

(3) IMPLEMENTATION OF INVESTIGATIVE STRATEGY.—Upon completion of the investigative strategy under subparagraph (B)(iii), each Federal agency or department shall fulfill the role assigned to it by the strategy.

(d) REGULATIONS.—

(1) IN GENERAL.—Not later than 4 years after that date of enactment of this Act, and periodically thereafter, the Secretary of Labor, based on the information developed under subsection (c) and on other information available to the Secretary, shall—

(A) determine if additional education about, emphasis on, or enforcement of existing regulations or standards is needed and will be sufficient, or if additional regulations or standards are needed to protect workers and their families from employee transported releases of hazardous materials; and

(B) prepare and submit to the appropriate committees of Congress a report concerning the results of such determination.

(2) ADDITIONAL REGULATIONS OR STANDARDS.—If the Secretary of Labor determines that additional regulations or standards are needed under paragraph (1), the Secretary shall promulgate such regulations or standards as determined to be appropriate not later than 3 years after such determination.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated, from sums otherwise authorized to be appropriated, for each fiscal year such sums as may be necessary to carry out this section.

PARTNERSHIP FOR WILDLIFE ACT

MITCHELL (AND CHAFEE) AMENDMENT NO. 3322

Mr. SIMON (for Mr. MITCHELL for himself and Mr. CHAFEE) proposed an amendment to the bill S. 1491 to establish a partnership among the United States Fish and Wildlife Service, the States, and private organizations and individuals to conserve the entire diverse array of fish and wildlife species in the United States and to provide opportunities for the public to enjoy these fish and wildlife species through nonconsumptive activities, as follows:

On page 9, line 22, subsection (d) is amended to read as follows:

"(d) LIMITATIONS ON FEDERAL PAYMENT.—The amount of appropriated Federal funds provided from the Fund by the Secretary to any designated State agency with respect to any fiscal year to carry out an eligible wildlife conservation and appreciation project under this section—

"(1) may not exceed $250,000.00;

"(2) may not exceed one third of the total project cost for that fiscal year;

"(3) may not exceed 40 percent of the total project cost for that fiscal year if designated State agencies from two or more States cooperate in implementing such a project;

"(4) may not be used to defray the administrative cost of state programs; and

"(5) may not exceed the State share of the cost of implementing such a project.".

On page 10, lines 17 and 18, strike "if such an agency diverts revenue from activities it regulates" and insert "if revenue derived from activities regulated by such an agency is diverted".

On page 11, line 12, immediately before the semi-colon insert", of which not more than 4 per centum shall be available to the Secretary and the National Fish and Wildlife Foundation to defray the costs of administering this Act and evaluating wildlife conservation and appreciation projects".

On page 11, line 20, paragraph (4) is amended to read as follows:

"(4) Of the total amount provided from the Fund to assist a State in carrying out a wildlife conservation and appreciation project under subsection (a) of this section, at least 50 per centum shall have been donated to the Fund by the National Fish and Wildlife Foundation.".

On page 12, line 4, strike the word "wholly".

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON LABOR AND HUMAN RESOURCES

Mr. SIMON. Mr. President, I ask unanimous consent that the Committee on Labor and Human Resources be authorized to meet during the session of the Senate on Tuesday, September 29, 1992, at 10:30 a.m., for a hearing on public investment and economic growth.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON PATENTS, COPYRIGHTS AND TRADEMARKS

Mr. SIMON. Mr. President, I ask unanimous consent that the Subcommittee on Patents, Copyrights and Trademarks of the Committee on the Judiciary, be authorized to meet during the session of the Senate on Tuesday, September 29, 1992, at 10 a.m., to hold a hearing on international piracy of intellectual property.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON JUDICIARY

Mr. SIMON. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate on Tuesday, September 29, 1992, at 10:30 a.m., to hold a hearing on S. 2922, a bill to assist the State in the enactment of legislation to address the criminal act of stalking other persons.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

Mr. SIMON. Mr. President, I ask unanimous consent that the Committee on Agriculture, Nutrition, and Forestry Subcommittee on Agricultural Research and General Legislation be allowed to meet during the session of the Senate on Tuesday, September 29, 1992, at 9:30 a.m., in SR-332 on the implementation of the Alternative Agriculture Research and Commercialization [AARC] Act of 1990.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON LABOR AND HUMAN RESOURCES

Mr. SIMON. Mr. President, I ask unanimous consent that the Committee on Labor and Human Resources be authorized to meet during the session of the Senate on Tuesday, September 29, 1992, at 9:15 a.m., for a hearing on regulation of human tissue transplantation.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

A TRIBUTE TO HARTFORD ELEMENTARY SCHOOL AND MOTOROLA

• Mr. DECONCINI. Mr. President, it gives me great pleasure to congratulate Hartford Elementary School and Motorola on their joint effort which will benefit both students and business. It is heartening to know that even during tough economic times business would join hands with the educational community to improve the skills of the students at Hartford Elementary School by designing and building a math/science lab.

Hartford, the oldest active elementary school in Chandler, AZ, serves a community that is 46-percent minority and 51-percent low income. The need here is great, the funds limited, but determination boundless. The teachers and staff decided it was time to make

a change. Hartford felt they could best improve the quality of education for their students by building a math/science lab, and sent their proposal to Motorola, a longtime friend of education.

Motorola agreed to fund the math/science lab at Hartford Elementary School. They designed and engineered the lab, coordinated the procurement of equipment, labor and supplies and added an outdoor lab so that teachers could hold an entire class outside. This partnership goes beyond the thousands of dollars spent on equipment, supplies, and the building of the lab. The Motorola staff, on a voluntary basis, will actually come to Hartford to teach classes to both students and teachers in the areas of math, science, and computers.

In addition, Chandler Unified School District will be instructing the Motorola volunteers in the areas of active participation and questioning strategies. This instruction will be useful beyond their roles as volunteer teachers by making them more effective communicators. The exchange between the teachers and staff at Hartford with the employees at Motorola provides positive role models for the students attending Hartford, as well as setting an example for other communities.

This partnership represents a bright spot in our public school system during a time when, as a nation, we are struggling to compete academically. The United States is no longer the giant it once was in the math and sciences. Our children need to be prepared for a world of technology. Hartford Elementary and Motorola have taken a step in the right direction.

This is a unique and creative endeavor, one about which Motorola, Hartford, and the city of Chandler should be proud. I know my colleagues join me in congratulating Hartford Elementary and Motorola and wish the best of luck to all the students who will enjoy the use of their new lab.

Mr. President, I ask that the following list of names of those who deserve special appreciation for their hard work on this joint effort be inserted at this point in the RECORD.

The list of names follows:

Dr. Howard Conley, Dr. Camille Castell, Dr. Pat Cuendet, Ms. Mary Johnson, Ms. Heidi Hansen, Ms. Pam Johnson, Ms. Marvin Johnson, Ms. Georginna Eschenweck, Ms. Krista Scarlett, Ms. Barbara Groff, Mr. Gary Johnson, Mr. Jim Echols, Mr. L.J. Reed, Mr. Don Walker, Mr. Tim Niesz, Mr. Greg Vargo, Mr. Mike Doyle, Mr. Rich Hogen, Mr. George Scott, Ms. Carolyn Cafiero, Ms. Laurie Doyle, Ms. Sherri Christensen, Ms. Barb Gudis, Ms. Marlene Gross, Ms. Cecelia Kearney, Mr. Ray Lopez, Ms. Donna Brooks, Ms. Patti Bruno, Ms. Barbara Knox, Ms. Cliff Frey, Ms. Donna Wallace and the entire staff of Hartford Elementary School.•

UNICO NATIONAL DISTRICT 11'S ANNUAL COLUMBUS DAY DINNER

• Mr. LAUTENBERG. Mr. President, I rise today in honor of Columbus Day on the occasion of Unico District 11th's Ninth Annual Columbus Day Dinner.

Five hundred years ago, a man with great vision and an extraordinary thirst for adventure set out on a voyage to find a new route to the Far East. It was a daring voyage of discovery that looked to a new future. In honoring Christopher Columbus as the first Italian in America, I would also like to take this opportunity to pay tribute to the bravery and fortitude of the many Italian-Americans who followed him to these shores.

Like Columbus, many Italians came to America facing extraordinary odds. They came without knowing what lay ahead of them in their new country. Christopher Columbus and Italian immigrants embodied the true American spirit of determination and enthusiasm. The promise of a new and better life for themselves and their children encouraged them to take a risk and look to a new life in a new world. Italians who came to America did so knowing that in order to succeed, they would have to overcome language and cultural barriers. However, the immigrants possessed great energy and passion that enabled them to hurdle each obstacle in their way.

