

SENATE—Monday, September 12, 1994

The Senate met at 12 noon, and was called to order by the President pro tempore [Mr. BYRD].

The PRESIDENT pro tempore. The prayer will be led by the Senate Chaplain, Reverend Dr. Richard C. Halverson.

Dr. Halverson.

PRAYER

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

Let us pray:

In a moment of silence, let us remember a number of our people who have passed from this life.

Former Senator Symms' mother; Paul Monaghan, for many years a press reporter; Beth Ormond, from the stationery room; and Officer Dextradeur, here many years in the Senate.

Let us remember their loved ones in their loss.

The kings of the earth set themselves, and the rulers take counsel together, against the Lord, and against his anointed, saying, Let us break their bands asunder, and cast away their cords from us.—Psalm 2:2-3.

Sovereign Lord of history, the psalmist asks a penetrating question: Why do people, nations, and rulers resist Thee and Thy law? Since the Tower of Babel, mankind has been organizing God out of his life, individually and institutionally. Even the church organizes God out of its life.

Dear God, let this not be true of the leadership of our Nation. As our Founding Fathers looked to Thee for protection and direction in establishing a new nation, so may we today. As they depended upon Thee to set our Nation on a course honoring to God and dedicated to the common good, so may we. Grant, O God, that these sacred precincts may be a place of Divine approval and blessing to all peoples.

In the name of the Lord, our God. Amen.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The majority leader is recognized.

ORDER TO PROCEED TO CONFERENCE REPORT ACCOMPANYING S. 2182

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of the conference report accompanying S. 2182, the Department of Defense authorization bill, at 1 p.m. today.

The PRESIDENT pro tempore. Is there objection? The Chair hears no objection, and it is so ordered.

ORDER OF PROCEDURE

Mr. MITCHELL. Mr. President, pursuant to a previous order, there will be a period for morning business to extend between now and 1 p.m. At 1 p.m., pursuant to the order just obtained, the Senate will proceed to consider the Department of Defense authorization bill conference report. No rollcall votes will be held today in accordance with a decision made prior to the recent recess, and as set forth in a scheduling letter which I sent to all Senators 2 weeks ago.

I have been advised that a request has been made by our Republican colleagues that any votes set for tomorrow occur following the respective party luncheon caucuses and I will, of course, accommodate that request. So there will be no recorded votes prior to the caucuses tomorrow noon, as requested by our Republican colleagues. Any votes that will be required with respect to the Department of Defense conference report and any other matters taken up today or tomorrow morning will be scheduled to occur not earlier than 2:30 p.m. tomorrow.

PAUL MONAGHAN

Mr. MITCHELL. Mr. President, the Senate Chaplain made reference to several people whose passing occurred during the recess. I would like to make just a brief comment about one of them.

Paul Monaghan was a reporter who covered the Congress for several newspapers, including one in my own State of Maine. As a result of that coverage, I came to know and work with Paul Monaghan over many years. He was diligent, fair, and a very good reporter. I personally, and many others who knew and befriended him, will miss him very much.

His death was untimely, as he was a young man, stricken by cancer at a very early age. And his death reminds us of our own mortality, which will come to all of us in time, but comes to some in a too early time.

I extend to all of Paul Monaghan's family the regrets and sympathies of all Members of the Senate.

SCHEDULE

Mr. MITCHELL. Mr. President, we are going to have a busy legislative period in the next several weeks.

As I previously indicated, and now take this occasion to restate, following the Department of Defense authorization bill, we have a number of other important measures to take up.

First, of course, as required by law, we must complete action on the remaining appropriations bills. Several such bills remain. The District of Columbia appropriations conference report will be considered in the near future. I understand the House will be taking up some measures today. So we are going to do the best we can to complete action on those measures prior to the end of the fiscal year. And the Presiding Officer, the chairman of the Appropriations Committee in the Senate, deserves a great deal of credit for moving that legislation so promptly.

We also hope to complete action on a wide range of important measures, including banking, housing, telecommunications, campaign finance, lobbying, and gift reform; the world trade agreement, known otherwise as GATT; some environmental measures; and, of course, health care reform, where I continue to believe that there is time remaining to do a good bill, as there are many areas of agreement among all Senators.

Mr. President, I look forward to a busy and productive period.

I note no other Senator on the floor now seeking recognition, and so I suggest the absence of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

MORNING BUSINESS

The PRESIDENT pro tempore. The Senate is in morning business. Under the order, a Senator may be recognized for not to exceed 10 minutes. The Senator from Indiana [Mr. COATS] is recognized therefore for not to exceed 10 minutes.

Mr. COATS. Mr. President, I thank the Chair.

NO UNITED STATES INVASION OF HAITI

Mr. COATS. I wish to note today that while I do not know for a fact that the United States will invade the island nation of Haiti, all the press reports indicate that the decision has already been made at the White House. The

news reports and spokesmen for the administration over the weekend on news shows seem to indicate that an invasion of Haiti is imminent and that the decision has been made; ships are steaming to the Caribbean, troops are being trained; and we are told that any day now we can expect an invasion of that nation.

Mr. President, the President's stated justification for an invasion, to this Senator and I think to many, simply does not hold up. Neither the cause of democracy nor the national security interests of the United States will, in my opinion, be served by an invasion of U.S. Marines of that nation. To the contrary, both the cause of democracy and our national security interests I think can be in the long run significantly undermined if we in fact do use military force to return Mr. Aristide to power in Haiti.

Unlike some of its neighbors, Mr. President, Haiti has never known true democracy. While its brief flirtation with elective politics after the fall of "Baby Doc" Duvalier resulted in Mr. Aristide's election as its President, the country merely substituted one repressive regime for another. And unlike Duvalier, when the country could stand no more, Aristide himself was overthrown.

While a democratic Haiti is certainly a desirable goal, restoring Mr. Aristide to power will not magically produce a democracy in a country where it has never taken root. Democracies cannot be imposed any more than nations can be built, and we do democracy a disservice by using it as an excuse to further what appear to be political rather than democratic goals.

In the same way, America's national security is undermined by diverting valuable human and other resources to a cause that has not been adequately defined as a cause in the national interest.

Mr. President, when Secretary of Defense William Perry conservatively estimated that it will cost \$425 million to mount an invasion of Haiti and occupy the island for 7 months, he failed to calculate what is the more likely cost of a prolonged United States occupation. You see, Mr. President, the last time we invaded Haiti to establish democratic rule we had to stay there 19 years, and even that 19-year occupation did not result in a democracy that we had intended or democratic rule for the nation of Haiti.

And so the \$425 million is just for the initial cost. We have no way of calculating what that cost will be or how many months we will stay or what the participation of the United States will be once we invade that country. And we have no assurance or no guarantee that any stay, no matter how prolonged, particularly based on past experience, will in any way guarantee any semblance of democracy in that nation.

But, Mr. President, the real cost to America will not be measured in dollars but in a number of other factors that are even perhaps more important than the dollars. First, it will be measured in the further decline of the readiness of U.S. military forces as already stretched defense dollars are once again diverted to nonessential military purposes.

Many of these purposes have not necessarily been purposes with which we might not want to engage. Certainly alleviating starvation in Somalia, certainly attempting to help with the situation in Rwanda were humanitarian interests and gestures of the United States that many have concluded were worth the cost. But as we found, sometimes those missions change and sometimes the initial goals are muddled as we attempt a multilateral effort with other nations and particularly attempt to follow some of the dictates that come from the United Nations.

But those dollars are dollars that are taken out of military readiness, those dollars are taken out of an already stretched and already thin defense budget. We will be debating later today and perhaps tomorrow and the remainder of the week the Department of Defense authorization bill and perhaps the appropriations bill and we will be talking about the very significant decline in defense spending, budgetary commitment for defense purposes, how this affects our defense readiness and potential readiness in the future. So to an already stretched and already reduced over the next 10 years' defense budget we will be committing additional funds, not paid for out of the State Department budget, not paid for out of other functions, but perhaps another supplemental appropriations. I do not know. But certainly it is another strain on defense dollars.

The cost to America will not just be measured in dollars, nor will it just be measured in military readiness. It will also be measured by a continued decline of U.S. prestige as the United States invades a country that is at war with no one and poses no threat to the United States, poses no threat to any other Caribbean or hemispheric nation. What is going on in Haiti has been going on in Haiti for decades. There is no threat to the United States other than the threat of perhaps a flow of immigrants that is a threat caused by the administration's own policy.

But most importantly, Mr. President, it is not the cost in dollars, nor the cost in readiness, nor the cost in decline of U.S. prestige but it is the potential cost measured by tragic, unnecessary loss of life, as many more U.S. military men and women may be asked to pay the ultimate price for a cause that has nothing to do with the national interest.

It is time to put an end to gunboat liberalism. What the Clinton adminis-

tration is demonstrating is not national strength but a national deception. There is no United States national security interest at stake in Haiti. And there is no reason to risk even one American life. As with Bosnia and Somalia, liberal Democrats now argue that United States credibility is on the line. We have no choice but to invade, they say, but credibility lost by political bungling should not be redeemed by American blood.

During the cold war, gunboat diplomacy may have served a purpose by denying a defined enemy victory or regaining ground lost to the advance of communism. But in the post-cold-war era, gunboat liberalism to establish and maintain democracies where none have even existed serves no purpose at all except to put our own democratic ideals at risk.

Mr. President, we cannot use U.S. soldiers for the purpose of advancing a theory which has not been adequately explained or communicated to the U.S. people, nor to the U.S. Congress. This is a subject that deserves debate. This is a subject that deserves to have the voices of the people heard. This is a subject that ought to be discussed on this Senate floor.

I urge the President to step back from what appears to be a decision that has been made to invade Haiti—to step back, reassess what is in our best national interests, reassess the security threat, consult with the Congress, consult with the American people, and at least explain how and why it is in the United States national security interest that we invade the country of Haiti.

I do not believe it is, and I would urge the President to reconsider.

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

The PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Under the order, the Senator is recognized for not to exceed 10 minutes.

HAITI

Mr. GREGG. Mr. President, we, once again, as a body need to address the issue of Haiti. I want to compliment my colleague from Indiana on his excellent and precise remarks relative to the issue of Haiti. It is critical, Mr. President, as has been discussed on this floor before, that this Nation not use its military in an arbitrary and capricious way, and that we not put our soldiers' lives at risk without a defined policy that gives them guidance and that makes it clear to not only those

soldiers but to the American people what it is that they are risking their lives for.

The problem that we confront in Haiti is that this administration's actions, rather than being defined and precise, rather than outlining a clear strategy for where this country should be going and why it should be involved there, has rather been a strategy of confusion, of inconsistency, and has been a strategy which has led to a lack of confidence not only within this body as to the goal of the administration, but amongst the people of this country and, I think, amongst the international community.

I have said before on this floor that before we pursue a military invasion, I believe very strongly that the President has the obligation to come to this Congress, under the terms of the Constitution, and ask for authority to do such. This is not an event that is created as a result of an emergency. This is not an instance where our national interests are suddenly threatened or where American lives are put at risk. This is not an event that has evolved quickly and spontaneously.

Rather, the planned invasion of Haiti is just that—a very planned event. It has been an off-again/on-again plan, obviously, where spokesmen for the administration have said differing and sometimes contradictory things about its purposes and goals. But still there can be no question that the administration has made it clear that it intends to use American military forces in Haiti.

One wonders how they can pursue that course without first coming to the U.S. Congress and asking for authority. If they are not going to come to the Congress and ask for authority—which they have an obligation to do under the Constitution—then they should at least go to the American people and explain what it is that brings us to the brink of going to war with a neighbor in this hemisphere. What is it?

Well, they have outlined three different reasons why we should pursue military action in Haiti, why American lives should be put at risk in that country. The first is that there is an outpouring of refugees which threatens in some way our interests in the United States as these destitute individuals leaving Haiti seek asylum in other countries and end up here in our country. Of course, if that were the cause, we would have to invade a lot of our neighboring countries, like Cuba which is creating much more of a problem with refugees coming here. We might have to invade Mexico. Last year, over 1.2 million Mexicans entered this country, and only 5,000 Haitians illegally entered this country last year.

So the concept that we need to invade in order to stem the flow of refugees is not supported. There is no outrageous flight of refugees from Haiti.

And second, if there were, it would be a secondary or even a third-level threat to our immigration policies as compared with some of the other nations in this hemisphere. So that is not a valid statement.

Their second argument is that it is a drug-lord center, a transshipment point for drugs. Well, that is specious on its face. The fact is that Haiti is surrounded by the United States fleet. That is about the last place drug lords are going to go in and out of because of the nature of the military force in the region. Then if we are talking about islands in the Caribbean that transship drugs, Haiti is very close to the bottom of the list compared to the top five or six nations in that region where we have a significant transshipment problem with drugs. So that is just poppycock.

The third reason that is given is, well, we need to replace the dictatorial government which has usurped authority in Haiti with the government elected by the people, headed by Mr. Aristide.

First off, Haiti is not the only country which has a government that is led by thugs. That is not an unusual event, unfortunately. That is a sad commentary on the situation in this hemisphere and on the situation in this world, that there are a number of countries which are led by people who are not what we would consider to be democratic—people who take from their people, who abuse their people and who use military force within their own nation to maintain power. Again, we need look no further than a nation closer to us in this hemisphere—Cuba—as a classic example of that. If we want to look at human rights, repression, abuse of people, and misuse of military force for the purposes of maintaining power, we need to look no further than Cuba as an example. We are not threatening to invade Cuba.

Second, it would be very hard, I think, for any citizen in this country to justify putting an American life at risk for the purposes of reinstating in power Mr. Aristide. Yes, he may have been democratically elected, but he is not an individual with attractive credentials. It would be hard for myself, as a Senator, and I think for any Senator in this room, to go to a parent—a mother or a father—or to a son or a daughter of a service man or woman who lost their lives or who were severely injured in the streets of Port-au-Prince and say: You did it, and it was for the American interest, and the American interest was, put Mr. Aristide back in place as the President of Haiti.

No Americans should lose their lives, or even be put at risk, for the purpose of putting Mr. Aristide back in power. That is not a justifiable goal.

So this administration has outlined no definable national interest for the

use of military force in Haiti. Yet, they insist on moving down this path.

What is the cause behind that insistence? Well, it cannot be that there is a national interest there. Maybe there is a domestic political interest there, and some cynical people would say that. I am afraid that as I watch this administration's policies unfold, I am becoming such a cynical person, because I do not see that they have any other purpose, any other cause than one which would be for the purposes of domestic consumption.

So this Congress, this Senate, should use its authority to participate in the debate in an aggressive way as to whether or not we should be using American military forces in Haiti. The way we should be doing that is by passing a resolution that has some authority and has some teeth which says to the President: Listen, explain to us what your purposes are in Haiti before you invade Haiti. We do not have to tie his hands, as he is the Commander in Chief. We do not have to say: No, you cannot do it under any circumstance without coming for approval here. But we should at least pass a resolution that says that we have authority that you, Mr. President, must explain to the Congress, and therefore the American people, what is the logic of this precipitous action which you appear to be ready to undertake.

That explanation has not been forthcoming, and I regret that. We did pass a resolution in this body that said essentially that, but it was a sense-of-the-Senate. Therefore, the administration has ignored it, and I, therefore, maintain my position which, when I offered an amendment earlier, said that there should be enforcement mechanisms behind that sense-of-the-Senate resolution which would require the President to explain to us his purposes in invading this nation.

The inconsistency which this administration participates in in discussing its policies on Haiti are startling. Again and again, they have said contradictory things. Just this weekend, for example, you had Secretary Christopher and Ambassador Albright giving two opposing views on what the administration expects to do once they invade and take control of Haiti.

Secretary Christopher said that he would not require the military leaders who are presently in charge of Haiti to leave Haiti. Ambassador Albright said yes, they would have to leave Haiti. That is within a half hour of each other. That is a very significant public policy position.

Then we have had the issue of when will and how will American troops get out of Haiti once they are in there. Members of the administration said it will take up to 20,000 troops to invade Haiti. When will they leave?

The PRESIDENT pro tempore. The 10 minutes have expired.

Mr. GREGG. Mr. President, I ask unanimous consent for an additional 5 minutes.

The PRESIDENT pro tempore. Is there objection? Is there objection to morning business being extended accordingly?

Hearing no objection, the Senator is recognized for an additional 5 minutes.

Mr. GREGG. I thank the Chair.

Mr. President, the administration has said it will take 20,000 troops to invade Haiti, 20,000 American lives that will be put at risk, and they will be at risk.

It is talked about as if this would occur as an overnight event. Maybe it will. But the fact is that Port-au-Prince is a dangerous place, and keeping peace in Port-au-Prince will be a difficult undertaking and American lives will be at significant risk.

The question is, How do we get the 20,000 troops out of Haiti once there? Once again, the administration is unclear on that policy. They have said that they intend to have a peacekeeping force of 6,000 individuals, half of whom may well be made up of Americans. That is the language that they have used. That means up to 3,000 people, 3,000 American military personnel, will be kept in Haiti for an extended period of time. In fact, Mr. Christopher said it will be through 1996. That is a long time to have American troops walking the streets of Haiti, risking their lives for whatever outrage may be perpetrated on them by some disgruntled faction within a country that has always been extraordinarily violent.

Then we have the fact, where are the rest of the troops going to come from that are going to be used for this peacekeeping undertaking? Well, so far, the report is that the other Caribbean nations that have been petitioned by this administration to participate in this event have made an agreement that they will be willing to offer up to 250 individuals, 250 troops. That is a far cry from the 3,000 or so that are going to be needed to man the peacekeeping effort.

So one suspects that not only will we end up with 3,000 troops there, but we will end up with many more thousands of troops there trying to keep peace in this country, which has an inordinantly long history of violence and fratricide.

Every day that they are there, probably, we are going to have to answer the question, because one American or another will have his or her life threatened in some way, and maybe one will be injured or will unfortunately lose his or her life. Every day they are there, we are going to have to ask the questions: Why did we go; why are we there; and when are we going to get out?

So far, we have no answers to any of those questions. So until this administration comes forward and explains to

the American people what is our national interest in Haiti that requires us to put American lives at risk, a minimum of 20,000 in the initial invasion and a minimum of 3,000 over a period of time, as we try to keep peace in that country after we have invaded—what is the national interest? Explain it to us, Mr. President, because I am not aware of it, and I do not think most Members of this body are aware of it. And I do not think the American people are aware of it.

If there is a national interest, once we get in, how are we going to get out?

As the Senator from Indiana mentioned, the last time we invaded Haiti, we went there to be there for 6 months. That was in 1915. We left in 1934, 19 years later.

It is clear from Secretary Christopher's own statement that they expect the occupation to last at least through 1996 and to involve literally thousands of Americans troops. How do we get those troops out? What is the scenario that allows us to remove them from that ravaged country, that country that is so full of violence, that will put so many American lives at risk. We have no definition of goal, and therefore we have no definition of what the end is, and therefore we have no definition of when the American troops will be coming out of that country.

This administration is on the wrong track. Invasion of Haiti is a mistake. It will put at risk American lives without having properly explained to the American people why, and it will be very difficult for those of us who are Senators in this body to go back to our constituents, our friends, and our neighbors if one of their children or one of their husbands or one of their wives shall have died in this invasion, or shall have been severely wounded in this invasion, and look them in the face and say that it was a good purpose that they went for, that it was an American purpose that they fought for, because it is not. And the President seems to be unable to explain to us what is there that causes us to be willing to put at risk those very precious lives.

I yield back the remainder of my time.

TRIBUTE TO ADM. GEORGE E.R. "GUS" KINNEAR II, U.S. NAVY, RETIRED

Mr. SMITH. Mr. President, I rise today to pay tribute to an extraordinary individual who has had a remarkable career in service to his country—Adm. George E.R. "Gus" Kinnear, USN, retired. "Gus" as his friends call him, has spent almost half a century either serving on active duty, or working on behalf of the U.S. Armed Forces.

Born in Mounds, OK, and raised in Brooksville, FL, Gus is now a distinguished citizen of the great State of New Hampshire. He entered the Navy

as an enlisted man in 1945, was selected for pilot training, and became a naval aviator in 1948. As with many fine young men of his generation, he participated in the Korean conflict, flying combat missions from the decks of U.S. aircraft carriers.

Following the war, Gus successfully completed studies leading to the receipt of his bachelor's and master's degrees. But the call of his first love, naval aviation, led him back to the air in 1961, and he served in various squadron positions until 1963, when he earned his first combat command as "C.O." of Attack Squadron 106.

In 1966, with 3 years of operational command under his belt, Gus once again took a brief hiatus to attend Stanford University, where he earned a master of science degree in industrial engineering and a doctoral degree in engineering management.

Mr. President, following completion of his doctoral work, Gus again assumed command positions involving greater and greater responsibility. He was given command of a carrier air wing during the Vietnam war, and later, as a flag officer, he commanded a carrier group. Units under his command saw action in the Sea of Japan during the Pueblo incident and in the Tonkin Gulf. He personally flew over 100 combat missions during Vietnam, and to his credit Gus holds the unique distinction among naval aviators of flying more different types of jet aircraft than any other naval aviator, having logged more than 5,000 flying hours and having made more than 950 arrested carrier landings.

The years 1968 to 1971 were also exciting and challenging ones for Gus, but in a different way. As Special Assistant to the Director of Navy Program Planning, and then as a Special Assistant to the Navy Comptroller, he honed his management skills in the business side of the Navy. Again, Gus served with distinction and developed skills that were to serve him well throughout his career.

Upon leaving Washington, Gus assumed command of LSD 32, the U.S.S. *Spiegel Grove*, followed in quick succession by his assignment as commander of one of the Navy's premier naval aviation installations, Miramar Naval Air Station in San Diego, CA. His stay at Miramar was, however, brief. Following his promotion to rear admiral, it was back to Washington. Predictably, Gus was again assigned to billets involving ever-increasing responsibility; first as the Assistant Chief of Naval Personnel and then as Chief of Legislative Affairs in the Office of the Secretary of the Navy. In 1978, he was designated a vice admiral, and assigned as the commander for naval air forces, Atlantic fleet. Finally, in 1981, Gus was promoted to admiral and assumed the prestigious and challenging position of U.S. military representative to the

NATO military community, a position he held until his retirement.

Those who know Gus recognize that he is not a person who can sit idle for long. Following his retirement he went to work for the Grumman Corp., where he advanced to the position of senior vice president for Washington operations. He left Grumman in 1988 to serve as executive vice president and then president of the University of New Hampshire, a position he held until 1992. In October 1992, following 4 years of service as a member of the board of directors of the Retired Officers Association [TROA], he was unanimously selected as TROA's chairman of the board, a position from which he is now retiring.

Mr. President, through Gus' stewardship, the Retired Officers Association continues to play a vital role as a staunch advocate of legislative initiatives to maintain readiness and improve the quality of life for all members of the military community—active, reserve, and retired, plus their families and survivors. I will not describe all of his many accomplishments at TROA, but I would like to focus briefly on a few that illustrate the breadth of his concern for our Nation's military people. As chairman, he led the fight for continued access to the military health care system for retirees and directed TROA's efforts to maintain the viability of the commissary system. Taken together, these comprise two of the most important institutional benefits provided as inducements for a career in service.

Under his direction, TROA spearheaded a bipartisan initiative to provide military retirees the same cost-of-living adjustment [COLA] as Federal civilian retirees will receive. His zeal in fighting to compel Congress and the administration to honor past commitments to our service personnel and their families is legendary.

On a national scope, Gus has been a vocal and effective champion of a reasoned, judicious approach to the downsizing of our Armed Forces. As Gus has so appropriately emphasized, if implemented haphazardly, the drawdown will undermine our national security and produce a "hollow" military force. No one in this Nation can speak with greater knowledge and experience on this issue than Gus Kinnear, and his observations are right on the mark.

Mr. President, my closing observation, which I am sure is shared by all my colleagues, is that Admiral Kinnear has been an outstanding leader, in the military, TROA, and on behalf of the entire retired community. His distinguished military service and his unwavering commitment to the cause of freedom throughout the world are an inspiration for those who have followed and will continue to follow in his footsteps. Our wishes go with him for a

long life of health, happiness, and continued success. As a former sailor myself, and in keeping with the highest traditions of the Navy, I join with his many friends in wishing Gus "fair winds and a following sea."

THE RECORD OF JUDGE SAROKIN

Mr. HATCH. Mr. President, President Clinton has nominated Judge H. Lee Sarokin to a seat on the U.S. Court of Appeals for the Third Circuit. I have decided that I must vote against this nomination and look forward to explaining my reasons during floor debate. For now, I ask unanimous consent that a memorandum analyzing the record of Judge Sarokin be included in the RECORD.

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

JUDGE SAROKIN'S RECORD

H. Lee Sarokin, President Clinton's nominee to the U.S. Court of Appeals for the Third Circuit, was appointed by Jimmy Carter to the federal district court in New Jersey in 1979. Since that time, Judge Sarokin has earned a reputation as a stridently liberal judicial activist who pursues his own ideological agenda in lieu of applying the law. On a broad range of telltale issues, such as crime, quotas and reverse discrimination, pornography, and minimal standards of decency and behavior in public life, Judge Sarokin has sought to impose his own moral vision. In so doing, he has ignored, defied, and even stampeded binding precedent and higher authority, and has flaunted his own biases and sentiments on the sleeve of his judicial robe.

These are not just the views of outside critics. The Third Circuit itself has, for example, lambasted Judge Sarokin for "judicial usurpation of power," for ignoring "fundamental concepts of due process," for destroying the appearance of judicial impartiality, and for "superimpos[ing] his] own view of what the law should be in the face of the Supreme Court's contrary precedent." The New Jersey Law Journal (9/14/92) has reported that Judge Sarokin "may be the most reversed federal judge in New Jersey when it comes to major cases." One can expect that these problems will surely be aggravated if Judge Sarokin enjoys the greater freedom of a circuit judge.

Organizations that have announced their opposition to Judge Sarokin's nomination include the Fraternal Order of Police, the Law Enforcement Alliance of America, the New Jersey State Police Survivors of the Triangle, the U.S. Business and Industrial Council, Organized Victims of Violent Crime, the League of American Families, Citizens for Law and Order, Citizens Against Violent Crime, and Voices for Victims, Inc.

This memorandum provides a detailed look at certain of Judge Sarokin's opinions that are all too illustrative of his approach to judging, as well as an overview of his manifestations of bias and ideology in cases and speeches.

I

(Kreimer v. Bureau of Police for the Town of Morristown, 765 F. Supp. 181 (D.N.J. 1991), rev'd, 958 F.2d 1242 (3rd Cir. 1992))

Facts

Kreimer, a homeless man who lived in various outdoor public spaces in Morristown,

New Jersey,¹ frequented the public library in Morristown. According to library staff, Kreimer often exhibited offensive and disruptive behavior, including staring at and following library patrons and talking loudly to himself and others. Also, according to library staff, Kreimer's odor was so offensive that it prevented the library patrons from using certain areas of the library and prohibited library employees from performing their jobs. A logbook instituted to catalog disciplinary problems faced by the library described incidents such as "Kreimer's odor prevents staff member from completing coping task," "Kreimer spent 90 minutes—twice—staring at reference librarians," "Kreimer was belligerent and hostile towards [the library director], and "Patron [was] followed by Kreimer after leaving Library."

In 1989, the library enacted a written policy prohibiting certain behavior in the library and authorizing the library director to expel persons who violated them. The policy included the following rules:

"1. Patrons shall be engaged in activities associated with the use of a public library while in the building. Patrons not engaged in reading, studying, or using library materials shall be required to leave the building. * * *

"5. Patrons shall respect the rights of other patrons and shall not harass or annoy others through noisy or boisterous activities, by staring at another person with the intent to annoy that person, by following another person about the building with the intent to annoy that person, * * * by singing or talking to others or in monologues, or by behaving in a manner which reasonably can be expected to disturb other persons.

"6. Patrons shall not interfere with the use of the Library by other patrons, or interfere with Library employees' performance of their duties. * * *

"9. * * * Patrons whose bodily hygiene is offensive so as to constitute a nuisance to other persons shall be required to leave the building.

"Any patron not abiding by these or other rules and regulations of the library shall be asked to leave the library premises."

After he was expelled from the library at least five times for violating these rules, Kreimer sued the library and others in federal district court, alleging that the library's policy violated the First Amendment and the Due Process and Equal Protection Clauses of the 14th Amendment.

Judge Sarokin's rulings

Judge Sarokin, in granting summary judgment in favor of Kreimer, ruled that the library policy was facially unconstitutional. Judge Sarokin's opinion included the following rulings:

1. The Library Policy Is Not A Reasonable Time, Place, And Manner Regulation. "[A] public library is not only a designated public forum, but also a 'quintessential,' 'traditional' public forum." Government restrictions on access to a public library must therefore be narrowly tailored to serve a significant state interest and must leave open alternative channels of communications. The library policy is not specifically designed to address disruptive activity, and is therefore, not a reasonable time, place, and manner regulation that is narrowly tailored to serve a significant government interest. Denying a patron all access to library materials leaves no alternative channels open to those without private means of access to the quantity and diversity of written communications contained in a library.

Footnotes at end of article.

2. The Library Policy Is Unconstitutionally Overbroad. Rules 1 and 5 are substantially overbroad. In *Brown v. Louisiana*, 383 U.S. 131 (1966), the Supreme Court reversed the convictions under a Louisiana breach-of-peace statute of five black men who peaceably protested in a library. The protesters in *Brown* would be prevented from engaging in the same constitutionally protected protest if they staged it in the Morristown library. This demonstrates that rule 1 is substantially and unconstitutionally overbroad. Rule 5 is unconstitutionally overbroad because it excludes patrons for silently staring at another with the intent to annoy. This is no different from the statutes in *Brown* and *Cox v. Louisiana*, 379 U.S. 536 (1965), which excluded people from public spaces for activity that annoyed people but that did not actually cause or threaten a disruption.

3. The Library Policy Is Unconstitutionally Vague. Although the library policy is not a penal statute, failure to comply with the policy results in criminal trespass. Accordingly, a criminal sanction is involved, and the policy should be subject to a strict vagueness challenge. Rule 1 is hopelessly vague. Rules 5 and 9 are unconstitutionally vague as well, since the "annoyance" standard is no standard at all, and the "offensiveness" standard is perfectly vague and subject to arbitrary and discriminatory enforcement.

4. The Library Policy Violates Substantive Due Process. Under the Due Process Clause, the government may not penalize, or afford different treatment to, a disfavored, disliked individual or class of people. Rule 9's prohibition on offensive hygiene makes personal attributes such as appearance, smell, and cleanliness determinative factors and is not limited to actual, material disruptions. The policy was designed with the explicit intention of restricting Kreimer's (and other homeless persons') access to the library. This reader-based restriction "is analogous to prohibited speaker-based restrictions. In this case, the restriction is not because of the reader's views, but because of plaintiff's other personal attributes which the library staff finds 'annoying.'"

5. The Library Policy Violates The Equal Protection Clause. The library's effort to exclude homeless persons who may potentially use the library as temporary shelter from the elements violates the Equal Protection Clause. Just as a poll tax for voting draws an improper line based on wealth, so does the library's hygiene rule, since it has a disparate impact on those poor patrons who do not have regular access to shower and laundry facilities.

6. The Library Policy Violates Article I of the New Jersey Constitution. The policy's restrictions are not reasonable.

The Third Circuit's reversal

The Third Circuit, in a lengthy and thorough opinion, unanimously reversed, making the following rulings:

1. A public library is sufficiently dissimilar to a public park, sidewalk, or street that it cannot reasonably be deemed to constitute a traditional public forum. Nor is it a full-scale designated public forum. Instead, under Supreme Court precedent, it is a limited public forum. Restrictions that do not limit those First Amendment activities that the government has specifically permitted in a limited public forum need only be reasonable and not viewpoint-based. The library policy is reasonable.

2. The library policy is not substantially overbroad. The district court's heavy reliance on *Brown* was improper; in fact, the

Court in *Brown* specifically relied on the fact that the protesters did not violate any library regulations.

3. The library policy is not unconstitutionally vague. The district court's use of the vagueness standard applicable to criminal statutes was misplaced, since the library policy is civil in nature and a criminal trespass requires a voluntary act distinct from violation of the rules. The policy does not simply proscribe "annoying" behavior; it lists specific behavior deemed to be annoying. The determination whether a person's hygiene is so offensive as to constitute a nuisance involves an objective reasonableness test.

4 and 5. The library policy does not violate due process or equal protection. The homeless do not constitute a suspect class. The policy is not arbitrary, and the library did not act with a discriminatory intent.

6. The library policy does not violate the New Jersey constitution. Under New Jersey Supreme Court precedent, the policy is clearly reasonable.

Analysis

Judge Sarokin's opinion in *Kreimer* is liberal judicial activism at its worst. Each of Judge Sarokin's rulings noted above is not just wrong, but patently wrong. Judge Sarokin does not simply misread precedent; he defies it and distorts it in furtherance of an ideology that prevents a community from enforcing even minimal standards essential to the public good. By effectively giving Richard Kreimer a right to disrupt and disturb a library, Judge Sarokin deprives the mass of citizens of the right to use a library in peace.

As the Wall Street Journal noted in a fine editorial (6/12/91), the conduct that Judge Sarokin protects when engaged in by a homeless man would never be tolerated if done by anyone else: "When a college professor or business executive looks at a woman in a way she considers disturbing, he nowadays may be subject to reprimands, departmental hearings, threats to his job and status, and accusations of sexual harassment. Mr. Kreimer, on the other hand, has been treated as a hero, embraced by the politically correct who have apparently decided that harassing women is acceptable so long as the harasser is homeless."

The following comments correspond to the above-numbered rulings in Judge Sarokin's opinion and should be read in conjunction with the sound criticisms made by the Third Circuit:

1. Judge Sarokin does not cite any precedent in support of his assertion that a library is a traditional public forum. Nor could he, for the assertion is ludicrous under Supreme Court precedent. Judge Sarokin's assertion that the library is a full-fledged designated public forum is also without any support in precedent. Can anyone who has heard a librarian's shush state in good faith that a library is "devoted to assembly and debate"? Remarkably, Judge Sarokin does not even explore the alternative that the library is a limited-purpose public forum.

2. Judge Sarokin's overbreadth analysis misstates the holding of *Brown*. In stating that the *Brown* protesters engaged in a "constitutionally protected protest," Judge Sarokin attributes to the Court a position taken only by a 3-Justice plurality, as Justice Brennan's opinion concurring in the judgment makes clear. What remains of Judge Sarokin's overbreadth analysis is the sort of hyperimaginative hypothesizing that could doom every statute.

3. One wonders how any policy could survive Judge Sarokin's vagueness analysis. The library policy is carefully drafted.

4. On the due process issue, Judge Sarokin's observation that the policy implements a "reader-based restriction" is refuted by his observation that "the restriction is not because of the reader's views." Amazingly, Judge Sarokin places these statements back to back, as though the second bolsters the first.

5. Judge Sarokin's creation of a suspect class defined by poor hygiene or homelessness has no basis in equal protection precedent. His use of disparate impact analysis also defies the Supreme Court's decision in *Washington v. Davis*, which makes clear that discriminatory intent (along a recognized suspect line) is necessary to trigger strict scrutiny.

Judge Sarokin's hearing testimony

Judge Sarokin painted a very misleading picture of *Kreimer* at his hearing:

"There were two issues that were presented to me. * * * The first one was whether or not there was a constitutional right of access to the library under the First Amendment. I said that there was, and the Third Circuit agreed. * * * [T]he only issue with which the Third Circuit disagreed was whether or not the regulations were vague and overbroad. They did not disagree about the First Amendment analysis." [46:1-5, 19-22]

Judge Sarokin's summary of *Kreimer* is mistaken or distorted in the following elemental respects:

As noted above, there were at least six separate legal claims decided by Judge Sarokin: (a) whether the library policy was not a reasonable time-place-and-manner regulation under the First Amendment; (b) whether it was unconstitutionally overbroad; (c) whether it was unconstitutionally vague; (d) whether it violated substantive due process; (e) whether it violated equal protection; and (f) whether it violated Article I of the New Jersey Constitution. Judge Sarokin decided each of these claims in *Kreimer*'s favor. The Third Circuit reversed Judge Sarokin on every claim. In short, Judge Sarokin was 0-for-6, not 1-for-2.

The question whether the First Amendment was implicated at all by the library policy was a minor (and easy) part of the determination whether the policy was a reasonable time-place-and-manner regulation. Judge Sarokin properly devoted only about a half-page of his 17-page opinion to this issue, yet he now incorrectly states that this was one of two major issues in the case.

The real question on the basic First Amendment analysis was what standard of review applies. Judge Sarokin held, without any basis in precedent, that a library is both a traditional public forum and a full-fledged designated public forum and that strict scrutiny therefore applied. These holdings are strikingly groundless, and were repudiated by the Third Circuit. In short, the Third Circuit did "disagree about the First amendment analysis"—and it did so vigorously.

Did Judge Sarokin not even recall that he had relied on unprecedented uses of substantive due process and equal protection to strike down the library policy? Is a judge who wields these weapons so carelessly and thoughtlessly fit for elevation to the Third Circuit? These two constitutional provisions, if misused, are among the most powerful available to a judge who seeks to substitute his own views for those of the legislative branch.

In defending his overbreadth analysis in *Kreimer*, Judge Sarokin incorrectly asserted that the Supreme Court in *Brown v. Louisiana* "specifically held that that kind of activity [a silent protest in a library] could

not be prohibited." [48:22-23] In fact, only a 3-Justice plurality took this position, as Justice Brennan's opinion concurring in the judgment emphasizes. Yet, even after Senator Thurmond pointed out Judge Sarokin's error [49:1-7], Judge Sarokin stubbornly persisted in presenting his incorrect account of *Brown v. Louisiana* [120:7-16].

II

(*Haines v. Liggett Group, Inc.*, 140 F.R.D. 681 (D.N.J. 1992), writ granted, 975 F.2d 81 (3rd Cir. 1992); *Cipollone v. Liggett Group, Inc.*, 799 F.Supp. 466 (D.N.J. 1992))

Haines: Facts and rulings

In a personal injury action against cigarette manufacturers, Haines sought discovery of certain documents that the defendant companies said were protected by the attorney-client privilege. Haines argued that even if the documents were within the scope of the attorney-client privilege, the crime-fraud exception applied and annulled the privilege. A magistrate judge determined that the documents were privileged and that the crime-fraud exception did not apply.

Haines appealed the magistrate judge's order to Judge Sarokin. Judge Sarokin ordered the parties to supplement the record with materials from the record in a similar case, *Cipollone*, in which he was the trial judge. He then issued a ruling that the crime-fraud exception did apply and that Haines was entitled to discovery of the documents at issue.

Several aspects of Judge Sarokin's opinion merit attention:

1. Judge Sarokin opened his opinion on this discovery dispute with this prologue:

"In light of the current controversy surrounding breast implants, one wonders when all industries will recognize their obligation to voluntarily disclose risks from the use of their products. All too often in the choice between the physical health of consumers and the financial well-being of business, concealment is chosen over disclosure, sales over safety, and money over morality. Who are these persons who knowingly and secretly decide to put the buying public at risk solely for the purpose of making profits and who believe that illness and death of consumers is an appropriate cost of their prosperity!

"As the following facts disclose, despite some rising pretenders, the tobacco industry may be the king of concealment and disinformation."

2. In holding that the magistrate judge's ruling could not survive under even the "clearly erroneous" standard of review, Judge Sarokin relied not only on the supplemental evidence that he ordered from the *Cipollone* trial but also on his "own familiarity with the evidence adduced at the *Cipollone* trial discussed in the directed verdict Opinion" in that case. 140 F.R.D., at 694. Judge Sarokin stated that having heard the trial evidence in *Cipollone*, he was "in the unique position of being able to evaluate the full scope of evidence supporting plaintiff's crime/fraud contention in the instant case." Id., at 694 n. 12.

3. In a stated effort to show "some of the most damaging evidence" on this crime-fraud exception, Judge Sarokin quoted extensively from those documents as to which privilege had been asserted. Judge Sarokin claimed to be "recognizing the sensitive task of fulfilling the court's duty to support and justify its holding while temporarily preserving the confidentiality of otherwise privileged documents." 140 F.R.D., at 695.

Third Circuit reversal

In a remarkably impressive opinion, the Third Circuit unanimously granted an ex-

traordinary writ vacating Judge Sarokin's order and removing him from the case. The following aspects of the Third Circuit's opinion are noteworthy:

1. Quoting, and commenting on, Judge Sarokin's opening, the Third Circuit stated that Judge Sarokin "issued an opinion and order purportedly addressing the applicability of the crime-fraud exception and not the ultimate merits of the plaintiff's claims, yet the opening paragraphs of the opinion appear to address the merits." 975 F.2d, at 87.

2. The Third Circuit emphasized that a writ was an "extreme" remedy to be used "only in extraordinary situations" and that "only exceptional circumstances amounting to a judicial usurpation of power will justify the invocation of this extraordinary remedy." 975 F.2d, at 88 (internal quotes omitted and emphasis added).

3. The Third Circuit ruled that under the statute providing that the district court review the magistrate judge's order under the "clearly erroneous" standard, "the district court is not permitted to receive further evidence." 975 F.2d, at 91. It noted that our "common law tradition [does not] permit a reviewing court [(in this case, the district court)] to consider evidence which was not before the tribunal of the first instance." Id., at 92. Because Judge Sarokin considered portions of the *Cipollone* record that were not in the record before the magistrate judge, his order could not stand. Id. at 93.

4. The Third Circuit also held that "fundamental concepts of due process" required that the defendant companies be given a hearing on whether the crime-fraud exception applies. 975 F.2d, at 97.

5. The Third Circuit sharply scolded Judge Sarokin for disclosing the contents of the documents as to which privilege had been claimed:

"This, too, must be said. Because of the sensitivity surrounding the attorney-client privilege, care must be taken that, following any determination that an exception applies, the matters covered by the exception be kept under seal or appropriate court-imposed procedures until all avenues of appeal are exhausted. Regrettably this protection was not extended by the district court in these proceedings. Matters deemed to be excepted were spread forth in its opinion and released to the general public. In the present posture of this case, by virtue of our decision today, an unfortunate situation exists that matters still under the cloak of privilege have already been divulged. We should not again encounter a casualty of this sort." 975 F.2d, at 97.

At his hearing, Judge Sarokin acknowledged only that his disclosure of privileged documents "probably was an error." [33:24]

6. In what the Third Circuit described as "a most agonizing aspect of this case," it then removed Judge Sarokin from the case on the ground that the prologue to his opinion destroyed any appearance of impartiality. The court noted that the prologue stated "accusations" on the "ultimate issue to be determined by a jury" in the case: whether defendants "conspired to withhold information concerning the dangers of tobacco use from the general public." It further noted that Judge Sarokin's remarks were reported prominently in the press throughout the nation. 975 F.2d, at 97-98.

Cipollone

After the Third Circuit removed him from the *Haines* case, Judge Sarokin recused himself from further action in *Cipollone*. His brief opinion on recusal (799 F.Supp. 466) included two notable remarks:

1. "It is difficult for me to understand how a finding based upon the evidence can have the appearance of partiality merely because it is expressed in strong terms."

2. "I fear for the independence of the judiciary if a powerful litigant can cause the removal of a judge for speaking the truth based upon the evidence, in forceful language that addresses the precise issues presented for determination. If the standard established here had been applied to the late Judge John Sirica, Richard Nixon might have continued as President of the United States."

Comments on Haines and Cipollone:

1. The Third Circuit's observations that Judge Sarokin's ruling amounts to a "judicial usurpation of power," is contrary to our "common law tradition," ignores "fundamental concepts of due process," eviscerates the defendants' rights of appeal, and destroys any appearance of impartiality scratches only the surface of Judge Sarokin's betrayal of the role of a Judge in this litigation. Among other things:

Consider some of the many other respects in which Judge Sarokin's prologue is grossly inappropriate: What do his blanket assertions about the values of businessmen say about his ability to preside fairly in any dispute between an individual and a business? To whom is he referring as the other "rising pretenders" to the throne of "concealment and disinformation"?

At his hearing, Judge Sarokin ultimately made only a modest concession: "I concede that the language was strong and maybe unduly strong; and if I could take it back, I probably would." [60:11-13] The fact of the matter is that Judge Sarokin could have taken it back: these were carefully composed written comments, not off-the-cuff oral remarks.

Judge Sarokin also stated that "I was also hoping that I could discourage the tobacco companies from continuing to conceal the risks of smoking and deny that they existed." [110:20-23] This statement vindicates the Third Circuit's concern that Judge Sarokin was broadcasting his opinion on the ultimate issue to be decided by the jury.

Judge Sarokin's reliance in *Haines* on his familiarity with the evidence in *Cipollone* is a flat admission of predisposition and bias. He is "uniquely[ly] position[ed]" to decide the issue only in the sense that he has already made up his mind.

Judge Sarokin's comments in his recusal opinion in *Cipollone* show that he just doesn't get it. It is bad enough that he does not acknowledge that his prologue did not "address[]" the precise issues presented for determination—whether the magistrate judge had committed clear error in determining that certain documents fell outside the crime-fraud exception to the attorney-client privilege—but instead opined, in flamboyant, media-baiting language, on the ultimate issue to be determined by the jury. It is even worse that he casts aspersions on the judges on the Third Circuit panel by charging that they had not exercised independent legal judgment but rather that a "powerful litigant" had "caused" them to decide as they did.

At his hearing, Judge Sarokin claimed, "I did not mean to suggest in any way that because they [the tobacco companies] were powerful, that the Third Circuit did something they would not otherwise have done. I never meant to convey that in that language." [36:20-24] But that is precisely what he conveyed.

This was not the first time that the Third Circuit had to use the extraordinary writ to

overtake a lawless discovery order by Judge Sarokin against these same defendants. See *Cipollone v. Liggett Group*, 785 F.2d 1108 (3rd Cir. 1986), granting writ vacating 106 F.R.D. 573.

2. Unchastened by his well-earned scolding, Judge Sarokin personally accepted "the C. Everett Koop Award for significant achievement toward creating a smokefree society," awarded by the New Jersey Group Against Smoking Pollution (GASP). (New Jersey Lawyer, 6/7/93). According to one news account, "Sarokin won the award for sentiments contained" in his *Haines* opinion. (New Jersey Law Journal, 6/7/93.) That a judge would accept an award for an opinion in a particular case is disturbing enough as an ethical matter. That he would do so for a case in which he had already been found to have destroyed the appearance of impartiality is breathtaking in its brazenness.

At his hearing, Judge Sarokin claimed that "[t]hree or four very nice elderly people came up to my chambers" to present the award. "Frankly, I had some doubts about the propriety of taking it, but I just didn't want to hurt their feelings by handing it back to them and saying I can't accept it. *** I just didn't have the heart to say to them, no, take this back." [117:20-118:6]

Judge Sarokin's admission that he was ruled by his heart rather than his head on this issue of impartiality illustrates the very problem that pervades his opinions.

3. It should be noted that in removing him from *Haines*, the Third Circuit stated that Judge Sarokin "is well known and respected for magnificent abilities and outstanding jurisprudential and judicial temperament." In context, this can only be understood as sugarcloaking a bitter pill.

III

(*Blum v. Witco Chemical Corp.* ("Blum II"), 702 F. Supp. 493 (D.N.J. 1988), rev'd, 829 F.2d 367 (3rd Cir. 1987))

Facts and ruling

Plaintiffs who prevailed in an age discrimination suit received a statutory award of attorney's fees. Judge Sarokin increased the fee award by a 20% multiplier to compensate for the risk that counsel had undertaken in taking the case on a contingency basis: i.e., and the plaintiffs lost, counsel would have received no payment. On initial review, the Third Circuit remanded so that the district court could apply the approach adopted in an intervening Supreme Court case, *Pennsylvania v. Delaware Valley Citizens' Council for Clean Air* 483 U.S. 711 (1987). In addition, the Third Circuit gave extensive guidance on how *Delaware Valley* should be applied. See 829 F.2d 367, 379-382 (3rd Cir. 1987).

On remand, Judge Sarokin first criticized and sarcastically attacked the Supreme Court opinion in *Delaware Valley* and the Third Circuit opinion ordering remand. E.g.: "The Supreme Court has sent a Christmas gift to this court delivered via the Third Circuit Court of Appeals. It is called 'How To Make an Attorney Fee Multiplier.'" However, the instructions are so confusing and inconsistent that this court has been unable to put the 'gift' together. Before dealing with the specific instructions received, it is necessary to consider what it is that we are to construct. ***

"The court fears *** that both the Supreme Court and the Third Circuit Court of Appeals have designed an erector set from which no attorney will ever be able to build a valid claim for a contingency enhancement or multiplier.

"Initially, the Supreme Court has held that determination of this issue requires a

marketwide analysis of the legal community and is not to be resolved by considerations of the specific risk encountered in the particular litigation under consideration. This court respectfully submits that evidence of the practices and expectations in non-statutory fee cases [i.e., marketwide] is not relevant. *** [Moreover,] it is doubtful that analysis of the risk of a specific case can be avoided. ***

"Reading between the lines of both the Supreme Court and the Third Circuit's opinions in this matter, one may conclude that multipliers or other enhancers are so disfavored as to be virtually non-existent. *** [T]he proof required by these two decisions is so elusive, burdensome and expensive that the prospect of a hearing to obtain such relief is sufficient in and of itself to discourage counsel who otherwise would undertake such matters." 702 F. Supp., at 494-496 (citizen omitted).

Judge Sarokin nonetheless purported to be "duty bound to apply the decisions above to the facts of this case." 702 F. Supp., at 497. Despite finding that plaintiffs' evidence failed to provide "a basis to make a market-based quantitative finding" and did not include "any substantiated amount by which fees need to be enhanced," Judge Sarokin ordered that a 50% contingency multiplier be added to the attorney's fees awarded. *Id.*, at 500.

Third Circuit reversal

The Third Circuit, in an opinion by Judge Sloviter (a Carter appointee), unanimously reversed. The Third Circuit found that Judge Sarokin had simply defied the Supreme Court's opinion in *Delaware Valley* and the Third Circuit's previous guidance:

"[W]e remanded *** in light of the Supreme Court's opinion in *Delaware Valley II*. Instead, the district court, without concealing its disapproval of both the Supreme Court's decision and ours, proceeded in accordance with its own views." 888 F.2d, at 977 (emphasis added and citation omitted).

The Third Circuit cited "at least four respects" in which Judge Sarokin had deviated from precedent:

1. "It appears that the court proceeded to follow its own view of the relevant market in ascertaining the availability of adequate legal representation."

2. "In making its determination on the risk associated with this individual case, the court failed to follow the clear direction of [the Third Circuit and the Supreme Court]. . . . The district court made no secret of its disagreement with the instruction it received on this issue."

3. "[I]n another departure from the task set for it, the district court established a contingency multiplier for this individual case rather than setting a standard which would be applicable to future litigation within the same market."

4. "Finally, and perhaps most importantly, although the district court concluded that the plaintiffs had failed to meet their burden of proof by not quantifying the contingency premium, the court nonetheless relieved the plaintiffs of their burden of proof." 888 F.2d, at 981-983.

Evidently concerned that Judge Sarokin didn't understand his role as a lower court judge, the Third Circuit concluded:

"[T]he error with the district court's judgment was that the 50 percent multiplier it arrived at was supported only by the court's own intuition. This is precisely what the Supreme Court and this court held impermissible. Neither the district court nor this court is free to superimpose its own view of

what the law should be in the face of the Supreme Court's contrary precedent. Unless and until that Court revises its view or promulgates an opinion of the majority that clarifies the determination that must be made to support a contingency multiplier, the district court and we are bound to the exposition of the law set out in *Blum I*." 888 F.2d, at 983-984.

Comments

1. The particular legal issue at stake in this case is not important. What is important is that, as the Third Circuit itself recognized, Judge Sarokin defiantly refused to follow precedent and instead "proceeded in accordance with his own views" and his "own intuition." Notably, Judge Sarokin did so even while professing to put aside his own criticisms and follow precedent.

2. Judge Sarokin's open contempt for the opinions of higher courts reflects a serious lack of judicial temperament.

3. The Supreme Court ultimately went even further than *Delaware Valley* and held that contingency multipliers are never appropriate. See *City of Burlington v. Dague*, 112 S. Ct. 2638 (1992). It is this completely repudiated Judge Sarokin's position.

IV

(*U.S. v. Rodriguez*, Crim No. 84-18 (D.N.J. 1984))

Facts

Raul Rodriguez was arrested on theft-related charges. At the time of his arrest, he was advised of his rights and provided only minimal information to the police. He spent the night in jail and was then transported to FBI headquarters, where he was handed a form in Spanish advising him of his rights and sitting that (by his signature) he agreed to waive them. He read the first paragraph of the form aloud and signed the form with the false name Lazaro Santana. He then answered certain questions asked of him by an FBI agent. An hour later, he was brought before a magistrate; informed that he was entitled to counsel, he stated that he wished to have counsel appointed for him. From arrest to arraignment, 20½ hours had passed. An FBI agent testified that the purpose of bringing Rodriguez to FBI headquarters instead of directly to the magistrate was to obtain additional information from him.

Despite expressly finding that Rodriguez read the form and was aware of his rights before he spoke with the FBI agent, Judge Sarokin granted Rodriguez's motion to suppress evidence of his statements to the FBI agent. Judge Sarokin offered two reasons in support of his conclusion that Rodriguez did not waive his *Miranda* rights and that his statement should therefore be deemed involuntary:

(1) Rodriguez didn't sign his own name to the waiver form. He signed the name Lazaro Santana. "[I]t does not strain logic to find the use of a name other than one's own to be wholly inconsistent with a voluntary waiver of rights: defendant might well have believed that by using a false name he was not committing himself to anything. *But see United States v. Chapman*, 488 F. 2d 1381, 1386 n. 7 (3d Cir. 1971) (contention that signature was not one's own is not relevant to the issue of the voluntariness of the confession)." (Yes, the "but see" cite to contrary Third Circuit authority is part of Sarokin's opinion!)

(2) Upon his appearance before the magistrate—the first point at which he was orally asked, in Spanish, whether he wanted a lawyer—he said he did. This "certainly gives rise to an inference of non-voluntariness with respect to the earlier waiver," especially since the delay between the time of arrest and time of arraignment was long.

Comments

1. Judge Sarokin objects to the fact that the police took Rodriguez to the FBI headquarters rather than directly to a magistrate. Because there is nothing unlawful about this police conduct, Judge Sarokin is forced to concoct another basis for excluding the evidence obtained.

2. The notion that signing an alias is wholly inconsistent with a voluntary waiver is absurd. Rodriguez may simply have been trying to conceal his identity.

3. Judge Sarokin's "but see" citation to controlling Third Circuit precedent is stunning. Does he not regard himself as bound by circuit precedent?

At this hearing, Judge Sarokin claimed that the Third Circuit had held only that the use of a false name is "certainly not dispositive" but could well be relevant. [91:15] Such a claim is contrary to the reading of that precedent made by Judge Sarokin himself in *Rodriguez*. It also finds no support in the Third Circuit case.

Judge Sarokin further stated, "I don't take Third Circuit precedent, set it forth and say, okay, now I am not going to follow it. I just don't operate that way." [115:14-16] There is no question that Judge Sarokin's defiance of precedent is typically less overt. But his unusual candor in *Rodriguez* might well reflect the fact that the opinion was unpublished.

4. That Rodriguez told the magistrate that he wanted a lawyer for assistance at trial is not at all inconsistent with his agreeing to speak with an FBI agent in the absence of counsel.

5. How these two factors could override Judge Sarokin's express finding that Rodriguez read the form and was aware of his rights is baffling.

v

(*Vulcan Pioneers, Inc. v. New Jersey Dep't of Civil Services*, 588 F. Supp. 716 (D.N.J. 1984), vacated, 588 F. Supp. 732 (D.N.J. 1984))

In 1980, some New Jersey cities entered into a civil rights consent decree regarding the hiring and promotion of firefighters. The decree set numerical hiring "goals," or quotas, for racial and ethnic minorities. A few years later, Newark, faced with a fiscal crisis, threatened to lay off firefighters. Both nonminority and minority firefighters went back to court to protect their respective interests. The union sought to have seniority honored, as required by state law. The minority firefighters sought to have the seniority system disregarded in favor of preserving the affirmative action quotas.

In May 1984, when a ruling by the Supreme Court in *Firefighters v. Stotts* on this very issue was known to be imminent, Judge Sarokin modified the consent decree to require layoffs on a proportional basis rather than according to seniority. Thus, more senior nonminority firefighters were to be laid off in favor of less senior minority firefighters.

In an especially bizarre twist, Judge Sarokin ruled that his order denying whites their seniority rights constituted an unconstitutional "taking" and that the federal government—which vigorously opposed Judge Sarokin's modification of the consent decree—should nonetheless be required to provide compensation for the taking.

Shortly thereafter, the Supreme Court, in the *Stotts* case, effectively reversed Judge Sarokin's decision regarding the layoffs. In his original opinion, Judge Sarokin had expressed sympathy for the nonminority firefighters who would have lost their jobs under

his ruling: "Though not themselves the perpetrators of the wrongs inflicted upon minorities over the years, these senior firefighters are being singled out to suffer the consequences." In vacating his own ruling in June 1984, Judge Sarokin changed his tone and attacked the nonminority firefighters:

"The non-minority firefighters and the unions who represent them resisted layoffs in this matter on the ground that they were blameless and innocent of any wrongdoing. But, in reality, they know better. If they have not directly caused the discrimination to occur, many certainly have condoned it by their acquiescence, their indifference, their attitudes and prejudices, and even their humor." 588 F.Supp. at 734.

VI

Judge Sarokin—who describes himself as a "flaming liberal" as a judge²—aggressively displays his sentiments and ideology on the sleeve of his judicial robe, especially in the prologues of his opinions. In his own words:

"People have said to me that my opinions read more like editorials or essays than traditional opinions. I have not yet decided whether that is praise or criticism." Comment, "Authority in the Dock," 69 Boston U.L. Rev. 477 (1989).

Here is a sample of Judge Sarokin's sentiments (in addition to those portions of his cases quoted in previous parts of this memorandum):

(*Kreimer v. Bureau of Police for Town of Morristown*, 765 F. Supp. 181, 182-183 (D.N.J. 1991), rev'd 958 F.2d 1242 (3rd Cir. 1992)):

"The danger in excluding anyone from a public building because their appearance or hygiene is obnoxious to others is self-evident. The danger becomes insidious if the conditions complained of are borne of poverty * * *.

"[O]ne person's hay-fever is another person's ambrosia; jeans with holds represent inappropriate dress to some and high fashion to others * * *.

"The greatness of our country lies in tolerating speech with which we do not agree; that some toleration must extend to people, particularly where the cause of revulsion may be of our own making. If we wish to shield our eyes and noses from the homeless, we should revoke their condition, not their library cards."

Comments

1. Given the ideological bias manifest in this prologue, it is not surprising that Judge Sarokin proceeded to steamroller or ignore Supreme Court precedent in ruling that the library policy violated numerous First Amendment doctrines, substantive due process, and equal protection. (See Part I for fuller discussion, including Third Circuit reversal.) Judge Sarokin now asserts that his opinion had nothing to do with the fact that Kreimer was homeless. But it is clear from the prologue that this is what motivated Judge Sarokin's lawless ruling.

2. How is the danger of excluding someone based on hygiene "self-evident"? Isn't that just Judge Sarokin's way of skirting the fact that he can't establish his key premise?

3. To note that different people have different standards of taste is not to establish that a community lacks the power to set minimal standards.

4. Why is it presumed that "the cause of revulsion"—Kreimer's offensive odor and disruptive behavior—"may be of our own making"? In fact, Kreimer squandered a large inheritance, turned down job offers, and refused to live in a shelter.

5. Why must we end hopelessness before we can maintain standards of hygiene and be-

havior in libraries? How can this be reconciled with Judge Sarokin's token disclaimer that "[l]ibraries cannot and should not be transformed into hotels or kitchens, even for the needy"?

(*Galioto v. Department of Treasury*, 602 F. Supp. 682 (D.N.J. 1985)):

"In a society which persists and insists in permitting its citizens to own and possess weapons, it becomes necessary to determine who may and who may not acquire them. At issue in this matter is a statute reminiscent of the Dark Ages * * *. To impose a perpetual and permanent [gun] ban against anyone who has ever been committed for mental illness, no matter how ancient the commitment or how complete the cure, is to elevate superstition over science."

Comment

Here's a liberal "two-fer": first disparaging the (politically conservative) right to own guns; then overriding the lines drawn by the legislature.

(*City of Jersey City v. Hodel*, 714 F. Supp. 126 (D.N.J. 1989)):

"The issue has been squarely presented: Should a large portion of this park, built in the shadow of the Statue of Liberty, be devoted to mooring the boats of an affluent few or be preserved for the enjoyment of the huddled masses?"

Comment

In fact, neither this issue nor any legal issue was squarely presented: despite his rhetorical flourish, Judge Sarokin dismissed this case as not ripe.

(*Sternberger v. Heckler*, No. 84-553 (Oct. 29, 1984)):

"This court has already concluded that the Department of Health and Human Services has no heart, but it appears that its brain is going as well."

(*Plaintiffs' lawyers v. defense lawyers* (Speech, ABA, Nov./Dec. 1989)):

"For those of you who represent plaintiffs in toxic tort matters, in addition to making money, I suggest to you that you are performing a vital and significant function. Not only are you seeking and obtaining compensation for those persons who have been injured by our technological society, but, equally, if not more importantly, you have created an awareness in the public that was nonexistent before. * * *. As to those of you who defend these cases, it is a little more difficult to take the high ground; but, there is a risk that frivolous and unsupported claims not only jeopardize the economy or segments of it, but discourage research and development of new products. They also raise costs to the consumer. Therefore, although your efforts may not be viewed as heroic as those of the plaintiff's bar, you likewise serve a vital function in making certain that those companies who are entitled to a defense receive it, and that the frivolous and ridiculous claims are vigorously defended."

Comments

Judge Sarokin exposes his clear bias that plaintiff's lawyers are "heroic" and that toxic tort claims are generally meritorious. What does this do to the appearance of impartiality in a particular case?

At his hearing, Judge Sarokin stated that he thought that his statement "was about as moderate and down-the-middle statement as anybody could make." [110:4-6] That Judge Sarokin, on reflection, still believes that a statement that plaintiff's lawyers are more "heroic" and occupy the moral "high ground" is "down-the-middle" illustrates the problem.

The litigation explosion (Speech, ABA, Nov./Dec. 1989):

"I think that the litigation explosion is a good thing. First of all, it should indicate to all of us that despite the constant criticism of the judicial system, that the people still believe in it, and it is the last place to which they can turn to seek a fair adjudication of their rights and claims. To a large extent the other people have lost confidence in the other branches and look to the courts as their last and final hope."

Comments

Does buying a lottery ticket reflect more one's faith in the lottery system or one's desire to get rich without doing any work? Is Judge Sarokin oblivious to the fact that judicial activism has weakened or emasculated the other branches and thereby contributed to the loss of confidence that people have in them?

FOOTNOTES

¹According to various new accounts, Kreimer squandered a \$340,000 inheritance, turned down job offers, and refused to live in a shelter.

²In a May 16, 1994, speech to the Federalist Society, Judge Sarokin described his reaction to the New York police commissioner's "crackdown on the squeegee people": "So as a citizen, I applaud the commissioner and his recognition that permitting this type of activity sets the tone of our cities and affects the fabric of our daily lives. But the judge in me, the flame in me, (as in flaming liberal,) says hold on a minute."

TRIBUTE TO GORDON OSBORNE

Mr. GREGG. Mr. President, I rise today to pay tribute to Mr. Gordon Osborne of New Ipswich, NH. On September 19, 1994, the Northern Textile Association [NTA] will present Gordon Osborne with their gold medal for his lifetime of service to the textile industry.

Mr. Osborne began his career in textiles in 1934 when he joined Warwick Mills in New Ipswich, and by 1948 he had become president of the company.

Mr. Osborne has also been active in the NTA for many years, serving as chairman, president, and, currently, treasurer of the organization.

Mr. President, during his career in the textile industry Gordon Osborne has represented the best of the New Hampshire business community, and it is my pleasure to pay tribute to this fine gentleman today on the Senate floor.

IS CONGRESS IRRESPONSIBLE? YOU BE THE JUDGE OF THAT

Mr. HELMS. Mr. President, the incredibly enormous Federal debt is like the weather—everybody talks about the weather but nobody does anything about it. Many Senators talk a good game—when they are back home—about bringing Federal deficits and the Federal debt under control, but take a look at how so many of them vote in support of bloated spending bills that roll through the Senate.

As of Friday, September 9, at the close of business, the Federal debt stood—down to the penny—at exactly \$4,679,665,237,940.33. This debt, never

forget, was run up by the Congress of the United States.

The Founding Fathers decreed that the big-spending bureaucrats in the executive branch of the U.S. Government should never be able to spend even a dime unless and until it had been authorized and appropriated by the U.S. Congress.

The U.S. Constitution is quite specific about that, as every school boy is supposed to know.

And do not be misled by declarations by politicians that the Federal debt was run up by some previous President or another, depending on party affiliation. Sometimes you hear false claims that Ronald Reagan ran it up; sometimes they play hit-and-run with George Bush.

These buck-passing declarations are false, as I said earlier, because the Congress of the United States is the culprit. The Senate and the House of Representatives are the big spenders.

Mr. President, most citizens cannot conceive of a billion of anything, let alone a trillion. It may provide a bit of perspective to bear in mind that a billion seconds ago, Mr. President, the Cuban missile crisis was in progress. A billion minutes ago, the crucifixion of Jesus Christ has occurred not long before.

Which sort of puts it in perspective, does it not, that Congress has run up this incredible Federal debt totaling 4,679 of those billions—of dollars. In other words, the Federal debt, as I said earlier, stood this morning at 4 trillion, 679 billion, 665 million, 237 thousand, 940 dollars and 93 cents. It'll be even greater at closing time today.

THE JERUSALEM FELLOWSHIPS PROGRAM

Mr. MOYNIHAN. Mr. President, I am pleased to report that the Jerusalem Fellowships Program brought over 120 North American college and graduate students to Israel this past summer, for a unique educational and cultural experience. My distinguished colleague from Pennsylvania, ARLEN SPECTER, and I have enjoyed the privilege of serving as honorary chairman of this exciting program since its inception in 1985.

The Jerusalem Fellows spent 4 weeks touring and studying in Israel. During this period they met individually with Israeli leaders including President Ezer Weizman, Prime Minister Yitzchak Rabin, Former Minister Shimon Peres, Former Prime Minister Yitzchak Shamir, Mayor of Jerusalem Ehud Olmert and members of Knesset Benny Begin and Raphael Eitan.

In every case, there was an opportunity for indepth dialog with these individuals—an unprecedented opportunity for a study mission of college-age students to question cabinet ministers and national leaders. In addition,

the fellowships met with Israeli citizens from every walk of life and from every group in that diverse society.

Eighty of the one hundred-twenty Jerusalem fellows had never been in Israel before. They had been selected on the basis of intellectual skills and leadership qualities. I am confident that they will articulate the insights developed during this tour now that they have returned to their campuses throughout North America.

The Jerusalem Fellowships Program was sponsored by Aish HaTorah College of Jewish Studies in Jerusalem, a unique educational institution headed by Rabbi Noah Weinberg, a leading contemporary Jewish philosopher and educator. The program's executive director is Rabbi Chanan Kaufman. The west coast division of this exemplary program is under the honorary chairmanship of our former colleague Governor Pete Wilson. The chairman for the west coast is Barry Goldfarb, a noted industrialist and major philanthropist whose vision and generosity made the west coast program a possibility. Sponsors and members of the advisory committee include:

Ken Abramowitz, Blair Axel, Ariel Berghash, Lon Bernell, Kenneth J. Bialkin, Alan and Mindy Bloom, Abe Briansky, Errol Brick, Herb Caskey, Marc S. Cooper, Kenneth Cowin, Charles Dimston, Mel Dubin, Andrew Duell, Lewis M. Eisenberg, Harold Feld, Marc Feuer, Nina Franklin, Natalio S. Fridman, Alan and Randee Gordin, Joseph A. Gottlieb, Arnold Hochstadt, Jonathan Ilany, George Klein, Samuel Klurman, Andrew E. Lewin, Arthur L. Loeb, Stephen Lovell, David Luchins, Leah and Shalom Mark, Danny Messing, Michael Morris, Jack Nash, Joseph Neustein, I. David Pelton, Pfizer Inc., Lester Pollack, Ephraim Propp, George Rohr, Steven Ronen, Daniel S. and Joanna S. Rose Fellowship, Jerry Rubin, Irving Schaffer, Alan J. Shefler, Alan B. Slifka, David and Lilli Smilow, Ronald and Nina Spiro, Warren Stieglitz, Judy and Charles S. Temel, Arnold Thaler, Phyllis and Arthur Wachtel, Gila Rosenhaus Wiener.

It is obvious from the response to this summer's program that the Jerusalem Fellowships Program has made a significant contribution toward furthering understanding of Israel among North American young people. I salute all who are involved in this magnificent project.

JIM CAULDER: EXCELLENCE IN PUBLIC SERVICE

Mr. HOLLINGS. Mr. President, I rise to salute Jim Caulder, an exceptional public servant, who retired last month after more than three decades of dedicated service with the Social Security Administration. Jim joined the agency during the first year of the Kennedy

administration, and has been assigned for most of the last two decades to the Social Security office in Columbia, SC. Most recently, he has served as Social Security's liaison officer with a broad range of State and Federal agencies, including South Carolina's congressional delegation. In that capacity, he has been of invaluable assistance to my staff and me on many, many occasions—consistently demonstrating a resourcefulness and can-do attitude that have been a tremendous credit to the Social Security Administration. We have lost a superb public servant, but we are grateful for all he has accomplished. I wish Jim Caulder all the best in retirement.

SUPPORT OF THE BETTER NUTRITION AND HEALTH FOR CHILDREN ACT OF 1994

Mr. SARBANES. Mr. President, Congress demonstrated its support for the health and well-being of our Nation's children through its recent approval of legislation which reauthorizes important Federal nutrition and school lunch programs through fiscal year 1998. The Better Nutrition and Health for Children Act of 1994 will help to ensure that millions of children continue to have access to the food necessary to keep them healthy and learning.

According to data released by the U.S. Census Bureau last fall, 36.9 million Americans lived in poverty in 1992. This increase, from 33.6 million in 1990, represents the largest increase of people living in poverty since the 1960's. More distressing, however, is that children continue to be the poorest age group in the country. Over the past 20 years, the number of American children in poverty has increased by more than 37 percent. Further, the Center on Hunger, Poverty, and Nutrition Policy claims that if child poverty trends continue as they have over the past two decades, nearly 2.8 million more American children will fall into poverty by the year 2000. In a country with our resources, this is simply unacceptable.

A study coordinated by the Food Research and Action Center in 1991 estimated that approximately 5.5 million American children under the age of 12—61,000 in my home State of Maryland—go hungry each month and that millions more are at risk of hunger. Further, the study indicated that hungry children are two to three times more likely than other children to have suffered from individual health problems, such as unwanted weight loss, fatigue, irritability, and headaches. Clearly, it is unreasonable to expect children who are faced with such distractions to function effectively in and outside the classroom.

I would also point out that this legislation is especially important in light of the recent Senate passage of the reauthorization of the elementary and

Secondary Education Act. How can the important education initiatives set forth in that legislation succeed if its major participants and benefactors—the children—are too sick and hungry to concentrate in the classroom?

The necessity for adequate funding for these programs is painfully obvious. If our Nation is to succeed in an increasingly competitive world, efforts to guarantee children access to basic nutrition must be maintained and expanded.

For many years, the Federal Government exhibited a strong commitment to funding for food assistance programs. In response to large numbers of American draftees failing their physical examinations because of nutritional deficiencies, President Truman proposed and Congress enacted the National School Lunch Act of 1946. This marked the beginning of congressional focus on food assistance programs. The stated purpose of this legislation was to provide both a market for agricultural production and to improve the health and well-being of our Nation's youth.

Under the influence of President Johnson's broad domestic legislative agenda in the 1960's, the primary purpose of food distribution programs began to shift from surplus disposal to furnishing nutritious food to low-income households with needy children. The issuance of a 1961 Executive order which mandated that the Department of Agriculture [USDA] increase the quantity and variety of foods donated for needy households further established the program's direction. Congress continued to expand food and nutrition programs during the 1960's and 1970's, increasing reimbursements and expanding program eligibility to cover a wider range of low-income families. Critical new programs were put into effect, including the WIC Program and nutrition programs targeting the elderly.

However, after almost 45 years of relatively uninterrupted growth, Federal funding for these critical food assistance programs was drastically cut through the Reagan administration's Omnibus Reconciliation Act of 1981. This measure, which reduced Federal funding for all domestic programs by \$35 billion in fiscal year 1992, cut approximately \$1.4 billion from child nutrition programs.

The School Lunch Program received the target dollar amount reduction, losing almost \$1 billion in fiscal year 1982. The Special Milk Program was cut by 77 percent; grant funding for the Nutrition, Education and Training Program [NET] was cut from \$15 million to \$5 million; and the Summer Food Service Program was reduced by 54 percent below the expected fiscal year 1982 level.

Efforts to restore some of the cutbacks in these programs began in the

mid-eighties with the passage of the food stamp amendments to the 1985 farm bill and the School Lunch and Child Nutrition Amendments of 1986. In 1988, Congress passed the Hunger Prevention Act, major legislation that mandated funding for commodity purchases for soup kitchens and food banks, expanded reimbursements and eligibility for the School Breakfast, Child Care Food, and Summer Food Service Programs, and changed food stamp benefits and eligibility rules.

I am pleased that largely through these congressional efforts, Federal funding for food assistance programs has increased since the cutbacks of the early eighties. Today, these programs also enjoy the support of the Clinton administration. President Clinton's commitment to our Nation's children and low-income families is reflected in his fiscal year 1995 budget request for a \$2 billion increase for food assistance programs.

The bill we have approved will increase total spending on nutrition programs and school lunches by approximately \$174 million over 5 years and will extend funding for startup and expansion of school breakfast and summer food service programs. It also reauthorizes WIC, school lunch and breakfast programs, the Summer Food Service Program and the Child and Adult Care Food Program.

The WIC Program, which provides food vouchers and nutrition education to pregnant women and young children, is expected to support an average of 7.2 million participants at an average monthly cost of \$42.38 per person per month in fiscal year 1995. The General Accounting Office estimates that WIC services to pregnant women who gave birth in 1990 cost the Federal Government nearly \$296 million, but could save a projected \$1.036 billion in Federal, State, local and private dollars by the year 2008. To date, this important program has served almost 90,000 of more than 210,000 eligibles in my home State of Maryland.

The bill will make children from low-income families who already qualify for Head Start automatically eligible for free meals under the Child and Adult Care Food Program. In order to ensure that children continue to receive nutritious meals, this legislation also reauthorizes the Summer Food Service Program which will appropriate Federal funds for meals served to children by both public and non-profit organizations during the summertime.

The National School Lunch Program, the oldest of all child nutrition programs, serves more than 25 million meals daily and boasts a 90 percent participation rate of schools nationwide. The average daily participation rate in Maryland is estimated to be around 374,855 children out of a public school enrollment of 763,274. That's

nearly half of all children enrolled in the Maryland public school system.

This bill appropriately recognizes that in providing food assistance to needy kids, it is equally important to make certain that the food provided is nutritious. The bill requires that the USDA improve the nutritional value of commodities provided to schools and guarantee that those commodities have nutrition labels. To achieve this goal, USDA has increased the amount of fresh fruits and vegetables that will be offered through schools lunch programs by direct USDA commodity purchases.

The bill also requires the Secretary of Agriculture to give technical assistance to schools and other participants in the program to help in meeting specific nutritional guidelines under the school lunch program. Such assistance would include training in preparation of low-fat forms of common food items and providing special meals for children whose medical conditions dictate unique dietary essentials.

I would like to take this opportunity to recognize one of several school districts from across the country which is already meeting some of the Federal standards for healthier lunches. According to a study published last month by the Public Voice for Food and Health Policy, Maryland's Howard County is one of several school districts currently providing well-balanced meals to its students.

The Washington Post recently reported that among the innovative programs at work in Howard County public schools is a option called Coach's Corner which provides a 1,000 calorie, low-fat meal for athletes and other interested students. In an effort to promote a greater understanding and appreciation of a nutritious diet, Howard County also provides nutrition education to students and faculty and nutrition training to all cafeteria managers.

Improvements made by school districts such as Howard County should serve as models of reform for other school lunch programs across the country.

Finally, I would note that in the context of the current debate on health care reform, this bill takes on an added significance. According to a Harvard University study, every dollar spent on prenatal care through the WIC Program saves as much as \$3 in future health care costs. The Department of Agriculture also estimates that every dollar spent on prenatal care through the WIC Program results in a significant Medicaid savings within the first 60 days after birth. In addition to the cost savings, this early investment results in increased birthweight, improved motor and visual skills and a reduction of an anemia among low-income children.

Similar benefits can be found among participants in the school lunch and

breakfast programs. The community childhood hunger identification project reports that children who participate in the school lunch program miss fewer school days, enjoy better overall health and improve significantly in standardized achievement test scores. It also stands to reason that healthier children with good eating habits translates into healthier adults with fewer medical problems.

It is estimated that low-income children receive from one-third to one-half of their daily nutrient intake from the school lunch program. Ellen Haas, Assistant Secretary for Food and Consumer Services at the Department of Agriculture, accurately noted that "for low-income children, a school meal is often their only nutritious meal of the day."