It is impossible to name the tremendous contributions Italian-Americans have made to the United States. They have helped to shape our Nation as we know it by becoming active in every part of our society. They can take pride in the way their rich Italian heritage has added to the mosaic of American culture. It is fitting that in honoring Christopher Columbus and his discoveries that we also acknowledge the rich contributions of other Italians who followed him to America.•

NOTICE OF DETERMINATION BY THE SELECT COMMITTEE ON ETHICS UNDER RULE 35, PARAGRAPH 4, PERMITTING ACCEPTANCE OF A GIFT OF EDUCATIONAL TRAVEL FROM A FOREIGN ORGANIZATION

• Mr. SANFORD. Mr. President, it is required by paragraph 4 of rule 35 that I place in the CONGRESSIONAL RECORD notices of Senate employees who participate in programs, the principal objective of which is educational, sponsored by a foreign government or a foreign educational or charitable organization involving travel to a foreign country paid for by the that foreign government or organization.

The select committee received a request for a determination under rule 35 for Laurie Schultz Heim, a member of the staff of Senator JEFFORDS, to participate in a program in Russia, sponsored by the Legislative Studies Institute [LSI] and the Russian Government, for 2 months beginning on October 24, 1992.

The committee has determined that participation by Ms. Heim in this program, at the expense of LSI and the Russian Government, is in the interest of the Senate and the United States.

The select committee received a request for a determination under rule 35 for Paul W. Barnett, a member of the staff of Senator JOHNSTON, to participate in a program in Russia, sponsored by the Legislative Studies Institute and the Russian Government, for 2 months beginning on October 24, 1992.

The committee has determined that participation by Mr. Barnett in this program, at the expense of LSI and the Russian Government, is in the interest of the Senate and the United States.

The select committee received a request for a determination under rule 35 for Jim Jatras, a member of the staff of Senator NICKLES, to participate in a program in Russia, sponsored by the Legislative Studies Institute and the Russian Government, for 2 months beginning on October 24, 1992.

The committee has determined that participation by Mr. Jatras in this program, at the expense of LSI and the Russian Government, is in the interest of the Senate and the United States.•

STATEMENT ON S. 3278

• Mr. BURNS. Mr. President, I want to express my support for legislation introduced last Saturday by the senior Senator from Montana [Mr. BAUCUS] to which I am being added as a cosponsor. I also want to take this opportunity to commend him for his diligence in working on this matter, and hope that we can come to some resolution on it before the end of the session.

The legislation, S. 3278, will exempt certain locomotive and freight car repair and rebuilding companies from the railroad retirement and unemployment taxes. It is crafted very narrowly to help those rebuild companies who are competing with companies that currently do not pay into the railroad retirement system while still protecting the integrity of the system. I know neither Senator BAUCUS or myself would want to put the railroad retirement fund at risk, and I am confident that this proposal doesn't do that.

However, it does address a very important jobs issue in Montana. The U.S. Seventh Circuit Court of Appeals recently ruled that the Livingston Rebuild Center [LRC], a locomotive repair facility, in Livingston, MT, must pay into the railroad retirement fund even though many of its competitors do not. If this decision stands, LRC could owe as much as $2.5 million in back taxes and $50,000 a month from now on. This tax burden would cripple their ability to compete and put LRC out of business. The closure of LRC would deal a serious economic blow to Montana's economy. LRC directly employs 140 people in Park County and generates an additional 257 nonbasic jobs throughout the State. If LRC

closes, the unemployment rate in Park County would nearly double from 7.1 percent to 13.3 percent. This travesty must be averted.

The court in deciding against LRC's challenge to the Railroad Retirement Board decision that they must pay into the railroad retirement system made the following comment:

> The Railroad Retirement Act is a creaky statute, presuming that "railroads" are distinct entities; today many railroads are parts of conglomerates, and an attempt to isolate "the railroad" in the larger enterprise is bound to cover at once too much and too little. But reconciling the statute with current forms of corporate organization—and with the fact that railroads compete vigorously against other modes of transportation that are not subject to special regulation and taxation—is a job for the political branches.

This legislation addresses, in part, the court's comments. It recognizes that companies can be under common majority ownership and still remain separate and distinct. LRC is a public company with its own board of directors just like any other company. However, a majority of its stock is held by an individual who also owns a railroad company. LRC is not, and never has been, a division of that railroad company. It competes against other rebuild and repair shops that are not, and never have been, divisions of railroad companies and that do not pay the railroad retirement and unemployment taxes. S. 3278 recognizes that reality.

Mr. President, if this legislation passes, it will save jobs in Montana. It will put LRC on a level playing field with its competitors. I hope my colleagues will work with us to get this legislation passed and save Montana jobs.•

THE ANGOLAN ELECTIONS: ANOTHER STEP TOWARD DEMOCRACY

• Mr. DECONCINI. Mr. President, today the people of Angola take another step along their path toward democratization, personal freedom, and peace. At long last, Angolans will be going to the polls to choose for themselves—for their first time since achieving independence from Portugal in 1975—to either retain the current government of the MPLA under José Eduardo dos Santos, or commit themselves to the leadership of UNITA, led by Dr. Jonas Savimbi. In light of this momentous event, I rise to take note of its historic significance, to voice my strong support for these elections, and to encourage the people of Angola to exercise their opportunity for a real revolution through the use of the ballot, not the end of a bayonet. By making true, multiparty elections an ingrained part of their political system, the Angolan people will not only improve their lives, they will also create a system that will benefit their children and, hopefully, the rest of southern Africa, as well.

As cochairman of the Helsinki Commission my commitment to the elimination of human rights abuses and the promotion of civil liberties by governments throughout the world is well known. My colleagues are also well aware of the great interest I have taken in the affairs and the struggle of the Angolan people. In watching this country's development over the years, I have urged and supported legislation and policies that would promote democracy in Angola. I have not always seen eye-to-eye on the methods used to bring Angola to this moment, but I remain hopeful that the people who go to the polls today and tomorrow will demonstrate to those they elect that they are serious about moving Angola toward peace and true national reconciliation.

When Angola achieved its independence in 1975, the promise of elections was quickly overrun by a power struggle in which the former influence of the Portuguese was transplanted by the Soviets and Cubans who moved in to support the MPLA. Soon thereafter they were joined in a counterstruggle when South Africa, and later the United States, intervened to support UNITA. Thus was a potentially rich nation devastated and, in many ways, stopped in time. This said civil war, in which innocent men, women, and children were the primary victims, has taken a severe toll over the years. Some have argued that the United States should have stayed out of the war, but I am convinced that would have prevented the Angolan people from ever experiencing the opportunity to achieve elections and democracy. Throughout my involvement with this issue, I have advocated three specific policies designed to bring peace to Angola.

First, I urged an end to civil war, which was simply a perpetuation of the violence and suppression that was supposed to have ended when independence was gained from Portugal. The cease-fire agreement between the MPLA and UNITA, signed on May 31, 1991, after active and sustained diplomacy on the part of the Portuguese, Soviet, and United States Governments, achieved this first goal. Although there continue to be reports of minor skirmishes, no major violations of the accords have been reported, a sign that both sides are serious in bringing about an end to the senseless violence that has only stalled the move toward true independence.

The second goal for Angola was, and remains, to see the institution of a multiparty, democratic system, marked by regular free and fair elections and promotion of personal rights and freedoms. Today, as the world watches, the people of Angola take their long-awaited first step toward democracy. It is encouraging that this day has finally arrived, and I am hopeful that these elections will provide the impetus for further dramatic reform. Only time will tell whether this process becomes institutionalized, as we all hope.

As the second objective for Angola appears close to fulfillment, we must ensure that the third and final step—national reconciliation among all Angolans—is achieved. In order to ensure that current progress is not nullified due to continued friction between the historically warring parties, there must be true national reconciliation, coupled with full participation and support from all sides. Only through completion of this third step will the people of Angola have achieved true independence.

Unlike the first two steps, primary responsibility for completing this process now rests on the Angolan people and those they elect to lead them. In a second statement later this week, I plan to address this final, critical issue.

Mr. President, the hostilities between UNITA and the MPLA must be ended and replaced by cooperative efforts. It is only through unity and a focus on a common goal that Angola will move forward. The United States and other countries are no longer in a position to support movements which seek change of governments through military means. The international community is as tired of these adventures as the people of Angola themselves. If Angola is to obtain development, trade, and investment assistance from the rest of the world, it must take the initiative through these elections to demonstrate to the world that it is serious about putting the past behind it. Only then will the world be ready to eagerly allow itself to focus on assisting Angola into a new independence.•

HAROLD JINKS, PIGGOTT, AR, RECIPIENT OF AWARD

• Mr. PRYOR. Mr. President, this morning, Harold Jinks of Piggott, AR, was selected as one of the initial recipients of the Lawrence O'Brien Democratic Party Achievement Awards.

These awards were established in Larry's memory to honor men and women who have made a particularly notable contribution to the health and vitality of the Democratic Party.

The judges for this award, Mr. President, could not have chosen better than recognizing the contributions that Harold Jinks has made to our political system.

Harold Jinks is an American original. He has dedicated his life enthusiastically to the cause of freedom and democracy in the United States as exemplified in the principles of the National Democratic Party.

Harold's commitment to the party and his tenacity in putting democratic principles into practice, as well as his ability to convince others to do the same, make Harold a natural choice for this award.

At a time in life when he should be enjoying a well-deserved retirement, Harold has taken on the formidable task of rallying senior Americans to our party, encouraging and guiding the formation of chapters of senior Democrats all across America.

Larry O'Brien knew Harold Jinks. Harold Jinks was a friend of his. Larry O'Brien would be proud today that Harold Jinks was selected as one of the first recipients of the award established in his name.

I join in saluting Harold Jinks on this great day.●

HURLOCK, MD

● Mr. SARBANES. Mr. President, this weekend the town of Hurlock, MD, will be celebrating its centennial. Hurlock ranks as the second largest town in Dorchester County. The town of Hurlock began as a station on the Dorchester/Delaware Railroad Line built in 1867. In 1869 John Martin Hurlock, on whose land the station was erected and after whom the town was named, built a grocery store at the railroad crossing.

In 1884 the Washington Methodist Parsonage was built, and in 1887 five new homes and a hotel were constructed. In 1888 the Washington Church, presently known as the Unity-Washington United Methodist Church, was moved into the growing settlement from its original location. At the same time the post office was moved into the town from Harrison Ferry, and the mill was moved from Williamsburg. All of these events were instrumental in the rapid growth of the town, which soon became an important center of upper Dorchester life.

Hurlock's growth was greatly influenced by the construction of a second railroad, the Baltimore, Chesapeake & Atlantic in 1890. This railroad conveyed passengers from the Love Point Ferry out of Baltimore to Ocean City. Since 1890 Hurlock's population has grown from 400 to almost 7,000 people today.

One of the most influential philanthropists of Hurlock was Mr. Henry Walworth who moved to Hurlock from Baltimore at the end of the century. In 1898 the first newspaper in town was started by Mr. Walworth and called the Hurlock Advance. In 1900 Mr. Walworth established the Hurlock Free Library by using his private library collection and discarded books from the Enoch Pratt Library. In 1901 the town had its own bucket and ladder brigade, which was incorporated in 1924 as the Hurlock Volunteer Fire Co.

Centered in one of the best agricultural areas of Dorchester County, Hurlock's farming and farm-related businesses were and are the main industry. The Hurlock vicinity is said to have the greatest concentration of irrigation systems of any region. These produce such crops as soybeans, barley, corn, wheat, cucumbers for pickling, tomatoes for processing, plus fresh market produce.

I join the citizens of Hurlock and Dorchester County in honoring a town which has experienced a century of history and change and to wish the town a joyful celebration during this notable anniversary.●

DOD'S REPORT ON THE INVESTIGATION OF THE 1991 TAILHOOK CONVENTION

● Mr. GORTON. Mr. President, it is clear from last Thursday's report on the investigation of the 1991 Tailhook convention, that the Navy's self-evaluation of this deplorable incident was neither fair nor objective.

Particularly distressing was the failure—or unwillingness—of the Naval Inspector General's Office and the Naval Investigative Service to work cooperatively prior to and during the investigation. Equally inexcusable was the calculated decision not to interview officers above the grade of lieutenant commander, an unmistakable demonstration of cronyism within the Navy.

The Department of Defense's report proves, beyond any reasonable doubt, that the mistakes, prejudices, and infighting that occurred during the Tailhook investigation were inexcusable—particularly given the nature of the allegations. If this Nation has learned nothing else during the course of the last year, it is that sexual harassment charges must not be taken lightly.

As women have moved into traditionally male dominated occupations, they are highly competitive within the employment chain. Women seek and deserve to be treated as equals. The blatant sexual harassment that occurred at the 1991 Tailhook convention and the investigation thereafter constitute a slap at every woman in our Armed Forces and to every woman who has struggled to be treated with dignity and respect in the workplace.

Mr. President, the reports from the Tailhook incident are appalling. But for the victims of this incident, the fear, mistreatment and degradation did not end there. It is shameful that the women who brought forth their claims were scorned and that the investigation that followed was simply a farce. Had the DOD's inspector general led the investigation from the beginning, the entire process could have been effective, and could have demonstrated our armed services' commitment to its women members. What was demonstrated instead was an inability to make the tough decisions needed to ensure a fair and thorough investigation. The officers involved let their allegiance to the outdated culture within an institution and to their male colleagues overshadow their better judgment.

This lapse is inexcusable. It is entirely appropriate that four of the five officers involved in the Tailhook investigation will lose their positions or be forced to retire as a result. If simply human decency does not convince all members of the military to treat women employees with respect, disciplinary actions should.

I hope, Mr. President, that Tailhook and its investigation will be used in the future as the impetus for every military branch to help root out sexual harassment, and that this will be the final chapter in a book that dishonors what has been otherwise a fine institution that has served its country well.●

SERIOUS FLAWS FOUND IN WINGS OF DOUGLAS C-17

● Mr. D'AMATO. Mr. President, there is a quiet celebration going on in the B-1B Program office. Why? Because after years of being pilloried as the "mother of all lemons," the B-1B's reputation as a flying Edsel is about to be eclipsed by the C-17. The press will not need the B-1B to kick around anymore, because working on the C-17 has become the equivalent of a Ph.D. program for quality control inspectors, auditors, trouble shooters, and, thus, reporters.

I ask that an article that appeared in the Los Angeles Times on September 24, 1992, entitled "Serious Flaws Found in Wings of Douglas C-17" be printed in the RECORD.

We can only hope that the Senate conferees on the Defense authorization and appropriations bills are able to impress upon their House colleagues the importance of reining in the C-17 before it becomes the Air Force equivalent of the A-12.

The article follows:

[From the Los Angeles Times, Sept. 24, 1992]

SERIOUS FLAWS FOUND IN WINGS OF DOUGLAS C-17

(By Ralph Vartabedian)

A Pentagon investigation has found serious defects in the wings of the McDonnell Douglas C-17 cargo jet, which could result in premature cracks—potentially the most severe problem yet in the long-troubled program.

The flaws, which were revealed in a report obtained Wednesday by The Times, have prompted questions about the safety of the aircraft. Remedying the problem also would significantly boost the program's cost and further delay its production.

The investigation by the Pentagon's inspector general means more bad news for the company's Douglas Aircraft unit in Long Beach, which has been struggling with defense industry cutbacks and production problems on its commercial programs. Thousands

of workers have lost their jobs in recent years.

The Air Force plans to buy 120 C-17s for an estimated $40 billion, making it one of the firm's largest programs in Long Beach. The program is already about $1 billion over budget, a cost borne so far by McDonnell, and development of the C-17 is more than a year behind schedule.

A McDonnell spokesman said the company "could not comment on a report that we haven't seen." McDonnell officials have previously said that some wing rivets did not meet specifications but that the problem has been corrected and the existing wings are more than adequate.

Potential safety risks from the wing flaws and the cost to remedy the defects are not known, but the government is "not protected" financially and needs to urgently conduct testing to determine the extent of the problem, according to a memorandum to Air Force officials included with the inspector general's report.

The investigation found that the quality standards for the C-17 did not comply with government requirements and that manufacturing procedures were "not followed and in some instances confusing or nonexistent." It also found that quality control data was "missing or incomplete."

Thousands of rivets that hold each wing together were improperly installed by Douglas with automated machines, the report found. After they were inserted into the wings, the rivets expanded twice as much as the company's specifications called for, the report said.

Rep. John Conyers (D-Mich.), who requested the Pentagon probe, said the findings raise "serious doubts about the safety of the aircraft" and asked Defense Secretary Dick Cheney to ground the four existing cargo jets undergoing test flights at Edwards Air Force Base.

But Air Force officials said McDonnell's riveting procedures do not pose any flight safety or durability problems, though the officials had not examined the inspector general's findings as of Wednesday.

In addition to the rivet problem, the inspector general report found that McDonnell had improperly installed two-piece fasteners or nuts and bolts in the wings, which were responsible for fuel leaks that forced the aircraft to be grounded three times in the last year.

The report found that the government is not protected either financially by the C-17 contract warranty or technically by durability tests on a special aircraft.

Despite the fuel leaks, McDonnell has asserted in recent weeks that the flight program is going well and is meeting many of the objectives set by the Air Force. So far four of the jets have flown about 500 hours at Edwards Air Force Base.

"We believe remarkable progress has been made in the C-17 program during the past 12 months, both in production and flight testing," David O. Swain, McDonnell senior vice president, said in a recent company news release.

But Conyers asserted in his letter to Cheney that the C-17 program amounts to a "procurement disaster" and asked Cheney to take urgent action to protect flight crews. A Conyers aide said that it appears that 26% of the wing rivets were overexpanded—meaning that the rivets fit too tightly inside the holes drilled in the wing. Each wing contains more than 100,000 rivets, according to a McDonnell source.

The allegations that McDonnell had improperly installed rivets surfaced in March, 1991, when The Times reported that the Federal Bureau of Investigation was looking into whether the rivets had been improperly installed and the problem covered up by McDonnell officials.

That investigation was later dropped by the Department of Justice, but congressional investigations of the problem continued and last year Conyers asked the inspector general to conduct a thorough investigation.

"It sounds like the same old news we heard some time ago," Col. Larry Greer. An Air Force spokesman, said about the inspector general's report.

The inspector general did not examine any rivets on the aircraft before concluding that they had been overexpanded. Instead, the conclusion was reached after reviewing quality control records that showed the automated riveting machines had used improper tolerances on sample runs, known as test coupons.