Mr. President, I cannot emphasize enough the importance of this legislation. This Nation's long record of supporting child nutrition programs illustrates the high priority we have placed and should continue to place on the health and well-being of our most precious resource—our children. It is not only sound economic policy, but is—put simply—the right thing to do.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER (Mr. DORGAN). Morning business is now closed.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1995 AND MILITARY CONSTRUCTION AUTHORIZATION ACT FOR FISCAL YEAR 1995—CONFERENCE REPORT

The PRESIDING OFFICER. Under the previous order, the Senate will now turn to the conference report to S. 2182, which the clerk will report.

The bill clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 2182) to authorize appropriations for fiscal year 1995 for military activities of the Department of Defense, for military construction, and for defense programs of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of August 12, 1994.)

The PRESIDING OFFICER. The Chair recognizes the Senator from New Mexico.

Mr. BINGAMAN. Thank you, Mr. President.

Mr. President, I am pleased to open the debate on the conference report on the fiscal year 1995 National Defense Authorization Act.

Senator NUNN, the chairman of the committee, will deliver a statement on the entire conference report when he arrives at 2:30. I plan to focus my brief remarks this afternoon on the work of the Defense Technology, Acquisition and Industrial Base Subcommittee, which I chair and on which Senator SMITH serves very ably as the ranking minority member, and also to make some comments on the work of other subcommittees as it affects my home State of New Mexico.

Mr. President, I believe that this is a sound bill that continues the process of restructuring our defense establishment to new global conditions that we see. In the case of the acquisition subcommittee, this conference report needs to be seen in the context of the conference report on the Federal Acquisition Streamlining Act of 1994, which the Senate approved last month. The fundamental themes of both of these conferences reports are fostering commercial-military integration and making greater use of dual-use technology that we have in our weapons systems.

Why is this approach so important in a post-cold-war world? The reasons are twofold. First, the commercial sector increasingly drives technology important to our national security. Second, commercial-military integration is the most cost-effective approach that we can take in maintaining our defense technology base.

In semiconductors, software, computers, telecommunications, advanced materials, and even sensors, all among the most important future technologies for the Department of Defense, the commercial sector's needs in these areas overwhelm the needs of DOD. Typically DOD buys well under 10 percent of the output of these industries. In the past DOD has too often tried to meet its needs in these areas by relying on a unique defense industrial base separate from the commercial world. That was the approach taken, for example, in the early 1980's in the Very High Speed Integrated Circuit Program. By 1986, Norm Augustine and his colleagues on the Defense Science Board recognized that that approach was unworkable. Instead they proposed to leverage the real commercial semiconductor industry in this country through Sematech, a concept that has served our Nation well in the past 7 years. The heart of that concept is cost-sharing, which saves the taxpayer money both in the development of dual-use technologies and in the acquisition of dual-use products, since DOD can take advantage of the much larger production efficiencies in the commercial world.

Secretary Perry recognizes the need to broaden that approach. Let me briefly quote an excerpt of Deputy Secretary Deutch's commencement address at Northeastern University in June:

Today, Secretary Perry is responding to these changed circumstances. He is called for greater reliance on commercial goods and services to meet defense needs. He's doing this for two reasons.

First, we can no longer afford the extra cost of maintaining a defense unique technology and industrial base. Second, we find in many fields vital to defense that commercial demand—not defense demand—is driving technological innovation. There is no better example of this than computers. Computers in weapons systems tend to be several generations old because the commercial market is moving so quickly.

For these two reasons, we have developed a growing interest in technology integration via that we call dual-use technology, that is, technology that meets both defense and commercial needs.

There are two advantages to this strategy: First, acquisition costs will be lower because the DOD is taking advantage of the economies of scale and the faster pace of change of technology in the larger commercial market of this country.

The second advantage is the one you hear President Clinton emphasize each time he talks about the importance of government action to increase economic growth and create jobs. That is, when DOD buys commercial products and services or supports dual-use technology, the DOD is strengthening the private sector.

The big change here is that the Department is not just paying attention to technical performance as we did in the past. We have to pay attention to technology integration. Both the larger society and our shrinking budgets demand it.

Mr. President, this bill is entirely consistent with Secretary Perry and Secretary Deutch's vision. It funds the Department's technology base programs at \$4.2 billion, the level of the budget request. It fosters dual-use research in a wide range of areas, including additional funding for advanced lithography, flat panel displays, telemedicine, and law enforcement technologies.

Let me briefly mention telemedicine as an example of this new approach. This is a technology which can save the lives of our troops in peacetime and in war by bringing the full capability of modern medicine to remote locations. It is also a technology of great relevance to rural populations in this country. This bill devotes \$20 million to initiatives in this area.

Similarly, there is an opportunity to help our law enforcement community at the same time we develop improved technologies for our troops serving peacekeeping functions overseas. The Justice Department and DOD have agreed through a memorandum of understanding to seek such synergies in their respective research programs. This bill authorizes \$41 million for the DOD component of that research effort.

This bill also fully funds the technology reinvestment project at \$625

million, and provides a total of \$751 million in technology reinvestment-related research funds. The technology reinvestment project is really the flagship of DOD's effort to pursue a commercial-military integration approach in its research efforts. It provides defense-unique firms the opportunity to diversify into commercial markets and an opportunity for commercially oriented firms to adapt their technologies to defense uses. The bill also provides \$50 million for a loan guarantee program for small- and medium-sized firms, an initiative on which Senator FEINSTEIN took the lead in the Senate. And it allows small businesses 120 days after being selected for a TRP project to obtain venture capital funding for their share of the project.

This bill also provides over half a billion dollars to the DOD Small Business Innovative Research Program. This is a crucial connection for the department to the most innovative component of our commercial sector.

I want to commend Senator SMITH, the ranking member on the Defense Technology, Acquisition and Industrial Base Subcommittee, for his work in the conference and throughout the year on these issues. We, and our House colleagues, Congresswoman SCHROEDER and Congressman STUMP, share a desire to do all we can to foster Secretary Perry's commercial-military integration approach. I was pleased that we were able to be the first subcommittee to complete its work in the conference last month.

I also want to commend the staff on both sides of the aisle who worked so hard on this bill while simultaneously working on the acquisition streamlining act. John Douglas, Andy Effron, and David Lyles on the majority side of the Armed Services Committee, and Jon Etherton and Jack Mansfield on the minority side did yeoman work throughout the year. Jack has gone on to bigger and better things at NASA since our conference concluded. I also want to thank John Gerhart, now at MIT, and Ed McGaffigan of my staff, and Tom Lankford of Senator SMITH's staff for their very hard work and consistently good work this year, as always.

Mr. President, let me conclude by citing some of the other elements of this bill that are particularly important for my home State of New Mexico.

This bill provides \$20 million to complete the upgrade of the Los Alamos Neutron Scattering Center for materials sciences purposes as part of DOE's stockpile stewardship program. This funding puts this vital center on a firm foundation for the future.

This bill provides \$20 million for the high energy laser systems test facility at White Sands, the heart of the DOD high energy laser program, in my view.

This bill provides \$48.6 million for military construction at Kirtland Air

Force Base to speed the revitalization of Kirtland's infrastructure.

The bill contains a provision, cosponsored by my senior colleague from New Mexico, Senator DOMENICI, that prohibits any action to retire, or prepare to retire, the F-111 fighter/bomber aircraft at Cannon Air Force Base during fiscal year 1995. This is entirely consistent with the action Secretary Deutch took last month on the fiscal year 1996 budget, and is a strong statement by the Congress in favor of retaining the vital capability of these aircraft until precision munitions become available on our strategic bombers at the turn of the century or beyond.

This bill provides \$30 million in new fiscal year 1995 funding plus \$35 million in unobligated fiscal year 1994 funds to the Phillips Laboratory for the Air Force component of the reusable space launch vehicle technology program to be carried out in partnership with NASA. Jack Mansfield, as I mentioned earlier, has left the Armed Services staff to take over the NASA reusable launch program and I am confident that the two agencies will work together with the private sector to seek a breakthrough here in low-cost access to space. The DC-X Program, which NASA has now taken over, points the way to a competitive next step in reusable launch vehicles.

This bill contains a provision, authored by Senators WARNER and SARBANES, which moves the cost-of-living allowance for military retirees forward to April 1, 1995, to be consistent with the civil service retiree COLA cost-of-living adjustment. And it also provides a 2.6 percent pay raise for active duty service members, effective January 1, 1995.

The bill contains \$49.9 million for the Army's echelon-above-corps communications systems, a program which has helped make Laguna Industries one of the leading, if not the leading, Indian-owned firm supplying equipment to the Pentagon.

And the bill contains additional funding for conventional munitions research at the DOE laboratories, counterproliferation research, the high-speed sled track at Holloman Air Force Base, and excimer laser and thermionics research at Phillips Laboratory. In short, it is considerable improvement over the administration's request earlier this year for New Mexico's military installations and the people who serve there.

Mr. President, I urge my colleagues to give overwhelming support to this conference report, which overall provides \$263.8 billion for our national security programs, primarily at DOD and the Department of Energy, about the same level as last year, although eroded by inflation. This is sound legislation, fashioned on a bipartisan basis under the leadership of Senator NUNN

and Senator THURMOND, and it will serve our Nation well upon enactment.

Mr. President, I yield the floor. I know my colleague, Senator THURMOND, wishes to make a statement.

The PRESIDING OFFICER. The Chair recognizes Senator THURMOND.

Mr. THURMOND. Mr. President, I wish to thank the chairman of the Armed Services Committee for his capable and tireless efforts on this year's Defense authorization conference. I would also like to thank the other members of the committee and their staffs as well. This is a good bill, but not a great bill. We were able to do a number of essential things. Mr. President, let me give you a few examples:

First, the bill meets our basic needs in modernization and preparedness. Let me cite some highlights:

We kept a number of key weapons systems in production which could spell the difference between victory and defeat in future conflicts.

The conferees also chose to preserve the current inventory of 95 B-52 and 95 B-1 bombers. In addition we directed studies to determine what the bomber mix of the future should be.

The conferees agreed to add funds to improve near-term precision guided weapons.

The bill provides funding and authority for multiyear procurement of small arms to provide the weapons needed by our military services, and to preserve critical elements of the small arms industrial base.

The bill authorizes an increase, above the budget request, for key readiness areas such as depot maintenance, training, recruiting, and real property maintenance.

The conferees authorized an additional \$510 million for modernized equipment for the National Guard and Reserve components.

I have indicated to the chairman of the committee that I do not like the allocation of funds within the Guard and Reserve package. I do not believe we have provided a proportionally fair share of these funds to the Army National Guard and Army Reserve. Senator NUNN has agreed that we will work with the Appropriations Committee conferees to ensure that additional funds are added for the Army National Guard in the appropriations process.

Second, Mr. President, this year's bill is good for soldiers and their families.

It authorizes a 2.6-percent pay raise for military personnel starting in January 1995.

It adds \$20 million to the budget for continued research into the cause and treatment of the gulf war syndrome.

The bill also adds \$76.1 million to the budget request of \$3.4 billion for improvements to, and construction of, military family housing.

As the services continue their drawdown, the conferees have chosen

to maintain a prudent glide path to reduce military personnel strength and yet make sure those who must leave the services are treated fairly. To ensure fairness for all uniformed personnel, the bill authorizes the expansion of personnel transition benefits in effect for the other services to the Coast Guard.

Third, Mr. President, this year's bill is good for the neighbors of our military communities because it maintains the momentum of the Defense Reinvestment and Conversion Program enacted in 1992.

Please understand that these provisions are good, but nothing to boast about. The authorization bill will keep the Department of Defense functioning for another year, but I have grave reservations about the years to come. This bill represents a barely adequate level of funding. All indicators point to future levels being inadequate. We are witnessing the dangerous divergence of two trends—increasing the commitments of our military forces while cutting the military budget.

Mr. President, let me mention but a few areas in which this bill is not good.

It does not go far enough in funding training for our men and women in uniform.

I mentioned earlier that the conferees chose to maintain a prudent glide path in personnel reductions. In order to do this under current budget constraints, it is necessary to make reductions in other areas; and quite often those areas involve future readiness and modernization of equipment. This cannot be allowed to continue in future years' budgets.

We are not building our airlift capacity at the necessary pace.

We have known for a long time that we do not have sufficient sealift; but, we fail to fix this shortfall because funding is not adequate. What this means is that even if we have the greatest armed forces in the world, they may not be able to deploy to other areas of the world to conduct missions essential to our national security quickly enough and in sufficient numbers. It also means we may not be able to sustain our forces even if we are able to get them to the conflict.

Make no mistake about what is going on here, Mr. President, while this year's bill provides a minimum level of funding for our forces, it does not put us in a position to meet future needs. We cannot remain prepared to fight and win two major regional contingencies, provide the humanitarian response team for world crises, and modernize our forces with the budgets being proposed by the Clinton administration for the next 5 years.

I support this conference report, because the conferees did the best we could within the budgetary limits we were given. The only other alternative is no authorization bill at all. But we

must not become complacent because we have provided this minimal level of resources with which to safeguard the Nation's security.

The world is still full of potential crises and challenges to our vital interests. There are a number of things we must do to meet those challenges—maintain adequate forces, stocks of war material, and our technological advantage in weapons and other systems. We must support our men and women in uniform and their families so that their morale is high, and make sure they are well-trained and well-led. Finally, we must spend the taxpayers' money wisely, to get more return for each defense dollar spent.

Mr. President, these are all essential, but they are no substitute for the most compelling requirement of all. We must provide adequate funding for the Armed Forces if they are going to remain capable of protecting the Nation's vital interests.

Recently we have seen increasing signs of the hollowing of our forces. Training is being curtailed and canceled. Just last month, five carrier aircraft squadrons were grounded at Naval Air Station, Whidbey Island in the State of Washington due to lack of funds. In addition, Deputy Secretary of Defense John Deutch announced last month that a number of major military systems will be reviewed for elimination or "stretch-out" because the Department of Defense must use the money to prevent further erosion of readiness. These systems are important elements of the administration's own Bottom-Up Review Force and they are necessary components of future combat capability.

I urge my colleagues to vote for the conference report. But in so doing, I urge them to set their sights on approving future defense bills only when those bills ensure our soldiers, sailors, marines, and airmen have sufficient means to do what America asks them to do often at great personal sacrifice. Since that sacrifice may include laying down their lives, we owe them no less.

I thank the Chair, and I yield the floor.

The PRESIDING OFFICER. Who seeks recognition?

Mr. KEMPTHORNE. Mr. President, regarding passage of the fiscal year 1995 Defense authorization conference report, I would like to take a moment of the Senate's time to clarify my position on the conference report. As a member of the Senate Armed Services Committee, I played an active role in the DOD authorization conference. I fully agree with the recommendations of the conference but I declined to sign the conference report because of my belief that we are cutting our defenses too deeply and too quickly.

For the last 2 years, I have had the honor of serving with some of the Senate's best national security thinkers.

On the Senate Armed Services Committee, I have watched and learned as members such as Senator NUNN, Senator THURMOND, Senator EXON, Senator WARNER, Senator LEVIN, Senator COHEN, Senator GLENN, Senator MCCAIN, Senator LOTT, Senator SHELBURY, Senator COATS, and Senator SMITH, acted to strengthen and promote our Nation's national security interests. In particular, the leadership provided by Chairman NUNN and Senator THURMOND gives me great confidence that the Senate will always have a voice for peace through strength as long as these two patriots guide the Senate Armed Services Committee.

At the same time, I fear that the post-cold-war era has led some to believe that we can make significant cuts to our defenses without any risk. Because of this perspective, the President has proposed, and the Congress has endorsed, large cuts in defense spending. While we have endorsed these cuts in defense spending, our troop commitments have grown and grown. Today, we have United States pilots enforcing a no-fly zone over Iraq; we have troops providing humanitarian relief to the Kurds; we have pilots enforcing a no-fly zone over Bosnia; we have sailors enforcing an economic embargo against Serbia; we have troops in Macedonia monitoring the economic sanctions against Serbia; we have sailors and marines deployed off the coast of Haiti; we have United States military personnel responding to the humanitarian tragedy in Rwanda; and we have 38,000 Americans deployed to deter aggression in South Korea. I know that I have left out a few commitments of U.S. troops but I think my colleagues get the picture.

The death of communism in the Soviet Union and the fall of the Berlin Wall lifted the superpower superstructure which inhibited regional conflicts. In the wake of those monumental actions, a new era of regional conflicts, civil wars, separatism, and humanitarian disasters have ensued.

While not all of these problems threaten U.S. national security interests, America has tried to play a role easing tensions and addressing humanitarian needs. These responsibilities have put tremendous demands on our military forces at a time when we are discharging people and mothballing ships and planes as fast as we can. In other words, our capabilities have declined while our responsibilities have increased. These crisscrossing trends force us to prioritize our objectives in relation to our resources. Unfortunately, I do not see that happening. Instead, I see an administration threatening an invasion of Haiti when no one has explained how that action would promote our national security interests.

Mr. President, I did not come here to critique our national security strategy

but I do think we need to focus our declining resources on our most essential objectives. Likewise, I think we need to look closer at the relationship between our defense responsibilities and defense spending. It is my view that our responsibilities now outweigh our capabilities and that is why I oppose the conference report now before the Senate. In addition, unless the world changes dramatically, I will continue to vote against defense bills that do not provide enough funding to meet our national security requirements. I do so without in any way questioning the work of the defense authorization and appropriations committees. It is simply my view that we are not providing these committees with enough resources to adequately meet their responsibilities.

Mr. President, I yield the floor.

Mr. SMITH. Mr. President, I rise today to offer some personal comments concerning the conference report on the fiscal year 1995 Defense authorization bill.

Let me begin by complimenting Chairman NUNN and ranking member THURMOND for their outstanding leadership during a difficult conference with the House. As always, the Senators from Georgia and South Carolina served with distinction, and represented the Senate's interests very effectively. It is an honor to serve with men of such dedication and integrity.

As a member of the Armed Services Committee, I participated actively in the full range of conference negotiations. I believe the conferees did their best to reconcile differences and to safeguard our national security interests within the constraints of the budget allocation. In my view, the conference bill deserves to be presented to the House and Senate for consideration. That is why I signed the report discharging the legislation from conference. However, I will vote against the bill today.

Mr. President, the Clinton administration's 5-year defense plan is both fiscally and intellectually dishonest. Although it claims to support the Bottom-Up Review [BUR] force levels and strategy, it clearly does not. In fact, the GAO recently estimated that the administration's defense program is underfunded by \$150 billion. In addition, the BUR force levels and strategy themselves do not support our military requirements. Thus, not only is the structure and strategy inadequate, but the resources to implement that flawed strategy are grossly insufficient, as well.

Based on the abundance of testimony presented to Congress, it is clear that the BUR is fundamentally and fatally flawed. It is equally clear that, contrary to the assertions of Pentagon spin doctors, the BUR was a budget driven, not threat driven, exercise. By all indications, the administration de-

termined exactly how much it wanted pillage from defense, and then utilized the BUR to rationalize the reductions. This is simply unacceptable.

Mr. President, I cannot sit idle and allow our national security to be compromised, and our Armed Forces decimated. The Clinton administration has charted a course that will most certainly do both. Congress must have the courage and the foresight to reject this blueprint for disaster. Merely accepting the budget reductions, and reallocating the resources within accounts is not the answer. It is part of the problem. The resources are inadequate, and to level of reallocation and restructuring can remedy these shortfalls.

While there is much within the bill that I strongly endorse, and worked actively to include, I simply cannot legitimize the administration's defense plan by approving its substance. The distinguished chairman and ranking member have done everything possible to make the best of an impossible situation. But I cannot, in good conscience, support this legislation.

I will vote against the conference report because it inevitably continues the administration's systematic dismantling of our Armed Forces.

The PRESIDING OFFICER. Who now seeks recognition?

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

The PRESIDING OFFICER. Without objection, it is so ordered. For what purpose does the Senator seek recognition?

Mr. COATS. I rise to speak on the pending legislation.

The PRESIDING OFFICER. The Senator from Indiana is recognized.

Mr. COATS. Mr. President, first I would like to commend the chairman and ranking member of the Armed Services Committee for their efforts in guiding this legislation through some very difficult decisions. The process of reporting out a defense authorization bill gets tougher every year. The decisions get tougher every year because we are trying to do what we believe is necessary to preserve our strength, the strength of our national security apparatus, and we are doing it with increasingly limited resources. Those resources are being stretched further every year.

The Armed Services Committee has had to deal with very serious concerns regarding readiness, the health and welfare of our personnel, procurement decisions, and how we allocate our funds. Many difficult issues still need to be addressed. But I do want to commend the chairman and ranking member and those members of the Armed

Services Committee who have worked so diligently to produce legislation under very difficult circumstances.

Mr. President, when presented with last year's budget, this body emphasized that every effort would need to be made to match our forces to the changing requirements of the post-cold-war world. The fall of communism and the demise of the Soviet Union dictated reduced levels of defense spending, and we have now, over the past 10 years, tried to adjust to those reduced levels of defense spending. But as we have done so, we have begun to notice—as I suppose would be inevitable under a declining budget—multiple signs of declining readiness, and that ought to be disturbing to all of us.

While none of us would argue that refocusing of priorities is in order, such refocusing should be based on capabilities and requirements, not on arbitrary budget figures.

Last year, the term "too far too fast" was used by many to express concern about the rapid decline of our military capability. As evidenced by the committee's evaluation of the administration's plan for our continued drawdown, the so-called Bottom-Up Review, that phrase "too far too fast" still fits. The Bottom-Up Review conducted by the administration and the Department of Defense said that our goal should be to have the capability of conducting two nearly simultaneous regional conflicts, and yet I think the evidence is now in: We do not possess that capability. Based on extensive testimony from military leaders at all levels, along with empirical real world facts and figures, we now see that readiness has now slipped beyond the point where the United States is capable of responding to two nearly simultaneous regional conflicts and perhaps is not even capable of mounting one operation on the scale of Desert Shield and Desert Storm.

According to the Department of Defense, 100 heavy bombers are needed to fulfill the war-fighting requirements during one major regional conflict. And from fiscal year 1995 to fiscal year 1999, the number of heavy bombers will drop below 110, well below the number needed to fight and win two regional conflicts at roughly the same time.

As to strategic lift, General Hoar, commander in chief of the Central Command, has stated that requirements during the Somalia relief efforts stretched the Air Force's strategic lift capability to the point where it could not even simultaneously support a small multinational exercise on the same continent, never mind an operation of the magnitude that would be required to sustain a mission in North Korea.

Yet, current events, like the continuing crisis with North Korea, possible future actions in Bosnia, what clearly appears to be a planned United States

invasion of Haiti, to say nothing of numerous other trouble spots around the globe, tell us that the world, while changed, is not any less dangerous but perhaps more. That requires us to look at some areas of concern that go to the heart of our military capability and our national security.

It is important, Mr. President, to understand how we got here, what has happened in the last decade.

What most Members now know, and what all of us should know is that this defense bill represents the 10th straight year of declining budgets. Just during the decade of the nineties, defense outlays will decrease by 35 percent, while at the same time, Federal mandatory spending will increase 38 percent, and domestic discretionary spending will increase by 12 percent.

Historically, defense has been cut deeper than domestic programs. We have cut active duty military personnel 32 percent. We have cut reserves 20 percent. We have cut civilian military workers 29 percent. We have cut the number of Army divisions by 45 percent. We have cut battle force ships 37 percent and fighter attack aircraft 40 percent.

Defense outlays, as a share of gross domestic product, is 3.7 percent in 1995, nearly half of what it was just 10 years before. And that will drop. Defense outlays as a percent of gross domestic product will drop to 2.8 percent by 1999, the lowest figure since just prior to World War II.

Mr. President, it has been stated on this floor, and needs to be stated again, that it is defense outlays that are helping to reduce the budget deficit. It is not any other aspect of spending. As the chairman of the Armed Services Committee, Senator NUNN, has said over and over and over, defense has done not only its share of reducing the deficit, it has done more than its share. It is virtually carrying the whole load and it cannot continue to carry the whole load. The Defense Department has commitments and responsibilities all over the globe, to say nothing of the constitutional responsibility to provide for our national security. We are stretching too thin the dollars available to meet those commitments and responsibilities.

Mr. President, since the peak year of fiscal year 1985, we have reduced procurement of ships 80 percent, from 29 per year to 6 per year. We have reduced aircraft procurement 86 percent, from 943 to 127.

We have reduced tanks 100 percent, from a procurement level of 720 in 1985 to zero—zero new tanks—for fiscal year 1995. We have reduced our procurement of strategic missiles 95 percent from 307 in 1980 to 18 in fiscal year 1995. Army divisions, as I have said, are down 45 percent, battle ships down 37 percent, and attack fighter aircraft down 40 percent.

These are significant reductions in hardware and in personnel. We have reduced active military 32 percent from 2,151,000 active duty personnel in 1985 to 1,526,000 for fiscal 1995, moving down to 1.46 million by the end of fiscal year 1999; selected reserves, from 1,128,000 to 979,000 in fiscal year 1995, on the way down to 906,000; and civilian military personnel down 29 percent, from 1,129,000 to a projected 804,000. Who knows how much further that will come down?

Now, where are these cuts coming from? They have come from personnel and they have come from operations and maintenance—two key accounts in the Defense Department budget.

These two accounts generally are the ones that provide the savings because their funds can be spent out faster than any other segments of the defense budget. Procurement spreads out over a number of years, to do the research and development and do the production of various defense hardware items. But it is in operations and maintenance and it is in personnel where the immediate cuts come. The cutbacks have forced the current 5-year defense plan budget to be front-end loaded with massive personnel cuts. In the last 12 months alone, 94,146 armed services personnel have left the military.

The total number of people leaving the military during the 5-year period from fiscal year 1990 to fiscal year 1995 will be 892,000 people. That equates to 14,866 individuals a month or 496 every day. Today, 496 active duty uniformed personnel will leave the military. In the month of September, in this month of September as we meet and debate, 14,866 men and women wearing the uniform will leave the military. And this will happen month after month after month.

Mr. President, we recently received a report from the GAO, the General Accounting Office, projecting that Pentagon programs over the next 5 years will be underfunded by a figure of \$150 billion. Current programs—according to GAO—on the books, that this Congress has approved as necessary to our national defense, will be underfunded by \$150 billion. GAO identified a number of shortfalls as a result of overstating savings and understating costs.

Now, I would like to quote from some of that report. They indicate that we are \$20 billion short on revised inflation adjustments; \$1.6 billion short in negative adjustment to unspecified programs in the research and development accounts; \$32 billion short in unrealized base closure and defense management report initiative savings; \$112 billion in potential cost increases for base closures, weapons systems, personnel pay, environmental cleanup, and humanitarian peacekeeping operations.

So GAO, which has looked at this and which has issued a report in July 1994,

estimates that the programs this Congress has determined are necessary to provide for our national security needs for the next 5 years are underfunded by \$150 billion.

Does anyone think that this Congress is going to come forth and say OK, we will live up to our commitments, and we will provide the additional \$150 billion of funding because we believe in those commitments, we believe those are sound commitments and we need to fund those? I do not think this Congress will do it. So we are saying one thing on the one hand and we are not delivering on the other hand.

Now, in fairness, the Department of Defense does not agree with the GAO analysis. They say GAO has overestimated the underfunding. In fact, I have a letter here from the comptroller of the Department of Defense, John Hamre, who gives a detailed explanation of why the shortfall will not be at the \$150 billion level. He does indicate that it could be at least \$40 billion short. So we are somewhere between \$40 and \$150 billion. We are probably closer to the 150 rather than the 40 because I think we understand some of these savings are not going to come in as quickly as we had hoped.

There are discrepancies in different methods of accounting, and GAO and the Department of Defense probably are apart on this, but the bottom line is we are underfunded in terms of the commitments that we have already made. We have made the commitments on the basis that this is what we need to do on a minimal basis. This is not maximum effort. This is what we need to do on a minimum. And even in doing so, we have to admit that it will not be possible to meet the stated goals outlined under the extensive Bottom-Up Review plan outlined by the Department of Defense.

So we are somewhere between \$40 and \$150 billion short of meeting the goals that Congress has set. Yet we also realize that congressional goals are not always synonymous with Department of Defense goals.

One of the reasons for that is we are engaging our military in all kinds of operations other than what the military is designed for and what military personnel are trained for. This administration has accelerated the use of defense dollars for funding nondefense efforts. Examples that come to mind are environmental cleanup, defense conversion, job retraining, humanitarian aid, and peacekeeping operations.

Should we do these types of things? Yes, without question. But not with crucial defense funds that are needed for readiness, needed for training, needed for personnel, needed to perform the essential functions and tasks of our national security operation.

Since the Persian Gulf war ended, American troops have rescued Kurds in Northern Iraq; they have helped south

Floridians after Hurricane Andrew; they have broken the famine in Somalia; they have air dropped supplies to civilians in Bosnia; they blockaded Haiti; they have provided massive relief aid to Rwandan refugees; they have picked up Haitian and Cuban refugees at sea; they are building tent cities for refugees in Guantanamo Bay, Cuba; they have fought forest fires and engaged in a whole number of the other operations that are worthy efforts but are not essential defense missions. Yet, most of these efforts are being paid for out of defense budgets. We are taking from training funds, personnel funds, operation and maintenance funds, in order to fund those other nonessential military operations.

I do not object to using our military in some of these sessions. But it ought to be paid for out of the appropriate Government account—not out of defense.

Mr. President, let me quote from the Chairman of the Joint Chiefs of Staff, General Shalikashvili, who in a recent speech made what I think is an important point. He said:

When Washington participates in U.N. peacekeeping or relief operations, Government pays about one-third of the cost. But when it undertakes a U.N. mission on its own, as in Rwanda, it picks up the entire bill.

So we are, in a sense, paying twice. We are paying a third of the cost for the U.N. personnel that go in to provide humanitarian relief. And, yet, to the extent that we are using U.S. military personnel, we are also paying 100 percent of that cost.

We have heard about the effects on procurement. Recently Secretary Deutch sent out a memorandum to members of the Defense Resources Board. The subject was "Additional Defense Resources Board Program Alternatives." Secretary Deutch essentially is saying here that, because of this squeeze on the budget, there is going to have to be a review of many of the major procurement items needed by the military in the next 5 years. He told the Department of the Army that they need to review the Comanche Helicopter Program and begin to develop a program alternative that "terminates the Comanche." He said the Army should develop a program alternative that terminates the Advanced Field Artillery System. He told the Department of the Air Force that at least two alternatives to the Joint Primary Aircraft Training System—the JPATS Program—should be developed, deferring the production of JPATS trainer for up to 7 years, and reducing costs by increasing reliance on commercial practices, slower procurement profile, and advanced training;

As to the F-22 fighter program now under development, the Air Force should develop a program alternative that delays the initial procurement of F-22 fighters by up to 4 years;

With regard to precision guided missiles, the Air Force should develop at least two alternative programs; first, cancel the triservice standoff attack missile, procuring other precision guided munitions to perform the mission; and second, retain the standoff attack missile but adding \$100 million in the near-term program.

He told the Department of the Navy that under medium-lift replacement, " * * * from the September Defense Board's acquisition meeting on the lift program, the Navy and Marine Corps should submit for review the most promising alternative that cancels the V-22 and replaces it with a helicopter alternative."

As to destroyers, the Navy should develop program alternatives for the DDG-51 procurement in the fiscal year 1996 to the 2001 period.

Secretary Deutch addressed the new attack submarine, saying the Navy should submit an alternative to the new attack submarine program that does not include a submarine in fiscal year 2012.

With regard to the advanced amphibious assault vehicle—the Navy and Marine Corps should develop a program alternative that cancels the program.

These and other concerns are listed in the memo from Secretary Deutch to the military services. It sent shock waves through the military. These are programs that we were counting on for the future to give us that edge we enjoyed in Desert Storm. These are programs that are now being suggested for termination or that other alternatives be developed because we simply do not have the funds to pay for them.

There is a tendency to raid the seed corn of our future when reductions are imposed on our defense budget. This is one area where reductions will assure long-range implications of future readiness of our forces. Our capabilities to respond to threats and risks in the year 2005 and 2010 will be substantially weakened. That credibility will be weakened by the cuts that we make in the 1990's.

If we learned anything in Desert Storm, it was that the weapons used there are weapons that are developed and put on the board, in the research process and development process, years, if not decades, before they are actually needed. It takes time to develop, to test, to do research, to procure and then train, and then finally utilize some of these sophisticated advanced weapons.

To quote General Sullivan, the Army Chief of Staff:

The fiscal year 1995 budget is our 10th consecutive budget representing negative real growth. We cannot continue in that direction forever, or we will not be ready tomorrow at any level.

Mr. President, this is the reality that we are dealing with in this year's budget. We are not sure what the reality is

going to be in next year's budget, or the next 3 or 4 or 5 years' budgets. The squeeze will continue; the shortfalls will continue, and they will probably be exaggerated. They will probably magnify. We have too many programs chasing too few dollars. We have now limited the programs, and we are still short the dollars. We have limited the personnel, and we are still short the dollars. We are facing major shortfalls in funding for our national security, and surely we will pay a tragic price for that at some point in the future.

It is important to understand why readiness is important. The term "readiness" refers to the ability of the military force to deploy quickly and perform initially in wartime the way it was designed to. Readiness is a key aspect of military capability, particularly in a period when conflicts can commence with little warning. All the old rules have been thrown out. All the old cold-war rules of how we prepare and how we deploy and how we build up have been thrown out. We are responding now to new conflicts, sudden conflicts that emerge in unlikely places, places that we have not even heard of before. We have to run to the map to find out where some of these situations even exist and who the protagonists are.

The reason we are so concerned, and the reason we need to protect readiness, is widely understood within the Department of Defense because many of today's senior military leaders were company commanders during the seventies. During that time, they dealt firsthand with the problems of a military which, largely because of problems with readiness, was dubbed "the hollow force." The hollow force 15 years ago did not have the correct blend of weapons, equipment, and trained personnel to make them fully operational. Today's personnel and force structure are more robust. They are being asked to do more with much less, and all indications are that the situation will get worse before it gets better.

In a recent effort to evaluate the readiness of a drawdown force, former Secretary of Defense Aspin formed the Defense Science Board panel to address long-term defense readiness. This readiness task force, as it was designated, was assigned to provide advice to the Department on how to avoid future unreadiness or future hollow Armed Forces. The memories of the seventies are still fresh in the minds of those who were there, and they do not want to see us return to that.

We had that extraordinary commitment in the eighties to rebuild a depleted undermanned, underfunded, undersupported, undertrained national defense system. We made an extraordinary commitment and an extraordinary effort in the decade of the eighties that culminated in one of the

most extraordinary engagements in the history of warfare, Desert Storm. There we rewrote the rules for warfare. We accomplished a massive military objective with an incredibly low loss of life and equipment, because we combined, through a decade of extraordinary effort, quality personnel with quality equipment with quality leadership and quality training. We brought it altogether in a synergistic way and we demonstrated to the world via CNN and other networks, the most efficient, effective military the world has ever seen. We engaged in an effort that resulted in victory and accomplished our objectives with minimal loss of life. Senior military people today, those of us in Congress, and Americans, do not want to see us lose that capability. They want us to maintain that edge. They do not want to see us return to the situation we were in 1970.

General Meyers' task force found that the readiness of today's forces is acceptable in most measurable areas. Let me quote to you portions of that report:

When we state that the readiness of today's forces is acceptable, that does not mean that we do not find pockets of unreadiness. Most of these pockets are a result of changes taking place in the Armed Forces and the turbulence created by these changes. However, we observed enough concerns that we are convinced that unless the Department of Defense and the Congress focuses on readiness, the Armed Forces could slip back into a hollow status.

That is an ominous warning. Let me repeat it.

*** unless the Department of Defense and the Congress focuses on readiness, the Armed Forces could slip back into a hollow status.

That should cause all of us concern.

General Meyers' task force reported on some recommendations to prevent this backsliding. He said:

The following actions need to be supported: One, resources to assess, train, educate, retain high-quality personnel and maintaining the quality of our people should continue to be the Department's top priority.

Again, if we learned anything in the decade of the 1980's, it was that the quality of our personnel made the difference. To retain that quality of personnel requires a commitment that demands a budget adequate to meet the needs of assessing, obtaining, educating, training, and retaining those quality personnel.

Second, General Meyers' task force stated that we need a system that adequately funds contingency operations. We cannot continue to fund these operations, as I mentioned before, by funds that are allocated for defense purposes.

Third, development of measurement systems that better equip resources in the future. The Department should take actions to develop and improve a set of analytical models and other means that can be used to help better understand the relationship between funding, allocation, and future force readiness.

I will read a couple more requirements. We have a special concern about future readiness. The reduction of resources for acquisition raises serious questions about the capabilities of our forces to respond to the challenges of the 21st century.

That goes back to the point I was making earlier. It is decisions made or not made today that affect our capabilities to meet challenges in the next century. We need to focus not only on what is needed in 1995, but what will we need in the years 2005 and 2010 and beyond. Those decisions today are necessary in order to provide us with the correct capability 10 or 15 years in the future.

General Meyers concluded his report by stating:

The Nation celebrated the 50th anniversary of D-Day during the preparation of this report. It is well to remember that 5 years before D-Day the United States had very hollow forces. Many servicemen died as a result of our unreadiness. Readiness cannot be taken for granted. History has shown how pockets of unreadiness rapidly grow and create hollow forces. We believe that attention to the issues raised in this report and the continued support of Congress for a ready, responsive force will give us a chance to prevent the shortcomings of the past from happening again as the military force evolves and responds to the demands of our unsettled world.

Mr. President, I wish every Member of Congress were forced to memorize that paragraph. The most important line is that "many servicemen died as a result of unreadiness."

The ultimate objective here is to provide for our national defense and meet our national security means with minimal loss of life. Failure to adequately budget funds to maintain the kind of forces we will need in the future ultimately results in loss of life—unnecessary loss of life. Is it expensive? Yes. Is it a commitment? Yes. Are these tough budget times? Yes.

But the ultimate price we pay is the loss of the life of service men and women who make extraordinary commitments to serve in the defense of this Nation. We owe them no less than quality personnel, quality leadership, quality equipment, quality training, and a quality life in the military. If we start cutting back, if we start compromising on this, it is not simply a result that ends up with mismanagement, or waste, or duplication, or shortage of parts; it is the loss of life of America's best young men and women that is the final result. We must keep that in mind as we make our decisions.

Mr. President, as important as these concerns are, the people are just part of the equation, because what the military does with these people is the other part. In 1990, the U.S. Navy was working toward a 600-ship fleet. Today, although it is operating with the same level of commitments worldwide, we have only 346 ships; we are moving toward that. Said one Navy veteran: "We

are working 18 hours a day. What more can we ask of our people when there are 360 places to be in and only 346 ships?" Twelve years ago, 22,000 marines were deployed overseas for 6 months or more in fast-response and forward-placed units. Today, 24,000 men and women are deployed, even though the Corps has been reduced by 22,000 during that same period of time. There are just as many commitments, fewer personnel, and longer deployments.

"The end of the cold war notwithstanding," said Marine Commandant Gen. Carl Mundy, "the operating tempo for the Marines has not diminished. It has even picked up. The practice of deploying as many as 30 percent of the Marines away from home will ultimately wear out marines and gear and drive down retention rates and end up with units not combat ready."

We are doing precisely that because of the commitments that this administration and this country have engaged in. We are deploying far more marines than is healthy.

Like the Marines, the Air Force also increased its operating tempo, but mostly as a result of humanitarian peacekeeping tasks. Eighty-thousand U.S. troops were used to support U.N. peacekeeping missions last year. These assignments adversely affected the military's ability to train constructively for its primary mission.

(Mr. DECONCINI assumed the chair.)

Mr. COATS. Each year, according to Air Force Secretary Sheila Widnall, all aircrews spend more than 120 days deployed. Some even spend up to 170 days deployed—despite the goal, determined by our experience with previous "holow force" shortcomings, of 60-day to 120-day annual deployments.

Lengthy periods of time spent away from home have a direct impact on the military's ability to effectively retrain and prepare for the next operational assignment.

Like the Air Force, Marine Corps units are also not receiving required training in war fighting skills because they are being chopped up for peacekeeping and humanitarian assignments.

According to testimony received in committee, the only way Navy ships were able to meet their operational and training commitments was to use the people and spare parts collected for the rapid decommissioning of other ships and units.

Let us look at some readiness shortcoming examples. The reenlistment rates for midgrade enlisted, the middle managers of our forces, the E-5 and E-6 levels, are now in the 67 percent range. This is down from the mid 80 percent range. This is the group of service members who are left in the force at the end of a massive drawdown in personnel.

The major reason given by those separating from the service is repetitive

deployments. The spouse and the family does have impact on future commitments of our force. We do not have volunteer single forces anymore. We have voluntary family forces. A majority of our armed services personnel are married. They have children. They have spouses. That is the commitment we made when we moved from a draft military to an All-Volunteer Force. We want people to make it a career. Those people have families. But they find themselves overseas for deployment more than what a family can reasonably expect or what the service personnel reasonably expected when they enlisted. They are forced to look at the civilian community outside. They say: "I want to serve my country. I understood there is a commitment. I understand I have to be away from home. But this is far more than what I was told. This is far more than what is necessary for me to provide reasonably for the needs of my family."

As to the Army at Fort Gordon, one of every eight vehicles is now in storage to eliminate maintenance and fuel costs that they cannot afford. Battalions that are supposed to be authorized at the 575 personnel level now contain only 474 present for duty, 100 people short of what they ought to be.

Wheeled vehicle mechanics, a special skill area, has only two of every five billets filled. This low number is a direct result of replacing mechanics for deploying units, who continue to be manned at 100 percent.

Marines walk 17 miles to their training ranges because they need to conserve truck fuel, tires, and maintenance.

A top sergeant in the Army recently said, "In these times of uncertainty with the rapid drawdown, deployments and short turn around times, people are deciding to leave rather than to be asked to separate."

Just in the last few months up to seven active duty battalions, five Army and two Marine Corps, have been tasked to fight forest fires in the Western United States. A mechanized infantry battalion on the west coast asked the commander if they could go and fight forest fires. The reason they said was there was insufficient training funds to keep the command active and occupied. They did not want to sit around, so they asked for something to do. They did not have the money to provide the training and keep occupied.

A junior Army officer said: "Since 1991 I have been on four deployments starting with Somalia. If something comes up outside the military and I can get a decent job, you bet I will take it. I cannot provide the emotional support, the physical presence that my family needs if I am constantly on deployment."

We have a significant backlog of maintenance and spare parts requirements. A major Army command in the

continental United States is only budgeted for 65 percent of fiscal year 1995 required level of training. Marines are facing the same overseas deployments as they did before the gulf war with two battalions less people, 30,000 fewer marines to fill these commitments. That means more time away from home and less time for career enhancement training. That is having an effect on readiness and, of course, on morale.

The military has been forced to alter the length of the replacement cycle of its buildings. The replacement period for base structures has been increased from once every 50 years to every 100 years. When you build a building now instead of 50 years of life, it has to last 100. There is not a corporation in America that will build a building and say this has to last for 100 years. We have to make it last because we do not have the funds to replace it.

Barracks structures for single service members are currently slated for replacement every 15 years. Now that is being changed to every 24 years. Very little real property maintenance is being accomplished. We do not have the money to do it.

Interviews with Navy carrier pilots indicate that squadrons are cutting back on pilot flying hours during the time the unit is waiting for its next sea deployment. One squadron commander said, "If you do not practice, you do not stay proficient." That makes sense.

The Air Force cut the numbers of AWACS radar aircrews to save money while meeting more and more requirements for overseas deployments. Those aircrews are now facing 200-plus days per year overseas compared to 100 days per year even during the gulf war. This affects reenlistments.

Recruiting quality has begun to drop from recent record levels. When you accept lower quality recruits you place a greater burden on trainers. Lower funding for training exposes lower quality personnel to a greater risk of error.

This is from the September 6 Defense Daily. Let me quote from General Shalikashvili, Chairman of the Joint Chiefs. "The military is beginning to eat into its readiness to fight." He said, "Some units are already being forced to cancel training due to lack of funds. The time has come to stop warning that readiness is going to be jeopardized and focus on fixing the problems that are here right now."

General Shalikashvili went on to say: "The best soldier in the tank wins the battle, not the best tank with a mediocre soldier."

Quality of our military men and women, their training and their morale, that is what wins war. War is not an abstract term. It requires people. The most advanced weapons and technology in the world will not win wars without qualified and motivated people.

When the Department of Defense maintains that we will not repeat the mistakes that were made in the seventies, when the last major defense drawdown produced understaffed, poorly equipped and demoralized personnel that is exactly the road down which we are marching today.

We cut the pay increase. We reduce the retirement benefits. Between 70 and 80 percent of all enlisted men and women earn less than \$30,000 a year, including food and housing allowances, 45 percent of the Army and 46 percent of the Marine Corps earns less than \$20,000 per year.

One of the most disturbing statistics of all, Mr. President, is this: An estimated 17,000 members of our Armed Forces receive food stamps and the number is rising. According to the Department of Defense, the total value of food stamps redeemed at military commissaries in 1993 increased from \$24.5 million to \$27.4 million. Over 50 percent of military spouses have full-time jobs just to help pay the bills.

When I first ran for Congress in 1980, one of the platforms I ran on was a strong national defense. I do not remember the exact numbers, but I remember making the statement over and over again, as an illustration, that for a nation which asks its young people to sacrifice in defense of this country, it is unconscionable to pay them so little that they have to use food stamps to provide for their basic needs.

And thank goodness we addressed that problem in the 1980's. But now we are heading right back in the same direction, and it is wrong. It is not right.

What kind of people do you think we are going to attract and retain in the military if a significant portion of them can only make it with handouts? They do not want a handout. They want to serve their country. They want to be adequately compensated. They have mouths at home to feed. They have children to educate. They want to put some food on the table.

How demeaning it must be to be a military man or woman in uniform to walk into a commissary and have to redeem food stamps to put milk on the table. Now, what kind of military are we going to have under those circumstances?

Let us look at housing. The housing in our military is a disgrace today. Thanks to Senator INOUE and Senator STEVENS and members of the Appropriations Committees and authorizing committees, we have passed, not finally, but we are moving along legislation that provides a significant amount of money for new military construction. But, in the meantime, we do not have money to rehab or to fix or repair some of the existing military housing. There is nothing more compelling to a soldier, sailor, airman, or marine than to ensure that his family is well cared for and securely housed during extended periods away from home.

As Army Chief of Staff General Sullivan described it, military personnel are willing to place their lives on the line, work long hours under demanding conditions, accept a lower pay scale than comparable civilian jobs, and ask their families to make sacrifices. But in return, he said, they expect the Nation to take care of their families. That is all they are asking.

If you walked up to a soldier today and said, "We are going to deploy tomorrow to a place in the world you have probably never heard of," he or she will salute and say, "Yes, sir." All they ask in return is that we take care of their families while they are gone. And taking care of their families does not mean putting them in substandard housing and having them qualify for food stamps in order to put food on the table.

More and more, we read about and hear about stories of junior enlisted men sleeping in automobiles waiting for housing to free up. Routine plumbing, exterior painting, and other non-critical maintenance is being abandoned. There are units in bases in America—not overseas, but in America—there are units that you cannot put a family to live in because there are pipes that are leaking and there is paint that is peeling and there is lead in the paint and there are conditions that you just would not put a family in. And yet we do not have the money to fix it up.

At Fort Huachuca, AZ, where common area upkeep has been reduced by half, the result is increased habitat for snakes and vermin. Family units are being closed rather than upgraded or repaired because we do not have the funds.

My colleague, Senator MCCAIN, described the situation as "our military poor." I would put it more bluntly. Are we the new slum landlords of our military men and women? That is not something that we want.

We are starting to see slipping in terms of the qualifications of our new enlistees. It is not great, but it is starting to move in the wrong direction. In the past, 97 percent of new enlistees were high school graduates. That is now decreasing.

What is more, the Pentagon's 1993 Youth Survey—that is the survey that annually measures the inclination of 16- to 25-year-olds to enlist—found that the number of young people who are considering joining the military is declining, a fairly significant decline since 1989 and 1990. What is more alarming is the fact, after a decade of striving and succeeding in reducing from 57 percent to zero the number of category 4 recruits—those in the lowest educational category—the military once again is forced to accept category 4 recruits.

And so, not only are the numbers of personnel of individuals seeking to join

the military declining, but the quality of those personnel is declining.

Mr. President, despite downsizing, it is essential that the military continue to be able to attract higher caliber recruits. Yet, since 1989, we have cut the overall service recruiting budget by 60 percent and advertising budgets by 40 percent. We are starting to see that the path we are on will take us to the point where we are losing the quality force that we worked so hard to achieve during the 1980's and early 1990's. We are seeing these pockets of unreadiness take shape with our soldiers, sailors, airmen and marines; not numbers, not statistics, but people. In today's environment, with the continued drawdown, it will be extremely difficult to reconstitute this premier group of people.

It has been said more than once in this body that our men and women in the military are a national treasure and should not be squandered. Secretary of Defense Perry has said, "The benefits of service must match the burdens we ask men and women in uniform to bear."

We listened to the experts out of the Department of Defense. Now let us listen to some base commanders.

On August 15, Maj. Gen. Jerry White, who is the commanding general at Fort Benning, announced immediate cuts in maintenance, staffing and training to offset \$1.9 million that the Fort Benning installation must provide to the Training and Doctrine Command's \$21 million share of their cuts. They are allocated \$1.9 million, so he announced immediate cuts in maintenance. He said only emergency maintenance or repairs will be done on barracks and installation facilities.

Other installations are being asked to make similar cuts, to the dismay of commanders and senior managers. "This is morally wrong," said one senior officer. "You should never put commanders in the position of sending their troops into harm's way, and in the same breath, steal money from their families, their training and their quality of life."

Fort Benning's garrison commander, Colonel Rutledge, echoed that sentiment. "This is not about putting bullets down range," he said. "It is the quality of life of the soldiers and their families that is going to be hurt by this."

Secretary Perry had a report provided to him after field trips taken by the Pentagon's No. 2 man, Secretary Deutch.

After visits to U.S. troops stationed around the world, Perry has become convinced that high morale is the most important short-term element to maintaining readiness, Deutch said.

The key elements of high morale include good pay, sufficient operations and maintenance funding, better quality housing, day care for troops' children, good medical care, and other items that improve the quality of

life for military personnel and their families, Deutch said.

As the drawdown deepens, the defense officials are haunted by memories of the post-Vietnam hollow military and are determined not to re-create it.

Vice Chairman Admiral Owens said, "Some of the indicators from the 1970's that were linked to the hollow force are beginning to reemerge." "We are trying desperately to do what's best for our people," Owens said. "I have never seen as much attention paid in the Pentagon to maintaining readiness."

I commend Secretary Perry, Secretary Deutch, Admiral Owens, and all those in the Pentagon who are doing everything they can to address this problem, but they are being asked to do "Mission Impossible," because we are not giving them the funds to do what they know they must and need to do minimally to maintain the morale, maintain the quality of life, and maintain the readiness that is essential.

Mr. President, I have talked for a lengthy amount of time here. Whether it is the Army's Fort Benning where waiting time for housing has increased by 5 months, interior painting now can only be done once every 5 years, all noncritical maintenance and repair has been deferred; whether it is Fort Dix where the repair of a fire damaged unit was deferred, maintenance in the fourth quarter of this year limited to emergency repairs only; whether it is Carlisle Barracks, PA, where 56 housing units are awaiting funds for asbestos removal, where Army War College students now have to paint their own quarters on change of occupant; or Fort Huachuca, AZ, which has eliminated exterior painting, reduced the common area and upkeep by half; at Fort Knox, where they have deferred lead-based paint removal; Fort Sill, where they have eliminated routine maintenance, eliminated interior painting and preventive maintenance—on and on and on it goes.

We owe our military people more than this. Our military people are our most valued asset in this country. They are married, they have children—well over 50 percent of the service members now have children. When you have quality people, you have fewer discipline problems. They are easier to train. They complete their obligations. Ultimately they win on the battlefield.

We want to recruit the best that we can. We want quality people to take quality jobs. We owe them quality of life. We want to retain those people by giving them adequate pay, adequate benefits, adequate housing. We want to take care of their families.

The variable with the strongest impact on unit readiness is the soldier's perceptions of the amount of support the unit leaders give soldiers and their families. Ultimately it is the Congress that provides the direction and the funding to those unit commanders and to those families. We are in that chain

of responsibility for our military people. We are the ones who ultimately make the decision about what kind of military we are going to have.

Unit readiness is based on the individual service member and his or her readiness. A great deal of research demonstrates the importance of family issues in personnel retention. "You recruit a soldier but you reenlist a soldier's family," is the line that any commanding officer will tell you. Retention is related to separations from family due to duty requirements. It is an important determinant to morale and a key factor in reenlistment decisions.

As I have heard stated to me over and over and over as I visit with troops: "We have made the commitment. We will make the sacrifice. All we ask is that you take care of our families."

Right now we are in a tremendous cost squeeze. It is this Congress that must decide what kind of national defense, what kind of military, what kind of obligation we have to the men and women in uniform and the families that support them. We make that decision. We cannot blame the administration, we cannot blame anybody but ourselves. We are in the chain of command when it comes to providing support for our military personnel. We have an obligation, a constitutional responsibility to provide for the needs of those people—to enlist and retain the highest quality people we can attract; to give them the best training that we can provide; to provide them with the best equipment that this country can produce; to give them the quality leadership necessary to provide the kind of cohesiveness and unit cohesion that ultimately wins wars, if and when conflict is required. That is our minimal obligation. We are beginning to see a return to the time when we are not meeting that obligation.

Now that the chairman has arrived I want to conclude by again stating how hard the chairman and the ranking member, Senator THURMOND, have fought to keep this budget together and provide at least the most minimal of budgeted services for our military under extraordinarily difficult circumstances. But the responsibility goes beyond the committee. The responsibility goes to every Member in this Congress. It is a constitutional responsibility. It is a moral responsibility. It is one we are beginning to see very seriously undermined; and I hope we will focus on these matters because, as I said, ultimately they go to the very heart of who we are as a people, what we stand for, and the provision of our national defense.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. NUNN addressed the Chair.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. NUNN. Mr. President, I am pleased to lay before the Senate the conference report on national defense before the Senate. This conference report authorizes programs for the Department Defense, national security programs of the Department of Energy, and civil defense for fiscal year 1994.

I know Senator THURMOND has already made his comments. Let me say I think the conferees worked very hard last month to resolve over 1,600 language and funding differences between the House and the Senate versions of this bill. I would like to particularly thank Senator THURMOND, the ranking minority member of the Armed Services Committee, and all the members of the Armed Services Committee, for their cooperation and support throughout the conference.

In a bill this large, much of the work has to be done by the subcommittee chairmen and ranking minority members. Without their efforts, Senator THURMOND and I would never have been able to complete this conference report. Certainly I want to say my counterpart on the House side, Chairman DELLUMS, and Senator THURMOND's counterpart, Congressman SPENCE, and the other conferees from the House, were very cooperative. We had a lot of difficult issues, a lot of difficult decisions, and a lot of disagreements. But we worked in a spirit of cooperation and, thanks to the leadership of Chairman DELLUMS, Congressman SPENCE, Senator THURMOND, and other members of both committees, we were able to work out the difficult and contentious issues in a spirit of good faith in completing this conference report.

Under the circumstances—and I will discuss some of those circumstances a little later—this is a good conference agreement that continues the process of restructuring our defense establishment. The conference report establishes and emphasizes the need to maintain the high quality of men and women entering the service and serving in the Armed Forces. For a long time we have recognized the quality of our personnel was the key to military readiness and the key to our preparedness as a nation.

This conference report continues, within the overall framework of the budget limitations we were dealing with, to emphasize the high quality of American and women that are needed in the Armed Forces and to do all we can to basically carry that out. We increased the funding above the budget request for readiness and training programs, and sustained the reduced pace of weapons system modernization requested in the fiscal 1995 budget.

The conference report preserves critical defense industrial base capabilities, and strengthens the peacekeeping and peace enforcement capability of U.S. military forces. It continues the key areas of the defense conversion and

transition programs to help individuals, communities and businesses adjust to the effects of the defense drawdown.

This conference report authorizes \$263.8 billion in budget authority for the national defense function for fiscal year 1995, the level requested by the President and agreed to by the Congress in the budget resolution for fiscal year 1995.

Although we have authorized the requested amount, I remain—and have said this on many occasions—increasingly concerned about the projected funding level for national defense over the next several years. In my view, the current budget levels will not be adequate to maintain the current readiness of our forces; to provide for their needed modernization; to support the compensation and quality of life improvements that we all want for our military members and their families, and still support the force structure necessary to carry out the full range of missions that we expect our military forces to be able to perform.

Something has to give because there is not sufficient funding to carry out all of those objectives.

Mr. President, I want to take a few moments to describe for my colleagues some of the most important provisions in this conference report.

In the area of strategic deterrence and arms control, with Senator EXON and Senator LOTT as chairman and ranking member, the conferees preserved bomber force structure options while directing further analyses of bomber requirements; added funds to improve near-term precision bomber weapons; and continued restructuring ballistic missile defense programs to emphasize deployment and development of near-term, ABM Treaty-compliant missile defenses.

Earlier this year, our committee concluded that the Defense Department did not have an adequate plan for the future of our bomber forces. The Senate bill contained a major initiative to preserve the current bomber force levels and industrial production capacity until the Department has had an opportunity to reconsider this whole issue. I am pleased the conference agreement includes all three of the major parts of the Senate's bomber initiative.

First, the conference agreement preserves the current bomber force levels for an additional year by preventing the Department of Defense from retiring any B-52 or B-1 bombers during fiscal year 1995.

Second, the conference agreement adds \$77.5 million to the budget for demonstration and procurement of interim precision weapons for the bomber force until the new family of precision-guided munitions are available at the end of this decade.

Finally, Mr. President, the conferees agreed to provide \$125 million to pre-

serve the bomber industrial base for 1 year, while the Secretary of Defense re-examines our bomber requirements and capabilities. While this reexamination is underway, the Secretary may obligate up to \$100 million to preserve these core capabilities which would take extended periods of time, or substantial expense, to regenerate, and which are in imminent danger of being lost, that are needed to maintain the ability to design, develop, and produce bombers in the near or long term.

Mr. President, there has been some confusion in the media and the trade press about the Enhanced Bomber Capability Fund. Let me try to clarify the situation.

Does the provision permit the Secretary of Defense to keep the major B-2 tooling in place? The answer to that is yes. The estimate is that it would cost \$20 million to \$30 million during fiscal year 1995 to keep the tooling from being dismantled. But dismantling and storing the tooling and then bringing it back later is estimated to cost well over \$100 million and add an extra year to any schedule for more B-2's if the Secretary and the administration decided more B-2's were needed. Under the conference provision, the Secretary may act to prevent substantial future expenses and delays of this type from arising.

Does the provision permit the purchase of B-2 parts and end items to keep the lower tier, stealth-unique vendor base intact? The answer again is yes, so long as the items in question are not long-lead items for additional B-2's. That decision has not been made, and we do not try to in any way preempt that decision, which has to be made first by the Secretary and then by the President before it gets to the Congress.

The best way to keep stealth-unique lower tier vendors in business is to give them new orders for the parts that have already been produced and delivered for the 20 B-2's now on order.

Does the provision permit the Secretary to conduct these activities throughout fiscal year 1995, both while his analyses are underway and after they are completed? Again, the answer is yes. The Secretary may spend up to \$100 million of the \$125 million provided before his analyses are completed and he reports to the Congress. And once he has reported, he may continue to allocate unobligated balances—up to the entire \$125 million in the fund—to sustain the B-2 industrial base; that is, if he has chosen not to use \$25 million of that money for an alternative purpose, which is a longer range bomber study.

It is correct that no additional B-2 or long-lead items may be purchased with the bomber industrial fund. That is clear. That was the Senate position going into the conference, and we certainly agreed to that and made that very clear in the conference.

The restructuring of the Ballistic Missile Defense Program initiated in the National Defense Authorization Act for fiscal year 1994 will continue under the conference agreement. The conferees transferred \$120 million in ballistic missile defense, BMD, funds for the Brilliant-Eyes space-based sensor system from the Ballistic Missile Defense Organization to the Office of Secretary of Defense, and reduced the request of \$3.25 billion by an additional \$330 million, to \$2.8 billion.

The conferees maintained funding for priority theater missile defense [TMD] programs, including Patriot PAC-3, the Theater High-Altitude Area Defense System [THAAD], and Navy TMD programs.

The conference agreement authorizes the budget request of \$648 million for the Milstar satellite communications program. The conferees agreed not to transfer the program from the Air Force to the Navy as proposed in the Senate bill because the Secretary of Defense will propose to Congress a major reform of space systems acquisition in the near future.

I am pleased that the conferees approved the budget request of \$400 million for another program, which I think is one of our most important programs, and that is the Cooperative Threat Reduction Program for the states of the former Soviet Union, the so-called Nunn-Lugar funding.

The conference report directs the Department of Defense to develop a multiyear strategy for these programs, establishes guidelines for future implementation, and requires a full accounting of implementation of this program.

The final conference provision I want to mention in this particular area, Mr. President, would repeal the Civil Defense Act of 1950 and transfer the authorities contained in that act to the Stafford Disaster Relief Act. This initiative was taken in the House bill to help consolidate jurisdiction over the Federal Emergency Management Agency under the Public Works Committees, which is consistent with the congressional reform initiative begun last year. After careful review, the Senate conferees agreed to this House provision.

On the subject of coalition defense and reinforcing forces, the conference agreement includes a series of initiatives to strengthen conventional capabilities and improve the production efficiency of key weapons programs. This area is under the jurisdiction of Senator CARL LEVIN and Senator JOHN WARNER, as chairman and ranking member.

In the area of tactical aviation, the conferees approved the budget request of \$2.5 billion for development of the F-22 and \$1.4 billion for the development of the F/A-18 E/F aircraft, and directed the Office of the Secretary of Defense and the Offices of the Secretaries of the

Navy and the Air Force to pursue a derivative of the Air Force F-22 as a joint program. We also authorized \$1.1 billion for the 24 F/A-18 C/D aircraft for the Navy requested in the budget.

For the Army, the conference agreement added \$72 million to the budget for buying 6 AH-64 Apache helicopters, and added \$150 million to the budget for upgrading 24 OH-58D Kiowa Warrior helicopters, sometimes referred to as the Army helicopter improvement program, AHIP.

The conference agreement contains several important initiatives involving tanks. The conferees authorized multiyear procurement of M1A2 Abrams tank upgrades for the Army, and added \$17.9 million for enhanced warfighting capabilities.

A total of \$108 million was added to the budget request for 24 additional M1A2 tank upgrades for the Army. The Army would then transfer a comparable number of M1A1 tanks to the Marine Corps Reserve no later than when the M1A2 upgrades are delivered to the Army. Finally, the conferees approved the Senate provision to transfer 84 M1A1 tanks to the Marine Corps as these tanks become excess to the active Army's requirements.

The conferees took several actions to improve U.S. peacekeeping and peace enforcement capabilities, including the addition of \$100 million to the budget for advance procurement of commercial airframes to be converted to JSTARS surveillance aircraft. This system, like the Air Force AWACS, is ideally suited to providing sophisticated intelligence and command and control over peacekeeping as well as military operations. The conferees also agreed to add \$10 million to the budget request of \$12 million for counterterrorism warfare research. Mine warfare is a particularly serious problem in areas where U.S. forces are engaged in peacekeeping operations.

Finally, the conferees agreed to authorize a total of \$510 million for equipment for the National Guard and Reserve components. These funds are authorized in generic categories and the conferees directed the National Guard and Reserve components to purchase items of equipment which contribute most directly to supporting the domestic missions of these units.

In the area of regional defense and contingency forces, which has been so ably headed by Senator KENNEDY and Senator BILL COHEN as chairman and ranking member, the conferees approved the budget request of \$3.6 billion for one nuclear powered aircraft carrier, CVN-76, \$2.7 billion for three DDG-51 Aegis destroyers, and \$507.3 million for continued development of the Navy's new attack submarine.

In the area of mobility, the conference agreement authorizes \$608.6 million for the national defense sealift fund to continue construction of stra-

tegic sealift vessels to implement the mobility requirements study. It adds \$220 million to the budget to purchase and convert two additional ships to enhance the current Marine Corps prepositioning ship squadrons. These additional ships will contain an expeditionary airfield, a fleet hospital, seabee equipment, and additional logistics and sustainability items.

The conferees approved the administration's request to enter into the settlement agreement negotiated with the C-17 prime contractor in January 1994. The conference agreement authorizes the budget request for six new aircraft but reduced the fiscal year 1995 procurement request of \$2.8 billion by \$387.4 million. The conference agreement also authorizes long lead funding for \$189.9 million for eight more aircraft, the amount requested in the budget.

I have some reservations about this program and the settlement, but a clear majority of both committees favors the Department's recommended approach.

In the area of defense technology, acquisition and the industrial base, under the leadership of Senator JEFF BINGAMAN and Senator BOB SMITH, the conference agreement maintains the momentum of the Defense Reinvestment and Conversion Program enacted in 1992. The conferees approved the requested amount of \$625 million for the Advanced Research Project Agency's technology and reinvestment program, including \$50 million for a loan guarantee program for small- and medium-sized defense firms, which will guarantee approximately \$2 billion in loans.

I am pleased that the conference agreement includes \$25 million, a \$10 million increase to the budget, for historically black colleges and universities and minority institutions to increase their capacity to educate scientists and engineers, as well as the requested level of \$50 million for the Mentor-Protégé Program. Under this growing program, large defense contractors enter into agreements with small and disadvantaged businesses to assist them in upgrading their manufacturing capabilities and their ability to compete for defense contracts.

In the area of defense medical research, the conference agreement authorizes increases to the budget of \$40 million, specifically to address health care issues affecting women in the Armed Forces; \$20 million for research and telemedicine, whereby doctors can examine and suggest treatment for injured soldiers in remote locations; and \$20 million for further research into the causes and possible treatments for the gulf war syndrome.

On the subject of telemedicine, Mr. President, that program is of enormous importance to our military because of the ability to take specialists at Walter Reed, Bethesda, or elsewhere, and

have them basically direct field operation medical teams in performing intricate and complicated medical procedures.

Telemedicine is an exciting concept for our entire country because it is technology which can bring to bear the best medical technology to the most remote areas of our country, including many rural areas which are medically underserved.

I believe it can do so and saving substantial, perhaps billions of dollars over a period of time. Most medical technology has been miracle working in its nature in the last 15 or 20 years, but has in most cases cost a lot more money.

In this case, I think we have a chance of improving the quality of medical care, both in the military and in the civilian sector, and at the same time lowering costs because this kind of technology is going to enable people to be treated where they are in many cases rather than traveling long distances to much more expensive areas and hospitals for treatment. So this is, indeed, an exciting program and our committee is doing all we can to help stimulate that program.

In the areas of military readiness and defense infrastructure, under the leadership of Senator JOHN GLENN and Senator JOHN MCCAIN, the conferees authorized an increase of \$310 million to the budget request of \$7.2 billion for depot-level maintenance programs to reduce the backlog of equipment overdue for repair and to prevent future degradation in equipment readiness.

The conferees agreed to the Senate initiative to authorize an increase of \$72 million to the budget request of \$534 million for DOD recruiting programs. This increase is needed to ensure that the military services continue to meet their recruit quality goals in an increasingly difficult recruiting environment.

The allocation of work between DOD depots and the private sector was one of the major issues facing the conference. The House bill contained several provisions that would have significantly altered the current law that provides a floor of 60 percent of the total depot maintenance and repair work in each service that must be done in DOD depots. The conferees agreed to provisions that maintain the current allocation of depot maintenance workload between DOD depots and the private sector. In addition, the conference agreement includes a Senate provision that would require DOD, in moving depot maintenance workload out of a DOD depot, to continue public-public competitions—competitions among DOD depots—and public-private competitions—competitions between DOD depots and private sector companies.

SUBCOMMITTEE ON FORCE REQUIREMENTS AND PERSONNEL

In the areas of personnel and compensation, under the leadership of Senator RICHARD SHELBY and Senator DAN COATS, the conferees maintained a prudent glide path to reduce military personnel strength, and, at the same time, provided for the quality of life of military personnel and their families.

The conference agreement authorizes a 2.6-percent pay raise for military personnel effective January 1, 1995, and approves the payment of a new cost-of-living allowance to service members stationed in certain geographic locations within the continental United States where the nonhousing living costs are significantly above national average.

At the request of Secretary Perry, the conferees included provisions to improve the health care and housing benefits available to dependents of service members who die on active duty. These provisions authorize coverage in the dependents' dental program and full CHAMPUS coverage for up to 1 year beginning on the date of the service member's death, and extend the period dependents are authorized to remain in Government quarters or continue to receive housing allowances from 90 days to 180 days beginning on the date of the service member's death. These changes would be retroactive to October 1, 1993.

The conferees also agreed to require the Secretary of Defense to develop a comprehensive policy on unlawful discrimination and sexual harassment, and to ensure that the Service Secretaries prescribe regulations implementing policies not later than March 1, 1995. The equal opportunity and complaint procedures of each of the military departments, at a minimum, must be substantially equivalent to the procedures of the Army on such matters.

Mr. President, there were the usually large number of general provisions in this conference which were ably handled by a Senate panel headed by Senator BOB GRAHAM and Senator DIRK KEMPTHORNE. This panel handled many of the very complex and controversial policy issues, such as peacekeeping, burdensharing, and Defense Department organizational issues. One in particular I want to mention was probably the most difficult issue for the conference to resolve—United States policy convening the international arms embargo on Bosnia.

After a great deal of discussion and debate, the conferees agreed to a provision that expresses the policy of the Congress that the President should by the end of October formally introduce a resolution at the U.N. Security Council to terminate the international arms embargo on the Government of Bosnia and Herzegovina if the Bosnian Serbs have not accepted the contact group's proposal by October 15, 1994. The Presi-

dent has indicated his willingness to make this effort in the U.N. Security Council. Funding for enforcement of the arms embargo on Bosnia will be terminated no later than November 15 if the Security Council has not lifted the arms embargo on Bosnia and the Bosnian Serbs have not accepted the contact group's proposal. This same provision was adopted by the full Senate during our debate on the Defense Appropriations Act for fiscal year 1995.

Mr. President, as these highlights of the conference agreement indicate, the conferees on the National Defense Authorization Act for fiscal year 1995 reached a sound compromise and produced a good conference agreement.

Before I complete my remarks, I want to again thank Senator THURMOND and all of the members of the Armed Services Committee for their work on this conference. Without the active participation of all of the committee members, we could not have completed the conference.

I also want to thank the staff on both sides of the aisle for their hard work and outstanding help on this conference agreement and throughout the year. Under the very capable leadership of staff director Arnold Punaro, and the minority staff director, Dick Reynard, the majority and minority staffs continued the committee's long tradition of bipartisanship by working closely together to carry out much of the burden of this conference and the conference on S. 1587, another enormously important bill which is not contained in this bill, that is, the Federal Acquisition Streamlining Act of 1994.

That act is working its way through the conference and will hopefully become law in the near future, and it will be the most important acquisition reform, in my view, since World War II. On the acquisition side, this is comparable to what is known on the organizational side as the Goldwater-Nichols legislation. It has not received much attention because so much hard work has been done by so many people over the years that a lot of the controversy has been removed from this major reform, but no one should in any way underestimate the effect of this reform, the good effect it can have over a long period of time. It is not going to be overnight, but over a period of 5 to 10 years it can make an enormous difference in efficiency and effectiveness in defense expenditures.

I would also like to add a special note of appreciation to Greg Scott and Charlie Armstrong of the Senate legislative counsel's office, and Bob Cover, Sherry Chriss, Judy Sheon, and Greg Kostka of the House Legislative Counsel's office for their excellent work on this bill and on S. 1587.

Mr. President, I urge my colleagues to support this conference report.

I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. BREAUX). The absence of a quorum is noted. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. HEFLIN). Without objection, it is so ordered.

THE NOMINATION OF ADM. HENRY H. MAUZ, JR.

Mr. NUNN. Mr. President, sometime this afternoon or tomorrow it would be my hope that the Senate go into executive session to take up the Mauz nomination. The leader has already indicated that would be his intent.

I do not intend to call it up now because I know we are not going to be able to vote on it now, and there will be others coming in I hope this afternoon to debate the defense bill which is the pending business. But in an effort to use the Senate's time in a meaningful way this afternoon, while we are waiting for people who have indicated they want to speak on the DOD bill to come to the floor, I would like to discuss the Mauz nomination because all of my colleagues may be required to vote on or in relation to this nomination as early as tomorrow afternoon.

Mr. President, I urge the Senate to confirm the nomination of Adm. Henry Mauz, Jr., U.S. Navy, to retire in grade. This nomination was received in the Senate on May 10, 1994—4 months ago—and has been thoroughly reviewed by the Committee on Armed Services.

The nomination was reported to the Senate over a month ago by the Armed Services Committee, on August 12, 1994, following a unanimous, 22-0 vote in committee in favor of the nomination.

Mr. President, the committee thoroughly reviewed all issues, including allegations associated with this nomination, in accordance with the committee's standard procedures prior to the unanimous vote on August 12. I will describe in detail the committee's proceedings on this nomination and the results of our review of the issues.

ADMIRAL MAUZ' MILITARY RECORD

Before doing so, I would like to set forth the details of Admiral Mauz' 35-year career in the Navy. That career—his record of service in uniform to our Nation, I believe, must be considered by the Senate in reaching its decision on Admiral Mauz' retirement.

Admiral Mauz has served on active duty continuously since 1959, with numerous shipboard assignments involving lengthy deployments and family separations.

During the war in Vietnam, he served with distinction over a 4-year period in the Western Pacific and in Southeast Asia. His direct combat experience included 13 months of duty as the officer

in charge of River Section 543, patrolling the rivers of Vietnam and supporting operations by Navy SEAL's and attack helicopters. His patrols frequently involved firefights and skirmishes with the Viet Cong, who controlled the river banks. For his Vietnam era service, he was awarded the Bronze Star with Combat "V" and the Navy Achievement Medal.

Subsequent to his tours of duty in Vietnam, he served in a series of command and staff positions in which he demonstrated outstanding performance and leadership. His operational actions included emergency deployments to the Mediterranean in the early seventies in response to the Middle East crisis and deployment to the North Arabian Sea in the early eighties in response to the Iranian crisis.

In 1986, he commanded the two carrier Battle Force consisting of the U.S.S. *America* and the U.S.S. *Coral Sea*, which conducted successful strikes against terrorist related targets in Libya. He was awarded the Distinguished Service Medal for these operations.

In 1990, while serving both as the Commander of the Seventh Fleet and Commander of U.S. Naval Forces in the Central Command, he worked with General Schwarzkopf to establish the maritime embargo against Iraq after Iraq invaded Kuwait, and developed the plans for naval involvement in the Persian Gulf war. His performance earned him a second Distinguished Service Medal.

In addition to the decorations previously mentioned, Admiral Mauz's awards include the Defense Superior Service Medal, the Legion of Merit, and the Meritorious Service Medal.

Since July 1992, he has served as the commander in chief, U.S. Atlantic Fleet. He has under his command 224 ships, 1,480 aircraft, 27 bases, 12,000 military officers, 125,000 enlisted personnel, and 10,000 DOD civilians.

Mr. President, I hope that these numbers do not just go over people's heads as they are making their own conclusions about this debate and this vote that we will have on this nomination. Every complaint needs to be checked, and every allegation in this case has been checked. I think the scope of this has to be put in the context of the complaints. We have had two people complain in terms of the allegations we are dealing with, and I will detail these issues in a few moments. Out of the 125,000 enlisted personnel, 10,000 civilians, and 12,000 military officers who served under Admiral Mauz for 2 years in his most recent assignment—this does not count the previous assignments over his entire 35-year career—we have had two complaints. These complaints need to be seriously examined, and they will be. They will be seriously considered by the Senate. This does not diminish the seriousness of

the complaints, but it does put them in context. The military nominations we consider involve Navy officers, Air Force officers, Marine officers, and Army officers, who have under their command tens of thousands of people. Thousands of things happen every day in personnel matters—not one or two, but thousands of them. I think this has to be put in that context.

The Atlantic Fleet, which has an annual operations and maintenance budget of \$4.6 billion, has been involved in operations ranging from the Arctic North to South America, including supporting the Haiti embargo, the war on drugs, and Cuban migration operations; providing forces for possible Haitian contingency operations; and providing forces for regular deployments to the Mediterranean and Central Command areas.

In short, he is serving, and has served, with distinction in one of the most senior and responsible positions in the Armed Forces of the United States.

Now the Senate is deciding whether his long and distinguished career of naval service warrants retirement in grade as a four-star Admiral; or whether—based on allegations which have not been substantiated—he should receive a two-grade reduction to rear Admiral. Such a reduction would not only constitute a penalty of almost \$17,000 per year for the rest of his life, it would also constitute a repudiation of his 35 years of distinguished service. At least that is the way it is perceived by me.

CONSIDERATION OF MILITARY NOMINATIONS BY THE ARMED SERVICES COMMITTEE

Mr. President, to put this nomination in context, I would like to describe the procedures used by the Armed Services Committee to consider general and flag officer nominations—including nominations for three- and four-star officers to retire in grade.

Pursuant to the constitutional responsibility of the Senate to provide advice and consent on the nomination of officers of the United States, the Senate Armed Services Committee considers the promotion of virtually all military officers, as well as the appointment, reassignment, and retirement of all three- and four-star officers. The consideration of military nominations is one of the major activities of the Armed Services Committee. This year alone, we have considered over 600 general and flag officer nominations and over 18,000 other military nominations.