The coupons were originally reported lost or destroyed by McDonnell in the FBI's investigation, Conyers said. He termed the misplacement a possible cover-up of the problem and on Wednesday asked Atty. Gen. William P. Barr to reopen his investigation.●

PRESTON, MD

● Mr. SARBANES. Mr. President, I would like to bring to the Senate's attention the 100th anniversary of the incorporation of Preston, MD, and the 65th anniversary of the founding of the Preston Volunteer Fire Co.

Preston, which was formerly called Snow Hill, is a rural Eastern shore town that was established around the present M.E. Church built on farmland deeded by Philemon Willis. Soon after the church was erected, William Gootee set up a general store with a post office. People from nearby farms made weekly excursions to Snow Hill to do their shopping and pick up mail.

As the town grew and more demands were placed on the post office, frequent delays in the mail service became commonplace because there was another, much larger, Snow Hill in Maryland already. in 1856, Snow Hill changed its name to Preston. The name Preston was most likely selected to memorialize Alexander Preston, a prominent Baltimore lawyer at the time who had business in the town.

Before 1890 and the advent of the railroad in Preston, the town grew at a slow pace due to a lack of transportation facilities. The Choptank River was the principal mode of transportation before that time. However, the introduction of the railroad in Preston greatly influenced the town's growth.

With the addition of electric lights in 1908, and the completion of the State road in 1916, Preston was positioned on the main artery of traffic up and down the peninsula. The town's location and strong community provide an excellent environment for businesses. Today, two of the community's outstanding enterprises include the Preston Trucking Co. and A.W. Sisk & Sons, Inc., a canned foods brokerage.

Preston retains the smalltown charm that attracted residents over a century ago. It remains a farm community that welcomes people and is famed for its hospitality and congenial atmosphere. I want to thank Ms. Dora Mitchell, a local historian, for sharing her knowledge of Preston's history with me.

I join the citizens of Preston and Caroline County in honoring a town which has experienced a century of history and change and to wish the town a joyful celebration during this notable anniversary.●

ECONOMIC PROGRAMMING FOR RUSSIAN TELEVISION

● Mr. BRADLEY. Mr. President, I commend to my colleagues an article by Dr. Arthur Obermeyer appearing yesterday in the Christian Science Monitor. Dr. Obermeyer has been involved in helping the people of the former Soviet Union manage the difficult transition from communism to market capitalism. His approach, using the power of television to teach the people of the former Soviet Union about the basic workings of a market economy and to correct misunderstandings about how our system works, represents the kind of innovative program we should be thinking about.

As I argued when I introduced the Freedom Exchange Act, what the people of the former Soviet Union need, more than our dollars, is our ideas. High expectations have been raised by the fall of communism and by the images of the West that now pour into the region. What is missing, however, is an understanding of what it will really take to make the transition from communism to a free market society. Programs like that described by Mr. Obermeyer and the Freedom Exchange Act can make a real contribution to filling that gap. They represent the kind of modest investment that will yield us significant dividends in the years to come.

I commend Dr. Obermeyer on his good work and ask that his article be inserted into the RECORD at this point.

The article follows:

[From the Christian Science Monitor, Sept. 28, 1992]

RUSSIAN TV: AN UNEXPLOITED OPPORTUNITY

(By Arthur S. Obermayer)

Soviet citizens lived in isolation from the rest of the world for over 70 years. Now these 280 million people must bridge the gap and learn how to function in a free-market economy. Educating so many people to cope with such drastic political and economic changes is a monumental task. But the global cost of failure would be enormous.

From early childhood, Westerners experience free-market concepts through watching TV advertising, playing games like Monopoly, and selling lemonade and Girl Scout cookies to neighbors. Even the brightest and best-educated Russians have not had this kind of exposure and do not automatically grasp concepts that are obvious to us. This lack of understanding causes them to be apprehensive about the disruptive effect of re-

forms on their lives. They fear unemployment, hopelessness, and higher prices and have little appreciation of how the bitter medicine of today can lead to a healthier society tomorrow.

The challenge to the world has been to find the most effective and rapid methods of helping these people. The top-down approach to economic reform breeds resistance, frustration, and disillusionment. It runs the risk of ultimate failure. Russian leaders need to use all their resources to convince the public that the direction they are taking is sound. Approaches that will change attitudes developed under 70 years of communism are at least as vital as instruction. Today, many American organizations are sponsoring seminars, courses, exchange programs, and internships. These activities are important but reach at most a few hundred thousand people. How do we reach the other 280 million?

The Soviet government spent billions of rubles to construct two sophisticated national satellite television networks that reach even the remotest parts of the country—a country with 11 time zones covering one-sixth of the earth's land mass. Over 90 percent of homes have television sets, four times as many as have telephones. Leaders knew its propaganda power. Television is the principal source of information and entertainment for the majority of Russians who have met few foreigners and understand no Western language.

Television networks can be used to help them understand the dynamics of a free-market economy. But to get programs on the air requires solid business connections. Personal relationships are critical because Russians mistrust their government and ours. They are suspicious of anyone they do not know and quickly recognize propaganda for what it is. Still, entrepreneurial organizations that can deal directly with television professionals there can overcome these problems.

For the past two years, my organization has been helping many Soviet, now Russian, television producers put together low-cost broadcasts on market economics. One approach has been to provide American videotapes on relevant subjects. Some tapes are instructional, but more often they deal with Russian misperceptions about our economic way of life. Most Russians think you can become wealthy only if you deal on the black market, exploit workers, or do something else dishonest. We have countered by providing US videotapes on the struggle of entrepreneurs to succeed in our society, showing how success can lead to better jobs for workers and an economically healthier community.

Another one of our national television series uses Russian television crews to follow the lives of their fellow countrymen who are temporarily in the United States for on-the-job training or as interns. The programs focus on their experiences and perceptions and emphasize the obligations and responsibilities of employers and employees to each other. They also demonstrate what it is like to shop in an American store and live in an American home. Each episode covers individuals that the average Russian can relate to, such as farmers, craftsmen, shopkeepers, and managers.

Last year we also helped convert a well-established, popular prime-time television series from its original science theme to market economics. The series was based on US interviews by the internationally known Russian host, Sergei Kapitsa, with famous Americans including economists Paul Samuelson, John Kenneth Galbraith, Milton Friedman, and Larry Summers.

Although these programs provide only a small portion of what is needed, they have received the enthusiastic support of Russian reform leaders, television professionals, budding business executives, and ordinary people. Russian television organizations have borne most of the ruble cost of producing programs and have made free air time available. Still, much of the technical and programmatic resources must come from the West and be paid for with hard currency.

Thus far, my limited resources have been the primary source of financial support for our efforts. The US government does not consider this a priority and has not provided any private-sector funding specifically for television. Furthermore, the Russian economy has not yet developed to the point where commercial sponsorship is viable. To compound the problem, even major private foundations have defined their roles in such a way as to lose sight of this important goal.

The Western world has a unique opportunity to influence these people, but it must act soon, before the opportunity dissappears.●

REGARDING AX

● Mr. D'AMATO. Mr. President, the latest issue of Proceedings includes an article by Capt. R.M. Nutwell entitled "AX * * * or VFAX." Considering Acting Navy Secretary O'Keefe's recent remark that deep-strike interdiction "is not a tertiary kind of mission," I believe that Captain Nutwell's argument for a naval variant of the F-22 is both timely and proper.

I commend this essay to my colleagues, and ask that the full text of the article be printed in the RECORD.

The article follows:

AX * * * OR VFAX?

(By Capt. R.M. Nutwell, USN)

The Navy has decided it needs an "AX" medium-attack aircraft to succeed the ill-fated A-12. Since the AX will probably be the only all-new tactical aircraft development program the Navy can afford in the next 10 to 15 years, it represents the future of naval aviation. But a "son of A-12" medium-attack aircraft optimized for the long-range strike mission is not the plane we should develop.

Why? Because we need a new fighter even more urgently than we need a new strike aircraft. Since we can buy only one all-new aircraft, it clearly must be multi-mission. Because airframe-engine performance requirements and modern weapon-sensor capabilities make it much easier to adapt a fighter design to the strike mission than vice versa, it must be a multi-mission fighter, one that also can perform the strike mission.

The first requirement for a successful air campaign, including long-range strike missions, is air superiority. While strike aircraft can contribute to air superiority by attacking surface-to-air defenses and airfields, the key player in the air-superiority campaign is a fighter force capable of sweeping the enemy fighters from the air, as U.S. fighters have always done—most recently in Operation Desert Storm. It is imperative that Navy air wings have a front-line fighter capable of pacing the threat in the 21st century.

By 2010 the tactical fighter threat will include large numbers of fourth-generation fighters and perhaps a significant number of even more capable aircraft—versions of the French Rafale or the European Fighter Aircraft. We can expect to face fighters incorporating stealth technology, enhanced maneuverability, and higher cruise speeds.

If we build a medium-attack AX, what airplane will Navy fighter squadrons be flying against these threats? Answer—the F/A-18E/F, an airplane that will clearly not give us the capability advantage we have always enjoyed. While the Hornet is an excellent strike fighter and a good match for current fourth-generation air threats, it will be too slow and insufficiently stealthy, and may lack adequate range to serve as the Navy's front-line fighter in the 21st century.

The future of fighter aviation lies with the technology incorporated in the Air Force's F-22 advanced tactical fighter (ATF). By combining stealth technology, "supercruise" (supersonic cruise at about Mach 1.4 without afterburner), and outstanding maneuverability, this airplane will revolutionize air-to-air warfare. If the Navy is to stay ahead of the fighter threat, it must have an aircraft with ATF capabilities. Not only would an ATF variant (call it VFAX) counter the future fighter threat, it would also provide the range and mobility required for fleet air defense against future bomber-antiship missile threats.

But what of the long-range strike mission? First, we must recognize that cruise missiles will claim an increasingly larger share of this mission as their capabilities improve. While manned aircraft will continue to be needed for some targets deep in the enemy interior, this mission is no longer of sufficient importance to justify building a dedicated aircraft, especially when it will be the only new airplane we can afford.

Second, a VFAX derived from the ATF concept would be capable of performing the residual strike and other air-to-ground missions that will continue to require the inherent flexibility of manned aircraft: interdiction, close air support, and suppression of enemy defenses. While I am not aware of any cases in which an attack aircraft design was successfully converted to a fighter, there are numerous examples of fighter designs serving successfully in an attack role, e.g., the F-15E, the F/A-18, the F-16, and the F-4. This is true because fighter capability is still driven by airframe performance, while strike capability is driven largely by weapon system performance, and survivability in the strike mission is actually enhanced by fighter-type airframe performance.

To the argument that an ATF-based VFAX would have insufficient payload, I would answer that weapon delivery accuracy has reduced the requirement to carry several tons of ordnance; four- to six-thousand pounds of payload should be sufficient now. While it is true that more is almost always better, a large air-to-ground payload is no longer of sufficient importance to drive the design of our only next-generation tactical aircraft. We should be willing to give up some payload to get a true multi-mission aircraft that will keep pace with the fighter threat.

As to the argument that a multi-mission airplane would be too expensive, it would be much cheaper than two separate development programs, especially when numbers of aircraft to be bought are considered. Furthermore, the shrinking of deployed air wings and the unpredictability of future missions dictate that we must give the battle group commander deck full of multi-mission aircraft.

If we share the long-range strike mission with Tomahawk and decline to develop a dedicated follow-on strike airplane, will we

weaken the rationale for aircraft carriers? Not in the eyes of those who truly understand the modern role of carrier battle groups in sea control and power projection ashore. Long-range strike is but one element of power projection, and success in both missions starts with control of the air. Maritime interdiction operations, protection of friendly shipping, and support of noncombatant evacuations or ground forces ashore are all likely carrier battle group tasks that do not necessarily involve deep land strikes.

The Navy should abandon the long-sacred tenet that long-range strike is the raison d'etre for aircraft carriers. Clinging to such reasoning will ultimately sink the carrier because it fails to recognize that cruise missile-technology offers a much cheaper, lower-risk, effective way to conduct many long-range strike missions, and does not recognize the other critical missions that carrier battle groups perform.

The Navy should scrap the AX concept in favor of a VFAX—naval strike-fighter variant of the ATF. To build a single-mission medium attack aircraft would squander naval aviation's declining resources on a shrinking mission, and consign Navy tactical air wings to second-class status for a generation.•

THE RISE OF RACIAL HATE CRIMES IN GERMANY: ANTI-SEMITISM WITHOUT JEWS

• Mr. SIMON. Mr. President, during this session of the 102d Congress, I have been inserting statements in the CONGRESSIONAL RECORD regarding anti-Semitism. The hatred this prejudice breeds is still widespread. Earlier this year, I inserted a statement in the RECORD about the rise of neo-Nazism in Germany. Today I would like to specifically focus on the recent wave of antiforeigner violence in Germany.

The Federal Republic of Germany, to its credit, has tried to educate its people about the horrors of Nazism and Nazi Germany's barbaric racial policy. Most Germans accept the responsibility of their past and realize that it must not happen again. But the violence against foreigners in Germany these past 2 months is something the people of Germany must realize is frightening to the rest of the world. While most of the victims now are not Jews, but Gypsies, Vietnamese, Turks, and so forth, people outside Germany see this as a flashback to the 1930s.

Most people from the former East Germany, where most of the anti-foreigner violence is taking place, have not been exposed to a thorough education program that West Germans have experienced since World War II. East Germans were taught in school that they, too, were victims of Nazism, and many were, but now that Germany is unified the world community finds it difficult to accept these acts of hooliganism against people who are ethnically different.

The most disturbing response to this crisis is not what some bigoted people believe, but rather the anemic response by the German Government. Germany does have a liberal asylum law that may need some minor revisions, but this is not the root of the problem. Most politicians in Germany have been unwilling to unequivocally and forcefully condemn these attacks. There is an unemployment problem in the Eastern states, but blaming foreigners for the failures of communism and the cost of reunification is clearly wrong. It is scapegoating of the most ugly kind, and it is something that Germans should realize is unacceptable to the international community.

Recent street demonstrations on August 22 in the eastern German city of Rostock is the most recent example of German hate crimes. Armed with knives, starter pistols, and gasoline bombs, a mob of "skinheads" spoke at meetings, flaming the hatred of angry youth and showed that the neo-Nazis' organized campaign of terror against asylum-seeking immigrants has been gaining strength. It started in Rostock but quickly spread to dozens of German towns and cities. Other recent events, such as the defacing of war memorials, is further evidence of a rise in neo-Nazi activities and hate crimes. These criminal acts have been aimed not just at asylum-seekers and foreign guest workers, but also foreign students and tourists.

This disturbing sequence of violence has brought with it a simplistic program of racial hatred: "Freedom for us means foreigners out! Prosperity for us means foreigners out! Germany for the Germans means foreigners out!" These words are received by loud cheers from rightwing extremists. More disturbing, the rightwing German Republican Party and the People's Union have done well in the elections at the state level. Nationalistic parties have used immigration as a way to gain support among those who worry about the economy.

Many German citizens have been deceived by those who blame immigrants and the political asylum law in the German Constitution. But the main problem is not immigration. It is racial hatred and xenophobia. This new wave against non-Germans is anti-Semitism without Jewish people. In a Germany largely without Jews, European refugees and other visible minorities have become the new scapegoats for Germany's problems. In the more permissive climate of post-cold war Germany, the anti-Semitism and racial hatred that had been just below the surface has again come to light. Just as they did during the troubled Weimar Republic, these racists pick the most vulnerable, defenseless group of people to take advantage of popular frustration during a transition period.

Years before the new wave of asylum-seekers began coming to Germany, neo-Nazis had won 7.5 percent of all votes cast, which entitled them to 11 seats in the legislature, and to sit in 11 of Berlin's 12 borough councils. There were 1,150 attacks by rightwing extremists reported by German authorities in 1991. It is a worrisome trend.

Chancellor Helmut Kohl has reacted to the violence by launching a national antiracism campaign. This has done little to soothe tensions throughout Germany, but it is a necessary first step. But more should be done. Protection for foreigners has been totally inadequate, and this ought to be remedied immediately. German officials have also been slow to investigate the organizations of the racist activities. As a result, rightwing hate crimes have been tolerated to a shocking degree. In the short term, law enforcement must be strengthened.

Germany's constitution offers asylum to all genuine political refugees. But now Chancellor Kohl has called for changes to article 16 and the German Government plans on deporting thousands of Romanians, mostly Gypsies, by November 1 of this year. These Gypsies, many of whom had relatives fall victim to Nazi racial policies, will now be forced to return to a country that does not accept Gypsies as part of their population. The renowned human rights organization, Helsinki Watch, says: "Gypsies in Romania have been the target of increasingly violent attacks since the revolution that toppled Nicolae Ceausescu." By singling out Gypsy asylum-seekers, Germany is promoting another scapegoat for its reunification problems.

By making the asylum law a central issue in German politics, the Kohl government has given rightwing extremists a legitimacy they do not deserve. Racial hatred must be met with education, forceful denunciations, and a genuine commitment to basic human rights.

The German Government ought to set the tone for a more tolerant Germany. They have a special responsibility to do no less.•

THE E-2C HAWKEYE

• Mr. D'AMATO. Mr. President, the latest issue of Proceedings includes a letter in the "Comment and Discussion" section from Comdr. Robert Chamberlain, USNR, regarding the future of carrier-based airborne early warning. I believe Commander Chamberlain's assessment of the precarious state of carrier-based airborne early warning is correct, and I agree wholeheartedly that the development of a follow-on to the E-2C needs to begin now, though I would differ with his funding source.

I commend this essay to my colleagues, and ask that the full text of the essay be printed in the RECORD.

The essay follows:

PRESS RELEASE FROM HELL

Commander Robert M. Chamberlain, U.S. Naval Reserve—Commander Pritulsky was

right on the mark about the state of airborne early warning (AEW) in the Navy. He also was entirely correct in suggesting that, unless something is done now to sustain an organic AEW capability for carrier air wings, AEW will become exclusively an Air Force mission.