Our review of military nominations is in addition to our action this year on 26 civilian nominations—each of which required hearings. We have discharged this responsibility while also acting on major legislation, including the annual National Defense Authorization Act and the Federal Acquisition Streamlining of 1994.

The committee gives particular attention to general and flag officer

nominations. Each such nomination is scrutinized to ensure compliance with the joint service and educational requirements of the Goldwater-Nichols Department of Defense Reorganization Act. In addition, the committee requires the Department of Defense to provide a letter on each general and flag officer nominee, advising the committee as to any substantiated adverse information.

The committee also takes seriously its responsibility to consider allegations submitted by individuals. When the committee receives an allegation which contains information that could provide a basis for rejecting the nomination, the committee forwards the information to the Department of Defense for its review and report back to the committee.

The committee reviews carefully the Department's adverse information letter and the information provided by the Department in response to allegations submitted by individuals. We do not simply defer to the judgment of the Department of Defense. We determine whether the Department's submission provides a sufficient basis for action on the nomination, or whether additional information is needed. When the committee determines that the information provided by the Department is not sufficient to provide a factual basis for considering the nomination, we require additional information.

When there is substantiated adverse information, it is considered by the committee in the course of determining whether to recommend to the Senate that the nomination be confirmed. I want to make it clear that we do not simply defer to the executive branch. In recent years, we have rejected nominees for senior military positions in each of the military departments that we were strongly supported by the Department of Defense.

PROCEEDINGS ON THE MAUZ NOMINATION

On May 10, 1994, President Clinton nominated Admiral Mauz to retire in grade as a four-star admiral, and the nomination was referred to the Armed Services Committee.

On May 17, 1994, Under Secretary of Defense Edwin Dorn submitted the required information letter to the committee. This letter informed the committee that Admiral Mauz was counseled in writing for circumstances involving an official trip to the Naval Air Station Bermuda in November 1992, a well-publicized incident that had been featured on the ABC-TV's "Prime Time Live" program on December 10, 1992.

The letter noted that although the matter involved legitimate official travel by Admiral Mauz, "circumstances that evolved during the planning of the trip created the appearance that the travel was planned and executed as much for the personal recreation of some of the staff and

their spouses as it was for the performance of official duties by Admiral Mauz."

The letter also noted that Admiral Mauz and members of his party and spouses were inappropriately provided with ground transportation, and the use of a military driver, while in leave status.

As a result, he was counseled in writing that he should exercise greater care to avoid the appearance of impropriety when scheduling of official travel and use of Government aircraft are combined with leave. He was further counseled that he should exercise greater scrutiny in his use of military personnel while in a leave status.

The DOD letter concluded:

We have carefully considered this information; it should not preclude favorable consideration of the nomination. When considered in light of Admiral Mauz's performance spanning 35 years of service, proceeding with the nomination is clearly in the best interests of the Department of the Navy and the Department of Defense.

Mr. President, pursuant to the committee's standard procedures, the nomination remained on the committee's calendar pending an opportunity to brief committee members and to discuss the adverse information that had been submitted by DOD. During June, the committee devoted almost all of our attention to markup and Senate floor debate on the National Defense Authorization Act for fiscal year 1995. We simply had no time for the kind of deliberate discussion that was required for this nomination.

The committee was prepared to act on the Mauz nomination in early July, when we received a letter on the nomination from the Government Accountability Project, a nonprofit organization, dated July 11, 1994. In addition to discussing the trip to Naval Air Station Bermuda, the letter raised two additional matters.

First, the letter alleged that Admiral Mauz retaliated against Senior Chief Master-at-Arms George R. Taylor, one of the individuals who had spoken to ABC-TV about travel of senior officers to Naval Air Station Bermuda. The letter alleged that Admiral Mauz and his staff removed Chief Taylor from his duties and attempted to prosecute him for insubordination. The letter implied that Admiral Mauz was also involved in court-martial charges against Chief Taylor at a subsequent duty station, Port Hueneme, which were later dismissed.

Second, the letter alleged that Admiral Mauz was aware of sexual harassment against Lt. Darlene Simmons, a female officer in a subordinate command within the Atlantic Fleet, that he suppressed findings of his own command's inquiry into the matter, and that he failed to order any corrective action on behalf of Lieutenant Simmons.

Mr. President, at the time we received this letter, the nomination had

been pending in the committee for over 2 months. Admiral Mauz was not the only one affected. His replacement—and all replacements down the line—were held in abeyance pending action on the nomination. The management of the Navy, the careers of individuals, and the personal plans of families—all were placed on hold pending the confirmation proceedings.

With due regard for the burdens on the Navy, the officers concerned, and their families, the committee recognized its obligation to the Senate to ensure appropriate review of these allegations. The committee followed its normal procedure and directed the Navy to address the issues set forth in the letter.

On July 27, 1994, Adm. Jeremy M. Boorda, the Chief of Naval Operations, responded on behalf of the Navy. The letter from Admiral Boorda contains detailed, factual responses to the allegations against Admiral Mauz. And for any colleagues who would like to look at the letter—it will be placed in the RECORD today—they will have a chance to examine that.

The Navy reported that the allegations of reprisal against Senior Chief Taylor by Admiral Mauz were not substantiated. According to the Navy, there is no substantiated evidence that Admiral Mauz had any role in the proceedings against Senior Chief Taylor in Bermuda or at Port Hueneme. Moreover, the DOD inspector general reviewed the proceedings in Bermuda and determined that they did not constitute a reprisal. In addition, the charges against Senior Chief Taylor in connection with his duties at Port Hueneme ultimately were dismissed by the Navy.

The Navy also determined that the allegations that Admiral Mauz had failed to address the sexual harassment of Lieutenant Simmons were not substantiated. The Navy confirmed that Lieutenant Simmons had been the victim of sexual harassment on board the U.S.S. *Canopus*—there is no question she had been sexually harassed; that is not at issue here—a ship under a subordinate chain of command—but that Admiral Mauz had acted promptly when he was advised of the problem.

The Navy reported that Admiral Mauz' intervention through appointment of Comdr. Cathleen Miller to monitor the case led to removal of the offending officer from the *Canopus* and a meeting of ship's officers in which the CO, the commanding officer, expressly condemned the offending behavior. In addition, when Lieutenant Simmons, a reserve officer, faced termination of her active duty service, Admiral Mauz personally intervened with the Chief of Naval Personnel to have her service extended.

The Navy reported that Lieutenant Simmons allegations against Admiral Mauz had been referred to the Navy in-

spector general and that the allegations were not substantiated.

At this point, the committee was again ready to consider the nomination. On July 29, the committee received a telephone call from the Government Accountability Project, indicating that they would be providing additional information on the Taylor matter during the week of August 1. The committee met on August 1 and decided to defer action on the nomination in view of the promised imminent receipt of additional information.

The committee received a letter from the Government Accountability Project, dated August 3, 1994, alleging that inquiries by Admiral Mauz' staff concerning the Port Hueneme case represented an attempt to influence the prosecution of Senior Chief Taylor and to intimidate his military defense counsel.

The committee once again deferred action on the nomination so that the allegations could be reviewed.

On August 9, Navy Secretary Dalton responded to the second letter from the Government Accountability Project. The Secretary reported that the allegations were not substantiated. Charges against Senior Chief Taylor were initiated, processed and dismissed by naval authorities in California without influence or intervention from Admiral Mauz or his staff.

On August 10, during a public hearing on civilian nominations, I outlined a number of items on the committee's agenda, including the likelihood of a vote on the retirement of the nomination of Admiral Mauz. I noted that the committee had been briefed on the nomination during the previous week, and that additional information had been reviewed since that time. I added that I would be recommending, as chairman of the committee, that the nomination be approved.

On August 12, the committee reported the nomination to the Senate. At this point, the nomination had been in the Senate for 3 months, action by the committee had been deferred two times, and all matters had been thoroughly reviewed by the Department of Defense and the committee.

The vote was unanimous, with all the 22 members of the committee voting in favor of the nomination. In reviewing the nomination we had discussed both of these matters, the allegations in both cases, that I have referred to.

In view of the media attention to nomination, the committee directed Senator THURMOND and me to issue a joint statement, summarizing the committee's proceedings and including the relevant correspondence from the Government Accountability Project and the Navy. That statement appeared in the RECORD of August 12, beginning on page 22114.

I might add the Government Accountability Project is a nonprofit organization. It has no connection with

the U.S. Government. That is the name of it—the Government Accountability Project. But there is no governmental connection that I know of.

On August 16, Senior Chief Taylor wrote to Senator SHELBY stating that the letters from the Navy were inaccurate and misleading. Senator SHELBY forwarded the letter to the committee. In response to a follow-up call from the committee, the Government Accountability Project submitted a letter from the Senior Chief Taylor on August 9. According to Senior Chief Taylor, Admiral Mauz' alleged improper role in the case I referred to was substantiated because Admiral Mauz' staff had obtained a copy of a motion in that case at the direction of Admiral Mauz, and Admiral Mauz' staff judge advocate had called the prosecutor to tell him that he was upset that the charges had been withdrawn against Taylor.

The committee forwarded this letter to the Navy for review.

Admiral Boorda responded on August 22, 1994, stating that the parties to the conversation do not support Senior Chief Taylor's assertion that the request for the motion was made at Admiral Mauz' personal direction, or that anyone regarded the request as improper.

Mr. President, this is a complicated series of conversations back and forth. It is all detailed in the Navy's response to the committee. It would take 3 or 4 pages of explanation, but the bottom line is there is no evidence that Admiral Mauz had any knowledge of the request. Instead, the evidence is that the material was forwarded at the initiative of Navy attorneys in California, not at the initiative of Admiral Mauz or his staff.

With respect to the allegation that Admiral Mauz's staff judge advocate stated that he was upset that the charges were withdrawn, the Navy reported that the staff judge advocate denies making such a statement. Senior Chief Taylor did not allege in the court proceedings that the staff judge advocate had made such a statement, and the record of proceedings does not contain evidence of such a statement.

But, in any event, relating to the allegations Senior Chief Taylor made to the committee, the staff judge advocate denies making such a statement.

Mr. President, I assume we will have most of the debate on this matter tomorrow. But there are several reasons that I think our colleagues ought to keep in mind why the Senate should act on this nomination now without further delay.

The committee adhered to our well-established procedures to ensure appropriate review of the allegations concerning Admiral Mauz by both the Department of Defense and the committee. The Navy provided detailed responses to the allegations concerning Admiral Mauz. With respect to the al-

legations concerning Lieutenant Simmons, the Navy concluded:

Admiral Mauz did not suppress the evidence of any inquiry, did not fail to take corrective action on behalf of Lieutenant Simmons, nor did he fail to follow proper procedures in inquiring into allegations.

With respect to the allegations concerning Senior Chief Taylor, the Navy concluded:

There is simply no basis whatsoever for any claim that Admiral Mauz took a personal interest in the case involving Senior Chief Taylor.

The committee has relied on these procedures in the past, both with respect to nominations that have been recommended for approval and nominations that have been rejected. There has been no showing that the circumstances of the Mauz nomination require the use of different procedures.

Mr. President, Admiral Mauz has served his country faithfully and with distinction for over 35 years, including combat service in Vietnam, as well as in key operational roles in the Mediterranean and in the Persian Gulf. He continues to serve as commander of the Atlantic Fleet. He was there when America needed him, and he continues to be there at this very moment. His service has not been perfect—and I doubt if there are many, if any, people who have gone through a perfect career—and that was demonstrated by the counseling he received in connection with travel to Bermuda Naval Air Station. No doubt he made a mistake there, a mistake of judgment. In my judgment, however, that lapse in judgment pales in significance when compared to his 35 years of outstanding service.

Finally, I would note that Admiral Mauz' replacement, Adm. Bud Flanagan—who many people in the Senate know; he was formerly Navy liaison—was confirmed by the Senate in June, but he cannot assume his new position until Admiral Mauz retires. The delay in moving Admiral Flanagan has in turn delayed appointment of Admiral Flanagan's successor, which in turn has delayed appointments all the way down the line.

This is most disruptive on Navy's management and very difficult on the officers and families concerned.

Mr. President, this disruption does not mean that serious allegations do not have to be taken seriously. And we have done that. This nomination has been delayed on three different occasions while we checked into each and every allegation. It does mean, however, that we cannot take allegations that do not have substance to them, based on all of our examinations, and make those the focal point of public hearings. If we do that, we go on and on and on with the process. There are times when hearings are required, but that is when we have substantial evidence to back up allegations.

An allegation is not a fact. An allegation is not proof. And we need to keep that in mind. There are too many of these cases now coming before the Senate where allegations are being taken as tantamount to fact. That is simply not the way that any deliberative body adjudicates important matters.

Mr. President, I understand the concern about the allegations made against Admiral Mauz. There are Senators who are legitimately concerned. They have legitimate questions. We have continued to work with those Senators. We are continuing to work with them now. We are getting to any other questions that concern this. I will be glad to send them over and make sure the Navy, Admiral Mauz, or Admiral Boorda, the Secretary of the Navy, or other appropriate people focus on them and give honest and thorough answers to those questions.

So we are not saying there is not room for questions here. There is.

But the committee has taken each allegation and we have gone through it. We have treated them as worthy of review. We did not act on the nomination until there was sufficient time for development of key facts and consideration of that information by the committee. We made that information available to the Senate. Every Senator can reach his or her own conclusion on the merits of the nomination.

In the opinion of the Armed Services Committee, by unanimous vote, after looking at these allegations, the 35 years of dedicated service to the Nation by Admiral Mauz warrants retirement in grade. I urge my colleagues, when we vote on this nomination or in relation to this nomination tomorrow afternoon—I hope we will vote tomorrow afternoon—to vote for his nomination.

Mr. President, I ask unanimous consent that the correspondence to the committee from the Government Accountability Project and responses to these allegations from the Department of Navy be printed in the RECORD.

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

GOVERNMENT ACCOUNTABILITY PROJECT,
Washington, DC, July 11, 1994.

HON. SAM NUNN,
Chairman, Senate Armed Services Committee,
Russell Senate Office Building, Washington,
DC.

DEAR SENATOR NUNN: On behalf of the Government Accountability Project (GAP) I am writing to bring information to the attention of your committee bearing on the merits of the retirement of Admiral Henry Mauz at the "four star" level.

GAP is a non-partisan, non-profit whistleblower protection organization. GAP provides legal representation and other support services to workers both within and outside federal service. Two of our clients, Senior Chief Master-at-Arms George R. Taylor and Lt. Darlene S. Simmons, JAGC, USNR, have had direct, recent experiences with Admiral Mauz and their letters are attached for your consideration [Attachments 1 and 2].

As Senior Chief Taylor's letter indicates, Admiral Mauz misused government facilities and property at the Bermuda Naval Air Station for his and his family's personal use. When these actions were brought to public attention, Admiral Mauz and his staff retaliated against Taylor, stripping him of his duties and attempting to prosecute him for insubordination. Following his transfer to the base at Port Hueneme, California, Taylor was faced with a 48-count court martial on a supposedly unrelated matter. This incident was closely monitored by Admiral Mauz's legal staff for the Atlantic Fleet. All charges against Taylor were subsequently dismissed.

As Lt. Simmons's letter indicates, Admiral Mauz was aware of sexual harassment against Lt. Simmons and the failure of her command to take proper action. Admiral Mauz suppressed the findings of his own command's inquiry into the issue. Despite his personal involvement and knowledge of the situation, Admiral Mauz failed to order any corrective action to be taken on behalf of Lt. Simmons. Finally, the Vice Chief of Naval Operations, Admiral S.R. Arthur, refused to accept a formal complaint from Lt. Simmons alleging dereliction of duty in violation of the Uniform Code of Military Justice against Admiral Mauz.

While the Secretary of the Navy, John H. Dalton, recently ordered corrective action on behalf of Lt. Simmons (an apology, clearing her record, a new duty station and letters of censure for three officers in her former chain of command [see Attachment 3]), no action was taken against any flag commander who was responsible for the ongoing development of this situation over several months.

Besides reprisal for the reporting of wrongdoing, there is one additional common element in these two cases—the role played by the Inspector General of the Atlantic Fleet to cover up the nature and extent of the underlying problems and prevent any further remedial actions.

These two cases, in our minds, bear directly on the merits of the decision before your committee with respect to the appropriate level of retirement grade for Admiral Mauz.

Regardless of how this particular question is resolved, it is clear that the system of accountability within the military and the Military Whistleblower Protection Act, in particular, are broken and in dire need of repair. GAP strongly urges that a comprehensive review of these issues be undertaken by the Armed Services Committee as soon as it is practicable.

Cordially,

JEFFREY P. RUCH,
Policy Director.

PONTE VEDRA, FL,
July 8, 1994.

Senator SAM NUNN,
Chairman, Armed Services Committee, Russell Senate Office Building, Washington, DC.

DEAR SENATOR NUNN: I am writing this letter to express my concern that Admiral Henry Mauz may retire at the Four Star Level, a distinction indicative of extraordinary service. I request that during the deliberation process of this issue the information regarding Admiral Mauz's involvement in the handling of my sexual harassment case be considered. I believe Admiral Mauz was (1) Derelict in his Duty through his culpable inefficient and negligent handling of my case of sexual harassment. (2) Admiral Mauz failed to act on my report of sexual harassment, retaliation and reprisal. I specifically report to you that Admiral Mauz

failed to follow those procedures directed by the Department of Defense and the Department of the Navy. (3) Admiral Mauz in his position as Commander In Chief of the Atlantic Fleet Mauz intentionally allowed sexual harassment, retaliation and reprisal by senior officers in my chain of command to go unchecked. Admiral Mauz used his official position to protect those guilty of sexual harassment and then to cover up his inefficient handling of the matter.

Admiral Mauz had knowledge in October 1992 that I was sexually harassed. This harassment was substantiated by a member of his staff, Commander Cathleen Miller. Admiral Mauz was also aware of the failure of my chain of command to handle the matter from May 1992 until October 1992. A command inquiry was conducted in October 1992. This command inquiry substantiated the sexual harassment which I had reported in May 1992. The command inquiry also substantiated the existence of a hostile environment in which I worked from May 1992 until October 1992. Admiral Mauz was familiar with those substantiated facts and took no action.

On December 28, 1992 I suffered reprisal for my report of sexual harassment when I received an adverse fitness report. I reported this retaliation and reprisal directly to the aide of Admiral Mauz. I was assured on that same day that Admiral Mauz was personally involved and that proper corrective action would follow. I relied in good faith on these assurances. My good faith reliance was not justified. Instead of taking corrective action the reprisal was covered up. Admiral Mauz was personally involved in this negligent handling of my report of reprisal. Admiral Mauz was the highest level of leadership in my chain of command.

I then reported the failure by my entire chain of command to properly handle my report of sexual harassment and reprisal to the Department of Defense, Inspector General's office. This report was then referred to the Navy Inspector General. I believe that Admiral Mauz used his position to influence the report from the Navy Inspector General's office in order to protect himself because he knew that he and the chain of command had failed to take appropriate action in my case of sexual harassment.

I actually swore to these facts on a charge sheet for violation of the Uniform Code of Military Justice Article 92 by Admiral Mauz. This charge sheet and supporting memorandum was returned to me without any investigation whatsoever. This too was inappropriate and not in accordance with applicable instructions and orders.

I believe Admiral Mauz has perpetuated the discrimination against women in the U.S. Navy with his failure to take swift and tough action against sexual harassment. I believe his failure to hold anyone accountable in my case of sexual harassment was Dereliction of his duties. One who is derelict in the performance of duty should not be rewarded for extraordinary service.

Sincerely,

DARLENE S. SIMMONS.

DEPARTMENT OF THE NAVY,
OFFICE OF THE SECRETARY,
Washington, DC, May 12, 1994.

Lt. DARLENE S. SIMMONS, JAGC, USNR,
Naval Legal Service Office, Naval Station,
Mayport, FL.

DEAR LIEUTENANT SIMMONS: I am writing to discuss your future in the U.S. Navy. Before doing so, however, I wish to express my profound regret over the harassment that you unfortunately experienced. No one in

our Navy or Marine Corps should be treated as you were. My goal is to send the message to every Sailor, Marine, and civilian in our Department that we are to treat others with the same respect and dignity we expect ourselves.

I believe we have made significant progress during the past 18 months to implement a comprehensive program aimed at eliminating sexual harassment from the workforce. As you know, we issued our revised policy guidance in January 1993 and also established an Advice and Counseling Line and an Informal Resolution System. Our Department-wide Reporting and Tracking System will provide us with information on formal complaints, results of investigations and administrative and judicial actions taken to resolve complaints. In March, we released the "Commander's Handbook," a single reference for commanders that addresses investigation, resolution, and prevention of sexual harassment. I thank you for your lessons learned, which were integrated into the first edition. While we have done much, I realize we still have far to go.

After you testified, I directed my staff to thoroughly review the circumstances of your case. Our review leads me to conclude that: you were sexually harassed by a fellow officer aboard USS CANOPUS; he retaliated against you by fostering a hostile work environment and polarizing the wardroom against you; the shipboard chain of command did not correct this environment; and your fitness report for the period 9 February 1992 to 28 December 1992 was improperly handled by the command.

As a result of my review of your case, I am issuing a Secretarial letter of censure to the officer who committed the harassment. The Chief of Naval Operations is also taking action with regard to two other officers in your former chain of command who did not measure up to our standards.

With regard to your specific situation, I recognize that your harassment, and the energy required on your part to address issues springing from it, impaired your ability to demonstrate fully what you can contribute to the Navy. Therefore, I have directed that the Navy make available to you the option to transfer to a new duty station with orders that you be retained on active duty until 1 September 1996. This represents an additional two years beyond the date currently established for your departure from active duty, and will afford you the opportunity to compete again for augmentation to the Regular Navy.

I have been informed that you have applied to the Board for Correction of Naval Records (BCNR) in accordance with 10 U.S.C. 1552 to correct any injustice in your performance records. I have final authority to review the BCNR's recommendation and will direct action to correct your military record as necessary.

While my actions can never wipe the slate clean, they reflect my genuine desire that you have the opportunity to continue to serve, if you wish. Should you nevertheless decide to leave active duty on 1 September 1994, however, I want you to know that you have my respect and gratitude for your Navy service.

I have directed Rear Admiral H.E. Grant, the Judge Advocate General of the Navy, to meet personally with you to discuss your decision.

JOHN H. DALTON,
Secretary of the Navy.

July 8, 1994.

Hon. SAM NUNN,
U.S. Senate,
Washington, DC.

DEAR SENATOR NUNN: I would like to introduce myself. My name is George R. Taylor. I am a Senior Chief Petty Officer (E-8) currently on active duty with the U.S. Navy stationed at the U.S. Naval Construction Battalion Center, Port Hueneme, California. Additionally, I am a whistleblower.

Sir, In December 1992, I blew the whistle on fraud, waste, and abuse concerning mismanagement at the U.S. Naval Air Station Bermuda. I would like to give you a very brief rundown on some of the events that transpired and are continuing to unfold in regards to Admiral Henry Mauz Jr., USN, Commander in Chief, U.S. Atlantic Fleet.

In November 1992, Admiral Mauz abused his power and authority as CINCLANTFLT by traveling to NAS Bermuda along with 12 other military and civilian personnel for a five day vacation.

Admiral Mauz was flown to Bermuda at government expense along with the other personnel. During his time on the island, his entire "official" visit consisted of playing golf, dining in the best restaurants, and shopping. This was in fact exposed on national television on ABC New's "Primetime Live" program. I appeared on the show and commented on the behavior of not only Admiral Mauz but numerous flag officers within the Armed Forces who had visited the beautiful island at taxpayer's expense. Additionally, Senator McCain had visited the island with a large group of family members and the nanny for his grandchildren all at taxpayer's expense or at a reduced rate.

As you know, this was not a popular thing for me to do. I was not politically correct. Needless to say, numerous high ranking officers within the Department of Defense were offended. Representative Schroder made arrangements for me to be transferred to NCBC Port Hueneme, CA. I was very naive, I believed in the system. However, I have very little faith left at this time. During the past 18 months numerous things have occurred that in my opinion and the opinion of my attorney have been nothing short of criminal.

Admiral Mauz in my opinion has not only abused his power but is a disgrace to the uniform of the Naval Service. He was a key player in me being charged with over 48 offenses of violating the Uniform Code of Military Justice in a supposed "unrelated to Bermuda situation". His attorney requested and received all legal documents and a brief in regards to my status. All charges were dismissed by Admiral Kelley, CINCPACFLT, 8 months later. Admiral Mauz took a personal interest in the prosecution of a case where nothing had been done wrong.

Senator, there is no doubt that if you or I committed some of the things that Admiral Mauz has, we would have been ran out of town.

As you know, the Navy has gone through a lot. However, I do believe with the current leadership in the Navy things will improve, but in order to correct wrongs and to ensure that senior, military officers do not continue to abuse their power and authority, you should take the lead in retiring Admiral Mauz at a two-star level.

You sir, are in the position to send a message to the entire Armed Forces announcing that misconduct at any level will not be tolerated, also that everyone in the Armed Forces from E1 to O-10 will be held accountable for their actions.

Sir, if you or your staff needs additional information feel free to call me at (805) 388-

3915 or my attorney, Jeff Ruch at (202) 408-0034.

Very Respectfully,

GEORGE R. TAYLOR,
MACS(SW) USN.

CHIEF OF NAVAL OPERATIONS,
July 27, 1994.

Hon. SAM NUNN,
Chairman, Senate Armed Services Committee,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: I am responding to your letter of July 21, 1994 to the Secretary of the Navy which enclosed a letter from the Government Accountability Project, concerning the retirement confirmation of Admiral Henry Mauz, Jr., U.S. Navy. I have reviewed the letter as well as the letters from Lieutenant Darlene Simmons and Senior Chief George Taylor that were included. It is my judgment that the allegations in these letters are not correct. Admiral Mauz has served faithfully and well in every assignment including this final one as a four star officer and deserves to retire in grade.

Before turning to these allegations, I want to state that Admiral Mauz is completing a career that exceeds thirty-five years of dedicated service to our Nation. He is scheduled to retire and desires to do so. His relief has been confirmed and is ready to assume the duties of Commander in Chief, U.S. Atlantic Fleet. Admiral Mauz's plans to enter the next phase of his personal and professional life are being delayed as is the assumption of command by the relieving officer. Admiral Mauz's performance has been outstanding throughout his career including, especially including, this final tour as Commander in Chief, U.S. Atlantic Fleet.

With regard to LT Simmons, Admiral Mauz did not suppress the evidence of any inquiry, did not fail to take corrective action on behalf of LT Simmons, nor did he fail to follow proper procedures in inquiring into allegations. Further, the Inspector General of the Atlantic Fleet did not cover-up the nature and extent of underlying problems nor prevent appropriate remedial action in the case.

The case of LT Simmons is an involved one with several complaints, overlapping in time, and inquiries that took place over nearly two years. It is clear that in 1992 LT Simmons was sexually harassed while stationed aboard USS CANOPUS (AS-34). While serving as Legal Officer in that ship she received repeated requests for dates and comments about her physical appearance from another officer who was one rank senior to her and with whom she worked closely in the performance of her duties.

The case was initiated at the shipboard level on 1 June 1992, when LT Simmons reported to the ship's Executive Officer that she was being sexually harassed by another officer. The allegations involved repeated requests for dates and comments about her physical appearance. On 5 June 1992, the officer was counseled and administrative action was taken. He requested retirement from the Navy as was his prerogative.

Unfortunately—and unacceptably—an atmosphere of harassment and hostility persisted, particularly as the retirement of the officer involved was not effective until April 1993, and he remained on duty on the ship. On 9 October 1992, an anonymous DOD IG hot line call and a call by LT Simmons to Congresswoman Schroeder and to the then Assistant Secretary of the Navy, Barbara Pope, raised the visibility of this case.

Admiral Mauz responded promptly when informed of the matter as a result of these

calls. To assure fairness and high-level attention, he directed his Special Assistant for Women's Affairs, CDR Miller, to join an investigation by COMSUBGRU 10. Following a briefing by Commander Miller, the offending officer was moved off the ship by the Commanding Officer in October 1992. The CO assembled all officers and told them that LT Simmons had been sexually harassed, condemned this behavior, and emphasized that any harassment would not be tolerated.

LT Simmons states in her letter that Commander Miller substantiated the sexual harassment. That is true. There is no question that LT Simmons was sexually harassed. As the Commander in Chief, U.S. Atlantic Fleet, Admiral Mauz acted promptly and appropriately. He directed the necessary actions to ensure a thorough and timely response to LT Simmons's allegations. The expeditious assignment of Commander Miller to examine the case and ensure that LT Simmons had a direct conduit to his clearly substantiated his personal concern and direct involvement in investigating LT Simmons's allegations.

Nor was this the end of Admiral Mauz's concern. In December 1992, Admiral Mauz returned to this matter. He personally intervened with the Chief of Naval Personnel to extend LT Simmons on active duty and assure her assignment to another command.

At this time also, LT Simmons complained that her transfer fitness report was issued in reprisal. The Inspector General investigation, completed in the spring of 1993, substantiated LT Simmons's original allegations of sexual harassment and also concluded the Commanding Officer of CANOPUS failed to recognize the development of a hostile command climate. Accordingly, the Commanding Officer was counseled by his immediate superior. While the Inspector General concluded the fitness report was not reprisal, the Secretary of the Navy later concluded that he would review, through the Board for Correction of Naval Records, any alleged injustice in her military record and that LT Simmons would be given the option of a new duty station with orders retaining her on active duty until September 1996. The Secretary stated that his decision was based on his recognition that " * * * your [LT Simmons] harassment, and the energy required on your part to address issues springing from it, impaired your ability to demonstrate fully what you can contribute to the Navy." The Secretary's action in correcting the fitness report, intended to provide LT Simmons with an opportunity to continue her naval career, was a decision that only the Secretary is empowered to make.

On his own initiative, Admiral Mauz returned to this matter for a third time in 1993. In a series of actions he manifested his concern that improvements should be made in handling cases of this kind. To effect change in this regard, Admiral Mauz, in April of 1993, issued a policy statement for the "Prevention of Sexual Harassment" to all Atlantic Fleet activities. It addressed Department of the Navy policy and the need for training in place. It tasked every manager, supervisor, and employee, military and civilian, within Admiral Mauz's command with the responsibility for carrying out the DON policy on prevention of sexual harassment.

In June 1993, Admiral Mauz signed a combined LANT/PACFLTINST 5354.1 (Equal Opportunity) that revised the Command Managed Equal Opportunity program and incorporated sexual harassment requirements from a new SECNAVINST.

In September 1993, Admiral Mauz issued a PERSONAL FOR to ensure each commander

was cognizant of the contents of the combined LANT/PAC Equal Opportunity instruction. He directed each commander to review the implementation of the program, including sexual harassment, in his command to ensure compliance. ISIC's were directed to include this as a special interest item for command inspections, and were directed to utilize Equal Opportunity Program Specialists in their inspections to the maximum extent possible.

Going well beyond normal bureaucratic requirements, in April 1994, Admiral Mauz returned to this matter again. To assure that fleet priorities and procedures would be as good as they could be, he personally conducted a training session for all flag officers assigned to the Atlantic Fleet. The subject was a case study in sexual harassment, and on addressing it, Admiral Mauz used both information obtained from the inquiry about LT Simmons case and information provided by LT Simmons herself. Finally, Admiral Mauz recognized that additional training was needed beyond what the initial curriculum in sexual harassment provided. Accordingly, he directed the development and distribution of a kit to assist commanders with the investigation and disposition of sexual harassment complaints. This kit formed the nucleus for the newly published Navy Sexual Harassment Handbook.

In January 1994, LT Simmons forwarded allegations of criminal dereliction by Admiral Mauz in the handling of her case. As the facts of the case did not, in fact, justify criminal charges, they were determined to be more appropriate for resolution under the provisions of Article 1150, U.S. Navy Regulations, Redress of Wrong Committed by a Senior, than under the Uniform Code of Military Justice (UCMJ). The allegations were accordingly returned to LT Simmons by the Vice Chief of Naval Operations, on advice of counsel, for forwarding as a matter under Article 1150. In response, LT Simmons indicated she did not desire to pursue an Article 1150 complaint. Nevertheless, LT Simmons' allegations were referred to the Naval Inspector General. The Inspector General found the allegations against Admiral Mauz to be without merit. Admiral Mauz did not influence or attempt to influence, the Inspector General's decision in this matter.

With regard to Senior Chief Taylor, the allegation that Admiral Mauz influenced the charges against Senior Chief Taylor after Senior Chief Taylor arrived at Port Hueneme, California, is without basis.

By way of background, there were charges brought against Senior Chief Taylor after he began his tour of duty in California. These charges addressed irregularities in the manner in which Senior Chief Taylor performed his duties. Senior Chief Taylor declined to have his case heard under Article 15 of the UCMJ, as was his right. As a result, charges were referred to a special court-martial. After charges were referred, Senior Chief Taylor's chain of command in the Pacific decided it was appropriate to move the case out of the Port Hueneme area to ensure an independent review of the case. Accordingly, the charges were considered by a Flag Officer in command in the San Diego area.

Following a newspaper account which stated that the charges against Senior Chief Taylor had been withdrawn in response to allegations of retaliation for his whistle-blowing activity in Bermuda, Admiral Mauz's Executive Assistant asked the senior Staff Judge Advocate to call his counterpart at Port Hueneme for additional information. A call was made and the situation was clar-

fied. The senior Staff Judge Advocate verbally reported his findings to the Executive Assistant who then back briefed Admiral Mauz as to the action he had taken. There was no influence on the case and, in fact, the charges had already been withdrawn at the time of the call.

Subsequently, unbeknownst to either the senior Staff Judge Advocate or Admiral Mauz, a junior Staff Judge Advocate obtained a copy of the defense motion that was the basis for withdrawal of the charges, as well as a copy of the charge sheets, from a friend who was then Officer in Charge, Navy Legal Service Office, Port Hueneme. The Officer in Charge believed that in providing that documentation, he was responding to an official request from Admiral Mauz's staff and acting quite properly he informed Senior Chief Taylor's military counsel of the actions he had taken to comply with that request. While these documents were shared with the senior Staff Judge Advocate, he did not speak of them to any other staff member. Clearly, the junior staff Judge Advocate's inquiry and receipt of documents did not stem from Admiral Mauz. In fact, Admiral Mauz did not become aware of the documents until their existence was revealed during my inquiry into Senior Chief Taylor's allegation preparatory to making this letter response. In this vein, Admiral Mauz's statement to Navy Times on July 21, 1994, that "I don't really recall this, but I think I said ok," to an inquiry regarding the newspaper account was not an accurate recollection. In fact, Admiral Mauz's Executive Assistant states that he, independently and without Admiral Mauz's knowledge, instituted that lawyer's inquiry into the newspaper article. These matters taking place after the withdrawal of charges at Fort Hueneme, could not have had any impact in any event.

The San Diego commander convened an Investigation under Article 32 of the UCMJ to inquire into the matter and make recommendations as to the appropriate disposition. The senior Judge Advocate assigned to conduct the Article 32 Investigation concluded there were reasonable grounds to believe that four offenses should be charged, with a total of seven specifications thereunder. The senior Judge Advocate recommended that the charges be adjudicated under Article 15 of the UCMJ, but noted that should Senior Chief Taylor decline Article 15, referral of the charges to special court-martial would be appropriate. The Commander in Chief of U.S. Pacific Fleet, however, determined that the nature of charges did not warrant referral to court-martial and directed counseling as the appropriate remedy, thereby closing the case.

In summary, Admiral Mauz was not involved in Senior Chief Taylor's case in California. He played no role in the charges themselves or in the disposition of the charges.

Senior Chief Taylor had accused Admiral Mauz of misconduct with regard to Admiral Mauz's travel to Bermuda. As a result of Senior Chief Taylor's allegations regarding Admiral Mauz's travel to Bermuda, the Naval Inspector General conducted a complete and thorough investigation. The investigation did not disclose any misuse of government facilities. The Inspector General determined that Admiral Mauz conducted significant official business while in Bermuda, including an inspection of the air station's facilities, addressing base personnel at an "All Hands" meeting and making calls on the U.S. Consul General and the Governor of Bermuda. Admiral Mauz took two days of

leave while in Bermuda, in compliance with Navy guidelines for combining leave and official travel. The Inspector General determined that the scheduling of the trip created the perception of impropriety and that there was a violation in the use of government drivers during the period of time that Admiral Mauz was on leave, as a result of which Admiral Mauz received informal written counseling.

Admiral Mauz did not remove Senior Chief Taylor from his duties or attempt to prosecute Senior Chief Taylor for insubordination as a result of Senior Chief Taylor having publicly accused Admiral Mauz of misconduct, as alleged by Mr. Ruch of the Government Accountability Project. Senior Chief Taylor originally alleged that his Commanding Officer in Bermuda had taken those actions as reprisals for his whistle-blowing activity in Bermuda. After a thorough investigation of the facts surrounding those actions, however, the DoD IG concluded that the actions were warranted under the circumstances and did not constitute reprisal. In fact, at the time the actions were taken, no one was aware of Senior Chief Taylor's whistle-blowing activity. The difficulties Senior Chief Taylor was experiencing in Bermuda preceded any knowledge by naval personnel, including his Commanding Officer and Admiral Mauz regarding his complaints.

Admiral Mauz has served his Navy and Nation for over thirty-five years. He has served in positions of great responsibility and he has served his Nation well.

I have discussed this letter with the Secretary of the Navy and he and I are in complete agreement that Admiral Mauz should be confirmed to retire in his four star grade and that he should be permitted to depart his command in a timely manner.

I am, of course, prepared to provide you any additional information that you or the other members of the Committee may require. Thank you for your consideration. I have sent an identical letter to Senator Thurmond.

Very respectfully,

J.M. BOORDA,
Admiral, U.S. Navy.

ATTACHMENT 3

GAP GOVERNMENT ACCOUNTABILITY
PROJECT,
August 3, 1994.

HON. SAM NUNN,
Chairman, Senate Armed Services Committee,
Washington, DC.

DEAR SENATOR NUNN: Last month my client, Senior Chief Master-at-Arms George R. Taylor (USN) wrote to you concerning the pending four-star retirement of Admiral Henry Mauz. In his letter, Senior Chief Taylor wrote that Admiral Mauz had taken "a personal interest" in the prosecution, that was later dismissed, against Senior Chief Taylor and the members of his security detachment. This personal interest raised questions concerning retaliatory motive since the attempted prosecution took place within the Pacific Command at a time when Admiral Mauz served as Commander of the Atlantic Fleet.

In the August 1, 1994 edition of Navy Times, Admiral Mauz told reporter Patrick Pexton that Taylor's allegation was "without foundation" and "nonsense." Mauz told the reporter that his staff contacted Port Hueneme authorities only once and then only for the purposes of learning the status of the case. In fact, Captain Joseph Baggett, the legal advisor to Admiral Mauz, did contact the legal advisor for the base at Port

Hueneme after the withdrawal of the 48-count court martial against Taylor and his detachment on April 9, 1994.

Prior to Captain Baggett's call to Port Hueneme, however, Lt. Noreen Hagerty-Ford, a JAG attorney on Admiral Mauz's staff, contacted Lt. John Tamboer, the supervisor of Taylor's military defense counsel, Lt. Carter Brod. Lt. Hagerty-Ford asked Lt. Tamboer to provide her with a copy of a motion filed by Lt. Brod seeking dismissal of all charges against Taylor on the grounds of "vindictive prosecution" [attached]. Lt. Tamboer refused her request, on the grounds that the Atlantic Fleet had no legitimate reason to obtain defense filings. Lt. Hagerty-Ford called Lt. Tamboer later that same day and demanded a copy of the motion stating that her call was at the personal request of Admiral Mauz. Lt. Tamboer acceded to this direct request from a flag officer and provided a copy of the motion to Lt. Hagerty-Ford.

Admiral Mauz's public statements with respect to his role and the role of his personal staff in the Taylor prosecution do not square with the facts. The lack of candor displayed here is consistent with the "damage control" approach to high profile personnel cases Admiral Mauz has exhibited. More disturbingly, these repeated contacts represent an attempt to influence the prosecution of Taylor and to intimidate his military defense counsel.

As always, if you or your staff desire any further information from my clients, please do not hesitate to contact me.

Sincerely,

JEFFREY P. RUCH,
Policy Director.

NAVY-MARINE CORPS TRIAL JUDICIARY,
SOUTHWEST JUDICIAL CIRCUIT, PORT HUENEME, CA

United States versus Taylor, George R.,
MACS/E-8, 424-86-0238, U.S. Navy.

Special Court-Martial: Motion to Dismiss
for Vindictive Prosecution Pursuant to the
Fifth Amendment.

Date: 23 March 1994.

1. Nature of Motion. This is a Motion to Dismiss for Vindictive Prosecution filed pursuant to the Fifth Amendment of the U.S. Constitution. This motion is filed as a direct result of an unlawful decision by Commander, Naval Construction Battalion Center, Port Hueneme, to prosecute MACS George R. Taylor, USN, the accused in this case.

2. Summary of Facts.

PRIOR TO MACS TAYLOR'S REPORTING AT NCBC

a. In 1992, MACS George R. Taylor, USN, held the position of Chief of Military Police at Naval Air Station Bermuda. While serving at NAS Bermuda, MACS Taylor produced evidence that the air station existed as a resort for top military officials at the expense of taxpayers. MACS Taylor and another "whistleblower" were featured on the 10 December 1992 episode of ABC's "Primetime Live" (tape of which will be hereinafter referred to as "the Bermuda tape"), which prompted Defense and Inspector General investigations. As a result of MACS Taylor's activities, Congress voted to close the Bermuda base in 1995.

b. MACS Taylor was transferred to Naval Construction Battalion Center, Port Hueneme, (hereinafter "NCBC"), in January 1993, under the protection of the Military Whistleblowers Protection Act.

c. Before MACS Taylor arrived at NCBC, members of the base security department posted an article about MACS Taylor's ac-

tivities in Bermuda on the security department bulletin board. In addition, members of the security department gathered in a conference room to view the Bermuda Tape.

d. Before MACS Taylor arrived, a file was sent to NCBC from Bermuda which included a non-punitive letter of caution and materials related to MACS Taylor's activities at Bermuda.

e. Prior to MACS Taylor's arrival at NCBC, RADM David Nash, USN, Commanding Officer of NCBC, requested a copy of the Bermuda tape from Kari Lee Patterson, a civilian employee at NCBC. Ms. Patterson delivered the tape to Mr. W.E. Hudson, NCBC Security Officer, who delivered the tape to RADM Nash.

AFTER REPORTING AT NCBC

f. Upon MACS Taylor's arrival, RADM Nash held a meeting with top base officials to discuss the arrival of MACS Taylor.

g. Upon reporting on board NCBC, MACS Taylor was taken to Executive Officer's Inquiry for activities in Bermuda. At the XOI, Taylor was awarded the Nonpunitive Letter of Caution sent from Bermuda. The charge was for disrespect to a commissioned officer at Bermuda.

h. Immediately upon arriving at NCBC, MACS Taylor was directed to meet with LCDR Cole in his office. At that meeting, which was attended by BMCS Kossman, LCDR Cole told MACS Taylor that "this isn't Bermuda" and "You aren't going to get away with that s--t here", or words to that effect.

i. In January 1993, LCDR Cole was called by Jeff Ruch, an attorney with the Government Accountability Project, a public interest organization which was involved with the incident in Bermuda. Mr. Ruch called LCDR Cole to discuss the pending Captain's Mast for Disrespect in Bermuda. After the phone conversation, LCDR Cole confronted MACS Taylor, saying he had just gotten a call from his "liberal lawyers" and "this is bulls--t," or words to that effect. LCDR Cole told MACS Taylor that "they're not gonna get you out of this. * * * This package was sent here. We're going to adjudicate this here", or words to that effect.

j. Approximately one month after MACS Taylor reported aboard, MACS Taylor suggested to LCDR Cole that one of his practices was improper. LCDR Cole had, on several occasions, sent sailors to the Long Beach Brig with full knowledge that there would never be a court-martial. This was typically done on a Friday afternoon, where the magistrate would be unable to release the sailor until the following Monday. When MACS Taylor suggested to LCDR Cole that this practice was improper, LCDR Cole became incensed, telling MACS Taylor "I'm the f---ing lawyer on this base; who made you the base lawyer?", or words to that effect.

k. A meeting to discuss Workman's Compensation issues was held in September 1993 and was attended by LCDR Cole, MACS Taylor, NCBC Executive Officer, NCBC Command Master Chief, and other officials. At the meeting, LCDR Cole confronted MACS Taylor due to rumors he had heard about members of the Special Investigations Unit, of which Taylor was a member, being deputized by the federal government. MACS Taylor denied ever spreading the rumor. LCDR Cole responded by admonishing MACS Taylor for not addressing him as "Sir" when making a statement.

l. In a Memorandum dated 5 September 1993, LCDR Cole requested to the Commanding Officer, NCBC, that MACS Taylor be re-

lieved of his duties. RADM Nash, however, declined to carry out LCDR Cole's request.

m. MACS Taylor has also had numerous personal confrontations with Mr. W.E. Hudson, NCBC Security Officer, since reporting aboard. Mr. Hudson is MACS Taylor's direct superior in the Security Department.

n. On 30 September 1993, MACS Taylor received a performance evaluation which covered the period since MACS Taylor's arrival on board NCBC and was signed by RADM Nash. Taylor received straight 4.0 evaluations on this evaluation. There was no mention whatsoever of any problems with MACS Taylor's performance. MACS Taylor was described as having "great depth of professional knowledge" and a "keen sense of responsibility". He was praised for "drafting and immediate implementation of the department's quality-focused Standard Operating Procedures." He was also praised for conducting a special task force to curtail the flow of drugs onto the base and for assisting civilian police in drug operations.

16 NOVEMBER ARREST

o. On 16 November 1993, MACS Taylor participated in the arrest of CE3 Richard Miller, USN, a deserter who had escaped from the Long Beach Brig. There were three other NCBC police officers at the scene. The arrest took place in the City of Oxnard with the participation of the Oxnard Police. No complaints were made by any persons involved in the arrest. Officers Ernie Eglin and L.E. Robertson of Oxnard Police executed the arrest and believe that MACS Taylor acted entirely properly.

p. On 17 November 1993, Mr. Hudson called MACS Taylor into his office and accused him of acting improperly during the previous night's arrest. Mr. Hudson then discussed with MACS Taylor the possibility of an early retirement for MACS Taylor.

q. On 18 November 1993, Mr. Hudson met with LCDR Cole to discuss this situation. At this meeting, the two men agreed to have Naval Investigative Service investigate MACS Taylor's activities on the night of the arrest.

r. On 22 November 1993, Mr. Hudson informed MACS Taylor that he planned to have NIS investigate the arrest.

s. Pursuant to advice from military defense attorneys, MACS Taylor and each of the other three officers consistently invoked his right to remain silent during the investigation.

t. On 3 January 1994, MACS Taylor was given a Report Chit citing one specification of violation of Article 92 related to the arrest of CE3 Miller. LCDR Cole's signature appears on the Chit for "person submitting report". Along with the Report Chit, MACS Taylor received formal notification of contemplated Nonjudicial Punishment.

u. On numerous occasions after the Report Chit was drafted, LCDR Cole attempted to persuade MACS Taylor and the other three NCBC officers involved to answer questions about the arrest. On or about 3 January 1994, LCDR Cole informed MACS Taylor that the Incident Complaint Report for the incident in question had never been received, and he gave MACS Taylor a direct order to write a report describing what happened on the night in question. MACS Taylor has consistently maintained that he submitted the report immediately after the arrest. Pursuant to advice from LT Carter F. Brod, JAGC, USNR, Defense Counsel, MACS Taylor nevertheless prepared a new report to avoid violating a direct order.

v. When discussing with MACS Taylor his potential Captain's Mast, LCDR Cole ordered

MACS Taylor to sit locked at attention. LCDR Cole told MACS Taylor that he would "add twenty more f--king charges" if Taylor refused Captain's Mast.

w. On or about 6 January 1994, LCDR Cole called LT Brod and asked LT Brod to give MACS Taylor pre-Mast advice. LCDR Cole told LT Brod that MACS Taylor was being really stupid in his attitude and that if he did not accept Mast then they were going to "throw the book at him." LCDR Cole told LT Brod that, if MACS Taylor refused Mast, "we have lots of other stuff on him to use which we will throw on there", or words to that effect.

x. On 10 January 1994, MACS Taylor refused Nonjudicial Punishment.

y. LCDR Cole has made numerous attempts to persuade the other three NCBC officers to discuss the details of the arrest. On 6 January 1994, LCDR Cole told LT Brod in a telephone conversation that "the command is unlikely to dismiss the charges against Senior Chief Taylor but would probably dismiss the others if they opened up."

z. In a telephone conversation with civilian police lieutenant Byron Frank, which lasted over one hour, LCDR Cole told Lt. Frank that "if you all had just cooperated with the NIS investigation, then you would have just gotten a slap on the wrist", or words to that effect. LCDR Cole stated that "Senior Chief Taylor is manipulating the other three officers. I feel really sorry for them", or words to that effect. LCDR Cole stated that "ABC bailed his a-- out in Bermuda. They won't come to his rescue now", or words to that effect. LCDR Cole asked Lt. Frank, who was also an African-American, "why won't you just tell me what happened? I'm the smartest black attorney in the JAG Corps. Let's just talk brother to brother", or words to that effect.

aa. On 21 January 1994, 48 specifications of UCMJ violations were preferred against MACS Taylor. Many of the specifications related to the 16 November arrest, but 16 of the 47 new specifications related to incidents in April, May and June of 1993.

bb. Naval Criminal Investigative Service conducted an extensive investigation of the charges against MACS Taylor. Included as part of the NCIS investigation were interviews of over twenty-one witnesses. Many of the witnesses, including Petty Officer Pringle, Detective Wunsch and Lieutenant Frank, were asked questions about MACS Taylor's activities in Bermuda.

cc. LT Robert P. Morean, JAGC, USNR, Trial Counsel, conducted several witness interviews at NCBC on or about 15 February 1994. LCDR Cole was present for many of these interviews and occasionally participated in questioning. In the interview with BMCS Kossman, USN, LCDR Cole corrected BMCS Kossman for giving an answer LCDR Cole believed was incorrect. When MS3(SS) Doyle was interviewed, LCDR Cole was "right there, only two feet away from me." When MS3 Doyle told LT Morean that he felt MACS Taylor was an excellent cop and excellent leader, LCDR Cole stormed out of the meeting and slammed the door. LCDR Cole also assisted LT Morean in the questioning of Dan Gordon, Security Department Training Officer.

dd. On 9 February 1994, LCDR Cole approached DT3 Fredia Wright, USN, who had a son living on base who had been barred from the base for juvenile delinquency. LCDR Cole offered DT3 Wright that her son could continue to live on the base if he would testify in the court-martial of MACS Taylor. LCDR Cole told her that she could disregard

the barring notice if her son would cooperate.

ee. On or about 18 February 1994, LCDR Cole discussed the 16 November arrest while teaching a class to new NCBC security officers. While teaching this class, LCDR Cole referred to the four officers who made the 16 November arrest as "the four", and used their arrest as an example of illegal police activities.

OTHER SIMILAR NCBC SECURITY CASES

ff. In the past, there have been several other arrests by NCBC Police with the same characteristics as the 16 November arrest. No prosecution or disciplinary action was taken in any of the other arrests. There have also been egregious cases of clear dereliction of duty by NCBC Military Police where no prosecution was undertaken.

gg. On 23 September 1992, NCBC Detective A. Carpenter, MA1 Woods, USN, and NCBC Detective P. Wunsch arrested EOCN Jason S. Tyree, USN, a deserter from NMCB-40, off-base in the City of Oxnard. The facts of that arrest were effectively identical to those in the case at bar. There was no disciplinary action of any kind taken against any of the officers.

hh. In December 1993, a complaint was filed alleging that GSM2 E.J. Beman used unlawful force in an arrest of a female suspect. The investigation of the incident was handled internally; NCIS was never asked to investigate. Beman was not court-martialed for his actions.

ii. In mid-1992, evidence existed that civilian NCBC police officer Carlos Tangonan used unnecessary force by hitting a suspect in the mouth with a baton. No investigation of any kind was undertaken, and no disciplinary action followed.

jj. On 21 January 1992, F.D. Forbes, a civilian NCBC police officer, arrested a suspect in the City of Port Hueneme by pursuing him on an off-base street, drawing his service revolver and ordering the suspect to freeze. The suspect was unarmed and seen climbing over the base fence from on-base to off-base, which is not an offense under any criminal code. The "suspect" was not charged with any crime. Forbes was not disciplined in any way for making this off-base arrest.

kk. Many members of the NCBC Security Department believe that, based on their knowledge of the facts, the 16 November arrest was entirely legal and consistent with NCBC policy practices.

RECENT FACTS

ll. On 11 February 1994, LCDR Cole offered LT Brod that MACS Taylor could still go to Captain's Mast if he wanted. LCDR Cole told LT Brod that, if MACS Taylor accepted Mast, the charges would include only two specifications of dereliction of duty.

mm. On 9 March 1994, LCDR Cole ordered an administrative questioning of Byron Frank regarding the arrest of 16 November 1993. LT Morean told LT Caroline Goldner, JAGC, USNR, that this was done as a "discovery tool" for the court-martial of MACS Taylor.

nn. On 17 March 1994, LT Morean told LT Brod in a telephone conversation, that "it is my understanding that if everyone had been forthcoming, there would have been no charges. The Admiral just got ticked when everyone clammed up."

3. Statement of Law.

a. R.C.M. 907, MCM 1984. Motions to Dismiss.

b. Fifth Amendment, United States Constitution. "No person shall be *** compelled in any case to be a witness against himself,

nor be deprived of life, liberty, or property, without due process of law."

c. *Bordenkircher v. Hayes*, 434 U.S. 357 (1978). "To punish a person because he has done what the law plainly allows him to do is a due process violation of the most basic sort."

d. *Chaffin v. Stynchcombe*, 412 U.S. 17 (1973). For an agent of the state to pursue a course of action whose object is to penalize a person's reliance on his constitutional rights is "patently unconstitutional."

e. *U.S. v. Davis*, 18 M.J. 820 (AFCMR 1984). For a claim of prosecutorial vindictiveness to succeed, it must be established that the decision to prosecute was based on impermissible considerations such as race, religion, or the desire to prevent the exercise of a legal right. "In the classic prosecutorial vindictiveness case the subsequent charges are harsher variations of the same decision to prosecute." See Also *U.S. v. Spence*, 719 F.2d 358 (11th Cir. 1983), *Hardwick v. Doolittle*, 558 F.2d 292 (5th Cir. 1977).

f. *U.S. v. Spence*, 719 F.2d 358 (11th Cir. 1983). "To help simplify prosecutorial vindictiveness claims, the Supreme Court developed a 'presumption of vindictiveness'." 719 F.2d at 361. "Courts in this circuit construing post-*Blackledge* decisions have held that whenever a prosecutor brings more serious charges following the exercise of procedural rights, 'vindictiveness' is presumed, provided that the circumstances demonstrate either actual vindictiveness or a realistic fear of vindictiveness." 719 F.2d at 361.

g. *U.S. v. Krezdorn*, 718 F.2d 1360 (5th Cir. 1983). If the defendant challenges as vindictive a prosecutorial decision to increase the number or severity of charges following the exercise of a legal right, the court must examine the prosecutor's actions in the context of the entire proceedings. If "the course of events provides no objective indication that would allay a reasonable apprehension by the defendant that the more serious charge was vindictive, i.e. inspired by a determination to 'punish a pesky defendant for exercising his legal rights,' a presumption of vindictiveness applies which cannot be overcome unless the government proves by a preponderance of the evidence occurring since the time of the original charge decision altered that initial exercise of the prosecutor's discretion." 718 F.2d at 1365.

h. *U.S. v. Blanchette*, 17 M.J. 512 (AFCMR 1983). "The test for prosecutorial vindictiveness is whether, in a particular factual situation, there is a realistic likelihood of vindictiveness for the referral of charges against the accused." 17 M.J. at 514.

i. *U.S. v. Hagen*, 25 M.J. 78 (CMA 1987). Once a prima facie case of vindictiveness is made out, the burden shifts to the prosecution to disprove the misconduct. See Also *U.S. v. Garwood*, 20 M.J. at 154 (CMA 1985).

j. *U.S. v. Falk*, 479 F.2d 616, 620 (7th Cir. 1973). If a defendant alleges intentional or purposeful discrimination and presents facts to raise a reasonable doubt about the prosecutor's purpose, then the prosecutor can be called to the stand to testify.

k. *U.S. v. Green*, 37 M.J. at 384 (CMA 1993). "This Court has previously stated that 'in referring a case to trial, a convening authority is functioning in a prosecutorial role'". See Also *U.S. v. Fernandez*, 24 M.J. at 78 (CMA 1987), *Cooke v. Orser*, 12 MJ 335 (CMA 1982), *U.S. v. Hardin*, 6 M.J. at 404 (CMA 1979).

l. In assessing a claim of prosecutorial vindictiveness, the Supreme Court focuses on practices which tend to chill the assertion of defendant's rights. *Blackledge v. Perry*, 417 U.S. 21 (1974), *NC v. Pearce*, 395 U.S. 711 (1969), *Bordenkircher v. Hayes*, 434 U.S. 357 (1978)

4. Discussion.

a. There are essentially three independent bases upon which the prosecution of MACS Taylor is vindictive. The first basis is due to retaliation for MACS Taylor's whistleblowing in Bermuda and his personal relationship with the convening authority's attorney, LCDR Cole. These two issues have been grouped together because they support the premise that MACS Taylor is being prosecuted for who he is, not what he has done. Second, MACS Taylor is being prosecuted for exercising his Constitutional right to remain silent. Third, MACS Taylor is being prosecuted for exercising his right to refuse Captain's Mast.

b. In light of the nature of these charges, the fact that forty-eight total specifications were preferred in this case, in itself, is strong evidence of the government's vindictiveness. An inference can be drawn that by charging MACS Taylor with such a large number of charges, the government intended to intimidate him, "show" him, or otherwise "retaliate" against him for any one of the three bases supporting this motion. The context of these charges, including the content and tone of statements made by the convening authority's attorney, further clarifies that this prosecution was undertaken with a vindictive purpose.

BASIS 1: BERMUDA AND PERSONAL RELATIONSHIP

c. Under this basis, this motion seeks dismissal of all charges pending against MACS Taylor. None of these charges would have been brought but for MACS Taylor's whistleblowing in Bermuda and his personal relationship with LCDR Cole. Pursuant to *U.S. v. Davis* and *Blackledge v. Perry*, these are both impermissible bases for undertaking a prosecution.

d. There is substantial evidence that the convening authority knew about MACS Taylor's activities in Bermuda and had distaste for those activities. RADM Nash requested a copy of the Bermuda tape before MACS Taylor arrived. Articles were posted and the tape was watched at the security department prior to MACS Taylor's arrival. LCDR Cole's statements to MACS Taylor when he arrived at NCBC shows his distaste for MACS Taylor's prior whistleblowing. MACS Taylor was taken to XO1 by the convening authority for activities in Bermuda. The convening authority awarded him a letter of caution at this XO1 for activities in Bermuda. NCIS, in conducting the investigation of these charges for the convening authority, asked numerous witnesses if they knew anything about the Bermuda incident. Furthermore, LCDR Cole's statement that "ABC bailed him out of Bermuda, they won't come to his rescue here", shows the vindictive tone of LCDR Cole based on MACS Taylor's activities in Bermuda.

e. There is also substantial evidence that LCDR Cole had a personal animosity for MACS Taylor. The statements by LCDR Cole at the meeting upon MACS Taylor's arrival is evidence of that animosity. MACS Taylor questioned LCDR Cole's professionalism by challenging his practice with regard to pre-trial confines. LCDR Cole was incensed at MACS Taylor's complaint. The 5 September 1993 memorandum shows that prior to this arrest, LCDR Cole sought to have MACS Taylor fired from his job. Ever since the first meeting when MACS Taylor reported at NCBC, there have been continual confrontations between the two men.

f. In addition to the evidence of vindictiveness, there is considerable evidence of fact situations similar to those in the case at bar

that were not prosecuted. The off-base arrests involving detectives Forbes and Wunsch were very similar to this arrest, and no disciplinary action followed. There was evidence of dereliction by GSM2 Beman, but no disciplinary action was initiated. There was evidence of dereliction by Officer Tangonan, and no investigation was initiated. An examination of these other situations demonstrates that the government would not have ordinarily prosecuted this case but for MACS Taylor's activities in Bermuda and his personal relationship with LCDR Cole.

g. The vigor with which the command initiated this prosecution is further evidence of the other-than-official interest in seeing MACS Taylor prosecuted. For example, NCIS was called in to investigate and devoted a great deal of resources to this investigation. NCIS jurisdiction, however, is normally over major offenses only. LCDR Cole used his influence as base SJA over other legal matters to affect the investigation in this court-martial. LCDR Cole used the pressure of a barring order to enlist the support of an unwilling witness, Doug Lively. He used his administrative power to order a civilian, Byron Frank, to give, against his will, information to use against MACS Taylor. LCDR Cole also actively participated in interviewing witnesses with the Trial Counsel.

h. In sum, there is substantial evidence that this prosecution would not have normally been initiated but for the fact that MACS Taylor was the subject. Dislike of a sailor based on his past legal activities (Bermuda) and his personality is not a permissible basis upon which to initiate a prosecution. For the foregoing reasons, all pending charges against MACS Taylor should be dismissed.

BASIS 2: RIGHT TO REMAIN SILENT

i. Ever since initially being accused of dereliction, MACS Taylor has exercised his Constitutional right to remain silent. There is substantial evidence that all forty-eight charges in this court-martial are a result of vindictiveness due to MACS Taylor's invoking this constitutional right. Under this basis, this motion seeks dismissal of all charges.

j. On 17 March 1994, the Trial Counsel told the Defense Counsel that it was his understanding, based on his discussions with the Convening Authority, that no charges would have been brought but for MACS Taylor's invocation of this right. The Trial Counsel further stated that it was his understanding that the Admiral "got ticked" when MACS Taylor invoked this right. The Trial Counsel's statement is clear evidence that the government's decision to prosecute was based on MACS Taylor's decision to remain silent.

k. In discussing Taylor's court-martial charges with Byron Frank, LCDR Cole stated that "if they had just cooperated with NIS, then it would've been a slap on the wrist", implying that the charges would not have been brought at all but for MACS Taylor's invocation of his right to remain silent.

l. LCDR Cole has made numerous attempts at pressuring MACS Taylor to give up his right to remain silent, including attempts to persuade LT Brod and * * * appeals to MACS Taylor. LCDR Cole further told MACS Taylor that if he didn't "open up" there would be "twenty more f---ing charges."

m. The convening authority has taken several other actions which demonstrate the vigor with which it has attempted to get MACS Taylor to give up his right to remain silent. First, LCDR Cole gave MACS Taylor

a direct order to write a new Incident Complaint Report, alleging that the original had been lost. Second, LCDR Cole administratively ordered civilian police lieutenant Byron J. Frank, who participated in the arrest, to give details of the arrest. LT Morean described this administrative order as a "discovery tool".

n. In sum, there is considerable evidence that the convening authority was angered by MACS Taylor's silence, and was in fact motivated to prosecute in retaliation for MACS Taylor's silence. In fact, the convening authority expressly told the Trial Counsel that there would not have been a prosecution at all had Taylor not "clammed up". It is evident that all forty-eight charges are in direct retaliation for MACS Taylor's exercise of a constitutional right, the right to remain silent.

o. To allow the government to prosecute a retaliation for exercising the right to remain silent would be to chill the exercise of this important constitutional right. Based on the foregoing, all charges now pending should be dismissed.

BASIS 3: RIGHT TO REFUSE CAPTAIN'S MAST

p. After MACS Taylor refused Captain's Mast, the charges against him rose from one specification of dereliction of duty to 48 specifications in total at special court-martial. There is substantial evidence that the additional 47 specifications were preferred in retaliation for MACS Taylor's refusal to accept Mast. Under this basis, the motion seeks dismissal of all charges added after the refusal of Captain's Mast. The charges sought to be dismissed include all additional specifications related to the 16 November arrest (beyond the one specification from Mast) as well as all specifications related to previous incidents.

q. LCDR Cole explicitly told MACS Taylor and LT Brod that if Taylor refused Mast "there would be twenty more charges" and that he would "throw the book at him". These statements demonstrate LCDR Cole's intentions to retaliate if MACS Taylor refused Mast.

r. Supreme Court and Military decisions support that a large increase in charges after the invocation of a legal right is a strong sign of prosecutorial vindictiveness. Here, the charges jumped from one to forty-eight after MACS Taylor exercised his right to a court-martial. In *U.S. v. Davis*, the court states that the classic prosecutorial vindictiveness case involves a harsher variation of the same decisions to prosecute. Clearly, if the first decision to prosecute was for only one specification, then a second decision for 48 specifications is a harsher variation.

s. In *U.S. v. Martino*, 18 M.J. 526 (AFCMR 1984), the government raised the number of charges after the accused refused NJP. The court held such prosecution to be proper. *Martino* can be distinguished on several bases. First, the court emphasized that the defense counsel asserted prosecutorial vindictiveness with no evidence whatsoever of a vindictive motivation. Further, the government showed evidence of a valid motivation for the difference in number of charges. In the case at bar, however, there is considerable evidence of vindictiveness and there is no evidence of valid government motive for increasing the charges from 1 to 48.

t. In *Bordenkircher v. Hayes*, the Supreme Court held that in the normal give and take of plea bargaining, a prosecutor has valid discretion to increase and decrease the number of charges in order to secure a guilty plea. *Bordenkircher* is distinguishable on several grounds. First, in *Bordenkircher*, the

only evident motive on the part of the prosecutor was the non-vindictive motive to receive a guilty plea. In the case at bar, there is considerable evidence of vindictiveness unrelated to the desire to secure a Mast conviction. Second, in *Bordenkircher*, it was not disputed that the defendant was properly chargeable for the additional charges. In the case at bar, however, there is considerable evidence that there was no valid basis for the additional charges. MACS Taylor's performance evaluation of September 1993 shows the convening authority's acknowledgement that there was no case of dereliction for any prior incidents. Third, the additional charges in the case at bar were not part of the course of normal plea bargaining. MACS Taylor was ordered to attention and threatened with more charges if he did not accept Mast. Further, the military relationship between a Lieutenant Commander and a Senior Chief Petty Officer is one of unequal bargaining power.

u. In *U.S. v. Davis*, a claim of prosecutorial vindictiveness was rejected. In *Davis*, however, there were no additional charges brought in the move from Mast to court-martial. In the case at bar, the charges rose from one to forty-eight. Justifying its rejection of the prosecutorial vindictiveness claim, the *Davis* court stated that the classic case of prosecutorial vindictiveness occurs when the number of charges is raised.

v. *U.S. v. Blanchette* also involved a rejected prosecutorial vindictiveness claim. That case can be distinguished in that the reason for not charging the accused initially was due to insufficiency of evidence. The court found that the additional charges were justified due to the availability of new evidence. No such evidentiary justifications exist for the government in the case at bar.

w. In sum, because MACS Taylor refused Mast on one specification of dereliction of duty, the convening authority retaliated by preferring forty-seven additional charges against him at a court-martial. The possibility of retaliation is clearly "realistic", and the impression made on the accused is clearly one of intimidation. The statements by LCDR Cole are evidence that the convening authority was in fact motivated by vindictiveness. Dismissing the additional charges would be consistent with Supreme Court and Military case law. To allow vindictive charging as occurred here would be to chill the exercise of a sailor's legal right to refuse Captain's Mast. For the foregoing reasons, all charges beyond the initial specification of dereliction of duty should be dismissed.

5. Evidence.

a. Witnesses. The defense offers the testimony of the following witnesses in support of this motion: Detective Wunsch, Sergeant Forbes, LCDR Cole, MACS Taylor, Lieutenant Frank, Officer Elgin, Officer Robertson, MACS Kossman, Kari Lee Patterson, DT3 Wright, MS3 Doyle, Mr. Hudson, Mr. Flynt, R.J. Bryan, Petty Officer Bassett, Petty Officer Pringle, Andrew Stewart, LT Morean, Petty Officer Beman Officer Tangonan.

b. Documents. The following documents will be presented as evidence in support of this motion: Incident Complaint Report (ICR) for Wunsch arrest, ICR for Forbes incident, report of Beman incident, 5 September 1993 Memorandum from LCDR Cole, Bermuda file, MACS Taylor evaluation, Mast charges, Report chit, NJP Refusal Form, Court-martial charges, letter of caution, Bermuda tape, new ICR for 16 November arrest, Barring notice for Doug Lively.

6. Relief Requested. Pursuant to Basis 1, the defense respectfully requests that all

charges be dismissed. Pursuant to Basis 2, the defense respectfully requests that all charges be dismissed. Pursuant to Basis 3, the defense respectfully rests that all charges other than the one specification charged at Mast be dismissed.

7. Oral Argument. The defense desires to make oral argument of this motion.

CARTER F. BROD,
LT, JAGC, USNR,
Defense Counsel.

Date: 23 Mar 94

CERTIFICATE OF SERVICE

I, Lieutenant Carter F. Brod, JAGC, USNR, certify that on this 23rd day of March 1994, I personally served upon government trial counsel a true and correct copy of this Motion.

DEPARTMENT OF THE NAVY,
OFFICE OF THE SECRETARY,
Washington, DC, August 9, 1994.

Hon. SAM NUNN,

Chairman, Committee on Armed Services, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN, I am responding to your letter of August 5, 1994, concerning the retirement confirmation of Admiral Henry Mauz, Jr., U.S. Navy.

The latest GAP letter alleges improper communications between members of Admiral Mauz' staff and persons assigned in the Port Hueneme area who had knowledge of the court-martial case involving Senior Chief Taylor. In order to be able to assure the Committee that we were providing all information relevant to this matter, OPNAV staff spoke with the persons concerned and confirmed the accuracy of those parts of the Chief of Naval Operations' 27 July letter to you that addressed this issue (pages 4 and 5).

Senior Chief Taylor had charges brought against him arising out of actions in November 1993 while serving at the Naval Construction Battalion Center (NCBC), Port Hueneme, California. He had previously requested in writing to be transferred outside the Commander in Chief, U.S. Atlantic Fleet (CINCLANTFLT) chain of command, and the Bureau of Naval Personnel approved that request by assigning him to an appropriate billet in his rating at Port Hueneme. He reported to NCBC Port Hueneme for duty in December 1992.

After referral to trial of the November 1993 charges, the convening authority (NCBC Port Hueneme) decided it was appropriate to move the case out of the Port Hueneme area to ensure the fair and independent disposition of the case. To this end, the convening authority withdrew the charges on March 26, 1994. My inquiry revealed no communications between Admiral Mauz or anyone on his staff and those involved with bringing the charges, and ultimately withdrawing the charges, against Senior Chief Taylor prior to the withdrawal of charges in March 1994.

The proceedings in Senior Chief Taylor's case were mentioned in a short Orlando Sentinel article of March 29, 1994, which appeared in a Pentagon compilation of news articles on 1 April. In describing the withdrawal of charges relating to Senior Chief Taylor's alleged negligent and improper arrest of a service member, the article stated that his attorneys had filed documents "contending the misconduct charges were retaliation for Taylor's comments" in the past regarding Bermuda. Admiral Mauz' Executive Assistant saw the article and asked the senior Staff Judge Advocate to ascertain what, if any, connection there could have been between Senior Chief Taylor's current situation in Port Hueneme and Bermuda. Both of-

ficers were confident that CINCLANTFLT had taken no action whatsoever in retaliation against Senior Chief Taylor, and they were understandably concerned that such a suggestion might have been made and believed it important to ascertain the basis, if any, for such an allegation.

The CINCLANTFLT Staff Judge Advocate called the NCBC Staff Judge Advocate, who confirmed the news article was indeed misleading and that there was no suggestion during the proceedings of any involvement by CINCLANTFLT or his subordinates in Senior Chief Taylor's case. The NCBC Staff Judge Advocate explained the charges involved Senior Chief Taylor's law enforcement activities while assigned to NCBC Port Hueneme. The charges included an allegation that Senior Chief Taylor engaged in unauthorized off-base law enforcement activities, including carrying a government-issued firearm off-base. The CINCLANTFLT Staff Judge Advocate recounted this information to the Executive Assistant, who then spoke briefly to Admiral Mauz about the matter. The request for clarification of the short news article was appropriate in order for CINCLANTFLT to ascertain whether there were grounds for investigation into any alleged impermissible actions by anyone under the command of CINCLANTFLT.

Neither Admiral Mauz, nor any other CINCLANTFLT official, was involved with the referral or withdrawal of the charges, which arose solely from events centered in NCBC Port Hueneme nearly a year after Senior Chief Taylor's transfer to that command. On 23 March 1994, Senior Chief Taylor's defense counsel in the pending case filed a "motion to dismiss for vindictive prosecution," alleging the Port Hueneme convening authority had an unlawful decision to prosecute Senior Chief Taylor. The defense motion complained mainly about the vigor with which the Port Hueneme command pursued the charges against Senior Chief Taylor, alleging that members of that command "had distaste" for his previous whistleblowing activities and the charges were being pursued because Senior Chief Taylor exercised his rights to remain silent and to refuse non-judicial punishment for his alleged improper law enforcement activities. The defense pointed to alleged statements by officials in Port Hueneme suggesting that they had focused inordinate attention on his previous, well-publicized disclosures relating to Bermuda. The defense motion did not allege "personal interest" or any actions or involvement relating to this case by Admiral Mauz or anyone subordinate to him.

With regard to receipt of a copy of the defense motion by a member of the office of the CINCLANTFLT Staff Judge Advocate, the GAP letter is incorrect in stating that this occurred prior to the call seeking clarification of the news article. I have reconfirmed the office of the CINCLANTFLT Staff Judge Advocate received the motion more than a week after the charges were withdrawn. This occurred when the Navy judge advocate assigned to an NCBC Port Hueneme tenant command called some of his lawyer colleagues to offer to send them copies of the document, which he found to be unique and very interesting from a professional perspective. One of these officers was an attorney in the office of the CINCLANTFLT Staff Judge Advocate with whom he had worked closely in the past. The two officers had maintained a close professional association and friendship, and spoke with each other and exchanged faxes regularly on professional issues. The CINCLANTFLT Lieutenant accepted the offer, but upon receipt noticed that

portions of it were illegible. In order to obtain a better copy, she called the Officer in Charge, Naval Legal Service Office Detachment, Port Hueneme, who was reluctant to provide the document, despite the fact that it was one of the papers in a public court proceeding, to people who were merely curious about the case and had no official reason to have it. The CINCLANTFLT Lieutenant replied that when allegations relating to a command appear in the press, the command has a valid interest in ascertaining the basis, if any, of such allegations. The Officer in Charge agreed that this was a valid reason and, believing that he had received a reasonable request from the CINCLANTFLT staff, he faxed her a copy. Since the Officer in Charge viewed the call as a CINCLANTFLT request, he so informed Senior Chief Taylor's defense counsel.

The request for the document did not stem from Admiral Mauz. During the further inquiry by OPNAV staff, the Officer in Charge verified the CINCLANTFLT Lieutenant neither demanded a copy of the motion, nor stated that her call was at the personal request of Admiral Mauz. Moreover, the document was not shared outside the CINCLANTFLT Staff Judge Advocate's office. Since the document included no allegations of impropriety by Admiral Mauz or anyone in CINCLANTFLT, and had not been requested by Admiral Mauz or anyone else on his staff, there was no reason for the Staff Judge Advocate to provide the document to, or discuss in with, others.

There is simply no basis whatsoever for any claim that Admiral Mauz took a personal interest in the case involving Senior Chief Taylor. The facts as confirmed by thorough inquiry show the accuracy of Admiral Mauz' public statement categorically denying any such allegation. The communications by members of his staff were permissible and in no way alter this conclusion. There was no attempt or intent in any of these communications to affect the case.

I have sought to answer the GAP letter's claims candidly, thoroughly and accurately in order to assist the Committee in its deliberations on Admiral Mauz' confirmation to retire in his four-star grade. I believe strongly that there is no basis for the GAP claims and that Admiral Mauz' confirmation—and the assumption of command by his successor—should not be further delayed.

I am available at any time to discuss this matter further with you or to provide you any further information you desire. Please do not hesitate to call on me. I have sent a similar letter to Senator Thurmond.

Sincerely,

JOHN H. DALTON,
Secretary of the Navy.

CAMARILLO, CA.

Senator SAM NUNN,
Chairman, Senate Armed Services Committee,
Washington, DC.

DEAR SENATOR NUNN AND MEMBERS OF THE COMMITTEE: I am writing to address the inaccurate and misleading information provided to the committee concerning my case as it pertains to the retirement status of Admiral Henry Mauz. My primary concerns focus on the involvement of Admiral Mauz and his staff in charges (since dropped) that were brought against me while at Port Hueneme. I believe this involvement, and the Navy's obfuscation of the facts, provide more than enough reason why the committee should hold a full investigation into this matter, before bringing the matter to a vote.

Below is an outline of the most serious errors in the Navy's communications with the

committee. It is by no means comprehensive, and full committee investigation would flush out the full details.

I. MANNER BY WHICH MAUZ'S STAFF ACQUIRED DEFENSE PROCEEDINGS

Not only do the Navy responses differ from the actual chain of events, the accounts from Admiral Boorda and Secretary Dalton differ from each other concerning the same events.