The painful lessons learned—and losses suffered—by the Royal Navy in 1982, when it went to the Falklands without a seagoing AEW capability and beyond the range of land-based AEW support, should not be lost upon us. A glance at a globe should prove to anyone with any understanding of aircraft operations that continuous, long-range, land-based, AEW support all over the world is, quite frankly, impossible. A carrier-based AEW aircraft is the only surveillance platform that can support a battle group in distant locations whenever rapid reaction and sustained AEW and surveillance coverage are required.

Navy acceptance of Air Force AEW support for its carrier battle groups certainly would produce strong suggestions that the aircraft carrier is no longer required. Advocates of the B-2 bomber are already saying that it can conduct sustained, long-range conventional strikes virtually anywhere in the world. If the Air Force developed a team of B-2s, Airborne Warning and Control System (AWACS) aircraft, and aerial tankers for long-range strike missions, how could the Navy make the case for keeping aircraft carriers?

Therefore, to maintain the carrier battle group's viability as a vital U.S. military asset in future conflicts—where flexibility, quick response, and endurance on station are required—an organic AEW capability is essential.

There are three possible approaches to sustaining AEW support for the battle groups. The first is to spend more money on the existing E-2C fleet and try to keep it alive. This approach does not solve the problem; it merely postpones it for a few years—at a significant cost to the taxpayer. The second approach is to do nothing; tantamount to giving the AEW mission to the Air Force.

The third approach is to start immediately an aggressive program to develop an AEW system to replace the E-2C. The main obstacle to this solution is the Navy's intense internal debate over future attack and fighter aircraft: AX vs. F/A-18E/F vs. F-14 Quickstrike vs. ATF. All this haggling has pulled attention away from the desperate situation carrier air wings find themselves in with regard to support aircraft. The carrier-aviation community must take a total-force out-look and admit that AEW aircraft, tankers, and even carrier on-board delivery aircraft are as critical to overall mission success as strike and fighter aircraft.

Many will respond to this by saying that support-aircraft programs will have to wait until the problems with attack and fighter programs are resolved. We cannot afford to wait. The Air Force has started a radar-development program for an eventual AWACS replacement. Given that AEW system performance requirements for the Navy and the Air Force will be similar in the future, this sets up a perfect opportunity to begin a joint Navy-Air Force system development program for the next generation of AEW aircraft. The goal of a Navy-Air Force AEW program should be the development of a system that can be integrated in a carrier-based aircraft—such as the S-3 Viking—and a land-based aircraft such as the C-17 or the KC-10. A joint development program would reduce significantly the research and development costs of an AEW system for both services, as well. As an initial contribution to a joint AEW-development program, the Navy could use the money earmarked for the upgrading of the E-2C.

A program like this would let the Navy address its carrier-based AEW needs well into the 21st century, and ease joint-service-interoperability problems. Before the Navy can commit to this, or any other course of action, however, it must admit, as a service, that it indeed has a problem in this crucial area.•

ADMINISTRATION'S DIGITAL TELEPHONY PROPOSAL

• Mr. LEAHY. Mr. President, the administration has come to Congress seeking help to preserve law enforcement's ability to wiretap communications in light of new and developing technologies. The latest proposal would require communications service and equipment providers to accommodate law enforcement's needs in developing their products.

The Judiciary Subcommittee on Technology and the Law is working with the Commerce Committee and our colleagues in the House of Representatives to address this problem. My goal is to assist law enforcement without jeopardizing privacy rights or frustrating the development of new communications technologies.

While it is not possible to resolve the digital telephony issue in the waning days of this session, I have committed to the Attorney General and the Director of the FBI that I will work with them over the next several months. The legal and technical issues are complex. Congress has an obligation to consider them carefully.

Last week, a broad coalition of civil liberties and privacy advocates, as well as telephone and computer companies issued a report on the administration's digital telephony proposal. This analysis raises several important questions about the breadth of the proposal and about its cost to consumers. While major computer companies like IBM, Digital, Microsoft, and Sun Microsystems as well as AT&T and the U.S. Telephone Association are concerned about the administration's proposals, they agree that "the FBI is entitled to full cooperation in its efforts to exercise the powers granted to it in the wiretap statute." I agree and strongly encourage industry to continue to work with the FBI in the context of the ad hoc technical working groups that have been meeting for the last several months. I include the coalition's report in the RECORD for the information of all Senators.

Let me raise one related point. The administration has expressed concern about the increased use of encryption devices by businesses that store and transmit data. The bottom line is that the Government would like trap doors into all encryption technology that could be used by potential targets of law enforcement investigations. In the course of hearings in the House Judiciary Committee, industry representatives opposed efforts to restrict their ability to protect their systems from industrial espionage and hi-tech criminals.

I have made it clear to Attorney General Barr and Director Sessions that while I am prepared to work with them on the digital telephony issue, I have no intention of forcing American businesses to make their computer systems vulnerable. Any such proposal would have grave consequences for American competitiveness. In today's global economy, we cannot afford to hamstring U.S. telecommunications and computer industries.

The executive summary follows:

ANALYSIS OF THE FBI PROPOSAL REGARDING DIGITAL TELEPHONY

EXECUTIVE SUMMARY

Athough the FBI has characterized its proposed "Digital Telephony" legislation as relating to the preservation of government's ability to engage in authorized wiretapping, the proposal actually requires that all communications and computer systems be designed to facilitate interception of private messages, on a concurrent and remote basis—thus imposing new engineering standards that go far beyond any existing law. As currently drafted, the proposal would impose substantial costs and create significant uncertainties, despite the absence of any clear showing that the proposed measures would be either effective or necessary. In addition, the proposal raises serious security and privacy concerns.

Beginning some time last year, the FBI has expressed concern that technological changes occurring in the telecommunications industry might have an adverse affect on the ability of law enforcement officials to conduct lawful, authorized wiretapping. For example, the FBI has raised questions about its ability to extract individual telephone calls from multiplexed signals sent over light fibers using new digital protocols. Various FBI proposals have generated concern on the part of industry that the security and privacy of electronic communications and computer systems might be weakened and that the competitiveness or technical advancement of various systems might be undercut. No one in industry challenges the FBI's right to cooperation in seeking to implement wiretaps or disagrees with the proposition that law enforcement officials need communications interception tools to do their vital job. The communications industry, network users and public interest groups are concerned with the broad sweep of the FBI's draft proposal and the potential uncertainties and costs it would impose. This memorandum explains the basis for those concerns.

Although the FBI proposal is described as relating to "digital telephony," it actually applies to all forms of communication, including all computer networks. The proposal requires that equipment be designed to give access to communications on a "concurrent" basis, regardless of the mobility of a target, in isolation from messages being exchanged by any other persons. These requests may have complex and differing application in different contexts, but they would certainly introduce additional costs and substantial

uncertainties for both equipment manufacturers and everyone who offers messaging service to others. These days, the list of those covered by the proposal ("providers of electronic communications services" and "PBX owners") includes just about everyone. Because the wiretap statute was written to protect the privacy of a broad range of communications types, and because of the growing independence and intermixing of all forms of communications, the statutory language of the FBI proposal could turn out to require redesign or expensive alternation of:

(1) Public electronic mail systems, like those offered by MCI, AT&T and a host of other companies and individuals;

(2) all telephone switches and the sophisticated equipment used by long distance carriers;

(3) software used by online information services like Prodigy, GEnie, Compuserve, America Online and many others;

(4) local area networks, linking all kinds of computers, operated by small businesses, colleges and universities and many other types of organizations, including links into these systems from other homes and offices;

(5) PBXs owned by small and large businesses;

(6) high speed data networks connecting workstations with mainframes and supercomputers, as well as those carrying messaging traffic across the "Internet;"

(7) radio-based and cellular communications systems, including pocket telephones and computers with radio-based modems;

(8) the thousands of small personal computers owned by businesses, hobbyists, local governments, and political organizations that communicate with others via computer bulletin boards;

(9) private metropolitan wide area communications systems used by businesses such as large banks;

(10) satellite uplink and downlink equipment supporting radio and television transmissions and other communications; and

(11) air-to-ground equipment serving general aviation and commercial aircraft. We are becoming an information economy and, accordingly, imposing mandatory system design requirements on all those involved in the transfer of information has an impact on large numbers of people and most sectors of the economy.

There is no doubt that evolving technologies will challenge law enforcement officials and industry alike. We need effective law enforcement tools, as well as appropriate levels of privacy and security in communications and computer systems. The goals underlying the FBI proposal are valid and important ones, but they may well be best achieved without additional legislation. Industry has historically cooperated with law enforcement and is presently engaged in ongoing discussions to identify specific problems and concrete solutions. This cooperative process will lead to needed exchanges of technical information, better understanding on all sides of the real policy issues, and better, more cost-effective solutions. Congress should reject the FBI proposal and encourage continuing discussions that will lead to more specific identification of any problems and to more concrete, cost-effective solutions.