Statement from Boorda letter:

"Subsequently, unbeknownst to either the senior Staff Judge Advocate of Admiral Mauz, a junior Staff Judge Advocate obtained a copy of the defense motion that was the basis for withdrawal of the charges, as well as a copy of the charge sheets, from a friend who was then Officer in Charge, Navy Legal Service Office, Port Hueneme. The Officer in Charge believed that in providing that documentation, he was responding to an official request from Admiral Mauz's staff and acting quite properly, he informed Senior Chief Taylor's military counsel of the actions he had taken to comply with the request. While these documents were shared with the senior Staff Judge Advocate he did not speak of them to any other staff member."

Statement from Dalton letter:

"With regard to receipt of a copy of the defense motion by a member of the office of the CINCLANTFLT Staff Judge Advocate, the GAP letter is incorrect in stating that this occurred prior to the call seeking clarification of the news article. I have reconfirmed the office of the CINCLANTFLT Staff Judge Advocate received the motion more than a week after the charges were withdrawn. This occurred when a Navy judge advocate assigned to an NCBC Port Hueneme tenant command called some of his lawyer colleagues to offer to send them copies of the document, which he found to be unique and very interesting from a professional perspective. One of these officers was an attorney in the office of the CINCLANTFLT Staff Judge Advocate with whom he had worked closely in the past. The two officers had maintained a close professional association and friendship, and spoke with each other and exchanged faxes regularly on professional issues. The CINCLANTFLT Lieutenant accepted the offer, but upon receipt noticed that portions of it were illegible. In order to obtain a better copy, she called the Officer in Charge, Naval Legal Service Office Detachment, Port Hueneme, who was reluctant to provide the document, despite the fact that it was one of the papers in a public court proceeding, to people who were merely curious about the case and had no official reason to have it. The CINCLANTFLT Lieutenant replied that when allegations relating to a command appear in the press, the command has a valid interest in ascertaining the basis, if any, of such allegations. The Officer in Charge agreed that this was a valid reason and, believing that he had received a reasonable request, he faxed her a copy."

The actual chain of events occurred as follows:

The junior Staff Judge Advocate contacted a friend of hers at Port Hueneme, a Lieutenant Wilson. Lieutenant Wilson approached Taylor's defense counsel supervisor, Lieutenant Tamboer, and asked for a copy of the defense proceedings. Lieutenant Tamboer refused the request. The junior Staff Judge Advocate contacted Lieutenant Tamboer directly and said it was a direct request from ADM Mauz. Lieutenant Tamboer then complied with the request.

II. ADMIRAL MAUZ'S INVOLVEMENT IN THE CHARGES AGAINST TAYLOR

Statement from Boorda letter:

"There was no influence on the case and, in fact, the charges had already been withdrawn at the time of the call."

Facts:

This statement is highly misleading. Although the extraordinarily high number of charges (48 total) were withdrawn at the time of the call, approximately two weeks later, Taylor was sent to an Article 32 hearing where he was re-charged.

In fact, the CINCLANTFLT Staff Judge Advocate called the Staff Judge Advocate for the Port Hueneme base, Lt. Cdr. Derrick Cole, to tell him that he was upset that the charges had been withdrawn against Taylor. Lt. Cdr. Cole assured the CINCLANTFLT Staff Judge Advocate that Taylor would be re-charged. This information is in the record of trial. The Navy withdrew charges, in all likelihood, because they were rightly concerned that if the case was brought before a judge, that judge would promptly dismiss the case.

Many of the key people involved in my case, who dispute the Navy's account of the chain of events, would be happy to provide the committee with statements or testify. Please contact me if I can be of any assistance. My work phone is: (805) 982-2007. My home phone is (805) 388-3915. My beeper number is: 1-800-482-3366, ext. 10397. I am at your service.

Very Respectfully,

GEORGE R. TAYLOR,
MACS (SW) USN.

CHIEF OF NAVAL OPERATIONS,
August 22, 1994.

Hon. SAM NUNN,
Chairman, Committee on Armed Services, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This letter responds to a recent undated letter from Senior Chief George R. Taylor, USN, to "Senator Nunn and Members of the Committee." Senior Chief Taylor's letter was passed from the Armed Services Committee Staff to the Navy Chief of Legislative Affairs on 19 August asking for "... the Navy's review of the letter and information therein."

This is the third in a series of letters concerning Senior Chief Taylor and the pending retirement confirmation of Admiral Henry Mauz, Jr., U.S. Navy. This most recent letter provides no new allegations or information that have not already been addressed in the prior two letters. Nevertheless, the following paragraphs will address in additional detail each of Senior Chief Taylor's allegations.

With respect to Part I of his letter, Senior Chief Taylor states that the accounts in my 27 July letter and the Secretary of the Navy's 9 August letter "... differ from each other concerning the same events." That is not correct. The Secretary's letter simply provided a more detailed description of the interactions between LT Hagerty-Ford (a junior staff judge advocate at CINCLANTFLT), LT Wilson (a legal officer at a Port Hueneme tenant command), and LT Tamboer (OIC Naval Legal Service Office Detachment, Port Hueneme).

The actual chain of events as stated in my 27 July letter and amplified in Secretary Dalton's letter is accurate. LT Wilson, a friend of LT Hagerty-Ford and a judge advocate assigned to a tenant command in Port Hueneme, called LT Hagerty-Ford to offer her a copy of the defense motion. When she received the copy with some illegible parts,

LT Hagerty-Ford asked LT Wilson to send a better copy. LT Wilson asked the OIC, LT Tamboer, for a better copy for this purpose, but LT Tamboer was reluctant to provide it for the reasons stated in Secretary Dalton's 9 August letter. LT Wilson so informed LT Hagerty-Ford, who then phoned LT Tamboer to explain her reason for requesting a copy. As stated in attachments 1 and 2, LT Tamboer and LT Hagerty-Ford agree that my previous letter and Secretary Dalton's letter accurately describe their phone conversation. Specifically, LT Hagerty-Ford did not say she was making a direct request from Admiral Mauz. In addition, her statement indicates she never met Admiral Mauz or ever discussed this or any other case with him.

The foregoing reaffirms that Admiral Mauz played no role in a staff member's request for a copy of the defense motion to dismiss Senior Chief Taylor's case.

With respect to Part II of Senior Chief Taylor's letter, my 27 July letter stating that there was no influence exerted on the case and, in fact, that the charges had already been withdrawn at the time of the call, is absolutely accurate and not misleading. CAPT Baggett (Staff Judge Advocate at CINCLANTFLT) called LCDR Cole after the case had been forwarded to COMNAVBASE San Diego for disposition. At the time of the call, LCDR Cole no longer had any influence on the outcome because of the withdrawal of the charges and the case's transfer to a new convening authority. CAPT Baggett states in Attachment 3 that he never called the new convening authority, who later recharged Senior Chief Taylor.

On the final page of his letter, under the section entitled "Facts", Senior Chief Taylor notes that approximately two weeks after the charges against him were withdrawn, new charges were preferred and sent to an Article 32 hearing. He fails to note, however, that this action was taken by a different convening authority, COMNAVBASE San Diego, after a review of Senior Chief Taylor's alleged misconduct and redrafting of charges against him based on his actions in November 1993 as a member of the Naval Construction Battalion Center, Port Hueneme, Security Force.

In his next to last paragraph, Senior Chief Taylor says that CAPT Baggett was "upset" that the charges had been withdrawn and that LCDR Cole assured CAPT Baggett that Senior Chief Taylor would be recharged. CAPT Baggett rejects this in Attachment 3. Moreover, there is no evidence in the record of the Article 32 investigation that supports Senior Chief Taylor's assertions. Secretary Dalton's letter accurately states that the purpose of Captain Baggett's call to LCDR Cole was to clarify information contained in a newspaper article.

The foregoing demonstrates again that Admiral Mauz played no role whatever in Senior Chief Taylor's case in California.

In summary, as stated in the Secretary's and my prior letters, Senior Chief Taylor's accusations are inaccurate and should not be allowed to further delay the confirmation of Admiral Mauz for retirement in the grade of Admiral, which he so deservedly has earned.

I am sending a similar letter to Senator Thurmond.

Very respectfully,

J.M. BOORDA.

GRAND RAPIDS, MI,
August 20, 1994.

TO WHOM IT MAY CONCERN: Regarding the call I received from Lieutenant Noreen

Hagerty-Ford of the CINCLANTFLT Staff Judge Advocate office in mid-April, the letters from the Chief of Naval Operations and the Secretary of the Navy to the Senate Armed Services Committee of July 27, 1994 and August 9, 1994, respectively, fairly and accurately describe my part in responding to her request. In April 1994, I was serving as Officer in Charge, Navy Legal Service Office, Port Hueneme. I have since left the Navy. My April discussion with Lieutenant Hagerty-Ford was about the purpose of her request for a copy of the notice filed by the defense in the Senior Chief Taylor case. She explained that Admiral Mauz was CINCLANTFLT. I knew the motion included allegations about the CINCLANTFLT/Bermuda matter and therefore understood the command (CINCLANTFLT) would want to know about the allegations made in this motion. I recall being very busy when she called and that it did not take long at all for me to make the judgment that it would be appropriate to send her a copy of the motion. I agreed she had provided a valid reason and, believing I had received a reasonable request from the CINCLANTFLT staff, I faxed her a copy and so informed Senior Chief Taylor's defense counsel.

JOHN TAMBOER.

NORFOLK, VA,
August 22, 1994.

TO WHOM IT MAY CONCERN: The letter of 27 July 1994 and Secretary of the Navy's letter of 9 August 1994 are correct in describing my actions in April 1994 in obtaining a copy of the defense motion in Senior Chief Taylor's case. I was first afforded the document by my friend, LT Wilson, whom I know from a previous duty station. The copy I got had some illegible parts, so I called LT Wilson to ask him to send me a better copy. LT Wilson said he would ask LT Tamboer for one. Later that day LT Wilson called me to say LT Tamboer was reluctant to send out copies of the document unless there was a reason for the person to have it. I told him I would call LT Tamboer and ask him for it myself. Just as Secretary Dalton's letter states, I told LT Tamboer that I was on the CINCLANTFLT staff and explained that when allegations are made about a command, as apparently had been made in this case, the command has a valid reason to know about those allegations. LT Tamboer said he was satisfied I had provided a valid reason and agreed to send me a copy. I did not demand the document. I had no reason to do that and I simply do not work that way. It was a short and business-like conversation. I did not say the request was from Admiral Mauz because it most certainly was not. In fact, I am a relatively junior member on a large fleet staff and have never actually met Admiral Mauz or discussed this or any other case with him. No one else asked me to get it either. I did not provide it to anyone outside my office.

LT. JAGC, USNR.

NORFOLK, VA,
August 20, 1994.

TO WHOM IT MAY CONCERN: I became the Staff Judge for Commander in Chief, U.S. Atlantic Fleet, in mid-February 1994. The purpose of my phone conversation on 4 April 1994 with the Staff Judge Advocate at Port Hueneme was exactly as stated in Secretary Dalton's letter of 9 August 1994 to the Senate Armed Services Committee. At no time during the conversation did I indicate the LCDR Cole in any way that I was upset that charges against Senior Chief Taylor stem-

ming from occurrences at Port Hueneme had been withdrawn. LCDR Cole explained that, contrary to an Orlando Sentinel newspaper article, the charges had not been dropped because of retaliation for being a whistleblower at Bermuda. He stated that the charges had been withdrawn and the case had been sent to another convening authority solely due to events at Port Hueneme which had prompted Senior Chief Taylor's defense counsel to raise a motion for dismissal based on vindictive prosecution. Upon being told the real reason for the withdrawal of the charges and transfer of materials pertaining to the case, I believed that the processing of the case had no connection with anything that had happened at Bermuda. The disposition of the investigation of Senior Chief Taylor had already been passed to a command in San Diego to determine independently at the time I talked with LCDR Cole. I had no further conversations with LCDR Cole and I never talked to anyone at San Diego about the case.

JOSEPH E. BAGGETT,
Capt. JAGC, USN.

Mr. NUNN. Mr. President, I know Senator THURMOND has been thoroughly involved in this nomination and I will yield for whatever remarks he would like to make.

I again urge our colleagues—I understand there are hours and hours being requested on this DOD bill. I do not mind that at all. But it is a little frustrating to come back and be told that there were going to be a lot of people wanting to speak on the bill today and there were a number of people who wanted to speak anywhere from 2 hours, 3 hours, and so forth, and have nobody here to speak on the bill.

That is our job and we will be here to do the job. I hope we can conclude this defense authorization before tomorrow afternoon. If there are several hours being requested for people to speak on it and we are here for hours this afternoon with no one speaking, the question is, is it going to cause us to delay tomorrow and not be able to take up other important matters of the Senate?

So I hope anyone who does want to make remarks on the DOD authorization bill would be able to come over and discuss that at this time.

In the meantime, I know Senator THURMOND has already made his statement on the DOD bill, but if he has any comments on the Mauz nomination, even though we are not officially on that nomination, it would probably be an efficient use of time if those could be made now.

Mr. THURMOND addressed the Chair. The PRESIDING OFFICER. The Senator from South Carolina.

Mr. THURMOND. Mr. President, I rise to support the nomination of Adm. Henry Mauz to retire in grade. Admiral Mauz has had a long and distinguished career spanning over 35 years of service during some of the most turbulent times in our Nation's history. He has commanded river boats in Vietnam, mighty ships of war, the U.S. 7th Fleet and is currently serving as Commander in Chief, U.S. Atlantic Fleet.

Senator NUNN, the distinguished chairman of the Armed Services Committee, has provided a detailed history of this nomination, so I will not repeat those details, except to reiterate that the Armed Services Committee received this nomination on the 10th of May and has been actively pursuing it ever since.

Mr. President, three allegations have clouded this nomination. The first concerns a trip Admiral Mauz took to Bermuda in November 1992. That incident was the subject of a television news show aired nationally and was thoroughly investigated. Although Admiral Mauz admitted to an error of judgment in this incident, Admiral Mauz was censured by the Vice Chief of Naval Operations for the appearance of impropriety as a result of this incident.

The second issue concerns allegations by Lt. Darlene Simmons that Admiral Mauz had not sufficiently protected her from reprisal in a verbal sexual harassment case.

Mr. President, Lieutenant Simmons concedes that Admiral Mauz was not involved in the incident and that he directed his Special Assistant for Women's Affairs, Commander Miller, to investigate the incident. The investigation led to the offending officer's removal from the ship. Also, Admiral Mauz intervened on behalf of Lieutenant Simmons to extend her tour of duty and her reassignment.

Lieutenant Simmons also believes the admiral let her down by not being more active in protecting her from what she felt to be reprisal in her fitness report.

Mr. President, after extensive review of the allegations, the Armed Services Committee found that Admiral Mauz responded correctly and positively to the incident and did not suppress evidence, cover up allegations, or fail to take corrective action. He intervened with the Chief of Naval Personnel on behalf of Lieutenant Simmons and ensured that she was provided appropriate action in her case.

The third issue involves an allegation from Senior Master Chief Taylor that Admiral Mauz used command influence to punish him for blowing the whistle on the admiral's trip to Bermuda. Master Chief Taylor was the individual who reported Admiral Mauz' trip to NAS Bermuda. Later, Master Chief Taylor had charges brought against him arising from actions while he was serving in California almost a year after leaving Bermuda. The charges were investigated and subsequently dismissed, however, Master Chief Taylor alleged that Admiral Mauz exercised undue command influence in the case in reprisal for the whistle blowing. The Department of the Navy investigated Master Chief Taylor's allegations and determined that there were no communications between Admiral Mauz, or anyone on his staff, with

those who brought the charges against Taylor.

Mr. President, I join Chairman NUNN in urging my colleagues to vote in favor of retiring Admiral Mauz in the grade of admiral. He is a fine officer who deserves to retire as an admiral.

Mr. NUNN. Mr. President, again, I urge any of our colleagues who would like to speak on the DOD authorization bill to come over and speak now. We have time this afternoon and we may run into other matters tomorrow, so I hope they will come over and speak.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1995 AND MILITARY CONSTRUCTION AUTHORIZATION ACT FOR FISCAL YEAR 1995—CONFERENCE REPORT

The Senate resumed consideration of the bill.

REACTIVATION OF THE SR-71 RECONNAISSANCE AIRCRAFT

Mr. BYRD. Mr. President, I am very pleased that the conference committee on the DOD authorization bill has chosen to accept my proposal to reactivate a small, three-plane contingency group of SR-71 reconnaissance aircraft. The SR-71 will be able to provide a timely, flexible, unique reconnaissance capability, at the call of our CINC's worldwide, which is not now available. I am also supportive of a range of development vehicles, unmanned aerial aircraft, or "UAV's," which eventually can partly make up for the gaps in our intelligence which will be filled by the SR-71. But those vehicles are years away from fielding, and in the meantime this contingency group can provide invaluable special radar and optical intelligence that would not otherwise be available by any other means now in America's inventory, including our satellites and other aircraft such as the U-2. I say it is unique because it can defeat deception, as satellites cannot, and it can go anywhere, virtually invulnerable, as our other aircraft cannot.

I believe that the previous administration made a mistake in prematurely retiring this system, in the hope that systems then under development would replace it. But those systems have not come along, and the proposal that I have made would be a frugal, stripped down, modest, contingency group, not a full-fledged 12-plane squadron as was the heart of the previous program. So we have the capability reactivated without high cost, a reinvestment in a proven capability that is well worth the money—particularly in comparison to the cost of the billions that we intend to invest in new systems that may, I emphasize may, be able to take up this intelligence task 5 to 10 years or so down the road.

I understand that there are forces in the Air Force and the Pentagon op-

posed to this modest reactivation proposal. I suspect that their opposition is based on the fear that we may discover that the very expensive new systems they want to build might be jeopardized by this action. That is not the intent of the proposed new contingency group, but I am all for saving money on redundant and wasteful defense technologies, and if it is redundancy that we are buying, then we need to take a good second look at the billions planned for spending on new technologies. If the buzzword in the Pentagon is to spend money on new toys rather than using effectively and frugally the ones we have already paid for, then the American people would expect us to take a hard, close second look at the new spending plans.

Mr. President, I say it was a mistake for the Bush administration to scrap the SR-71 prematurely and open up a gap in our reconnaissance capabilities. What were their reasons for scrapping this important capability?

The primary reason given in 1989 and 1990 for terminating the SR-71 program was cost. The operating costs for the 12-plane fleet were averaging \$250 million each year, for a system that was not then being creatively or effectively employed. This reasoning seems faulty, however, in light of the enormous sums being spent on a new headquarters building for the National Reconnaissance Office [NRO], the agency that builds and operates the intelligence community's satellite systems. To terminate an operational system that to this day has not been surpassed in capability on the basis that it is too expensive to operate, while spending over \$300 million just to house the NRO, not on actual intelligence collection systems, is like building the Taj Mahal of Garages when you just sold the car that was to be parked inside. This wasteful, extravagant, and secretive spending is more than three times the amount needed to keep a contingency capability of SR-71 alive to support military commanders in the field.

Creating the 3-plane contingency force at a cost of \$100 million, and maintaining it for some \$50 million per year, which includes 1 month of operations with 10 mission flights, is far less expensive than developing and fielding new aircraft or satellite systems. After carefully studying the costs of this small program, and after including cost-reducing measures such as basing the contingency force with the NASA-operated research SR-71's in order to share common equipment, I am confident that this contingency group can be reactivated for \$100 million. Indeed, in the DOD appropriations bill, the costs for reactivating the program have been capped at that amount.

A second reason given for the termination of the SR-71 program was that the system was no longer needed, since it was not being used well and newer

systems were coming. We now know that the new systems have either been canceled or are still some years off. I concede that the SR-71 was not being effectively employed in the 1980's. But now that the static cold war era is over, the blossoming of smaller regional and ethnic conflicts around the globe has created many new requirements for conflict monitoring and humanitarian crisis planning. These requirements could be efficiently supported by limited numbers of SR-71 aircraft flying a small number of well-planned missions. One of the lessons learned from the Persian Gulf War was that the SR-71 was needed to create maps and to monitor activity over large areas. Civilian satellite systems were pressed into service to support humanitarian air drops of food in Bosnia in 1993, but the greater resolution and finer detail achievable by the SR-71 cameras might have made greater precision in air drops achievable. Similar creative use of the SR-71 could support humanitarian efforts in Rwanda and Zaire without drawing national collection systems away from other areas of interest.

Finally, opponents of the SR-71 suggest that America's political authorities lack the will to use the SR-71 to overfly hostile territory. It is true that in 1991, a political decision was made not to overfly Iraq, despite the potential intelligence that might have been gathered for the United States and her allies. I do not believe that one decision, taken by one administration, should forever tie the hands of future administrations. It is far better for our national leaders to have the instrument at hand, to use if necessary, than to deny them the opportunity to use it by assuming that they will never have the political will to overfly a nation if our intelligence needs, and our combat forces at risk, demand it. I applaud the decision made by the conference committee to provide this contingency force, and to keep this tool in our intelligence arsenal.

Mr. WALLOP. Mr. President, I rise to express my deep concern regarding an ill-considered and dangerous provision contained in the defense authorization conference report.

Section 1012 would grant immunity under U.S. law to agents and employees of the United States and foreign countries engaged in interdiction of aircraft suspected of illicit drug trafficking. This provision condones the shoot-down of civil aircraft and all but exempts American and foreign agents from responsibility under U.S. law if an innocent aircraft is accidentally shot down.

This provision was passed in the Senate by voice vote without the benefit of hearings and in the face of significant opposition by affected organizations. Yet it reverses well-established U.S. policy, sets troubling precedents for

U.S. and international law and contradicts key international conventions governing civil air safety—conventions promoted by the United States and approved by this body.

It has been argued that this provision is needed so that we can continue assisting Colombia and Peru in their fight against illicit drug trafficking. In fact, this provision is only needed if the United States is willing to condone shoot-down policies of foreign countries.

Although the United States has provided intelligence to support Colombian and Peruvian drug interdiction efforts for years, circumstances surrounding this assistance have now dramatically changed. Both countries have adopted policies of shooting down civil aircraft suspected of illicit drug trafficking. Given this situation, the United States faced a choice: either not participate in such shoot-downs, seek to dissuade Colombia and Peru to abandon their shoot-down policies, or seek an exemption from United States law to allow us to participate in civil aircraft shoot-downs.

Even if we accept the administration's position that United States law prohibits United States officials from assisting foreign countries with drug interdiction if they adopt shoot-down policies, it is far from clear that section 1012 is the correct solution to the dilemma created by Colombia and Peru. By accepting their shoot-down policies without any serious effort to dissuade them, the United States has allowed Colombia and Peru to drive United States policy and thereby to shape United States law. This is unacceptable on its face. Instead, the United States should have made it clear to these countries that shooting down civil aircraft is unacceptable under any circumstances short of a direct military threat.

In choosing to accept Colombia's and Peru's shoot-down policies, the administration has opened up a number of dangerous precedents. Perhaps most troubling, section 1012 blurs the line between law enforcement and national defense. By elevating drug trafficking to the level of a threat to national security—justifying the use of deadly force against civil aircraft—section 1012 fundamentally departs from accepted standards of international law and long-held U.S. policy.

This is not a new issue. Four years ago, when faced with a similar proposal, the Bush administration stood firm in opposition to any law that would involve the United States in the shoot-down of civil aircraft.

In testimony before a House subcommittee in 1990, the Transportation Department's general counsel, Mr. Phillip D. Brady, made the following observations:

It has been the position of the United States and the world aviation community

that international law prohibits the use of weapons against civilian aircraft not posing a clear and present danger, in the military sense, to the security of a nation.

For many years we have opposed, for both legal and safety reasons, other countries' occasionally announced intentions to shoot at civil aircraft. Once such a practice begins, it could have dangerous and widespread consequences that could affect the safety of innocent people worldwide. As the world leader in civil aviation, the United States would have more to lose than any other country in the development of such a practice.

But now, after all these years, the Clinton administration has decided to overturn these precedents, and without any serious debate or discussion. The administration's own legal analysis highlights the import of such a departure. As this analysis points out: "There are of course numerous policy implications from moving away from the existing 'bright line' standard that only self-defense can justify a shoot-down." These implications, however, have received only minimal consideration, and virtually none by Congress.

In 1989, the Senate debated the issue of civil shoot-down, but strictly in the context of U.S. drug enforcement efforts. At that time, the Senate voted twice on amendments to authorize U.S. Federal drug enforcement agencies to shoot at aircraft suspected of drugrunning. Although the first amendment passed on August 1, 1989, it was later dropped in conference. I voted against this amendment.

Two months later, a revised version of this amendment was considered, and tabled. I voted against the tabling motion at that time for several reasons. First and foremost, the revised amendment contained stringent conditions and safeguards that would have made it almost impossible for a shoot-down to occur, let alone one involving innocents. And second, the amendment would only have indemnified U.S. drug officials. It would not have involved the U.S. military in the shoot-down policies of foreign countries. And it would not have made a national security argument to justify such actions. As it turns out, the Senate rejected even this revised approach.

Today, I believe that abandoning our unconditional opposition to shooting down civil aircraft sends a very bad message, even if the rationale—interdicting the flow of illicit drugs—is a worthy one. By making a national security argument to justify such activity, we blur a line that was previously clear. By offering this exception to current practice, we invite others to do the same, perhaps for far less worthy reasons. Recall, after all, that the Soviet Union used a national security argument to justify the shoot-down of KAL 007 in 1983.

The only thing the families of the KAL 007 victims ever got was a promise from the United States and the international community that we would

never condone, under any circumstances, the deliberate shutdown of a civilian aircraft. The law that the Clinton administration now seeks to undo is the only tangible compensation that these families ever received.

If section 1012 is enacted, we will virtually eliminate legal recourse for the victims of an accidental shutdown in Colombia and Peru. By passing this law, we will encourage Colombia and Peru to become more aggressive in implementing their shutdown policies. Accidents happen all too often without American encouragement.

Under section 1012, once the President certifies that "the country has appropriate procedures in place to protect against the loss of innocent life in the air and on the ground in connection with interdiction" the United States is free to participate in such shutdowns. As a practical matter, no country has an adequate degree of protection against such accidents. Recall that the United States military itself—with the best procedures in the world to protect against the loss of innocent life—has been responsible for such accidents in the past. Why should we have greater confidence in Colombia and Peru? And why should we encourage them in this regard?

Mr. President, I am not alone in expressing concern about this provision. A number of key organizations directly affected by section 1012 have also voiced strong opposition. These concerns have been all but ignored by the administration and by Congress.

The Aircraft Owners and Pilots Association [AOPA] and the National Business Aircraft Association [NBAA] have repeatedly attempted to convince the administration to seek an alternative to participation in a civil shutdown policy. The American Association for Families of KAL 007 Victims has also expressed outrage at this provision. For them, there is no excuse to condone, let alone participate in, a policy that involves the deliberate shutdown of civil aircraft. I ask unanimous consent that letters from each of these associations be included in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

AIRCRAFT OWNERS AND
PILOTS ASSOCIATION,
Frederick, MD, June 23, 1994.

Hon. ROBERT S. GELBARD,
Assistant Secretary, U.S. Department of State,
Washington, DC.

DEAR MR. GELBARD: The Aircraft Owners and Pilots Association will vigorously oppose any action by the United States government which would condone or encourage the use of deadly force against civilian aircraft.

We represent the interests of 325,000 members nationwide who take advantage of general aviation aircraft to fulfill their personal and business transportation needs. AOPA members are law-abiding citizens who share the Clinton Administration's desire to curb the use of general aviation aircraft as a tool in the illegal drug trade. But condoning the

use of deadly force against civilian aircraft is irresponsible and fundamentally wrong.

Those in Washington who applaud the so-called "shutdown" policies of the Colombian and Peruvian governments cannot have forgotten that two civilian airliners were shot down in recent years after they were mistaken for military aircraft. Trained military personnel using the most advanced equipment have demonstrated with tragic results that it is possible for a relatively slow-moving airliner to be mistaken for a fast-moving military jet fighter. Considering these horrifying events—one of which involved our own armed forces—how can anyone feel assured that a twin engine Cessna carrying Members of Congress on an overseas fact-finding mission will never be mistaken for an identical twin engine Cessna full of drug smugglers?

There are obvious alternatives to the use of deadly force which are equally effective, and the consequences of mistake are far less likely to result in injury or death. For example, we as pilots know that whatever goes up must come down. Aircraft suspected of drug smuggling activity are going to return to solid ground, one way or another. Utilizing the same modern technology and superior intelligence information which makes it possible to identify a suspected aircraft in the first place, it is merely necessary to continue tracking such an aircraft to its point of destination and apprehend the occupants and their cargo on the ground.

Because of potential multi-national jurisdictional issues, we recognize that additional international agreements might be required to facilitate this approach. We are confident that the State Department is capable of securing the necessary cooperation of other nations in the war on drugs.

And surely any foreign government with sufficient resources and firepower to shoot unarmed civilian aircraft out the sky also has the wherewithal to arrest criminals once they have landed. Aside from reducing the possibility of tragic mistake, it seems to us that such an approach has the added advantage of preserving evidence and potential witnesses who may be able to help lead authorities to their superiors in an international drug smuggling cartel.

We commend those elements of the Clinton Administration which news reports indicate are opposed to encouraging the use of deadly force against civilian aircraft. In the zeal to curtail the debilitating presence of illegal drugs in our society, the United States as the leader of the free world must exercise common sense and maintain its adherence to fundamental moral and legal concepts.

We would appreciate an opportunity to meet with you to discuss our concerns. In the meantime, thank you for considering our views.

Sincerely,

PHIL BOYER,
President.

AOPA LEGISLATIVE ACTION,
Washington, DC.

OPPOSE SHOOTING DOWN CIVILIAN AIRCRAFT

AOPA Legislative Action is opposed to any action by the United States government which would encourage the use of deadly force against civilian aircraft. Language included in the Senate version of the defense authorization bill would condone the use of deadly force against civilian aircraft by Colombia and Peru, which seek to use U.S. intelligence information for the purpose of shooting down aircraft suspected of illegal drug smuggling activity.

We represent thousands of pilots nationwide who take advantage of general aviation

aircraft to fulfill their personal and business transportation needs. Our members are law-abiding citizens who share the desire of lawmakers to curb the use of general aviation aircraft as a tool in the illegal drug trade. But condoning the use of deadly force against civilian aircraft is fundamentally wrong.

Those who are attracted by the so-called "shutdown" policies of the Colombian and Peruvian governments must remember that two civilian airliners were shot down in recent years after they were mistaken for military aircraft. Trained military personnel using the most advanced equipment have demonstrated with tragic results that it is possible for a relatively slow-moving airliner to be mistaken for a fast-moving military jet fighter. In addition, the Defense Department recently disclosed details of the cascading series of communications failures which resulted in the accidental shooting down of two U.S. Army helicopters by American F-15 fighters which mistook them for Iraqi aircraft. The Iraqi incident illustrates the potential for tragedy which exists any time deadly force is applied, let alone against civilian aircraft.

Considering these horrifying events—some involving our own armed forces—it is impossible to assure that a twin engine Cessna carrying Members of Congress on an overseas fact-finding mission will never be mistaken for an identical twin engine Cessna full of drug smugglers.

There are obvious alternatives to the use of deadly force which are equally effective, and the consequences of mistake are far less likely to result in injury or death. For example, using the same modern technology and superior intelligence information which makes it possible to identify a suspected aircraft in the first place, it is merely necessary to continue tracking such an aircraft to its point of destination and apprehend the occupants and their cargo on the ground.

If the United States desires to continue sharing intelligence and providing other assistance to Colombia and Peru, it should seek assurances from the governments of those countries with respect to their shutdown activities. Preferably, Colombia and Peru would assure our government that they would engage in no more shutdowns of civilian aircraft. A less desirable alternative would be an assurance that Colombia and Peru would make no use of information or other aid provided by the United States in effecting shutdowns.

NATIONAL BUSINESS
AIRCRAFT ASSOCIATION, INC.,
Washington, DC.

NBAA DEEPLY CONCERNED WITH CLINTON ADMINISTRATION PROPOSAL TO ASSIST FOREIGN GOVERNMENTS WHICH HAVE "SHOOTDOWN" DRUG INTERDICTION PROGRAMS

June 30, 1994, Washington, DC.—The National Business Aircraft Association (NBAA) expressed deep concern today with the announcement late last week of President Clinton's proposal to allow U.S. officials to provide tracking data to foreign governments that want to shoot down suspected drug-smuggling flights.

"The President's proposal, which requires Congressional approval, raises serious aviation safety issues," said NBAA President Jack Olcott. "We agree with the protocol drafted in 1984 by the International Civil Aviation Organization (ICAO) which stated that, in part, '*** every State must refrain from resorting to the use of weapons against civil aircraft in flight and that, in case of

interception, the lives of persons on board and the safety of aircraft must not be endangered.' The potential for tragic error resulting in the loss of innocent lives is too great to warrant support for the 'shoot down' approach to drug interdiction. In fact and unfortunately, recent history has proven this point," he continued.

"Furthermore, we are proud of the excellent record of NBAA Member Companies with regard to the drug issue. To our knowledge, no NBAA Member Company aircraft has ever been found to have been involved in the smuggling of drugs." He added, "Whether it be Colombia, Peru, or any other country, no foreign government should receive a signal from the United States Government that the 'shoot down' approach is acceptable. And, specifically, NBAA is deeply concerned with the added risk to international flight operations of NBAA Member Companies as they endeavor to compete in the global marketplace should this proposal be approved by Congress."

Olcott concluded, "It is our sincere hope that President Clinton will reconsider his decision and that Congress will reject the proposal if he fails to."

NBAA represents the aviation interests of approximately 3,400 companies which own and operate general aviation aircraft as an aid to the conduct of their business, or are involved with business aviation. NBAA Member Companies earn annual revenues in excess of \$3 trillion—a number that is about half of the Gross National Product—and employ more than 16 million people worldwide.

THE AMERICAN ASSOCIATION FOR
FAMILIES OF KAL 007 VICTIMS,
New York, N.Y., August 15, 1994.

Subject: S-2182.

Hon. MALCOLM WALLOP,
U.S. Senate, Russell Senate Office Building,
Washington, DC.

DEAR SENATOR WALLOP: We just became aware of the above Bill which we understand is up for a vote.

Section 1012 would grant immunity to authorized employees and agents of the United States and of foreign countries engaged in interdiction of aircraft used in illicit drug trafficking.

We urge you to vote against this amendment to Bill S. 2182.

Eleven years ago we lost 269 of our loved ones precisely because Korean Airlines Flight 007 was interdicted for security reasons by the then Soviet authorities.

By passing this amendment we would set indeed a bad example to the world allowing the destruction of civilian aircraft. In fact passage of this bill would encourage drug traffickers to fill their planes with civilians, and dare our authorities to shoot them down. How would we know who are the innocent and who are the guilty passengers on such planes?

It cannot be the policy of our Government to grant anybody immunity for a decision to terminate a civilian flight, for whatever reason.

Thank you for your attention.

Respectfully,

HANS EPHRAIMSON-ABT,
Chairman.

Mr. WALLOP. Mr. President, those who oppose section 1012 do not want U.S. military personnel or other U.S. Government employees to be liable under U.S. law for merely doing their assigned duties. Nor do they want the United States to be soft on drug traf-

ficking. What they are saying is that U.S. participation in a civil aircraft shutdown policy is not the only alternative and certainly not the best one. Unfortunately, the alternatives have not even been considered by Congress.

Given the legitimate concerns that have been raised, and the fact that section 1012 overturns decades of U.S. policy, it is irresponsible at best for Congress to pass this section without hearings and full debate. This is not a slight modification. It is a large hole in U.S. policy and international practice.

Mr. President, I realize that the Senate is unlikely to defeat the defense authorization conference report based solely on this provision. I, for one, however, will vote against this conference report largely as a result of this provision. I hope that it will never be implemented and that in the future the Congress will come to its senses and rethink this dangerous approach.

REGARDING THE THEATER AIR CONTROL
IMPROVEMENT (TACSI).

SMITH. Mr. President, I wonder if I might engage the distinguished chairman and ranking member of the Armed Services Committee in a brief colloquy. It is my understanding that the conferees approved a \$7.6 million reduction to the TACSI program, despite the full funding of the budget request for this program in both the House and Senate authorization bills.

Mr. NUNN. The Senator from New Hampshire is correct.

Mr. SMITH. I recognize the need to reduce spending wherever possible, but I am concerned that this cut may produce unintended harm to the Air Force Mission Support System [AFMSS] program, which is the mission, planning portion of the TACSI Program. As my colleagues know, AFMSS consolidates many different and costly mission planning systems into one standard system, consistent with the policy of establishing migration systems in defense procurements. I fear that a reduction of this nature will negatively impact our operational warfighting capability.

Could the distinguished chairman and ranking member comment on this issue?

Mr. NUNN. I would be happy to respond. I am aware of the importance of the AFMSS Program, and share my colleague from New Hampshire's commitment to preserving our Nation's warfighting capabilities. I can assure the Senator that, while the conferees did strive to achieve budget savings, it was not the intent of the conferees to reduce funding for the AFMSS portion of the TACSI Program.

Mr. THURMOND. The distinguished chairman is correct. The reduction of \$7.6 million was not done with any prejudice toward the AFMSS Program. Rather, it was an effort on the part of the conferees to avoid creating so-called hollow budget authority, since

the House and Senate Defense appropriations bills each reduced the overall funding level for the TACSI Program.

Mr. SMITH. I thank my colleagues for this clarification, and for their support of this important program.

Mr. LIEBERMAN. Mr. President, I am pleased to have been a part of the conference with the House of Representatives on the fiscal year 1995 Defense authorization bill and to have worked under the able leadership of the distinguished chairman of the Senate Armed Services Committee, Senator NUNN. I have advocated for some time now that the Senate should enact a law which would require the United States to lift unilaterally the arms embargo imposed on Bosnia. The amendment which the minority leader, Senator DOLE, and I offered to the Defense authorization bill when it was on the floor on July 1, 1994. That amendment failed by a 50-to-50 tie vote. A Nunn-Mitchell amendment expressed a sense of the Congress on this subject; this amendment was passed with a 52 to 48 vote. The House of Representatives entered conference with an amendment similar to the Dole-Lieberman amendment which had passed the House with a 66-vote margin.

During the authorization conference, I worked to achieve compromise language which would have required unilateral lifting of the embargo consistent with both Dole-Lieberman and the House position. The chairman of the Armed Services Committee offered an innovative and thoughtful proposal which attempted to bridge the gap between the two positions. I felt that this proposal took important steps with regard to the arms embargo, but it stopped short of requiring, as the last step of the process it established, that the President unilaterally lift the embargo if efforts to attain approval of the U.N. Security Council for a multilateral lifting failed. Ultimately, the efforts of those of us in the conference who favored adding to it a unilateral lifting of the embargo failed and the language offered by the Senator from Georgia was accepted as the final conference language by the conferees on August 10.

While I supported and signed the conference report on the Defense authorization bill, I am making this statement so that the record accurately reflects my concern over the final language adopted on Bosnia by the conference.

I should note that there have been subsequent developments on this issue. During consideration of the Defense appropriations bill on August 11, 1994, I joined once again with the Senate Republican leader and offered an amendment requiring the unilateral lifting of the arms embargo no later than November 15, 1994. This amendment was agreed to by the Senate by a vote of 58 to 42. An amendment by Senators NUNN

and MITCHELL which was identical to the language agreed to in the Defense authorization conference was also agreed to, by a vote of 56 to 44. Consistent with the position I took in conference, I voted for the amendment on August 11 because I believe it provides the necessary preliminary steps to a unilateral lifting of the embargo as required by the Dole-Lieberman amendment.

Mr. MITCHELL. Mr. President, the Senate has now considered the conference report on the Department of Defense authorization bill. This is an important measure, although it is relatively noncontroversial, and I anticipate, when we finally have a vote on it, it will be approved by a substantial margin.

It had been my hope that the Senate would complete the debate on this measure today, and that we could have a vote tomorrow morning. We then were asked by our Republican colleagues not to have any votes tomorrow until after the respective party lunches and conferences, and I therefore agreed to that. I announced earlier today in response to that request that there would be no votes prior to 2:30 tomorrow.

We then were further asked for additional time to permit Senators who were not present today to be present tomorrow to debate that Department of Defense authorization bill, and I have agreed to that. The time requested was approximately 4 hours, and if we come in at 10 and have the usual recess for the luncheon period, the vote would then occur at about 4:30.

Accordingly, Mr. President, I now ask unanimous consent that the vote on the Department of Defense authorization bill occur at 4:30 p.m. tomorrow, and that the time prior to that be equally divided between the two parties for debate on the matter in the usual form.

Mr. MCCONNELL addressed the Chair.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. MCCONNELL. Mr. President, I am going to have to object, but I do want to say to the leader that we are hopeful we can acquire approval to have the vote some time tomorrow afternoon. It is my understanding that Senator McCAIN will be here at 10 o'clock in the morning. It will be a debate to begin at 10 o'clock and he will be here to discuss the pending matter.

The PRESIDING OFFICER. Objection is heard.

Mr. MITCHELL. Mr. President, I regret that we were not able to get the agreement. I hope that we will be able to tomorrow, that we will be able to vote on this matter tomorrow. It is an important bill on which we must complete action.

INTERSTATE BANKING EFFICIENCY ACT

Mr. MITCHELL. Mr. President, another bill on which action must be completed is the conference report on the Interstate Banking Act. I announced prior to the recess, that is to say, several weeks ago, that this was a matter on which I intended to try to proceed. We are now in the position where we do not know whether or not cloture will be required. There has been a number of objections made by several Senators, and it has been my intention to proceed to that bill this evening for the purpose of filing cloture so that if we are unable to bring this conference report up tomorrow or Wednesday morning, that the cloture motion will ripen and we would have a vote on whether or not to proceed to the bill on Wednesday morning. I frankly hope we could get agreement to vote on cloture tomorrow but that would require consent.

Therefore, Mr. President, I now ask unanimous consent that the Senate proceed to the conference report accompanying H.R. 3841, the Interstate Banking Efficiency Act.

Mr. MCCONNELL. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. MITCHELL. Mr. President, I move to proceed to the conference report accompanying H.R. 3841, the Interstate Banking Efficiency Act.

Mr. MCCONNELL. Mr. President, I ask for the yeas and nays on the motion to proceed.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

Mr. MITCHELL. Mr. President, I ask unanimous consent that the vote on the motion to proceed to H.R. 3841, the Interstate Banking Efficiency Act, occur at 2:30 p.m. tomorrow.

The PRESIDING OFFICER. Is there objection?

Mr. MCCONNELL. Mr. President, reserving the right to object.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. MCCONNELL. I do not object.

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

Mr. MITCHELL. Accordingly then, Mr. President, a vote will occur at 2:30 p.m. tomorrow on the motion to proceed to the Interstate Banking Efficiency Act.

I want to make a comment on what has just transpired.

My purpose in wanting to have the cloture motion filed this evening was to have the cloture vote on Wednesday, because, as we all know, the Senate will go into recess on Wednesday at about 2 p.m. because of the Jewish holidays.

Now, I had previously announced that there would be no votes today,

Monday, in response to a number of requests from Republican and Democratic Senators. And so what has just occurred is that because I accommodated several Senators in announcing, at their request, that there not be votes today, I have been put in the position where that is now being used to prevent progress on the bill so that we could not get the motion to proceed to the Banking Act this evening.

That means, since it will not be until tomorrow that we can take that up and file the cloture motion, and we have to break on Wednesday for the Jewish holidays, we will not be able to get to that cloture vote until next week. And so a whole week will have been consumed because of the maneuver that has just occurred.

I find myself in a position where, having accommodated the requests of a number of Senators, I am now being penalized in trying to move forward on the legislation that the Senate has to act on because of that accommodation.

There is not anything I can do about it now, but I will say to Senators that it certainly does not enhance the prospects for further accommodation of this type on my part. I want to be as cooperative as I can with as many Senators as possible, but when some of the very people who make the request for accommodation then turn around and use that accommodation as a way of preventing action, or delaying action, it is very difficult to accept and will obviously have to be a factor in connection with future requests for accommodation.

Mr. President, as of now, the one vote we have scheduled tomorrow is on a motion to proceed to the Interstate Banking Efficiency Act. That is a non-debatable motion, and a vote has been set for 2:30. It is my intention to file a motion to invoke cloture on that matter immediately following that vote, if in fact we have not got the matter resolved by then and cannot proceed to final passage of that measure. We will also attempt to complete action on the Department of Defense authorization bill some time tomorrow, and I hope that the suggested cooperation which was mentioned earlier is forthcoming in that regard.

MORNING BUSINESS

LINCOLN COUNTY, MT, PUBLIC LANDS TRANSFER ACT

The text of the bill (S. 528) to provide for the transfer of certain U.S. Forest Service Lands located in Lincoln County, MT, to Lincoln County in the State of Montana, as passed by the Senate on August 25, 1994, is as follows:

S. 528

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 "Lincoln County, Montana, Lands Transfer Act of 1994".

SEC. 2. CONVEYANCE OF PROPERTY.

(a) As soon as practicable, but in no event not later than 180 days after the date of enactment of this Act, the Secretary of Agriculture (hereinafter the "Secretary") shall convey, without consideration, all right, title, and interest of the United States to the following lands located within the boundaries of the Kootenai National Forest, Montana, to Lincoln County, Montana—

(1) approximately 30 acres, as generally depicted on the map entitled "Kootenai National Forest Lands—Libby Junior High School" dated August 1994;

(2) approximately 2 acres, as generally depicted on the map entitled "Kootenai National Forest Lands—Boyd Cemetery" dated August 1994;

(3) approximately 27.68 acres, as generally depicted on the map entitled "Kootenai National Forest Lands—Yaak Ambulance Barn" dated August 1994;

(4) approximately 170 acres, as generally depicted on the map entitled "Kootenai National Forest Lands—Libby Landfill" dated August 1994;

(5) approximately 11 acres, as generally depicted on the map entitled "Kootenai National Forest Lands—Eureka Administration Site" dated August 1994; and

(6) approximately 99.5 acres, as generally depicted on the map entitled "Kootenai National Forest Lands—Old Libby Airport" dated August 1994.

(b) As soon as practicable after the date of enactment of this Act, the Secretary shall convey, without consideration, the timber and mineral rights to approximately 182.04 acres at the new Libby Airport, as generally depicted on the map entitled "Kootenai National Forest Lands—Timber and Mineral Rights Transfer at Libby Airport" dated August 1994, to Lincoln County, Montana.

(c) If the lands referred to in subsection (a) cease to be used for public purposes, such lands shall revert to the United States: *Provided*, That the lands shall not revert if the Secretary determines that such lands, or any portion thereof, have become contaminated with hazardous substances (as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 and following)).

SEC. 3. RELEASE.

Upon the transfer of any lands or interests therein identified in section 2 of this Act to Lincoln County, Lincoln County shall release the United States from any liability for claims relating to such lands or interests therein.

SEC. 4. MAPS.

The maps referred to in this Act shall be on file and available for public inspection in the Office of the Chief of the Forest Service, in Washington, D.C.

BETTER NUTRITION AND HEALTH FOR CHILDREN ACT

The text of the bill (S. 1614) to amend the Child Nutrition Act of 1966 and the National School Lunch Act to promote healthy eating habits for children and to extend certain authorities contained in such acts through fiscal year 1998, and for other purposes, as passed by the Senate on August 25, 1994, is as follows:

S. 1614

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the "Better Nutrition and Health for Children Act of 1994".

(b) **TABLE OF CONTENTS.**—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—SCHOOL LUNCH AND RELATED PROGRAMS

Sec. 101. Delivery of commodities.

Sec. 102. Combined Federal and State commodity purchases.

Sec. 103. Nutritional requirements.

Sec. 104. Elimination of whole milk requirement.

Sec. 105. Use of free and reduced price meal eligibility information.

Sec. 106. Automatic eligibility of Head Start participants.

Sec. 107. Use of nutrition education and training program resources.

Sec. 108. Special assistance for schools electing to serve all children free lunches or breakfasts.

Sec. 109. Definition of school.

Sec. 110. Reimbursement for meals, supplements, and milk under certain programs contingent on timely submission of claims and final program operations report.

Sec. 111. Organically produced agricultural products.

Sec. 112. Food and nutrition projects.

Sec. 113. Summer food service program for children.

Sec. 114. Commodity distribution program.

Sec. 115. Child and adult care food program.

Sec. 116. Homeless children nutrition program; demonstration program for the prevention of boarder babies.

Sec. 117. Pilot projects.

Sec. 118. Food service management institute.

Sec. 119. Compliance and accountability.

Sec. 120. Duties of the Secretary of Agriculture relating to nonprocurement debarment under certain child nutrition programs.

Sec. 121. Nutrition education promotion program.

Sec. 122. Information clearinghouse.

Sec. 123. Guidance and grants for accommodating medical and special dietary needs of children with disabilities.

Sec. 124. Inspection of juice and juice products.

Sec. 125. Administration of nutrition programs.

TITLE II—SCHOOL BREAKFAST AND RELATED PROGRAMS

Sec. 201. School breakfast program.

Sec. 202. State administrative expenses.

Sec. 203. Competitive foods of minimal nutritional value.

Sec. 204. Special supplemental nutrition program.

Sec. 205. Nutrition education and training program.

TITLE III—OTHER RELATED PROVISIONS

Sec. 301. Distribution of commodities on certain Indian reservations.

TITLE IV—EFFECTIVE DATES

Sec. 401. Effective dates.

TITLE I—SCHOOL LUNCH AND RELATED PROGRAMS**SEC. 101. DELIVERY OF COMMODITIES.**

(a) **IN GENERAL.**—Section 6 of the National School Lunch Act (42 U.S.C. 1755) is amended—

(1) by striking subsection (b) and inserting the following new subsection:

"(b) The Secretary shall deliver, to each State participating in the school lunch program under this Act, commodities valued at the total level of assistance authorized under subsection (c) for each school year for the school lunch program in the State, not later than September 30 of the following school year.;"

(2) by striking subsections (c) and (d); and

(3) by redesignating subsections (e) and (f) as subsections (c) and (d), respectively.

(b) **CONFORMING AMENDMENTS.**—

(1) Subsection (f), and clauses (i) and (ii) of subsection (g)(3)(A), of section 14 of such Act (42 U.S.C. 1762a) are amended by striking "section 6(e)" and inserting "section 6(c)".

(2) The last sentence of section 16(a) of such Act (42 U.S.C. 1765(a)) is amended by striking "section 6(e) of this Act" and inserting "section 6(c)".

(3) Section 17(h)(1)(B) of such Act (42 U.S.C. 1766(h)(1)(B)) is amended by striking "section 6(e)" and inserting "section 6(c)".

SEC. 102. COMBINED FEDERAL AND STATE COMMODITY PURCHASES.

Section 7 of the National School Lunch Act (42 U.S.C. 1756) is amended by adding at the end the following new subsection:

"(d) Notwithstanding any other provision of law, the Secretary may enter into an agreement with a State agency under which funds payable to the State under section 4 or 11 may be used by the Secretary for the purpose of purchasing commodities for use by schools in the State in meals served under the school lunch program under this Act."

SEC. 103. NUTRITIONAL REQUIREMENTS.

(a) **TECHNICAL ASSISTANCE FOR SCHOOL LUNCH PROGRAM.**—Section 9(a)(1) of the National School Lunch Act (42 U.S.C. 1758(a)(1)) is amended—

(1) by inserting "(A)" after "(1)"; and

(2) by adding at the end the following new subparagraph:

"(B) The Secretary shall provide technical assistance and training, including technical assistance and training in the preparation of lower-fat versions of foods commonly used in the school lunch program under this Act, to schools participating in the school lunch program to assist the schools in complying with the nutritional requirements prescribed by the Secretary pursuant to subparagraph (A) and in providing appropriate meals to children with medically certified special dietary needs. The Secretary shall provide additional technical assistance to schools that are having difficulty maintaining compliance with the requirements."

(b) **MINIMUM NUTRITIONAL REQUIREMENTS MEASURED BY WEEKLY AVERAGE OF NUTRIENT CONTENT OF SCHOOL LUNCHES.**—Section 9(a)(1)(A) of such Act (42 U.S.C. 1758(a)(1)(A)) (as amended by subsection (a)) is further amended—

(1) by striking "except that such minimum nutritional requirements" and inserting the following: "except that—

"(i) the minimum nutritional requirements";

(2) by striking the period at the end and inserting "and"; and

(3) by adding at the end the following new clause:

"(ii) the minimum nutritional requirements shall be measured by not less than the weekly average of the nutrient content of school lunches."

(c) **DIETARY GUIDELINES FOR AMERICANS.**—Section 9 of such Act (42 U.S.C. 1758) is amended by adding at the end the following new subsection:

"(f)(1) Not later than July 1, 1996, the Secretary, State educational agencies, schools, and school food service authorities shall, to the maximum extent practicable, inform students who participate in the school lunch and school breakfast programs, and parents and guardians of the students, of—

"(A) the nutritional content of the lunches and breakfasts that are served under the programs; and

"(B) the consistency of the lunches and breakfasts with the guidelines contained in the most recent 'Dietary Guidelines for Americans' that is published under section 301 of the National Nutrition Monitoring and Related Research Act of 1990 (7 U.S.C. 5341) (referred to in this subsection as the 'Guidelines'), including the consistency of the lunches and breakfasts with the guideline for fat content.

"(2)(A) Except as provided in subparagraph (B), not later than July 1, 1996, schools that are participating in the school lunch or school breakfast program shall serve lunches and breakfasts under the programs that are consistent with the Guidelines (as measured in accordance with subsection (a)(1)(A)(ii)).

"(B) State educational agencies may grant waivers from the requirements of subparagraph (A) subject to criteria established by the appropriate State educational agency. The waivers shall not permit schools to implement the requirements later than July 1, 1996, or a later date determined by the Secretary.

"(C) To assist schools in meeting the requirements of this paragraph, the Secretary shall—

"(i) develop, and provide to schools, standardized recipes, menu cycles, and food product specification and preparation techniques; and

"(ii) provide to schools information regarding nutrient standard menu planning, assisted nutrient standard menu planning, and other approaches, including food-based menu systems with nutrient analysis, as determined by the Secretary.

"(D) Schools may use any of the approaches described in subparagraph (C) to meet the requirements of this paragraph.

"(3)(A) Not later than 120 days after the date of enactment of this subsection, the Secretary shall submit to the authorizing committees of Congress a detailed and specific plan that describes the actions the Secretary will take to encourage schools that are participating in the school lunch and school breakfast programs to serve lunches and breakfasts under each program that are consistent with the Guidelines.

"(B) The Secretary shall include in the plan—

"(i) a strategy for providing technical assistance to States, State educational agencies, schools, and school food service authorities to encourage consistency with the Guidelines; and

"(ii) a strategy for informing State child nutrition directors, school food service directors, parents, guardians, and students of—

"(I) the provisions of the Guidelines; and

"(II) specific suggestions for dietary modifications that would achieve the objectives of the Guidelines."

SEC. 104. ELIMINATION OF WHOLE MILK REQUIREMENT.

Section 9(a)(2) of the National School Lunch Act (42 U.S.C. 1758(a)(2)) is amended—

(1) by inserting "(A)" after "(2)";

(2) by striking "fluid whole milk and fluid unflavored lowfat milk" and inserting "fluid

milk, except that a State educational agency may require schools in the State to offer any type or types of milk to students"; and

(3) by adding at the end the following new subparagraph:

"(B)(i) The Secretary shall purchase each calendar year to carry out the school lunch program under this Act, and the school breakfast program under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773), lowfat cheese on a bid basis in a quantity that is the milkfat equivalent of the quantity of milkfat the Secretary estimates the Commodity Credit Corporation will purchase each calendar year as a result of the elimination of the requirement that schools offer students fluid whole milk and fluid unflavored lowfat milk, based on data provided by the Director of Office of Management and Budget.

"(ii) Not later than 30 days after the Secretary provides an estimate required under clause (i), the Director of the Congressional Budget Office shall provide to the appropriate committees of Congress a report on whether the Director concurs with the estimate of the Secretary.

"(iii) The quantity of lowfat cheese that is purchased under this subparagraph shall be in addition to the quantity of cheese that is historically purchased by the Secretary to carry out school feeding programs. The Secretary shall take such actions as are necessary to ensure that purchases under this subparagraph shall not displace commercial purchases of cheese by schools."

SEC. 105. USE OF FREE AND REDUCED PRICE MEAL ELIGIBILITY INFORMATION.

Clause (iii) of section 9(b)(2)(C) of the National School Lunch Act (42 U.S.C. 1758(b)(2)(C)(iii)) is amended to read as follows:

"(iii) The use or disclosure of any information obtained from an application for free or reduced price meals, or from a State or local agency referred to in clause (ii), shall be limited to—

"(I) a person directly connected with the administration or enforcement of this Act or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), or a regulation issued pursuant to either Act;

"(II) a person directly connected with the administration or enforcement of a State health or education program administered by the State or local educational agency (other than a program carried out under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.)); and

"(III)(aa) the Comptroller General of the United States for audit and examination authorized by any other provision of law; and

"(bb) notwithstanding any other provision of law, a Federal, State, or local law enforcement official for the purpose of investigating an alleged violation of any program covered by paragraph (1) or this paragraph.

"(iv) Information provided by a school under clause (iii)(II) shall be limited to the income eligibility status of the child for whom application for free or reduced price meal benefits was made or for whom eligibility information was provided under clause (ii), unless the consent of the parent or guardian of the child for whom application for benefits was made is obtained.

"(v) A person described in clause (iii) who publishes, divulges, discloses, or makes known in any manner, or to any extent not authorized by Federal law (including a regulation), any information obtained under this subsection shall be fined not more than \$1,000 or imprisoned not more than 1 year, or both."

SEC. 106. AUTOMATIC ELIGIBILITY OF HEAD START PARTICIPANTS.

(a) IN GENERAL.—Section 9(b)(6) of the National School Lunch Act (42 U.S.C. 1758(b)(6)) is amended—

(1) in subparagraph (A)—

(A) in the matter preceding clause (1), by striking "a member of";

(B) in clause (i)—

(i) by inserting "a member of" after "(i)"; and

(ii) by striking "or" at the end;

(C) in clause (ii)—

(i) by inserting "a member of" after "(ii)"; and

(ii) by striking the period at the end and inserting "; or"; and

(D) by adding at the end the following new clause:

"(iii) enrolled as a participant in a Head Start program authorized under the Head Start Act (42 U.S.C. 9831 et seq.), on the basis of a determination that the child is a member of a family that meets the low-income criteria prescribed under section 645(a)(1)(A) of the Head Start Act (42 U.S.C. 9840(a)(1)(A));" and

(2) in subparagraph (B), by striking "food stamps or aid to families with dependent children" and inserting "food stamps or aid to families with dependent children, or of enrollment or participation in a Head Start program on the basis described in subparagraph (A)(ii)."

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall become effective on September 1, 1995.

SEC. 107. USE OF NUTRITION EDUCATION AND TRAINING PROGRAM RESOURCES.

Section 9 of the National School Lunch Act (42 U.S.C. 1758) (as amended by section 103(c)) is further amended by adding at the end the following new subsection:

"(g) In carrying out this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), a State educational agency shall, particularly with regard to the responsibilities of the agency under subsection (a)(3), use resources provided through the nutrition education and training program authorized under section 19 of the Child Nutrition Act of 1966 (42 U.S.C. 1788) for training aimed at improving the quality and acceptance of school meals."

SEC. 108. SPECIAL ASSISTANCE FOR SCHOOLS ELECTING TO SERVE ALL CHILDREN FREE LUNCHES OR BREAKFASTS.

Section 11(a)(1) of the National School Lunch Act (42 U.S.C. 1759a(a)(1)) is amended—

(1) by inserting "(A)" after "(1)";

(2) in the second sentence, by striking "In the case of" and inserting the following:

"(B) Except as provided in subparagraph (C), (D), or (E), in the case of"; and

(3) by striking the third and fourth sentences and inserting the following new subparagraphs:

"(C)(i) Except as provided in subparagraph (D), in the case of any school that—

"(I) elects to serve all children in the school free lunches under the school lunch program during any period of 3 successive school years, or in the case of a school that serves both lunches and breakfasts, elects to serve all children in the school free lunches and free breakfasts under the school lunch program and the school breakfast program established under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) during any period of 3 successive school years; and

"(II) pays, from sources other than Federal funds, for the costs of serving the lunches or breakfasts that are in excess of the value of

assistance received under this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) with respect to the number of lunches or breakfasts served during the period; special assistance payments shall be paid to the State educational agency with respect to the school during the period on the basis of the number of lunches or breakfasts determined under clause (ii) or (iii).

"(i) For purposes of making special assistance payments under clause (i), except as provided in clause (iii), the number of lunches or breakfasts served by a school to children who are eligible for free lunches or breakfasts or reduced price lunches or breakfasts during each school year of the 3-school-year period shall be considered to be equal to the number of lunches or breakfasts served by the school to children eligible for free lunches or breakfasts or reduced price lunches or breakfasts during the first school year of the period.

"(ii) For purposes of computing the amount of the payments, a school may elect to determine on a more frequent basis the number of children who are eligible for free or reduced price lunches or breakfasts who are served lunches or breakfasts during the 3-school-year period.

"(D)(i) In the case of any school that, on the date of enactment of this subparagraph, is receiving special assistance payments under this paragraph for a 3-school-year period described in subparagraph (C), the State may grant, at the end of the 3-school-year period, an extension of the period for an additional 2 school years, if the State determines, through available socioeconomic data approved by the Secretary, that the income level of the population of the school has remained stable.

"(ii) A school described in clause (i) may reapply to the State at the end of the 2-school-year period described in clause (i) for the purpose of continuing to receive special assistance payments, as determined in accordance with this paragraph, for a subsequent 5-school-year period. The school may reapply to the State at the end of the 5-school-year period, and at the end of each 5-school-year period thereafter for which the school receives special assistance payments under this paragraph, for the purpose of continuing to receive the payments for a subsequent 5-school-year period. The school shall require submission of applications for free and reduced price lunches, or for free and reduced price lunches and breakfasts, in the first school year of each 5-school-year period for which the school receives special assistance payments under this paragraph, for the purpose of calculating the special assistance payments.

"(E)(i) In the case of any school that—

"(I) elects to serve all children in the school free lunches under the school lunch program during any period of 4 successive school years, or in the case of a school that serves both lunches and breakfasts, elects to serve all children in the school free lunches and free breakfasts under the school lunch program and the school breakfast program during any period of 4 successive school years; and

"(II) pays, from sources other than Federal funds, for the costs of serving the lunches or breakfasts that are in excess of the value of assistance received under this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) with respect to the number of lunches or breakfasts served during the period;

total Federal cash reimbursements and total commodity assistance shall be provided to the State educational agency with respect to

the school at a level that is equal to the total Federal cash reimbursements and total commodity assistance received by the school in the last school year for which the school accepted applications under the school lunch or school breakfast program, adjusted annually for inflation in accordance with paragraph (3)(B) and for changes in enrollment, to carry out the school lunch or school breakfast program.

"(ii) A school described in clause (i) may reapply to the State at the end of the 4-school-year period described in clause (i), and at the end of each 4-school-year period thereafter for which the school receives reimbursements and assistance under this subparagraph, for the purpose of continuing to receive the reimbursements and assistance for a subsequent 4-school-year period. The State may approve an application under this clause if the State determines, through available socioeconomic data approved by the Secretary, that the income level of the population of the school has remained consistent with the income level of the population of the school in the last school year for which the school accepted the applications described in clause (i)."

SEC. 109. DEFINITION OF SCHOOL.

(a) IN GENERAL.—Section 12(d)(5) of the National School Lunch Act (42 U.S.C. 1760(d)(5)) is amended—

(1) in the first sentence—

(A) in subparagraph (A), by striking "under," and inserting "under and";

(B) in subparagraph (B), by striking "and" and inserting a period; and

(C) by striking subparagraph (C); and

(2) in the second sentence, by striking "of clauses (A) and (B)".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall become effective on October 1, 1995.

SEC. 110. REIMBURSEMENT FOR MEALS, SUPPLEMENTS, AND MILK UNDER CERTAIN PROGRAMS CONTINGENT ON TIMELY SUBMISSION OF CLAIMS AND FINAL PROGRAM OPERATIONS REPORT.

Section 12 of the National School Lunch Act (42 U.S.C. 1760) is amended by adding at the end the following new subsection:

"(j)(1) Except as provided in paragraph (2), the Secretary may provide reimbursements for final claims submitted to State agencies by eligible schools, institutions, and service institutions for service of meals, supplements, and milk under this Act or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) only if—

"(A) the claims have been submitted to the State agencies not later than 60 days after the last day of the month for which reimbursements are claimed; and

"(B) the final program operations report for the month is submitted to the Secretary not later than 90 days after the last day of the month.

"(2) The Secretary may waive the requirements of paragraph (1)."

SEC. 111. ORGANICALLY PRODUCED AGRICULTURAL PRODUCTS.

Section 12 of the National School Lunch Act (42 U.S.C. 1760) (as amended by section 110) is further amended by adding at the end the following new subsection:

"(k)(1) The Secretary shall make available, at the request of State educational agencies and schools participating in the school lunch program, information about means for schools to obtain organically produced agricultural products (as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502)), such as meats, poultry prod-

ucts, fruits, products made from grains, dairy products, and vegetables that are organically produced."

"(2) Paragraph (1) shall apply beginning on the date the Secretary establishes an organic certification program for producers and handlers of agricultural products in accordance with such Act (7 U.S.C. 6501 et seq.)."

SEC. 112. FOOD AND NUTRITION PROJECTS.

Section 12 of the National School Lunch Act (42 U.S.C. 1760) (as amended by section 111) is further amended by adding at the end the following new subsection:

"(1)(1) The Secretary, acting through the Administrator of the Food and Nutrition Service or through the Extension Service, shall award on an annual basis grants to a private nonprofit organization or educational institution in each of 3 States to create, operate, and demonstrate food and nutrition projects that are fully integrated with elementary school curricula.

"(2) Each organization or institution referred to in paragraph (1) shall be selected by the Secretary and shall—

"(A) assist local schools and educators in offering food and nutrition education that integrates math, science, and verbal skills in the elementary grades;

"(B) assist local schools and educators in teaching agricultural practices through practical applications, like gardening;

"(C) create community service learning opportunities or educational programs;

"(D) be experienced in assisting in the creation of curriculum-based models in elementary schools;

"(E) be sponsored by an organization or institution, or be an organization or institution, that provides information, or conducts other educational efforts, concerning the success and productivity of American agriculture and the importance of the free enterprise system to the quality of life in the United States; and

"(F) be able to provide model curricula, examples, advice, and guidance to school, community groups, States, and local organizations regarding means of carrying out similar projects.

"(3) Subject to the availability of appropriations to carry out this subsection, the Secretary shall make grants to each of the 3 private organizations or institutions selected under this section in amounts of not less than \$100,000, nor more than \$200,000, for each of fiscal years 1995 through 1998.

"(4) The Secretary shall establish fair and reasonable auditing procedures regarding the expenditure of funds under this subsection.

"(5) There are authorized to be appropriated to carry out this subsection such sums as are necessary for each of fiscal years 1995 through 1998."

SEC. 113. SUMMER FOOD SERVICE PROGRAM FOR CHILDREN.

(a) ORDER OF PRIORITY.—Section 13(a)(4) of the National School Lunch Act (42 U.S.C. 1761(a)(4)) is amended by striking subparagraphs (A) through (F) and inserting the following:

"(A) School food authorities.

"(B) Units of local, municipal, or county government that have demonstrated successful program performance in a prior year.

"(C) Other units of local, municipal, or county government, and private nonprofit organizations eligible under paragraph (7)."

(b) PRIVATE NONPROFIT ORGANIZATIONS.—Section 13(a)(7) of such Act (42 U.S.C. 1761(a)(7)) is amended by striking subparagraph (C).

(c) NON-SCHOOL SITES.—Section 13(c)(1) of such Act (42 U.S.C. 1761(c)(1)) is amended by

inserting before the period at the end the following: "or that provide meal service at non-school sites to children who are not in school for a period during the months of October through April due to an unanticipated school closure".

(d) REGISTERED FOOD SERVICE MANAGEMENT COMPANY REPORTS.—Section 13(l)(3) of such Act (42 U.S.C. 1761(l)(3)) is amended by striking "and their program record" and inserting "that have been seriously deficient in their participation in the program."

(e) MANAGEMENT AND ADMINISTRATION PLAN.—Section 13(n) of such Act (42 U.S.C. 1761(n)) is amended—

(1) in paragraph (2), by adding "and" after the semicolon at the end;

(2) in paragraph (3), by striking the semicolon at the end and inserting a period; and

(3) by striking paragraphs (4) through (12).

(f) ELIMINATION OF WARNING IN PRIVATE NONPROFIT ORGANIZATION APPLICATION RELATING TO CRIMINAL PROVISIONS AND RELATED MATTERS.—Section 13(q) of such Act (42 U.S.C. 1761(q)) is amended—

(1) by striking paragraph (2);

(2) by redesignating paragraph (3) as paragraph (2); and

(3) in paragraph (4), by striking "paragraphs (1) and (3)" and inserting "paragraphs (1) and (2)".

(g) HEARINGS REGARDING STATE ACTION ON THE BASIS OF FEDERAL REVIEW FINDINGS.—Section 13(q) of such Act (42 U.S.C. 1761(q)) (as amended by paragraphs (1) and (2) of subsection (f)) is further amended by inserting before paragraph (4) the following new paragraph:

"(3) A State shall not be required to provide a hearing to a private nonprofit organization concerning a State action taken on the basis of a Federal review finding with respect to a program carried out under this section. If a State does not provide a hearing to the organization concerning the action, the Secretary, on request, shall provide a hearing to the organization concerning the action."

(h) EXTENSION OF PROGRAM.—Section 13(r) of such Act (42 U.S.C. 1761(r)) is amended by striking "1994" and inserting "1998".

(i) ALL-DAY ACTIVITIES.—The Secretary of Agriculture shall—

(1) not later than 180 days after the date of enactment of this Act, identify sources of Federal funds that may be available from other Federal agencies for service institutions under the summer food service program for children established under section 13 of the National School Lunch Act (42 U.S.C. 1761) to carry out all-day educational and recreational activities for children at feeding sites under the program; and

(2) notify through State agencies, as determined appropriate by the Secretary, the service institutions of the sources.

SEC. 114. COMMODITY DISTRIBUTION PROGRAM.

(a) EXTENSION.—Section 14(a) of the National School Lunch Act (42 U.S.C. 1762a(a)) is amended by striking "1994" and inserting "1998".

(b) NUTRITIONAL CONTENT.—Section 14(b) of such Act (42 U.S.C. 1762a(b)) is amended—

(1) by inserting "(1)" after "(b)"; and

(2) by adding at the end the following new paragraphs:

"(2) The Secretary shall improve the overall nutritional quality of entitlement commodities (within the meaning of section 18) provided to schools under the school lunch program to assist the schools in improving the nutritional content of meals served under the program.

"(3) The Secretary shall—

"(A) require that nutritional content information labels be placed on packages or shipments of commodities provided to schools under the school lunch program; or

"(B) otherwise provide nutritional content information regarding the commodities provided to schools under the school lunch program."

SEC. 115. CHILD AND ADULT CARE FOOD PROGRAM.

(a) REAPPLICATION FOR ASSISTANCE AT 3-YEAR INTERVALS.—Section 17(d)(2)(A) of the National School Lunch Act (42 U.S.C. 1766(d)(2)(A)) is amended by striking "2-year intervals" and inserting "3-year intervals".

(b) USE OF ADMINISTRATIVE FUNDS TO CONDUCT OUTREACH AND RECRUITMENT TO UNLICENSED DAY CARE HOMES.—Section 17(f)(3)(C) of such Act (42 U.S.C. 1766(f)(3)(C)) is amended—

(1) by inserting "(i)" after "(C)"; and

(2) by adding at the end the following new clause:

"(ii) Funds for administrative expenses may be used by a family or group day care home sponsoring organization to conduct outreach and recruitment to unlicensed family or group day care homes so that the day care homes may become licensed."

(c) INFORMATION AND TRAINING CONCERNING CHILD HEALTH AND DEVELOPMENT.—Section 17(k) of such Act (42 U.S.C. 1766(k)) is amended by adding at the end the following new paragraph:

"(4) The Secretary shall encourage States to provide information and training concerning child health and development to family or group day care home sponsoring organizations."

(d) EXTENSION OF STATEWIDE DEMONSTRATION PROJECTS.—Section 17(p) of such Act (42 U.S.C. 1766(p)) is amended—

(1) in paragraph (1)(A), strike "25 percent of the children served by such organization" and insert "25 percent of the children enrolled in the organization or 25 percent of the licensed capacity of the organization for children, whichever is less";

(2) in paragraph (4)(B), by striking "1992" and inserting "1998"; and

(3) in paragraph (5), by striking "1994" and inserting "1998".

(e) WIC INFORMATION.—Section 17 of such Act (42 U.S.C. 1766) is amended by adding at the end the following new subsection:

"(q)(1) The Secretary shall provide State agencies with basic information concerning the importance and benefits of the special supplemental nutrition program for women, infants, and children authorized under section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786).

"(2) The State agency shall—

"(A) provide each child care institution participating in the program established under this section, other than institutions providing day care outside school hours for schoolchildren, with materials that include—

"(i) a basic explanation of the benefits and importance of the special supplemental nutrition program for women, infants, and children;

"(ii) the maximum income limits, according to family size, applicable to children up to age 5 in the State under the special supplemental nutrition program for women, infants, and children; and

"(iii) a listing of the addresses and phone numbers of offices at which parents may apply;

"(B) annually provide the institutions with an update of the information on income limits described in subparagraph (A)(ii); and

"(C) ensure that, at least once a year, the institutions to which subparagraph (A) applies provide written information to parents that includes—

"(i) basic information on the benefits provided under the special supplemental nutrition program for women, infants, and children;

"(ii) information on the maximum income limits, according to family size, applicable to the program; and

"(iii) information on where parents may apply to participate in the program."

SEC. 116. HOMELESS CHILDREN NUTRITION PROGRAM; DEMONSTRATION PROGRAM FOR THE PREVENTION OF BOARDER BABIES.

(a) HOMELESS CHILDREN NUTRITION PROGRAM.—The National School Lunch Act is amended by inserting after section 17A (42 U.S.C. 1766a) the following new section:

"SEC. 17B. HOMELESS CHILDREN NUTRITION PROGRAM.

"(a) IN GENERAL.—The Secretary shall conduct projects designed to provide food service throughout the year to homeless children under the age of 6 in emergency shelters.

"(b) AGREEMENTS TO PARTICIPATE IN PROJECTS.—

"(1) IN GENERAL.—The Secretary shall enter into agreements with State, city, local, or county governments, other public entities, or private nonprofit organizations to participate in the projects conducted under this section.

"(2) ELIGIBILITY REQUIREMENTS.—The Secretary shall establish eligibility requirements for the entities described in paragraph (1) that desire to participate in the projects conducted under this section, including requirements that—

"(A) each private nonprofit organization shall operate not more than 5 food service sites under the project and shall serve not more than 300 homeless children under the age of 6 at each site; and

"(B) each food service site operated by any of the organizations shall meet applicable State and local health, safety, and sanitation standards.

"(c) PROJECT REQUIREMENTS.—

"(1) IN GENERAL.—A project conducted under this section shall—

"(A) use the same meal patterns, and receive reimbursement payments for meals and supplements at the same rates, as apply to child care centers participating in the child care food program established under section 17 for free meals and supplements; and

"(B) receive reimbursement payments for meals and supplements served on Saturdays, Sundays, and holidays, at the request of the sponsor of the project.

"(2) MODIFICATION.—The Secretary may modify the meal pattern requirements to take into account the needs of infants.

"(3) HOMELESS CHILDREN ELIGIBLE FOR FREE MEALS WITHOUT APPLICATION.—Homeless children under the age of 6 in emergency shelters shall be considered eligible for free meals without submitting an application.

"(d) FUNDING PRIORITIES.—From the amount described in subsection (f), the Secretary shall provide funding for projects carried out under this section for a particular fiscal year (referred to in this subsection as the 'current fiscal year') in the following order of priority, to the maximum extent practicable:

"(1) The Secretary shall first provide such funding to entities and organizations, each of which—

"(A) received funding under this section or section 18(c) (as in effect on the day before

the date of enactment of this section) to carry out a project for the preceding fiscal year; and

"(B) is eligible to receive funding under this section to carry out the project for the current fiscal year;

to enable the entity or organization to carry out the project under this section for the current fiscal year at the level of service provided by the project during the preceding fiscal year.

"(2) From the portion of the amount that remains after the application of paragraph (1), the Secretary shall provide funds to entities and organizations, each of which is eligible to receive funding under this section, to enable the entity or organization to carry out a new project under this section for the current fiscal year, or to expand the level of service provided by a project for the current fiscal year over the level provided by the project during the preceding fiscal year.

"(e) NOTICE.—The Secretary shall advise each State of the availability of the projects conducted under this subsection for States, cities, counties, local governments, and other public entities, and shall advise each State of the procedures for applying to participate in the project.

"(f) FUNDING.—

"(1) IN GENERAL.—From funds made available under section 7(a)(5)(B)(i) of the Child Nutrition Act of 1966 (42 U.S.C. 1776(a)(5)(B)(i)), the Secretary shall expend \$3,000,000 for fiscal year 1995 and each subsequent fiscal year to carry out this section.

"(2) EXCEPTION.—The Secretary may expend less than the amount described in paragraph (1) if there is an insufficient number of suitable applicants to carry out projects under this section. Any funds made available under this subsection to carry out the projects for a fiscal year that are not obligated to carry out the projects in the fiscal year shall remain available until expended for purposes of carrying out the projects.