ANALYSIS OF THE FBI PROPOSAL REGARDING DIGITAL TELEPHONY

What is Proposed? The most recent proposal imposes obligations to provide various generic interception "capabilities and capacities" and empowers the Attorney General to grant exemptions, after consultation with the Federal Communications Commission, the Department of Commerce and the Small Business Administration. See Attachment A. Any person who manufactures equipment or provides a service that failed to comply with the broad and vague requirements of the proposed statute would be subject to a civil penalty of $10,000 per day.

How Serious is the Problem? The predicate for the FBI proposal is that advances in technology have made it more difficult for the government to intercept particular telephone conversations in the course of legally-authorized wiretapping. There have been few actual problems, historically, in executing authorized wiretaps. None have stemmed from characteristics of communications equipment design (as distinct from limitations in equipment capacity). On the other hand, it is clear that, over time, changes in the technologies used for communications will require the FBI (and the communications industry as a whole) to use new techniques and to acquire additional equipment and skills. Some developments, such as encryption, may make interception (or, at least, understanding the contents of what has been "intercepted") much more difficult—but in ways that are not even addressed and cannot be fixed by the proposed legislation. (It is difficult to evaluate the FBI argument that it would have asked for more interceptions if some technological barriers had not existed. There have always been and will always be some technological barriers to interception of the content of communications the participants seek to protect.)

Existing law requires all companies providing electronic communications services to cooperate fully with lawful requests from the FBI and other law enforcement officials—and there is no history of any general failure to provide such cooperation. See Attachment B. Existing law also contemplates that the government will bear the costs imposed by the government's requests for access to communications. (As noted below, the proposal does not specifically extend that principle.) There is no showing that the government lacks the financial resources to modernize its communications equipment or to fund the costs of lawful interceptions that it initiates. Since the total number of content wiretaps in 1991 authorized by Federal and State courts was only 856 taps (and almost 60% of these were at the State level, 356 Federal versus 500 State), and since the call-set up or pen register tap orders for 1991 at the Federal level were only 2,445, (thus, implying a national total under 7,000), it appears the costs may be better targeted to the specific lines or ports necessary, instead of burdening all lines or ports existing in the network. See Administrative Office of the U.S. Courts "Report on Applications For Orders Authorizing or Approving the Interception of Wire, Oral, or Electronics Communications (Wiretap Report)" for the period January 1, 1991 to December 31, 1991 and letter from the Assistant Attorney General W. Lee Rawls to the Honorable Jack Brooks, Chairman of the Committee on the Judiciary of the United States House of Representatives, dated April 23, 1992, providing the annual report of the Attorney General on pen register orders. By comparison, there were over 138 million access lines as of December 31, 1990 according to the United States Telephone Association and this does not include ports used for cellular or many other network accesses. (We understand the current FBI budget provides for $9 million for new digital telephony interception equipment.) Thus, although there is valid reason to be concerned that changes in technology will challenge law enforcement agencies to find and adopt new techniques, there is no immediate crisis requiring swift action.

Broad Scope of the Current Proposal: The FBI proposal covers all providers of "electronic communications services" and all "private branch exchange operators." These days, that means just about everybody, including every business that has its own phone switch and every company that operates its own local or wide area computer network. The Electronic Communications Privacy Act defines "electronic communications services" to include electronic mail, file transfers over a Local Area Network ("LAN") and, indeed, every form of transmission of a message other than voice telephone calls (which are also covered by the proposal as "wire" communications), and sound waves in the open air (the only form of communication not covered by the proposal). See 18 U.S.C. 2510(12),(15). All "providers" of such services would be affirmatively required, within three years, to provide law enforcement officials with the "capability and capacity" to intercept communications. This capability would have to be provided "concurrently" with the communication, without detection (apparently without regard to the target of the wiretap possibly employing sophisticated wiretap detection capabilities), exclusive of any communications between other parties, regardless of the mobility of the target, and without degradation of service.

These absolute requirements might not be capable of being met, as a technical matter, in some contexts, regardless of costs. The proposal is redundant, in the sense that it requires the ability to access communications at all points during their transmission, even though access at one point is all that is needed in any given circumstance. Although current wiretap law requires "minimization" and use of wiretaps as a "last resort," the proposal imposes obligations on all communications systems as if preserving the ability to wiretap at any point should be the system designer's highest priority. The application of these requirements would have substantially different costs and other implications depending upon where in a communications pathway they were actually applied. In any event, they dramatically expand the nature and reach of current law—which requires cooperation but does not grant the government a right to redesign the communications network or the equipment used by large numbers of businesses.

The FBI has defended its proposal on the ground that it is only seeking to "preserve the status quo," by preventing changes in technology from taking away capabilities that Congress meant to assure when it passed the 1968 and 1986 wiretap statutes. But that mischaracterizes the "status quo". The current wiretap statutes take the communications networks as they find them and do not require any provider of communications service to redesign the system, or to refrain from using any particular technology, solely on the ground that such a technology would make interception more difficult. While there may well be sound reasons for all concerned to cooperate to seek to preserve for the government a practical ability to engage in authorized wiretapping, there is simply no existing legal authority for law enforcement officials to mandate the use of particular technologies and, thus, contrary to the claims made by the FBI, the proposal does not simply maintain the status quo, but greatly expands the jurisdiction of the At-

torney General and would represent a giant step beyond current law and congressional intent going back to 1968.

While the proposal imposes substantial uncertainties, to be discussed below, there is no question that, as drafted, it would have an extremely broad reach. As a result, it could complicate the development of various new technologies. Even though the language of the proposal would extend to cable information systems and Automated Teller Machines ("ATM"), the FBI has stressed in its proposal that various systems might be exempted by executive action. But the exemption authority is vague and standardless—so the net effect is that every system provider has to worry on a continuing basis about whether or not its system is covered. Moreover, the proposal is clearly designed to cover any system facilitating two-way conversation, regardless of the size of the communications service provider. In consequence, any small business that installs its own local PBX system for forwarding calls from customers could be required to replace its equipment with new switches that meet the law's requirements. If current online information services do not track the "services" and "features" used by those who send messages through their electronic mail channels, then expensive modifications might be mandated. Because these electronic mail systems are all being joined together, and some function as links that forward messages between other systems, all might have to be designed to all "real time" interception by retransmission to a remote site—even though delayed searches of stored files would seem to make a lot more sense in the context of electronic mail.

Costs Likely to be Imposed by the Proposal: The costs imposed by this proposal would be passed on to consumers and to all subscribers to electronic communications services. The total costs, including costs imposed by its potentially disruptive impact on planning for new computer and communication technologies, cannot be fully assessed—but would clearly be very substantial. In its report on the FBI's proposal, the General Accounting Office ("GAO"), page 1, stated: "[N]either the FBI nor the telecommunications industry has systematically identified the alternatives, or evaluated their costs, benefits, or feasibility." And further at page 4 of the GAO Report:

"[T]he [FBI's] May proposal does not address what the telecommunications industry would need to do to be in full compliance with the proposal in the event it is enacted, the meaning of certain technical terms, or who would pay for the cost of wiretapping solutions."

The proposal mandates compliance with very broadly stated functional standards and contemplates that exemptions (available from the Attorney General, without the benefit of any specific standards or criteria) will be granted only after this broad new governmental authority has been enacted into law. The most recent proposal assumes that the costs of compliance will become a cost of doing business imposed on all communications service providers—and passed on to telephone ratepayers and other subscribers to electronic communications services. (The current law's provision that the government will pay reasonable expenses incurred in cooperating with a specific request for interception have not been expressly applied to this new requirement to "provide the capability and capacity" to respond to such requests.) Communication service providers and computer equipment manufacturers could suffer major losses as a result of delays, mandatory redesigns, and even prohibition of certain technological options. There has been no opportunity as yet to compare (1) the costs the FBI would incur to modernize its approach to interception (especially given the data on the small number of taps performed annually) with (2) the costs that would be incurred by consumers as a result of mandatory limitations on new technology design applied to all technologies nationwide.

Uncertainties Created by the Proposal: By attempting to establish open-ended duties, broadly defined, in statutory language, the current proposal creates substantial uncertainties and could cause controversy to supplant cooperation. For example, although current interception orders predominantly relate to voice communications, the draft proposal covers all forms of communication. The approach could sweep up systems ranging from the cellular pager to the high-speed network designed to transfer digital data between supercomputers. It raises a wide variety of questions:

What exactly are the boundaries of the "public switched network" to which the proposal refers?

On what basis would the Attorney General choose, or be required, to provide exemptions?

How would the proposal affect systems that regularly encode messages at the point of origin?

Does the required provision of capacity to intercept "concurrent with the transmission to the recipient" mean that an electronic mail or voice mail or facsimile mail system must be designed to signal the system operator every time a message from a target of an investigation is accessed by the person to whom that message might have been addressed?

Will it be technically feasible to detect and separate just those parts of communication signal coming from a particular residence or other source, that "exclusively" represent the content coming from a particular individual?

What is meant by the new, broad requirement that the government be told what "services, systems, and features" have been used by the subject of the interception?

Does the required provision of interception capacity "notwithstanding . . . the use by the subject . . . of any features of the . . . system" have the effect of requiring the system provider to offer to defeat any encryption mechanism it may provide to subscribers?