"(g) DEFINITION OF EMERGENCY SHELTER.—As used in this section, the term 'emergency shelter' has the meaning provided in section 321(2) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11351(2))."

(b) DEMONSTRATION PROGRAM FOR THE PREVENTION OF BOARDER BABIES.—Subsection (c) of section 18 of the National School Lunch Act (42 U.S.C. 1769(c)) is amended to read as follows:

"(c)(1) Using the funds provided under paragraph (7), the Secretary shall conduct at least 1 demonstration project through a participating entity during each of fiscal years 1995 through 1998 that is designed to provide food and nutrition services throughout the year to—

"(A) homeless pregnant women; and

"(B) homeless mothers or guardians of infants, and the children of the mothers and guardians.

"(2) To be eligible to obtain funds under this subsection, a homeless shelter, transitional housing organization, or other entity that provides or will provide temporary housing for individuals described in paragraph (1) shall (in accordance with guidelines established by the Secretary)—

"(A) submit to the Secretary a proposal to provide food and nutrition services, including a plan for coordinating the services with services provided under the special supplemental nutrition program for women, infants, and children authorized under section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786);

"(B) receive the approval of the Secretary for the proposal;

"(C) be located in an urban area that has—

"(i) a significant population of boarder babies;

"(ii) a very high rate of mortality for children under 1 year of age; or

"(iii) a significant population of homeless pregnant women and homeless women with infants;

as determined by the Secretary; and

"(D) be able to coordinate services provided under this subsection with the services provided by the local government and with other programs that may assist the participants receiving services under this subsection.

"(3) Food and nutrition services funded under this subsection—

"(A) may include—

"(i) meals, supplements, and other food;

"(ii) nutrition education;

"(iii) nutrition assessments;

"(iv) referrals to—

"(I) the special supplemental nutrition program for women, infants, and children authorized under section 17 of such Act (42 U.S.C. 1786);

"(II) the medical assistance program established under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.); and

"(III) other public or private programs and services;

"(v) activities related to the services described in any of clauses (i) through (iv); and

"(vi) administrative activities related to the services described in any of clauses (i) through (v); and

"(B) may not include the construction, purchase, or rental of real property.

"(4)(A) A participating entity shall—

"(i) use the same meal patterns, and receive reimbursement payments for meals and supplements at the same rates, as apply to child care centers participating in the child care food program under section 17 for free meals and supplements;

"(ii) receive reimbursement payments for meals and supplements served on Saturdays, Sundays, and holidays, at the request of the entity; and

"(iii) maintain a policy of not providing services or assistance to pregnant women, or homeless women with infants, who use a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)).

"(B) The Secretary may modify the meal pattern requirements to take into account the needs of infants, homeless pregnant women, homeless mothers, guardians of infants, or the children of the women, mothers, or guardians.

"(C) The Secretary shall provide funding to a participating entity for services described in paragraph (3) that are provided to individuals described in paragraph (1).

"(5) The Secretary shall impose such auditing and recordkeeping requirements as are necessary to monitor the use of Federal funds to carry out this subsection.

"(6) The Secretary shall periodically report to the appropriate committees of Congress on projects carried out under this subsection.

"(7)(A) Out of any moneys in the Treasury not otherwise appropriated, the Secretary of the Treasury shall provide to the Secretary \$400,000 for each of fiscal years 1995 through 1998 to carry out this subsection. The Secretary shall be entitled to receive the funds and shall accept the funds.

"(B) Any funds provided under subparagraph (A) to carry out projects under this subsection for a fiscal year that are not obligated in the fiscal year shall be used by the

Secretary to carry out the homeless children nutrition program established under section 17B.

"(8) As used in this subsection:

"(A) The term 'boarder baby' means an abandoned infant described in section 103(1) of the Abandoned Infants Assistance Act of 1988 (Public Law 100-505; 42 U.S.C. 670 note).

"(B) The term 'nutrition education' has the meaning provided in section 17(b)(7) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)(7))."

SEC. 117. PILOT PROJECTS.

(a) FORTIFIED FLUID MILK.—Section 18 of the National School Lunch Act (42 U.S.C. 1769) is amended by adding at the end the following new subsection:

"(e)(1) Subject to the availability of appropriations to carry out this subsection, the Secretary shall establish pilot projects in at least 25 school districts under which the milk offered by schools meets the fortification requirements of paragraph (3) for lowfat, skim, and other forms of fluid milk.

"(2) The Secretary shall make available to school districts information that compares the nutritional benefits of fluid milk that meets the fortification requirements of paragraph (3) and the nutritional benefits of other milk that is made available through the school lunch program established under this Act.

"(3) The fortification requirements for fluid milk for the pilot project referred to in paragraph (1) shall provide that—

"(A) all whole milk in final package form for beverage use shall contain not less than—

"(i) 3.25 percent milk fat; and

"(ii) 8.7 percent milk solids not fat;

"(B) all lowfat milk in final package form for beverage use shall contain not less than 10 percent milk solids not fat; and

"(C) all skim milk in final package form for beverage use shall contain not less than 9 percent milk solids not fat.

"(4)(A) In selecting where to establish pilot projects under this subsection, the Secretary shall take into account, among other factors, the availability of fortified milk and the interest of the school district in being included in the pilot project.

"(B) The Secretary shall establish the pilot projects in as many geographic areas as practicable, except that none of the projects shall be established in school districts that use milk described in paragraph (3) or similar milk.

"(5) Not later than 2 years after the establishment of pilot projects under this subsection, the Secretary shall report to the appropriate committees of Congress on—

"(A) the acceptability of fortified whole, lowfat, and skim milk products to participating children;

"(B) the impact of offering the milk on milk consumption;

"(C) the views of the school food service authorities on the pilot projects; and

"(D) any increases or reductions in costs attributed to the pilot projects.

"(6) The Secretary shall—

"(A) obtain copies of any research studies or papers that discuss the impact of the fortification of milk pursuant to standards established by the States; and

"(B) on request, make available to State agencies and the public—

"(i) the information obtained under subparagraph (A); and

"(ii) information about where to obtain milk described in paragraph (3).

"(7)(A) The pilot projects established under this subsection shall terminate on the last day of the third year after the establishment of the pilot projects.

"(B) The Secretary shall advise representatives of all districts participating in the pilot projects that the districts may continue to offer the fortified forms of milk described in paragraph (3) after the project terminates."

(b) INCREASED CHOICES OF FRUITS, VEGETABLES, LEGUMES, CEREALS, AND GRAIN-BASED PRODUCTS.—Section 18 of such Act (42 U.S.C. 1769) (as amended by subsection (a)) is further amended by adding at the end the following new subsection:

"(f)(1) The Secretary is authorized to establish a pilot project to assist schools participating in the school lunch program established under this Act, and the school breakfast program established under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773), to offer participating students additional choices of fruits, vegetables, legumes, cereals, and grain-based products (including, subject to paragraph (7), organically produced agricultural commodities and products) (collectively referred to in this subsection as 'qualified products')."

"(2) The Secretary shall establish procedures under which schools may apply to participate in the pilot project. To the maximum extent practicable, the Secretary shall select qualified schools that apply from each State.

"(3) The Secretary shall use the funds provided under this subsection to provide to the schools referred to in paragraph (1)—

"(A) per meal reimbursements, in addition to reimbursements otherwise due the schools;

"(B) incentive awards to schools that agree to increase the choices of the schools of qualified products during the school year; or

"(C) qualified products acquired by the Secretary.

"(4) The Secretary may provide a priority for receiving funds under this subsection to—

"(A) schools that are located in low-income areas (as defined by the Secretary); and

"(B) schools that rarely offer 3 or more choices of qualified products per meal.

"(5) On request, the Secretary shall provide information to the appropriate committees of Congress on the impact of the pilot project on participating schools, including—

"(A) the extent to which school children increased consumption of qualified products;

"(B) the extent to which increased consumption of qualified products offered under the pilot project has contributed to a reduction in fat intake in the school breakfast and school lunch programs;

"(C) the desirability of—

"(i) requiring that each school participating in the school breakfast program increase the number of choices of qualified products offered per meal to at least 2 choices;

"(ii) requiring that each school participating in the school lunch program increase the number of choices of qualified products offered per meal; and

"(iii) mandating that the Secretary provide additional Federal reimbursements to assist schools in complying with clauses (i) and (ii);

"(D) the views of school food service authorities on the pilot project; and

"(E) any increase or reduction in costs to the schools in offering the additional qualified products.

"(6) Subject to the availability of funds appropriated to carry out this subsection, the Secretary shall use not more than \$10,000,000 for each of fiscal years 1995 through 1997 to carry out this subsection.

"(7) For purposes of this subsection, qualified products shall include organically pro-

duced agricultural commodities and products beginning on the date the Secretary establishes an organic certification program for producers and handlers of agricultural products in accordance with the Organic Foods Production Act of 1990 (7 U.S.C. 6501 et seq.)."

(c) INCREASED CHOICES OF LOWFAT DAIRY PRODUCTS AND LEAN MEAT AND POULTRY PRODUCTS.—Section 18 of such Act (42 U.S.C. 1769) (as amended by subsection (b)) is further amended by adding at the end the following new subsection:

"(g)(1) The Secretary is authorized to establish a pilot project to assist schools participating in the school lunch program established under this Act, and the school breakfast program established under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773), to offer participating students additional choices of lowfat dairy products and lean meat and poultry products (including, subject to paragraph (7), organically produced agricultural commodities and products) (collectively referred to in this subsection as 'qualified products')."

"(2) The Secretary shall establish procedures under which schools may apply to participate in the pilot project. To the maximum extent practicable, the Secretary shall select qualified schools that apply from each State.

"(3) The Secretary shall use the funds provided under this subsection to provide to the schools referred to in paragraph (1)—

"(A) per meal reimbursements, in addition to reimbursements otherwise due the schools;

"(B) incentive awards to schools that agree to increase the choices of the schools of qualified products during the school year; or

"(C) qualified products acquired by the Secretary.

"(4) The Secretary may provide a priority for receiving funds under this subsection to—

"(A) schools that are located in low-income areas (as defined by the Secretary); and

"(B) schools that rarely offer 3 or more choices of qualified products per meal.

"(5) On request, the Secretary shall provide information to the appropriate committees of Congress on the impact of the pilot project on participating schools, including—

"(A) the extent to which school children increased consumption of qualified products;

"(B) the extent to which increased consumption of qualified products offered under the pilot project has contributed to a reduction in fat intake in the school breakfast and school lunch programs;

"(C) the desirability of—

"(i) requiring that each school participating in the school breakfast program increase the number of choices of qualified products offered per meal to at least 2 choices;

"(ii) requiring that each school participating in the school lunch program increase the number of choices of qualified products offered per meal; and

"(iii) mandating that the Secretary provide additional Federal reimbursements to assist schools in complying with clauses (i) and (ii);

"(D) the views of the school food service authorities on the pilot project; and

"(E) any increase or reduction in costs to the schools in offering the additional qualified products.

"(6) Subject to the availability of funds appropriated to carry out this subsection, the Secretary shall use not more than \$10,000,000 for each of fiscal years 1995 through 1997 to carry out this subsection.

"(7) For purposes of this subsection, qualified products shall include organically pro-

duced agricultural commodities and products beginning on the date the Secretary establishes an organic certification program for producers and handlers of agricultural products in accordance with the Organic Foods Production Act of 1990 (7 U.S.C. 6501 et seq.)."

SEC. 118. FOOD SERVICE MANAGEMENT INSTITUTE.

(a) REQUIRED ACTIVITIES.—Section 21(c)(2) of the National School Lunch Act (42 U.S.C. 1769b-1(c)(2)) is amended—

(1) in subparagraph (B)—

(A) by striking "and" at the end of clause (viii);

(B) by redesignating clause (ix) as clause (x); and

(C) by inserting after clause (viii) the following new clause:

"(ix) culinary skills; and";

(2) by striking "and" at the end of subparagraph (D);

(3) by striking the period at the end of subparagraph (E) and inserting a semicolon; and

(4) by adding at the end the following new subparagraphs:

"(F) training food service personnel to comply with the nutrition guidance and objectives of section 24 through a national network of instructors or other means;

"(G) preparing informational materials, such as video instruction tapes and menu planners, to promote healthier food preparation; and

"(H) assisting State educational agencies in providing additional nutrition and health instructions and instructors, including training personnel to comply with the nutrition guidance and objectives of section 24."

(b) USE OF FOOD SERVICE MANAGEMENT INSTITUTE FOR DIETARY AND NUTRITION ACTIVITIES.—Section 21(d) (42 U.S.C. 1769b-1(d)) is amended—

(1) by striking "(d) COORDINATION.—The" and inserting the following:

"(d) COORDINATION.—

"(1) IN GENERAL.—The"; and

(2) by adding at the end the following new paragraph:

"(2) USE OF INSTITUTE FOR DIETARY AND NUTRITION ACTIVITIES.—The Secretary shall use any food service management institute established under subsection (a)(2) to assist in carrying out dietary and nutrition activities of the Secretary."

(c) AUTHORIZATION OF APPROPRIATIONS.—Section 21 of such Act (42 U.S.C. 1769b-1) is amended—

(1) in subsection (a)(1), by striking "from" and inserting "subject to the availability of, and from,"; and

(2) by striking subsection (e) and inserting the following new subsection:

"(e) AUTHORIZATION OF APPROPRIATIONS.—

"(1) TRAINING ACTIVITIES AND TECHNICAL ASSISTANCE.—There are authorized to be appropriated \$3,000,000 for fiscal year 1990, \$2,000,000 for fiscal year 1991, and \$1,000,000 for each of fiscal years 1992 through 1998 for purposes of carrying out subsection (a)(1).

"(2) FOOD SERVICE MANAGEMENT INSTITUTE.—

"(A) FUNDING.—Out of any moneys in the Treasury not otherwise appropriated, the Secretary of the Treasury shall provide to the Secretary \$2,000,000 for fiscal year 1995 and each subsequent fiscal year to carry out subsection (a)(2). The Secretary shall be entitled to receive the funds and shall accept the funds.

"(B) ADDITIONAL FUNDING.—In addition to amounts made available under subparagraph (A), there are authorized to be appropriated to carry out subsection (a)(2) such sums as

are necessary for fiscal year 1995 and each subsequent fiscal year. The Secretary shall carry out activities under subsection (a)(2), in addition to the activities funded under subparagraph (A), to the extent provided for, and in such amounts as are provided for, in advance in appropriations Acts.

“(C) FUNDING FOR EDUCATION, TRAINING, OR APPLIED RESEARCH OR STUDIES.—In addition to amounts made available under subparagraphs (A) and (B), from amounts otherwise appropriated in discretionary appropriations, the Secretary may provide funds to any food service management institute established under subsection (a)(2) for projects specified by the Secretary that will contribute to implementing dietary or nutrition initiatives. Any additional funding under this subparagraph shall be provided noncompetitively in a separate cooperative agreement.”

SEC. 119. COMPLIANCE AND ACCOUNTABILITY.

Not later than 1 year after the date of enactment of this Act, the Director of the Office of Technology Assessment shall submit a report to the Committee on Education and Labor of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate that analyzes—

(1) the status of the coordinated review system authorized under section 22 of the National School Lunch Act (42 U.S.C. 1769c);

(2) the advantages and disadvantages of the system; and

(3) the cost impact of the system on schools.

SEC. 120. DUTIES OF THE SECRETARY OF AGRICULTURE RELATING TO NONPROCUREMENT DEBARMENT UNDER CERTAIN CHILD NUTRITION PROGRAMS.

(a) FINDINGS.—Congress finds that—

(1) in recent years, there has been an alarming number of instances of price-fixing and bid-rigging regarding foods purchased for—

(A) the school lunch program established under the National School Lunch Act (42 U.S.C. 1751 et seq.); and

(B) the school breakfast program established under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773);

(2) effective educational and monitoring programs can greatly reduce the incidence of price-fixing and bid-rigging by companies that sell products to schools;

(3) reducing the incidence of price-fixing and bid-rigging in connection with the school lunch and breakfast programs could save school districts, parents, and taxpayers millions of dollars per year; and

(4) the Comptroller General of the United States has noted that bid-rigging awareness training is an effective means of deterring improper collusion and bid-rigging.

(b) NONPROCUREMENT DEBARMENT.—The National School Lunch Act (42 U.S.C. 1751 et seq.) is amended by adding at the end the following new section:

“SEC. 25. DUTIES OF THE SECRETARY RELATING TO NONPROCUREMENT DEBARMENT.

“(a) PURPOSES.—The purposes of this section are to promote the prevention and deterrence of instances of fraud, bid rigging, and other anticompetitive activities encountered in the procurement of products for child nutrition programs by—

“(1) establishing guidelines and a timetable for the Secretary to initiate debarment proceedings, as well as establishing mandatory debarment periods; and

“(2) providing training, technical advice, and guidance in identifying and preventing the activities.

“(b) DEFINITIONS.—As used in this section:

“(1) CHILD NUTRITION PROGRAM.—The term ‘child nutrition program’ means—

“(A) the school lunch program established under this Act;

“(B) the summer food service program for children established under section 13;

“(C) the child and adult care food program established under section 17;

“(D) the homeless children nutrition program established under section 17B;

“(E) the special milk program established under section 3 of the Child Nutrition Act of 1966 (42 U.S.C. 1772);

“(F) the school breakfast program established under section 4 of such Act (42 U.S.C. 1773); and

“(G) the special supplemental nutrition program for women, infants, and children authorized under section 17 of such Act (42 U.S.C. 1786).

“(2) CONTRACTOR.—The term ‘contractor’ means a person that contracts with a State, an agency of a State, or a local agency to provide goods or services in relation to the participation of a local agency in a child nutrition program.

“(3) LOCAL AGENCY.—The term ‘local agency’ means a school, school food authority, child care center, sponsoring organization, or other entity authorized to operate a child nutrition program at the local level.

“(4) NONPROCUREMENT DEBARMENT.—The term ‘nonprocurement debarment’ means an action to bar a person from programs and activities involving Federal financial and non-financial assistance, but not including Federal procurement programs and activities.

“(5) PERSON.—The term ‘person’ means any individual, corporation, partnership, association, cooperative, or other legal entity, however organized.

“(c) ASSISTANCE TO IDENTIFY AND PREVENT FRAUD AND ANTICOMPETITIVE ACTIVITIES.—The Secretary shall—

“(1) in cooperation with any other appropriate individual, organization, or agency, provide advice, training, technical assistance, and guidance (which may include awareness training, training films, and troubleshooting advice) to representatives of States and local agencies regarding means of identifying and preventing fraud and anticompetitive activities relating to the provision of goods or services in conjunction with the participation of a local agency in a child nutrition program; and

“(2) provide information to, and fully cooperate with, the Attorney General and State attorneys general regarding investigations of fraud and anticompetitive activities relating to the provision of goods or services in conjunction with the participation of a local agency in a child nutrition program.

“(d) NONPROCUREMENT DEBARMENT.—

“(1) IN GENERAL.—Except as provided in paragraph (3) and subsection (e), not later than 180 days after notification of the occurrence of a cause for debarment described in paragraph (2), the Secretary shall initiate nonprocurement debarment proceedings against the contractor who has committed the cause for debarment.

“(2) CAUSES FOR DEBARMENT.—Actions requiring initiation of nonprocurement debarment pursuant to paragraph (1) shall include a situation in which a contractor is found guilty in any criminal proceeding, or found liable in any civil or administrative proceeding, in connection with the supplying, providing, or selling of goods or services to any local agency in connection with a child nutrition program, or—

“(A) an anticompetitive activity, including bid-rigging, price-fixing, the allocation of

customers between competitors, or other

violation of Federal or State antitrust laws;

“(B) fraud, bribery, theft, forgery, or embezzlement;

“(C) knowingly receiving stolen property;

“(D) making a false claim or statement; or

“(E) other obstruction of justice.

“(3) EXCEPTION.—If the Secretary determines that a decision on initiating nonprocurement debarment proceedings cannot be made within 180 days after notification of the occurrence of a cause for debarment described in paragraph (2) because of the need to further investigate matters relating to the possible debarment or for other good cause (as determined by the Secretary), the Secretary may have such additional time as the Secretary considers necessary to make a decision, but not to exceed an additional 180 days.

“(4) MANDATORY CHILD NUTRITION PROGRAM DEBARMENT PERIODS.—

“(A) IN GENERAL.—Subject to the other provisions of this paragraph and notwithstanding any other provision of law except subsection (e), if, after deciding to initiate nonprocurement debarment proceedings pursuant to paragraph (1), the Secretary decides to debar a contractor, the debarment shall be for a period of not less than 1 year.

“(B) PREVIOUS DEBARMENT.—If the contractor has been previously debarred pursuant to nonprocurement debarment proceedings initiated pursuant to paragraph (1), and the cause for debarment is described in paragraph (2) based on activities that occurred subsequent to the initial debarment, the debarment shall be for a period of not less than 3 years.

“(C) SCOPE.—At a minimum, a debarment under this subsection shall serve to bar the contractor for the specified period from contracting to provide goods or services in conjunction with the participation of a local agency in a child nutrition program.

“(D) REVERSAL, REDUCTION, OR EXCEPTION.—Nothing in this section shall restrict the ability of the Secretary to—

“(i) reverse a debarment decision;

“(ii) reduce the period or scope of a debarment;

“(iii) grant an exception permitting a debarred contractor to participate in a particular contract to provide goods or services; or

“(iv) otherwise settle a debarment action at any time;

in conjunction with the participation of a local agency in a child nutrition program, if the Secretary determines there is good cause for the action, after taking into account factors set forth in paragraphs (1) through (6) of subsection (e).

“(5) INFORMATION.—On request, the Secretary shall present to the appropriate congressional committees information regarding the decisions required by this subsection.

“(6) RELATIONSHIP TO OTHER AUTHORITIES.—A debarment imposed under this section shall not reduce or diminish the authority of a Federal, State, or local government agency or court to penalize, imprison, fine, suspend, debar, or take other adverse action against a person in a civil, criminal, or administrative proceeding.

“(7) REGULATIONS.—The Secretary shall issue such regulations as are necessary to carry out this subsection.

“(e) MANDATORY DEBARMENT.—Notwithstanding any other provision of this section, the Secretary shall initiate the nonprocurement debarment proceedings described in subsection (d)(1) against the contractor who

has committed a cause for debarment (as determined under subsection (d)(2)), unless the action—

"(1) is likely to have a significant adverse effect on competition or prices in the relevant market or nationally;

"(2) will interfere with the ability of a local agency to procure a needed product for a child nutrition program;

"(3) is unfair to a person that is not involved in the improper activity that would otherwise result in the debarment;

"(4) is likely to have significant adverse economic impacts on the local economy in a manner that is unfair to innocent parties;

"(5) is not justified in light of the penalties already imposed on the contractor for violations relevant to the proposed debarment; or

"(6) is not in the public interest, or otherwise is not in the interests of justice, as determined by the Secretary.

"(f) EXHAUSTION OF ADMINISTRATIVE REMEDIES.—Prior to seeking judicial review in a court of competent jurisdiction, a contractor against whom a nonprocurement debarment proceeding has been initiated shall—

"(1) exhaust all administrative procedures prescribed by the Secretary; and

"(2) receive notice of the final determination of the Secretary.

"(g) INFORMATION RELATING TO PREVENTION AND CONTROL OF ANTICOMPETITIVE ACTIVITIES.—On request, the Secretary shall present to the appropriate congressional committees information regarding the activities of the Secretary relating to anti-competitive activities, fraud, nonprocurement debarment, and any waiver granted by the Secretary under this section."

(c) APPLICABILITY.—Section 25 of the National School Lunch Act (as added by subsection (b)) shall not apply to a cause for debarment as described in section 25(d)(2) of such Act that is based on an activity that took place prior to the effective date of section 25 of such Act.

(d) NO REDUCTION IN AUTHORITY TO DEBAR OR SUSPEND A PERSON FROM FEDERAL FINANCIAL AND NONFINANCIAL ASSISTANCE AND BENEFITS.—The authority of the Secretary of Agriculture that exists on the day before the date of enactment of this Act to debar or suspend a person from Federal financial and nonfinancial assistance and benefits under Federal programs and activities shall not be diminished or reduced by this Act or the amendment made by subsection (b).

SEC. 121. NUTRITION EDUCATION PROMOTION PROGRAM.

The National School Lunch Act (42 U.S.C. 1751 et seq.) (as amended by section 120(b)) is further amended by adding at the end of each the following new section:

"SEC. 26. NUTRITION EDUCATION PROMOTION PROGRAM.

"(a) IN GENERAL.—The Secretary, using amounts received under subsection (d), shall establish a nutrition education promotion program to promote healthy eating habits among participants in the domestic food assistance programs of the Department.

"(b) CONDUCT OF PROGRAM.—In carrying out the program described in subsection (a), the Secretary may—

"(1) develop or assist other persons in developing appropriate educational materials, including public service announcements, promotional publications, and press kits for the purpose of promoting nutrition education;

"(2) distribute or assist other persons in distributing the materials to appropriate public or private individuals and entities; and

"(3) provide funds to public or private individuals and entities, including teachers,

child care providers, physicians, health professional organizations, food service personnel, school food authorities, and community-based organizations for the purpose of assisting the individuals and entities in conducting nutrition education promotion programs to promote healthy eating habits among the participants in the domestic food assistance programs of the Department.

"(c) COOPERATIVE AGREEMENTS AND GRANTS.—The Secretary may enter into cooperative agreements with, and make grants to, Federal agencies, State, and local governments, and other entities, to carry out the program described in subsection (a).

"(d) GIFTS, BEQUESTS, AND DEVICES.—

"(1) IN GENERAL.—Notwithstanding any other provision of law, the Secretary may solicit, accept, use, and dispose of gifts, bequests, or devises of services or property, both real and personal, for the purpose of establishing and carrying out the program described in subsection (a). Gifts, bequests, or devises of money and proceeds from the sale of other property received as gifts, bequests, or devises shall be deposited in the Treasury and shall be available for disbursement on order of the Secretary.

"(2) CRITERIA FOR ACCEPTANCE.—The Secretary shall establish criteria for determining whether to solicit and accept gifts, bequests, or devises under paragraph (1), including criteria that would ensure that the acceptance of any gifts, bequests, or devises would not—

"(A) reflect unfavorably on the ability of the Secretary to carry out the responsibilities of the Secretary in a fair and objective manner; or

"(B) compromise, or appear to compromise, the integrity of any governmental program or any officer or employee involved in the program."

SEC. 122. INFORMATION CLEARINGHOUSE.

The National School Lunch Act (42 U.S.C. 1751 et seq.) (as amended by section 121) is further amended by adding at the end the following new section:

"SEC. 27. INFORMATION CLEARINGHOUSE.

"(a) IN GENERAL.—The Secretary shall enter into a contract with a nongovernmental organization described in subsection (b) to establish and maintain a clearinghouse to provide information to nongovernmental groups located throughout the United States that assist low-income individuals or communities regarding food assistance, self-help activities to aid individuals in becoming self-reliant, and other activities that empower low-income individuals or communities to improve the lives of low-income individuals and reduce reliance on Federal, State, or local governmental agencies for food or other assistance.

"(b) NONGOVERNMENTAL ORGANIZATION.—The nongovernmental organization referred to in subsection (a) shall be selected on a competitive basis and shall—

"(1) be experienced in the gathering of first-hand information in all the States through onsite visits to grassroots organizations in each State that fight hunger and poverty or that assist individuals in becoming self-reliant;

"(2) be experienced in the establishment of a clearinghouse similar to the clearinghouse described in subsection (a);

"(3) agree to contribute in-kind resources towards the establishment and maintenance of the clearinghouse and agree to provide clearinghouse information, free of charge, to the Secretary, States, counties, cities, antihunger groups, and grassroots organizations that assist individuals in becoming self-sufficient and self-reliant;

"(4) be sponsored by an organization, or be an organization, that—

"(A) has helped combat hunger for at least 10 years;

"(B) is committed to reinvesting in the United States; and

"(C) is knowledgeable regarding Federal nutrition programs;

"(5) be experienced in communicating the purpose of the clearinghouse through the media, including the radio and print media, and be able to provide access to the clearinghouse information through computer or telecommunications technology, as well as through the mails; and

"(6) be able to provide examples, advice, and guidance to States, counties, cities, communities, antihunger groups, and local organizations regarding means of assisting individuals and communities to reduce reliance on government programs, reduce hunger, improve nutrition, and otherwise assist low-income individuals and communities become more self-sufficient.

"(c) AUDITS.—The Secretary shall establish fair and reasonable auditing procedures regarding the expenditures of funds to carry out this section.

"(d) FUNDING.—Out of any moneys in the Treasury not otherwise appropriated, the Secretary of the Treasury shall pay to the Secretary to provide to the organization selected under this section, to establish and maintain the information clearinghouse, \$200,000 for each of fiscal years 1995 and 1996, \$150,000 for each of fiscal years 1997 and 1998, and \$75,000 for fiscal year 1999. The Secretary shall be entitled to receive the funds and shall accept the funds."

SEC. 123. GUIDANCE AND GRANTS FOR ACCOMMODATING MEDICAL AND SPECIAL DIETARY NEEDS OF CHILDREN WITH DISABILITIES.

The National School Lunch Act (42 U.S.C. 1751 et seq.) (as amended by section 122) is further amended by adding at the end the following new section:

"SEC. 28. GUIDANCE AND GRANTS FOR ACCOMMODATING MEDICAL AND SPECIAL DIETARY NEEDS OF CHILDREN WITH DISABILITIES.

"(a) DEFINITIONS.—As used in this section:

"(1) CHILDREN WITH DISABILITIES.—The term 'children with disabilities' means individuals, each of which is—

"(A) a participant in a covered program; and

"(B) an individual with a disability, as defined in section 7(8) of the Rehabilitation Act of 1973 (29 U.S.C. 706(8)) for purposes of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).

"(2) COVERED PROGRAM.—The term 'covered program' means—

"(A) the school lunch program established under this Act;

"(B) the school breakfast program established under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773); and

"(C) any other program established under this Act or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) that the Secretary determines is appropriate.

"(3) ELIGIBLE ENTITY.—The term 'eligible entity' means a school food service authority, or institution or organization, that participates in a covered program.

"(b) GUIDANCE.—

"(1) DEVELOPMENT.—The Secretary, in consultation with the Attorney General and the Secretary of Education, shall develop and approve guidances for accommodating the medical and special dietary needs of children with disabilities under covered programs in a manner that is consistent with section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).

"(2) TIMING.—In the case of the school lunch program established under this Act and the school breakfast program established under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773), the Secretary shall develop the guidance as required by paragraph (1) not later than 90 days after the date of enactment of this section.

"(3) DISTRIBUTION.—Not later than 60 days after the date that the development of the guidance relating to a covered program is completed, the Secretary shall distribute the guidance to school food service authorities, and institutions and organizations, participating in the covered program.

"(4) REVISION OF GUIDANCE.—The Secretary, in consultation with the Attorney General and the Secretary of Education, shall periodically update and approve the guidance to reflect new scientific information and comments and suggestions from persons carrying out covered programs, recognized medical authorities, parents, and other persons.

"(c) GRANTS.—

"(1) IN GENERAL.—Subject to the availability of appropriations provided in advance to carry out this subsection, the Secretary shall make grants on a competitive basis to State educational agencies for distribution to eligible entities to assist the eligible entities with nonrecurring expenses incurred in accommodating the medical and special dietary needs of children with disabilities in a manner that is consistent with section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).

"(2) ADDITIONAL ASSISTANCE.—Subject to paragraph (3)(A)(iii), assistance received through grants made under this subsection shall be in addition to any other assistance that State educational agencies and eligible entities would otherwise receive.

"(3) ALLOCATION BY SECRETARY.—

"(A) PREFERENCE.—In making grants under this subsection for any fiscal year, the Secretary shall provide a preference to State educational agencies that, individually—

"(i) submit to the Secretary a plan for accommodating the needs described in paragraph (1), including a description of the purpose of the project for which the agency seeks such a grant, a budget for the project, and a justification for the budget;

"(ii) provide to the Secretary data demonstrating that the State served by the agency has a substantial percentage of children with medical or special dietary needs, and information explaining the basis for the data; or

"(iii) demonstrate to the satisfaction of the Secretary that the activities supported through such a grant will be coordinated with activities supported under other Federal, State, and local programs, including—

"(I) activities carried out under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.);

"(II) activities carried out under the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.); and

"(III) activities carried out under section 19 of the Child Nutrition Act of 1966 (42 U.S.C. 1788) or by the food service management institute established under section 21.

"(B) REALLOCATION.—The Secretary shall act in a timely manner to recover and reallocate to other States any amounts provided to a State educational agency under this subsection that are not used by the agency within a reasonable period (as determined by the Secretary).

"(C) APPLICATIONS.—The Secretary shall allow State educational agencies to apply on an annual basis for assistance under this subsection.

"(4) ALLOCATION BY STATE EDUCATIONAL AGENCIES.—In allocating funds made available under this subsection within a State, the State educational agency shall give a preference to eligible entities that demonstrate the greatest ability to use the funds to carry out the plan submitted by the State in accordance with paragraph (3)(A)(i).

"(5) MAINTENANCE OF EFFORT.—Expenditures of funds from State and local sources to accommodate the needs described in paragraph (1) shall not be diminished as a result of grants received under this subsection.

"(6) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated \$1,000,000 for each of fiscal years 1995 through 2000 to carry out this subsection."

SEC. 124. INSPECTION OF JUICE AND JUICE PRODUCTS.

(a) IN GENERAL.—The National School Lunch Act (42 U.S.C. 1751 et seq.) (as amended by section 123) is further amended by adding at the end the following new section:

"SEC. 29. INSPECTION OF JUICE AND JUICE PRODUCTS.

"(a) DEFINITION OF JUICE AND JUICE PRODUCT.—As used in this section, the terms 'juice' and 'juice product' mean juice and a juice-based product, respectively, for which a United States standard for a grade has been issued by the Secretary under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 et seq.).

"(b) PROHIBITION.—No State, State agency, or local agency shall contract to procure, or make available, juice or a juice product for use in the school lunch program established under this Act or the school breakfast program established under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) unless the juice or juice product was processed under in-plant inspection conducted by the Secretary.

"(c) REGULATIONS.—The Secretary shall issue such regulations as are necessary to carry out this section."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall become effective on the date that is 270 days after the date of enactment of this Act.

SEC. 125. ADMINISTRATION OF NUTRITION PROGRAMS.

Not later than 180 days after the date of enactment of this Act, the Secretary of Agriculture shall issue regulations that—

(1) significantly ease the administrative and paperwork burdens on participating schools and families with respect to—

(A) the school lunch program established under the National School Lunch Act (42 U.S.C. 1751 et seq.); and

(B) the school breakfast program established under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773); and

(2) streamline Federal, State, and local administration of all programs established under the National School Lunch Act (42 U.S.C. 1751 et seq.) and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.).

TITLE II—SCHOOL BREAKFAST AND RELATED PROGRAMS

SEC. 201. SCHOOL BREAKFAST PROGRAM.

(a) TECHNICAL ASSISTANCE FOR SCHOOL BREAKFAST PROGRAM.—Section 4(e)(1) of the Child Nutrition Act of 1966 (42 U.S.C. 1773(e)(1)) is amended—

(1) by inserting "(A)" after "(1)"; and

(2) by adding at the end the following new subparagraph:

"(B) The Secretary shall provide through State educational agencies technical assistance and training, including technical assistance and training in the preparation of foods

high in complex carbohydrates and lower-fat versions of foods commonly used in the school breakfast program established under this section, to schools participating in the school breakfast program to assist the schools in complying with the nutritional requirements prescribed by the Secretary pursuant to subparagraph (A) and in providing appropriate meals to children with medically certified special dietary needs. The Secretary shall provide through State educational agencies additional technical assistance to schools that are having difficulty maintaining compliance with the requirements."

(b) STARTUP AND EXPANSION OF SCHOOL BREAKFAST PROGRAM AND SUMMER FOOD SERVICE PROGRAM FOR CHILDREN.—Subsection (g) of section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773(g)) is amended to read as follows:

"STARTUP COSTS

"(g)(1) The Secretary shall make payments, totalling not less than \$5,000,000 for each of fiscal years 1991 through 1996, \$6,000,000 for each of fiscal years 1997 and 1998, and \$7,000,000 for fiscal year 1999 and each subsequent fiscal year, on a competitive basis and in the following order of priority (subject to other provisions of this subsection), to—

"(A) State educational agencies in a substantial number of States for distribution to eligible schools to assist the schools with nonrecurring expenses incurred in—

"(i) initiating a school breakfast program under this section; or

"(ii) expanding a school breakfast program; and

"(B) a substantial number of States for distribution to service institutions to assist the institutions with nonrecurring expenses incurred in—

"(i) initiating a summer food service program for children; or

"(ii) expanding a summer food service program for children.

"(2) Payments received under this subsection shall be in addition to payments to which State agencies are entitled under subsection (b) and section 13 of the National School Lunch Act (42 U.S.C. 1761).

"(3) To be eligible to receive a payment under this subsection, a State educational agency shall submit to the Secretary a plan to expand school breakfast programs conducted in the State, including a description of the manner in which the agency will provide technical assistance and funding to schools in the State to expand the programs.

"(4) In making payments under this subsection for any fiscal year to initiate or expand school breakfast programs, the Secretary shall provide a preference to State educational agencies that—

"(A) have in effect a State law that requires the expansion of the programs during the year;

"(B) have significant public or private resources that have been assembled to carry out the expansion of the programs during the year;

"(C) do not have a breakfast program available to a large number of low-income children in the State; or

"(D) serve an unmet need among low-income children, as determined by the Secretary.

"(5) In making payments under this subsection for any fiscal year to initiate or expand summer food service programs for children, the Secretary shall provide a preference to States—

"(A)(i) in which the numbers of children participating in the summer food service

program for children represent the lowest percentages of the number of children receiving free or reduced price meals under the national school lunch program established under the National School Lunch Act (42 U.S.C. 1751 et seq.); or

"(ii) that do not have a summer food service program for children available to a large number of low-income children in the State; and

"(B) that submit to the Secretary a plan to expand the summer food service programs for children conducted in the State, including a description of—

"(i) the manner in which the State will provide technical assistance and funding to service institutions in the State to expand the programs; and

"(ii) significant public or private resources that have been assembled to carry out the expansion of the programs during the year.

"(6) The Secretary shall act in a timely manner to recover and reallocate to other States any amounts provided to a State educational agency or State under this subsection that are not used by the agency or State within a reasonable period (as determined by the Secretary).

"(7) The Secretary shall allow States to apply on an annual basis for assistance under this subsection.

"(8) Each State agency and State, in allocating funds within the State, shall give preference for assistance under this subsection to eligible schools and service institutions that demonstrate the greatest need for a breakfast program or a summer food service program for children, respectively.

"(9) Expenditures of funds from State and local sources for the maintenance of the breakfast program and the summer food service program for children shall not be diminished as a result of payments received under this subsection.

"(10) As used in this subsection:

"(A) The term 'eligible school' means a school—

"(i) attended by children a significant percentage of whom are members of low-income families; and

"(ii) that agrees to operate the breakfast program established with the assistance provided under this section for a period of not less than 3 years.

"(B) The term 'service institutions' means an institution or organization described in paragraph (1)(B) or (7) of section 13(a) of the National School Lunch Act (42 U.S.C. 1761(a)(1)(B) or (7)).

"(C) The term 'summer food service program for children' means a program authorized by section 13 of such Act (42 U.S.C. 1761)."

SEC. 202. STATE ADMINISTRATIVE EXPENSES.

(a) FUNDING FOR HOMELESS CHILDREN NUTRITION PROGRAM.—Section 7(a) of the Child Nutrition Act of 1966 (42 U.S.C. 1776(a)) is amended—

(1) in the second sentence of paragraph (1), by striking "paragraphs (2), (3), and (4) of this subsection" and inserting "paragraphs (2) through (5)"; and

(2) in paragraph (5), by striking subparagraph (B) and inserting the following new subparagraph:

"(B)(i) Notwithstanding any other provision of this subsection, of the amounts that are provided under paragraph (1), before making the allocations required under paragraphs (2), (3), and (4), the Secretary shall allocate \$3,000,000 for fiscal year 1995 and each subsequent fiscal year to carry out section 17B of the National School Lunch Act.

"(ii) After making the allocations required under clause (i) and paragraphs (2), (3), and

(4), the Secretary shall allocate, for purposes of administrative costs, any remaining amounts among States that demonstrate a need for the amounts."

(b) WITHHOLDING OF FUNDS FOR SERIOUS DEFICIENCY IN STATE ADMINISTRATION OF PROGRAMS.—Section 7(a) of such Act (42 U.S.C. 1776(a)) is amended by adding at the end the following new paragraph:

"(9)(A) If the Secretary determines that the administration of any program by a State under this Act (other than section 17) or under the National School Lunch Act (42 U.S.C. 1751 et seq.), or compliance with a regulation issued to carry out a program pursuant to either of such Acts, is seriously deficient, and the State fails to correct the deficiency within a period of time specified by the Secretary, the Secretary may withhold from the State all or part of the funds allocated to the State under this section and sections 13(k)(1) and 17 of the National School Lunch Act (42 U.S.C. 1761(k)(1) and 1766).

"(B) On a subsequent determination by the Secretary that the administration of the program for which the Secretary withheld funds under subparagraph (A), or compliance with the regulation issued to carry out the program, is no longer seriously deficient and is carried out in an acceptable manner, the Secretary may allocate all or part of the funds withheld under subparagraph (A) to the State."

(c) EXTENSION OF AUTHORITY TO PROVIDE FUNDS FOR STATE ADMINISTRATIVE EXPENSES.—Section 7(h) of such Act (42 U.S.C. 1776(h)) is amended by striking "1994" and inserting "1998".

(d) PROHIBITION OF FUNDING UNLESS STATE AGREES TO PARTICIPATE IN CERTAIN STUDIES OR SURVEYS.—Section 7 of such Act (42 U.S.C. 1776) is amended—

(1) by redesignating subsection (h) as subsection (i); and

(2) by inserting after subsection (g) the following new subsection:

"(h) The Secretary may not provide amounts under this section to a State for administrative costs incurred in any fiscal year unless the State agrees to participate in each study or survey of a program authorized under this Act or the National School Lunch Act (42 U.S.C. 1751 et seq.) that is conducted by the Secretary."

SEC. 203. COMPETITIVE FOODS OF MINIMAL NUTRITIONAL VALUE.

Section 10 of the Child Nutrition Act of 1966 (42 U.S.C. 1779) is amended—

(1) by designating the first, second, and third sentences as subsections (a), (b), and (c), respectively;

(2) in subsection (b) (as so designated)—

(A) by striking "Such regulations" and inserting "(1) The regulations"; and

(B) by adding at the end the following new paragraphs:

"(2) The Secretary shall develop and provide to elementary schools, through each State agency, model language that bans the sale of competitive foods of minimal nutritional value anywhere on elementary school grounds before the end of the last lunch period.

"(3) The Secretary shall provide to secondary schools, through State agencies, a copy of regulations (in existence on the effective date of this paragraph) concerning the sale of competitive foods of minimal nutritional value.

"(4) Paragraphs (2) and (3) shall not apply to a State that has in effect a ban on the sale of competitive foods of minimal nutritional value in schools in the State."

SEC. 204. SPECIAL SUPPLEMENTAL NUTRITION PROGRAM.

(a) DEFINITION OF NUTRITIONAL RISK.—Section 17(b)(8) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)(8)) is amended—

(1) by redesignating subparagraph (D) as subparagraph (E);

(2) by inserting after "health," at the end of subparagraph (C) the following new subparagraph: "(D) conditions that directly affect the nutritional health of a person, such as alcoholism or drug abuse,"; and

(3) in subparagraph (E) (as so redesignated), by striking "alcoholism and drug addiction, homelessness, and" and inserting "homelessness and".

(b) PRESUMPTIVE ELIGIBILITY.—Section 17(d)(3) of such Act (42 U.S.C. 1786(d)(3)) is amended—

(1) by inserting "(A)" after "(3)"; and

(2) by adding at the end the following new subparagraph:

"(B) Under the procedures, a pregnant woman who meets the income eligibility standards shall be considered presumptively eligible to participate in the program and shall be certified for participation immediately, without delaying certification until an evaluation is made concerning nutritional risk. A nutritional risk evaluation of the woman shall be completed not later than 60 days after the woman is certified for participation. If it is subsequently determined that the woman does not meet nutritional risk criteria, the certification of the woman shall terminate on the date of the determination."

(c) TECHNICAL CORRECTIONS.—Section 17(e) of such Act (42 U.S.C. 1786(e)) is amended by redesignating paragraph (3) (as added by section 123(a)(3)(D) of the Child Nutrition and WIC Reauthorization Act of 1989 (Public Law 101-147; 103 Stat. 895)) and paragraphs (4) and (5) as paragraphs (4), (5), and (6), respectively.

(d) COORDINATION OF WIC AND MEDICAID PROGRAMS USING MANAGED CARE PROVIDERS.—Section 17(f)(1)(C)(iii) is amended by inserting before the semicolon at the end the following: ", including medicaid programs that use managed care providers under section 1903(m) or 1915(b) of the Social Security Act (42 U.S.C. 1396b(m) or 1396b(b)) (including coordination through the referral of potentially eligible women, infants, and children between the program authorized under this section and the medicaid program)".

(e) PRIORITY CONSIDERATION FOR CERTAIN MIGRANT POPULATIONS.—The first sentence of section 17(f)(3) of such Act (42 U.S.C. 1786(f)(3)) is amended by inserting before the period at the end the following: "and shall ensure that local programs provide priority consideration to serving migrant participants who are residing in the State for a limited period of time".

(f) INCOME ELIGIBILITY GUIDELINES.—Paragraph (18) of section 17(f) of such Act (42 U.S.C. 1786(f)(18)) is amended to read as follows:

"(18) Not later than July 1 of each year, a State agency may implement income eligibility guidelines under this section concurrently with the implementation of income eligibility guidelines under the medicaid program established under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.)."

(g) USE OF RECOVERED PROGRAM FUNDS IN YEAR COLLECTED.—Section 17(f) of such Act (42 U.S.C. 1786(f)) is amended by adding at the end the following new paragraph:

"(23) A State agency may use funds recovered as a result of violations in the food delivery system of the program in the year in which the funds are collected for the purpose of carrying out the program."

(h) EXTENSION OF PROGRAM.—Section 17 of such Act (42 U.S.C. 1786) is amended—

(1) in the first sentence of subsection (g)(1), by striking "1991, 1992, 1993, and 1994" and inserting "1991 through 1998"; and

(2) in the first sentence of subsection (h)(2)(A), by striking "1990, 1991, 1992, 1993 and 1994" and inserting "1990 through 1998".

(i) USE OF FUNDS FOR TECHNICAL ASSISTANCE AND RESEARCH EVALUATION PROJECTS.—Section 17(g)(5) of such Act (42 U.S.C. 1786(g)(5)) is amended—

(1) by striking "and administration of pilot projects" and inserting "administration of pilot projects";

(2) by inserting before the period at the end the following: ", and carrying out technical assistance and research evaluation projects of the programs established under this section"; and

(3) by adding at the end the following new sentence: "The Secretary may allow the interagency transfer of funds made available to carry out this paragraph to Federal and other agencies to carry out projects and initiatives that are consistent with program goals.".

(j) BREASTFEEDING PROMOTION AND SUPPORT ACTIVITIES.—

(1) IN GENERAL.—Section 17(h)(3) of such Act (42 U.S.C. 1786(h)(3)) is amended—

(A) in subparagraph (A)(i)(II), by striking "\$8,000,000," and inserting "the national minimum breastfeeding promotion expenditure, as described in subparagraph (E)."; and

(B) by adding at the end the following new subparagraph:

"(E) The national minimum breastfeeding promotion expenditure shall be—

"(i) with respect to fiscal year 1995, the amount that is equal to \$21 multiplied by the number of pregnant women and breastfeeding women participating in the program, based on the average number of pregnant women and breastfeeding women during the last 3 months for which the Secretary has final data; and

"(ii) with respect to each of fiscal years 1996 through 1998, the amount described in clause (i) adjusted for inflation in accordance with paragraph (1)(B)(ii)."

(2) IMPLEMENTATION.—The Secretary of Agriculture may permit a State agency a period of not more than 2 years after the effective date of this subsection to comply with the expenditure required by reason of the amendments made by paragraph (1).

(k) DEVELOPMENT OF STANDARDS FOR THE COLLECTION OF BREASTFEEDING DATA.—Section 17(h)(4) of such Act (42 U.S.C. 1786(h)(4)) is 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)(i) not later than 1 year after the effective date of this subparagraph, develop uniform requirements for the collection of data regarding the incidence and duration of breastfeeding among participants in the program; and

"(ii) effective beginning on the date of the establishment of the uniform requirements, require each State agency to report the data for inclusion in the report to Congress described in subsection (d)(4)."

(l) SUBMISSION OF INFORMATION TO CONGRESS ON WAIVERS WITH RESPECT TO PROCUREMENT OF INFANT FORMULA.—Section 17(h)(8)(D)(iii) of such Act (42 U.S.C. 1786(h)(8)(D)(iii)) is amended by striking "at 6-month intervals" and inserting "on a timely basis".

(m) COST CONTAINMENT.—

(1) IN GENERAL.—Section 17(h)(8)(G) (42 U.S.C. 1786(h)(8)(G)) is amended—

(A) in clause (i)—

(i) in the first sentence, by striking "The" and inserting "During each of fiscal years 1995 and 1996, the"; and

(ii) by striking the second sentence and inserting the following new sentence: "If an offer made under the preceding sentence results in the implementation of contracts by 2 or more State agencies, the Secretary shall also make offers in accordance with the preceding sentence during each of fiscal years 1997 and 1998.";

(B) in clause (viii), by inserting after the first sentence the following new sentence: "In conducting an offer under this clause, the Secretary shall attempt to develop and use procurement procedures that are likely to be broadly acceptable among State agencies."; and

(C) by adding at the end the following new clause:

"(ix) If an offer made under clause (i) results in the implementation of contracts by 2 or more State agencies, the Secretary shall promptly offer to solicit bids on behalf of State agencies regarding cost containment contracts to be entered into by infant cereal or infant juice manufacturers, or both, and State agencies. In carrying out this clause, the Secretary shall, to the maximum extent feasible, follow the procedures prescribed in this subparagraph regarding offers made by the Secretary with regard to soliciting bids regarding infant formula cost containment contracts. If the offer of the Secretary to solicit bids regarding cost containment contracts for infant cereal or infant juice, or both, results in the implementation of contracts by 2 or more State agencies, the Secretary shall renew the offer at appropriate intervals.".

(2) REPEAL OF TERMINATION OF AUTHORITY.—Section 209 of the WIC Infant Formula Procurement Act of 1992 (Public Law 102-512; 42 U.S.C. 1786 note) is repealed.

(n) PROHIBITION ON INTEREST LIABILITY TO FEDERAL GOVERNMENT ON REBATE FUNDS.—Section 17(h)(8) of such Act (42 U.S.C. 1786(h)(8)) is amended by adding at the end the following new subparagraph:

"(L) A State shall not incur an interest liability to the Federal Government on rebate funds for infant formula and other foods if all interest earned by the State on the funds is used to carry out the program.".

(o) USE OF UNIVERSAL PRODUCT CODES.—Section 17(h)(8) of such Act (42 U.S.C. 1786(h)(8)) (as amended by subsection (n)) is further amended by adding at the end the following new subparagraph:

"(M)(i) The Secretary shall establish pilot projects to determine the feasibility and cost of requiring States to carry out a system for using universal product codes to assist retail food stores that are vendors under the program in providing the type of infant formula that the participants in the program are authorized to obtain. In carrying out the projects, the Secretary shall determine whether the system reduces the incidence of incorrect redemptions of low-iron formula or brands of infant formula not authorized to be redeemed through the program, or both.

"(ii) If the Secretary determines that the system is feasible, cost-effective, and reduces the incidence of incorrect redemptions described in clause (i), the Secretary shall establish such procedures as the Secretary determines appropriate to require States to carry out the system.

"(iii) The system shall not require a vendor under the program to obtain special

equipment and shall not be applicable to a vendor that does not have equipment that can use universal product codes.".

(p) USE OF UNSPENT NUTRITION SERVICES AND ADMINISTRATION FUNDS.—Section 17(h) of such Act (42 U.S.C. 1786(h)) is amended by adding at the end the following new paragraph:

"(10)(A) For each of fiscal years 1995 through 1998, the Secretary shall use, for the purposes specified in subparagraph (B), the lesser of \$10,000,000 or the amount of unspent funds for nutrition services and administration from the previous fiscal year.

"(B) Funds under subparagraph (A) shall be used for—

"(i) the development of infrastructure for the program under this section, including management information systems;

"(ii) special State projects of regional or national significance directed toward improving the services of the program under this section; and

"(iii) special breastfeeding support and promotion projects, including projects to assess the effectiveness of particular breastfeeding promotion strategies and to develop State or local agency capacity or facilities to provide quality breastfeeding services.".

(q) SPENDBACK FUNDS.—Section 17(i)(3) of such Act (42 U.S.C. 1786(i)(3)) is amended—

(1) in subparagraph (A)(i), by inserting "(except as provided in subparagraph (H))" after "1 percent"; and

(2) by adding at the end the following new subparagraph:

"(H) The Secretary may authorize a State agency to expend not more than 3 percent of the amount of funds allocated to a State under this section for supplemental foods for a fiscal year for expenses incurred under this section for supplemental foods during the preceding fiscal year, if the Secretary determines that there has been a significant reduction in rebates provided to the State agency that would affect the ability of the State agency to at least maintain the level of participation by eligible participants served by the State agency.".

(r) ELIMINATION OF DUPLICATIVE MIGRANT REPORTS.—Section 17 of such Act (42 U.S.C. 1786) is amended—

(1) in subsection (d)(4), by inserting after "Congress" the following: "and the National Advisory Council on Maternal, Infant, and Fetal Nutrition established under subsection (k)"; and

(2) by striking subsection (j).

(s) INITIATIVE TO PROVIDE PROGRAM SERVICES AT COMMUNITY AND MIGRANT HEALTH CENTERS.—Section 17 of such Act (42 U.S.C. 1786) (as amended by subsection (r)(2)) is further amended by inserting after subsection (i) the following new subsection:

"(j)(1) The Secretary and the Secretary of Health and Human Services (referred to in this subsection as the 'Secretaries') shall jointly establish and carry out an initiative for the purpose of providing both supplemental foods and nutrition education under the special supplemental nutrition program and health care services to low-income pregnant, postpartum, and breastfeeding women, infants, and children at substantially more community health centers and migrant health centers than are served on the date of enactment of the Better Nutrition and Health for Children Act of 1994.

"(2) The initiative shall also include—

"(A) activities to improve the coordination of the provision of supplemental foods and nutrition education under the special supplemental nutrition program and health care

services at facilities funded by the Indian Health Service; and

"(B) the development and implementation of strategies to ensure that, to the maximum extent feasible, new community health centers, migrant health centers, and other federally supported health care facilities established in medically underserved areas provide supplemental foods and nutrition education under the special supplemental nutrition program.

"(3) The initiative may include—

"(A) outreach and technical assistance for State and local agencies and the health centers referred to in subparagraphs (A) and (B) of paragraph (2);

"(B) demonstration projects in selected States or local areas; and

"(C) such other activities as the Secretaries consider appropriate.

"(4) As used in this subsection:

"(A) The term 'community health center' has the meaning provided in section 330(a) of the Public Health Service Act (42 U.S.C. 254c(a)).

"(B) The term 'migrant health center' has the meaning provided in section 329(a)(1) of such Act (42 U.S.C. 254b(a)(1))."

(t) FARMERS' MARKET NUTRITION PROGRAM.—

(1) MATCHING REQUIREMENT FOR INDIAN STATE AGENCIES.—Section 17(m)(3) of such Act (42 U.S.C. 1786(m)(3)) is amended by adding at the end the following new sentence: "The Secretary may negotiate with an Indian State agency a lower percentage of matching funds than is required under the preceding sentence, but not lower than 10 percent of the total cost of the program, if the Indian State agency demonstrates to the Secretary financial hardship for the affected Indian tribe, band, group, or council."

(2) EXPANSION.—Section 17(m)(5)(F) of such Act (42 U.S.C. 1786(m)(5)(F)) is amended—

(A) in clause (i), by striking "15 percent" and inserting "17 percent"; and

(B) by striking clause (ii) and inserting the following new clause:

"(ii) During any fiscal year for which a State receives assistance under this subsection, the Secretary shall permit the State to use up to 1 percent of total program funds for market development or technical assistance to farmers' markets if the Secretary determines that the State intends to promote the development of farmers' markets in socially or economically disadvantaged areas, or remote rural areas, where individuals eligible for participation in the program have limited access to locally grown fruits and vegetables."

(3) NOTIFICATION OF AWARD OF FUNDS.—Section 17(m)(6)(A) of such Act (42 U.S.C. 1786(m)(6)(A)) is amended by adding at the end the following new sentence: "The Secretary shall inform each State of the award of funds as prescribed by subparagraph (G) by February 15 of each year."

(4) MINIMUM AMOUNT OF GRANTS.—Section 17(m)(6)(B)(ii) of such Act (42 U.S.C. 1786(m)(6)(B)(ii)) is amended by striking "\$50,000" each place it appears and inserting "\$75,000".

(5) STATE PLAN SUBMISSION DATE.—Section 17(m)(6)(D)(i) of such Act (42 U.S.C. 1786(m)(6)(D)(i)) is amended by striking "at such time and in such manner as the Secretary may reasonably require" and inserting "by November 15 of each year".

(6) MAINTENANCE OF EFFORT.—Section 17(m)(6)(F)(iii) of such Act (42 U.S.C. 1786(m)(6)(F)(iii)) is amended by striking "reduce in any fiscal year" and inserting "reduce, in the first full fiscal year of the Federal grant,".

(7) ALLOCATION OF ADDITIONAL FUNDS.—Section 17(m)(6)(G) of such Act (42 U.S.C. 1786(m)(6)(G)) is amended—

(A) in the first sentence of clause (i), by striking "45 to 55 percent" and inserting "60 percent"; and

(B) in the first sentence of clause (ii), by striking "45 to 55 percent" and inserting "40 percent".

(8) DATA COLLECTION REQUIREMENTS.—Section 17(m)(8) of such Act (42 U.S.C. 1786(m)(8)) is amended by striking subparagraphs (D) and (E) and inserting the following new subparagraphs:

"(D) if available, information on the change in consumption of fresh fruits and vegetables by recipients;

"(E) if available, information on the effects of the program on farmers' markets; and"

(9) AUTHORIZATION OF APPROPRIATIONS.—Section 17(m)(10)(A) of such Act (42 U.S.C. 1786(m)(10)(A)) is amended by striking "and \$8,000,000 for fiscal year 1994" and inserting "\$8,000,000 for fiscal year 1994, \$10,500,000 for fiscal year 1995, \$12,500,000 for fiscal year 1996, \$15,000,000 for fiscal year 1997, and \$18,000,000 for fiscal year 1998".

(10) ELIMINATION OF REALLOCATION OF UNEXPENDED FUNDS OF DEMONSTRATION PROJECTS.—Section 17(m)(10)(B)(ii) of such Act (42 U.S.C. 1786(m)(10)(B)(ii)) is amended by striking the second sentence.

(11) DEFINITION OF STATE AGENCY.—Section 17(m)(11)(D) of such Act (42 U.S.C. 1786(m)(11)(D)) is amended by inserting before the period at the end the following: "or any other agency approved by the chief executive officer of the State".

(12) PROMOTION BY THE SECRETARY.—The Secretary of Agriculture shall promote the use of farmers' markets by recipients of Federal nutrition programs administered by the Secretary.

(u) CHANGE IN NAME OF PROGRAM.—

(1) IN GENERAL.—Section 17 of such Act (42 U.S.C. 1786) is amended—

(A) by striking the section heading and inserting the following new section heading:

"SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS, AND CHILDREN";

(B) in the first sentence of subsection (c)(1), by striking "special supplemental food program" and inserting "special supplemental nutrition program";

(C) in the second sentence of subsection (k)(1), by striking "special supplemental food program" each place it appears and inserting "special supplemental nutrition program"; and

(D) in subsection (o)(1)(B), by striking "special supplemental food program" and inserting "special supplemental nutrition program".

(2) CONFORMING AMENDMENTS.—

(A) The second sentence of section 9(c) of the Food Stamp Act of 1977 (7 U.S.C. 2018(c)) is amended by striking "special supplemental food program" and inserting "special supplemental nutrition program".

(B) Section 685(b)(8) of the Individuals with Disabilities Education Act (20 U.S.C. 1484a(b)(8)) is amended by striking "Special Supplemental Food Program for Women, Infants and Children" and inserting "special supplemental nutrition program for women, infants, and children".

(C) Section 3803(c)(2)(C)(x) of title 31, United States Code, is amended by striking "special supplemental food program" and inserting "special supplemental nutrition program".

(D) Section 399(b)(6) of the Public Health Service Act (42 U.S.C. 280c-6(b)(6)) is amend-

ed by striking "special supplemental food program" and inserting "special supplemental nutrition program".

(E) Paragraphs (11)(C) and (53)(A) of section 1902(a) of the Social Security Act (42 U.S.C. 1396a(a)) are each amended by striking "special supplemental food program" and inserting "special supplemental nutrition program".

(F) Section 202(b) of the WIC Infant Formula Procurement Act of 1992 (Public Law 102-512; 42 U.S.C. 1786 note) is amended by striking "special supplemental food program" and inserting "special supplemental nutrition program".

(3) REFERENCES.—Any reference to the special supplemental food program established under section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786) in any law, regulation, document, record, or other paper of the United States shall be considered to be a reference to the special supplemental nutrition program established under such section.

SEC. 205. NUTRITION EDUCATION AND TRAINING PROGRAM.

(a) NAME OF PROGRAM.—Section 19 of the Child Nutrition Act of 1966 (42 U.S.C. 1788) is amended by striking "information and education" each place it appears in subsections (b), (c), (d)(1), and (j)(1) and inserting "education and training".

(b) NUTRITION EDUCATION PROGRAMS.—The second sentence of section 19(c) of such Act (42 U.S.C. 1788(c)) is amended—

(1) in subparagraph (B), by striking "school food service" and inserting "child nutrition program";

(2) by striking "and" at the end of subparagraph (C); and

(3) by inserting before the period at the end the following: "; and (E) providing information to parents and caregivers regarding the nutritional value of food and the relationship between food and health".

(c) NUTRITION EDUCATION AND TRAINING.—Section 19(d) of such Act (42 U.S.C. 1788(d)) is amended—

(1) in paragraph (1)(C), by inserting before the period at the end the following: ", and the provision of nutrition education to parents and caregivers";

(2) in the first sentence of paragraph (4), by striking "educational and school food service personnel" and inserting "educational, school food service, child care, and summer food service personnel"; and

(3) in the first sentence of paragraph (5), by inserting after "schools" the following: ", and in child care institutions and summer food service institutions,".

(d) USE OF FUNDS.—Section 19(f) of such Act (42 U.S.C. 1788(f)) is amended—

(1) by striking paragraph (1) and inserting the following new paragraph:

"(1) The funds made available under this section may, under guidelines established by the Secretary, be used by a State educational agency for—

"(A) employing a nutrition education specialist to coordinate the program, including travel and related personnel costs;

"(B) undertaking an assessment of the nutrition education needs of the State;

"(C) developing and carrying out a State plan of operation and management for nutrition education;

"(D) coordinating and promoting nutrition education and training activities in local school districts (incorporating, to the maximum extent practicable, as a learning laboratory, the child nutrition programs);

"(E) contracting with public and private nonprofit educational institutions for the conduct of nutrition education instruction

and programs relating to the purpose of this section;

"(F) providing funding for a nutrition component in the health education curriculum offered to children in kindergarten through grade 12;

"(G) instructing teachers, school administrators, or other school staff on how to promote better nutritional health and to motivate children to practice sound eating habits;

"(H) increasing public awareness of the importance of breakfasts for providing the energy necessary for the cognitive development of school-age children;

"(I) developing means of providing nutrition education to children, and families of children, through after-school programs;

"(J) creating instructional programming for teachers, food service personnel, and parents on the relationships between nutrition and health and the importance of the Food Guide Pyramid established by the Secretary;

"(K) encouraging public service advertisements to promote healthy eating habits for children;

"(L) achieving related nutrition education purposes, including the preparation, testing, distribution, and evaluation of visual aids and other informational and educational materials; and

"(M) coordinating and promoting nutrition education and training activities carried out under child nutrition programs, including the summer food service program for children established under section 13 of the National School Lunch Act (42 U.S.C. 1761) and the child and adult care food program established under section 17 of such Act (42 U.S.C. 1766)."; and

(2) by striking paragraph (3) and inserting the following new paragraph:

"(3) A State agency may use an amount equal to not more than 15 percent of the funds made available through a grant under this section for expenditures for overall administrative and supervisory or program purposes in connection with the program authorized under this section if the State makes available at least an equal amount for the expenditures.".

(e) STATE COORDINATORS FOR NUTRITION; STATE PLAN.—Section 19(h) of such Act (42 U.S.C. 1788(h)) is amended—

(1) in the first sentence of paragraph (2), by inserting "and training" after "education"; and

(2) in the third sentence of paragraph (3)—
(A) by striking "and" at the end of subparagraph (D); and

(B) by inserting before the period at the end the following: "; and (F) a comprehensive plan for providing nutrition education during the first fiscal year beginning after the submission of the plan and the succeeding 4 fiscal years".

(f) AUTHORIZATION OF APPROPRIATIONS.—Section 19(i)(2)(A) of such Act (42 U.S.C. 1788(i)(2)(A)) is amended by striking "nutrition education and information programs" and all that follows through the period at the end and inserting "nutrition education and training programs \$10,000,000 for fiscal year 1995 and each subsequent fiscal year.".

(g) AVAILABILITY OF FUNDS.—Section 19(i) of such Act (42 U.S.C. 1788(i)) is amended—

(1) by redesignating paragraph (3) as paragraph (4); and

(2) by inserting after paragraph (2) the following new paragraph:

"(3) Funds made available to any State under this section shall remain available to the State for obligation in the fiscal year succeeding the fiscal year in which the funds were received by the State.".

TITLE III—OTHER RELATED PROVISIONS

SEC. 301. DISTRIBUTION OF COMMODITIES ON CERTAIN INDIAN RESERVATIONS.

Section 3(j) of the Food Stamp Act of 1977 (7 U.S.C. 2012(j)) is amended by adding at the end the following new sentence: "For the purpose of the distribution of commodities under section 4(b), the term 'reservation' includes the geographically defined area or areas (including an urban area or areas) within the boundaries of former reservations in Oklahoma, as defined by the Secretary of the Interior, over which a tribal organization exercises governmental jurisdiction.".

TITLE IV—EFFECTIVE DATES

SEC. 401. EFFECTIVE DATES.

Except as otherwise provided in this Act, this Act and the amendments made by this Act shall become effective on October 1, 1994.

ELECTRONIC FREEDOM OF INFORMATION IMPROVEMENT ACT

The text of the bill (S. 1782) to amend title 5, United States Code, to provide for public access to information in an electronic format, to amend the Freedom of Information Act, and for other purposes, as passed by the Senate on August 25, 1994, is as follows:

S. 1782

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 "Electronic Freedom of Information Improvement Act of 1994".

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) the purpose of the Freedom of Information Act is to require agencies of the Federal Government to make certain agency information available for public inspection and copying and to establish and enable enforcement of the right of any person to obtain access to the records of such agencies (subject to statutory exemptions) for any public or private purpose;

(2) since the enactment of the Freedom of Information Act in 1966, and the amendments enacted in 1974 and 1986, the Freedom of Information Act has been a valuable means through which any person can learn how the Federal Government operates;

(3) the Freedom of Information Act has led to the disclosure of waste, fraud, abuse, and wrongdoing in the Federal Government;

(4) the Freedom of Information Act has led to the identification of unsafe consumer products, harmful drugs, and serious health hazards;

(5) Government agencies increasingly use computers to conduct agency business and to store publicly valuable agency records and information; and

(6) Government agencies should use new technology to enhance public access to agency records and information.

(b) PURPOSES.—The purposes of this Act are to—

(1) foster democracy by ensuring public access to agency records and information;

(2) improve public access to agency records and information;

(3) ensure agency compliance with statutory time limits; and

(4) maximize the usefulness of agency records and information collected, maintained, used, retained, and disseminated by the Federal Government.

SEC. 3. PUBLIC INFORMATION AVAILABILITY.

Section 552(a)(1) of title 5, United States Code, is amended—

(1) in the first sentence by inserting "by computer telecommunications, or if computer telecommunications means are not available, by other electronic means," after "Federal Register";

(2) by striking out "and" at the end of subparagraph (D);

(3) by redesignating subparagraph (E) as subparagraph (F); and

(4) by inserting after subparagraph (D) the following new subparagraph:

"(E) a complete list of all statutes that the agency head or general counsel relies upon to authorize the agency to withhold information under subsection (b)(3) of this section, together with a specific description of the scope of the information covered; and".

SEC. 4. MATERIALS MADE AVAILABLE IN ELECTRONIC FORMAT.

Section 552(a)(2) of title 5, United States Code, is amended—

(1) in the first sentence by inserting "including, within 1 year after the date of the enactment of the Electronic Freedom of Information Improvement Act of 1994, by computer telecommunications, or if computer telecommunications means are not available, by other electronic means," after "copying";

(2) in subparagraph (B) by striking out "and" after the semicolon;

(3) in subparagraph (C) by inserting "and" after the semicolon;

(4) by adding after subparagraph (C) the following new subparagraphs:

"(D) an index of all major information systems containing agency records regardless of form or format unless such an index is provided as otherwise required by law; and

"(E) a description of any new major information system with a statement of how such system shall enhance agency operations under this section"; and

(5) in the third sentence by inserting "and the extent of such deletion shall be indicated on the portion of the record which is made available or published at the place in the record where such deletion was made" after "explained fully in writing".

SEC. 5. LIST OF RECORDS MADE AVAILABLE TO THE PUBLIC AND HONORING FORMAT REQUESTS.

Section 552(a)(3) of title 5, United States Code, is amended by—

(1) inserting "(A)" after "(3)";

(2) striking out "(A) reasonably" and inserting in lieu thereof "(i) reasonably";

(3) striking out "(B)" and inserting in lieu thereof "(ii)"; and

(4) adding at the end thereof the following new subparagraphs:

"(B) A list of all records which are made available to any person under this paragraph shall be made available for public inspection and copying as provided under paragraph (2) of this subsection. Copies of all such records, regardless of form or format, which because of the nature of their subject matter, have become or are likely to become the subject of subsequent requests under this paragraph for substantially the same records, shall be made available for inspection and copying as provided under paragraph (2) of this subsection.

"(C) An agency shall, as requested by any person, provide records in any form or format in which such records are maintained by that agency.

"(D) An agency shall make reasonable efforts to provide records in the form or format requested by any person, including in an

electronic form or format, even where such records are not usually maintained but are available in such form or format."

SEC. 6. DELAYS.

(a) FEES.—Section 552(a)(4)(A) of title 5, United States Code, is amended by adding at the end thereof the following new clause:

"(viii) If at an agency's request, the Comptroller General determines that the agency annually has either provided responsive documents or denied requests in substantial compliance with the requirements of paragraph (6)(A), one-half of the fees collected under this section shall be credited to the collecting agency and expended to offset the costs of complying with this section through staff development and acquisition of additional request processing resources. The remaining fees collected under this section shall be remitted to the Treasury as general funds or miscellaneous receipts."

(b) PAYMENT OF THE EXPENSES OF THE PERSON MAKING A REQUEST.—Section 552(a)(4)(E) of title 5, United States Code, is amended by adding at the end thereof the following new sentence: "The court may assess against the United States all out-of-pocket expenses incurred by the person making a request, and reasonable attorney fees incurred in the administrative process, in any case in which the agency has failed to comply with the time limit provisions of paragraph (6) of this subsection."

(c) DEMONSTRATION OF CIRCUMSTANCES FOR DELAY.—Section 552(a)(4)(E) of title 5, United States Code, is further amended—

(1) by inserting "(i)" after "(E)"; and
(2) by adding at the end thereof the following new clause:

"(i) Any agency not in compliance with the time limits set forth in this subsection shall demonstrate to a court that the delay is warranted under the circumstances set forth under paragraph (6) (B) or (C) of this subsection."

(d) PERIOD FOR AGENCY DECISION TO COMPLY WITH REQUEST.—Section 552(a)(6)(A)(i) is amended by striking out "ten days" and inserting in lieu thereof "twenty days".

(e) AGENCY BACKLOGS.—Section 552(a)(6)(C) of title 5, United States Code, is amended by inserting after the second sentence the following: "As used in this subparagraph, 'exceptional circumstances' shall be unforeseen and shall not include delays that result from a predictable workload, including any ongoing agency backlog, in the ordinary course of processing requests for records."

(f) NOTIFICATION OF DENIAL.—The fourth sentence of section 552(a)(6)(C) of title 5, United States Code, is amended to read: "Any notification of any full or partial denial of any request for records under this subsection shall set forth the names and titles or positions of each person responsible for the denial of such request and the total number of denied records and pages considered by the agency to have been responsive to the request."

(g) MULTITRACK FIFO PROCESSING AND EXPEDITED ACCESS.—Section 552(a)(6) of title 5, United States Code, is amended by adding at the end thereof the following new subparagraphs:

"(D)(i) Each agency shall adopt a first-in, first-out (hereafter in this subparagraph referred to as FIFO) processing policy in determining the order in which requests are processed. The agency may establish separate processing tracks for simple and complex requests using FIFO processing within each track.

"(ii) For purposes of such a multitrack system—

"(I) a simple request shall be a request requiring 10 days or less to make a determination on whether to comply with such a request; and

"(II) a complex request shall be a request requiring more than 10 days to make a determination on whether to comply with such a request.

"(iii) A multitrack system shall not negate a claim of due diligence under subparagraph (C), if FIFO processing within each track is maintained and the agency can show that it has reasonably allocated resources to handle the processing for each track.

"(E)(i) Each agency shall promulgate regulations, pursuant to notice and receipt of public comment, providing that upon receipt of a request for expedited access to records and a showing by the person making such request of a compelling need for expedited access to records, the agency shall determine within 5 days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such a request, whether to comply with such request. No more than one day after making such determination the agency shall notify the person making a request for expedited access of such determination, the reasons therefor, and of the right to appeal to the head of the agency. A request for records to which the agency has granted expedited access shall be processed as soon as practicable. A request for records to which the agency has denied expedited access shall be processed within the time limits under paragraph (6) of this subsection.

"(ii) A person whose request for expedited access has not been decided within 5 days of its receipt by the agency or has been denied shall be required to exhaust administrative remedies. A request for expedited access which has not been decided may be appealed to the head of the agency within 7 days (excepting Saturdays, Sundays, and legal public holidays) after its receipt by the agency. A request for expedited access that has been denied by the agency may be appealed to the head of the agency within 2 days (excepting Saturdays, Sundays, and legal public holidays) after the person making such request receives notice of the agency's denial. If an agency head has denied, affirmed a denial, or failed to respond to a timely appeal of a request for expedited access, a court which would have jurisdiction of an action under paragraph (4)(B) of this subsection may, upon complaint, require the agency to show cause why the request for expedited access should not be granted, except that such review shall be limited to the record before the agency.

"(iii) The burden of demonstrating a compelling need by a person making a request for expedited access may be met by a showing, which such person certifies under penalty of perjury to be true and correct to the best of such person's knowledge and belief, that failure to obtain the requested records within the timeframe for expedited access under this paragraph would—

"(I) threaten an individual's life or safety;

"(II) result in the loss of substantial due process rights and the information sought is not otherwise available in a timely fashion; or

"(III) affect public assessment of the nature and propriety of actual or alleged governmental actions that are the subject of widespread, contemporaneous media coverage."

SEC. 7. COMPUTER REDACTION.

Section 552(b) of title 5, United States Code, is amended by inserting before the period in the sentence following paragraph (9):

"and the extent of such deletion shall be indicated on the released portion of the record at the place in the record where such deletion was made".

SEC. 8. DEFINITIONS.

Section 552(f) of title 5, United States Code, is amended to read as follows:

"(f) For purposes of this section—

"(1) the term 'agency' as defined in section 551(1) of this title includes any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency;

"(2) the term 'record' means all books, papers, maps, photographs, machine-readable materials, or other information or documentary materials, regardless of physical form or characteristics; and

"(3) the term 'search' means a manual or automated review of agency records that is conducted for the purpose of locating those records which are responsive to a request under subsection (a)(3)(A) of this section."

AVAILABILITY OF CREDIT FOR PEOPLE AFFECTED BY DISASTERS

The text of the bill (S. 2430) to facilitate recovery from the recent flooding in Georgia, Alabama, and Florida resulting from Tropical Storm Alberto by providing greater flexibility for depository institutions and their regulators, and for other purposes, as passed by the Senate on August 25, 1994, is as follows:

S. 2430

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

SECTION 1. DEPOSITORY INSTITUTIONS DISASTER RELIEF.

(a) TRUTH IN LENDING ACT; EXPEDITED FUNDS AVAILABILITY ACT.—

(1) TRUTH IN LENDING ACT.—During the 240-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, on or after July 1, 1994, that a major disaster exists, or within an area determined to be eligible for disaster relief under other Federal law by reason of damage related to the 1994 flooding in Georgia, Alabama, and Florida resulting from Tropical Storm Alberto, if the Board determines that the exception can reasonably be expected to alleviate hardships to the public resulting from such disaster that outweigh possible adverse effects.