Does the requirement to provide interception despite the target's mobility mean that systems that inherently allow users to send and receive from multiple points, without notice, cannot be used at all?

Will it be physically possible or economically feasible to prevent "degradation of services" if the functional requirement for real time tracking of any target means that some central database must be checked by the service provider's computers every time a communication is made?

We don't know the answers to these questions, despite their importance. More importantly, the answers to key policy questions may differ substantially depending on what particular technology and interception need (and minimization goal) is being addressed. And we don't even know by what means providers of electronic communications services and designers and users of electronic communications and computing equipment will find out how the requirements will be applied to their systems. In short, the FBI's proposal, as currently drafted, may generate new and unnecessary controversy, despite its legitimate goals, by attacking perceived problems at the wrong level of generality.

Threat to security and privacy: Ironically, in addition to creating uncertainty and imposing costs, the proposal would itself create new and serious security risks and undermine the privacy of electronic communications. If electronic communications service providers must design their system to allow and ensure FBI access, then the resulting mandatory "back doors" may become known to and be exploited by criminals. Business is currently attempting to achieve greater security in its communications, to counter the threats posed by unauthorized access, computer viruses, and electronic theft. A proposal the FBI seeks to justify in terms of law enforcement could well have the effect of facilitating violations of law and reducing or preventing effective security measures.

Threat to International Trade and Security Interests: As drafted, the proposal appears to threaten U.S. interests in international trade and competitiveness. Potential purchasers abroad may not buy products or systems that they know have a "trap door" the United States Government can easily open. If U.S. manufacturers of communications systems and equipment and computer software have to go through a bureaucratic certification or clearance process that is not applicable to their foreign competitors, their race to the market with new technologies will be slowed and their products and designs will be disadvantaged.

Legitimate Law Enforcement Interests and Concerns Can and Should be Served: There is no doubt that authorized wiretapping is an important weapon properly used by the FBI to fight serious crime. And there is general agreement among communications service providers, and the makers of communications and computing equipment, that the FBI is entitled to full cooperation in its efforts to exercise the powers granted to it in the wiretap statute. If new technologies require changes in police tactics, then accommodations may be needed on all sides to make sure that new tactics that do not threaten the effectiveness or safety of law enforcement (or unreasonably threaten privacy interests) are available. The FBI proposal has served a valuable purpose in drawing attention to the need for adequate planning and redoubled cooperative efforts.

It is Too Soon to Tell Whether Legislation will be Necessary: Despite the good intentions underlying the FBI proposal, there is certainly no demonstrated need to hamper U.S. technological advances, harm the competitiveness of the U.S. communications or computer industries, or hinder efforts by business to increase computer security, just to make sure that law enforcement officials can continue indefinitely to use the same equipment and procedures that were appropriate for an earlier technology. There has as yet been no clear showing that the design of new technologies will not permit reasonable, affordable and effective techniques to be used for authorized interception. There has been no showing that the industry will not or cannot cooperate fully, share technical information under appropriate protections, and even design and supply new equipment at reasonable cost, insofar as these steps prove necessary for the FBI to accomplish its mission. There has been no clear showing that any capacity limitations could not readily be remedied with the provision of adequate financing for government law enforcement operations.

The Current Proposal is Clearly Premature, in Light of Active Ongoing Efforts by Industry to Identify and Solve any Serious Problems: An ad hoc coalition of interested parties has joined together to study the issues posed by the FBI's proposal and to begin discussions involving various business interests, public interest groups, the law enforcement community, legislative staff, and representatives of the Administration. All involved recognize that the FBI is entitled to have adequate tools to fulfill its law enforcement objectives. For its part, the FBI has recognized the value of industry cooperation and the need for a more robust exchange of technical information. Once the technical issues come into focus, particular policy issues may be ripe for decision, in a context in which the costs and implications of such decisions for trade, security and privacy concerns will be much more clear. Technical Working Groups representing both the telephone companies and the computer industry are hard at work—but the issues are complex and even the first stage of identifying serious potential problems for law enforcement will take some time. Consideration of proposed solutions should await the results of these detailed and technical discussions.

CONCLUSION

As the broad collaboration that accompanied consideration of the 1986 amendments to the wiretap statute showed, the public interest in sound law enforcement, and public expectations of privacy and security, are best served by encouraging a constructive exchange of views among industry, concerned citizens and government, before any new legislation is enacted. Congress should reject the FBI proposal and encourage continuing discussions that will lead to more specific identification of any problems and to concrete, cost-effective solutions.

Electronic Frontier Foundation.
ABCD—The Microcomputer Industry Association.
Advanced Network & Services, Inc.
Agson, Inc.
American Civil Liberties Union.
Arrow.
AT&T.
Cellular Telecommunications Industry Association.
Computer and Business Equipment Manufacturers Association.
Computer and Communications Industry Association.
Computer Professionals for Social Responsibility.
Digital Equipment Corporation.
Eastman Kodak.
Electronic Mail Association.
Graphics Technologies, Inc.
IBM.
Information Industry Association.
Information Technology Association of America.
Iris Associates.
Logistics Management, Inc.
Lotus Development Corporation.
Merisel, Inc.
Micro Computer Centers Inc.
Microsoft Corporation.
Okidata.
Oracle.
Panamax.
P C Parts Express.
Prodigy.
Seneca Data Distributors, Inc.
Software Publishers Association.
Sun Microsystems.
Telecommunications Industry Association.
United States Telephone Association.
Westbrook Technologies.●

S. 2362, SOCIAL SECURITY ACT AMENDMENT, MEDICARE REIMBURSEMENT FOR THE SERVICES OF NEW PHYSICIANS

● Mr. D'AMATO. Mr. President, I rise today to join 32 of my distinguished colleagues in cosponsoring S. 2362, the Medicare Physician Payment Equity Act. This bill, introduced by Senator MCCAIN, seeks to correct an inequity in title XVIII of the Social Security Act regarding the Medicare reimbursement rates for the services of new physicians.

Currently, new physicians receive Medicare reimbursement at a reduced rate for the services they provide Medicare beneficiaries. New physicians in the first year treating Medicare beneficiaries receive reimbursement for their services at a rate reduced by 20 percent. This rate is reduced 15 percent in the second year, 10 percent in the third year and 5 percent in the fourth year. Although new physicians are usually those who have just completed their medical training—including extensive and intensive residency training—new physicians, as defined by the current Medicare reimbursement policies, can also be individuals who have practiced for a number of years. They may never have treated Medicare beneficiaries and received Medicare reimbursement; may have been in military service practicing medicine; or may previously have been members of a group practice.

I believe that the current policy of reduced reimbursement is discriminatory. In real terms, new physicians often have higher expenses that physicians who have been in practice a number of years. They are often repaying substantial student loans for the high cost of medical education and may have heavy startup costs of establishing a practice.

In the spirit of physician payment reform and with the practical consideration of encouraging Medicare participation, we must rectify this inequity. I am pleased to join this bipartisan effort in cosponsoring this legislation.●

ORDERS FOR TOMORROW

Mr. EXON. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand adjourned until 8:30 a.m., Wednesday, September 30; and that when the Senate reconvenes on Wednesday, September 30, the Journal of the proceedings be deemed to have been approved to date; that the call of the calendar be waived, no motions or resolutions come over under the rule; and that the morning hour be deemed to have expired.

I further ask unanimous consent that the time for the two leaders be reserved for their use later in the day; that following the Chair's announcement, there be a period of time for the transaction of routine morning business not to exceed beyond 9 a.m., with Senators permitted to speak therein for not more than 5 minutes each, and with Senator DECONCINI recognized for not to exceed 20 minutes; and that at 9 a.m. the Senate return to executive session to resume consideration of the START Treaty under the previous order.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADJOURNMENT UNTIL TOMORROW AT 8:30 A.M.

Mr. EXON. If there is no further business to come before the Senate today, I now move that the Senate stand adjourned in accordance with the previous order until 8:30 a.m., on Wednesday, September 30.

The motion was agreed to, and the Senate, at 8:45 p.m., adjourned until Wednesday, September 30, 1992, at 8:30 a.m.

CONFIRMATIONS

Executive nominations confirmed by the Senate September 29, 1992:

THE JUDICIARY

DENNIS G. JACOBS, OF NEW YORK, TO BE U.S. CIRCUIT JUDGE FOR THE SECOND CIRCUIT.

ANITA A. BRODY, OF PENNSYLVANIA, TO BE U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

IN THE COAST GUARD

COAST GUARD NOMINATIONS BEGINNING THOMAS B. RODINO, AND ENDING KENNETH T. VENUTO, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON SEPTEMBER 9, 1992.

COAST GUARD NOMINATIONS BEGINNING ROGER W. BOGUE, AND ENDING FRANCIS L. SHELLEY III, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON SEPTEMBER 9, 1992.

COAST GUARD NOMINATIONS BEGINNING ADESTE F. FUENTES, AND ENDING KRISTIN A. WILLIAMS, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON SEPTEMBER 15, 1992.

COAST GUARD NOMINATIONS BEGINNING ROBERT J. FULLER, AND ENDING CARRIE M. STOFFEL, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON SEPTEMBER 25, 1992.