(2) EXPEDITED FUNDS AVAILABILITY ACT.—During the 240-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 for depository institution offices located within any area referred to in paragraph (1) of this section if the Board determines that the exception can reasonably be expected to alleviate hardships to the public resulting from such disaster that outweigh possible adverse effects.

(3) TIME LIMIT ON EXCEPTIONS.—Any exception made under this subsection shall expire not later than January 1, 1996.

(4) PUBLICATION REQUIRED.—The Board of Governors of the Federal Reserve System

shall publish in the Federal Register a statement that—

(A) describes any exception made under this subsection; and

(B) explains how the exception can reasonably be expected to produce benefits to the public that outweigh possible adverse effects.

(b) DEPOSIT OF INSURANCE PROCEEDS.—

(1) IN GENERAL.—The appropriate Federal banking agency may, by order, permit an insured depository institution 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—

(A) the institution—

(i) 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, on or after July 1, 1994, that a major disaster exists, or within an area determined to be eligible for disaster relief under other Federal law by reason of damage related to the 1994 flooding in Georgia, Alabama, and Florida resulting from Tropical Storm Alberto, on the day before the date of any such determination;

(ii) 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;

(iii) was adequately capitalized (as defined in section 38 of the Federal Deposit Insurance Act) before the major disaster; and

(iv) has an acceptable plan for managing the increase in its total assets and total deposits; and

(B) the subtraction is consistent with the purpose of section 38 of the Federal Deposit Insurance Act.

(2) TIME LIMIT ON EXCEPTIONS.—Any exception made under this subsection shall expire not later than January 1, 1996.

(3) DEFINITIONS.—For purposes of this subsection, the following definitions shall apply:

(A) APPROPRIATE FEDERAL BANKING AGENCY.—The term "appropriate Federal banking agency" has the same meaning as in section 3 of the Federal Deposit Insurance Act.

(B) INSURED DEPOSITORY INSTITUTION.—The term "insured depository institution" has the same meaning as in section 3 of the Federal Deposit Insurance Act.

(C) LEVERAGE LIMIT.—The term "leverage limit" has the same meaning as in section 38 of the Federal Deposit Insurance Act.

(D) 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 any determination referred to in paragraph (1)(A)(i), 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.

(c) BANKING AGENCY PUBLICATION REQUIREMENTS.—

(1) IN GENERAL.—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, on or after July 1, 1994, that a major disaster exists, or within an area determined to be eligible for disaster relief under other Federal law by reason of damage related to the 1994 flooding in Georgia, Alabama, and Florida resulting from Tropical Storm Alberto, if the agency determines that the action would facilitate recovery from the major disaster:

(A) PROCEDURE.—Exercising the agency's authority under provisions of law other than this subsection without complying with—

(i) any requirement of section 553 of title 5, United States Code; or

(ii) any provision of law that requires notice or opportunity for hearing or sets maximum or minimum time limits with respect to agency action.

(B) PUBLICATION REQUIREMENTS.—Making exceptions, with respect to institutions or other entities for which the agency is the primary Federal regulator, to—

(i) any publication requirement with respect to establishing branches or other deposit-taking facilities; or

(ii) any similar publication requirement.

(2) PUBLICATION REQUIRED.—A qualifying regulatory agency shall publish in the Federal Register a statement that—

(A) describes any action taken under this subsection; and

(B) explains the need for the action.

(3) QUALIFYING REGULATORY AGENCY DEFINED.—For purposes of this subsection, the term "qualifying regulatory agency" means—

(A) the Board of Governors of the Federal Reserve System;

(B) the Comptroller of the Currency;

(C) the Director of the Office of Thrift Supervision;

(D) the Federal Deposit Insurance Corporation;

(E) the Financial Institutions Examination Council;

(F) the National Credit Union Administration; and

(G) with respect to chapter 53 of title 31, United States Code, the Secretary of the Treasury.

(4) EXPIRATION.—Any exception made under this subsection shall expire not later than January 1, 1996.

(d) 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 to meet the financial services needs of their communities and customers located in areas affected by the 1994 flooding in Georgia, Alabama, and Florida resulting from Tropical Storm Alberto.

(e) OTHER AUTHORITY NOT AFFECTED.—Nothing in this section limits the authority of any department or agency under any other provision of law.

ALVARO DE LUGO UNITED STATES POST OFFICE

The text of the bill (H.R. 4190) to designate the U.S. Post Office located at 41-42 Norre Gade in Saint Thomas Virgin Islands, as the "Alvaro de Lugo United States Post Office," as passed by the Senate on August 25, 1994, is as follows:

Resolved, That the bill from the House of Representatives (H.R. 4190) entitled "An Act

to designate the building located at 41-42 Norre Gade in Saint Thomas, Virgin Islands, for the period of time during which it houses operations of the United States Postal Service, as the Alvaro de Lugo Post Office", do pass with the following amendments:

Page 2, after line 2, insert:

SEC. 3. EXCLUSION OF CERTAIN POSTAL EMPLOYEES FROM FEDERAL RETIREMENT PROVISIONS RELATING TO REEMPLOYED ANNUITANTS.

(a) CIVIL SERVICE RETIREMENT SYSTEM.—Section 8344 of title 5, United States Code, is amended by adding at the end the following:

"(m)(1) For the purpose of this subsection—

"(A) the term 'postal annuitant' means any individual who becomes an annuitant by reason of retirement from the United States Postal Service;

"(B) the term 'rural postmaster' means the postmaster of any post office which provides regular postal services to any rural areas, communities, or small towns; and

"(C) the term 'rural letter carrier' means an employee of the United States Postal Service occupying a position the regular duties of which involve the collection and delivery of mail on a rural route.

"(2)(A) Subsections (a) and (b) shall not apply to any postal annuitant receiving an annuity from the Fund while such annuitant is employed by the United States Postal Service, on a temporary basis, as a rural postmaster or rural letter carrier, subject to subparagraph (B).

"(B) This subsection shall not, in the case of any postal annuitant, have the effect of excluding from the application of subsections (a) and (b) more than—

"(i) 90 days of service in any calendar year; or

"(ii) a total of 180 days of service."

(b) FEDERAL EMPLOYEES' RETIREMENT SYSTEM.—Section 8468 of title 5, United States Code, is amended by adding at the end the following:

"(j)(1) For the purpose of this subsection—

"(A) the term 'postal annuitant' means any individual who becomes an annuitant by reason of retirement from the United States Postal Service;

"(B) the term 'rural postmaster' means the postmaster of any post office which provides regular postal services to any rural areas, communities, or small towns; and

"(C) the term 'rural letter carrier' means an employee of the United States Postal Service occupying a position the regular duties of which involve the collection and delivery of mail on a rural route.

"(2)(A) Subsections (a) and (b) shall not apply to any postal annuitant receiving an annuity from the Fund while such annuitant is employed by the United States Postal Service, on a temporary basis, as a rural postmaster or rural letter carrier, subject to subparagraph (B).

"(B) This subsection shall not, in the case of any postal annuitant, have the effect of excluding from the application of subsections (a) and (b) more than—

"(i) 90 days of service in any calendar year; or

"(ii) a total of 180 days of service."

(c) CLARIFICATION.—Nothing in this section shall have the effect of causing any reemployed annuitant to be treated as an active employee for purposes of any provision of chapter 83 or 84 of title 5, United States Code.

(d) APPLICABILITY.—This section and the amendments made by this section shall apply with respect to temporary appointments commencing on or after the date of the enactment of this Act.

Amend the title so as to read: "An Act to designate the building located at 41-42 Norre Gade in Saint Thomas, Virgin Islands, for the period of time during which it houses operations of the United States Postal Service, as the Alvaro de Lugo Post Office; and to

provide that the provisions of chapters 83 and 84 of title 5, United States Code, relating to reemployed annuitants shall not apply with respect to postal retirees who are reemployed, on a temporary basis, to serve as rural letter carriers or rural postmasters."

FEDERAL CROP INSURANCE REFORM ACT

The text of the bill (H.R. 4217) to reform the Federal Crop Insurance Program, and for other purposes, as passed by the Senate on August 25, 1994, is as follows:

Resolved, That the bill from the House of Representatives (H.R. 4217) entitled "An Act to reform the Federal crop insurance program, and for other purposes", do pass with the following amendment:

Strike out all after the enacting clause and insert:

SECTION 1. TABLE OF CONTENTS.

The table of contents of this Act is as follows:

Sec. 1. Table of contents.

TITLE I—FEDERAL CROP INSURANCE REFORM

SUBTITLE A—CATASTROPHIC RISK AND ADDITIONAL COVERAGE INSURANCE

- Sec. 1100. Short title; references.
- Sec. 1101. Authority to offer insurance.
- Sec. 1102. Catastrophic risk protection.
- Sec. 1103. General coverage levels.
- Sec. 1104. Premiums.
- Sec. 1105. Eligibility.
- Sec. 1106. Yield determinations.
- Sec. 1107. Insurance policies.
- Sec. 1108. Claims for losses.
- Sec. 1109. Reinsurance.
- Sec. 1110. Funding.
- Sec. 1111. Advisory Committee for Federal Crop Insurance.
- Sec. 1112. Management of Corporation.

SUBTITLE B—NONINSURED ASSISTANCE PROGRAM

- Sec. 1201. Noninsured assistance program.
- Sec. 1202. Payment and income limitations.

SUBTITLE C—MISCELLANEOUS

- Sec. 1301. Ineligibility for catastrophic risk and noninsured assistance payments.
- Sec. 1302. Prevented planting.
- Sec. 1303. Conforming amendments.
- Sec. 1304. Disaster assistance.
- Sec. 1305. Use of Commodity Credit Corporation funds to cover certain costs for fall-planted 1995 crops.
- Sec. 1306. Poultry labeling, public hearings.
- Sec. 1307. Agriculture employees first amendment rights.
- Sec. 1308. Adjusted cost of thrifty food plan.
- Sec. 1309. Effective dates.
- Sec. 1310. Termination of authority.

TITLE II—DEPARTMENT OF AGRICULTURE REORGANIZATION

SUBTITLE A—SHORT TITLE; PURPOSE; DEFINITIONS

- Sec. 2101. Short title.
- Sec. 2102. Purpose.
- Sec. 2103. Definitions.

SUBTITLE B—GENERAL AUTHORITIES OF THE SECRETARY

- Sec. 2201. Delegation of functions to the Secretary.
- Sec. 2202. Reorganization.
- Sec. 2203. Personnel reductions.
- Sec. 2204. Consolidation of headquarters offices.
- Sec. 2205. Reports by the Secretary.

SUBTITLE C—NATIONAL APPEALS DIVISION

- Sec. 2301. Definitions.
- Sec. 2302. National Appeals Division and Director.

- Sec. 2303. Transfer of functions.
- Sec. 2304. Personnel of the Division.
- Sec. 2305. Notice and opportunity for hearing.
- Sec. 2306. Informal hearings.
- Sec. 2307. Rights of participants.
- Sec. 2308. Division hearings and Director review.
- Sec. 2309. Judicial review.
- Sec. 2310. Implementation of final determinations of Division.
- Sec. 2311. Decisions of State and county committees.
- Sec. 2312. Prohibition on adverse action while appeal is pending.
- Sec. 2313. Relationship to other laws.
- Sec. 2314. Evaluation of agency decisionmakers and other employees.
- Sec. 2315. Conforming amendments.

SUBTITLE D—FARM AND INTERNATIONAL TRADE SERVICES

- Sec. 2401. Under Secretary for Farm and International Trade Services.
- Sec. 2402. Farm Service Agency.
- Sec. 2403. State and county committees.
- Sec. 2404. International Trade Service.

SUBTITLE E—RURAL ECONOMIC AND COMMUNITY DEVELOPMENT

- Sec. 2501. Under Secretary for Rural Economic and Community Development.
- Sec. 2502. Rural Utilities Service.
- Sec. 2503. Rural Housing and Community Development Service.
- Sec. 2504. Rural Business and Cooperative Development Service.

SUBTITLE F—FOOD, NUTRITION, AND CONSUMER SERVICES

- Sec. 2601. Under Secretary of Agriculture for Food, Nutrition, and Consumer Services.
- Sec. 2602. Food and Consumer Service.
- Sec. 2603. Nutrition Research and Education Service.

SUBTITLE G—NATIONAL RESOURCES AND ENVIRONMENT

- Sec. 2701. Natural Resources Conservation Service.
- Sec. 2702. Reorganization of Forest Service.

SUBTITLE H—MARKETING AND INSPECTION SERVICES

- Sec. 2801. Grain Inspection, Packers and Stockyards Administration.

SUBTITLE I—RESEARCH, ECONOMICS, AND EDUCATION

- Sec. 2901. Federal Research and Information Service.
- Sec. 2902. Cooperative State Research and Education Service.
- Sec. 2903. Agricultural Economics and Statistics Service.
- Sec. 2904. Program Policy and Coordination Staff.

SUBTITLE J—FOOD SAFETY

- Sec. 2951. Food Safety Service.

SUBTITLE K—MISCELLANEOUS

- Sec. 2981. Assistant Secretaries of Agriculture.
- Sec. 2982. Removal of obsolete provisions.
- Sec. 2983. Additional conforming amendments.
- Sec. 2984. Termination of authority.
- Sec. 2985. Elimination of duplicative inspection requirements.

TITLE I—FEDERAL CROP INSURANCE REFORM

Subtitle A—Catastrophic Risk and Additional Coverage Insurance

SEC. 1100. SHORT TITLE; REFERENCES.

(a) *SHORT TITLE*.—This title may be cited as the "Federal Crop Insurance Reform Act of 1994".

(b) *REFERENCES TO FEDERAL CROP INSURANCE ACT*.—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 Federal Crop Insurance Act (7 U.S.C. 1501 et seq.).

SEC. 1101. AUTHORITY TO OFFER INSURANCE.

Section 508 (7 U.S.C. 1508) is amended—

(1) by striking subsection (a) and inserting the following new subsection:

"(a) *AUTHORITY TO OFFER INSURANCE*.—

"(1) *IN GENERAL*.—If sufficient actuarial data are available (as determined by the Corporation), the Corporation may insure, or provide reinsurance for insurers of, producers of agricultural commodities grown in the United States under 1 or more plans of insurance determined by the Corporation to be adapted to the agricultural commodity concerned. To qualify for coverage under a plan of insurance, the losses of the insured commodity shall be due to drought, flood, or other natural disaster (as determined by the Secretary).

"(2) *PERIOD*.—Except in the cases of tobacco and potatoes, insurance shall not extend beyond the period during which the insured commodity is in the field. As used in the preceding sentence, in the case of aquacultural species, the term 'field' means the environment in which the commodity is produced.

"(3) *EXCLUSIONS*.—Insurance provided under this subsection shall not cover losses due to—

"(A) the neglect or malfeasance of the producer;

"(B) the failure of the producer to reseed to the same crop in such areas and under such circumstances as it is customary to so reseed; or

"(C) the failure of the producer to follow good farming practices (as determined by the Secretary).";

(2) by striking subsections (c), (e), (g), (l), and (n); and

(3) by redesignating subsections (b), (d), (f), (h), (i), (j), (k), and (m) as subsections (g) through (n), respectively.

SEC. 1102. CATASTROPHIC RISK PROTECTION.

Section 508 (7 U.S.C. 1508) (as amended by section 1101) is further amended by inserting after subsection (a) the following new subsection:

"(b) *CATASTROPHIC RISK PROTECTION*.—

"(1) *IN GENERAL*.—The Corporation shall offer a catastrophic risk protection plan to indemnify producers for crop loss due to loss of yield or prevented planting when the producer is unable, because of drought, flood, or other natural disaster (as determined by the Secretary), to plant crops for harvest on the acreage for that crop year.

"(2) *AMOUNT OF COVERAGE*.—Catastrophic risk protection shall offer a producer 50 percent loss in yield coverage, on an individual yield or area yield basis, indemnified at 60 percent of the expected market price, or a comparable coverage (as determined by the Corporation).

"(3) *PAYMENT*.—A catastrophic risk payment may reflect a reduction that is proportionate to the lack of out-of-pocket expenses associated with the failure to plant, grow, or harvest the crop, as determined by the Corporation.

"(4) *YIELD AND LOSS BASIS*.—A producer shall have the option of basing the catastrophic coverage of the producer on an individual yield and loss basis or on an area yield and loss basis, if both options are offered by the Corporation.

"(5) *SALE OF CATASTROPHIC RISK COVERAGE*.—

"(A) *IN GENERAL*.—Catastrophic risk coverage may be offered by—

"(i) private insurance providers, if available in an area; and

"(ii) at the option of the Secretary that is based on considerations of need, local offices of the United States Department of Agriculture (referred to in this title as the 'Department').

"(B) *NEED*.—For purposes of considering need under subparagraph (A)(ii), the Secretary may

take into account the most efficient and cost-effective use of resources, the availability of personnel, fairness to local producers, the needs and convenience of local producers, and the availability of private insurance carriers.

"(6) ADMINISTRATIVE FEE.—

"(A) IN GENERAL.—As a condition of catastrophic risk protection, a producer shall pay an administrative fee. The administrative fee shall be \$50 per crop per county, but not to exceed \$100 per producer per county. The administrative fee shall be paid at the service point, at the local office of the Department, or to the approved insurance provider, at the time of application.

"(B) FEE WAIVERS.—The administrative fee shall be waived—

"(i) for farmers of limited resources (as defined by the Corporation); or

"(ii) if the producer elects to purchase additional protection at 65 percent or more of the recorded or appraised average yield and 100 percent of the expected market price, or an equivalent coverage, offered by an approved insurance provider.

"(C) USE OF FEES COLLECTED.—Funds collected as administrative fees shall be retained by the Department or the approved insurance provider for operating and administrative expenses for the delivery of catastrophic risk protection policies.

"(7) PARTICIPATION REQUIREMENT.—A producer may obtain catastrophic risk coverage for a crop of the producer on land in the county only if the producer obtains such coverage for the crop on all insurable land of the producer in that county.

"(8) ELIGIBILITY FOR DEPARTMENT PROGRAMS.—

"(A) IN GENERAL.—To be eligible for any price support or production adjustment program or any benefit described in section 371 of the Consolidated Farm and Rural Development Act, the producer must obtain at least the catastrophic level of insurance for each crop of economic significance grown on each farm in the county in which the producer has an interest, if insurance is available in the county for the crop.

"(B) DEFINITION OF CROP OF ECONOMIC SIGNIFICANCE.—As used in this paragraph, the term 'crop of economic significance' means a crop that has contributed, or is expected to contribute, 10 percent or more of the total expected value of all crops grown by the producer.

"(9) LIMITATION DUE TO RISK.—The Corporation may limit catastrophic risk coverage in any county or area, or on any farm, on the basis of the insurance risk concerned.

"(10) SIMPLIFICATION.—

"(A) CATASTROPHIC RISK PROTECTION PLANS.—In developing and carrying out the policies and procedures for a catastrophic risk protection plan under this title, the Corporation shall, to the maximum extent practicable, minimize the paperwork required and the complexity and costs of procedures governing applications for, processing, and servicing of the plan for all parties involved.

"(B) OTHER PLANS.—To the extent that the policies and procedures developed under subparagraph (A) may be applied to other plans of insurance offered under this title without jeopardizing the actuarial soundness or integrity of the crop insurance program, the Corporation shall apply the policies and procedures to the other plans of insurance within a reasonable period of time (as determined by the Corporation) after the effective date of this paragraph."

SEC. 1103. GENERAL COVERAGE LEVELS.

Section 508 (7 U.S.C. 1508) (as amended by section 1102) is further amended by inserting after subsection (b) the following new subsection:

"(c) GENERAL COVERAGE LEVELS.—

"(1) IN GENERAL.—The Corporation shall offer plans of insurance that provide levels of cov-

erage that are greater than the level available under catastrophic risk protection under subsection (b). A producer may purchase such a plan only from an approved insurance provider, if the private insurance is available. Nothing in this paragraph restricts the Corporation from offering insurance plans if coverage from private insurance providers is unavailable.

"(2) TRANSFER OF INSURANCE FILES.—If a producer has already applied for catastrophic risk protection at the local office of the Department and elects to purchase additional coverage, the insurance file for the crop of the producer shall be transferred to the approved insurance provider servicing the additional coverage crop policy.

"(3) YIELD AND LOSS BASIS.—A producer shall have the option of purchasing additional coverage based on an individual yield and loss basis or on an area yield and loss basis, if both options are offered by the Corporation.

"(4) LEVEL OF COVERAGE.—The level of coverage shall be dollar denominated and may be purchased at any level not to exceed 85 percent of the individual yield or 95 percent of the area yield (as determined by the Corporation). By the beginning of the 1996 crop year, the Corporation shall provide producers with information on catastrophic risk and additional coverage in terms of dollar coverage (within the allowable limits of coverage provided in this paragraph).

"(5) PRICE LEVEL.—The Corporation shall establish a price level for each commodity on which insurance is offered that—

"(A) shall not be less than the projected market price for the commodity (as determined by the Corporation); or

"(B) at the discretion of the Corporation, may be based on the actual market price at the time of harvest (as determined by the Corporation).

"(6) PRICE ELECTIONS.—

"(A) IN GENERAL.—Subject to subparagraph (B), insurance coverage shall be made available to the producer on the basis of any price election that equals or is less than the price election established by the Corporation. The coverage shall be quoted in terms of dollars per acre.

"(B) MINIMUM PRICE ELECTIONS.—The Corporation may establish minimum price elections below which levels of insurance shall not be offered.

"(C) WHEAT VARIETIES.—The Corporation shall, over a period of time as determined practicable by the Corporation, offer producers different price elections for varieties of wheat, in addition to the standard price election, that reflect different market prices, as determined by the Corporation. The Corporation shall offer additional coverage for each variety determined under this subparagraph and charge a premium for each variety that is actuarially sound.

"(7) SUBSTITUTE COVERAGE FOR FIRE AND HAIL.—

"(A) IN GENERAL.—For levels of coverage 65 percent or more of the recorded or appraised average yield and 100 percent of the expected market price, or an equivalent coverage, the producer may elect to delete from the insurance coverage provided under this title coverage against damage caused by fire or hail, if an equivalent or greater dollar amount of coverage for damage caused by fire or hail is obtained from a private fire or hail insurance provider.

"(B) CREDIT FOR SUBSTITUTE COVERAGE.—On written notice of an election under subparagraph (A) to the company issuing the policy providing coverage under this title and submission of evidence of substitute coverage on the commodity insured, the premium of the producer shall be reduced by an amount determined by the Corporation to be actuarially appropriate, taking into account the actuarial value of the remaining coverage provided by the Corporation. The producer shall not be given a reduc-

tion for an amount of premium determined to be greater than the actuarial value of the protection against losses caused by fire or hail that is included in the coverage under this title for the crop.

"(8) STATE PREMIUM SUBSIDIES.—The Corporation may enter into agreements with any State or agency of a State under which the State or agency may pay to the approved insurance provider an additional premium subsidy to further reduce the portion of the premium paid by the producers in the State.

"(9) LIMITATION DUE TO RISK.—The Corporation may limit or refuse insurance in any county or area, or on any farm, on the basis of the insurance risk concerned.

"(10) ADMINISTRATIVE FEE.—

"(A) IN GENERAL.—As a condition of coverage that is in addition to catastrophic risk protection but less than 65 percent of the recorded or appraised average yield and 100 percent of the expected market price, or an equivalent coverage, a producer shall pay an administrative fee. The administrative fee shall be \$50 per crop per county, but not to exceed \$100 per producer per county. The administrative fee shall be paid to the approved insurance provider or the Department, as applicable, at the time of application.

"(B) FEE WAIVERS.—The administrative fee shall be waived—

"(i) for farmers of limited resources (as defined by the Corporation); or

"(ii) if the producer elects to purchase additional protection at 65 percent or more of the recorded or appraised average yield and 100 percent of the expected market price, or an equivalent coverage, offered by an approved insurance provider.

"(C) USE OF FEES COLLECTED.—Funds collected as administrative fees shall be retained by the approved insurance provider or the Department, as applicable, for operating and administrative expenses."

SEC. 1104. PREMIUMS.

Section 508 (7 U.S.C. 1508) (as amended by section 1103) is further amended by inserting after subsection (c) the following new subsection:

"(d) PREMIUMS.—

"(1) LEVELS.—

"(A) CATASTROPHIC RISK PROTECTION.—For catastrophic risk protection coverage, the amount of premium shall be sufficient to cover anticipated losses and a reasonable reserve.

"(B) ADDITIONAL COVERAGE.—For levels of coverage below 65 percent of the recorded or appraised average yield and 100 percent of the expected market price, or an equivalent coverage, but greater than catastrophic risk protection coverage, the amount of premium shall be sufficient to cover anticipated losses, a reasonable reserve, and an amount for operating and administrative expenses (as determined by the Corporation) that is less than the amount established for coverage at 65 percent of the recorded or appraised average yield and 100 percent of the expected market price, or an equivalent coverage.

"(C) HIGH COVERAGE.—For levels of coverage of at least 65 percent of the recorded or appraised average yield and 100 percent of the expected market price, or an equivalent coverage, the amount of premium shall be sufficient to cover anticipated losses, a reasonable reserve, and an amount to pay the operating and administrative expenses (as determined by the Corporation) on an industry-wide basis as a percentage of the total premium.

"(2) PAYMENT OF PART OF PREMIUM.—For the purpose of encouraging the broadest possible participation, the Corporation shall pay a part of the premium equivalent to—

"(A) for catastrophic risk protection coverage, an amount equal to the premium established under paragraph (1)(A);

"(B) for levels of coverage below 65 percent of the recorded and appraised average yield and 100 percent of the expected market price, or an equivalent coverage, but greater than catastrophic risk protection, an amount equal to the sum of the amount of premium established for catastrophic risk protection coverage and the amount for operating and administrative expenses established under paragraph (1)(B); and

"(C) for levels of coverage at or greater than 65 percent of the recorded and appraised yield and 100 percent of the expected market price, or an equivalent coverage, on an individual or area basis, an amount equal to the sum of—

"(i) the premium established for—

"(I) in the case of each of the 1995 and 1996 crop years, 50 percent loss in yield indemnified at 80 percent of the expected market price;

"(II) in the case of the 1997 crop year, 50 percent loss in yield indemnified at 77.5 percent of the expected market price; and

"(III) in the case of the 1998 and each subsequent crop year, 50 percent loss in yield indemnified at 75 percent of the expected market price; and

"(ii) the amount for operating and administrative expenses established under paragraph (1)(C).

"(3) REDUCTIONS BY PRIVATE PROVIDERS.—If a private insurance provider determines that the provider may provide insurance more efficiently than the expense reimbursement amount set by the Corporation, the private insurance provider may, with the approval of the Corporation, reduce the premium charged the insured by the amount of the efficiency. A reduction pursuant to the preceding sentence shall be subject to such rules, limitations, and procedures as are established by the Corporation.

"(4) INDIVIDUAL AND AREA CROP INSURANCE COVERAGE.—The Corporation shall allow approved insurance providers to offer a plan of insurance to producers that combines both individual yield coverage and area yield coverage at a premium rate determined by the provider under the following conditions:

"(A) The individual yield coverage shall be equal to or greater than catastrophic risk protection as described in subsection (b).

"(B) The combined policy shall include area yield coverage that is offered by the Corporation or similar area coverage, as determined by the Corporation.

"(C) The Corporation shall provide reinsurance on the area yield portion of the combined policy at the request of the provider, except that the provider shall agree to pay to the producer any portion of the area yield and loss indemnity payment received from the Corporation or a commercial reinsurer that exceeds the individual indemnity payment made by the provider to the producer.

"(D) The Corporation shall pay a part of the premium equivalent to—

"(i) the amount authorized under paragraph (2) (except provisions regarding operating and administrative expenses); and

"(ii) the amount of operating and administrative expenses authorized by the Corporation for the area yield coverage portion of the combined policy.

"(E) The provider shall provide all underwriting services for the combined policy, including the determination of individual yield coverage premium rates, the terms and conditions of the policy, and the acceptance and classification of applicants into risk categories, subject to subparagraph (F).

"(F) The Corporation shall approve the combined policy unless the Corporation determines that the policy is not actuarially sound or that the interests of producers are not adequately protected."

SEC. 1105. ELIGIBILITY.

(a) IN GENERAL.—Section 508 (7 U.S.C. 1508) (as amended by section 1104) is further amended

by inserting after subsection (d) the following new subsection:

"(e) ELIGIBILITY.—

"(1) IN GENERAL.—To participate in catastrophic risk protection coverage under this section, a producer shall submit an application at the local office of the Department or to an approved insurance provider.

"(2) SALES CLOSING DATE.—For coverage under this title, each producer shall purchase crop insurance on or before the sales closing date for the crop by providing the required information and executing the required documents. Subject to the goal of ensuring actuarial soundness for the crop insurance program, the sales closing date shall be established by the Corporation to maximize convenience to producers in obtaining benefits under price and production adjustment programs of the Department. Beginning with the 1995 crop year, the Corporation shall establish, for an insurance policy for each insurable crop that is planted in the spring, a sales closing date that is 30 days earlier than the corresponding sales closing date that was established for the 1994 crop year.

"(3) RECORDS.—For coverage under this title, each producer shall provide records, acceptable to the Corporation, of previous acreage and production or accept a yield determined by the Corporation.

"(4) REPORTING.—For coverage under this title, each producer shall report acreage planted and prevented from planting by the designated acreage reporting date for the crop and location as established by the Corporation."

(b) PRODUCER ELIGIBILITY.—Section 520 (7 U.S.C. 1520) is amended to read as follows:

"SEC. 520. PRODUCER ELIGIBILITY.

"Except as otherwise provided in this title, a producer shall not be denied insurance under this title if—

"(1) for purposes of catastrophic risk protection coverage, the producer is a 'person' (as defined by the Secretary); and

"(2) for purposes of any other plan of insurance, the producer is 18 years of age and has a bona fide insurable interest in a crop as an owner-operator, landlord, tenant, or share-cropper."

SEC. 1106. YIELD DETERMINATIONS.

Section 508 (7 U.S.C. 1508) (as amended by section 1105(a)) is further amended by inserting after subsection (e) the following new subsection:

"(f) YIELD DETERMINATIONS.—

"(1) IN GENERAL.—Subject to paragraph (2), the Corporation shall implement crop insurance underwriting rules that ensure that yield coverage is provided to eligible producers participating in the Federal crop insurance program.

"(2) YIELD COVERAGE PLANS.—

"(A) ACTUAL PRODUCTION HISTORY.—Subject to subparagraph (B), the yield for a crop shall be based on the actual production history for the crop, if the crop was produced on the farm without penalty during each of the 4 crop years immediately preceding the crop year for which actual production history is being established, building up to a production data base for each of the 10 consecutive crop years preceding the crop year for which actual production history is being established.

"(B) ASSIGNED YIELD.—If the producer does not provide satisfactory evidence of the yield of a commodity under subparagraph (A), the producer shall be assigned a yield that is not less than 65 percent of the transitional yield of the producer (adjusted to reflect actual production reflected in the records acceptable to the Corporation for continuous years), as specified in regulations issued by the Corporation based on production history requirements.

"(C) AREA YIELD.—The Corporation may offer a crop insurance plan based on an area yield

that allows an insured producer to qualify for an indemnity if a loss has occurred in an area (as specified by the Corporation) in which the farm of the producer is located. Under an area yield plan, an insured producer shall be allowed to select the level of area production at which an indemnity will be paid consistent with such terms and conditions as are established by the Corporation.

"(D) COMMODITY-BY-COMMODITY BASIS.—A producer may choose between individual yield or area yield coverage or combined coverage (as provided in subsection (d)(4)), if available, on a commodity-by-commodity basis.

"(3) NOTICE.—The Corporation shall ensure that producers are given adequate notice of the applicable yield coverage provisions of this section in advance of the crop insurance application period for the crops to which the provisions first will apply.

"(4) TRANSITIONAL YIELDS FOR PRODUCERS OF FEED OR FORAGE.—

"(A) IN GENERAL.—If a producer does not provide satisfactory evidence of the yield under paragraph (2)(A), the producer shall be assigned a yield that is at least 80 percent of the transitional yield established by the Corporation (adjusted to reflect the actual production history of the producer) if the Secretary determines that—

"(i) the producer grows feed or forage primarily for on-farm use in a livestock, dairy, or poultry operation; and

"(ii) over 50 percent of the net farm income of the producer is derived from the livestock, dairy, or poultry operation.

"(B) YIELD CALCULATION.—The Corporation shall—

"(i) for the first year of participation of a producer, provide the assigned yield under this paragraph to the producer of feed or forage; and

"(ii) for the second year of participation of the producer, apply the actual production history or assigned yield requirement, as provided in this subsection.

"(C) TERMINATION OF AUTHORITY.—The authority provided by this paragraph shall terminate on the date that is 2 years after the effective date of this paragraph."

SEC. 1107. INSURANCE POLICIES.

Subsection (g) of section 508 (7 U.S.C. 1508) (as redesignated by section 1101(3)) is amended—

(1) in paragraph (1), by striking "(a)" and inserting "(c)";

(2) by striking paragraph (2) and inserting the following new paragraph:

"(2) PREPARATION OF POLICIES.—A policy or other material submitted to the Corporation under this subsection may be prepared without regard to the limitations specified in this title, including the requirements concerning the levels of coverage and rates and the requirement that a price level for each commodity insured shall equal the projected market price for the commodity as established by the Corporation. The policy may be subsidized only at an amount equivalent to coverage authorized under this title."

(3) in paragraph (3)—

(A) in the first sentence, by striking "taking into consideration the risks covered by the policy or other material"; and

(B) in the second sentence, by inserting "with a private insurance provider" after "reinsurance agreement"; and

(4) by striking paragraph (4) and inserting the following new paragraphs:

"(4) REQUIRED PUBLICATION.—Any policy, provision of a policy, or rate approved under this subsection shall be published as a notice in the Federal Register and made available to each person who contracts with or is reinsured by the Corporation under the same terms and conditions as are applicable between the Corporation and the submitting person.

"(5) PILOT COST OF PRODUCTION RISK PROTECTION PLAN.—

"(A) **IN GENERAL.**—The Corporation shall offer, to the extent practicable, a cost of production risk protection plan of insurance that would indemnify producers (including new producers) for insurable losses as provided in this paragraph.

"(B) **PILOT BASIS.**—The cost of production risk protection plan shall—

"(i) be established as a pilot project for each of the 1996 and 1997 crop years; and

"(ii) be carried out in a number of counties that is determined by the Corporation to be adequate to provide a comprehensive evaluation of the feasibility, effectiveness, and demand among producers for the plan.

"(C) **INSURABLE LOSS.**—An insurable loss shall be incurred by a producer if the gross income of the producer (as determined by the Corporation) is less than an amount determined by the Corporation, as a result of a reduction in yield or price resulting from an insured cause.

"(D) **DEFINITION OF NEW PRODUCER.**—As used in this paragraph, the term 'new producer' means a person that has not been actively engaged in farming for a share of the production of the insured crop for more than 2 crop years, as determined by the Secretary.

"(6) ADDITIONAL PREVENTED PLANTING POLICY COVERAGE.—

"(A) **IN GENERAL.**—Beginning with the 1995 crop year, the Corporation shall offer to producers additional prevented planting coverage that insures producers against losses in accordance with this paragraph.

"(B) **APPROVED INSURANCE PROVIDERS.**—Additional prevented planting coverage shall be offered by the Corporation through approved insurance providers.

"(C) **TIMING OF LOSS.**—A crop loss shall be covered by the additional prevented planting coverage if—

"(i) crop insurance policies were obtained for—

"(I) the crop year the loss was experienced; and

"(II) the crop year immediately preceding the year of the prevented planting loss; and

"(ii) the cause of the loss occurred—

"(I) after the sales closing date for the crop in the crop year immediately preceding the loss; and

"(II) before the sales closing date for the crop in the year in which the loss is experienced.

"(7) PILOT TRANSITIONAL YIELD PROGRAM FOR NEW PRODUCERS.—

"(A) **INCREASED TRANSITIONAL YIELD.**—The Corporation shall offer, to the extent practicable, a transitional yield program for new producers to provide 110 percent of the transitional yield established by the Corporation.

"(B) **PILOT BASIS.**—The transitional yield program shall—

"(i) be established as a pilot project for each of the 1995 and 1996 crop years; and

"(ii) be carried out in 30 counties that are determined by the Corporation to be adequate to provide a comprehensive evaluation of the feasibility, effectiveness, and demand among new producers for the plan.

"(C) **DEFINITION OF NEW PRODUCER.**—As used in this paragraph, the term 'new producer' means a person that has not been actively engaged in farming for a share of the production of the insured crop for more than 2 crop years, as determined by the Secretary."

SEC. 1108. CLAIMS FOR LOSSES.

Subsection (i) of section 508 (7 U.S.C. 1508) (as redesignated by section 1101(3)) is amended to read as follows:

"(i) **CLAIMS FOR LOSSES.**—

"(1) **IN GENERAL.**—The Corporation may provide for adjustment and payment of claims for

losses as provided under subsection (a) under rules prescribed by the Corporation. The rules prescribed by the Corporation shall establish standards to ensure that all claims for losses are adjusted, to the extent practicable, in a uniform and timely manner.

"(2) **DENIAL OF CLAIMS.**—

"(A) **IN GENERAL.**—Subject to subparagraph (B), if a claim for indemnity is denied by the Corporation or by the private insurance provider, an action on the claim shall only be brought against the Corporation or Secretary or the insurance provider in the United States District Court for the district in which the insured farm is located.

"(B) **STATUTE OF LIMITATIONS.**—A suit on the claim may be brought not later than 1 year after the date on which written notice of denial of the claim is provided to the claimant.

"(3) **INDEMNIFICATION.**—The Corporation shall provide insurance companies, agents, and brokers with indemnification, including costs and reasonable attorney fees, from the Corporation for errors or omissions on the part of the Corporation."

SEC. 1109. REINSURANCE.

Section 508 (7 U.S.C. 1508) is amended—

(1) by striking subsection (j) (as redesignated by section 1101(3)) and inserting the following new subsection:

"(j) **REINSURANCE.**—Notwithstanding any other provision of this title, the Corporation shall, to the maximum extent practicable, provide reinsurance, on such terms and conditions as the Corporation determines to be consistent with subsections (b) and (c) and sound reinsurance principles, to insurers (as defined by the Corporation) that insure producers of any agricultural commodity under 1 or more plans acceptable to the Corporation. Each reinsurance agreement of the Corporation with a reinsured company shall require the reinsured company to bear a sufficient share of any potential loss under the agreement so as to ensure that the reinsured company will sell and service policies of insurance in a sound and prudent manner, taking into consideration the availability of private reinsurance."; and

(2) in subsection (k) (as so redesignated), by striking "provide" and inserting "offer plans of".

SEC. 1110. FUNDING.

Section 516 (7 U.S.C. 1516) is amended to read as follows:

"SEC. 516. FUNDING.

"(a) **AUTHORIZATION OF APPROPRIATIONS.**—

"(1) **EXPENSES OF CORPORATION.**—There are authorized to be appropriated such sums as are necessary to cover the salaries and expenses of the Corporation and the administrative and operating expenses of the Corporation for the sales commissions of agents.

"(2) **EXPENSES OF PROVIDERS.**—There are authorized to be appropriated such sums as are necessary to cover the administrative and operating expenses of an approved insurance provider for the delivery of policies with coverage that is greater than catastrophic risk protection.

"(b) **PAYMENT OF EXPENSES.**—

"(1) **ADMINISTRATIVE AND OPERATING EXPENSES.**—Beginning with the 1996 crop year, the Corporation is authorized to pay, from the insurance fund established under subsection (c), the administrative and operating expenses of an approved insurance provider, other than expenses covered under subsection (a)(1).

"(2) **OTHER EXPENSES.**—The Corporation is authorized to pay from the insurance fund established under subsection (c)—

"(A) all other expenses of the Corporation (other than expenses covered in subsection (a)(1)), including all premium subsidies and indemnities;

"(B) for the 1995 crop year, all administrative and expense reimbursements due under a rein-

surance agreement with an approved insurance provider; and

"(C) to the extent necessary, expenses incurred by the Corporation to carry out research and development.

"(c) **INSURANCE FUND.**—

"(1) **IN GENERAL.**—There is established an insurance fund for the deposit of premium income, income from reinsurance operations, and amounts made available under subsection (a)(2).

"(2) **SOURCE OF FUNDING.**—There are appropriated, without fiscal year limitation, such sums as may be necessary to carry out subsection (b) through the insurance fund."

SEC. 1111. ADVISORY COMMITTEE FOR FEDERAL CROP INSURANCE.

The Act is amended by inserting after section 514 (7 U.S.C. 1514) the following new section:

"SEC. 515. ADVISORY COMMITTEE FOR FEDERAL CROP INSURANCE.

"(a) **ESTABLISHMENT.**—The Secretary may establish within the Department a committee to be known as the 'Advisory Committee for Federal Crop Insurance' (referred to in this section as the 'Advisory Committee'), which shall remain in existence until September 30, 1998.

"(b) **MEMBERSHIP.**—The Advisory Committee shall be composed of—

"(1) the Manager of the Corporation;

"(2) the Secretary or a designee; and

"(3) not fewer than 10 representatives of organizations or agencies involved with the Federal crop insurance program, which may include insurance companies, insurance agents, farm producer organizations, experts on agronomic practices, and banking and lending institutions.

"(c) **ADMINISTRATIVE PROVISIONS.**—

"(1) **TERMS.**—Members of the Advisory Committee shall be appointed by the Secretary for a term of not more than 2 years from nominations made by the participating organizations and agencies referred to in subsection (b). The terms of the members shall be staggered.

"(2) **CHAIRPERSON.**—The Advisory Committee shall be chaired by the Manager of the Corporation.

"(3) **MEETINGS.**—The Advisory Committee shall meet at least annually. The meetings of the Advisory Committee shall be publicly announced in advance and shall be open to the public. Appropriate records of the activities of the Advisory Committee shall be kept and made available to the public on request.

"(d) **PRIMARY RESPONSIBILITY.**—The primary responsibility of the Advisory Committee shall be to advise the Secretary on the implementation of this title and on other issues related to crop insurance (as determined by the Manager of the Corporation).

"(e) **REPORTS.**—Not later than June 30 of each year, the Advisory Committee shall prepare, and submit to the Secretary, a report specifying the conclusions of the Advisory Committee on—

"(1) the progress toward implementation of this title;

"(2) the actuarial soundness of the Federal crop insurance program; and

"(3) the rate of participation in the catastrophic and the additional coverage programs under this title."

SEC. 1112. MANAGEMENT OF CORPORATION.

(a) **IN GENERAL.**—The second sentence of section 505(a) (7 U.S.C. 1505(a)) is amended—

(1) by striking "program, the Under Secretary" and inserting "program, 1 additional Under Secretary"; and

(2) by striking "responsible for the farm credit programs of the Department of Agriculture" and inserting "as designated by the Secretary of Agriculture (referred to in this title as the 'Secretary')".

(b) **GENERAL POWERS.**—Section 506 (7 U.S.C. 1506) is amended—

(1) by redesignating subsections (j) through (n) as subsections (k) through (o), respectively;

(2) by inserting after subsection (i) the following new subsection:

"(j) **SETTLING CLAIMS.**—The Corporation shall have the authority to make final and conclusive settlement and adjustment of any claim by or against the Corporation or a fiscal officer of the Corporation."

(3) in subsection (l) (as so redesignated)—

(A) in the first sentence, by inserting "and issue regulations," after "agreements"; and

(B) in the second sentence, by striking "contracts or agreements" each place it appears and inserting "contracts, agreements, or regulations";

(4) in subsection (n)(1) (as so redesignated), by striking subparagraph (B) and inserting the following new subparagraph:

"(B) disqualify the person from purchasing catastrophic risk protection or receiving noninsured assistance for a period of not to exceed 2 years, or from receiving any other benefit under this title for a period of not to exceed 10 years."

(5) in subsection (o) (as so redesignated)—

(A) by redesignating paragraphs (1) through (4) as subparagraphs (A) through (D) and aligning the margins of each subparagraph with the margins of subparagraph (A) of subsection (n)(1) (as redesignated by paragraph (1));

(B) by striking "(o) ACTUARIAL SOUNDNESS.—The Corporation" and inserting the following:

"(o) **ACTUARIAL SOUNDNESS.**—

"(1) **PROJECTED LOSS RATIO AS OF OCTOBER 1, 1995.**—The Corporation";

(C) in subparagraph (A) (as redesignated by subparagraph (A)), by striking "from obtaining adequate Federal crop insurance, as determined by the Corporation" and inserting "(as defined by the Secretary) from obtaining Federal crop insurance";

(D) in subparagraph (C) (as so redesignated)—

(i) by inserting "agents, and loss adjusters" after "participating producers"; and

(ii) by inserting "agents, and loss adjusters" after "identify insured producers"; and

(E) by adding at the end the following new paragraphs:

"(2) **PROJECTED LOSS RATIO AS OF OCTOBER 1, 1998.**—The Corporation shall take such actions, including the establishment of adequate premiums, as are necessary to improve the actuarial soundness of Federal multiperil crop insurance made available under this title to achieve, on and after October 1, 1998, an overall projected loss ratio of not greater than 1.0.

"(3) **NONSTANDARD CLASSIFICATION SYSTEM.**—To the extent that the Corporation uses the nonstandard classification system, the Corporation shall apply the system to all insured producers in a fair and consistent manner."; and

(6) by adding at the end the following new subsection:

"(p) **LOSS RATIO DEFINED.**—As used in this Act, the term 'loss ratio' means the ratio of all sums paid by the Corporation as indemnities under any eligible crop insurance policy to that portion of the premium designated for anticipated losses and a reasonable reserve, other than that portion of the premium designated for operating and administrative expenses.

"(q) **REGULATIONS.**—The Secretary and the Corporation are each authorized to issue such regulations as are necessary to carry out this title."

(c) **PERSONNEL.**—Section 507 (7 U.S.C. 1507) is amended—

(1) in subsection (a), by striking "and county crop insurance committeemen";

(2) in subsection (c), by striking "in which case the agent or broker" and all that follows through "the agent or broker has caused the error or omission"; and

(3) in subsection (d), by striking "of this Act," and all that follows through "agency".

(d) **INFORMATION COLLECTION ON CROP INSURANCE.**—Subsection (n) of section 508 (7 U.S.C. 1508) (as redesignated by section 1101(3)) is amended to read as follows:

"(n) **INFORMATION COLLECTION ON CROP INSURANCE.**—The Secretary shall make available to producers through local offices of the Department—

"(1) current and complete information on all aspects of Federal crop insurance; and

"(2) a listing of insurance agents."

(e) **CROP INSURANCE YIELD COVERAGE.**—Section 508A (7 U.S.C. 1508a) is repealed.

(f) **PREEMPTION.**—Section 511 (7 U.S.C. 1511) is amended by inserting after "The Corporation, including" the following: "the contracts of insurance of the Corporation and premiums on the contracts, whether insured directly or reinsured by the Corporation."

(g) **FALSE STATEMENTS.**—Section 1014 of title 18, United States Code, is amended by inserting "or a company the Corporation reinsures" after "Federal Crop Insurance Corporation".

Subtitle B—Noninsured Assistance Program

SEC. 1201. NONINSURED ASSISTANCE PROGRAM.

The Act (7 U.S.C. 1501 et seq.) is amended by adding at the end the following new section:

"**SEC. 521. NONINSURED ASSISTANCE PROGRAM.**

"(a) **ELIGIBILITY.**—

"(1) **IN GENERAL.**—The Corporation shall establish a noninsured assistance program to provide coverage equivalent to the catastrophic risk protection insurance described in section 508(b) for crops for which catastrophic risk protection insurance is not available. Crops covered shall include all commercial crops and commodities for which catastrophic risk protection coverage is not available and that are produced for food, fiber, or an industrial crop on a commercial basis but shall not include livestock. Noninsured assistance shall not cover losses due to—

"(A) the neglect or malfeasance of the producer;

"(B) the failure of the producer to reseed to the same crop in such areas and under such circumstances as it is customary to so reseed; or

"(C) the failure of the producer to follow good farming practices (as determined by the Secretary).

"(2) **APPLICATIONS.**—To be eligible for assistance under this section, a producer shall make a timely application, as required by the Corporation, for noninsured assistance at the local office of the Department.

"(3) **RECORDS.**—A producer shall annually provide records, as required by the Corporation, of previous crop acreage and yields, or the producer shall accept a yield under subsection (c)(2)(B) determined by the Corporation.

"(4) **ACREAGE REPORTS.**—A producer shall provide reports on acreage planted or prevented from being planted, as required by the Corporation, by the designated acreage reporting date for the crop and location as established by the Corporation.

"(5) **AREA YIELD LOSSES.**—

"(A) **AREA AVERAGE YIELD.**—A producer of a noninsurable crop shall not be eligible for noninsured assistance unless the area (as determined by the Corporation) average yield, or an equivalent measure if yield data are not available, for the crop is less than 65 percent of the expected area yield established by the Corporation.

"(B) **PREVENTED PLANTING PAYMENTS.**—Subject to subparagraph (A), the Corporation shall make a prevented planting noninsured assistance payment to a producer if the producer is prevented from planting more than 35 percent of the acreage intended for the crop because of drought, flood, or other natural disaster (as determined by the Secretary).

"(C) **REDUCED YIELD PAYMENTS.**—Subject to subparagraph (A), if, because of drought, flood,

or other natural disaster (as determined by the Secretary), the total quantity of the crop that a producer is able to harvest on any farm is less than 50 percent of the expected area yield for the crop (as determined by the Corporation) factored for the interest of the producer for the crop, the Corporation shall make a reduced yield noninsured assistance payment.

"(b) **PAYMENT.**—The Corporation shall make available to a producer eligible for noninsured assistance under this section a payment computed by multiplying—

"(1) the quantity that is less than 50 percent of the established yield for the crop; by

"(2) 60 percent of the average market price for the crop (or any comparable coverage determined by the Corporation); by

"(3) a payment rate for the type of crop (as determined by the Corporation) that—

"(A) in the case of a crop that is produced with a significant and variable harvesting expense, a payment rate that reflects the decreasing cost incurred in the production cycle for the crop that is—

"(i) harvested; and

"(ii) planted but not harvested; and

"(iii) prevented from being planted because of drought, flood, or other natural disaster (as determined by the Secretary); and

"(B) in the case of a crop that is not produced with a significant and variable harvesting expense, a payment rate determined by the Corporation.

"(c) **YIELDS.**—

"(1) **IN GENERAL.**—The Corporation shall establish noninsured assistance program farm yields for crops for the purposes of this section.

"(2) **ACTUAL PRODUCTION HISTORY.**—

"(A) **IN GENERAL.**—Subject to subparagraph (B), the yield for a crop shall be based on the actual production history for the crop, if the crop was produced on the farm without penalty during each of the 4 crop years immediately preceding the crop year for which actual production history is being established, building up to a production data base of the 10 crop years immediately preceding the crop year for which production history is being established.

"(B) **ASSIGNED YIELD.**—

"(i) **IN GENERAL.**—If the producer does not provide sufficient evidence of the yield (as required by the Corporation) of a commodity under subparagraph (A), the producer shall be assigned a yield that is not less than 65 percent of the transitional yield of the producer (adjusted to reflect actual production reflected in the records acceptable to the Corporation for continuous years), as specified in regulations issued by the Corporation based on production history requirements.

"(ii) **LIMITATION.**—A producer who receives an assigned yield for the current year of a natural disaster because required production records were not submitted to the local office of the Department shall not be eligible for an assigned yield for the year of the next natural disaster unless the required production records of the previous 1 or more years (as applicable) are provided to the local office.

"(C) **YIELD VARIATIONS DUE TO DIFFERENT FARMING PRACTICES.**—The Corporation shall make noninsured payments that accurately reflect significant yield variations due to different farming practices, such as between irrigated and nonirrigated acreage.

"(d) **INCREASED CROP PLANTINGS.**—

"(1) **IN GENERAL.**—If the acreage of a crop in a county has increased by more than 100 percent since the 1987 crop year, to become eligible for a noninsured assistance payment, a producer must provide detailed documentation of production costs, acres planted, and yield, as required by the Corporation. Except as provided in paragraph (2), a producer who produces a crop on a

farm located in a county described in the preceding sentence may not obtain an assigned yield.

"(2) EXCEPTION.—A crop or a producer shall not be subject to this subsection if—

"(A) the planted acreage of the producer for the crop has been inspected by a third party acceptable to the Secretary; or

"(B)(i) the County Executive Director, the District Director, and the State Executive Director recommend an exemption from the requirement to the Deputy Administrator for State and County Operations of the Agricultural Stabilization and Conservation Service; and

"(ii) the Deputy Administrator approves the recommendation.

"(e) CONTRACT PAYMENTS.—A producer who has received a guaranteed payment for production, as opposed to delivery, of a crop pursuant to a contract shall have the production of the producer adjusted upward by the amount of the production equal to the amount of the contract payment received.

"(f) PAYMENT OF LOSSES.—Payments for noninsured assistance losses under this section shall be made from the insurance fund established under section 516(b). The losses shall not be included in calculating the premiums charged to producers for insurance."

SEC. 1302. PAYMENT AND INCOME LIMITATIONS.

Section 521 (as added by section 1201) is further amended by adding at the end the following new subsection:

"(g) PAYMENT AND INCOME LIMITATIONS.—

"(1) DEFINITIONS.—As used in this subsection:

"(A) PERSON.—The term 'person' has the meaning provided the term in regulations issued by the Secretary. The regulations shall conform, to the extent practicable, to the regulations defining the term 'person' issued under section 1001 of the Food Security Act of 1985 (7 U.S.C. 1308).

"(B) QUALIFYING GROSS REVENUES.—The term 'qualifying gross revenues' means—

"(i) if a majority of the gross revenue of the person is received from farming, ranching, and forestry operations, the gross revenue from the farming, ranching, and forestry operations of the person; and

"(ii) if less than a majority of the gross revenue of the person is received from farming, ranching, and forestry operations, the gross revenue of the person from all sources.

"(2) PAYMENT LIMITATION.—The total amount of payments that a person shall be entitled to receive annually under this title may not exceed \$100,000.

"(3) NO DOUBLE BENEFITS.—No person may receive a noninsured assistance payment under this title and emergency livestock feed assistance under section 606 of the Agricultural Act of 1949 (7 U.S.C. 1471d) for the same livestock feed or forage loss.

"(4) INCOME LIMITATION.—A person who has qualifying gross revenues in excess of the amount specified in section 2266(a) of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 1421 note) (as in effect on November 28, 1990) during the taxable year (as determined by the Secretary) shall not be eligible to receive any noninsured assistance payment under this section.

"(5) REGULATIONS.—The Secretary shall issue regulations prescribing such rules as the Secretary determines necessary to ensure a fair and equitable application of section 1001 of the Food Security Act of 1985 (7 U.S.C. 1308), the general payment limitation regulations of the Secretary, and the limitations established under this subsection."

Subtitle C—Miscellaneous

SEC. 1301. INELIGIBILITY FOR CATASTROPHIC RISK AND NONINSURED ASSISTANCE PAYMENTS.

The Act (7 U.S.C. 1501 et seq.) (as amended by section 1201) is further amended by adding at the end the following new section:

"SEC. 522. INELIGIBILITY FOR CATASTROPHIC RISK AND NONINSURED ASSISTANCE PAYMENTS.

"If the Secretary determines that a person has knowingly adopted a material scheme or device to obtain catastrophic risk, additional coverage, or noninsured assistance benefits under this Act to which the person is not entitled, has evaded this Act, or has acted with the purposes of evading this Act, the person shall be ineligible to receive all benefits applicable to the crop year for which the scheme or device was adopted. The authority provided by this section shall be in addition to, and shall not supplant, the authority provided by section 506(m)."

SEC. 1302. PREVENTED PLANTING.

(a) IN GENERAL.—Effective for the 1994 crop year, a producer described in subsection (b) shall receive compensation under the prevented planting coverage policy provision described in subsection (b)(1) by—

(1) obtaining from the Secretary of Agriculture the applicable amount that is payable under the conservation use program described in subsection (b)(4); and

(2) obtaining from the Federal Crop Insurance Corporation the amount that is equal to the difference between—

(A) the amount that is payable under the conservation use program; and

(B) the amount that is payable under the prevented planting coverage policy.

(b) ELIGIBLE PRODUCERS.—Subsection (a) shall apply to a producer who—

(1) purchased a prevented planting policy for the 1994 crop year from the Federal Crop Insurance Corporation prior to the spring sales closing date for the 1994 crop year;

(2) is unable to plant a crop due to major, widespread flooding in the Midwest, or excessive ground moisture, that occurred prior to the spring sales closing date for the 1994 crop year;

(3) had a reasonable expectation of planting a crop on the prevented planting acreage for the 1994 crop year; and

(4) participates in a conservation use program established for the 1994 crop of wheat, feed grains, upland cotton, or rice established under section 107B(c)(1)(E), 105B(c)(1)(E), 103B(c)(1)(D), or 101B(c)(1)(D), respectively, of the Agricultural Act of 1949 (7 U.S.C. 1445b-3a(c)(1)(E), 1444(f)(1)(E), 1444-2(c)(1)(D), or 1441-2(c)(1)(D)).

(c) OILSEED PREVENTED PLANTING PAYMENTS.—

(1) IN GENERAL.—Effective for the 1994 crop year, a producer of a crop of oilseeds (as defined in section 205(a) of the Agricultural Act of 1949 (7 U.S.C. 1446f(a))) shall receive a prevented planting payment for the crop if the requirements of paragraphs (1), (2), and (3) of subsection (b) are satisfied.

(2) SOURCE OF PAYMENT.—The total amount of payments required under this subsection shall be made by the Federal Crop Insurance Corporation.

(d) PAYMENT.—A payment under this section may not be made before October 1, 1994.

SEC. 1303. CONFORMING AMENDMENTS.

(a) PRICE SUPPORT PROGRAMS.—

(1) IN GENERAL.—Title IV of the Agricultural Act of 1949 (7 U.S.C. 1421 et seq.) is amended by adding at the end the following new section:

"SEC. 427. CROP INSURANCE REQUIREMENT.

"As a condition of receiving any benefit (including payments) under title I or II for each of the 1995 and subsequent crops of tobacco, rice,

extra long staple cotton, upland cotton, feed grains, wheat, peanuts, oilseeds, and sugar and for each of the 1995 and subsequent calendar years with respect to milk, a producer must obtain at least catastrophic risk protection insurance coverage under section 508 of the Federal Crop Insurance Act (7 U.S.C. 1508) for the crop and crop year for which the benefit is sought, if the coverage is offered by the Corporation."

(2) RICE.—Section 101B(c) of such Act (7 U.S.C. 1441-2(c)) is amended—

(A) in paragraph (1), by striking subparagraph (F); and

(B) by striking paragraph (2) and inserting the following new paragraph:

"(2) CROP INSURANCE REQUIREMENT.—A producer shall obtain catastrophic risk protection insurance coverage in accordance with section 427."

(3) UPLAND COTTON.—Section 103B(c) of such Act (7 U.S.C. 1444-2(c)) is amended—

(A) in paragraph (1), by striking subparagraph (F); and

(B) by striking paragraph (2) and inserting the following new paragraph:

"(2) CROP INSURANCE REQUIREMENT.—A producer shall obtain catastrophic risk protection insurance coverage in accordance with section 427."

(4) FEED GRAINS.—Section 105B(c) of such Act (7 U.S.C. 1444f(c)) is amended—

(A) in paragraph (1), by striking subparagraph (G); and

(B) by striking paragraph (2) and inserting the following new paragraph:

"(2) CROP INSURANCE REQUIREMENT.—A producer shall obtain catastrophic risk protection insurance coverage in accordance with section 427."

(5) WHEAT.—Section 107B(c) of such Act (7 U.S.C. 1445b-3a(c)) is amended—

(A) in paragraph (1), by striking subparagraph (G); and

(B) by striking paragraph (2) and inserting the following new paragraph:

"(2) CROP INSURANCE REQUIREMENT.—A producer shall obtain catastrophic risk protection insurance coverage in accordance with section 427."

(6) DISASTER PAYMENTS.—Section 208 of such Act (7 U.S.C. 1446i) is repealed.

(b) FARMERS HOME ADMINISTRATION PROGRAMS.—The Consolidated Farm and Rural Development Act of 1971 (7 U.S.C. 1921 et seq.) is amended by adding at the end the following new section:

"SEC. 371. CROP INSURANCE REQUIREMENT.

"(a) IN GENERAL.—As a condition of obtaining any benefit (including a direct loan, loan guarantee, or payment) described in subsection (b), a borrower must obtain at least catastrophic risk protection insurance coverage under section 508 of the Federal Crop Insurance Act (7 U.S.C. 1508) for the crop and crop year for which the benefit is sought, if the coverage is offered by the Corporation.

"(b) APPLICABLE BENEFITS.—Subsection (a) shall apply to—

"(1) a farm ownership loan (FO) under section 303;

"(2) an operating loan (OL) under section 312; and

"(3) an emergency loan (EM) under section 321."

(c) DISASTER ASSISTANCE.—Subtitle B of title XXII of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 1421 note) is amended by striking chapter 3.

(d) EMERGENCY APPROPRIATIONS.—

(1) IN GENERAL.—Section 251(b)(2)(D)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901(b)(2)(D)(i)) is amended by adding at the end the following new sentence: "This subparagraph shall not apply to appropriations to cover agricultural crop disaster assistance."

(2) EMERGENCY LEGISLATION.—Section 252(e) of such Act (2 U.S.C. 902(e)) is amended by adding at the end the following new sentence: "This subsection shall not apply to direct spending provisions to cover agricultural crop disaster assistance."

(e) TECHNICAL AMENDMENTS.—

(1) The first sentence of section 506(d) (7 U.S.C. 1506(d)) is amended by striking "508(f)" and inserting "508(i)".

(2) The last sentence of section 507(c) (7 U.S.C. 1507(c)) is amended by striking "508(b)" and inserting "508(g)".

(3) Section 518 (7 U.S.C. 1518) is amended by striking "(k)" and inserting "(m)".

SEC. 1304. DISASTER ASSISTANCE.

(a) CROP LOSS ASSISTANCE.—The Secretary of Agriculture may provide assistance to producers for crop losses in 1994 due to natural disasters under the terms and conditions of—

(1) chapter 3 of subtitle B of title XXII of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 1421 note); and

(2) subsections (a)(4), (b)(3), (d), and (e) of section 521 of the Federal Crop Insurance Act (as amended by this title).

(b) OTHER EMERGENCY ASSISTANCE.—To provide assistance for losses in 1994 due to natural disasters, the Secretary of Agriculture may provide assistance under—

(1) the emergency conservation program established under title IV of the Agricultural Credit Act of 1978 (16 U.S.C. 2201 et seq.);

(2) the emergency watershed protection program of the Soil Conservation Service; and

(3) the emergency community water assistance grant program established under section 306A of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926a).

(c) FUNDING.—

(1) CROP LOSS ASSISTANCE.—Out of available funds of the Commodity Credit Corporation, the Commodity Credit Corporation is authorized to provide to the Secretary of Agriculture, through July 15, 1995, such sums as are necessary to carry out subsection (a).

(2) OTHER EMERGENCY ASSISTANCE.—There are authorized to be appropriated such sums as are necessary to carry out subsection (b).

(3) EMERGENCY REQUIREMENT.—The amounts made available under paragraphs (1) and (2) are designated by Congress as an emergency requirement pursuant to section 252(e) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 902(e)). The amounts shall be available only to the extent that an official budget request for specific dollar amounts, that includes designation of the entire amount of the request as an emergency requirement pursuant to such Act, is transmitted by the President to Congress.

(d) DEFINITION OF NATURAL DISASTERS.—As used in this section, the term "natural disasters" includes weather-related insect damage to strawberries.

SEC. 1305. USE OF COMMODITY CREDIT CORPORATION FUNDS TO COVER CERTAIN COSTS FOR FALL-PLANTED 1995 CROPS.

(a) DEFINITION OF FALL-PLANTED 1995 CROP.—As used in this section, the term "fall-planted 1995 crop" means a 1995 crop that is insurable under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.) with a sales closing date that is prior to January 1, 1995.

(b) USE OF FUNDS TO COVER COSTS.—Subject to the other provisions of this section, the Federal Crop Insurance Corporation may use funds of the Commodity Credit Corporation to cover operating and administrative costs of the Corporation referred to in section 516(a)(1) of the Federal Crop Insurance Act (7 U.S.C. 1516(a)(1)) associated with insurance policies issued for a fall-planted 1995 crop under such Act (7 U.S.C. 1501 et seq.).

(c) LIMITATION ON AMOUNT OF FUNDS.—The amount of funds of the Commodity Credit Corporation that may be used under subsection (b) may not exceed \$40,000,000.

(d) COMBINED LIMITATION ON AMOUNT OF FUNDS AND EMERGENCY CROP LOSS ASSISTANCE.—The amount of funds of the Commodity Credit Corporation used under subsection (b) and the amount of funds used for fiscal year 1995 to provide emergency crop loss assistance for 1995 crops shall not exceed \$500,000,000.

SEC. 1306. POULTRY LABELING, PUBLIC HEARINGS.

It is the sense of the Senate that the United States Department of Agriculture should carry out its plans to hold public hearings during the month of September 1994, for the purpose of receiving public input on issues related to the conditions under which poultry sold in the United States may be labeled "fresh" and to finalize and publish a decision on this issue as expeditiously as possible thereafter. It is the further sense of the Senate that no person serving on the expert advisory committee established to advise the Secretary of Agriculture on this issue should stand to profit, or represent any interest that would stand to profit, from the Department's decision on the issue.

SEC. 1307. AGRICULTURE EMPLOYEES FIRST AMENDMENT RIGHTS.

Notwithstanding any other provision of law, no employee of the United States Department of Agriculture shall be peremptorily removed without public hearings from his or her position because of remarks made during personal time in opposition to Departmental policies, or proposed policies regarding homosexuals: Provided, That any such individual so removed prior to date of enactment shall be reinstated to his or her previous position.

SEC. 1308. ADJUSTED COST OF THRIFTY FOOD PLAN.

Section 3(o)(11) of the Food Stamp Act of 1977 (7 U.S.C. 2012(o)(11)) is amended by inserting before the period at the end the following: ", except that the Secretary may not reduce the cost of such diet below the allotment in effect for fiscal year 1994."

SEC. 1309. EFFECTIVE DATES.

(a) IN GENERAL.—Except as otherwise provided in this title, this title and the amendments made by this title shall become effective beginning with—

(1) if this title is enacted before October 1, 1994, the 1995 crop year for the applicable agricultural commodity; or

(2) if this title is enacted on or after October 1, 1994, the 1996 crop year for the applicable agricultural commodity.

(b) EXCEPTIONS.—

(1) IN GENERAL.—Sections 1100, 1101(l), 1112(e), 1112(f), and 1302, the amendments made by such sections, and this section shall become effective on the date of enactment of this Act.

(2) EMERGENCY APPROPRIATIONS.—The amendments made by section 1303(d) shall become effective—

(A) if this title is enacted before October 1, 1994, on the date of enactment of this title; or

(B) if this title is enacted on or after October 1, 1994, on June 1, 1995.

SEC. 1310. TERMINATION OF AUTHORITY.

The authority provided by this title and the amendments made by this title shall terminate on September 30, 2000.

TITLE II—DEPARTMENT OF AGRICULTURE REORGANIZATION

Subtitle A—Short Title; Purpose; Definitions

SEC. 2101. SHORT TITLE.

This title may be cited as the "Department of Agriculture Reorganization Act of 1994".

SEC. 2102. PURPOSE.

The purpose of this title is to provide the Secretary of Agriculture with the necessary author-

ity to streamline and reorganize the Department of Agriculture to achieve greater efficiency, effectiveness, and economies in the organization and management of the programs and activities carried out at the Department.

SEC. 2103. DEFINITIONS.

As used in this title (unless the context clearly requires otherwise):

(1) ADMINISTRATIVE UNIT.—The term "administrative unit" includes—

(A) any office, administration, agency, institute, unit, or organizational entity, or component thereof, except that the term does not include a corporation; and

(B) any county, State, or area committee, as established by the Secretary.

(2) DEPARTMENT.—The term "Department" means the United States Department of Agriculture.

(3) FUNCTION.—The term "function" means an administrative, financial, or regulatory duty of an administrative unit or employee of the Department, including a transfer of funds made available to carry out a function of an administrative unit.

(4) SECRETARY.—The term "Secretary" means the Secretary of Agriculture.

Subtitle B—General Authorities of the Secretary

SEC. 2201. DELEGATION OF FUNCTIONS TO THE SECRETARY.

(a) DELEGATION OF FUNCTIONS.—Except as otherwise provided in this title and notwithstanding any other provision of law, all functions and all activities, officers, employees, and administrative units of the Department, not vested in the Secretary on the date of enactment of this Act, are delegated to the Secretary.

(b) EXCEPTIONS TO THE DELEGATION.—This section shall not apply to the following functions and administrative units of the Department:

(1) The functions vested in administrative law judges by subchapter II of chapter 5 of title 5, United States Code.

(2) The functions vested in the Inspector General by the Inspector General Act of 1978 (5 U.S.C. App. 3).

(3) The functions vested in the Chief Financial Officer by chapter 9 of subtitle I of title 31, United States Code.

(4) Corporations and the boards of directors and officers of the corporations.

(5) The functions vested in the Alternative Agricultural Research and Commercialization Board by the Alternative Agricultural Research and Commercialization Act of 1990 (7 U.S.C. 5901 et seq.).

SEC. 2202. REORGANIZATION.

(a) GENERAL AUTHORITY OF THE SECRETARY.—The Secretary may transfer any function or administrative unit of the Department, including any function or administrative unit delegated to the Secretary by this title, and any officer or employee of the Department, as the Secretary considers appropriate. The authority established in the preceding sentence includes the authority to establish, consolidate, alter, or discontinue any administrative unit of the Department.

(b) AUTHORITY TO TRANSFER RECORDS, PROPERTY, AND FUNDS.—

(1) IN GENERAL.—Subject to section 1531 of title 31, United States Code, the Secretary may transfer any of the records, property, and unexpended balances (available or to be made available for use in connection with any affected function or administrative unit) of appropriations, allocations, and other funds of the Department, as the Secretary considers necessary to carry out this title, except as otherwise provided in this section.

(2) USE.—Absent prior approval by law, any unexpended balances transferred pursuant to

paragraph (1) shall be used only for the purposes for which the funds were originally made available.

(3) **ADDITIONAL AUTHORITY.**—The Secretary may make such additional incidental dispositions of personnel, assets, liabilities, grants, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds held, used, arising from, available to, or to be made available in connection with the functions or administrative units, as the Secretary considers necessary to carry out this title.

(c) **PURPOSE OF THE AUTHORITY.**—The Secretary shall carry out subsections (a) and (b) with the goals of simplifying and maximizing the efficiency of the national, State, regional, and local levels of the Department, and of improving the accessibility of farm and other programs at all levels. To the extent practicable, the Secretary shall adapt the administration of the programs to State, regional, and local conditions.

(d) **EXHAUSTION OF ADMINISTRATIVE APPEALS.**—Notwithstanding any other provision of law, a person shall exhaust all administrative appeal procedures established by the Secretary before the person may bring an action in a court of competent jurisdiction against—

- (1) the Secretary;
- (2) the Department;
- (3) an administrative unit of the Department;

or

- (4) an employee or agent of an administrative unit of the Department.

(e) **CONFORMING AMENDMENTS.**—Section 9 of the Commodity Credit Corporation Charter Act (15 U.S.C. 714g) is amended—

- (1) in subsection (a), by striking "(a)"; and
- (2) by striking subsection (b).

SEC. 2203. PERSONNEL REDUCTIONS.

(a) **DEFINITIONS.**—As used in this section:

(1) **FIELD STRUCTURE.**—The term "field structure" means the offices, functions, and employee positions of all administrative units of the Department, other than the headquarters offices. The term includes the physical and geographic locations of the units. The term shall not include State, county, or area committees established under section 8(b) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)).

(2) **HEADQUARTERS OFFICES.**—The term "headquarters offices" means the offices, functions, and employee positions of all administrative units of the Department located or performed in Washington, District of Columbia, or elsewhere, as determined by the Secretary.

(b) **EMPLOYEE REDUCTIONS.**—Subject to subsection (c), the Secretary shall achieve employee reductions of at least 7,500 staff years within the Department by September 30, 1999.

(c) **DISTRIBUTION.**—The percentage of employee reductions in the headquarters offices under subsection (b) shall be substantially higher than the percentage of employee reductions in the field structure, as determined by the Secretary.

(d) **SCHEDULE.**—The personnel reductions under subsections (b) and (c) should be accomplished concurrently in a manner determined by the Secretary.

SEC. 2204. CONSOLIDATION OF HEADQUARTERS OFFICES.

The Secretary shall develop and carry out a plan to consolidate offices of administrative units of the Department located in Washington, District of Columbia, subject to the availability of appropriations.

SEC. 2205. REPORTS BY THE SECRETARY.

(a) **IN GENERAL.**—Subject to subsection (b), notwithstanding any other provision of law, the Secretary may, but shall not be required to, prepare and submit any report to Congress or any committee of Congress.

(b) **LIMITATION.**—For each fiscal year, the Secretary may not prepare and submit more than 30 reports referred to in subsection (a).

(c) **SELECTION OF REPORTS.**—In consultation with the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate, the Secretary shall determine which reports shall be prepared and submitted in accordance with subsection (b).

Subtitle C—National Appeals Division

SEC. 2301. DEFINITIONS.

As used in this subtitle:

(1) **ADVERSE DECISION.**—The term "adverse decision" means an administrative decision made by a decisionmaker that is adverse to a participant, including a denial of equitable relief, except that the term shall not include a decision over which the Board of Contract Appeals has jurisdiction. The term shall include the failure of a decisionmaker to issue a decision or otherwise act on the request or right of the participant to participate in, or receive payments, loans, or other benefits under, any of the programs administered by an agency. Notwithstanding section 701(a)(2) of title 5, United States Code, a discretionary decision of the Secretary or the Division shall be reviewable under section 706(2)(A) of such title unless the decision is generally applicable to all program participants and, as a matter of general applicability, is committed to agency discretion by law within the meaning of section 701(a)(2) of such title.

(2) **AGENCY.**—The term "agency" means any agency of the Department designated by the Secretary or a successor agency of the Department, except that the term shall include—

- (A) ASCS;
- (B) CCC, with respect to domestic programs;
- (C) FmHA (including rural housing programs);
- (D) FCIC;
- (E) RDA (including rural housing programs);
- (F) SCS; or
- (G) a State or county committee established under section 8(b) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)) or the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.).

(3) **APPELLANT.**—The term "appellant" means a participant who appeals an adverse decision in accordance with this subtitle.

(4) **ASCS.**—The term "ASCS" means the Agricultural Stabilization and Conservation Service or a successor agency.

(5) **CASE RECORD.**—The term "case record" means all the materials maintained by the Secretary that concern the participant, including any materials related to the adverse decision.

(6) **CCC.**—The term "CCC" means the Commodity Credit Corporation or a successor agency.

(7) **DECISIONMAKER.**—The term "decisionmaker" means an officer, employee, or committee of an agency who makes an adverse decision that is appealed by an appellant.

(8) **DIRECTOR.**—The term "Director" means the Director of the Division.

(9) **DIVISION.**—The term "Division" means the National Appeals Division established by this subtitle.

(10) **EMPLOYEE.**—The term "employee" means an individual employed by an agency, including an individual who enters into a contract with an agency to perform services for the agency.

(11) **FINAL DETERMINATION.**—The term "final determination" means a determination of an appeal by the Division that is administratively final, conclusive, and binding.

(12) **FCIC.**—The term "FCIC" means the Federal Crop Insurance Corporation or a successor agency.

(13) **FmHA.**—The term "FmHA" means the Farmers Home Administration or a successor agency.

(14) **HEARING OFFICER.**—The term "hearing officer" means an individual employed by the Division who hears and determines appeals of adverse decisions by any agency.

(15) **HEARING RECORD.**—The term "hearing record" means the transcript of a hearing, any audio tape or similar recording of a hearing, any information from the case record that a hearing officer considers relevant or that is raised by the appellant or agency, and all documents and other evidence presented to a hearing officer.

(16) **IMPLEMENT; IMPLEMENTATION.**—The terms "implement" and "implementation" refer to those actions necessary to effectuate fully and promptly a determination of the Division not later than 30 calendar days after the effective date of the determination.

(17) **PARTICIPANT.**—The term "participant" means any individual, group of individuals, partnership, corporation, association, cooperative, or other entity whose application for, or right to participate in or receive, payments, loans, or other benefits in accordance with any of the programs administered by an agency, is affected by an adverse decision made by a decisionmaker.

(18) **RDA.**—The term "RDA" means the Rural Development Administration or a successor agency.

(19) **SCS.**—The term "SCS" means the Soil Conservation Service or a successor agency.

(20) **STATE DIRECTOR.**—The term "State director" means the individual who is primarily responsible for carrying out the program of an agency within a State.

SEC. 2302. NATIONAL APPEALS DIVISION AND DIRECTOR.

(a) **ESTABLISHMENT OF DIVISION.**—

(1) **ESTABLISHMENT.**—The Secretary shall establish and maintain a National Appeals Division within the Office of the Secretary to carry out this subtitle.

(2) **APA APPLICATION.**—The provisions of title 5, United States Code, shall apply to all appeals of the Division, including chapters 5 and 7 of such title.

(3) **PROCEDURAL REGULATIONS AND POLICIES.**—The Secretary shall promulgate procedural regulations and policies to govern the conduct of the business of the Division. The Secretary shall ensure and enhance the independence, integrity, and efficiency of the Division, the Director, hearing officers, and other employees of the Division.

(b) **DIRECTOR.**—

(1) **APPOINTMENT.**—The Division shall be headed by a Director.

(2) **POSITION CLASSIFICATION.**—The position of the Director shall be a Senior Executive Service position that shall be filled by a career appointee (as defined in section 3132(a)(4) of title 5, United States Code), who shall not be subject to removal except for cause in accordance with law.

(3) **QUALIFICATIONS.**—The Director shall be a person who has substantial experience in practicing administrative law. In considering applicants for the position of Director, the Secretary shall consider persons employed outside the Government as well as Government employees.

(4) **CONFORMING AMENDMENT.**—Section 5316 of title 5, United States Code, is amended by adding at the end the following:

"Director, National Appeals Division, Department of Agriculture."

(c) **DIRECTION, CONTROL, AND SUPPORT.**—The Director shall be free from the direction and control of any person other than the Secretary. The Division shall not receive administrative support (except on a reimbursable basis) from any agency other than the Office of the Secretary. The Secretary may not delegate to any other officer or employee of the Department,

other than the Director, the authority of the Secretary with respect to the Division.

(d) **COMMUNICATION WITH SECRETARY AND AGENCIES.**—The Director shall inform the Secretary and the appropriate agency of problems regarding the functions of the agency that are identified as a result of the activities of the Division under this subtitle. The information provided by the Director may include proposals to resolve the problems identified or otherwise to improve the programs of the agency.

(e) **APPEALABLE DECISIONS.**—Subject to section 2304(b)(2), if a decisionmaker determines that a decision is not appealable and a participant appeals the decision to the Director, the Director shall determine whether the decision is adverse or of general applicability, and thus appealable. Except for a legal interpretation that may be reversed or modified by the Secretary, the determination of the Director as to whether a decision is appealable shall be administratively final, conclusive, and binding.

(f) **OTHER POWERS OF THE DIRECTOR.**—The Director may enter into contracts and make other arrangements for reporting and other services and make such payments as may be necessary to carry out this subtitle.

SEC. 2303. TRANSFER OF FUNCTIONS.

There are transferred to the Division all functions exercised and all administrative appeals pending before the date of enactment of this Act (including all related functions of any officer or employee) of or relating to—

(1) the National Appeals Division established by section 426(c) of the Agricultural Act of 1949 (7 U.S.C. 1433e(c)) (as in effect before the amendment made by section 2315(a)(2));

(2) the National Appeals Division established by subsections (d) through (g) of section 333B of the Consolidated Farm and Rural Development Act (7 U.S.C. 1983b) (as in effect before the amendment made by section 2315(b));

(3) appeals of decisions made by FCIC; and

(4) appeals of decisions made by SCS.

SEC. 2304. PERSONNEL OF THE DIVISION.

(a) **APPOINTMENT, DIRECTION, AND CONTROL.**—The Director shall appoint such hearing officers and other employees as are necessary for the administration of the Division. A hearing officer or other employee of the Division shall have no duties other than those that are necessary to carry out this subtitle. Hearing officers shall be supervised by the Director. All other employees of the Division shall report to the Director.

(b) **LEGAL COUNSEL.**—

(1) **IN GENERAL.**—The Director shall employ legal counsel to advise the Director with respect to legal questions affecting the Division. The legal counsel shall not serve as a counsel to any other agency of the Department. This subsection is not intended to affect the role of the Office of General Counsel in representing the Department in civil or criminal actions or as a liaison between the Department and any other Federal agency.

(2) **REVIEW BY THE SECRETARY.**—If a hearing officer or the Director disagrees with the General Counsel on a matter of legal interpretation with respect to a program or authority of the Department, the Secretary shall have the authority to make a final determination on the interpretation at the request of the General Counsel. The authority of the Secretary under this paragraph may not be delegated.

(c) **PERFORMANCE EVALUATIONS.**—The Director shall establish policies to provide for the evaluation of the Director, hearing officers, and other employees of the Division who are involved in the appeal process under section 2308 or the supervision of other employees. The evaluation process shall be designed to ensure and enhance the independence, integrity, and efficiency of the Director and employees of the Di-

vision. The actual evaluations shall include evaluations by individuals outside of the Department and may include peer review.

SEC. 2305. NOTICE AND OPPORTUNITY FOR HEARING.

(a) **NOTICE REQUIRED.**—Not later than 10 working days after an adverse decision is made that is adverse to the participant, the Secretary shall provide the participant with the written notice described in subsection (b).

(b) **CONTENT OF NOTICE.**—The notice required under subsection (a) shall contain a description of the following:

(1) The decision, including all of the reasons, facts, and conclusions underlying the decision.

(2) The appeal and implementation process available to the participant, including the rights and responsibilities of the participant provided by this subtitle.

(3) An opportunity to request a determination by the Director pursuant to section 2302(e) concerning whether a decision is appealable, if the decisionmaker determines that the decision is not appealable.

(c) **MAINTENANCE OF RECORDS.**—The Secretary and the Director shall maintain the entire case record and hearing record, respectively, and any additional information from any further appeal proceeding, of the participant at least until the expiration of the period during which the participant may seek administrative or judicial review of the determination.

(d) **JOINDER.**—

(1) **GUARANTEED LOANS.**—With regard to a guaranteed loan under the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.), a borrower or applicant who is directly and adversely affected by a decision of the Secretary may appeal the decision pursuant to this subtitle without the lender joining in the appeal.

(2) **RENTAL HOUSING.**—A tenant in rental housing of an agency who is individually, directly, and adversely affected by a decision of the Secretary may appeal the decision pursuant to this subtitle without the landlord joining in the appeal.

(3) **THIRD PARTIES.**—If the Director determines that the receipt of a payment, loan, or other direct benefit by a participant may be directly, substantially, and adversely affected by a determination of the Division, a hearing officer may invite the participant to participate in a hearing if the final determination resulting from the hearing would, as a practical matter, foreclose the participant from receiving the payment, loan, or other direct benefit of the participant. If the participant elects to participate in the hearing, the participant shall have the same procedural rights as the appellant with regard to the hearing and other procedures described in this subtitle.

(e) **EFFECT OF REVERSAL OR MODIFICATION OF ADVERSE DECISION.**—If an adverse decision is reversed or modified by the Division, a decisionmaker may not base any subsequent adverse decision with regard to that appellant on the information that was available to the previous decisionmaker (or could have been available with reasonable diligence on the part of the previous decisionmaker).

SEC. 2306. INFORMAL HEARINGS.

If a decisionmaker of an agency makes an adverse decision, the decisionmaker shall hold, at the request of the participant, an informal hearing on the decision.

SEC. 2307. RIGHTS OF PARTICIPANTS.

Among other rights, a participant shall have the right, in accordance with this subtitle, to—

(1) appeal any adverse decision;

(2) representation by an attorney or nonattorney throughout the informal hearing and appeals process under this subtitle;

(3) access to, and a reasonable opportunity to inspect and reproduce, the case record at an of-

fice of the agency located in the area of the participant; and

(4) an evidentiary hearing.

SEC. 2308. DIVISION HEARINGS AND DIRECTOR REVIEW.

(a) **POWERS OF DIRECTOR AND HEARING OFFICERS.**—To carry out their responsibilities under this section, the Director and hearing officers—

(1) shall have access to all records, reports, audits, reviews, documents, papers, recommendations, or other material available that relate to programs and operations with respect to which an appeal has been taken;

(2) shall have the authorities that are provided under section 2302(a)(2);

(3) may request such information or assistance as may be necessary for carrying out the duties and responsibilities established under this subtitle from any Federal, State, or local governmental agency or unit of the agency;

(4) may, or shall at the request of an appellant with good cause shown, require the attendance of witnesses and the production of all information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence necessary to the proper resolution of appeals;

(5) may require the attendance of witnesses, and the production of evidence, by subpoena; and

(6) may administer oaths or affirmations.

(b) **TIME FOR HEARING.**—

(1) **IN GENERAL.**—Except as provided in paragraph (2), an appellant shall have the right to—

(A) request a hearing, not later than 30 days after the date an adverse decision is made; and

(B) have a hearing by the Division on the adverse decision, not later than 45 days after receipt of the request for the hearing.

(2) **REDUCTION OR EXTENSION.**—The Director may establish an earlier deadline for a hearing (or request for a hearing) on an appeal relating to a time sensitive decision, or delay a hearing (or request for a hearing), at the request of an appellant for good cause shown.

(c) **LOCATION AND ELEMENTS OF HEARING.**—

(1) **LOCATION.**—A hearing on an adverse decision shall be held in the State of residence of the appellant or at a location that is otherwise convenient to the appellant and the Division.

(2) **EVIDENTIARY HEARING.**—The evidentiary hearing before a hearing officer shall be in person, unless the appellant agrees to a hearing by telephone or by a review of the case record and hearing record. The hearing officer shall conduct and resolve the hearing (regardless of the hearing format) in a fair and impartial manner and free of undue influence. The hearing officer shall not be bound by previous findings of fact by the agency in making a determination.

(3) **INFORMATION AT HEARING.**—The hearing officer shall consider information, including new information, presented at the hearing without regard to whether the evidence was known to the decisionmaker at the time the adverse decision was made. The hearing officer shall leave the record open after the hearing for a reasonable period of time to allow the submission of information by the appellant or the decisionmaker after the hearing to the extent necessary to prevent the appellant or the decisionmaker from being prejudiced by new facts, information, arguments, or evidence presented or raised by the decisionmaker or appellant. At the hearing, the agency may not rely on or assert new grounds for the adverse decision, if the grounds were not described in the agency decision notice.

(4) **BURDEN OF PROOF.**—The appellant shall bear the burden of proving that the adverse decision of the agency was erroneous.

(5) **PRODUCTION OF RECORD.**—An official verbatim record shall be provided by the Division for each hearing before a hearing officer. The appellant or agency representative may record an unofficial record of the hearing.

(6) **STANDARD OF REVIEW.**—In any case pending before a hearing officer, the hearing officer may determine that the adverse decision was in error only if substantial evidence demonstrates that the adverse decision was not correct. For purposes of this paragraph, the evidentiary threshold for substantial evidence is lower than the evidentiary threshold for preponderance of the evidence.

(7) **DETERMINATION NOTICE.**—The hearing officer shall issue a notice of the determination on the appeal not later than 30 days after a hearing or after receipt of the request of the appellant to waive a hearing, except that the Director may establish an earlier or later deadline pursuant to subsection (b)(2). The hearing officer may include recommendations in the determination notice. If the determination is not appealed to the Director under subsection (d), the notice provided by the hearing officer shall be considered to be a notice of final determination.

(d) **REVIEW BY DIRECTOR.**—

(1) **REFERRAL.**—At the request of the appellant or the head of the agency affected by a determination of a hearing officer, the determination of the hearing officer shall be referred to the Director for review.

(2) **APPEAL BY HEAD OF AGENCY TO DIRECTOR.**—

(A) **REVIEW OF DETERMINATION OF HEARING OFFICER AT THE REQUEST OF AN AGENCY HEAD.**—In exceptional circumstances, if the head of an agency believes that the determination of a hearing officer is contrary to a statute or regulation, or a finding of fact of a hearing officer is clearly erroneous, only the head of the agency may make a written request, not later than 10 business days after receipt of the determination, that the Director review the determination.

(B) **REQUESTS FOR REVIEW.**—A request for review shall—

(i) include a full description of—

(I) the exceptional circumstances justifying the request for review; and

(II) the reasons that the head of the relevant agency believes that the determination is contrary to statute or regulation, or the finding of fact of the hearing officer is clearly erroneous; and

(ii) be provided to the appellant and the hearing officer at the same time the request is provided to the Director.

(C) **DETERMINATION OF DIRECTOR.**—Not later than 10 business days after receipt of the request for review, the Director shall—

(i) conduct a review of the determination based on the case record and hearing record, the request for review under subsection (b), and any additional arguments or information submitted by the appellant or the hearing officer; and

(ii)(I) issue a final determination notice that upholds, reverses, or modifies the determination of the hearing officer; or

(II) if the Director determines that the hearing record is inadequate, remand the determination for further proceedings to complete the hearing record, or, at the option of the Director, to hold a new hearing, and notify the appellant, agency, and hearing officer of the remand.

(D) **NEW HEARING.**—If the Director remands a determination for a new hearing on the adverse decision under subparagraph (C), the hearing officer shall make a new determination with respect to the adverse decision based on the case record and the hearing record.

(E) **FINALITY.**—The head of the relevant agency may not request a second review as to the determination of the hearing officer or the Director on the same issue.

(3) **APPEAL BY HEAD OF AGENCY OR APPELLANT TO DIRECTOR.**—

(A) **USE OF RECORD.**—If the determination of a hearing officer is appealed under paragraph (1), the hearing officer shall certify the hearing record and provide the record to the Director.

(B) **NEW INFORMATION.**—The Director may consider, under extraordinary circumstances, new information in reviewing a determination under this section. The appellant, decisionmaker, and hearing officer shall receive and have the opportunity to comment on the new information.

(C) **ACTIONS.**—Not later than 30 days after the referral to the Director, the Director shall—

(i) review the hearing record and the determination;

(ii) uphold the determination, issue a new determination, require that a new hearing be held on 1 or more of the issues considered at the original hearing, or take any combination of the actions described in this clause; and

(iii) issue a notice of—

(I) a new evidentiary hearing;

(II) a final determination; or

(III) a remand on certain issues and a final determination on remaining issues.

(D) **RECOMMENDATIONS.**—The Director may include recommendations in a final determination notice.

(E) **RELIEF.**—The Director shall have the same authority as the Secretary to grant equitable relief. Notwithstanding the administrative finality of a final determination, the Secretary shall have the authority to grant equitable or other types of relief to the appellant after a final determination is issued by the Division.

(e) **BASIS FOR DETERMINATION.**—The determination of the hearing officer and the Director shall be based on information from the hearing record, laws applicable to the matter at issue, and applicable regulations published in the Federal Register and in effect on the date of the adverse decision or the date on which the acts that gave rise to the adverse decision occurred, whichever date is appropriate. The Director shall not reverse the determination of a hearing officer with regard to a finding of fact that is based on oral testimony or inspection of evidence unless the finding of fact is clearly erroneous or the Director is considering new information under subsection (d)(3) with respect to the finding of fact.

(f) **EFFECTIVE DATE.**—The final determination shall be effective as of the date of filing of an application, the date of the transaction or event in question, or the date of the original adverse decision, whichever is applicable.

SEC. 2309. JUDICIAL REVIEW.

A final determination of the Division under section 2308 shall be reviewable and enforceable by any United States district court of competent jurisdiction in accordance with chapter 7 of title 5, United States Code. Notwithstanding section 701(a)(2) of such title, a discretionary decision of the Secretary or the Division shall be reviewable under section 706(2)(A) of such title unless the decision is generally applicable to all program participants and, as a matter of general applicability, is committed to agency discretion by law within the meaning of section 701(a)(2) of such title.

SEC. 2310. IMPLEMENTATION OF FINAL DETERMINATIONS OF DIVISION.

(a) **IN GENERAL.**—On the return of a case to an agency pursuant to the final determination of a hearing officer or the Director under section 2308, the agency shall implement the final determination of the Division not later than 30 days after the effective date of the notice of the final determination.

(b) **ADDITIONAL AND UPDATED INFORMATION.**—

(1) **IN GENERAL.**—Except as provided in paragraph (2), after notice of a final determination is received by the agency—

(A) the agency may not require that additional and updated information be provided by the appellant or considered by the decisionmaker in implementing the final determination of the hearing officer or the Director; and

(B) additional and updated information from any other source may not be used in implementing the final determination.

(2) **EXCEPTIONS.**—

(A) **INTRODUCTION BY APPELLANT.**—If additional information is introduced by the appellant during the appeal process and accepted by the hearing officer or the Director, the agency shall consider the additional information in implementing the final determination.

(B) **DETERMINATION LETTER.**—If the final determination notice specifically states that additional and updated information will be considered in implementing the final determination, the agency shall consider any additional and updated information in implementing the final determination.

(C) **SUBSEQUENT ADVERSE DECISION.**—Additional and updated information considered under this paragraph may not be used as a ground for a subsequent adverse decision.

(c) **IMPLEMENTATION RESPONSIBILITIES.**—

(1) **STATE DIRECTOR.**—Each State director shall be—

(A) required to implement final determinations of a hearing officer or the Director that affect appellants in the State; and

(B) responsible for monitoring and ensuring the implementation of final determinations that reverse and modify adverse decisions.

(2) **AGENCY HEADS.**—Relevant agency heads shall be responsible for—

(A) the performance of State directors under paragraph (1); and

(B) the implementation of all final determinations of the Division that reverse or modify adverse decisions of the agency.

(d) **PROTECTION OF APPELLANTS' RIGHTS.**—

(1) **IN GENERAL.**—No officer or employee of the Federal Government shall make or engage in threats or intimidation, or solicit action, to prevent any potential appellant from exercising a right of the appellant under this subtitle or make, solicit, or engage in retaliation or retribution for the exercise of a right of an appellant under this subtitle.

(2) **CORRECTIVE ACTION.**—If an officer or employee of the Federal Government violates paragraph (1), the Secretary shall take corrective action (including the imposition of sanctions, when necessary) in conformance with civil service laws.

(e) **IMPLEMENTATION PROBLEMS.**—

(1) **ACTIONS BY RELEVANT AGENCY HEAD.**—The relevant agency head shall promptly correct any problems that may arise in the implementation of a final determination.

(2) **OVERSIGHT.**—The Secretary shall assign employees within the Office of the Inspector General whom appellants may contact concerning problems with the implementation of final determinations of the Division. The employees shall investigate and, to the extent practicable, resolve the implementation problems.

(3) **IDENTITY AND ACTIVITIES OF OVERSIGHT AGENCY.**—The Secretary shall notify the Director of the business address and telephone number of employees assigned under paragraph (2). The Director shall include this information in the final determination notice of the Division to an appellant.

SEC. 2311. DECISIONS OF STATE AND COUNTY COMMITTEES.

(a) **FINALITY.**—Each decision of a State or county committee (or an employee of the committee) that administers functions of CCC, or functions assigned to ASCS on the date of enactment of this Act, made in good faith in the absence of misrepresentation, false statement, fraud, or willful misconduct shall be final not later than 90 days after the date of filing of the application for benefits, unless the decision is—

(1) appealed under this subtitle; or

(2) modified by the Administrator of ASCS or the Executive Vice President of CCC.

(b) **RECOVERY OF AMOUNTS.**—No action shall be taken by the CCC, ASCS, or a State or county committee to recover amounts found to have been disbursed as a result of a decision in error if the decision of the State or county committee has become final under subsection (a), unless the participant had reason to believe that the decision was erroneous.

SEC. 2312. PROHIBITION ON ADVERSE ACTION WHILE APPEAL IS PENDING.

(a) **IN GENERAL.**—The Secretary may not take any adverse action against an appellant relating to an appeal while any proceeding authorized or required under this subtitle is pending, including any action that would prevent the implementation of a decision that is favorable to the appellant.

(b) **WITHHOLDING.**—This section shall not preclude the Secretary from withholding a payment if the eligibility for, or amount of, the payment is an issue on appeal, except that ongoing assistance to then current borrowers and grantees shall not be discontinued pending the outcome of an appeal.

SEC. 2313. RELATIONSHIP TO OTHER LAWS.

(a) **OTHER RIGHTS.**—This subtitle is not intended to supersede or deprive a recipient of assistance from an agency of any rights that the recipient may have under any other law, including section 510(g) of the Housing Act of 1949 (42 U.S.C. 1480(g)).

(b) **EQUITABLE RELIEF.**—This subtitle is not intended to affect the authority of an agency head to grant equitable relief.

(c) **EMPLOYEE RIGHTS.**—This subtitle shall neither supersede nor interfere with rights granted to employees or their exclusive representatives by applicable civil service laws.

SEC. 2314. EVALUATION OF AGENCY DECISIONMAKERS AND OTHER EMPLOYEES.

(a) **EVALUATION IN ANNUAL REVIEW.**—The Secretary shall promulgate regulations to require the evaluation described in subsection (b) as part of the annual review of the performance of decisionmakers, State directors, and agency heads.

(b) **PERFORMANCE.**—In the review, a decisionmaker, a State director, or an agency head shall be considered to have performed poorly if the decisionmaker, State director, or agency head—

(1) takes action that leads to numerous appeals that result in adverse decisions that are reversed or modified;

(2) fails to properly implement final determinations of the Division;

(3) fails to satisfactorily perform the reviewing and monitoring responsibilities required under subsection (c) or (e)(1) of section 2310, whichever applies; or

(4) threatens or intimidates, or engages in retaliation or retribution against, an appellant in violation of section 2310(d).

(c) **SANCTIONS.**—If a decisionmaker, State director, or relevant agency head has performed poorly (as determined under subsection (b)), the Secretary shall issue sanctions against the decisionmaker, State director, or relevant agency head, as the case may be, which may include a formal reprimand or dismissal consistent with civil service laws.

SEC. 2315. CONFORMING AMENDMENTS.

(a) **ASCS.**—

(1) **FINALITY OF FARMERS PAYMENTS AND LOANS.**—Section 385 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1385) is amended—

(A) by striking the first sentence and inserting the following new sentence: "As used in this section, the term 'payment' means any payment under the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590a et seq.), any payment under the wheat, feed grain, upland cotton, extra long staple cotton, and rice programs au-

thorized by the Agricultural Act of 1949 (7 U.S.C. 1421 et seq.) and this title, or any loan or price support operation, or the amount of the payment, loan, or price support."; and

(B) in the second sentence, by striking "any such payment" and inserting "a payment".

(2) **DETERMINATIONS BY SECRETARY; APPEALS.**—Sections 412 and 426 of the Agricultural Act of 1949 (7 U.S.C. 1429 and 1433e) are repealed.

(b) **FMHA.**—Section 333B of the Consolidated Farm and Rural Development Act (7 U.S.C. 1983b) is repealed.

(c) **FCIC.**—The last sentence of section 508(f) of the Federal Crop Insurance Act (7 U.S.C. 1508(f)) is amended by inserting before the period at the end the following: "or within 1 year after the claimant receives a final determination notice from an administrative appeal made in accordance with title II of the Department of Agriculture Reorganization Act of 1994, whichever is later".

Subtitle D—Farm and International Trade Services

SEC. 2401. UNDER SECRETARY FOR FARM AND INTERNATIONAL TRADE SERVICES.

(a) **ESTABLISHMENT.**—There is established in the Department the position of Under Secretary of Agriculture for Farm and International Trade Services (referred to in this section as the "Under Secretary"), to be appointed by the President, by and with the advice and consent of the Senate.

(b) **DUTIES.**—The Under Secretary shall exercise such functions and perform such duties related to farm and international trade services, and shall perform such other duties, as may be required by law or prescribed by the Secretary.

(c) **CONTINUITY OF THE POSITION.**—Any official serving as Under Secretary for International Affairs and Commodity Programs on the date of enactment of this Act, who has been appointed by the President and confirmed by the Senate, shall be considered on and after the date of enactment of this Act to be serving in the successor position established by subsection (a), and shall not be required to be reconfirmed by reason of the enactment of this title.

(d) **CONFORMING AMENDMENTS.**—

(1) Section 5314 of title 5, United States Code, is amended by striking "Under Secretary of Agriculture for International Affairs and Commodity Programs." and inserting "Under Secretary of Agriculture for Farm and International Trade Services."

(2) Section 501 of the Agricultural Trade Act of 1978 (7 U.S.C. 5691) is repealed.

SEC. 2402. FARM SERVICE AGENCY.

(a) **ESTABLISHMENT.**—The Secretary is authorized to establish and maintain a Farm Service Agency (referred to in this section as the "Agency") and assign to the Agency such functions as the Secretary may consider appropriate.

(b) **HEAD.**—

(1) **AGENCY.**—If the Secretary establishes the Agency, the Agency or any successor administrative unit shall be headed by an Administrator who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) **FCIC.**—The Secretary may appoint the Administrator of the Agency, or any other person, to serve as head of the Federal Crop Insurance Corporation.

(c) **FUNCTIONS.**—Except as provided in subsection (d), the Secretary is authorized to carry out through the Agency—

(1) price and income support, production adjustment, and other related functions;

(2) functions of the Federal Crop Insurance Corporation;

(3) notwithstanding section 331 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1981), agricultural credit functions assigned prior to the date of enactment of this Act

to the Farmers Home Administration, including farm ownership, operating, emergency, and disaster loan functions, and other lending programs for producers of agricultural commodities; and

(4) any other function or administrative unit that the Secretary considers appropriate.

(d) **FUNCTIONS NOT ASSIGNABLE TO THE AGENCY.**—Except as otherwise determined by the Secretary, functions relating to conservation programs authorized to be assigned to the Natural Resources Conservation Service established under section 2701 may not be assigned to the Agency.

(e) **USE OF EMPLOYEES.**—Notwithstanding any other provision of law, in carrying out in any county or area any functions assigned to the Agency or any successor administrative area, the Secretary is authorized to—

(1) use interchangeably, in the implementation of functions, Federal employees, and employees of county and State committees established under section 8(b) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)); and

(2) provide interchangeably for supervision by the employees of the performance of functions assigned to the Agency.

(f) **COLLOCATION.**—The Secretary, to the maximum extent practicable, shall collocate county offices of the Agency with county offices of the Natural Resources Conservation Service in order to—

(1) maximize savings from shared equipment, office space, and administrative support;

(2) simplify paperwork and regulatory requirements;

(3) provide improved services to producers and landowners affected by programs administered by the Agency and the Service; and

(4) achieve computer compatibility between the Agency and the Service to maximize efficiency and savings.

(g) **CONTINUITY OF THE POSITION.**—Any official serving on the date of enactment of this Act, who has been appointed by the President and confirmed by the Senate, shall not be required to be reconfirmed by reason of the enactment of this title.

(h) **CONFORMING AMENDMENTS.**—

(1) The second sentence of section 505(a) of the Federal Crop Insurance Act (7 U.S.C. 1505(a)) is amended by striking "the Under Secretary or Assistant Secretary of Agriculture responsible for the farm credit programs of the Department of Agriculture," and inserting "one additional Under or Assistant Secretary of Agriculture, as designated by the Secretary."

(2) Section 507(d) of the Federal Crop Insurance Act (7 U.S.C. 1507(d)) is amended by striking "section 516 of this Act," and all that follows through the period at the end of the subsection and inserting "section 516."

(3) Section 331(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1981(a)) is amended by striking "assets to the Farmers Home Administration" and all that follows through the period at the end of the subsection and inserting "assets to such officers or administrative units of the Department of Agriculture as the Secretary may consider appropriate."

SEC. 2403. STATE AND COUNTY COMMITTEES.

Section 8(b) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)) is amended—

(1) by designating the first through eighth undesignated paragraphs as paragraphs (1) through (8), respectively; and

(2) in paragraph (5) (as so designated) by adding at the end the following new sentence: "The Secretary is authorized, after consultation with the State committee of the State in which the affected counties are located, to terminate, combine, and consolidate two or more county committees established under this subsection."

SEC. 2404. INTERNATIONAL TRADE SERVICE.

(a) **ESTABLISHMENT.**—The Secretary is authorized to establish and maintain an International Trade Service (referred to in this section as the "Service") and to assign to the Service such functions or administrative units as the Secretary may consider appropriate and consistent with this title.

(b) **HEAD.**—If the Secretary establishes the Service, the Service or any successor administrative unit shall be headed by an Administrator who shall be appointed by the President, by and with the advice and consent of the Senate.

(c) **FUNCTIONS.**—The Secretary is authorized to carry out, through the Service or through such other officers or administrative units as the Secretary may consider appropriate, programs and activities involving—

(1) the acquisition of information pertaining to agricultural trade;

(2) market promotion and development;

(3) promotion of exports of United States agricultural commodities;

(4) administration of international food assistance; and

(5) international development, technical assistance, and training.

(d) **CONTINUITY OF THE POSITION.**—Any official serving on the date of enactment of this Act, who has been appointed by the President and confirmed by the Senate, shall not be required to be reconfirmed by reason of the enactment of this title.

(e) **CONFORMING AMENDMENTS.**—Sections 502 and 503 of the Agricultural Trade Act of 1978 (7 U.S.C. 5692 and 5693) are repealed.

Subtitle E—Rural Economic and Community Development

SEC. 2501. UNDER SECRETARY FOR RURAL ECONOMIC AND COMMUNITY DEVELOPMENT.

(a) **ESTABLISHMENT.**—Subsection (a) of section 3 of the Rural Development Policy Act of 1980 (7 U.S.C. 2211b) is amended to read as follows:

"(a)(1) There is established in the Department of Agriculture the position of Under Secretary of Agriculture for Rural Economic and Community Development to be appointed by the President, by and with the advice and consent of the Senate.

"(2) The Under Secretary of Agriculture for Rural Economic and Community Development shall exercise such functions and perform such duties related to rural economic and community development, and shall perform such other duties, as may be required by law or prescribed by the Secretary of Agriculture."

(b) **CONTINUITY OF POSITION.**—Any official serving as Under Secretary of Agriculture for Small Community and Rural Development on the date of enactment of this Act, after appointment by the President, by and with the advice and consent of the Senate, shall be considered after the date of enactment of this Act to be serving in the successor position established by the amendment made by subsection (a), and shall not be required to be reconfirmed by reason of the enactment of this title.

(c) **CONFORMING AMENDMENT.**—Section 5314 of title 5, United States Code, is amended by striking "Under Secretary of Agriculture for Small Community and Rural Development." and inserting "Under Secretary of Agriculture for Rural Economic and Community Development."

SEC. 2502. RURAL UTILITIES SERVICE.

(a) **ESTABLISHMENT.**—Notwithstanding section 364 of the Consolidated Farm and Rural Development Act (7 U.S.C. 2006f) and any other provision of law, the Secretary is authorized to establish and maintain within the Department the Rural Utilities Service (referred to in this section as the "Service") and to assign to the Service such functions and administrative units as the Secretary may consider appropriate.

(b) **HEAD.**—If the Secretary establishes the Service, the Service or any successor administrative unit shall be headed by an Administrator who shall be appointed by the President, by and with the advice and consent of the Senate.

(c) **FUNCTIONS.**—The Secretary may carry out through the Service, or through any other officer or administrative unit as the Secretary may consider appropriate—

(1) electric and telephone loan programs and water and waste facility activities authorized by law, including—

(A) the Rural Electrification Act of 1936 (7 U.S.C. 901 et seq.); and

(B) section 2322 of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 1926-1); and

(2) water and waste facility programs and activities authorized by law, including—

(A) sections 306, 306A, 306B, and 306C, the provisions of sections 309 and 309A relating to assets, terms, and conditions of water and sewer programs, section 310B(b)(2), and the amendment made by section 342 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926, 1926a, 1926b, 1926c, 1929, 1929a, 1932(b)(2), and 1013a); and

(B) section 2324 of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 1926 note).

(d) **CONTINUITY OF THE POSITION.**—Any official serving on the date of enactment of this Act, who has been appointed by the President and confirmed by the Senate, shall not be required to be reconfirmed by reason of the enactment of this title.

(e) **CONFORMING AMENDMENTS TO THE RURAL ELECTRIFICATION ACT.**—

(1) The first section of the Rural Electrification Act of 1936 (7 U.S.C. 901) is amended by striking "there is" and all that follows through "This Act" and inserting "this Act".

(2) Section 2 of such Act (7 U.S.C. 902) is amended by striking "Administrator" and inserting "Secretary of Agriculture".

(3) Section 3(a) of such Act (7 U.S.C. 903(a)) is amended—

(A) by striking "Administrator, upon the request and approval of the Secretary of Agriculture," and inserting "Secretary,"; and

(B) by striking "Administrator appointed pursuant to the provisions of this Act or from the Administrator of the Rural Electrification Administration established by Executive Order Numbered 7037" and inserting "Secretary".

(4) Section 8 of such Act (7 U.S.C. 908) is amended—

(A) in the first sentence, by striking "Administrator authorized to be appointed by this Act" and inserting "Secretary"; and

(B) in the second sentence, by striking "Rural Electrification Administration created by this Act" and inserting "Secretary".

(5) Section 11A of such Act (7 U.S.C. 911a) is repealed.

(6) Section 13 of such Act (7 U.S.C. 913) is amended by inserting before the period the following: "; and the term 'Secretary' means the Secretary of Agriculture".

(7) Sections 206(b)(2), 306A(b), 311, and 405(b)(1)(A) of such Act (7 U.S.C. 927(b)(2), 936a(b), 940a, and 945(b)(1)(A)) are amended by striking "Rural Electrification Administration" each place it appears and inserting "Secretary".

(8) Section 403(b) of such Act (7 U.S.C. 943(b)) is amended by striking "Rural Electrification Administration or of any other agency of the Department of Agriculture," and inserting "Secretary".

(9) Section 404 of such Act (7 U.S.C. 944) is amended by striking "the Administrator of the Rural Electrification Administration" and inserting "the Secretary of Agriculture shall designate an official of the Department of Agriculture who".

(10) Sections 406(c) and 410(a)(1) of such Act (7 U.S.C. 946(c) and 950) are amended by striking "Administrator of the Rural Electrification Administration" each place it appears and inserting "Secretary".

(11) Such Act (7 U.S.C. 901 et seq.) is amended by striking "Administrator" each place it appears and inserting "Secretary".

(f) **MISCELLANEOUS CONFORMING AMENDMENTS.**—

(1) Section 236(a) of the Disaster Relief Act of 1970 (7 U.S.C. 912a) is amended by striking "Rural Electrification Administration" and inserting "Secretary pursuant to the Rural Electrification Act of 1936 (7 U.S.C. 901 et seq.)".

(2) The second undesignated paragraph of section 401 of the Rural Electrification Act of 1938 (52 Stat. 818; 7 U.S.C. 903 note) is amended by striking "Administrator of the Rural Electrification Administration" and inserting "Secretary of Agriculture".

(3) Section 15 of the Department of Agriculture Organic Act of 1944 (7 U.S.C. 915) is amended by striking "Rural Electrification Administration" and inserting "Secretary".

(4)(A) Section 2333 of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 950aaa-2) is amended—

(i) by striking paragraph (1); and

(ii) by redesignating paragraphs (2) through (11) as paragraphs (1) through (10), respectively.

(B) Chapter 1 of subtitle D of title XXIII of such Act (7 U.S.C. 950aaa et seq.) is amended by striking "Administrator" each place it appears and inserting "Secretary".

SEC. 2503. RURAL HOUSING AND COMMUNITY DEVELOPMENT SERVICE.

(a) **ESTABLISHMENT.**—Notwithstanding section 364 of the Consolidated Farm and Rural Development Act (7 U.S.C. 2006f) and any other provision of law, the Secretary is authorized to establish and maintain within the Department the Rural Housing and Community Development Service (referred to in this section as the "Service") and to assign to the Service such functions as the Secretary may consider appropriate.

(b) **FUNCTIONS.**—The Secretary is authorized to carry out through the Service, or through any other officer or administrative unit as the Secretary may consider appropriate—

(1) programs and activities under title V of the Housing Act of 1949 (42 U.S.C. 1471 et seq.);

(2) programs and activities authorized under section 310B(i) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1932(i)) and related provisions of law; and

(3) programs and activities that relate to rural community lending programs, including programs authorized by sections 365 through 369 of the Consolidated Farm and Rural Development Act (7 U.S.C. 2008 through 2008d).

SEC. 2504. RURAL BUSINESS AND COOPERATIVE DEVELOPMENT SERVICE.

(a) **ESTABLISHMENT.**—Notwithstanding section 364 of the Consolidated Farm and Rural Development Act (7 U.S.C. 2006f) and any other provision of law, the Secretary is authorized to establish and maintain within the Department the Rural Business and Cooperative Development Service (referred to in this section as the "Service"), and to assign to the Service such functions as the Secretary may consider appropriate.

(b) **FUNCTIONS.**—The Secretary is authorized to carry out through the Service, or through any other officer or administrative unit as the Secretary may consider appropriate, programs and activities, including—

(1) section 313 and title V of the Rural Electrification Act of 1936 (7 U.S.C. 940c and 950aa et seq.);

(2) subtitle G of title XVI of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 5901 et seq.);

(3) sections 306(a)(1) and 310B of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926(a)(1) and 1932);

(4) section 1323 of the Food Security Act of 1985 (Public Law 99-198; 7 U.S.C. 1932 note); and

(5) the Act of July 2, 1926 (44 Stat. 802, chapter 725; 7 U.S.C. 451 et seq.).

Subtitle F—Food, Nutrition, and Consumer Services

SEC. 2601. UNDER SECRETARY OF AGRICULTURE FOR FOOD, NUTRITION, AND CONSUMER SERVICES.

(a) **ESTABLISHMENT.**—There is established in the Department the position of Under Secretary of Agriculture for Food, Nutrition, and Consumer Services to be appointed by the President, by and with the advice and consent of the Senate.

(b) **DUTIES.**—The Under Secretary of Agriculture for Food, Nutrition, and Consumer Services shall exercise such functions and perform such duties related to food, nutrition, and consumer services, and shall perform such other duties, as may be required by law or prescribed by the Secretary.

(c) **CONTINUITY OF THE POSITION.**—Any official serving as Assistant Secretary of Agriculture for Food and Consumer Services on the date of enactment of this Act, after appointment by the President, by and with the advice and consent of the Senate, shall be considered to be serving in the successor position established by subsection (a), and shall not be required to be reconfirmed by reason of the enactment of this title.

(d) **CONFORMING AMENDMENT.**—Section 5314 of title 5, United States Code, is amended by adding at the end the following:

“Under Secretary of Agriculture for Food, Nutrition, and Consumer Services.”

SEC. 2602. FOOD AND CONSUMER SERVICE.

(a) **ESTABLISHMENT.**—The Secretary is authorized to establish and maintain within the Department the Food and Consumer Service (referred to in this section as the “Service”) and to assign to the Service such functions as the Secretary may consider appropriate.

(b) **FUNCTIONS.**—The Secretary is authorized to carry out through the Service, or through any other officer or administrative unit as the Secretary may consider appropriate, programs and activities, including—

(1) the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.);

(2) the National School Lunch Act (42 U.S.C. 1751 et seq.); and

(3) the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.).

SEC. 2603. NUTRITION RESEARCH AND EDUCATION SERVICE.

(a) **ESTABLISHMENT.**—The Secretary is authorized to establish and maintain within the Department the Nutrition Research and Education Service (referred to in this section as the “Service”) and to assign to the Service such functions as the Secretary may consider appropriate.

(b) **FUNCTIONS.**—The Secretary is authorized to carry out through the Service, or through any other officer or administrative unit as the Secretary may consider appropriate, programs and activities relating to human nutrition research and education.

Subtitle G—National Resources and Environment

SEC. 2701. NATURAL RESOURCES CONSERVATION SERVICE.

(a) **ESTABLISHMENT.**—The Secretary is authorized to establish and maintain within the Department the Natural Resources Conservation Service (referred to in this section as the “Service”) and to assign to the Service such functions as the Secretary may consider appropriate.

(b) **FUNCTIONS.**—The Secretary is authorized to carry out through the Service, or through any other officer or administrative unit of the

Department as the Secretary may consider appropriate, programs and activities, including—

(1) title X of the Agricultural Act of 1970 (16 U.S.C. 1501 et seq.);

(2) the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590a et seq.);

(3) the Water Bank Act (16 U.S.C. 1301 et seq.);

(4) section 4 of the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2103);

(5) title XII of the Food Security Act of 1985 (16 U.S.C. 3801 et seq.);

(6) title IV of the Agricultural Credit Act of 1978 (16 U.S.C. 2201 et seq.);

(7) section 202(c) of the Colorado River Basin Salinity Control Act (43 U.S.C. 1592(c)); and

(8) the Farms for the Future Act of 1990 (7 U.S.C. 4201 note).

(c) **USE OF EMPLOYEES.**—Notwithstanding any other provision of law, in carrying out in any county or area any functions assigned to the Service or any successor administrative unit, the Secretary is authorized to—

(1) use interchangeably, in the implementation of functions, Federal employees, and employees of county and area committees established under section 8(b) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)); and

(2) provide interchangeably for supervision by the employees of the performance of functions assigned to the Service.

(d) **AGRICULTURAL CONSERVATION PROGRAM.**—In carrying out the Agricultural Conservation Program, the Secretary shall—

(1) acting on the recommendations of the Service, with the concurrence of the Farm Service Agency, issue regulations to carry out the program; and

(2) use a county committee established under section 8(b) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)) to make the final decision on which applicants are eligible to receive cost share assistance under the program based on priorities and guidelines established at the national and State levels by the Service.

(e) **CONFORMING AMENDMENTS.**—

(1) Section 5 of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590e) is repealed.

(2)(A) Section 2(2) of the Soil and Water Resources Conservation Act of 1977 (16 U.S.C. 2001(2)) is amended by striking “the Soil Conservation Service of”.

(B) Section 3(2) of such Act (16 U.S.C. 2002(2)) is amended by striking “through the Soil Conservation Service”.

(C) The first sentence of section 6(a) of such Act (16 U.S.C. 2005(a)) is amended by striking “Soil Conservation Service” and inserting “Secretary”.

SEC. 2702. REORGANIZATION OF FOREST SERVICE.

(a) **IN GENERAL.**—Reorganization proposals that are developed by the Secretary to carry out the designation by the President of the Forest Service as a Reinvention Lab pursuant to the National Performance Review (September 1993) shall include proposals for—

(1) reorganizing the Service in a manner that is consistent with the principles of interdisciplinary planning;

(2) redefining and consolidating the mission and roles of, and research conducted by, employees of the Service in connection with the National Forest System and State and private forestry to facilitate interdisciplinary planning and to eliminate functionalism;

(3) reforming the budget structure of the Service to support interdisciplinary planning, including reducing the number of budget line items;

(4) defining new measures of accountability so that Congress may meet the constitutional obligation of Congress to oversee the Service;

(5) achieving structural and organizational consolidations;

(6) to the extent practicable, sharing office space, equipment, vehicles, and electronic systems with other administrative units of the Department and other Federal field offices, including proposals for using an on-line system by all administrative units of the Department to maximize administrative efficiency; and

(7) reorganizing the Service in a manner that will result in a larger percentage of employees of the Service being retained at organizational levels below regional offices, research stations, and the area office of the Service.

(b) **REPORT.**—Not later than March 31, 1995, the Secretary shall submit a report to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate that describes actions taken to carry out subsection (a) and identifies any disparities in regional funding patterns and the rationale behind the disparities.

Subtitle H—Marketing and Inspection Services

SEC. 2801. GRAIN INSPECTION, PACKERS AND STOCKYARDS ADMINISTRATION.

(a) **ESTABLISHMENT.**—The Secretary is authorized to establish and maintain within the Department the Grain Inspection, Packers and Stockyards Administration (referred to in this section as the “Administration”) and to assign to the Administration such functions as the Secretary may consider appropriate.

(b) **FUNCTIONS.**—The Secretary is authorized to carry out through the Administration, or through any other officer or administrative unit as the Secretary may consider appropriate, programs and activities authorized under—

(1) the United States Grain Standards Act (7 U.S.C. 71 et seq.); and

(2) the Packers and Stockyards Act, 1921 (7 U.S.C. 181 et seq.).

(c) **CONFORMING AMENDMENTS.**—

(1)(A) Section 3 of the United States Grain Standards Act (7 U.S.C. 75) is amended—

(i) by striking subsections (z) and (aa); and

(ii) by redesignating subsection (bb) as subsection (z).

(B) Section 3A of such Act (7 U.S.C. 75a) is repealed.

(C) Section 5(b) of such Act (7 U.S.C. 77(b)) is amended by striking “Service employees” and inserting “employees of the Secretary”.

(D) The first sentences of each of sections 7(j)(2) and 7A(l)(2) of such Act (7 U.S.C. 79(j)(2) and 79a(l)(2), respectively) are amended by striking “supervision by Service personnel of its field office personnel” and inserting “supervision by the Secretary of the field office personnel of the Secretary”.

(E) Section 12 of such Act (7 U.S.C. 87a) is amended—

(i) in the first sentence of subsection (c), by striking “or Administrator”; and

(ii) in subsection (d), by striking “or the Administrator”.

(F) Such Act (7 U.S.C. 71 et seq.) is amended by striking “Administrator” and “Service” each place either term appears and inserting “Secretary”.

(2) Section 407 of the Packers and Stockyards Act, 1921 (7 U.S.C. 228) is amended—

(A) by striking subsection (b);

(B) by redesignating subsections (c) through (f) as subsections (b) through (e), respectively; and

(C) in subsection (e) (as so designated), by striking “subsection (e)” and inserting “subsection (d)”.

Subtitle I—Research, Economics, and Education

SEC. 2901. FEDERAL RESEARCH AND INFORMATION SERVICE.

(a) **ESTABLISHMENT.**—The Secretary is authorized to establish and maintain within the Department the Federal Research and Information Service (referred to in this section as the "Service") and to assign to the Service such functions as the Secretary may consider appropriate.

(b) **FUNCTIONS.**—The Secretary is authorized to carry out through the Service, or through any other officer or administrative unit as the Secretary may consider appropriate, programs and activities, including—

- (1) agricultural research; and
- (2) agricultural information and library services.

SEC. 2902. COOPERATIVE STATE RESEARCH AND EDUCATION SERVICE.

(a) **ESTABLISHMENT.**—The Secretary is authorized to establish and maintain within the Department the Cooperative State Research and Education Service (referred to in this section as the "Service") and to assign to the Service such functions as the Secretary may consider appropriate.

(b) **FUNCTIONS.**—The Secretary is authorized to carry out through the Service programs and activities, including—

- (1) cooperative research programs; and
- (2) agricultural extension and education programs.

SEC. 2903. AGRICULTURAL ECONOMICS AND STATISTICS SERVICE.

(a) **ESTABLISHMENT.**—The Secretary may establish and maintain within the Department the Agricultural Economics and Statistics Service (referred to in this section as the "Service") and to assign to the Service such functions as the Secretary may consider appropriate.

(b) **FUNCTIONS.**—The Secretary may carry out through the Service, or through any other officer or administrative unit as the Secretary may consider appropriate, programs and activities, including—

- (1) economic analysis and research;
- (2) energy-related programs;
- (3) crop and livestock estimates; and
- (4) agricultural statistics.

(c) **STATE AND LOCAL STATISTICAL OFFICES AND PERSONNEL.**—The authority provided by subsections (a) and (b) shall not authorize a substantial change in the functions or structures of State and local statistical offices and employees of the offices.

SEC. 2904. PROGRAM POLICY AND COORDINATION STAFF.

(a) **ESTABLISHMENT.**—The Secretary is authorized to establish and maintain within the Department the Program Policy and Coordination Staff (referred to in this section as the "Staff") and to assign to the Staff such functions as the Secretary may consider appropriate.

(b) **FUNCTIONS.**—If the Staff is established and maintained, the Staff shall provide common program policy development for the Federal Research and Information Service, the Cooperative State Research and Education Service, and the Agricultural Economics and Statistics Service.

(c) **COMPOSITION.**—Not less than 50 percent of the employees of the Staff shall be former employees of the Cooperative State Research Service and the Extension Service, as in existence on the date of enactment of this Act.

(d) **RELATIONSHIP TO FUNCTIONS CURRENTLY PERFORMED BY NASS.**—The Staff may not—

- (1) interfere with statistic collection and reporting; or
- (2) compromise the independence or integrity of statistic collection and reporting functions of the National Agricultural Statistics Service as in effect on the date of enactment of this Act.

Subtitle J—Food Safety

SEC. 2951. FOOD SAFETY SERVICE.

(a) **MEAT INSPECTION.**—The Federal Meat Inspection Act (21 U.S.C. 601 et seq.) is amended by adding at the end the following new title:

"TITLE V—FOOD SAFETY SERVICE

"SEC. 501. FOOD SAFETY SERVICE.

"(a) **IN GENERAL.**—The Secretary shall establish and maintain within the United States Department of Agriculture the Food Safety Service (referred to in this section as the "Service") and to assign to the Service such functions as the Secretary may consider appropriate.

"(b) **ASSISTANT SECRETARY FOR FOOD SAFETY.**—

"(1) **APPOINTMENT.**—There shall be in the Service the position of Assistant Secretary for Food Safety (referred to in this section as the "Assistant Secretary"), who shall be appointed by the President, by and with the advice and consent of the Senate.

"(2) **CONTINUITY OF THE POSITION.**—Any official serving on the date of enactment of this section, who has been appointed by the President and confirmed by the Senate, shall not be required to be reconfirmed by reason of the enactment of this Act.

"(3) **RELATIONSHIP TO THE SECRETARY.**—The Assistant Secretary shall report directly to the Secretary.

"(4) **GENERAL POWERS.**—The Secretary is authorized to carry out, through the Service or through such other officers or administrative units as the Secretary may consider appropriate, programs and activities involving food safety under this Act and the Poultry Products Inspection Act (21 U.S.C. 451 et seq.), including—

"(A) providing overall direction to the Service and establishing and implementing general policies concerning the management and operation of programs and inspection activities of the Service;

"(B) coordinating and overseeing the operation of all administrative entities within the Service;

"(C) research and inspection relating to meat, meat food products, poultry, and poultry products in carrying out this Act and the Poultry Products Inspection Act;

"(D) conducting educational and public information programs relating to the responsibilities of the Service; and

"(E) performing such other functions related to food safety as the Secretary may prescribe, except that only programs and activities related to food safety, as determined by the Secretary, shall be administered through the Service.

"(c) **TECHNICAL AND SCIENTIFIC REVIEW GROUPS.**—The Secretary, acting through the Assistant Secretary, may, without regard to the provisions of title 5, United States Code, governing appointment in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification and General Schedule pay rates—

"(1) establish such technical and scientific review groups as are needed to carry out the functions of the Service, including functions under this Act and under the Poultry Products Inspection Act (21 U.S.C. 451 et seq.); and

"(2) appoint and pay the members of the groups, except that officers and employees of the United States shall not receive additional compensation for service as a member of a group."

(b) **POULTRY PRODUCTS INSPECTION.**—The Poultry Products Inspection Act (21 U.S.C. 451 et seq.) is amended—

- (1) by redesignating section 29 as section 30; and
- (2) by inserting after section 28 the following new section:

"SEC. 29. ADMINISTRATION.

"The Secretary shall administer this Act through the Assistant Secretary for Food Safety

of the Food Safety Service established under section 501 of the Federal Meat Inspection Act."

Subtitle K—Miscellaneous

SEC. 2981. ASSISTANT SECRETARIES OF AGRICULTURE.

(a) **ESTABLISHMENT.**—There are established in the Department six positions of Assistant Secretary of Agriculture, each to be appointed by the President, by and with the advice and consent of the Senate.

(b) **FUNCTIONS.**—Each Assistant Secretary of Agriculture shall exercise such functions and perform such duties as may be required by law or prescribed by the Secretary, and shall receive compensation at the rate prescribed by law for an Assistant Secretary of Agriculture. The compensation of any person serving as an Administrator shall not be raised by this title.

(c) **CONFORMING AMENDMENTS.**—

(1) Section 2 of the Act of February 9, 1889 (25 Stat. 659, chapter 122; 7 U.S.C. 2212), is repealed.

(2) Section 604 of the Rural Development Act of 1972 (7 U.S.C. 2212a) is amended by striking subsection (a).

(3) Section 2 of Public Law No. 94-561 (7 U.S.C. 2212b) is repealed.

(4) Section 1413 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3128) is amended by striking subsection (d).

(5) Section 8 of the International Carriage of Perishable Foodstuffs Act (7 U.S.C. 2212c) is amended by striking subsection (a).

(d) **CONTINUITY OF POSITIONS.**—Notwithstanding subsections (a) and (b) and the amendments made by subsection (c), any official serving in any of the positions referred to in this section on the date of enactment of this Act, after appointment by the President, by and with the advice and consent of the Senate, shall be considered after the date of enactment of this Act to be serving in the successor positions established by subsection (a) and shall not be required to be reappointed by reason of the enactment of this title.

(e) **ADDITIONAL CONFORMING AMENDMENTS.**—Section 5315 of title 5, United States Code, is amended—

(1) by striking "Assistant Secretaries of Agriculture (7)" and inserting "Assistant Secretaries of Agriculture (six)"; and

(2) by adding at the end the following: "Administrator, Farm Service Agency, Department of Agriculture.

"Administrator, International Trade Service, Department of Agriculture.

"Administrator, Rural Utilities Service, Department of Agriculture."

SEC. 2982. REMOVAL OF OBSOLETE PROVISIONS.

Section 5316 of title 5, United States Code, is amended—

(1) by striking "Administrator, Agricultural Marketing Service, Department of Agriculture."; and

(2) by striking "Administrator, Agricultural Research Service, Department of Agriculture."; and

(3) by striking "Administrator, Agricultural Stabilization and Conservation Service, Department of Agriculture."; and

(4) by striking "Administrator, Farmers Home Administration."; and

(5) by striking "Administrator, Foreign Agricultural Service, Department of Agriculture."; and

(6) by striking "Administrator, Rural Electrification Administration, Department of Agriculture."; and

(7) by striking "Administrator, Soil Conservation Service, Department of Agriculture."; and

(8) by striking "Chief Forester of the Forest Service, Department of Agriculture."; and

(9) by striking "Director of Science and Education, Department of Agriculture."; and

(10) by striking "Administrator, Animal and Plant Health Inspection Service, Department of Agriculture."; and

(11) by striking "Administrator, Federal Grain Inspection Service, Department of Agriculture."

SEC. 2983. ADDITIONAL CONFORMING AMENDMENTS.

Not later than 180 days after the date of enactment of this Act, the Secretary shall prepare and submit to Congress recommended legislation containing additional technical and conforming amendments to Federal law that are necessary as a result of the enactment of this title.

SEC. 2984. TERMINATION OF AUTHORITY.

(a) *IN GENERAL.*—Subject to subsection (b), the authority delegated to the Secretary by this title to reorganize the Department shall terminate on the date that is 2 years after the date of enactment of this Act.

(b) *FUNCTIONS.*—Subsection (a) shall not affect—

(1) the authority of the Secretary to continue to carry out a function that the Secretary performs on the date that is 2 years after the date of enactment of this Act; or

(2) the authority delegated to the Secretary under Reorganization Plan No. 2 of 1953 (5 U.S.C. App. 1).

SEC. 2985. ELIMINATION OF DUPLICATIVE INSPECTION REQUIREMENTS.

(a) *IN GENERAL.*—The Secretary of Agriculture shall—

(1) eliminate inspections of pilots and aircraft by the Department of Agriculture;

(2) develop with the Administrator of the Federal Aviation Administration inspection specifications and procedures by which aircraft and pilots contracted by the United States Department of Agriculture will be inspected. The Administrator will ensure that the inspection specifications and procedures are met; and

(3) permit the utilization by the Department of Agriculture of inspections and certifications of pilots and aircraft conducted by the Federal Aviation Administration.

(b) *APPLICABILITY.*—An inspection requirement shall be eliminated pursuant to subsection (a)(1) only if the pilots and aircraft are inspected by the Federal Aviation Administration for compliance with the safety regulations of the Federal Aviation Regulations.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Thomas, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE RECEIVED DURING ADJOURNMENT

Under the authority of the order of January 5, 1993, the Secretary of the Senate on Friday, August 26, 1994, during the recess of the Senate, received a message from the House of Representatives announcing that the House agrees to the amendments of the Senate to the concurrent resolution (H. Con. Res.

289) providing for an adjournment or recess of the two Houses.

Under the authority of the order of the Senate of January 5, 1993, the Secretary of the Senate, on September 9, 1994, during the adjournment of the Senate, received a message from the House of Representatives announcing that the Speaker has signed the following enrolled bills:

H.R. 3355. An act to control and prevent crime.

H.R. 3474. An act to reduce administrative requirements for insured depository institutions to the extent consistent with safe and sound banking practices, to facilitate the establishment of community development financial institutions, and for other purposes.

S. 859. An act to reduce the restrictions on lands conveyed by deed under the act of June 8, 1926.

The enrolled bills were signed on today, September 12, 1994, by the President pro tempore (Mr. BYRD).

MESSAGES FROM THE HOUSE

At 6:12 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the Speaker has signed the following enrolled bills:

S. 1066. An act to restore Federal services to the Pokogon Band of Potawatomi Indians; and

S. 1357. An act to reaffirm and clarify the Federal relationship of the Little Traverse Bay Band of Odawa Indians and the Little River Band of Ottawa Indians as distinct federally recognized Indian tribes, and for other purposes.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC-3262. A communication from the Chairman and President of the Export-Import Bank of the United States, transmitting, pursuant to law, a report with respect to a transaction involving U.S. exports to the United Mexican States ("Mexico"); to the Committee on Banking, Housing, and Urban Affairs.

EC-3263. A communication from the Chairman and President of the Export-Import Bank of the United States, transmitting, pursuant to law, a report with respect to a transaction involving U.S. exports to the United Mexican States ("Mexico"); to the Committee on Banking, Housing, and Urban Affairs.

EC-3264. A communication from the Chairman and President of the Export-Import Bank of the United States, transmitting, pursuant to law, a report with respect to a transaction involving U.S. exports to the Indonesia; to the Committee on Banking, Housing, and Urban Affairs.

EC-3265. A communication from the Chairman and President of the Export-Import Bank of the United States, transmitting, pursuant to law, a report with respect to a transaction involving U.S. exports to the People's Republic of China; to the Committee on Banking, Housing, and Urban Affairs.

EC-3266. A communication from the Administrator, Energy Information Administration, Department of Energy, transmitting, pursuant to law, the report of uranium purchases for calendar year 1993; to the Committee on Energy and Natural Resources.

EC-3267. A communication from Acting Assistant Secretary of the Army (Civil Works), transmitting, pursuant to law, the report relative to a flood damage reduction project; to the Committee on Environment and Public Works.

EC-3268. A communication from Acting Assistant Secretary of the Army (Civil Works), transmitting, pursuant to law, the report relative to uprating hydroelectric power; to the Committee on Environment and Public Works.

REPORTS OF COMMITTEE SUBMITTED DURING ADJOURNMENT

Pursuant to the order of the Senate of August 25, 1994, the following report was submitted on September 7, 1994, during the adjournment of the Senate:

By Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, with an amendment in the nature of a substitute:

S. 1881. A bill to establish and implement a technology investment policy for aeronautical and space activities of the National Aeronautics and Space Administration, and for other purposes (Rept. No. 103-362).

ADDITIONAL STATEMENTS

"WHY PUNISH THE CUBAN PEOPLE?"

• Mr. SIMON. Mr. President, our irrational policy toward Cuba was discussed in a New York Times editorial that makes good sense.

I ask to insert that editorial into the RECORD at this point.

The editorial follows:

[From the New York Times, Aug. 24, 1994]

WHY PUNISH THE CUBAN PEOPLE?

President Clinton's abrupt reversal of 28 years of Cuban refugee policy last Friday looked clumsy enough, but over the weekend he made it worse. Seeking to punish Fidel Castro for unleashing the latest refugee tide, Mr. Clinton ended up also punishing ordinary Cubans. He cut off all cash support from their relatives in the U.S., rather than the 50 percent cut originally announced. By raising the temperature on Cuba when it should be trying to cool it, the Administration could yet convert a rhetorical emergency into a real one.

The package of pressures the President unveiled on Saturday did include two legitimate spurs to greater freedom in Cuba—increased radio broadcasts and a new U.N. initiative on human rights. It also included a cutoff of charter flights from the U.S.—unwise, since Cuban freedom is served by more contacts with Americans, not less.

The Administration suspended the payments because they not only help stretch family budgets but also provide hard currency to Havana as recipients exchange their dollars for goods in special Government-run stores. The policy seems designed to bring Cuba to a political boil by closing off the refugee safety valve and driving down living

standards. Presumably that will hasten a popular revolt, but this course entails a pointless risk to the Cuban people since the Castro regime is already withering.

Even in decline, Mr. Castro has again shown his uncanny power to get Washington to tie itself in knots. Following a familiar pattern, the U.S. is overreacting to his provocations and letting domestic politics distort foreign policy priorities.

In any rational calculus, Mexico, with its 92 million people and a North American Free Trade Agreement, should be the Administration's main Latin concern following a critical and tense election. Instead all eyes are fixed on Cuba and continuing efforts to contain the refugee flow, promoted in one frantic day by Attorney General Janet Reno from non-problem to national emergency.

The Administration's new offensive against Havana is supported by Cuban-Americans, who were upset when Washington reclassified those who risk their lives to flee Mr. Castro's economically battered police state as "illegal immigrants" rather than refugees from tyranny. They believe the time has finally come to get rid of the Castro regime, and inflicting increased short-term pain on Cuba's people seems worth the long-term gain.

The voice of a million Cuban-Americans should be heard, but it should not be allowed to drive U.S. policy against humane values and larger national interests. Those values weigh against punishing innocent victims, and those interests do not include detonating a large explosion in the Caribbean. Discontented Cubans do not relish rising up only to be mowed down by a totalitarian regime. They would rather get out and start anew somewhere else. It is unconscionable for Washington to tell them, in effect, no, we will lock you in until you revolt.

Getting rid of Fidel Castro is a job for the Cuban people themselves, not for the U.S. Government or Miami exiles. This cold-war orphan can still annoy the U.S. but poses no serious threat. Instead of gearing up for another round of sterile confrontation, Washington should be spelling out what Cuba could gain, under this regime or a successor, by embracing democracy and respecting human rights. That, rather than increased hunger and misery, might actually encourage those Cubans who remain in Cuba to work for political change. ●

POSTAL SERVICE FAILS TO DELIVER FOR VETERANS

♦ Mr. SMITH. Mr. President, this past Memorial Day, May 30, 1994, I and 81 other Members of the body, sent a letter to Postmaster General, Marvin Runyon, urging that he and the Citizen Stamp Advisory Committee—to which he appoints all members—issue a stamp calling attention to America's commitment to account for POW's and MIA's from past military conflicts.

We were especially interested in having this stamp issued in time for POW/MIA Recognition Day, this coming Friday, September 16. We pointed out that the Service had announced, and issued an AIDS awareness stamp within a couple of months. So we know the Service can move quickly when it wants and thus, there was certainly time enough for the Postal Service to have issued a POW/MIA stamp and

have it available for dedication on September 16. It is now September 12 and our letter of May 30 has not even been answered, let alone any action taken on our request, despite numerous follow-up calls from my staff. Let me repeat: 82 Senators have written the Postmaster General and he has not even had the courtesy to acknowledge that he has received the letter, let alone respond in a substantive way. I could suggest, perhaps, that the letters to or from him got lost in the mail, but I do not think that is the case, especially since I personally presented the letter to the Postmaster General's representative in May.

Mr. President, this issue goes right to the center of current Postal Service management problems today. One of the problems I, and others, perceive is a disregard for the role of Congress in oversight of the Postal Service. We do have legislative oversight responsibilities for the Postal Service, and the appropriate committees in both Houses take this responsibility seriously.

But a more immediate problem to me is not just the complete disregard for the views of 82 Senators, but also an apparent disregard by the Postal Service for veterans in general. They not only have ignored the request of 82 Senators and hundreds of thousands of Americans over the last decade who have urged the issuance of a POW/MIA awareness stamp, but they have consistently turned down a stamp honoring the most decorated war veteran of World War II, Audie Murphy. In addition, the Postal Service has continually thwarted any suggestion that they would issue a stamp in remembrance of the brave marines who lost their lives in the Lebanon bombing in 1985. Instead, I recently had the unhappy experience of watching a Postal Service television ad promoting the sale of D-day stamps which featured a buffoonish character in a military uniform. As an aside, I am surprised that more of our veterans organizations have not taken umbrage at this depiction.

Even in terms of living up to the Veterans' Preference Act, the Postal Service has gone to great pains to circumvent the benefits that Congress set forth for hiring and advancement of veterans in all Federal agencies, including the U.S. Postal Service. The Postal Service's recent reorganization is a case in point. The Postal Service management claimed that the veteran's preference did not apply to the Postal Service. However, the Merit Systems Protection Board ruled otherwise and the President agreed and decided not to appeal the matter. However, the Postmaster General was so adamant that he not be required to adhere to veterans' preference laws he announced he would appeal the case with postal attorneys, even though they have no legal standing to do so. Given

the fact that they were a sure loser, the Postmaster General soon withdrew his threat. Nevertheless, the perception is that when it comes to veterans' matters, whether it be honoring veterans or faithfully adhering to the laws that protect veterans, the Postmaster General seems to be either oblivious or antiveteran.

The Postal Service has issued stamps honoring entertainers of fleeting importance, intermingled with those of significant stature. But they do not seem to honor American veterans. In defense of the Postal Service they have issued very positive stamps commemorating World War II. But in reality, the World War II stamp series was set in motion before the current postal administration took over. Dealing with veterans matters both as employees and honoring them on stamps would be one way to begin to repair the Postal Service's relationship with Congress and the veterans of America. A simple acknowledgment of a letter signed by 82 Senators would be a welcome long-overdue step.

Mr. President, it is no wonder many of my colleagues have little sympathy for the Postal Service's financial plight when we look at budget matters. They have few friends and seem to go out of their way to offend Members. The ultimate losers in the Postal Service's Congress-be-damned attitude are the mailing public who must pay higher postage rates because of OBRA hits and changes in the revenue foregone appropriations.

Mr. President, the Postal Service stamp division seems to exemplify the "gang that couldn't shoot straight" when it comes to accuracy on the stamps they do issue. I hope it does not become the latest Federal institution to join the Smithsonian and the National Endowment for the Arts where political correctness outweighs historical accuracy and appropriateness in their projects. Stamps are an important and traditional means of commemorating outstanding Americans and events and of teaching American history, and America's commitment to important issues of the day, including the POW/MIA issue.

Mr. President, I would like to inform my colleagues that if the Postmaster General does not take immediate steps to address our concerns, I will offer legislation to instruct the Postal Service to issue a POW/MIA stamp. I hope and expect that there will be many Senators who will join me. Mr. President, I also ask unanimous consent to insert in the RECORD following my statement the entire text of the letter dated May 30, 1994, which was sent to the Postmaster General by 82 U.S. Senators and has not yet been answered.

I would also like to share with my colleagues a few Associated Press articles which came out on September 9, 1994. The articles discuss a number of

stamp proposals that have been chosen instead of a POW/MIA stamp. They include Marilyn Monroe, a series on jazz musicians, and cartoon characters Dick Tracy, Popeye, the Yellow Kid, Prince Valiant, and Little Orphan Annie. I ask unanimous consent that these two articles be printed in the RECORD following the letter from 82 Senators.

Mr. President, I remind my colleagues that the Postal Service has received hundreds of thousands of POW/MIA stamp petitions since I first came to Congress in 1985. How many petitions do we really think they have received asking for a "Popeye" stamp? Give me a break.

Mr. President, the leadership of the Postal Service would be wise to get their act together with respect to our Nation's veterans, and they are hereby put on notice that I hold them accountable to the Senate for their complete disregard to our request for a POW/MIA stamp.

It is my understanding, as well, that several national veterans' organizations are also planning to hold the Postal Service accountable when the 1995 stamp program is publicly announced in November. I hope that this matter can be quickly resolved so that we do not have to witness the sad spectacle of veterans picketing at the Postmaster General's office in L'Enfant Plaza.

I thank the Chair, and I yield the floor.

The material follows:

U.S. SENATE,

Washington, DC, May 30, 1994.

Hon. MARVIN RUNYON,
Postmaster General, U.S. Postal Service, Washington, DC.

DEAR MARVIN: We are writing to urge you to approve the issuance of a commemorative stamp honoring American prisoners of war and missing in action personnel.

As you may know, in late 1992 the Senate unanimously adopted an amendment to the Department of Defense Authorization Bill mandating the issuance of a POW/MIA stamp. Although this amendment was removed from the bill in deference to the normal stamp approval process, the conference nevertheless stated its strong support for such a stamp.

The issuance of a POW/MIA stamp is very important to us and, we hope, important to you. As we are sure you realize, it is also important to the families of missing service personnel and to millions of American veterans, including many Postal Service employees.

We are also asking that the normal licensing fee for the stamp design be waived, as was recently done for the AIDS stamp, in order to allow veterans' organizations and POW/MIA family organizations to reproduce the design.

This year marks the 30th anniversary of the capture of Everett Alvarez, a Lieutenant j.g. in the U.S. Navy, who became the first and longest-held American POW in North Vietnam. Lt. Alvarez was released in 1973, during "Operation Homecoming." We are also observing the 50th anniversary of the landing at Normandy, which led to the lib-

eration of Europe and the subsequent release of hundreds of American POWs. Given the recent focus on America's efforts to account for POWs and MIAs, we believe that the release of a POW/MIA stamp would be timely and appropriate.

National POW/MIA Recognition Day is scheduled for September 16, 1994. We suggest that this would be an excellent target date for the unveiling of the stamp. As the expedited approval of the AIDS awareness stamp demonstrated, this date is not unreasonable.

A POW/MIA stamp meets the critical elements normally used for selecting commemorative stamps.

1. American POWs and MIAs have contributed significantly to America and its history.

2. The POW/MIA issue is a theme of widespread national appeal and significance. Indeed, Presidents Reagan, Bush, and Clinton have publicly declared the resolution of this issue to be a matter of "highest national priority."

3. A POW/MIA stamp was last issued on November 24, 1970, over 23 years ago. This far exceeds the policy of not considering stamp proposals if a stamp treating the same subject has been issued in the past 10 years.

4. The Postal Service normally desires the submission of subjects three years prior to the proposed date of issuance. Members of Congress, veterans organizations, and families of POWs and MIAs have been continuously petitioning for such a stamp for well over a decade.

5. As the number of petitions which have already been sent to the Citizens' Stamp Advisory Committee would clearly demonstrate, there is considerable interest in a POW/MIA stamp and, as such, its issuance would generate millions of dollars in postal revenues. Veterans and veterans' organizations, families and friends of POWs and MIAs, military personnel, and supporters, would all be likely to use such a stamp. From a marketing perspective, a POW/MIA stamp would be an excellent choice.

We thank you in advance for your assistance and cooperation in this matter, and we look forward to working with you.

Sincerely yours,

Bob Smith, Bill Roth, Strom Thurmond, Herb Kohl.

Dick Lugar, Barbara A. Mikulski, Kent Conrad, Thad Cochran, Daniel K. Inouye, Alfonse D'Amato, Daniel K. Akaka, Dave Durenberger, Tom Daschle, L. E. Craig, John Breaux, Paul Sarbanes, Jesse Helms, Frank R. Lautenberg, Conrad Burns, Harris Wofford, Jeff Bingaman, Jim Jeffords, Ben Nighthorse Campbell, J. Bennett Johnston, Tom Harkin, Ted Stevens, Kay Bailey Hutchison, Hank Brown.

Judd Gregg, Joe Lieberman, Arlen Specter, Paul Wellstone, Dirk Kempthorne, George Mitchell, Dan Coats, Lauch Faircloth, John Warner, Patrick Leahy, Paul Simon, Al Simpson, Don Riegle, Richard Shelby, John Chafee, Dennis DeConcini, Sam Nunn, Robert C. Byrd, Bob Graham, Bill Cohen, Phil Gramm, John F. Kerry.

Chuck Grassley, Connie Mack, Carol Moseley-Braun, Slade Gorton, Wendell Ford, Jim Sasser, Edward M. Kennedy, Daniel Moynihan, Chuck Robb, Harlan Mathews, Paul Coverdell, Russ Feingold, Bob Kerrey, Patty Murray, Max Baucus, Trent Lott, Harry Reid, Nancy Landon Kassebaum, Christopher J. Dodd, Dianne Feinstein, Frank H. Murkowski, Jay Rockefeller.

Don Nickles, Richard H. Bryan, Larry Pressler, Bob Packwood, Pete V. Domenici, Byron L. Dorgan, Orrin Hatch, Barbara Boxer, Malcolm Wallop.

[From the Associated Press, Sept. 9, 1994]

MARILYN, NIXON, CARTOONS PLANNED FOR STAMPS

WASHINGTON—The post office is looking to Marilyn Monroe and long-running cartoon characters to continue the stamp-collecting success that brought in a quarter-billion dollars last year.

Elvis Presley led the way in a stamp program that raised \$30 million more for the financially pressed agency in 1993 than it did a year earlier.

Money from stamp collecting is nearly all profit, since the Postal Service doesn't have to perform any work for stamps collected in albums.

Various poses for the Marilyn Monroe stamp are being considered at the agency, though officials are not expected to repeat the public balloting used to select the Elvis image.

Post office spokeswoman Robin Minard declined to discuss any specific stamps planned for 1995, pointing out that no decisions are official until the agency makes a formal announcement of new stamps in November.

But a stamp honoring the late President Nixon is expected to be part of the 1995 Program. Nixon died last April and presidents are traditionally commemorated on stamps the year following their deaths.

While the Postal Service was keeping mum on other planned stamps, the Washington Post said those would include commemoratives for several jazz musicians including Louis Armstrong, the Thelouious Monk and stamps featuring cartoon characters Dick Tracy, Popeye, and Little Orphan Annie, among others.

WASHINGTON.—Marilyn, music and the military are likely candidates for next year's postage stamps.

Various poses of actress Marilyn Monroe are being evaluated for a 1995 stamp, one that officials hope will repeat the runaway success of the Elvis Presley stamp a year ago.

Programs for stamp collectors brought in \$250 million last year, led by the success of the king of rock 'n' roll.

And that's nearly all profit for the financially pressed Postal Service, since it doesn't have to perform any work for the stamps saved by collectors and music fans.

Other issues aimed at collectors next year will likely be the final year of the World War II series and stamps commemorating the Civil War.

Postal Service policy calls for presidents to be commemorated on a stamp in the year following their death, so a Richard Nixon stamp can be expected in 1995.

And agency officials are trying to work out copyright details and permission to use several cartoon characters on a series of stamps. This could include such popular figures as Prince Valiant, Popeye, the Yellow Kid and Dick Tracy if the legal complications can be worked out.

Stamps honoring several jazz musicians such as Louis Armstrong and Thelouious Monk also appear likely candidates, although postal officials stressed that final decisions have not been completed with artwork and other research still being evaluated.

A formal announcement of the 1995 postage stamps is expected to be made in November. ●

NOTICE OF DETERMINATION BY THE SELECT COMMITTEE ON ETHICS UNDER RULE 35, PARAGRAPH 4, REGARDING EDUCATIONAL TRAVEL

• Mr. BRYAN. 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 that foreign government or organization.

The select committee received notification under rule 35 for Walter Lohman, a member of the staff of Senator MCCAIN, to participate in a program in Korea, sponsored by the Korean Ministry of Foreign Affairs from August 29 to September 4, 1994.

The committee determined that no Federal statute or Senate rule would prohibit participation by Mr. Lohman in this program.

The select committee received notification under rule 35 for Mike Tongour, a member of the staff of Senator SIMPSON, to participate in a program in Peru, sponsored by the Asociacion Pro Imagen del Peru from August 29 to September 2, 1994.

The committee determined that no Federal statute or Senate rule would prohibit participation by Mr. Tongour in this program.

The select committee received notification under rule 35 for Bobby Franklin, a member of the staff of Senator PRYOR, to participate in a program in Taiwan, sponsored by the Chinese Culture University from August 30 to September 5, 1994.

The committee determined that no Federal statute or Senate rule would prohibit participation by Mr. Franklin in this program.

The select committee received notification under rule 35 for Carter Pilcher, a member of the staff of Senator BROWN, to participate in a program in Hong Kong and Guangzhou, sponsored by the Hong Kong General Chamber of Commerce from August 29 to September 5, 1994.

The committee determined that no Federal statute or Senate rule would prohibit participation by Mr. Pilcher in this program.

The select committee received notification under rule 35 for Raymond Paul, a member of the staff of Senator JOHNSTON, to participate in a program in Singapore, sponsored by the Singapore International Foundation from August 28 to September 3, 1994.

The committee determined that no Federal statute or Senate rule would prohibit participation by Mr. Paul in this program.

The select committee received notification under rule 35 for Geryld B. Christianson, a member of the staff of

Senator PELL, to participate in a program in Peru, sponsored by the Asociacion Pro Imagen del Peru from August 29 to September 2, 1994.

The committee determined that no Federal statute or Senate rule would prohibit participation by Mr. Christianson in this program. •

CONGRESS IS STEALING OUR COLLEGE EDUCATION

• Mr. SIMON. Mr. President, when we were considering eliminating the Pell grants for prison inmates, I was one of those who opposed that policy. It makes sense if prison inmates are never going to get out of prison, but it doesn't make sense when the huge majority of those in our prisons will come out.

We are doing far too little in the way of constructive effort for those in prison. This has been one of the few constructive things.

The New York Times carried an op-ed piece by Jon Marc Taylor, who is a prison inmate in Missouri—I gather in a Federal prison.

Our response to the whole problem of crime has been shortsighted, and there is no better illustration than our taking Pell grants away from those in our prisons who want to pursue further education.

I ask to insert into the RECORD the op-ed piece by Jon Marc Taylor.

The article follows:

[From the New York Times, Aug. 24, 1994]

THERE OUGHT TO BE A LAW (BUT NOT THIS CRIME BILL)

CONGRESS IS STEALING OUR COLLEGE EDUCATION

(By Jon Marc Taylor*)

JEFFERSON CITY, Mo.—On April 19, I "celebrated" my anniversary. On that day I had been locked up for 14 years. I had survived and even grown stronger in the crucible of the keep (as good as any reason to celebrate), but after watching NBC's "Dateline" that evening, I feared I had outlived the best chance any ex-con has of making it once he hits the bricks again.

The lead segment on "Dateline" that night was on prisoners receiving Pell higher education grants to help finance undergraduate college education. A measure denying Pell grants to inmates was up for a vote in the House the next day; the Senate had already passed such a measure.

And now Congress is about to turn the exclusion, incorporated into the crime bill, into the nation's policy on higher education for prisoners.

Since 1982, when I enrolled in a state university's prison extension program, I have managed to complete associate and bachelor's degrees with the help of Pell grants, and then, with the assistance of family, friends and church groups, became the first prisoner in my state to earn a graduate degree. I began a doctoral program in education and completed a few courses before my transfer to another state temporarily

*Jon Marc Taylor, a prison inmate in Missouri, won a Robert F. Kennedy journalism award last year.

stalled that guest. By then, higher education had so enriched my soul that with my own resources I started a second baccalaureate program in criminal justice and psychology.

Over the years, I have witnessed countless changes in my fellow convicts and brother classmates. White and black offenders not only got along but actually and began to respect one another. My fraternity brothers spoke about careers, going straight and, even more remarkable, about being proud of that life style. When prisoner-students got out, a truly remarkable thing happened. They did not come back.

In May, a friend of mine and a two-time loser, who during his second bit enrolled in the prison college program, worked full time and started a family after his release. He is now receiving his bachelor's degree, with honors, in writing. Another acquaintance, who is being released after 15 years, is already enrolled in graduate school. My cellmate, who completed part of his degree in prison, is a manager at a burger chain and attends a nationally ranked university. All three men depended on Pell grants.

Now, it appears that one of the few shining stars I have seen in the dismal galaxy of corrections is fading out.

Its end is due in part to misinformation like the "Dateline" piece, which implied that a miscarriage of justice was transpiring at the expense of Joe (and Jane) College.

The show told us that some 27,000 inmate-students receive Pell grants worth \$35 million annually. What was not reported was that \$6.3 billion in grants went to 4.3 million students the same year. The report didn't mention that prisoners receive about one-half of 1 percent of all Pell grants.

Then it said that half of those who apply for assistance are denied Pell grants and that inmates unfairly skew the need-based formula to their benefit. We were not told that those denied aid generally come from families with incomes about the \$42,000 ceiling set by Congress.

With prisoners expelled from the Pell program, little will change. All students who qualify for grants in a given year receive them. The \$35 million "saved" will be distributed to the other recipients; evenly divided, it would amount to less than \$5 per semester for each one.

Only vaguely did "Dateline" suggest that prison college programs reduce the likelihood of the participants' return to prison. This seems a strange oversight when the purpose of prisons, aside from deterrence, is to rehabilitate. The debate over the efficacy of rehabilitation has been vitriolic, but there remains little doubt that the better educated the ex-convict, the smaller the chance of recidivism.

That has been documented since the 1970's. In December, the Federal Bureau of Prisons reported a 40 percent recidivism rate for all Federal parolees while among college graduates the rate was 5 percent.

Since it costs \$25,000 a year to incarcerate someone, with \$11.5 billion invested in concrete and barbed wire in 1990 alone, any program that routinely cuts inmates' return rates in half should be expanded, not eliminated.

The average cost of a skill-related associate's degree earned in prison is \$3,000. This is a little over 10 percent of the cost of a single year of incarceration. Yet states are spending more for penitentiaries than universities.

Congress is doing more than shuttering prison college classrooms. To a large extent it is closing the door to hope for a future after release. But hope is the critical ingredient, I have learned. It forms the bulwark

against the insanity of debilitating incarceration and the corrosive anger of monotonous, petty regimentation.

Some people argue that inmates have lost the "right" to a college education at public expense. What they fail to consider is that the issue is not rights, but reclaiming humanity. And researchers are finding that it is in the cognitive powers that positive restructuring (rehabilitation, if you will) must take place. We can pay for the opportunity now, or we can pay much more later.

The move by Congress is not surprising. Politicians have been playing to the cheap seats with their ineffectual litany of "get tough on crime." The crime bill will spend more public money on cell blocks—and more poorly educated, untrained offenders will be released back into society. And nothing will change the economic and social conditions that feed the frustrations, ignorance and futile coping attempts that we call crime in America.●

ORDERS FOR TUESDAY, SEPTEMBER 13, 1994

Mr. MITCHELL. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 10 a.m. on Tuesday, September 13; that following the prayer, the Journal of proceedings be deemed approved to date, and the time for the two leaders reserved for their use later in the day; that immediately thereafter the Senate resume consideration of the conference report to accompany S. 2182, the Department of Defense authorization bill; that on Tuesday, the Senate stand in recess from 12:30 p.m. to 2:15 p.m. in order to accommodate the respective party conferences.

The PRESIDING OFFICER. Is there objection? The chair hears none, and it is so ordered.

THE NOMINATION OF ADM. HENRY H. MAUZ, JR.

Mr. MITCHELL. Mr. President, for the information of Senators, it is also my intention that tomorrow the Senate take up, debate, and vote on a pending nomination. It is on the Executive Calendar printed today, Calendar No. 1140. It is the nomination of Adm. Henry H. Mauz, Jr., to be Adm. of the U.S. Navy. That has been the subject of some discussion among interested Senators over the past few days, and my hope is that we can complete the debate and complete action on that matter tomorrow.

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. 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.

RECESS UNTIL TOMORROW AT 10 A.M.

Mr. MITCHELL. Mr. President, I now ask unanimous consent that the Senate stand in recess as previously ordered.

There being no objection, the Senate at 6:32 p.m., recessed until tomorrow, Tuesday, September 13, 1994, at 10 a.m.

NOMINATIONS

Executive nominations received by the Senate September 12, 1994:

DEPARTMENT OF THE TREASURY

FRANK N. NEWMAN, OF CALIFORNIA, TO BE DEPUTY SECRETARY OF THE TREASURY, VICE ROGER ALTMAN, RESIGNED.

EDWARD S. KNIGHT, OF TEXAS, TO BE GENERAL COUNSEL FOR THE DEPARTMENT OF THE TREASURY, VICE JEAN E. HANSON, RESIGNED.

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

DEVRA LEE DAVIS, OF THE DISTRICT OF COLUMBIA, TO BE A MEMBER OF THE CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD FOR A TERM OF 5 YEARS. (NEW POSITION.)

GERALD V. POJE, OF VIRGINIA, TO BE A MEMBER OF THE CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD FOR A TERM OF 5 YEARS. (NEW POSITION.)

AFRICAN DEVELOPMENT FOUNDATION

Cecil James Banks, of New Jersey, to be a member of the board of directors of the African Development Foundation for a term expiring November 13, 1995, vice T.M. Alexander, Sr., resigned.

NATIONAL INSTITUTE FOR LITERACY

MARCIENE S. MATTLEMAN, OF PENNSYLVANIA, TO BE A MEMBER OF THE NATIONAL INSTITUTE FOR LITERACY ADVISORY BOARD FOR THE REMAINDER OF THE TERM EXPIRING OCTOBER 12, 1995, VICE JIM EDGAR, RESIGNED.

LYNNE C. WAHNE, OF HAWAII, TO BE A MEMBER OF THE NATIONAL INSTITUTE FOR LITERACY ADVISORY BOARD FOR A TERM OF 3 YEARS. (NEW POSITION.)

DEPARTMENT OF STATE

CHARLES E. REDMAN, OF FLORIDA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE FEDERAL REPUBLIC OF GERMANY.

GABRIEL GUERRA-MONDRAGON, OF THE DISTRICT OF COLUMBIA, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF CHILE.

MARC GROSSMAN, OF VIRGINIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF TURKEY.

IN THE COAST GUARD

THE FOLLOWING REGULAR OFFICERS OF THE U.S. COAST GUARD FOR PROMOTION TO THE GRADE OF COMMANDER:

WILLIAM C. PARADISE

GARY J. STOCK

MICHAEL A. MONTEITH

STEPHEN T. DELIKAT

MICHAEL J. BECHTEL

JACK R. BENTLEY

WILLIAM P. VEITH, JR.

KENNETH KEEFE

ROBERT L. HURST

CHRISTOPHER W. LILLIE

GINA M. WEBBER

JAMES M. FARLEY

JEFFREY A. GABRIELSON

MICHAEL L. SCHAFFERSMAN

THOMAS E. CAHILL

ROBERT M. AUSTIN

JOHN J. LAPKE

GUY A. TETREAU

JAMES X. MONAGHAN

STEPHEN P. GARRITY

STEVE M. SAWYER

DUANE M. SMITH

DARRELL C. FOLSOM

DANIEL A. NEPTUN

WILLIAM J. UBERTI

CHRISTOPHER C. COLVIN

GEORGE W. DUPREE

DOUGLAS J. WISNIEWSKI

ROBERT W. NUTTING

BRADLEY M. JACOBS

CHET A. HARTLEY

GREGORY A. KMIECIC

DAVID B. MC LEISH

FRANCIS J. STURM

DAVID C. SPILLMAN

CHRISTOPHER A. ABEL

NORRIS E. MERKEL

WILLIAM D. WIEDENHOEFT

DAN S. TAKASUGI

CHRISTOPHER J. CONKLIN

KEVIN S. COOK

LOYD M. MCKINNEY

BRIAN J. FORD

CHRISTOPHER T. BOEGEL

DOUGLAS B. LANE

JEFFREY D. STEIB

WILLIAM J. BELMONDO

BRUCE E. VIEKMAN

PATRICK T. KELLY

KENNETH L. KING, JR.

CURTIS L. DUBAY

BRUCE M. ROSS

MICHAEL L. BLAIR

CHARLES S. JOHNSON, JR.

RONALD A. GAN

DAVID C. AURAND

MARK J. FIEBRANDT

WILLIAM R. GRAWE

ROBERT F. CORBIN

STEPHEN L. SIELBECK

JOH M. WATSON

DANA E. WARE

RICHARD J. PRESTON, JR.

FRANCIS A. DUTCH

DANIEL K. OLIVER

KEVIN A. REDIG

JOHN D. MCCANN, JR.

KENNETH L. SAVOIE

STEPHEN J. DARMODY

PETER J. BOYNTON

HERBERT A. BLACK III

NEIL O. BUSCHMAN

DAVID R. KING

THOMAS L. KOONTZ

DANIEL R. MAY

WILLIAM J. SEMRAU

ERIC M. JEWESS

JAMES K. LOUETTIT

JOHN T. COSTELLO, JR.

SUSAN D. BIBEAU

KEITH B. KETOURNEAU

DAVID B. HILL

CHARLES W. HOLMAN

JEFFREY R. PETTTTT

RICHARD W. HATTON

ROY A. NASH

JOHN E. LONG

BRUCE D. BRANHAM

JEFFREY D. HOLMGREN

RODRICK M. ANSLY

SCOTT H. EVANS

MARK P. BLACE

CHARLES D. PRATT

DAVID A. MASIERO

GERALD R. GIRARD

JOHN H. KORN

EDWIN H. DANIELS, JR.

SHANE C. ISHIKI

KEVIN D. KRUMDECK

EVERETT F. ROLLINS III

STEPHEN J. DANCUSK

PATRICK H. STADT

KENNETH B. PARRIS

MARK P. WATSON

GLENN G. MILLER

SCOTT D. GENOVESE

MARC C. CRUDER

ROBERT E. MOBLEY

TIMOTHY J. LEAHY

DANNY ELLIS

RODNEY D. RAINES III

CLAUDIA P. WELLS

JOSEPH W. BODENSTEDT

ERIC A. ROSENBERG

BRUCE K. HUERTAS

EDWARD O. COATES

GARY E. DAHMEN

CARSTEN L. HENNINGSEN

III

MICHAEL S. BLACK

JACK G. ALBERT, JR.

RONALD J. KOCHAN

AL J. BERNARD

MICHAEL E. MAES

MARK D. BOBAL

JAMES F. MCMANUS

DAVID L. SCOTT

PHILLIP M. LITHERLAND

FRANCES L. PROPST

RICHARD A. MCCULLOUGH

JOHN D. BOGLE

DANIEL A. CUTRER

SCOTT A. NEWSHAM

GLENN A. GORTON

GERALD M. SWANSON

WALTER J. REGER

HAROLD W. FINCH, JR.

DAVID J. TALLON

EDWARD G. LEBLANC

ROGER B. GAYMAN

TIMOTHY J. CUNNINGHAM

ERIC J. SHAW

MARY E. LANDRY

THE FOLLOWING RESERVE OFFICER OF THE U.S. COAST GUARD TO BE A PERMANENT COMMISSIONED OFFICER IN THE GRADE OF COMMANDER:

RONALD W. BRANCH

THE FOLLOWING OFFICERS OF THE U.S. COAST GUARD OF THE PERMANENT COMMISSIONED TEACHING STAFF AT THE COAST GUARD ACADEMY FOR PROMOTION TO THE GRADE OF CAPTAIN:

THOMAS J. HAAS

LEONARD J. KELLY, JR.

THE FOLLOWING OFFICERS OF THE U.S. COAST GUARD OF THE PERMANENT COMMISSIONED TEACHING STAFF AT THE COAST GUARD ACADEMY FOR PROMOTION TO THE GRADE OF COMMANDER:

MARK B. CASE

ROBERT C. AYER

IN THE AIR FORCE

THE FOLLOWING-NAMED OFFICER FOR APPOINTMENT IN THE U.S. AIR FORCE RESERVE TO THE POSITION AND GRADE INDICATED, UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 8038:

To be chief of Air Force Reserve

MAJ. GEN. ROBERT A. MCINTOSH, xxx-xx-xx.

THE FOLLOWING-NAMED OFFICERS FOR APPOINTMENT IN THE RESERVE OF THE AIR FORCE, TO THE GRADE INDICATED, UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTIONS 593, 8351, AND 8374:

AIR NATIONAL GUARD OF THE UNITED STATES

To be major general

BRIG. GEN. THOMAS W. POWERS, xxx-xx-x.

BRIG. GEN. DAVID E.B. WARD, xxx-xx-x.

To be brigadier general

COL. ROBERT L. BIEHUNKO, xxx-xx-x.

COL. JOSEPH L. CANADY III, xxx-xx-xx.

COL. JAMES H. GRESHIK, xxx-xx-x.

COL. STANLEY P. MAY, xxx-xx-x.

COL. KENNETH W. MCGILL, xxx-xx-x.

COL. GEORGE F. SCOGGINS, JR., xxx-xx-xx.

COL. MILES B. SCRIBNER, xxx-xx-x.

COL. CAROL M. THOMAS, xxx-xx-x.

IN THE NAVY

THE FOLLOWING-NAMED OFFICER TO BE PLACED ON THE RETIRED LIST IN THE GRADE INDICATED UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 1370:

To be admiral

ADM. PAUL D. MILLER, xxx-xx-x.

THE FOLLOWING-NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF VICE ADMIRAL WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601:

To be vice admiral

REAR ADM. WALTER J. DAVIS, JR., xxx-xx-xx.

THE FOLLOWING-NAMED REAR ADMIRAL (LOWER HALF) IN THE LINE OF THE NAVY FOR PROMOTION TO THE PERMANENT GRADE OF REAR ADMIRAL, PURSUANT TO TITLE 10, UNITED STATES CODE, SECTION 624, SUBJECT TO QUALIFICATIONS THEREFOR AS PROVIDED BY LAW:

UNRESTRICTED LINE OFFICER

To be rear admiral

REAR ADM. (LH) WILLIAM E. NEWMAN

THE FOLLOWING-NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF REAR ADMIRAL IN ACCORDANCE WITH ARTICLE II, SECTION 2, CLAUSE 2, OF THE CONSTITUTION:

To be rear admiral

CAPT. JOHN F. EISOOLD, MC

IN THE MARINE CORPS

THE FOLLOWING-NAMED OFFICER, UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 601, FOR ASSIGNMENT TO A POSITION OF IMPORTANCE AND RESPONSIBILITY AS FOLLOWS:

To be general

LT. GEN. JOHN J. SHEEHAN

IN THE AIR FORCE

THE FOLLOWING NAMED OFFICERS FOR PERMANENT PROMOTION IN THE UNITED STATES AIR FORCE, UNDER THE PROVISIONS OF SECTION 628, TITLE 10, UNITED STATES CODE, AS AMENDED, WITH DATE OF RANK TO BE DETERMINED BY THE SECRETARY OF THE AIR FORCE.

LINE OF THE AIR FORCE

To be lieutenant colonel

- JAMES S. DALRYMPLE
RICHARD A. HAND
REED F. HANSON
MICHAEL A. KOLODKA
JAMES W. LAMB
MICHAEL B. MCGINTY
LANNY B. MCNEELY
ANTONIO MENDIBUR
MICHAEL H. OELRICH
JAMES N. PANKAU
DOUGLAS E. PATON
HARRY J. THOMPSON III
BENJAMIN H. TROEMEL, JR.
GEORGE B. WARTON II
SCOTT E. WUESTHOFF

To be major

- DANIEL B. BAKKE
RICHARD J. DIERINGER
JUAN S. DINKINS
ROLLIN S. DIXON
LLOYD W. EAST, JR.
SUSAN M. FULLER
JOE L. HOGLER
RICHARD J. HORAN
RANDALL C. MILLER
ROBERT J. RADFORD
SETH D. SHEPHERD
THOMAS E. STRAIGHT, JR.

THE FOLLOWING-NAMED OFFICERS FOR PERMANENT PROMOTION IN THE U.S. AIR FORCE, UNDER THE PROVISIONS OF SECTION 628, TITLE 10, UNITED STATES CODE, AS AMENDED, WITH DATES OF RANK TO BE DETERMINED BY THE SECRETARY OF THE AIR FORCE. THE OFFICER IDENTIFIED WITH AN ASTERISK IS ALSO NOMINATED FOR APPOINTMENT IN THE REGULAR AIR FORCE IN ACCORDANCE WITH SECTION 531, TITLE 10, UNITED STATES CODE, WITH A VIEW TO DESIGNATION UNDER THE PROVISIONS OF SECTION 8067, TITLE 10, UNITED STATES CODE, TO PERFORM THE DUTIES INDICATED PROVIDED THAT IN NO CASE SHALL THE OFFICERS BE APPOINTED IN A GRADE HIGHER THAN INDICATED.

MEDICAL SERVICE CORPS

To be major

KENNETH R. MCDONOUGH

BIOMEDICAL SCIENCES CORPS

To be colonel

JAMES P. DIXON

To be lieutenant colonel

EDWARD J. LUMINATI

THE FOLLOWING OFFICERS FOR APPOINTMENT IN THE REGULAR AIR FORCE UNDER THE PROVISIONS OF SECTION 531, TITLE 10, UNITED STATES CODE, WITH GRADE AND DATE OF RANK TO BE DETERMINED BY THE SECRETARY OF THE AIR FORCE PROVIDED THAT IN NO CASE SHALL THE OFFICERS BE APPOINTED IN A GRADE HIGHER THAN THAT INDICATED.

LINE OF THE AIR FORCE

To be captain

DOUGLAS E. SEIVER

DANNY J. WATSON

IN THE MARINE CORPS

THE FOLLOWING-NAMED NAVAL RESERVE OFFICERS TRAINING CORPS GRADUATES FOR PERMANENT APPOINTMENT TO THE GRADE OF SECOND LIEUTENANT IN THE U.S. MARINE CORPS, PURSUANT TO TITLE 10, U.S. CODE, SECTIONS 531 AND 2107:

To be second lieutenant

HEIDI A. ALOISE

- JEROME J. CHANDLER
ROBERT D. FRANSON
JAMES P. HAMILTON
BRIAN C. HAWKINS
CHRISTIAN M. RANKIN
DENNIS L. SAUGSTAD, JR.
JAMES L. WILKINSON

THE FOLLOWING-NAMED MARINE CORPS ENLISTED COMMISSIONING EDUCATION PROGRAM GRADUATE FOR PERMANENT APPOINTMENT TO THE GRADE OF SECOND LIEUTENANT IN THE U.S. MARINE CORPS, PURSUANT TO TITLE 10, U.S. CODE, SECTIONS 531:

To be second lieutenant

DAVID E. HART

IN THE NAVY

THE FOLLOWING-NAMED LIEUTENANTS IN THE STAFF CORPS OF THE NAVY FOR PROMOTION TO THE PERMANENT GRADE OF LIEUTENANT COMMANDER, PURSUANT TO TITLE 10, UNITED STATES CODE, SECTION 624, SUBJECT TO QUALIFICATIONS THEREFORE AS PROVIDED BY LAW:

MEDICAL CORPS OFFICERS

To be lieutenant commander

- ALTENHOFEN, CHRISTOPHER J.
ANDERSON, ARNE J.
ANDERSON, CLAUDE D.
ANDERSON, NILS
AUGUSTUS, CARL T.
AUSTIN, SUSAN J.
AYERS, JEFFREY A.
BACHSTEIN, JAMES M.
BAILEY, LYNN A.
BALL, RUSSELL A.
BALOUGH, BEN J.
BARCOMB, ALAN J.
BERNSTEIN, TODD H.
BELSON, BRIAN M.
BELTRA, LINDA J.
BERNSTEIN, TODD H.
BLOTTER, ROBERT H.
BOLLINGER, BARBARA K.
BONNEMA, CRAIG L.
BORGESON, DANA C.
BOWLING, LESTER S.
BRENNAN, FRANK J.
BUCKLEY, RONALD
BURNS, BENNETT S.
CAMMARATA, ANGELA J.
CAMPBELL, VIVIAN D.
CANEVA, DUANE C.
CARPENTER, JOEL P.
CARROLL, MATTHEW T.
CARTER, MARTHA W.
CASTELLAN, SUE E.T.
CECE, JENNIFER A.
CHANNELL, JOHN C.
CHAVEZ, BENNIE
CHESKY, JOSEPH F.
CHRISTIE, THERESA L.
CHUDACOFF, RICHARD M.
CLARK, GORDON B.
CLINE, HAROLD S.
COLE, JAMES P., JR.
COMER, STEWART W.
COSS, HAROLD S.
CRESCENZI, VICTORIA T.
CURRY, MARGARET A.
DAVIS, SHARON H.
DOCKSTADER, STEVEN
DOUGLASS, ANDREW M.
EINFALT, ERIC S.
ELKINS, DAVID G.
ELLIS, ROBERT J.
ERNSTER, ALLEN M.
EVANS, LARRY A.
FAVA, ANTHONY J.
FERRER, FERNANDO A.
FINK, BRETT R.
FITZSIMONS, JOHN P.
FLOUNT, THOMAS A.
FOULDS, KAREN E.
FREEMAN, RICHARD K.
FRITZ, GERARD D.
FROGGE, JAMES M.
FUNK, KENT J.
FURLONG, CHRISTOPHER B.
GABLE, PRESTON S.
GAFFNEY, KEVIN C.
GEHLE, RANDALL D.
GEORGE, ATHANASIOS H.
GERMAIN, MICHELLE M.
GIBLIN, JOHN M.
GIVENS, REGINALD A.
GLEASON, LISA A.
GLEASON, TIMOTHY P.
GNUECHTEL, MICHAEL M.
GOALY, THOMAS J., JR.
GODDARD, DANIEL G.
GONZALEZ, JULIO
GOODSELL, CRAIG W.
GRAEVE, JONATHAN F.
GREEN, RICHARD
GREENLEE, JOSEPH A., III
HACK, TERRANCE A.
HARBACH, TODD J.
HART, KRISTINA E.
HAWKINS, MARGUERITE A.

- HEAPS, ROBERT J.
HENDRIE, JENNIE G.
HERRING, JUDI C.
HERRON, MICHAEL
HESLINGER, KEITH A.
HIER, DODDS S.L.
HIGHTOWER, DANIEL J.
HIGHTOWER, GEORGE B.
HILL, JOHN M.
HILL, KEVIN F.
HILL, ROBERT A.
HILLENBRAND, KARIN M.
HINKLEY, DEBORAH A.
HOANG, JOSEPH T.
HOFFMAN, MARK G.
HOPKINS, JON L.
HUGHES, MICHAEL G.
JACOBS, MICHAEL M.
JAHN, TIMOTHY W.
JAIME, FRANCISCO.
JOHN, PAUL W.
JOHNSON, THOMAS M.
JONES, BRUCE A.
JONES, STEVEN B.
JORGENSEN, EDWARD B.
JULIANO, JOHN S.
KAHLER, DANIEL E.
KELLER, SETH M.
KELLY, JAMES D.
KELLY, KENNETH J.
KELSO, THOMAS B.
KENDALL, PATRICIA A.
KING, JOHN C.
KNEE, TREYCE S.
KNUTSON, JOHN P.
KUONG, ALLAN P.
LANE, MICHAEL D.
LANE, PENNY C.
LE, THONG P.
LECLAIR, SUSAN J.
LEE, YVONNE R.
LEVENTIS, LYNN L.
LEWIS, JANE C.
LINFESTY, RONALD L.
LINGEN, JOAN K.
LIPSON, ROBERT S.
LIVESAY, CHRISTOPHER H.
LOVE, JOSEPH B.
LUNDEEN, JEFFREY M.
MALAKOOTI, MARK A.
MALLAK, CRAIG T.
MARCO, PETER A.
MARQUAND, WESLEY L.
MARTIN, JEFFREY A.
MARTIN, ROBERT W.
MARTIN, STEPHEN C.
MATTHEWS, LELI
MATTONI, JOHN
MAYBURY, EDWARD A., JR.
MC BREEN, JOSEPH A.
MC BRIDE, MARK T.
MC CLURE, JEFFREY J.
MC DONALD, PATRICIA S.
MC DOUGLE, LEON
MC FARLAND, ROBERT M.
MC KEEBY, JEFFREY L.
MC KINNEY, ELIZABETH T.
MEAD, DONALD T., JR.
MEANS-MARKWELL, MELISSA
METTS, ROBERT E.
MILLER, ALAN K.
MILLER, OREN F.
MITTS, KEVIN G.
MOORE, ROBERT C.
NARINE, NALAN
NIOSSO, ANTHONY W.
NORDYKE, BRADLEY W.
NUSBAUM, JEAN M.
OLSON, CHERYL L.
OLSON, PETER H.
ORTUNO, MARILYN S.
PACHECO, PATRICIA P.
PALOMBARO, JAMES P.
PAULDING, JOSEPH D.
PERROTTA, PETER L.
PESCATORE, EARLE M., JR.
PETRE, ANNE M.
PETRE, JAMES E.
PIERCE, SAMUEL J.
POLSTON, GREGORY J.
POPE, THOMAS
PYE, HAROLD T.
RAND, SCOTT E.
RAPPOLD, JOSEPH H.
RAVAD, GUY
REQUENA, RICARDO
REUER, ROBERT D.
RICH, BRIAN W.
ROOS, JOEL A.
ROTHEN, ROBERT A.
RUPP, JOHN F.
SAVIDGE, TODD
SCHERER, PATRICIA
SCHERMERHORN, THOMAS J.
SCHREIBER, LEE R.
SCHROEDER, SONYA B.
SECHLER, DAVID L.
SHAY, SCOTT
SHIN, ALEXANDER
SHMORHUN, DANIEL P.
SHOPE, TIMOTHY R.
SHOWER, LAURA L. F.

SKANCHY, KELLY D. xxx-xx-x
 SKIDMORE, ROBERT xxx-xx-x
 SONKEN, RONALD S. xxx-xx-x
 SORENSEN, MICHAEL D. xxx-xx-x
 SOYER, ADAM D. xxx-xx-x
 SPIEGEL, ARTHUR xxx-xx-x
 STAMBAUCH, TERRY A. xxx-xx-x
 STANLEY, PHILIP P. xxx-xx-x
 STOLLE, CHRISTOPHER P. xxx-xx-x
 SZWEC, ADRAIN B. xxx-xx-x
 TADDEO, JOSEPH R. xxx-xx-x
 TAKASHIMA, WILLIAM S. xxx-xx-x
 THACKER, CLIFFORD L. xxx-xx-x
 THEODORE, NICHOLAS xxx-xx-x
 THOMAS, BRUCE E. xxx-xx-x
 THOMPSON, MATTHEW xxx-xx-x
 TIPTON, ELIZABETH E. xxx-xx-x
 TOSCANO, JOSEPH D. xxx-xx-x
 TOURTELOT, JOHN B. xxx-xx-x
 TRIANA, RUDOLPH, JR. xxx-xx-x
 TVEDTEN, DANIEL E. xxx-xx-x
 UMLAUF, JON T. xxx-xx-x
 VELLING, THOMAS xxx-xx-x
 VERGARA, JOSE G. xxx-xx-x
 VYAS, ASHA S. xxx-xx-x
 WALTON, SARAH xxx-xx-x
 WARD, JOHN F. xxx-xx-x
 WARD, MICHAEL xxx-xx-x
 WARD, SHARON V. xxx-xx-x
 WAXMAN, ERNA A. xxx-xx-x
 WILDE, WADE W. xxx-xx-x
 WILLIAMS, HARRY xxx-xx-x
 WOLF, RICHARD B. xxx-xx-x
 YAVORSKI, CHESTER C. xxx-xx-x
 YENCHA, MYRON xxx-xx-x
 YEW, KENNETH S. xxx-xx-x
 YOUNG, LISA J. xxx-xx-x
 ZELLER, KRISTEN C. xxx-xx-x

SUPPLY CORPS OFFICERS
To be lieutenant commander

ACEVEDO, JOSEPH xxx-xx-x
 ADAMS, JOHN M. xxx-xx-x
 ALBER, MARY L. xxx-xx-x
 ALEXANDER, LESLIE H. xxx-xx-x
 ARCHER, DIANNE A. xxx-xx-x
 ARMSTRONG, ALDEN D. xxx-xx-x
 BAQUER, JEFFREY R. xxx-xx-x
 BARNARD, JAMES M. xxx-xx-x
 BARNETT, WILLIAM M. xxx-xx-x
 BEESON, KIMBERLEY A. xxx-xx-x
 BERRY, ERIC D. xxx-xx-x
 BINDER, JEANNE E. xxx-xx-x
 BLACK, RONALD L. xxx-xx-x
 BLAIR, KELLY J. xxx-xx-x
 BOOKER, ALLEN xxx-xx-x
 BORREBAUGH, DOUGLAS S. xxx-xx-x
 BOWER, MARK E. xxx-xx-x
 BOWMAN, WILLIAM A. xxx-xx-x
 BROADWELL, GARY A. xxx-xx-x
 BROOKS, PAUL A. xxx-xx-x
 BROWNING, PAUL xxx-xx-x
 BRUBAKER, THOMAS S. xxx-xx-x
 CAMUSO, JOHN W. xxx-xx-x
 CANDREVA, PHILIP xxx-xx-x
 CANTU, JESUS V. xxx-xx-x
 CAPLAN, MORRIS A. xxx-xx-x
 CARR, JOHNNY L. xxx-xx-x
 CHENIER, ROBERT W. xxx-xx-x
 CHRISTOPHERSON, RUTH A. xxx-xx-x
 COKER, W.W. xxx-xx-x
 COLE, ROBERT W., JR. xxx-xx-x
 COOK, GLENN R. xxx-xx-x
 COPP, DENNIS W. xxx-xx-x
 COUCOULES, CLAUDE J. xxx-xx-x
 COX, JEFFREY J. S. xxx-xx-x
 CUYLER, KENNETH E. xxx-xx-x
 CYRUS, CHARLES xxx-xx-x
 DAHL, PETER E. xxx-xx-x
 DAVIS, MICHAEL J. xxx-xx-x
 DAVIS, RANDALL L. xxx-xx-x
 DAVIS, ROBERT E. xxx-xx-x
 DIGGES, EDWARD D. xxx-xx-x
 DIRAMIO, VICTOR S. xxx-xx-x
 DOLAN, JAMES R. xxx-xx-x
 DOLLASE, STEVEN W. xxx-xx-x
 EGGENBERGER, MARIAN A. xxx-xx-x
 ELLIS, STEVEN B. xxx-xx-x
 EVANS, WESLEY M. xxx-xx-x
 FABISH, MICHAEL K. xxx-xx-x
 FOWLER, DAVID P. xxx-xx-x
 GARDNER-BROWN, MATTHEW T. xxx-xx-x
 GIORDANO, DEAN J. xxx-xx-x
 GONZALEZ, VIDAL E. xxx-xx-x
 GRAUER, WALTER A. xxx-xx-x
 HANSON, KEVIN T.M. xxx-xx-x
 HELLMAN, DAVID H. xxx-xx-x
 HENNESSY, JOSEPH P. xxx-xx-x
 HERRICK, CRAIG L. xxx-xx-x
 HOGENMILLER, MARK E. xxx-xx-x
 HOLDEN, SCOTT H., JR. xxx-xx-x
 HOLMES, ROBERT D., JR. xxx-xx-x
 HOOVER, JAMES H. xxx-xx-x
 HORTON, JEFFREY C. xxx-xx-x
 HULTS, ROBERT L. xxx-xx-x
 INABA, ROBERT M. xxx-xx-x
 JONES, MELVIN G. xxx-xx-x
 JONES, MICHAEL L. xxx-xx-x
 JONES, WILLIAM R. xxx-xx-x
 JUNG, JOHN D. xxx-xx-x
 KASPRZAK, MARY A. xxx-xx-x

KEITH, KEVIN G. xxx-xx-x
 KIM, SIDNEY J. xxx-xx-x
 KING, JOHN G. xxx-xx-x
 KRNC, JAMES J. xxx-xx-x
 LAIRD, TERRY W. xxx-xx-x
 LAMSON, ALLEN H. xxx-xx-x
 LANMAN, ERIC D. xxx-xx-x
 LAROCHELLE, LAWRENCE E. xxx-xx-x
 LEEPER, ALBERT M. xxx-xx-x
 LEONARD, THOMAS J. xxx-xx-x
 LEPP, RICHARD A. xxx-xx-x
 LOPEZ, AURURO A. xxx-xx-x
 LYNN, JOHN F. xxx-xx-x
 LYONS, TIMOTHY J. xxx-xx-x
 MARSHALL, STUART A. xxx-xx-x
 MARTIN, LESLIE D. xxx-xx-x
 MATO, NICHOLAS K. xxx-xx-x
 MCCABE, PATRICK O. xxx-xx-x
 MCPHEAK, MICHAEL B. xxx-xx-x
 MEIS, RANDALL M. xxx-xx-x
 MIEDZINSKI, ROBERT J. xxx-xx-x
 MOORE, RANDALL W. xxx-xx-x
 MORGAN, ANDREW S. xxx-xx-x
 MORGAN, TIMOTHY M. xxx-xx-x
 MORRIS, DAVID K. xxx-xx-x
 MULLIN, DREW K. xxx-xx-x
 MURRAY, DONN D. xxx-xx-x
 NICHOLS, PAUL F. xxx-xx-x
 O'BRIEN, CHARLOTTE D. xxx-xx-x
 PERSINGER, BEN P. xxx-xx-x
 PETERS, JAMES D. xxx-xx-x
 PIBURN, JAMES T. xxx-xx-x
 PRIMANN, JOHN C. xxx-xx-x
 PORT, WILLIAM H. xxx-xx-x
 PRY, DAVID A. xxx-xx-x
 PURCELL, TERENCE S. xxx-xx-x
 RACKAUSKAS, ALFREDO E. xxx-xx-x
 REICHAUT, ROBERT A. xxx-xx-x
 ROBBINS SHEILA A.R. xxx-xx-x
 SANCHEZ, GUY R. xxx-xx-x
 SCHARPNICK, STEVEN R. xxx-xx-x
 SCHMITZ, JOSEPH A. xxx-xx-x
 SHAPRO, STEPHEN R. xxx-xx-x
 SMITH, BARRY R. xxx-xx-x
 SMITH, HUGH C. xxx-xx-x
 SNOODGRASS, ALFRED W., JR. xxx-xx-x
 SNYDER, BRION S. xxx-xx-x
 SOULET, EUNICEA F. P. xxx-xx-x
 SPICER, JOHN S. xxx-xx-x
 STANLEY, MARK E. xxx-xx-x
 STEM, JACK, L. xxx-xx-x
 STILES, MARK A. xxx-xx-x
 ST. MORITZ, MARK E. xxx-xx-x
 STROH, GREGORY F. xxx-xx-x
 THARP, THOMAS A. xxx-xx-x
 THAYER, PAUL D. xxx-xx-x
 THERIAULT, ROBERT W. xxx-xx-x
 THON, SCOTT B. xxx-xx-x
 THORPE, FREDERICK G. xxx-xx-x
 TUPTS, ROBERT K. xxx-xx-x
 VALLE, CHRISTIAN J. xxx-xx-x
 VESEY, LAWRENCE J. xxx-xx-x
 WALLNER, MICHAEL J. xxx-xx-x
 WATT, DAVID M. xxx-xx-x
 WELLMAN, WILLIAM H. xxx-xx-x
 WENGER, BRIAN L. xxx-xx-x
 WILD, THOMAS S. xxx-xx-x
 WOLFE, JEFFREY, S. xxx-xx-x
 YODER, ELLIOTT C. xxx-xx-x
 YUDISKI, JOSEPH B., JR. xxx-xx-x
 ZIMMERMAN, MICHAEL E. xxx-xx-x

CHAPLAIN CORPS OFFICERS
To be lieutenant commander

ADAMS, GEORGE E. xxx-xx-x
 ANDERSON, BRUCE M. xxx-xx-x
 BARRETT, MILES J. xxx-xx-x
 BLACK, JON R. xxx-xx-x
 BOCHONOK, SANDRA L. xxx-xx-x
 BROWN, RONDALL xxx-xx-x
 BROWN, STEVEN R. xxx-xx-x
 CALHOUN, ANDREW, III xxx-xx-x
 CARTER, JOHN K., JR. xxx-xx-x
 CRADDOCK, RONALD D. xxx-xx-x
 CROMER, DAVID C. xxx-xx-x
 DANG, CHIN V. xxx-xx-x
 DAWSON, PASCHAL, L., III xxx-xx-x
 DELIS, ROBERT D. xxx-xx-x
 DORY, MICHAEL E. xxx-xx-x
 DUNHAM, LARRY C. xxx-xx-x
 DUNN, DOYLE W. xxx-xx-x
 ERESTAIN, ALFONSO E. xxx-xx-x
 FAUNTLEROY, WILLIAM K. xxx-xx-x
 FELDER, GERALD W. xxx-xx-x
 FIX, DONALD P. xxx-xx-x
 FRANKLIN, JOHN VICTOR xxx-xx-x
 GOODWIN, MELODY H. xxx-xx-x
 GORDY, JOHN C., III xxx-xx-x
 HARKNESS, FURNISS B., JR. xxx-xx-x
 HOGAN, TIMOTHY D. xxx-xx-x
 HOLLOWAY, DAVID L. xxx-xx-x
 HOLMES, WAYNE P. xxx-xx-x
 HUNTER, CHARLOTTE B. xxx-xx-x
 INGRAM, JAMES A. xxx-xx-x
 INMAN, RICHARD W. xxx-xx-x
 JOHNSON, PATRICK D. xxx-xx-x
 KEANE, ROBERT L. xxx-xx-x
 KLARER, MICHAEL E. xxx-xx-x
 KOZAK, MARK W. xxx-xx-x
 KREKELBERG, ANNE M. xxx-xx-x
 LEONARD, KIM A. xxx-xx-x

MC ALEXANDER, KALAS K. xxx-xx-x
 MCCORMICK, PATRICK J. xxx-xx-x
 MCGUIRE, DEBRA E. xxx-xx-x
 MEEHAN, DIANA L. xxx-xx-x
 MORENO, JAIRO xxx-xx-x
 NELSON, TERRY E. xxx-xx-x
 ORTIZ, RUBEN A. xxx-xx-x
 OVERTURF, TIMOTHY L. xxx-xx-x
 PARISI, MICHAEL J. xxx-xx-x
 POWERS, ROY S. xxx-xx-x
 RAMIREZ, ABEL, xxx-xx-x
 SEILER, JEFFREY H. xxx-xx-x
 SEYB, STOCKTON, K.M. xxx-xx-x
 SPALDING, MARY H. xxx-xx-x
 STEWART, GARY P. xxx-xx-x
 TOKAR, PETER, JR. xxx-xx-x
 VEITCH, DONALD P. xxx-xx-x
 WAKEFIELD, TIMOTHY E. xxx-xx-x
 WEEDEN, GARY P. xxx-xx-x
 WILLIAMS, CHRISTOPHER xxx-xx-x
 WILLIAMS, ROBERT T. xxx-xx-x
 WILLIAMS, WILLIE xxx-xx-x
 WOIENSKI, RICHARD xxx-xx-x
 WRIGHT, MICHAEL A. xxx-xx-x
 YORTON, MARK B. xxx-xx-x

CIVIL ENGINEER CORPS OFFICERS
To be lieutenant commander

ABATE, MICHAEL K. xxx-xx-x
 ADDISON, IRENE K. xxx-xx-x
 ANDRES, ROBERT E. xxx-xx-x
 BALDWIN, MARY K. xxx-xx-x
 BECKETT, JAMES P. xxx-xx-x
 BELL, SCOTT R. xxx-xx-x
 BERCHTOLD, DAVID A. xxx-xx-x
 BERNIS, MICHAEL J. xxx-xx-x
 BOROWY, JEFFREY T. xxx-xx-x
 BOUCHER, THOMAS M. xxx-xx-x
 BOUIKA, HAROLD A. xxx-xx-x
 BRANCH, KENNETH W. xxx-xx-x
 BROWN, EDWARD W. xxx-xx-x
 BURNS, TIMOTHY W. xxx-xx-x
 CAMPBELL, DONALD B., JR. xxx-xx-x
 CHANDLER, DONALD R. xxx-xx-x
 CLARKE, CARLOS D. xxx-xx-x
 CLARKE, ROBERT S. xxx-xx-x
 COBLENTZ, WILLIAM L. xxx-xx-x
 COOK, RICHARD D. xxx-xx-x
 COORDS, WILLIAM F. xxx-xx-x
 CREASY, DARRYL K. xxx-xx-x
 CROMPTON, RICHARD E. xxx-xx-x
 CRUSSELLAS, ANTONIO xxx-xx-x
 CUMMINGS, JAMES J. xxx-xx-x
 DAMANDA, KEVIN J. xxx-xx-x
 DECKER, CHRISTIAN C. xxx-xx-x
 DOBSON, HENRY V., JR. xxx-xx-x
 DRAPER, JEFFREY D. xxx-xx-x
 DUREN, DENNIS L. xxx-xx-x
 EDWARDS, JOHN H. xxx-xx-x
 EICH, WILLIAM G. xxx-xx-x
 FAHEY, ROBERT G. xxx-xx-x
 FAULK, DAVID P. xxx-xx-x
 FISCHER, STEVEN G. xxx-xx-x
 GARCIA, GREGORY A. xxx-xx-x
 GAVRISHEFF, ALEXIS M. xxx-xx-x
 GENTRY, JAMES E., JR. xxx-xx-x
 GEORGES, DAVID R. xxx-xx-x
 GIBBONS, PATRICK J. xxx-xx-x
 GIBBS, ROBERT J. xxx-xx-x
 GLOBOKAR, SUSAN P. xxx-xx-x
 GONZALEZ, EDUARD xxx-xx-x
 GRIFFITH, CHRISTOPHER J. xxx-xx-x
 HAMILTON, PATRICK J. xxx-xx-x
 HARRIS, DAVID W., II xxx-xx-x
 HEDGES, JOSEPH D. xxx-xx-x
 HEINZEL, JOHN J. xxx-xx-x
 HELVEY, CLETE R. xxx-xx-x
 HOEL, JEFFREY S. xxx-xx-x
 HOFMANN, TRACY D. xxx-xx-x
 HUGGINS, MICHAEL D. xxx-xx-x
 JODOIN, JEFFREY J. xxx-xx-x
 JOHNSTON, RANDALL J. xxx-xx-x
 KING, WILLIAM T. xxx-xx-x
 KIWUS, CHRISTOPHER H. xxx-xx-x
 LAMBERSON, JEFFREY D. xxx-xx-x
 LEEMASTER, MARK L. xxx-xx-x
 LIBONATE, MARK R. xxx-xx-x
 LIPSKI, MICHAEL xxx-xx-x
 LISTER, SCOTT R. xxx-xx-x
 MANNING, CAMERON A. xxx-xx-x
 MAURER, CLIFFORD M. xxx-xx-x
 MCGARRITY, ROBERT J. xxx-xx-x
 MCLEAN, ROBERT A., III xxx-xx-x
 MILLS, STEVEN G. xxx-xx-x
 MUILENBURG, BRET J. xxx-xx-x
 MYRUN, MARC A. xxx-xx-x
 NORWOOD, JOHN S. xxx-xx-x
 OPENSHAW, MARK F. xxx-xx-x
 OSTER, WILLIAM A. xxx-xx-x
 PETOUHOFF, MICHAEL L. xxx-xx-x
 POINDESTER, MARK A. xxx-xx-x
 PREBLE, TERENCE G. xxx-xx-x
 PREGEL, GEORGE A. xxx-xx-x
 RICE, GINGER B. xxx-xx-x
 RICE, JOHN D. xxx-xx-x
 ROSE, PAUL M. xxx-xx-x
 ROSNER, JOHN xxx-xx-x
 ROWLANDS, WARREN D. xxx-xx-x
 ROYSTER, ROLAND H., JR. xxx-xx-x
 SAYGER, MARK L. xxx-xx-x
 SCHOFIELD, JAMES M. xxx-xx-x

SELLERS, LINDA L.
SMITH, SCOTT G.
SNOOK, KELLY R.
STEVENS, STEVEN N.
STRICKLAN, KIMBERLY K.
TAYLOR, GEORGE E., II
TROTTA, ANDREW P.
TURNER, VERNON R.
VANDEVOORDE, JAMES R.
WASHINGTON, JULIUS C.
WELL, DAVID K.
WESTMORELAND, MICHAEL K.
WILLIAMS, MARY J.
WILSON, CHARLES K.
WORCESTER, JAMES A.
ZAPP, KAREN M.

BEAUDOIN, RICHARD P.
BEAUJON, JAN R., III
BROGDON, THOMAS D.
BROWN, STEVEN I.
BURTON, CRAIG L.
BYE, EDWARD S.
CADY, DEBORAH A.
CARLSON, NEAL A.
COLORITO, LARRY R.
COLE, KENNETH A.
CONNOR, PAUL E.
COOPER, MITCHELL A.
COPE, STANTON E., JR.
CORFUZ, VICTOR B.
DEINNOCENTIS, VINCENT
DELARA, EUGENE M.
DIGGS, PATRICIA
EKENAKALU, CHIDIEBERE
EVANS, PAMELA J.
FERIL, BENJAMIN G.M.
FINCH, MICHAEL L.
FISHER, STUART B.
FRANTZEN, THOMAS A.
GALLAND, ROLAND M.
GANNON, MARIE E.
GARIPAY, ROLAND G.
GLENNON, BRENDAN H.
GONZALES, RICHARD
HALL, REGINA
HAYSLETT, BEVERLY J.
HENSON, PAUL A.
HIPOLITO, ELISEO F.
HOLMES, STEPHEN L.
HOWARD, CRAIG M.
HUERTAS, VICTOR M.
HYDE, KAREN R.
IVEY, GARY W.
JONES, CLAUDIA A.
KATO, KAREN S.
KNIGHT, WILSON G.
KOERNER, SETH D.
LANE, TERRY M.
LIAM, BENJAMIN D., JR.
LINDBERG, AMY D.
LINNVILLE, STEVEN E.
LUCART, ANN L.
LUCAS, CHARLES E., JR.
MACINSKI, MICHAEL J.
MAHONE, ERNEST M.
MARIONI, MARIA L.
MAROTTA, DAVID J.
MATER, DAVID A.
MATHEWS, MICHAEL J.
MATHIS, ANTHONY L.
MCCORMACK, WILLIAM P.
MCNEIL, REGINALD B.
MCERRITT, JANELLE A.
MERTILLE, FRANK C.
MIHARA, THOMAS G.
MILLS, DEXTER R.
MONAHAN, MARK C.
MONTROY, EDWIN G.
MOSES, DENNIS L.
MULL, DAVID D.
MUNDT, VICTORIA L.
OYOFU, BUHARI A.
PACHECO, DANIEL J.
PARADISO, CATHERINE A.S.
PARKER, JOHN C.
PIERCE, ROBERT H., JR.
PISKURA, EDWARD S., JR.
PRESLEY, STEVEN M.
PRIBOTH, TERESA L.
RICHARDS, ALLEN L.
RODRIGUEZ, AMILCAR
SAENZ, EFREN S.
SANCHEZ, MICHAEL
SANDERS, WILLIAM D.
SELLERS, ROGER L.
SERVICE, DAVID E.
SHAKE, CARON L.
SHAW, GARY A.
SMALLWOOD, EUGENE F., JR.
SMITH, DEBRA K.H.
SMITH, ELEANOR J.
SMITH, PHILIP A.
SMITH, STEWART D.
SMOCK, STEPHEN R.
SPARKS, REBECCA V.
SPRINGLE, CHARLES K.
STALCUP, ANNA H.
STOREY, WILLIAM L.
TAYLOR, ROBERT B.
THORNTON, STEPHEN A.
VILLAMORA, ALFONSO E.
WALTER, PENNY B.
WARD, ARTHUR W.
WILEY, BRADFORD J.
WILLIAMS, GLENN E.
ZIEMKE, LISA A.

BASSETT-MITCHELL, DEBRA D.
BAYSIC, FAY M.
BEACH, KENNETH B.
BEADLE, ANNETTE
BERRY, DONNA T.
BLEAU, TIMOTHY L.
BLUMLING, RICHARD L.
BOGLE, MARCIA C.
BOWENS, SHIRLEY M.
BROWN, DENISE C.
BULACH, BONNIE A.
BUMBALOUGH, LINDA K.
BURNS, CHARLENE P.
BURTH, LOURDES E.
CADY, MARY W.
CARTER, DINETA C.
CELLI, MARIAN L.
CHAIN, CLINT S.
CLAREY, BARBARA F.
COPENHAVER, MARK N.
COX, JUDITH A.
DAVIDSON, TINA A.
DAVIDSON-WILSON, LATANYA D.
DAVIS, BRENDA
DELIZO, CAROLINE V.
DEMCHAK, MICHELE C.
DENHAM, JOHNNY M.
DIGGS, ANNE M.
DIONNE, SUSAN E.
DOZSA, EDIE H.
DULL, NANCY G.
FALLS, DEANNA C.
FIELDS, COLLEEN D.
FILLION, BRONWYN R.
FINES, DENISE M.
FISCHER, ROBERT A.
FLOWERS, KEVIN N.
FOTO, PAMELA R.
GEE, THERESA S.
GIFT, KATHRYN M.
GRIMES, JAN F.
HANSEN, WAYNE F.
HARLOW, KIMBERLY M.
HERNANDEZ, REBECCA
HILL, DEBORAH L.
HOFFMAN, CATHERINE M.
HOOD, RAYMOND J.
HUGHEN, JANET E.
HUGHES, LINDIA G.
ISAACSON, KIMBERLY K.
IZUMIYA, CYNTHIA W.
JACOB, GREGORY B.
JENISTA, JANET R.
JOHNSON, MAGGIE L.
JOHNSTON, EVAN K.
JOSEPH, JOANN M.
KELLEY, PATRICIA A.W.
KESSOCK, CHRISTY, L.D.V.
KNEVEL, ERIC S.
KUBCK, LYNNE R.
LALLY, ANNE M.
LANTRY, JAMES W., JR.
LARSEN, MARK S.
LAVOIE, THERESA
LESSLEY, LISA E.
LING, JEANNE Y.
LOY, LOUISE A.
MACKELLAR, JENNIFER
MARCH, SHARI E.
MARTIN, TAMARA C.
MASTERS, ROBERT J.
MCCOY, JENNIFER B.
MCDERMOTT, BARBARA A.
MCKEON, KATHLEEN A.
MICHEL, KATHLEEN A.
MILLER, SUSAN W.
MOHAN, GERARD H.
MONTGOMERY, KENNETH R.
MUELLER, DARLENE A.
MUSTELIER, JOSEPHINE
NASH, LINDA L.
NIEMANTSVERDIET-MCDONALD, K.
OKERSTROM, MARITA R.
OLSON, RONALD I.
OSHEA-SMITH, ANNA M.
OTIS, CAROL B.
OWENS, ROCHELLE A.
PACKER, DOROTHY G.
PARADIS, ROSEMARIE J.
PARODI, VIVIANNE A.
PAULY, BARBARA E.
PENNEBECKER, SUSAN M.
PENNINGTON, DEBRA A.
PEREZ, VICTORIA G.
PETERSEN, PATRICIA B.
PETTIT, LINDA
PFEFFER, DEBORA A.
PHILLIPS, RAYMOND E.
PIERCE, JAMES R.
POTTER, CINDY L.
POWERS, REBECCA J.
PRITCHARD, WAYNE D.
QUINONES, MELISSA
ROBERTS, KETH D.
ROYBALBISHOP, LISA M.
SABATINOS, JAMES F.
SANDERS, SUSANNE M.
SCHLIEF, KRISTIN E.
SCRUTON, SCOTT D.
SHERROCK, DEBORAH A.
SHVIEMA, DOROTHY J.
SNOW, TERESA E.

JUDGE ADVOCATE GENERAL'S CORPS OFFICERS

To be lieutenant commander

BRAU, KEITH L.
BRILL, JANE M.
CABELKA, TODD M.
CHARTIER, PAMELA M.
EDWARDS, MICHAEL M.
GOEHLER, BARRY J.
HANNINK, JOHN G.
HAYCOCK, STEVEN
HENNING, DIANE L.
HENSON, JEFFREY A.
HERLIHY, DAVID K.
HUNZEKER, MARK T.
JUNG, CHRISTOPHER D.
LANG, SCOTT M.
LOFTON, LINDA J.
MASSEY, CURTIS O., II
MC CARTHY, PATRICK M.
MIRO, THOMAS E.
MUELLER, DOUGLAS J.
ORTIZ, LAUREN B.
PRICE, ERIC C.
REISMEIER, CHRISTIAN L.
TIDESWELL, TAMMY F.
WARD, BRENDAN F.
WILLIAMS, SIDNEY K.
YOUNG, LINDA E.

BEAUDOIN, RICHARD P.
BEAUJON, JAN R., III
BROGDON, THOMAS D.
BROWN, STEVEN I.
BURTON, CRAIG L.
BYE, EDWARD S.
CADY, DEBORAH A.
CARLSON, NEAL A.
COLORITO, LARRY R.
COLE, KENNETH A.
CONNOR, PAUL E.
COOPER, MITCHELL A.
COPE, STANTON E., JR.
CORFUZ, VICTOR B.
DEINNOCENTIS, VINCENT
DELARA, EUGENE M.
DIGGS, PATRICIA
EKENAKALU, CHIDIEBERE
EVANS, PAMELA J.
FERIL, BENJAMIN G.M.
FINCH, MICHAEL L.
FISHER, STUART B.
FRANTZEN, THOMAS A.
GALLAND, ROLAND M.
GANNON, MARIE E.
GARIPAY, ROLAND G.
GLENNON, BRENDAN H.
GONZALES, RICHARD
HALL, REGINA
HAYSLETT, BEVERLY J.
HENSON, PAUL A.
HIPOLITO, ELISEO F.
HOLMES, STEPHEN L.
HOWARD, CRAIG M.
HUERTAS, VICTOR M.
HYDE, KAREN R.
IVEY, GARY W.
JONES, CLAUDIA A.
KATO, KAREN S.
KNIGHT, WILSON G.
KOERNER, SETH D.
LANE, TERRY M.
LIAM, BENJAMIN D., JR.
LINDBERG, AMY D.
LINNVILLE, STEVEN E.
LUCART, ANN L.
LUCAS, CHARLES E., JR.
MACINSKI, MICHAEL J.
MAHONE, ERNEST M.
MARIONI, MARIA L.
MAROTTA, DAVID J.
MATER, DAVID A.
MATHEWS, MICHAEL J.
MATHIS, ANTHONY L.
MCCORMACK, WILLIAM P.
MCNEIL, REGINALD B.
MCERRITT, JANELLE A.
MERTILLE, FRANK C.
MIHARA, THOMAS G.
MILLS, DEXTER R.
MONAHAN, MARK C.
MONTROY, EDWIN G.
MOSES, DENNIS L.
MULL, DAVID D.
MUNDT, VICTORIA L.
OYOFU, BUHARI A.
PACHECO, DANIEL J.
PARADISO, CATHERINE A.S.
PARKER, JOHN C.
PIERCE, ROBERT H., JR.
PISKURA, EDWARD S., JR.
PRESLEY, STEVEN M.
PRIBOTH, TERESA L.
RICHARDS, ALLEN L.
RODRIGUEZ, AMILCAR
SAENZ, EFREN S.
SANCHEZ, MICHAEL
SANDERS, WILLIAM D.
SELLERS, ROGER L.
SERVICE, DAVID E.
SHAKE, CARON L.
SHAW, GARY A.
SMALLWOOD, EUGENE F., JR.
SMITH, DEBRA K.H.
SMITH, ELEANOR J.
SMITH, PHILIP A.
SMITH, STEWART D.
SMOCK, STEPHEN R.
SPARKS, REBECCA V.
SPRINGLE, CHARLES K.
STALCUP, ANNA H.
STOREY, WILLIAM L.
TAYLOR, ROBERT B.
THORNTON, STEPHEN A.
VILLAMORA, ALFONSO E.
WALTER, PENNY B.
WARD, ARTHUR W.
WILEY, BRADFORD J.
WILLIAMS, GLENN E.
ZIEMKE, LISA A.

BASSETT-MITCHELL, DEBRA D.
BAYSIC, FAY M.
BEACH, KENNETH B.
BEADLE, ANNETTE
BERRY, DONNA T.
BLEAU, TIMOTHY L.
BLUMLING, RICHARD L.
BOGLE, MARCIA C.
BOWENS, SHIRLEY M.
BROWN, DENISE C.
BULACH, BONNIE A.
BUMBALOUGH, LINDA K.
BURNS, CHARLENE P.
BURTH, LOURDES E.
CADY, MARY W.
CARTER, DINETA C.
CELLI, MARIAN L.
CHAIN, CLINT S.
CLAREY, BARBARA F.
COPENHAVER, MARK N.
COX, JUDITH A.
DAVIDSON, TINA A.
DAVIDSON-WILSON, LATANYA D.
DAVIS, BRENDA
DELIZO, CAROLINE V.
DEMCHAK, MICHELE C.
DENHAM, JOHNNY M.
DIGGS, ANNE M.
DIONNE, SUSAN E.
DOZSA, EDIE H.
DULL, NANCY G.
FALLS, DEANNA C.
FIELDS, COLLEEN D.
FILLION, BRONWYN R.
FINES, DENISE M.
FISCHER, ROBERT A.
FLOWERS, KEVIN N.
FOTO, PAMELA R.
GEE, THERESA S.
GIFT, KATHRYN M.
GRIMES, JAN F.
HANSEN, WAYNE F.
HARLOW, KIMBERLY M.
HERNANDEZ, REBECCA
HILL, DEBORAH L.
HOFFMAN, CATHERINE M.
HOOD, RAYMOND J.
HUGHEN, JANET E.
HUGHES, LINDIA G.
ISAACSON, KIMBERLY K.
IZUMIYA, CYNTHIA W.
JACOB, GREGORY B.
JENISTA, JANET R.
JOHNSON, MAGGIE L.
JOHNSTON, EVAN K.
JOSEPH, JOANN M.
KELLEY, PATRICIA A.W.
KESSOCK, CHRISTY, L.D.V.
KNEVEL, ERIC S.
KUBCK, LYNNE R.
LALLY, ANNE M.
LANTRY, JAMES W., JR.
LARSEN, MARK S.
LAVOIE, THERESA
LESSLEY, LISA E.
LING, JEANNE Y.
LOY, LOUISE A.
MACKELLAR, JENNIFER
MARCH, SHARI E.
MARTIN, TAMARA C.
MASTERS, ROBERT J.
MCCOY, JENNIFER B.
MCDERMOTT, BARBARA A.
MCKEON, KATHLEEN A.
MICHEL, KATHLEEN A.
MILLER, SUSAN W.
MOHAN, GERARD H.
MONTGOMERY, KENNETH R.
MUELLER, DARLENE A.
MUSTELIER, JOSEPHINE
NASH, LINDA L.
NIEMANTSVERDIET-MCDONALD, K.
OKERSTROM, MARITA R.
OLSON, RONALD I.
OSHEA-SMITH, ANNA M.
OTIS, CAROL B.
OWENS, ROCHELLE A.
PACKER, DOROTHY G.
PARADIS, ROSEMARIE J.
PARODI, VIVIANNE A.
PAULY, BARBARA E.
PENNEBECKER, SUSAN M.
PENNINGTON, DEBRA A.
PEREZ, VICTORIA G.
PETERSEN, PATRICIA B.
PETTIT, LINDA
PFEFFER, DEBORA A.
PHILLIPS, RAYMOND E.
PIERCE, JAMES R.
POTTER, CINDY L.
POWERS, REBECCA J.
PRITCHARD, WAYNE D.
QUINONES, MELISSA
ROBERTS, KETH D.
ROYBALBISHOP, LISA M.
SABATINOS, JAMES F.
SANDERS, SUSANNE M.
SCHLIEF, KRISTIN E.
SCRUTON, SCOTT D.
SHERROCK, DEBORAH A.
SHVIEMA, DOROTHY J.
SNOW, TERESA E.

DENTAL CORPS OFFICERS

To be lieutenant commander

ALLEN, HENRY T.
ALTMAN, SHELLIE J.
BOWMAN, MICHAEL J.
BREILING, KURT J.
BROWN, BARBARA H.
BROWN, TERRY L.
BYERS, PAUL G.
CAMAISA, TED G.
CARUSO, ROBERT A., JR.
CASTLE, JAMES T.
COSTA, GUIDO E.
DEVEY, JASON P.
FAHNCKE, CHARLES E.
FINLEY, CLAYTON A.
GARRETT, KATHERINE E.
GAUSS, CHESTER B., III
GEORGE, ARTHUR T.
GRAMKEE, MATTHEW J.
GSCHWIND, SANDRA J.
GUTER, KLAUS D.
HAUN, JONATHAN L.
KALANTA, KEVIN T.
KOPP, THOMAS A.
KUHN, JULIA M.
LARSON, DAVID R.
LONERGAN, KATHY S.
LYNCH, CORNELIOUS T.
LYONS, WILLIAM J.
MADDEN, JENNIFER M.
MASUOKA, LOREN K.
MATTIOLI, ROBERT L.
MAYER, PETER G.
MENACHER, MAXEMILLIAN A.
MILIOS, STEVE P.
MILLER, JOHN P.
MILLER, STUART O.
MUNLEY, PATRICK J.
NORDSTROM, ERIC D.
PETERSEN, DOUGLAS G.
QADER, NASREEN S.
ROBINSON, PAMELA V.
RUBINO, GIACINTO F.
RUPPRECHT, ROBERT D.
SCHMIDT, KYLE J.
SCHULTE, GARY E.
SHELburne, KAREN E.
SHEINER, PATRICK J.
STEVENS, RICHARD W.
TALLIO, KELLY
TROTTER, BRADLEY S.
VOCKROTH, WILLIAM C.
WEINERT, BRIAN L.
WILLIAMS, DEREK K.
YANG, JOSEPH C.K.

BEAUDOIN, RICHARD P.
BEAUJON, JAN R., III
BROGDON, THOMAS D.
BROWN, STEVEN I.
BURTON, CRAIG L.
BYE, EDWARD S.
CADY, DEBORAH A.
CARLSON, NEAL A.
COLORITO, LARRY R.
COLE, KENNETH A.
CONNOR, PAUL E.
COOPER, MITCHELL A.
COPE, STANTON E., JR.
CORFUZ, VICTOR B.
DEINNOCENTIS, VINCENT
DELARA, EUGENE M.
DIGGS, PATRICIA
EKENAKALU, CHIDIEBERE
EVANS, PAMELA J.
FERIL, BENJAMIN G.M.
FINCH, MICHAEL L.
FISHER, STUART B.
FRANTZEN, THOMAS A.
GALLAND, ROLAND M.
GANNON, MARIE E.
GARIPAY, ROLAND G.
GLENNON, BRENDAN H.
GONZALES, RICHARD
HALL, REGINA
HAYSLETT, BEVERLY J.
HENSON, PAUL A.
HIPOLITO, ELISEO F.
HOLMES, STEPHEN L.
HOWARD, CRAIG M.
HUERTAS, VICTOR M.
HYDE, KAREN R.
IVEY, GARY W.
JONES, CLAUDIA A.
KATO, KAREN S.
KNIGHT, WILSON G.
KOERNER, SETH D.
LANE, TERRY M.
LIAM, BENJAMIN D., JR.
LINDBERG, AMY D.
LINNVILLE, STEVEN E.
LUCART, ANN L.
LUCAS, CHARLES E., JR.
MACINSKI, MICHAEL J.
MAHONE, ERNEST M.
MARIONI, MARIA L.
MAROTTA, DAVID J.
MATER, DAVID A.
MATHEWS, MICHAEL J.
MATHIS, ANTHONY L.
MCCORMACK, WILLIAM P.
MCNEIL, REGINALD B.
MCERRITT, JANELLE A.
MERTILLE, FRANK C.
MIHARA, THOMAS G.
MILLS, DEXTER R.
MONAHAN, MARK C.
MONTROY, EDWIN G.
MOSES, DENNIS L.
MULL, DAVID D.
MUNDT, VICTORIA L.
OYOFU, BUHARI A.
PACHECO, DANIEL J.
PARADISO, CATHERINE A.S.
PARKER, JOHN C.
PIERCE, ROBERT H., JR.
PISKURA, EDWARD S., JR.
PRESLEY, STEVEN M.
PRIBOTH, TERESA L.
RICHARDS, ALLEN L.
RODRIGUEZ, AMILCAR
SAENZ, EFREN S.
SANCHEZ, MICHAEL
SANDERS, WILLIAM D.
SELLERS, ROGER L.
SERVICE, DAVID E.
SHAKE, CARON L.
SHAW, GARY A.
SMALLWOOD, EUGENE F., JR.
SMITH, DEBRA K.H.
SMITH, ELEANOR J.
SMITH, PHILIP A.
SMITH, STEWART D.
SMOCK, STEPHEN R.
SPARKS, REBECCA V.
SPRINGLE, CHARLES K.
STALCUP, ANNA H.
STOREY, WILLIAM L.
TAYLOR, ROBERT B.
THORNTON, STEPHEN A.
VILLAMORA, ALFONSO E.
WALTER, PENNY B.
WARD, ARTHUR W.
WILEY, BRADFORD J.
WILLIAMS, GLENN E.
ZIEMKE, LISA A.

BASSETT-MITCHELL, DEBRA D.
BAYSIC, FAY M.
BEACH, KENNETH B.
BEADLE, ANNETTE
BERRY, DONNA T.
BLEAU, TIMOTHY L.
BLUMLING, RICHARD L.
BOGLE, MARCIA C.
BOWENS, SHIRLEY M.
BROWN, DENISE C.
BULACH, BONNIE A.
BUMBALOUGH, LINDA K.
BURNS, CHARLENE P.
BURTH, LOURDES E.
CADY, MARY W.
CARTER, DINETA C.
CELLI, MARIAN L.
CHAIN, CLINT S.
CLAREY, BARBARA F.
COPENHAVER, MARK N.
COX, JUDITH A.
DAVIDSON, TINA A.
DAVIDSON-WILSON, LATANYA D.
DAVIS, BRENDA
DELIZO, CAROLINE V.
DEMCHAK, MICHELE C.
DENHAM, JOHNNY M.
DIGGS, ANNE M.
DIONNE, SUSAN E.
DOZSA, EDIE H.
DULL, NANCY G.
FALLS, DEANNA C.
FIELDS, COLLEEN D.
FILLION, BRONWYN R.
FINES, DENISE M.
FISCHER, ROBERT A.
FLOWERS, KEVIN N.
FOTO, PAMELA R.
GEE, THERESA S.
GIFT, KATHRYN M.
GRIMES, JAN F.
HANSEN, WAYNE F.
HARLOW, KIMBERLY M.
HERNANDEZ, REBECCA
HILL, DEBORAH L.
HOFFMAN, CATHERINE M.
HOOD, RAYMOND J.
HUGHEN, JANET E.
HUGHES, LINDIA G.
ISAACSON, KIMBERLY K.
IZUMIYA, CYNTHIA W.
JACOB, GREGORY B.
JENISTA, JANET R.
JOHNSON, MAGGIE L.
JOHNSTON, EVAN K.
JOSEPH, JOANN M.
KELLEY, PATRICIA A.W.
KESSOCK, CHRISTY, L.D.V.
KNEVEL, ERIC S.
KUBCK, LYNNE R.
LALLY, ANNE M.
LANTRY, JAMES W., JR.
LARSEN, MARK S.
LAVOIE, THERESA
LESSLEY, LISA E.
LING, JEANNE Y.
LOY, LOUISE A.
MACKELLAR, JENNIFER
MARCH, SHARI E.
MARTIN, TAMARA C.
MASTERS, ROBERT J.
MCCOY, JENNIFER B.
MCDERMOTT, BARBARA A.
MCKEON, KATHLEEN A.
MICHEL, KATHLEEN A.
MILLER, SUSAN W.
MOHAN, GERARD H.
MONTGOMERY, KENNETH R.
MUELLER, DARLENE A.
MUSTELIER, JOSEPHINE
NASH, LINDA L.
NIEMANTSVERDIET-MCDONALD, K.
OKERSTROM, MARITA R.
OLSON, RONALD I.
OSHEA-SMITH, ANNA M.
OTIS, CAROL B.
OWENS, ROCHELLE A.
PACKER, DOROTHY G.
PARADIS, ROSEMARIE J.
PARODI, VIVIANNE A.
PAULY, BARBARA E.
PENNEBECKER, SUSAN M.
PENNINGTON, DEBRA A.
PEREZ, VICTORIA G.
PETERSEN, PATRICIA B.
PETTIT, LINDA
PFEFFER, DEBORA A.
PHILLIPS, RAYMOND E.
PIERCE, JAMES R.
POTTER, CINDY L.
POWERS, REBECCA J.
PRITCHARD, WAYNE D.
QUINONES, MELISSA
ROBERTS, KETH D.
ROYBALBISHOP, LISA M.
SABATINOS, JAMES F.
SANDERS, SUSANNE M.
SCHLIEF, KRISTIN E.
SCRUTON, SCOTT D.
SHERROCK, DEBORAH A.
SHVIEMA, DOROTHY J.
SNOW, TERESA E.

NURSE CORPS OFFICERS

To be lieutenant commander

ABASOLO, JENNIFER C.
ALEXANDER, KENNETH E.
ALKOSHNAW, KAREN, M.
AMMONS, MARK S.

ABNEY, AVA C.
APPLEQUIST, CHRISTIE M.
ARMBRUSTER, COLLETTE J.B.
ARMEI, THOMAS C.
AUBINKELLY, MARI
BALLANTYNE, KATHRYN
BARE, CHERIE L.
BARGER, BETH A.

BASSETT-MITCHELL, DEBRA D.
BAYSIC, FAY M.
BEACH, KENNETH B.
BEADLE, ANNETTE
BERRY, DONNA T.
BLEAU, TIMOTHY L.
BLUMLING, RICHARD L.
BOGLE, MARCIA C.
BOWENS, SHIRLEY M.
BROWN, DENISE C.
BULACH, BONNIE A.
BUMBALOUGH, LINDA K.
BURNS, CHARLENE P.
BURTH, LOURDES E.
CADY, MARY W.
CARTER, DINETA C.
CELLI, MARIAN L.
CHAIN, CLINT S.
CLAREY, BARBARA F.
COPENHAVER, MARK N.
COX, JUDITH A.
DAVIDSON, TINA A.
DAVIDSON-WILSON, LATANYA D.
DAVIS, BRENDA
DELIZO, CAROLINE V.
DEMCHAK, MICHELE C.
DENHAM, JOHNNY M.
DIGGS, ANNE M.
DIONNE, SUSAN E.
DOZSA, EDIE H.
DULL, NANCY G.
FALLS, DEANNA C.
FIELDS, COLLEEN D.
FILLION, BRONWYN R.
FINES, DENISE M.
FISCHER, ROBERT A.
FLOWERS, KEVIN N.
FOTO, PAMELA R.
GEE, THERESA S.
GIFT, KATHRYN M.
GRIMES, JAN F.
HANSEN, WAYNE F.
HARLOW, KIMBERLY M.
HERNANDEZ, REBECCA
HILL, DEBORAH L.
HOFFMAN, CATHERINE M.
HOOD, RAYMOND J.
HUGHEN, JANET E.
HUGHES, LINDIA G.
ISAACSON, KIMBERLY K.
IZUMIYA, CYNTHIA W.
JACOB, GREGORY B.
JENISTA, JANET R.
JOHNSON, MAGGIE L.
JOHNSTON, EVAN K.
JOSEPH, JOANN M.
KELLEY, PATRICIA A.W.
KESSOCK, CHRISTY, L.D.V.
KNEVEL, ERIC S.
KUBCK, LYNNE R.
LALLY, ANNE M.
LANTRY, JAMES W., JR.
LARSEN, MARK S.
LAVOIE, THERESA
LESSLEY, LISA E.
LING, JEANNE Y.
LOY, LOUISE A.
MACKELLAR, JENNIFER
MARCH, SHARI E.
MARTIN, TAMARA C.
MASTERS, ROBERT J.
MCCOY, JENNIFER B.
MCDERMOTT, BARBARA A.
MCKEON, KATHLEEN A.
MICHEL, KATHLEEN A.
MILLER, SUSAN W.
MOHAN, GERARD H.
MONTGOMERY, KENNETH R.
MUELLER, DARLENE A.
MUSTELIER, JOSEPHINE
NASH, LINDA L.
NIEMANTSVERDIET-MCDONALD, K.
OKERSTROM, MARITA R.
OLSON, RONALD I.
OSHEA-SMITH, ANNA M.
OTIS, CAROL B.
OWENS, ROCHELLE A.
PACKER, DOROTHY G.
PARADIS, ROSEMARIE J.
PARODI, VIVIANNE A.
PAULY, BARBARA E.
PENNEBECKER, SUSAN M.
PENNINGTON, DEBRA A.
PEREZ, VICTORIA G.
PETERSEN, PATRICIA B.
PETTIT, LINDA
PFEFFER, DEBORA A.
PHILLIPS, RAYMOND E.
PIERCE, JAMES R.
POTTER, CINDY L.
POWERS, REBECCA J.
PRITCHARD, WAYNE D.
QUINONES, MELISSA
ROBERTS, KETH D.
ROYBALBISHOP, LISA M.
SABATINOS, JAMES F.
SANDERS, SUSANNE M.
SCHLIEF, KRISTIN E.
SCRUTON, SCOTT D.
SHERROCK, DEBORAH A.
SHVIEMA, DOROTHY J.
SNOW, TERESA E.

MEDICAL SERVICE CORPS OFFICERS

To be lieutenant commander

STEVENS, ROSS R.P. xxx-xx-xx
 STRICKLAND, BRUCE R. xxx-xx-xx
 SUBLETT, ELIZABETH S. xxx-xx-xx
 SULLIVAN, MARY T. xxx-xx-xx
 SULLIVAN, RITA M. xxx-xx-xx
 SUMMERS, KATHRYN A. xxx-xx-xx
 SWATZELL, ELIZABETH A. xxx-xx-xx
 SWEET, GAIL R. xxx-xx-xx
 SWINEHART, SUSAN L. xxx-xx-xx
 TAYLOR, BEVERLY A. xxx-xx-xx
 TAYLOR, NANCY B. xxx-xx-xx
 THOMASON, PATRICIA W. xxx-xx-xx
 TOLBERT, CARLA G. xxx-xx-xx
 TROUP, LINDA E. xxx-xx-xx
 TURPTE, LORELIE xxx-xx-xx
 TURNER, CATHERINE B. xxx-xx-xx

UETZ, ANN M. xxx-xx-xx
 VERHEUL, KAREN L. xxx-xx-xx
 VILLAROS, ESTEBAN C., JR. xxx-xx-xx
 WARREN, MARY K. xxx-xx-xx
 WILLIAMS, RUTH A. xxx-xx-xx
 WILSON, JUANA M. xxx-xx-xx
 WRIGHT, DOROTHY B. xxx-xx-xx
 YORK-SLAGLE, LEANNE M. xxx-xx-xx

LIMITED DUTY OFFICERS (STAFF)

To be lieutenant commander

CABLING, BONIFACIO A. xxx-xx-xx
 COCHRANE, DAVID S. xxx-xx-xx
 DAVIS, WILLIAM C. xxx-xx-xx
 DELMUNDO, REYNALDO G. xxx-xx-xx

DUGGINS, RODNEY E. xxx-xx-xx
 FERGUSON, DWIGHT L. xxx-xx-xx
 HEIMBACH, MARC C. xxx-xx-xx
 JOHNSON, MICHAEL H. xxx-xx-xx
 KOCK, LINDBERGH, JR. xxx-xx-xx
 LEE, LARRY S. xxx-xx-xx
 MEYER, EDWIN M. xxx-xx-xx
 NAVEA, JOSE A. xxx-xx-xx
 PERKINS, OVEL xxx-xx-xx
 PIEPER, GEORGE E. xxx-xx-xx
 PONKO, THOMAS D. xxx-xx-xx
 PURVIS, DWIGHT L. xxx-xx-xx
 RAMSEY, EARL D. xxx-xx-xx
 SEXTON, SCOTT xxx-xx-xx
 WILLIAMS, BYRON C. xxx-xx-xx